

Umatilla County

Department of Land Use Planning



AGENDA

Umatilla County Planning Commission

Public Hearing

Thursday, April 23, 2015, 6:30 p.m.

Justice Center Media Room

Pendleton, OR

Members of Planning Commission

Randy Randall, Chair
Gary Rhinhart, Vice-Chair
Tammie Williams
Don Wysocki
David Lee
Don Marlatt
Suni Danforth
Cecil Thorne

Members of Planning Staff

Tamra Mabbott, Planning Director
Carol Johnson, Senior Planner

1. Call to Order

2. New Hearing:

REQUEST FOR A PUBLIC HEARING submitted by JAMES BREEDING on appeal of the following application. CONDITIONAL USE REQUEST, #C-1238-14, applicant JAMES BREEDING. Mr. Breeding applied for a conditional use permit to establish a PERSONAL AIRSTRIP on property he owns at 84943 Triangle Station Road, Milton-Freewater, OR 97862, Tax Lot 190, Assessor's Map 6N3522C. The applicant's property is located approximately 1000 feet north of Triangle Road and 3 miles northwest of the City of Milton-Freewater. A Personal Airstrip established on land zoned Exclusive Farm Use (EFU) may be permitted through a Conditional Use Permit. The standards that shall be met for a Conditional Use Permit to establish a Personal Airstrip are found in UCDC Sections 152617 (N), 152.061 & 152.615. The Breeding application was processed administratively as provided in UCDC Section 152.769, and a decision was made by the Planning Director to deny Conditional Use Permit, #C-1238-14. The applicant timely appealed the Planning Director's decision requesting a public hearing before the County Planning Commission as allowed in UCDC Section 152.766.

3. New Hearing:

TEXT AMENDMENT #T-15-061, filed by Umatilla County, the purpose is to adopt standards in the UCDO for firearms training facilities consistent with Oregon Administrative Rules Chapter 660-division 33 Section 0130(2)(c). The standards will specifically allow the county to provide for expansion of certain facilities, including a firearms training facility as defined in ORS 197.770. The criteria of approval are found in Umatilla County Development Code 152.750-152.754

**UMATILLA COUNTY
PLANNING COMMISSION
HEARING**

**THURSDAY,
April 23, 2015**

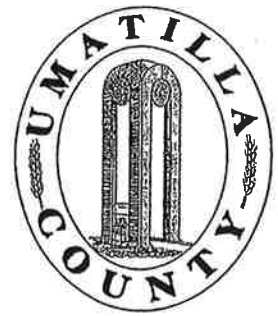
**Conditional Use Permit
Request, #C-1238-14**

**BREEDING CONDITIONAL USE PERMIT, #C-1238-14
PERSONAL USE AIRPORT OR AIRSTRIP
APRIL 23, 2015, PLANNING COMMISSION HEARING
PACKET LIST**

1. Staff Memo, pages 1 & 2
2. Assessor Map and list of notified property owners, page 3
3. Applicant's Maps, pages 4 & 5
4. Planning Map of 500' dwelling buffer area, page 6
5. Staff email to applicant, dated January 21, 2015, page 7
6. Staff Report & Final Findings, pages 8-15
7. Planning Staff 21-day Letter, pages 16 & 17
8. Comments from notified surrounding property owners, pages 18-23
9. Informational Letter from Oregon Dept. of Aviation, page 24
10. Applicant's request for a Public Hearing, pages 25-27
11. Email from a notified surrounding property owner, page 28
12. Staff Letter to Applicant on continuing to operate an unpermitted airstrip, page 29
13. Email from Oregon Dept. of Aviation, page 30
14. Comment Letter and photos from notified property owner, pages 31-33

Umatilla County

Department of Land Use Planning



April 15, 2015

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

MEMO

To: Umatilla County Planning Commissioners

From: Carol Johnson, Planner

Re: April 23, 2015 Planning Commission Hearing,
James Breeding, Applicant
Personal Airstrip/Airport Conditional Use Permit, #C-1238-14
Assessor Map #6N 35 22C, Tax Lot #190, Zoning - EFU

cc: Tamra J. Mabbott, Planning Director
County Code Enforcement

Background, Request and Timeline:

James Breeding was contacted May 18, 2014 by County Code Enforcement concerning the operation of a personal airstrip without a permit on his Exclusive Farm Use (EFU) zoned property. The visit from Code Enforcement resulted in submission (July 16, 2014) of a Conditional Use Permit application for a personal airstrip. Mr. Breeding's application lacked sufficient information addressing the criteria of approval; therefore, a completeness letter and information request was mailed to Mr. Breeding August 5, 2014. The completeness letter included a closing date for the requested information of January 2, 2015. Mr. Breeding provided additional information December 18, 2014.

Process & Notice:

Planning Staff processed the Breeding request administratively via public notice sent to the surrounding property owners on January 5, 2015. Comments were received in opposition to approval of the airstrip during the 21-day notice period; these comments are included in the Planning Commission packets.

Standards & Administrative Decision:

The EFU Conditional Use Section 152.060 (G) allows for personal use airports through approval of a Conditional Use Permit. Conditional Use Permit standards for personal use airports are found in Umatilla County Development Code (UCDC) Section 152.617 (N):

Personal Use Airport means an airstrip restricted, except for aircraft emergencies to use by the owner, and on an infrequent and occasional basis by his invited guests, and by commercial aviation activities in connection with agricultural operations.

In order to receive land use approval all land use requests must meet all of the criteria of approval. The Breeding request did not meet the EFU Conditional Use Permit criteria listed in UCDC Section 152.617 (N) (3), (4), (6) & (7) and UCDC Section 152.061 (See Staff Report, #23) and therefore, the Breeding Conditional Use request was denied.

The County Administrative land use process allows participates, including the applicant, an opportunity to file a request for a public hearing within 15-days of the mailed decision. The decision denying the Breeding Conditional Use Permit, #C-1238-14, was mailed January 28, 2015, beginning the 15-day time period that ended February 12, 2015.

On February 8, 2015, the Planning Department received a request for a public hearing from the applicant, James Breeding. This hearing request resulted in scheduling the denial of the Breeding Condition Use Permit application before the Planning Commission on April 23, 2015.

Continued Airstrip Use:

During the month of March 2015 the Planning Department received complaints about multiple take-off and landings of several aircraft from the Breeding property. As a result of information on the continued use of the Breeding property as an airstrip the Planning Department sent a letter to Mr. Breeding, dated March 31, 2015. The letter informed Mr. Breeding that there was no legal ability to use the property as an airstrip and to cease use of the property as an airstrip for the take-off and landing of aircraft.

Conclusion:

Unless the application meets all of the Conditional Use Permit criteria for establishment of the airstrip, the airstrip cannot be approved. Therefore, the Planning Department found, that the Breeding Condition Use Permit Application, #C-1238-14, as presented, did not meet the approval criteria and could not be approved.

The Planning Commission's task is either to uphold the decision made by the Planning Department and deny the Breeding application request, or based on substantial evidence in the record, approve the Breeding application.

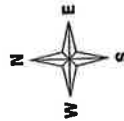
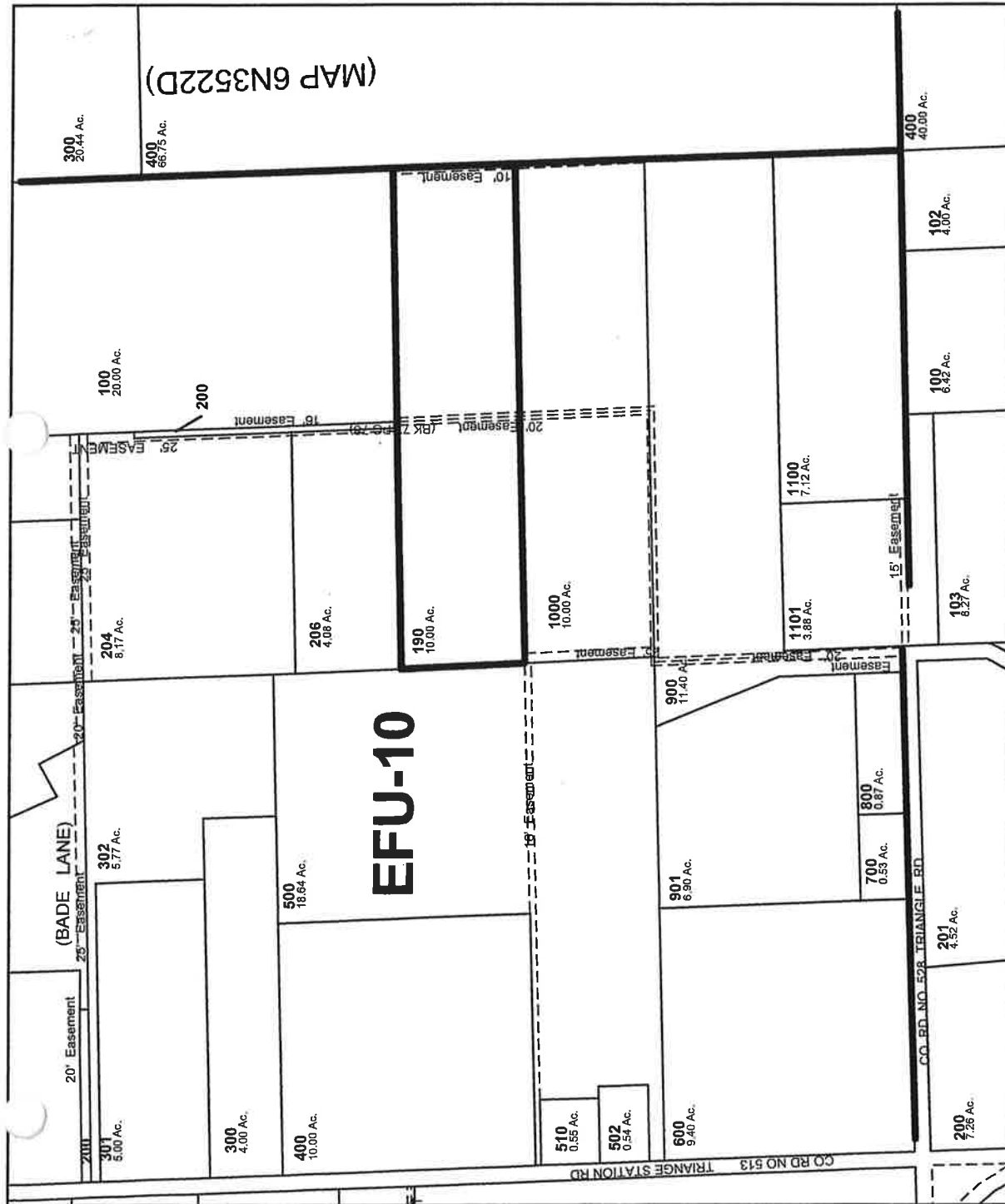
PROPERTY OWNERS WITH 750'
NOTICE AREA OF SUBJECT PARCEL

MAP 6N3522C

- 100 HANEY RICHARD D & JEANNE M
- 190 BREEDING JAMES D & SHERRIL
- 200 HANEY RONALD P & RUBY A
- 204 HANEY RICHARD D & JEANNIE
- 206 EISEMAN JIM JR & LANA
- 300 BATALIS JOHN PAUL
- 301 PUMPHREY CURTIS & LAURA ANN
- 302 GRIFFIN JEREMY S & KIMBERLY S
- 400 SEAGRAVE WILLIAM T & GERALDINE
- 500 POIROT JEHAN LOUIS & JUDITH D
- 600 WALKER GERALD & CONNIE
- 900 LUBBES BARBARA A
- 901 WALKER GERALD & CONNIE
- 1000 WIDNER LAWRENCE E
- 1100 HUMBERT CINDY L
- 1101 HUMBERT SAM & ROSELLA

MAP 6N3522D

- 300 MILLER DAVID J & DEBRA A
- 400 MILLER LARRY D ET AL



DATE: 7/31/14

MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Created by J. Alford, Umatilla County Planning Dept.

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CONDITIONAL USE REQUEST #C-1238-14
JAMES BREEDING, APPLICANT/OWNER
MAP 6N3522C, TAX LOT 190

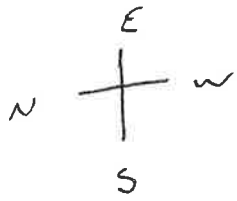
SUBJECT PARCEL



3

Home

500 yards



Field



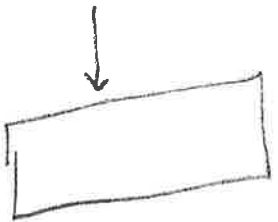
300 yards



1/2 mile

over 1/2 mile

over 1/2 mile





Google earth

feet 800
meters 200



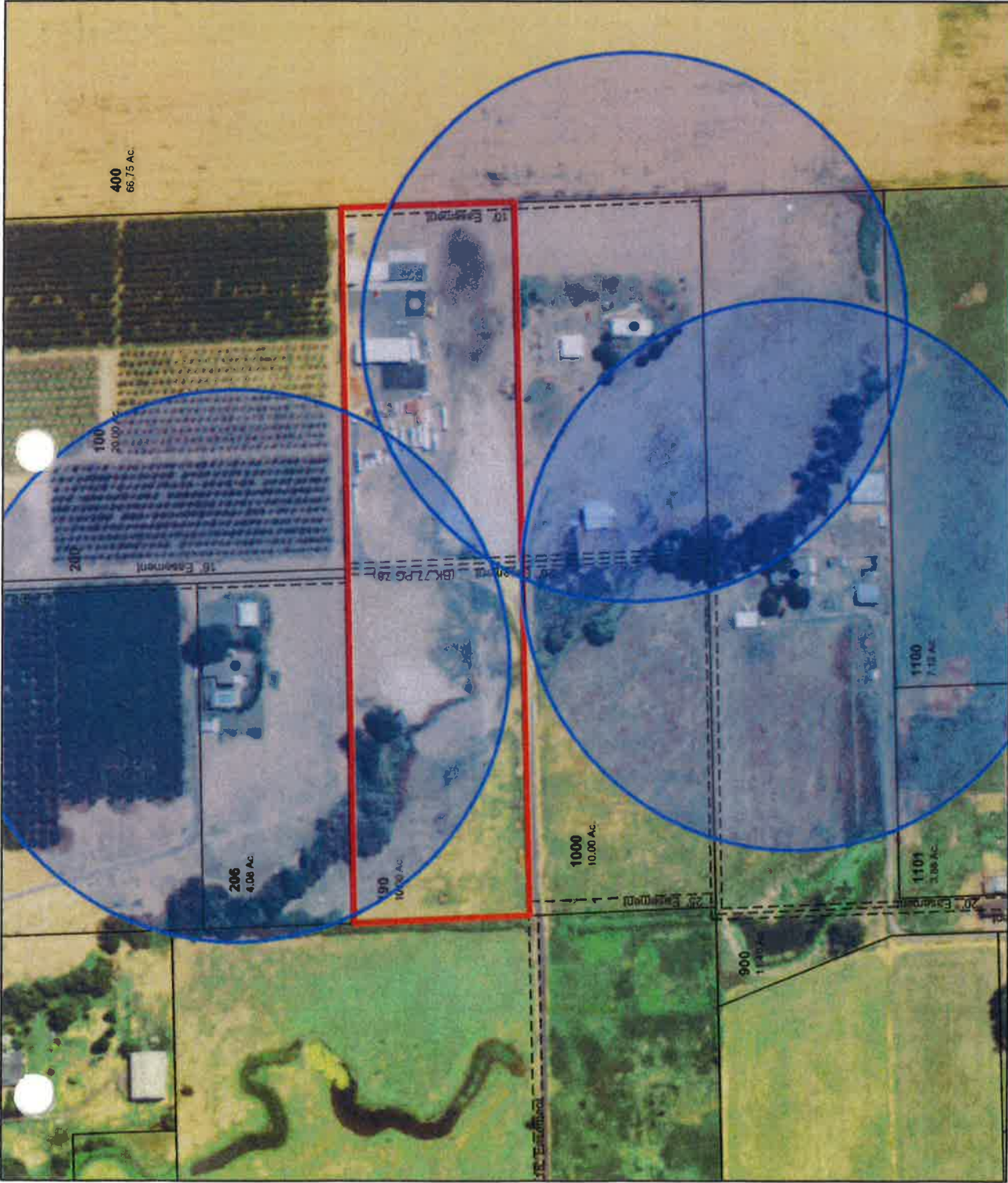
LN 3522; TAX 1910

Exhibit B Site plan

under item (c)

found on Section 4 (on preceding page)

(5)

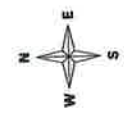


Subject Parcel 500' Buffer from adjacent dwellings

CONDITIONAL USE REQUEST #C-1238-14
 JAMES BREEDING, APPLICANT/OWNER
 MAP 6N3522C, TAX LOT 190

2014 AERIAL PHOTO

DATE: 12/22/14



MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Created by J. A'ford, Umatilla County Planning Dept. y:\workspace\planning\vicinity maps/A-D/BreedingC_1238_14.gws

④

Airstrip Preliminary Findings

Carol Johnson <carol.johnson@umatillacounty.net>
To: Jim Breeding <jimbreding3@gmail.com>

Wed, Jan 21, 2015 at 5:28 PM

Jan 21, 2015

Hello Jim,

Attached is a copy of the staff report/Preliminary Findings. As explained in the cover letter the deadline to request a public hearing is January 26, 2015. However, since you, the applicant, and Larry Miller have commented, both of you will also receive another 15-day opportunity to request a hearing after the Final Findings are mailed. (The Final Findings will likely be mailed sometime the middle of next week.)

I believe one thing that may not be understood is that Conditional Use Permit requests must meet all approval standards. If a request fails to meet even just one standard then the application fails and cannot be approved. Additionally, the burden of proof to supply and support the application is on the applicant. This means that the applicant must provide enough factual information to prove that all of the standards are met.

There is little factual information in support of several of the approval standards. In addition, your request has one major flaw. The flaw is in meeting the 500-ft distance requirement from the proposed airstrip to existing adjacent dwellings. Although one of your maps indicates otherwise your airstrip does not meet the 500-ft distance requirement to your neighbor's existing adjacent dwelling. (See the GIS map with 500-ft buffer to adjacent dwellings.)

As mentioned in our earlier conversation, you may present your request at a public hearing before the Planning Commission. There is a \$250 fee to appeal the Planning Director's decision and request a first hearing on appeal to the Planning Commission. An appeal of the decision should be based on planning staff's misrepresentation or misinterpretation of the request or in misapplication of the approval standards.

If you have questions after you've had an opportunity to read and review the Preliminary Findings please email me and I will try to answer your questions as best I can.

Thank you,
Carol



Carol Johnson, Senior Planner
Umatilla County Department of Land Use Planning
216 SE 4th ST, Pendleton, OR 97801
Phone: 541-278-6301 | Fax: 541-278-5480
<http://www.umatillacounty.net/planning>
Visit the County's website for application forms, planning documents, and other helpful information.

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

Breeding CUP Airstrip Preliminary Findings.pdf
1051K

**UMATILLA COUNTY PLANNING DEPARTMENT
FINAL FINDINGS AND CONCLUSIONS
BREEDING CONDITIONAL USE REQUEST, #C-1238-14
MAP #6N 35 22C, TAX LOT #190, ACCOUNT #129532**

- 1. APPLICANT:** James Breeding, 84943 Triangle Station Road, Milton-Freewater, Oregon 97862
- 2. OWNERS:** James D. & Sherri L. Breeding, 84943 Triangle Station Road, Milton-Freewater, Oregon 97862
- 3. LOCATION:** The property is located about 3 miles northwest of Milton-Freewater, and approximately 1000 feet north of Triangle Road. (See map)
- 4. PARCEL ACREAGE:** 10 acres
- 5. REQUEST:** The applicant is requesting approval to use an area on his property as an airstrip to take-off, land and park a fixed wing aircraft. The applicant's request is the result of a code violation for operating a personal use airstrip without a land use permit.
- 6. COMP. PLAN:** Orchard District Agriculture Plan Designation
- 7. ZONING:** EFU (Exclusive Farm Use)
- 8. ACCESS/
ROAD TYPE:** Access is obtained via an access easement extending north from Triangle Road, County Road No. 528.
- 9. EASEMENTS:** Although, there are no easements documented in the application the deed information lists a three foot easement for a ditch along the east property line and a 20 foot access easement (Book 77, Page 78) located north to south across the center of the applicant's property. Also, the Assessor's map depicts a 15 foot easement along the east property line.
- 10. LAND USE:** The land is zoned for farm use and the area proposed for the airstrip is in the vicinity of the side yard area south of the applicant's dwelling. (See applicant's map)
- 11. BUILDINGS:** The buildings on the property include the applicant's shop, dwelling, garage and pump house.
- 12. ADJACENT:** The properties surrounding the subject property are farm parcels. Orchards adjoin the applicant's property to the north. West and south are farm parcels in pasture. East of the subject property is a larger farm parcel rotated in wheat and alfalfa/hay.

13. LAND FORM: Walla Walla Valley.

14. SOIL TYPES: The subject property consists predominately of High Value soil types. High Value Soils are defined in UCDC 152.003 as Land Capability Class I and II. Soils are listed in order of predominance.

Soil Name, Unit Number, Description	Land Capability Class	
	Dry	Irrigated
39A: Hermiston Silt Loam, 0 to 3 percent slopes	2c	1
61A: Oliphant Silt Loam, 0 to 3 percent slopes	2c	1
62C: Oliphant Silt Loam, 3 to 25 percent slopes	2e	2e
106A: Umapine Silt Loam, 3 to 3 percent slopes	3c	2s

Soil Survey of Umatilla County Area, 1989, NRCS. The suffix on the Land Capability Class designations are defined as "e" – erosion prone, "c" – climate limitations, "s" soil limitations and "w" – water (*Survey*, page. 172).

15. UTILITIES: The area electricity provider is Pacific Power. Land line phone service is provided by Century Link.

16. WATER/SEWER: There is a domestic well and septic system serving the applicant's dwelling. The airstrip does not require water.

17. IRRIGATION: The information in the application specifies there are irrigation water rights. However, no additional information was provided for the source, the amount, or where the water rights are used on the property. The applicant lists pasture grass as a current use of the property.

18. PROPERTY OWNERS & AGENCIES NOTIFIED: January 5, 2014

19. AGENCIES NOTIFIED: Dept. of Environmental Quality, Oregon Department of Water Resources, Oregon Aeronautics Division, Federal Aviation Administration, Umatilla County Assessor, Umatilla County Public Works Department, Pacific Power & Light and Century Link.

20. COMMENT DUE DATE: January 26, 2015

21. COMMENTS RECEIVED: Comments were received during the comment period from several notified area property owners. One commenting neighbor raised safety concerns about farm workers being distracted while operating farm machinery or moving irrigation pipes when aircraft take off or land. In addition, the neighbor did not believe that the applicant considered impacts to surrounding owners. The second commenter was concerned about noise from low flying aircraft near their rental house that could make it more difficult to rent. Additionally, this commenting neighbor shared concerns about livestock and the possible impacts to raising livestock near an airstrip. A third commenting property owner shared concerns about noise, vibration, dust and fumes that may be associated with the airstrip. The fourth commenter expressed that the airstrip is inconsistent the current zoning and land use of the surrounding area. This commenter also shared that the flight path

would be over his adjacent property and near a dwelling on the family's property. The airstrip would be a source of noise and dust and negatively impact the value of the property.

22. THE UMATILLA COUNTY DEVELOPMENT ORDINANCE EFU SECTION 152.060 (G) ALLOWS FOR PERSONAL USE AIRPORTS THROUGH A CONDITIONAL USE PERMIT, CONDITIONAL USE PERMIT STANDARDS FOR PERSONAL USE AIRPORTS ARE FOUND IN SECTION 152.617 (N): Personal Use Airport: means an airstrip restricted, except for aircraft emergencies to use by the owner, and on an infrequent and occasional basis by his invited guests, and by commercial aviation activities in connection with agricultural operations. The applicable criteria are underlined, responses are in standard text.

(1) No aircraft shall be based on a personal use airport other than those owned or controlled by the owner of the airstrip;

Finding: The applicant indicated only his personal owned aircraft would be based on the property and use the airstrip.

Conclusion: The applicant's personal aircraft would be the only aircraft based on the applicant's property and to use the airstrip.

(2) A site plan is submitted with the application showing topography of the surrounding area;

Finding: The applicant included a map generally depicting the location of the proposed airstrip and surrounding areas. The aerial (attached google) map shows the location of the proposed airstrip as well as some of the surrounding area. The airstrip area would be located on relatively flat land varying with 0 to 3 percent slopes.

Conclusion: Several maps of the property and surrounding area were submitted with the application satisfying the criterion.

(3) The location of the facility will not be hazardous to the safety and general welfare of surrounding properties;

Finding: The proposal is for a personal use airstrip for the use by the applicant to take-off, land, and park his personal aircraft. The location of the airstrip for these activities must be located in an area that will not be hazardous to the safety and general welfare of surrounding properties. Information was not provided on why the proposed airstrip location was chosen and whether this location will not be hazardous to the safety and general welfare of surrounding properties.

Conclusion: Information was not provided on why the proposed airstrip location was chosen and whether this location will not be hazardous to the safety and general welfare of surrounding properties. Therefore, a conclusion could not be formulated on whether the location of the airstrip will be, or will not be, hazardous to the safety and general welfare of surrounding properties. The criterion is not met.

(4) The facility is designed not to materially alter the stability of the overall land use pattern of the area;

Finding: The applicant provides that the property to the north is in orchard, to the east is wheat and/or hay ground and other areas are in pasture grass. There were no additional descriptions or discussion of the land use pattern in the area. In addition, the applicant provided a statement that the airstrip will not change the farm use, or change or increase the cost of accepted farm or forest practices on surrounding lands

The area is a farming area that consists mainly of irrigated pasture, hay and fruit crops. Therefore, the overall farm use pattern of the parcel and surrounding lands is irrigated farm land. How the airstrip will or will not alter this land use pattern was not provided.

Conclusion: The applicant did not provide information on whether the airstrip will or will not alter the overall land use pattern. Staff concludes that there is not a factual basis to support a finding that the airstrip will, or will not, alter the overall land use pattern. The criterion is not met.

(5) Land or construction clearing shall be kept to a minimum to minimize soil disturbance and help maintain water quality;

Finding: The proposed grass side yard. The applicant provides that very little room is needed to take-off, land, or to park, and these activities do not disturb the ground.

Conclusion: The area proposed to be used as the airstrip is an existing yard area. Additional clearing is not proposed and appears not to be necessary.

(6) Facility be located 500 feet or more from existing dwellings on adjacent properties;

Finding: The applicant's site plan (attached) shows the neighbor's shop and home on the adjacent parcel (Tax Lot 1000) to the south a distance of 300 yards (900 feet) away from the applicant's proposed airstrip. The applicant also writes that the "airstrip is way over 1,000 feet from an existing dwelling on adjacent properties."

The applicant's parcel is what could be described as long and narrow - 1320 feet east-to-west by 330 feet north-to-south. Tax Lot 1000 is a similar sized parcel of 1320 feet by 330 feet. Since the applicant's parcel and the neighbor's Tax Lot 1000 measure together north-to-south a total of 660 feet, it would be impossible for the proposed airstrip area to be 300 yards or 900 feet from the neighbor's shop or the neighbor's dwelling located on Tax Lot 1000.

The attached GIS maps clearly show the proposed airstrip area would be located within 500 feet of the neighbor's dwelling on Tax Lot 1000. (See attached GIS maps)

Conclusion: The applicant's proposed airstrip would be located within 500 feet of the existing dwelling on Tax Lot 1000, an adjacent property. The criterion is not met.

(7) The location will not necessarily restrict existing and future development of surrounding properties as indicated in the Comprehensive Plan;

Finding: The subject parcel and surrounding parcels are designated in the Comprehensive Plan for Orchard Use, an agricultural use. The proposed location of the airstrip is a yard area south of the applicant's dwelling that the applicant indicates is not farmed. The location of the airstrip and whether it will or will not necessarily restrict existing and future farm use development of surrounding properties was not addressed.

Conclusion: Staff concludes that there is not a factual basis to support a finding that the airstrip will not restrict existing and future development of surrounding property as indicated in the Comprehensive Plan. The criterion is not met.

(8) Complies with other conditions deemed necessary; See **number 24 below for review of conditions that may be imposed based upon a finding that circumstances warrant such additional conditions.**

(9) The personal use landing strip lawfully existing as of September 13, 1975 shall continue to be permitted subject to any applicable rules of the Department of Aviation;

Finding: Not applicable, the personal use airstrip did not exist on September 13, 1975 and is not "grandfathered-in." The Breeding application is for approval of a new airstrip facility.

Conclusion: The applicant's request is for approval of a new airstrip. If approved the airstrip would be established in 2015 or 2016.

(10) Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances.

Finding: The Oregon Aeronautics Division and Federal Aviation Administration (FAA) will be notified of the land use request for the airstrip facility and have the opportunity to comment or make a request for exceptions to the airstrip activities permitted by the Umatilla County conditional use permit. An exception could allow the use of the airstrip area by others in the case of an emergency.

Conclusion: Consideration would be given to a waiver request from the Aeronautics Division for an exception to the activities permitted by the applicant's conditional use permit. A request for an exception by the Aeronautics Division may result in additional conditions of approval and/or re-notice of an amended conditional use permit for the applicant's airstrip.

23. STANDARDS FOR ALL EFU CONDITIONAL USES: The following limitations shall apply to all conditional uses in an EFU zone.

Uses may be approved only where such uses:

(A) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(B) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Finding: The applicant writes that the airstrip will not change the farm use, or change or increase the cost of accepted farm or forest practices on surrounding lands. The applicant did not support this statement with facts, or with additional information or explanation of why the airstrip will not change the farm use, or change or increase the cost of accepted farm or forest practices. The applicant also writes that the airstrip will be located in an area of the property that is not farmed.

The surrounding farming area consists of mainly small irrigated parcels used as pasture, orchards and alfalfa/hay. Accepted farming practices consist of planting, fertilizing, irrigating, spraying, and harvesting a crop. Many types of farming implements are used depending on the farming method and type of crop being raised. The location of the airstrip would be along the side yard area in the vicinity of the southeast corner of the property. The remainder of the parcel would continue to be used as it has been since the applicant purchased the property.

Staff believes that the airstrip will not force a significant change in *forest practices* on surrounding lands devoted to *forest use*, or significantly increase the cost of accepted *forest practices* on lands devoted to forest use, because there are no *forest practices* occurring on the applicant's property or surrounding lands. Forest uses and forest practices occur miles away in the timbered areas of the county.

Conclusion: The airstrip facility would be located in an area not currently farmed. The applicant

states that the airstrip will not change the farm use, or change or increase the cost of accepted farm or forest practices on surrounding lands. This is a re-statement of the standards and was not supported with facts.

Staff concludes that there is not a factual basis to support the applicant's statement that the airstrip will not change the *farm use*, or change or increase the cost of accepted *farm practices* on surrounding lands.

Staff concludes that the airstrip will not force a significant change in *forest practices* on surrounding lands devoted to *forest use*, or significantly increase the cost of accepted *forest practices* on lands devoted to forest use, because there are no *forest practices* occurring on the applicant's property or surrounding lands and forest uses and forest practices occur miles away in the timbered areas of the county.

The criterion is not met.

24. ADDITIONAL CONDITIONAL USE RESTRICTIONS, DEVELOPMENT CODE SECTION 152.615: In addition to the requirements and criteria listed in this sub-chapter, the county may impose the following conditions upon a finding that circumstances warrant such additional restrictions:

(A) Limiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such environmental effects as noise, vibration, air pollution, glare or odor;

Finding: Details on how often the applicant would use the airstrip were not provided; therefore, it is expected that the hours of operation would be restricted by way of local weather conditions, and limited to daylight hours.

The applicant explains that his small plane is not loud. However, take-off and landing of the aircraft may produce some dust and noise. Dust and noise should be temporary. Review of the proposed airstrip for compliance with minimizing noise, and other environmental effects listed above requires an annual review.

Conclusion: The use of the airstrip would be limited by weather and to daylight hours. Noise and dust from take-off and landing would be temporary. A condition to conduct an annual review of the airstrip for compliance with the conditional use permit is imposed.

(B) Establishing a special yard, other open space or lot area;

Finding: The proposed airstrip would be located in the vicinity of the southeast corner of the applicant's parcel.

Conclusion: A condition to establish a special yard, other open space or lot area, in addition to the proposed airstrip area is not imposed.

(C) Limiting the height, size or location of a building or other structure;

Finding: Other buildings or structures are not proposed.

Conclusion: The applicant has not proposed a building or other structure. A condition to limit the height size or location of a building or other structure is not imposed.

(D) Designating the size, number, location and nature of vehicle access points;

Finding: Access to the applicant's parcel is provided by an access easement extending from a county road. Access is in place and currently used by the applicant.

Conclusion: The vehicle access point is in place. Additional access points are not proposed or necessary. A condition to designate the size, number, location and nature of vehicle access points is not imposed.

(E) Increasing the required street dedication, roadway width or improvements within the street right-of-way;

Finding: The applicant proposes an airstrip in a yard area south of the applicant's dwelling. In addition, no buildings or other structures are proposed. The access to the parcel and airstrip is the same access currently used by the applicant. The applicant's request for an airstrip would not trigger a condition to require additional street dedication or to make improvements to a roadway or street right-of-way.

Conclusion: The application for a personal airstrip does not trigger an increase in a street dedication or roadway width or improvements within a street right-of-way. A condition requiring an increase in street dedication, roadway width or improvements within the street right-of-way is not imposed.

(F) Designating the size, location, screening, drainage, surfacing or other improvement of a parking or loading area;

Finding: The applicant is proposing a personal use airstrip. Vehicle parking would continue to use the area now used by the applicant for parking.

Conclusion: A condition to designate the size, location, screening, drainage, surfacing or require other improvements for additional vehicle parking and loading areas is not imposed.

(G) Limiting or otherwise designating the number, size, location, height and lighting of signs;

Finding: No signs or other above ground obstructions are proposed.

Conclusion: The applicant does not propose a sign. A condition to limit or designate the number, size, location, height and lighting of signs is not applicable or imposed.

(H) Limiting the location and intensity of outdoor lighting and requiring its shielding;

Finding: Outdoor lighting is not proposed.

Conclusion: The applicant does not propose outdoor lighting. A condition to limit the location and intensity of outdoor lighting and shielding is not imposed.

(I) Requiring diking, screening, landscaping or other methods to protect adjacent or nearby property and designating standards for installation and maintenance;

Finding: The applicant has not proposed diking, screening, landscaping or other installations to protect adjacent or nearby properties. A 500 foot setback from an airstrip to a dwelling on adjacent lands is implemented in the conditional use permit approval standards [152.617 (N)] to provide a buffer to adjacent property owners with dwellings.

Conclusion: The applicant is not proposing diking, screening, landscaping or other installations. A condition to require diking, screening, landscaping or other installations is not imposed.

(J) Designating the size, height, location and materials for a fence;

Finding: The applicant has not proposed fencing. Fencing would not be practical to enclose a proposed airstrip area and in fact this could cause a safety hazard to aircraft.

Conclusion: The airstrip area would not be required to be fenced due to the nature of the facility and the potential safety hazard fencing could cause to aircraft. A condition to designate the size, height, location and materials for a fence is not imposed.

(K) Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources;

Finding: The airstrip site is in an open yard area that does not contain trees, vegetation or other natural resources.

Conclusion: There are no existing trees, vegetation, water resources, wildlife habitat or other significant natural resources in the area proposed for the airstrip. A condition to protect and preserve existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources is not imposed.

(L) Parking area requirements as listed in Section 152.560 through 152.562.

Finding: The proposed personal airstrip does not require vehicle parking area. Vehicles would continue to be parked in the current parking area near the applicant's dwelling.

Conclusion: The parking requirements in Section 152.560 – 152.562 do not contain specific parking standards for a personal airstrip. A condition to require additional parking and loading areas associated with the proposed airstrip is not necessary or imposed.

DECISION: BASED UPON THE ABOVE FINDINGS AND CONCLUSIONS THE BREEDING CONDITIONAL USE REQUEST, #C-1238-14, DOES NOT MEET THE EFU APPROVAL STANDARDS IN SECTION 152.061 AND CONDITIONAL USE PERMIT, SECTION 152.617 (N), AND IS DENIED.

UMATILLA COUNTY PLANNING DEPARTMENT

Dated 28th day of January, 20 15

Tamra J. Mabbott
Tamra J. Mabbott, *Planning Director*

Mailed 28th day of January, 20 15

THIS DECISION BECOMES FINAL FIFTEEN DAYS AFTER THE DECISION IS MAILED UNLESS TIMELY APPEALED.

15

Umatilla County

Department of Land Use Planning



DIRECTOR
TAMRA MABBOTT

January 28, 2015

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

James Breeding
84943 Triangle Station Road
Milton-Freewater, Oregon 97862

Re: 21-day Letter - Breeding Conditional Use Permit, #C-1238-14
Map #6N 35 22C, Tax Lot #190, Account #129532

Dear Jim:

The 21-day comment period for Conditional Use Permit, #C-1238-14, to establish an airstrip on your property has elapsed. The County Planning Department received four comments during the comment period; however, there was not a request for a public hearing. The four comments are from the notified property owners of Tax Lot 400, east of your property.

One of these comments is from Larry Miller. Mr. Miller raised safety concerns about farm workers being distracted while operating farm machinery or moving irrigation pipes during aircraft take-offs and landings. In addition, Mr. Miller did not believe that you considered impacts to surrounding owners.

The second comment is from Dean Miller. Dean also has concerns about negative impacts from the noise caused by low flying aircraft that could make it more difficult to rent a rental house on his adjacent property. Additionally, Dean shared his concerns about the effects of low flying aircraft on livestock in the vicinity of the airstrip.

The third comment is from Diane Pease. Diane objects to the airstrip due to noise, vibrations, dust, and fumes. The fourth comment is from Mark Miller. Mark commented that the airstrip is inconsistent the current zoning and land use of the surrounding area. Mr. Miller also shares that the flight path would be over his adjacent property and near a dwelling on the property. The airstrip would be a source of noise and dust and negatively impact the value of the property. Copies of the comment letter are enclosed for your review.


On January 28, 2015, the Findings and Conclusions document was signed; signifying denial of Conditional Use Permit, #C-1238-14, a copy of this document is enclosed. A statutory 15-day appeal period commenced the date the Findings were signed and

16e

mailed; this time period will be over on February 12, 2015. Either you, or persons who commented during the 21-day comment period, may appeal the County's decision. The cost of the first hearing on appeal is \$250. The form to request a public hearing on appeal is available at the Planning Department and on the Planning Department website. An appeal request must be made in writing to the Planning Department. The appeal should be based on alleged staff error in interpreting the approval criteria. If no appeal is made within the 15-day time period then the decision will be Final.

If you have questions please feel free to contact me, at (541) 278-6301, or if it is more convenient you may e-mail me at carol.johnson@umatillacounty.net Thank you for your cooperation.

Cordially,


Carol Johnson,
Senior Planner

enclosures: Signed Findings and Conclusions, Comment Letters

cc: Larry D. Miller,
Dean Miller,
Diane Pease,
Mark Miller

JAN 20 2015

UMATILLA COUNTY
PLANNING DEPARTMENT**Larry D. Miller****12223 SW 131st Avenue · Tigard, OR 97223 · (503) 590-5042 · lmillers@frontier.com**

January 19, 2015

Ms. Carol Johnson
Umatilla County Planner
Email: planning@umatillacounty.net

Ref: Conditional Use Request #C-1238-14

As part owner of parcel no. 400, I object to the granting of a conditional use permit to the owners of the adjoining parcel no.190.

I am concerned for the safety of individuals working in our farm when an aircraft is taking off or landing. The proposed airstrip is on the property line so an aircraft taking off or landing to the east will be at a low enough altitude to distract an individual operating machinery or moving irrigation pipes. Having personally worked on the farm either operating farm machinery or moving irrigation pipes, I know the harm that can come to a distracted operator.

It is apparent from the review of the application by the planning department that the applicant has not taken into consideration the impact to the surrounding owners in (3) and (4) on page 3 and (6) and (7) on page 4 of the Preliminary Findings and Conclusions report. I believe the proposed airstrip will benefit one at the detriment of all the surrounding owners.

Again, I strongly urge this conditional use request not be granted.

Thank you.

/s/ Larry Miller

RECEIVED

JAN 22 2015

UMATILLA COUNTY
PLANNING DEPARTMENT

Dean Miller
9785 NW Leahy Road
Portland, OR 97229

January 19, 2015

Dear Carol Johnson:

Having interest in the land parcel, Map 6N3522D Tax Lot 400, to the east of the proposed development requiring the conditional use request #C-1238-14, I am opposed to the county granting this request. I have a quarter interest in Tax Lot 400. The proposed aircraft landing strip being adjacent to my property line will put the planes, on landings and take-offs, too low over my property. We have a house on the property that we rent. The noise from the low passing aircraft will make it difficult to rent the house. Currently we are not raising livestock on the farm but cattle have been raised there before and we would like to have that as an option in the future. The noise from the low flying aircraft would disturb the livestock thus taking away from us a reasonable option for the use of our land.

The land use laws in the county need to protect adjacent land owners from this type of negative impact that such a development would have on our land's usage. Thank you for the notice.

Cordially,



Dean Miller



Fwd: Response to conditional use request, #C-1238-14

Tamra Mabbott <tamra.mabbott@umatillacounty.net>
To: Carol Johnson <carol.johnson@umatillacounty.net>

Mon, Jan 26, 2015 at 10:34 AM

please respond

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

From: **Diane Pease** <dianepease@windermere.com>

Date: Sun, Jan 25, 2015 at 3:46 PM

Subject: Response to conditional use request, #C-1238-14

To: "planning@umatillacounty.net" <planning@umatillacounty.net>

Dear Sirs;

I am writing in response to the request by James Breeding to use an area on his property as an airstrip. As an owner of adjoining farm property listed as Larry D Miller Et Al, I am very much *against* allowing this land use variance. Because of the noise, vibrations, dust, and fumes, it would have a detrimental effect on the value of the surrounding properties, and is definitely not in keeping with the EFU zoning. It also appears in the documents that many or the criteria of the Umatilla County Planning Department were not met by the applicant.

Thank you.

Sincerely,

Diane Pease

Broker - Windermere Real Estate
202 S First Ave, Walla Walla, WA
(509) 301 - 6199
(509) 525 - 2151
dianepease@windermere.com

Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning

216 SE 4th ST | Pendleton, OR 97801

Phone: 541-278-6246 | Fax: 541-278-5480

<http://www.umatillacounty.net/planning> - Visit our website for copies of planning documents, permit applications and other helpful information.

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Fwd: Objection to Conditional Use Request #C-1238-14

1 message

Tamra Mabbott <tamra.mabbott@umatillacounty.net>
To: Carol Johnson <carol.johnson@umatillacounty.net>

Tue, Jan 27, 2015 at 6:35 AM

Please reply

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

From: **Mark Miller** <mrmiller75@live.com>
Date: Mon, Jan 26, 2015 at 9:03 PM
Subject: Objection to Conditional Use Request #C-1238-14
To: "planning@umatillacounty.net" <planning@umatillacounty.net>

Attention Carol Johnson, County Planner

I would like to place an objection to Conditional Use Request #C-1238-14 for a personal use airstrip.

I am a joint owner of the property immediately due east of the proposed airstrip (Parcel 400, Map 6N3522D, Miller Larry D Et Al). It is my opinion the proposed airstrip is inconsistent with the current zoning and land use of the surrounding area.

The applicant stated the proposed airstrip would not negatively impact surrounding properties or value thereof. I disagree. The property I am a joint owner of is in the direct flight path of aircraft take-offs and landings and contains a personal dwelling. Aircraft activity associated with the proposed airstrip would be the source of noise and dust, and negatively impact the value of the property I am a part owner of.

I am also concerned by the statement made by the applicant that the nearest dwelling on an adjacent property is 300 yards from the proposed airstrip. The Planning Department's own analysis and GIS maps demonstrate that is a physical impossibility, and the 500 foot minimum distance criteria is not met. Whether due to carelessness or intentional mis-representation on the part of the applicant, it calls one to question other statements contained in the application.

Thank you for the opportunity to voice my concerns with this application.

Mark Miller
4901 Woodridge Circle
Anchorage, AK 99516

907-263-4537

Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning

216 SE 4th ST | Pendleton, OR 97801

Phone: 541-278-6246 | Fax: 541-278-5480

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(21)



F Breeding Conditional Use Request #C-1238-14

1 message

Tamra Mabbott <tamra.mabbott@umatillacounty.net>
To: Jim & Lana Eiseman <eiseman14@gmail.com>
Cc: Carol Johnson <carol.johnson@umatillacounty.net>

Tue, Feb 10, 2015 at 10:17 AM

Mr. and Mrs. Eiseman - thank you for your comments. We will enter them into the record and present to the County Planning Commission.
Cordially, Tamra

On Sat, Feb 7, 2015 at 2:15 PM, Jim & Lana Eiseman <eiseman14@gmail.com> wrote:

February 7, 2015

Carol Johnson, County Planner
Umatilla County
Department of Land Use Planning
216 SE 4th Street
Pendleton, OR 97801

RECEIVED
FEB 10 2015
UMATILLA COUNTY
PLANNING DEPARTMENT

RE: Conditional Use Request, #C-1238-14
Assessors Map #6N 35 22C, Tax #190
James Breeding, Applicant
James D. and Sherri L. Breeding, Property Owners

Dear Ms. Johnson:

I am sending this email now because my wife, Lana, and I were out of state for the month of January and did not arrive back in Milton-Freewater until February 2. We did not pick up our mail until the next day. This is the first chance I have had to respond to this notice. I have several questions and concerns regarding Jimmy Breeding and his aircraft and land usage.

1. Jimmy has been using his property as an air strip for over a year. During that time there have been up to three different planes and a helicopter using this "air strip".
- 2 Regarding the location and "being hazardous", on several occasions Jimmy and/or his friends have buzzed his place and in doing so fly right over our house, causing a lot of noise and disruption. On many occasions when a plane takes off they make a sharp right turn and again fly directly over our house and by that time they are so close that we can almost identify the people in the plane; we can very easily read the plane's ID numbers on the tail. Also, Jimmy and his friends have no regard as to time, arriving and/or leaving very early in the morning.

22

3 Regarding the land use and clearing of said land, Jimmy has dozed off top of his property filling in the lower portion of his property to accommodate his "airstrip". In the process he widened his existing roadway which is the access to his house and shop. He has culverted the creek an additional 30 to 50 feet and has additional culverts to fill in the creek completely across the base of his property. I am quite sure that this affects the water habitat of the land area on both sides of this area by filling more of the creek. I would think that the land on both sides of additional filling would affect the watershed and environmental habitat, that land being mine and Larry Widener's. I would think that the alterations I mentioned in this third note are reflections on both line items 4 & 5 of the Public Notice I received. I feel that the question also deals with Items A, F and K under "Additional Conditional Use and Restrictions Development code section 152.615".

As mentioned earlier I am responding to this as soon as I could. I have learned from one of my neighbors that Jimmy had one of his friends take a petition around the neighborhood asking for an appeal to this request. I, however, am in favor of the original denial your office gave and feel there are several other areas that Jimmy has disregarded and flaunted in just doing what he wanted and asking permission after he is caught, not considering his neighbors and the natural environment of his property and that around him.

Thank you for your considering my concerns.

Sincerely,

Jim Eiseman
53358 Bade Lane
Milton-Freewater, OR 97862
(541) 938-6380
eiseman14@gmail.com

Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning
216 SE 4th ST | Pendleton, OR 97801
Phone: 541-278-6246| Fax: 541-278-5480

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Oregon

John A. Kitzhaber, MD, Governor



3040 25th Street, SE
Salem, OR 97302-1125
Phone: (503) 378-4880
Toll Free: (800) 874-0102
FAX: (503) 373-1688

January 28, 2015

Carol Johnson
Senior Planner
Umatilla County
Department of Land Use Planning
216 SE 4th ST
Pendleton, OR 97801

SUBJECT: #C-1238-14 – Breeding Private Airstrip

The Oregon Department of Aviation (ODA) has reviewed the proposed land use action referenced with the above land use file number and have prepared the following comments.

In response to any development, Oregon Revised Statutes (ORS) 836.090 requires that "any municipality or person desiring or planning to construct or establish an airport must, prior to the construction or establishment of the proposed airport, submit to the Oregon Department of Aviation an application for approval of the site."

In addition, prior to the establishment of the airport, the application fee, as described in ORS 836.085 must be paid. Finally, the approval criteria for the establishment of the airport can be found in ORS 836.095 as well as ORS 738-020 (Minimum Standards for Airports.).

Please Contact the ODA's Operation Specialist Don Hankwitz at 503-378-4176 for more information on the approval process.

Thank you for allowing ODA to comment on this development proposal. If you have any questions or need further information please feel free to contact me at 503-378-2529 or Jeff.Caines@aviation.state.or.us or Heather Peck – Projects and Planning Manager at 503-378-3168 or Heather.Peck@aviation.state.or.us.

Sincerely,


Jeff Caines, AICP
Aviation Planner

24

Umatilla County

Department of Land Use Planning

216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252



Request for a Public Hearing

Process taken from UCDC 152.769

RECEIVED

FEB 09 2015

UMATILLA COUNTY
PLANNING DEPARTMENT

REQUEST FOR A HEARING

The purpose of a notice for a land use request application is to provide affected property owners and agencies the opportunity to review the request and the tentative findings and conclusions of the Department, and to either offer comments or requested conditions, or request a public hearing be held to deliberate on issues they deem are significant.

FILING FEE

Requesting a Public Hearing - \$250

It is the responsibility of the applicant to submit a complete application with all necessary attachments. Planning staff can refuse an incomplete application.

Version: February 20, 2009
File Location: H:\shared\FORMS_Master\Appeal_Hearing.doc

25

Section 3: Basis for the Request for a Public Hearing

Complete only for a Request for a Public Hearing

The Request for a Public Hearing must be based on issues you feel should be addressed in a public forum. Please describe the reasons you feel that a public hearing should be held before the Umatilla County Planning Commission in relation to the land use request application specified above:

I am requesting a public Hearing do to the Decision ^{not} that the planning Commission to Denied the premissio-
to Land ~~use~~ plane on my property, Based
on the Statements that Larry D Miller and
Dean miller, Mark Miller and Diane Pease
made are false and the planning commission
Shows the Airstrip to close to Larry Widner
Home, which is not True, I will need at
least until June so I can gather proof
to show the Public Hearing I can meet
the requirements they ask for. Plus I am
Seeking legal advise to make sure I even
need permission. I am working in Amarillo
Texas as we speak thats why I need the
Time to prove my case Thank you

P.S

no one Has taking
the Time to prove other
wise, those decisions can
not be made by living
out of Town or setting
at a computer at a desk
in pendleton Or.

Jim

541-461-0112

Section 4: Certification

I/We, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

X [Signature]
Signature of Submitter
James D Breeding
Printed Name of Submitter

2-7-15
Date

X _____
Signature of Submitter

Printed Name of Submitter

Date

X _____
Signature of Submitter

Printed Name of Submitter

Date

X _____
Signature of Submitter

Printed Name of Submitter

Date

Office Use Only

Date this paperwork was received: 2/9/2015

Accepted by: Connie Henderson Connie Henderson
Signature of Planning Staff & Printed Name

Fee Paid? Yes No Receipt Number: See Attached

(27)

Fwd: Breeding Conditional Use Request #C-1238-14

2 messages

Tamra Mabbott <tamra.mabbott@umatillacounty.net>
To: Carol Johnson <carol.johnson@umatillacounty.net>
Cc: Gina Miller <gina.miller@umatillacounty.net>

Fri, Mar 27, 2015 at 8:46 AM

Carol. fyi - I will respond but wanted you to see first. I will let them know about the hearing, etc.

Gina - have they been issued a warning or citation?
Tamra

----- Forwarded message -----
From: **Jim & Lana Eiseman** <eiseman14@gmail.com>
Date: Thu, Mar 26, 2015 at 6:43 PM
Subject: Breeding Conditional Use Request #C-1238-14
To: tamra.mabbott@umatillacounty.net

Ms. Mabbott:

Several weeks ago I sent you an e-mail regarding Jimmy Breeding and the air strip he put on his property. I was under the impression from the notice I received, that the request Jimmy made to put in an airstrip was denied. Since the writing of my initial e-mail there have been five days that planes have taken off and landed from the airstrip that was denied permission to install in the first place. Today 3 different planes have taken off and landed a total of seven times with more than once multiple planes coming and going simultaneously. A yellow plane, a blue one and a white plane with red trim. I had understood that Jimmy Breeding's air strip was for his one and only plane. As I mentioned in my initial e-mail to you, there have been several planes coming and going from said strip.

As I also mentioned if Mr. Breeding was denied permission then what is going on? If Mr. Breeding was given permission to proceed then why were we not notified of this change? I will again point out that Mr. Breeding installed his airstrip before putting in his request for permission and planes had been coming and going from that strip for well over a year. I did not realize that when I purchased my land (designated EFU) I would be living next to a commercial truck business and airfield. Please advise as to whether or not this airfield has Planning Commission approval and when this approval happened.

Thank you.

Jim Eiseman

Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning

216 SE 4th ST | Pendleton, OR 97801

Phone: 541-278-6246 | Fax: 541-278-5480

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Tamra Mabbott <tamra.mabbott@umatillacounty.net>

Fri, Mar 27, 2015 at 9:40 AM

To: Jim & Lana Eiseman <eiseman14@gmail.com>

Cc: Gina Miller <gina.miller@umatillacounty.net>, Carol Johnson <carol.johnson@umatillacounty.net>, Doug Olsen <doug.olsen@umatillacounty.net>

Hell Mr. and Mrs. Eiseman - Thank you for your email. One of our code enforcement staff also witnessed airplanes yesterday and we have a video. Unfortunately, Mr. Breeding is not complying with the codes and we are now consulting with our County Counsel, Doug Olsen, as to our next step. Mr. Breeding was issued a warning that he needed a Conditional Use Permit to operate an airstrip. He made that application and, as you know, it was denied by staff. Mr. Breeding has filed a request for a public hearing, which will be in front of the Planning Commission on April 23, 2015 here in Pendleton. You will be mailed a notice of that hearing.

Mr. Breeding, as we understand, is also operating a trucking business for which he has no permit. He has not been authorized to operate either business but has been given the option to apply for permits.

Thank you for your email and your patience. Your information is very useful evidence.

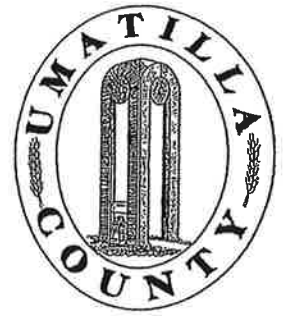
Cordially, Tamra

[Quoted text hidden]

28

Umatilla County

Department of Land Use Planning



March 31, 2015

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

James Breeding
84943 Triangle Station Road
Milton-Freewater, Oregon 97862

Re: Breeding Conditional Use Permit, #C-1238-14
Map #6N 35 22C, Tax Lot #190, Account #129532

Dear Jim:

It has been brought to the attention of the Planning Department that recently several planes have made flights in-and-out of your property located at 84943 Triangle Station Road. Your property has not been approved for a personal airstrip. In fact your application for a conditional use permit to operate an airstrip was denied by the County Planning Director and is scheduled, on appeal, at your request, for a public hearing before the County Planning Commission, April 23, 2015. Therefore, you do not have the legal ability to use your property as an airstrip, and you should cease use of the property as an airstrip while your application is on appeal pending a Final decision.

If you have questions please contact me, at (541) 278-6301, or you may e-mail me at carol.johnson@umatillacounty.net Thank you for your cooperation.

Cordially,

Handwritten signature of Carol Johnson in cursive.

Carol Johnson,
Senior Planner

enclosure: Conditional Use Permit, #C-1238-14 Findings

cc: Tamra J. Mabbott, County Planning Director
Doug Olsen, County Attorney
County Code Enforcement
Jeff Caines and John Wilson, Oregon Department of Aviation



Breeding CUP #C-1238-14

1 message

CAINES Jeff <Jeff.CAINES@aviation.state.or.us>

Mon, Apr 13, 2015 at 4:15 PM

To: "'Carol Johnson' (carol.johnson@umatillacounty.net)" <carol.johnson@umatillacounty.net>

Carol:

I wanted to update you on the Breeding CUP as it relates to the Oregon Department of Aviation (ODA). If you recall on January 28, 2015 (attached) I wrote a comment letter on this pending application stating that ORS requires the establishment of new airports to be reviewed and inspected by ODA in order to ensure minimum safety standards are met.

As of April 13, 2015, ODA has not received any application for a new airport at this location (84943 Triangle Station Road – Map 6N 35 22C Lot 190).

In addition ODA records are unable to determine if James Breeding is a registered pilot in Oregon based on records from ODA and the FAA. Since we are unable to determine if Mr. Breeding is a registered pilot, ODA is unable to determine if any aircraft are registered with ODA.

Both pilot and aircraft registration are required by ODA in accordance with **ORS 837.020 & ORS 837.040.**

If you have any questions or need further information please feel free to contact me at 503-378-2529 or jeff.caines@aviation.state.or.us.

Jeff

Jeff Caines, AICP

Oregon Department of Aviation

Aviation Planner / SCIP Coordinator

3040 25th St. SE | Salem, OR 97302

Office: 503.378.2529

Cell / Text: 503.507.6965

Email: Jeff.Caines@aviation.state.or.us

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

RECEIVED

APR 15 2015

UMATILLA COUNTY
PLANNING DEPARTMENT

April 12, 2015

Dear Members of the Umatilla County Planning Commission,

My name is John Batalis and I live at 84993 Triangle Station Road, Milton-Freewater Or, 97862. My property is located approximately 700 yards north west of Mr. Breeding's property. I would like to submit comments for the record and urge you to deny the application for this personal airstrip.

I began noticing a plane flying overhead nearly a year ago. On several occasions, the plane was flying so low over our tree tops, I could make out the identification numbers on the plane. On these occasions of the plane flying overhead, I also saw it landing and taking off from a property sitting up on a hill very close to my home. Every time the plane went overhead, the animals in my pasture would run from one end of the pasture to the other, very frightened by the noise.

One day last summer, I came home and discovered that my son's prize show llama was dead in the pasture, right next to a large tree that had fallen during a storm that past spring. The llama's body was pushed right up against the tree and her neck was snapped. It was determined that she had probably been driven right into the tree in a wild panic, and that is what snapped her neck and killed her. Later that week, another neighbor told us that they had seen a plane flying low over our property the day that my son's llama was killed.

Due to the close proximity of Mr. Breeding's property to mine, I can hear the revving of the plane's engines every time it takes off, and flies over my property. The noise is intolerable, and has disturbed me on early weekend mornings on many occasions when they start taking off and flying around!!

It is my understanding that Mr. Breeding applied for a permit to have the airstrip on his property with Umatilla County. When I contacted the county in early April, I was told that the permit was denied but that Mr. Breeding had appealed that decision. Since that time, I have witnessed as many as three planes landing and taking off from his property multiple times during the last weekend of March. Please refer to the attached photos of these planes taken from my home.

I strongly urge members of the Planning Commission to deny this application and sincerely request that you do not allow an airstrip right in the middle of people's homes and the farm land where we all raise our valuable livestock!! After reading the findings from the County, the applicant does not meet the buffer zone for nearby residences. On this fact alone, the application should be denied!! It is also very clear that Mr. Breeding has no regard or respect for the county's rules, as he has continued to use the airstrip for up to as many as 3 planes in one day even after having the permit denied!!

Thank you for your consideration. I strongly urge you to deny the application and not allow an airstrip in my backyard!!


John Batalis

84993 Triangle Station Road
Milton-Freewater, OR 97862

31

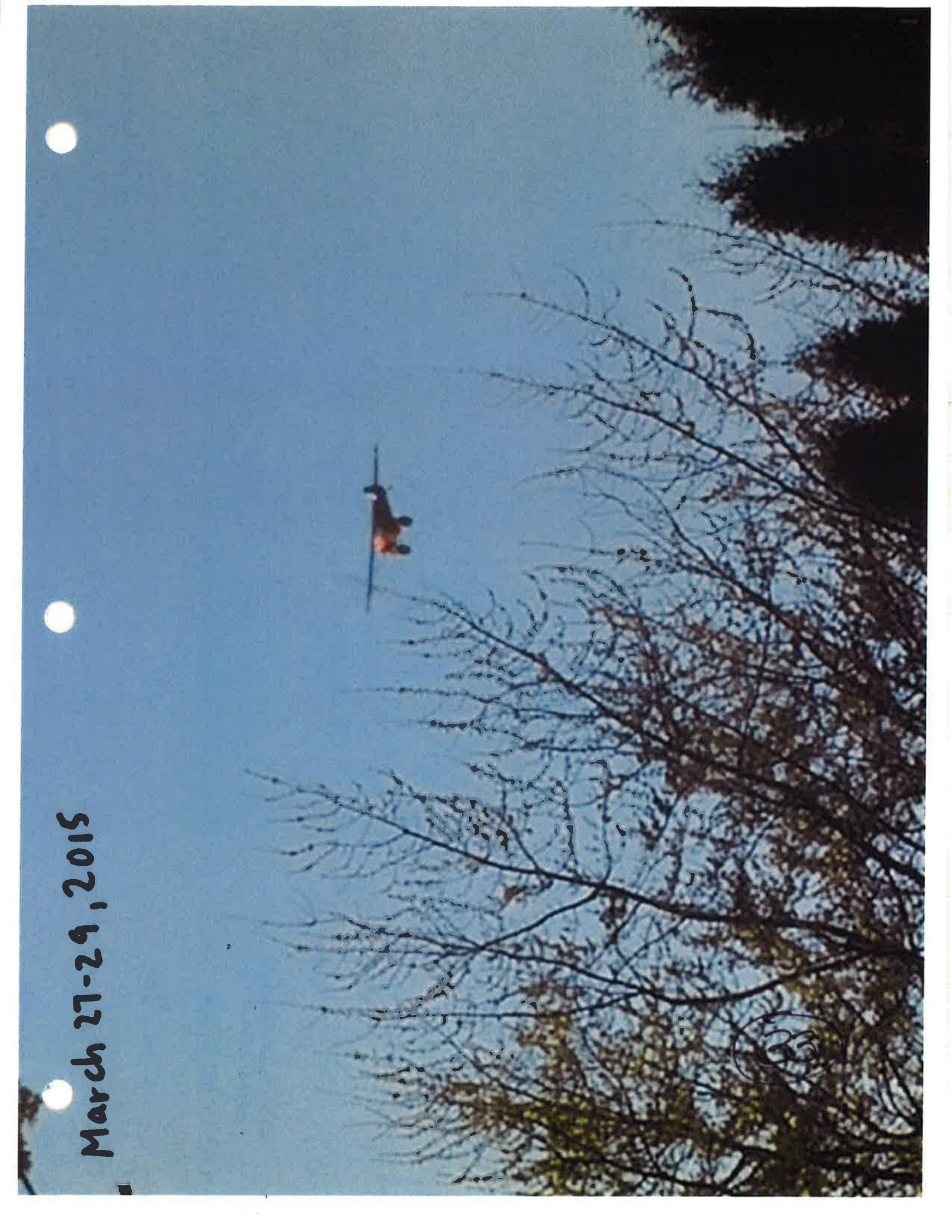
March 27-29, 2015



25

March 27-29, 2015

(23)



**UMATILLA COUNTY
PLANNING COMMISSION
HEARING**

**THURSDAY,
April 23, 2015**

Text Amendment, #T-15-061

Umatilla County

Department of Land Use Planning



DIRECTOR
TAMRA
MABBOTT

April 13, 2015

LAND USE
PLANNING,
ZONING AND
PERMITTING

MEMO

TO: Planning Commission

FROM: Tamra Mabbott *Tamra*

CC: Interested Parties

CODE
ENFORCEMENT

RE: Amendment to adopt standards for expansion of Firearms Training Facility.

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

The purpose of this amendment is to adopt standards to permit expansion of firearms training facility. Currently county code is silent on expansion and explicit only in permitting a firearms training facility that existed on September 9, 1995 (UCDO 152.617(II)(5)). That is, the code does not expressly permit nor does it prohibit expansion of firearm training facilities.

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON,
NATURAL
RESOURCES &
ENVIRONMENT

This code conundrum was brought to light by the Land Use Board of Appeals (LUBA) in their decision on the East End Rod N Gun Club's firearms training facility. On remand, LUBA upheld county's decision to recognize and approve the existing facility but cited the absence of specific standards to permit expansion of a facility as reason to reverse county's decision to allow the facility to expand.

On March 18, 2015, Board of Commissioner directed staff to proceed with necessary amendments to adopt standards to allow expansion of firearms training facilities.

The action before the Planning Commission is a legislative amendment. The Planning Commission's role is to make a recommendation to the Board of Commissioners, who will have a hearing on April 28, 2015.

The Planning Commission decision is not a quasi-judicial decision and does not apply to a specific property. Any application of the new law (standards), if adopted by the Board of Commissioners, would require a land use application.

Attached is draft language for your consideration. Amendments are proposed for two sections of the UCDO 152.059 LAND USE DECISIONS and UCDO 152.617(II)(5).

Also attached are draft Findings written for the Board of Commissioners. The summary of legal issues is very informative.

single-event license. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of the County or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(1) Must be related to and supportive of agriculture as well as incidental and subordinate to existing farm use on the tract;

(2) May not begin before 6 a.m. or end after 10 p.m.;

(3) May not involve more than 100 attendees or 50 vehicles;

(4) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(5) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(6) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(7) Must comply with applicable health and fire and life safety requirements. (Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-05; Ord. 2008-09, passed 6-16-08; Ord. 2009-09, passed 12-8-09; Ord. 2010-01, passed 3-11-10; Ord. 2011-02, passed 3-17-11; Ord. 2012-02 passed 1-26-12; Ord. 2013-02, passed 1-29-13; Ord. 2014-04, passed 7-2-14)

§ 152.059 LAND USE DECISIONS.

In an EFU zone the following uses may be permitted through a land use decision via administrative review (§ 152.769) and subject to the applicable criteria found in § 152.617. Once approval is obtained a zoning permit (§ 152.025) is necessary to finalize the decision.

(A) [Item Deleted]

(B) Churches and a cemetery in conjunction with a church provided the church is not within 3 miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 004. Existing church facilities may be maintained, enhanced or expanded on the same tract without an exception. New facilities are not allowed on high value farmland as provided in § 152.617 (II) (2) and/or (3).

(C) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission or communication towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275 and in § 152.617 (II) (7).

(D) A facility for the primary processing of forest products as provided in § 152.617 (II) (4).

(E) Continuation, maintenance, enhancement, or expansion of a fire arms training facility in existence on September 9, 1995 and meeting the intent and purposes in ORS 197.770(2) and as provided in § 152.617 (II) (5).

(F) A facility for the processing of farm

developments.

(d) Within an EFU Zone, the following additional standards as set forth in ORS 215.283(2) (j) shall apply:

Provided that such a facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2), such a facility may be approved for a one year period. These facilities are intended to be only portable and temporary in nature.

(5) Firearms Training Facility.

Any firearms training facility in existence on September 9, ~~1995~~, 1995 shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility, and to be maintained, enhanced, or expanded as provided for in this section.

(For purposes of this section a FIREARMS TRAINING FACILITY is an indoor or outdoor facility that provides training courses and issues certifications required for law enforcement personnel, by the State Department of Fish and Wildlife, or by nationally recognized programs that promote shooting matches, target shooting and safety.)

(A) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 179.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(B) Any enclosed structures or group

of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.

(C) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements.

(6) [Item Deleted]

(7) Utility Facility Necessary for Public Service.

(A) A utility facility established under ORS 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant

must:

(1) Demonstrate that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Information provided in the technical and engineering feasibility;

(b) The proposed facility is locationally dependent. (It must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands.)

(c) Show a lack of available urban and non-resource lands;

(d) Due to availability of

existing rights of way.

(e) Due to public health and safety concerns; and

(f) Show it must meet other requirements of state and federal agencies.

(2) Costs associated with any of the factors listed in subsection (A) above may be considered, but cost alone, including the cost of land, may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(3) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any

**BEFORE THE PLANNING COMMISSION
AND BOARD OF COMMISSIONERS OF UMATILLA COUNTY, OREGON**

In the Matter of a Post-Acknowledgment County Ordinance to Amend Umatilla County Development Code Chapter 152 to Allow Limited Expansions of Firearms Training Facilities in the Exclusive Farm Use Zoning District Consistent with State Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR UMATILLA COUNTY ORDINANCE NO. 2015-__ (COUNTY FILE NO. T-15-061)

1. Issue and Purpose.

Umatilla County ("County") permits firearms training facilities in existence on September 9, 1995, to continue to operate on land in the Exclusive Farm Use ("EFU") zone. These regulations are set forth in Umatilla County Development Code ("UCDC") 152.617(II)(5). The UCDC does not expressly permit or prohibit expansions of such facilities.

In 2014, the County Board of Commissioners ("Board") approved an application filed by East End Rod & Gun Club to expand its existing firearms training facility on EFU land (County Land Use Permit # LUD-163-13). As authority for approving the expansion, the Board relied upon OAR 660-033-0130(2)(c)—which expressly provided for limited expansion of firearms training facilities—even though the applicable statute and UCDC provisions did not expressly allow such expansions. See Board Findings of Fact and Conclusions of Law at 13-14. An opponent appealed the Board's decision to LUBA, which held that, although the administrative rule authorized the County to allow limited expansions of firearms training facilities consistent with state law, the County must first amend its local code to provide for such expansions:

"OAR 660-033-0130(2)(c) authorizes a county to amend its land use regulations to *provide* for the expansion of certain facilities, including an ORS 197.770 firearms training facility. [Footnote 12 omitted.] The county adopted amendments that implement OAR 660-033-0120(2)(c), and in so doing chose *not* to provide for expansion of an ORS 197.770 firearms training facility in the EFU zone. That the county has not adopted an

express *prohibition* on expansion of an ORS 197.770 firearms training facility does not mean that the administrative rule somehow applies directly to authorize such an expansion. As explained, the county's implementation of OAR 660-033-0130(2)(c) is acknowledged to comply with the administrative rule, and therefore, pursuant to ORS 197.175(2)(d) the county must apply the UCDC, not the administrative rule, to land use decisions. Because the UCDC does not provide for expansion of an ORS 197.770 firearms training facility, the county cannot approve such an expansion unless and until it amends the UCDC to so provide."

H.T. Rea Farming Corp. v. Umatilla County, __ Or LUBA __ (LUBA No. 2014-077, February 19, 2015) (slip op. at 19-20). Based upon this reasoning, LUBA sustained the opponent's assignment of error and remanded the County's decision. *Id.*

The Board finds that it was the Board's intent to allow limited expansions of otherwise lawful firearms training facilities consistent with state law. Accordingly, the Board finds that amending the code to expressly provide for such expansions will fulfill this intent. Additionally, the Board finds that such limited expansions will protect the private property rights of owners of these facilities by allowing them more return on their investment-backed expectations. Finally, the Board finds that by making approval of such expansions subject to limitations and subject to an administrative review process, it will protect surrounding uses from incompatible development. As a result, the Board finds that these Amendments serve the public interest and welfare. For these reasons and as further explained below, the Board has proposed and adopted the attached Amendments.

2. Text Amendments

As explained above, the purpose of the proposed text amendments ("Amendments") is to allow limited expansions of otherwise lawful firearms training facilities on EFU land within three miles of an urban growth boundary consistent with OAR 660-033-0130(2). The text of the proposed Amendments in strike-through and underline format is set forth in Exhibit A, attached hereto and incorporated herein by reference.

3. Procedural Status

A. Nature of Amendments

The proposed Amendments are legislative in nature because they are County-initiated and potentially apply to all EFU lands within three miles of an urban growth boundary.

B. Initiation of Amendments

Pursuant to UCDC 152.750, the Board, the Planning Commission, or a property owner may initiate a UCDC text amendment. On March 18, 2015, the Board adopted an agenda item at its regular meeting initiating the Amendments. Therefore, the Board finds that the Amendments have been properly initiated.

C. Notices of Public Hearings

On March 17, 2015, the County electronically provided notice on the applicable form to the Oregon Department of Land Conservation and Development ("DLCD"), more than 35 days before the initial legislative public hearing for the Amendments by the Planning Commission. This notice satisfied the County's pre-hearing obligations for notice to DLCD.

On Apr 17, 2015, the County published notices in *The East Oregonian* for both the Planning Commission's and Board's hearings relating to the Amendments. The published notice listed the dates, times, and places of the Planning Commission and Board hearings. These notices satisfied the County's pre-hearing obligations for notice to the public.

D. Public Hearings

The County has adopted a two-step review process for legislative text amendments. UCDC 152.752. First, the Planning Commission conducts a public hearing and makes a recommendation on the proposed amendments. *Id.* Second, the Board conducts a public hearing on the proposed amendments within 60 days after receiving the Planning Commission's recommendation and then makes a legislative decision on the request. *Id.* The following sections of this narrative explain how the County complied with these procedural requirements.

i. Planning Commission Action

On April 23, 2015, the Planning Commission conducted a public hearing to discuss the Amendments. At the hearing, Tamra Mabbott, County Planning Director, noted that the entire Planning Department file was physically before the Planning Commission. The Planning Commission did not reject any part of the Planning Department file. Ms. Mabbott then presented the County Planning Department staff report ("Staff Report"), which included a recommendation to approve the Amendments. Following presentation of the Staff Report, the East End Rod & Gun Club testified in support of the Amendments.

At the conclusion of the hearing, the Planning Commission closed the public hearing and discussed the Amendments. _____ made a motion, seconded by _____, to recommend that the Board approve the legislative changes and adopt the Amendments. The Planning Commission voted ___ - ___ to approve the motion.

ii. Board Action

On April 28, 2015, the Board conducted a public hearing on the Amendments. At the hearing, Ms. Mabbott testified and noted that the entire Planning Department file was physically before the Board. The Board did not reject any part of the Planning Department file. Ms. Mabbott then presented the staff report, which included a recommendation to approve the Amendments. Following presentation of the staff report, the Board accepted public testimony. The East End Rod & Gun Club testified in support of the Amendments.

At the conclusion of public testimony, the Board closed the public hearing and discussed the Amendments. Based upon the Planning Commission recommendation, the evidence before the Board (which included the evidence before the Planning Commission), and oral and written testimony presented to the Board, Commissioner _____ made a motion, seconded by Commissioner _____, to conduct two readings of the Amendments at that hearing and then to adopt the Amendments. The Board voted _- _ to approve the motion.

E. Record Before the Board

The record before the Board consists of the Staff Report to the Board dated _____, 2015, including all exhibits thereto; and, all materials entered into the record before and during the public hearings on April 23, 2015 and April 28, 2015. The entire County Planning Department file was physically before and not rejected by the Board before the close of the record.

4. Findings of Fact and Conclusions of Law

A. UCDC Provisions

i. UCDC 152.751 – Compliance with Comprehensive Plan

“An amendment to the text of this chapter or to a zoning map shall comply with the provisions of the County Comprehensive Plan Text and Comprehensive Land Use Map. Proposed amendments shall also comply with the applicable provisions of the Oregon Transportation Planning Rule, Oregon Administrative Rule (OAR) 660, Division 12 and the Umatilla County Transportation Plan, and are subject to the requirements of § 152.019, Traffic Impact Analysis. * * *”

This section sets forth the substantive approval criteria for the Amendments. For the reasons set forth below, the Board finds the applicable approval criteria met and adopts the Amendments.

ii. UCDC 152.752 – Public Hearings on Amendments

“The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures of § 152.771 of this chapter at its earliest practicable meeting after it is proposed. The decision of the Planning Commission shall be final unless appealed, except in the case where the amendment is to the text of this chapter, then the Planning Commission shall forward its recommendation to the Board of Commissioners for final action. The Board shall hold a public hearing in accordance with § 152.771 of this chapter within 60 days from receipt of the Planning Commission’s recommendation. * * *.”

For the reasons explained above, the County has reviewed the Amendments at noticed public hearings before the Planning Commission and the Board. The Board finds that it has satisfied the procedural requirements of this section.

iii. UCDC 152.019 - Traffic Impact Study

A text amendment is also subject to the requirements of UCDC 152.019, which requires submittal of a Traffic Impact Analysis with any land use application that proposes development that involves any of the following: a change to a plan amendment designation; an increase in site trips by at least 250 average daily trips; an addition, on a daily basis, of at least 20 vehicles greater than 10,000 pounds each to any gravel-surfaced County roads; a decision involving a site with a substandard access driveway; a change to internal traffic patterns that creates a safety concern; or a site located within specific Interchange Area Management Plan Areas. The Board finds that the Amendments are text amendments that do not propose any map changes or other any of the other listed activities. Therefore, no Traffic Impact Analysis is required.

B. Comprehensive Plan Provisions

Chapter 4 – The Planning Process

Policy 1: “Evaluate plan and implementing measures every two years, and where significant changes affect policies, initiate the amendment process.”

The Board finds that a significant change has occurred in that LUBA has held that the County cannot interpret the UCDC to allow limited expansions of firearms training facilities. *H. T. Rea Farming Corp.*, __ Or LUBA at __. The Board finds that this significant change affects the meaning of the UCDC. Accordingly, the Board initiates this amendment process.

Chapter 5 – Citizen Involvement

Policy 1: “Provide information to the public on planning issues and programs, and encourage citizen input to planning efforts.”

The Board finds that the County’s procedures in this matter are consistent with this policy for two reasons. First, the County published hearing notice in *The East Oregonian* and sent hearing notice to DLCD, which, in turn, distributed notice of the amendment to the public. These notices advised the public of the nature of the

amendments and provided directions to obtain more details from the County. Second, the County has provided citizens two *de novo* hearings to address the Amendments.

Policy 5: “Through appropriate media, encourage those County residents’ participation during both city and County deliberation proceedings.”

The Board finds that the County’s procedures in this matter are consistent with this policy because the County published notice of the hearings in *The East Oregonian*.

For these reasons, the Board finds that the Amendments are consistent with these policies.

C. Consistency with Statewide Planning Goals

This section addresses consistency with the applicable Goals. As described below, the Board finds that the Amendments are consistent with the Goals.

i. Goal 1 – Citizen Involvement

Goal 1 requires every city and county to develop and implement a citizen involvement program. As LUBA has recognized, Goal 1 does not provide due process protections, nor does it dictate the conduct of local government hearings. Rather, the Oregon Revised Statutes govern the manner in which local authorities conduct hearings and the procedural requirements for such hearings. See ORS Chapter 215. When notice of a hearing is provided and public testimony considered, LUBA will find no Goal 1 violation.

The County has an acknowledged citizen involvement program and an acknowledged process for securing citizen input on all proposed plan amendments. These local processes thus comply with state mandates, and the Amendments were processed in a manner consistent with the Plan and the UCDC. The Planning Commission and Board held duly noticed public hearings in compliance with local law and with the statutory procedures required under ORS Chapter 197. Therefore, the Board finds that its review of the Amendments is consistent with Goal 1.

ii. Goal 2 – Land Use Planning

Goal 2 requires consistency between local comprehensive plans and the Goals, that local comprehensive plans maintain internal consistency, and that the implementation of ordinances remain consistent with acknowledged comprehensive

plans. Goal 2 also requires that planning authorities make land use decisions with adequate factual bases and coordinate with affected jurisdictions.

The Plan and the UCDC, as well as the Goals and applicable statutes, provide policies and criteria for the evaluation of the Amendments. Compliance with these measures ensures an adequate factual basis for approval of the Amendments. As discussed elsewhere in these findings, the Amendments are consistent with applicable policies and standards. By demonstrating such compliance, the Amendments satisfy the consistency element of Goal 2.

The County is required to forward a notice of the Amendments to DLCD at least 35 days before the first evidentiary hearing on adoption. The County provided the requisite notice to DLCD on March 17, 2015. Under Goal 2, the County is not required to accommodate all of the concerns of interested governmental agencies, but the County's findings did respond to the legitimate concerns of affected agencies.

The Board finds that its review of the Amendments are consistent with Goal 2.

iii. Goal 3 – Agricultural Lands

The purpose of Goal 3 is to protect agricultural lands. The Amendments concern development on farmlands. Thus, Goal 3 is applicable. The Board finds that the Amendments are consistent with Goal 3 for two reasons. First, the Amendments propose to amend the UCDC to be consistent with state law. Second, the Amendments preserve farmland because they allow only limited expansion of otherwise lawful firearms training facilities within three miles of an urban growth boundary upon notice and opportunity for a hearing.

iv. Goal 4 – Forest Lands

The Amendments do not affect any forest lands, and thus the Board finds Goal 4 inapplicable.

v. Goal 5 – Open Space, Scenic and Historic Areas, Natural Resources

The Amendments do not affect any open space, scenic and historic areas, or natural resources. Thus, the Board finds Goal 5 inapplicable.

vi. Goal 6 – Air, Water, and Land Resources Quality

Goal 6 seeks to maintain and improve the quality of the air, water, and land resources in the state. Because the proposal does not authorize any specific development at this time, there can be no direct impact to air, water, or land resources. Therefore, the Board finds that the Amendments are consistent with Goal 6.

vii. Goal 7 – Areas Subject to Natural Hazards

Goal 7 requires that planning authorities not locate development that could result in damage or loss of life in known areas of natural hazards and disasters without appropriate safeguards. Because the Amendments do not authorize any specific development at this time, it allows no development planned or located in known areas of natural hazards and disasters. The Board finds that the Amendments are consistent with Goal 7.

viii. Goal 8 – Recreational Needs

The Amendments do not involve any designated recreational or open-space lands. Thus it does not affect access to any significant recreational uses in the area. The Board finds Goal 8 inapplicable in this instance.

ix. Goal 9 – Economic Development

Goal 9 requires that local authorities base their comprehensive plans and policies on an inventory of areas suitable for increased economic growth and activity, including for specified land uses. The Amendments do not authorize any specific development activity. Therefore, the Board finds that Goal 9 is not applicable.

x. Goal 10 – Housing

Goal 10 requires local governments to help provide for an adequate number of needed housing units and to encourage the efficient use of developable land within urban growth boundaries. The Amendments do not affect the provision or type of housing units in the County. Thus, the Board finds that Goal 10 is not applicable to the Amendments.

xi. Goal 11 – Public Facilities and Services

Goal 11 creates guidelines for the timely, orderly, and efficient provision of public facilities and services, such as sewer, water, solid waste, and storm drainage. The

Amendments do not specifically propose any new development that would utilize public facilities or services. Therefore, the Board finds Goal 11 inapplicable in this instance.

xii. Goal 12 – Transportation

Goal 12 requires that local governments provide and encourage a safe, convenient, and economic transportation system. Because the proposal does not authorize any specific development at this time, there can be no direct impact to transportation. Therefore, the Board finds that the Amendments are consistent with Goal 12. The Board further finds that OAR 660-012-0060, the Transportation Planning Rule (“TPR”) implements Goal 12. The Board addresses the TPR below.

xiii. Goal 13 – Energy Conservation

The Amendments do not impact any known or inventoried energy sites or resources. The Board finds Goal 13 inapplicable in this instance.

xiv. Goal 14 – Urbanization

The Amendments do not involve a change in the location of an urban growth boundary or a conversion of rural land to urban land. The Board finds Goal 14 inapplicable in this instance.

xv. Goals 15 – 19

Goals 15 through 19 apply to the Willamette River Greenway and the Oregon Coast and are therefore inapplicable.

D. ORS 197.770 – Firearms Training Facilities

“(1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.

“(2) For purposes of this section, a firearms training facility is an indoor or outdoor facility that provides training courses and issues certifications required:

“(a) For law enforcement personnel;

(b) By the State Department of Fish and Wildlife; or

(c) By nationally recognized programs that promote shooting matches, target shooting and safety.”

The Amendments concern firearms training facilities. The Board finds that the existing UCDC definition of “firearms training facilities” is consistent with this statute. The Amendments do not modify this definition. Therefore, the Amendments are consistent with this statute.

E. Oregon Administrative Rules

i. OAR 660-012-0060 - Transportation Planning Rule

The TPR mandates that local governments impose mitigation measures when the adoption or amendment of a land use regulation would “significantly affect an existing or planned transportation facility.” OAR 660-012-0060(1). The Amendments are amendments to land use regulations.

In applying the TPR, the Board takes notice of LUBA’s decision in *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012). In its decision in that case, LUBA held that a text amendment that does not create trips cannot have a significant effect for purposes of the TPR. *Id.* The Board finds that the Amendments do not create additional trips on the County’s transportation system and therefore the Amendments do not significantly affect any existing or planned transportation facilities. As a result, the Board finds that no mitigation under the TPR is required.

ii. OAR 660-033-0120 – Uses Authorized on Agricultural Lands

“The specific development and uses listed in the following table are allowed or may be allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

“(2) R – Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.”

OAR 660-033-0120 Table of Uses

“Firearms training facility as provided in ORS 197.770.

“High Value Farmland: R2

“All Other: R2.”

Based upon OAR 660-033-0120 and its accompanying table, the Board finds that a “[f]irearms training facility as provided in ORS 197.770” may be allowed on farmland, subject to notice and a hearing and subject to the requirements of OAR 660-033-0130(2). The Board finds that the Amendments are consistent with these requirements for three reasons. First, the Amendments only permit firearms training facilities on farmland as provided in ORS 197.770. See revised UCDC 152.059 in Exhibit A. Second, as explained below, the Amendments allow expansions consistent with the requirements of OAR 660-033-0130(2). Third, the Amendments allow the County to approve such expansions through an administrative review under UCDC 152.769, which provides for notice and an opportunity for a hearing. See revised UCDC 152.059.

iii. OAR 660-033-130 – Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

“(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.”

“(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, ‘tract’ means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.”

“(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.”

LUBA held that the provisions of this rule authorize counties to amend their land use regulations to provide for limited expansions of firearms training facilities. *H. T. Rea Farming Corp.*, __ Or LUBA at __ (slip op. at 19). The Board finds that the Amendments are consistent with these provisions because the Amendments are a verbatim restatement of these provisions.

F. County Transportation Plan

The Board finds that no provisions of the County Transportation Plan apply to the Amendments.

5. Conclusion

The Board finds that the Amendments are consistent with applicable local and state law. Further, the Amendments are warranted because they protect private property rights for owners of firearms training facilities, protect offsite uses from incompatible development, and cause the UCDC to be consistent with state law. Thus, the Board adopts the Amendments.

**UMATILLA COUNTY
PLANNING COMMISSION
HEARING**

**THURSDAY,
April 23, 2015**

Text Amendment, #T-15-062

Umatilla County

Department of Land Use Planning



DIRECTOR
TAMRA
MABBOTT

April 14, 2015

LAND USE
PLANNING,
ZONING AND
PERMITTING

MEMO

TO: Planning Commission

CODE
ENFORCEMENT

FROM: Tamra Mabbott

CC: Interested Parties

SOLID WASTE
COMMITTEE

RE: Amendment to adopt land use standards for medical marijuana

SMOKE
MANAGEMENT

The purpose of this amendment is to adopt definitions and standards for medical marijuana growing, processing and dispensing in Umatilla County. The amendments also include a definition of recreational marijuana; however, standards for recreational marijuana are excluded at this time due to the numerous changes likely to come out of the Oregon Legislature.

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON,
NATURAL
RESOURCES &
ENVIRONMENT

Currently, the county code does not have a definition of marijuana, medical and/or recreational. Absent a definition, the code may allow, inadvertently, a marijuana business to occur as part of another business. For example, if a zone allows a commercial greenhouse and the code is silent on marijuana, county land use code would not limit what crop(s) were grown in the greenhouse. Under the proposed land use definitions and standards, a commercial greenhouse would only be able to grow marijuana for commercial sale if a land use permit was issued specifically for marijuana.

Civil and Land Use Versus other laws

It is important to note that land use codes in no way effect the laws that are enforced by the Sheriff's Office, Oregon State Police, Oregon Health Authority and federal agencies.

Moratorium

Today the Board of Commissioners adopted a moratorium on medical marijuana dispensaries, effective thru December 31, 2015. The proposed land use standards are relevant insofar as a legal challenge could overturn the moratorium, and, so that standards are in place once the moratorium expires. The moratorium could be rescinded prior to December 31st if the Board finds that adequate safeguards are in place.

The moratorium does not limit the otherwise legally permissible growing and processing of medical marijuana. Proposed land use code amendments will

define growing and processing of medical marijuana and include standards for permitting.

Draft Standards

The attached Development Code standards are draft and will likely require modification. For example, the buffer is written as a one mile buffer, but could be amended to be one half mile or 1,000 feet. The attached maps show one half mile and 1,000 feet. To note, Mr. Rob Bovett, Chief Counsel for the Association of Oregon Counties and foremost expert on marijuana, reviewed the attached draft code definitions and amendments.

Exhibits

1. Draft Code Language
2. Maps of Commercial and Industrial lands with buffers
3. "Oregon Health Authority Oregon Medical Marijuana Program: overview"
4. "Q and A" from Oregon Health Authority
5. "Local Government Regulation of Medical Marijuana In Oregon"
6. Moratorium adopted by Board of Commissioners

March 17, 2015

Proposed Amendments to Umatilla County Development Ordinance

I. Definitions UCDO Section 152.003

152.003 Medical Marijuana Dispensary (MMJ) or Laboratory.

A Medical Marijuana Dispensary shall be the same as defined in OAR 333-008-1050 and licensed by the Oregon Health Authority and registered as a business with the Office of the Secretary of State.

152.003 Medical Marijuana (MMJ) Grow Facility or Operation property.

A Medical Marijuana (MMJ) Grow Site or Grow operation shall be the same as defined in OAR 333 Division 8 where a single parcel of land is used as a grow operation for more than two MMJ cardholders (or patients). A medical marijuana grow facility may also be defined as an operation (single parcel of land) where marijuana is grown for two or more medical marijuana cardholders or persons who consume marijuana for medical purposes. Growing of medical marijuana is a not for profit commerce.

152.003 Medical Marijuana Processing Facility.

A Medical Marijuana Processing Facility is a place where marijuana is processed for human consumption.

152.003 Pain Management Clinic.

A pain management clinic is a business or clinic where professional treatment is provided to persons who have chronic pain or addictions.

152.003 Recreational Marijuana.

Recreational marijuana is marijuana consumed for non-medical purposes. The definition shall be the same as defined in (Measure 91, Oregon Revised Statutes) and as subsequently amended in ORS. The growing, harvesting or processing of marijuana for recreational purposes is considered a for-profit business.

harvesting or processing of marijuana for recreational purposes is considered a for-profit business.

152.003 Recreational Marijuana Business.

A recreational marijuana facility or business is a place where marijuana is sold or traded for profit and intended for non-medical purposes.

II. Zones

A Medical Marijuana Dispensary or Laboratory and a Medical Marijuana Grow Facility or Grow Operation

A medical marijuana dispensary or laboratory and a Medical Marijuana Grow Facility or Grow Operation may be permitted as a conditional use in the following zones, as listed in Umatilla County Development Ordinance Sections:

Retail, Service Commercial (RSC) 152.247(N)

Rural Retail, Service, Commercial (RRSC) 152.253(O)

Light Industrial (LI) 152.303(A)(21)

Rural Light Industrial (RLI) 152.309 (A)(15)

Limited Rural Light Industrial (LRLI) 152.315(A)(15)

III. Conditional Use Permit Standards for Medical Marijuana (MMJ) Dispensary or Laboratory or Processing Facility. Purpose: This section will establish the regulations for the siting of a medical marijuana dispensary or laboratory or processing facility as authorized by state law.

Conditional Use Permit Standards 152.616(III)

- a. Hours of operation shall be limited to hours between 9:00 am to 7:00 pm.

- b. A Dispensary or Laboratory shall make available to the public information about the health of medical marijuana consumption (as provided by County Public Health).
- c. Post in public view the state license, county license and/or permit.
- d. Product quality shall be assured by compliance with Oregon Health Authority testing and licensing. Documentation of inspections from OHA and laboratories available during hours of operation.
- e. A facility shall be located no less than one mile from any public or private schools, day care facilities, youth sports facilities, public pools, libraries, play grounds, designated school routes, and community colleges or career schools serving individuals under the age of 21 and churches.
- f. A facility shall be no closer than 1,000 feet of another MMJ facility.
- g. A dispensary or laboratory may be sited on the same lot or parcel as a “medical marijuana grow facility” if the dispensary is segregated from the grow facility.
- h. A dispensary shall be subject to permitting and inspections by County Environmental Health Division of the Public Health Department.
- i. Products sold at the dispensary must come from a registered grow facility, as defined by OHA and county code.
- j. Medical marijuana products shall be properly stored in a secure location so as to avoid access to persons under age 21.
- k. Products shall be properly labeled and shall include appropriate health advisory warnings.
- l. Applicant/owner shall sign and record an acknowledgement that he/she is responsible for compliance with federal laws and county is held harmless.

- m. Consumption of the product on-site shall be restricted.
- n. Consumption of the product shall not be in the presence of children (persons under age 21).
- o. Applicant/landowner shall comply with permitting and licensing requirements of the Oregon Health Division's Oregon Medical Marijuana Program.
- p. Applicant/landowner shall comply with any standards recommended by local law enforcement.
- q. Business shall not employ persons with a history of criminal convictions related to Schedule I or Schedule II drugs, as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970 and as may be subsequently amended.
- r. Business owner/landowner shall provide proof of liability insurance for the business.
- s. Selling, trading or consuming of recreational marijuana shall be prohibited at a medical marijuana dispensary or laboratory.
- t. Violation of the standards and conditions of the conditional use permit will result in immediate revocation of the land use permit and a citation to Circuit Court. Note: Where a warning is not issued and a citation is issued immediately, this process is shorter than the process for other land use violations.

IV. Conditional Use Permit Standards for a Medical Marijuana Grow Facility or Operation.

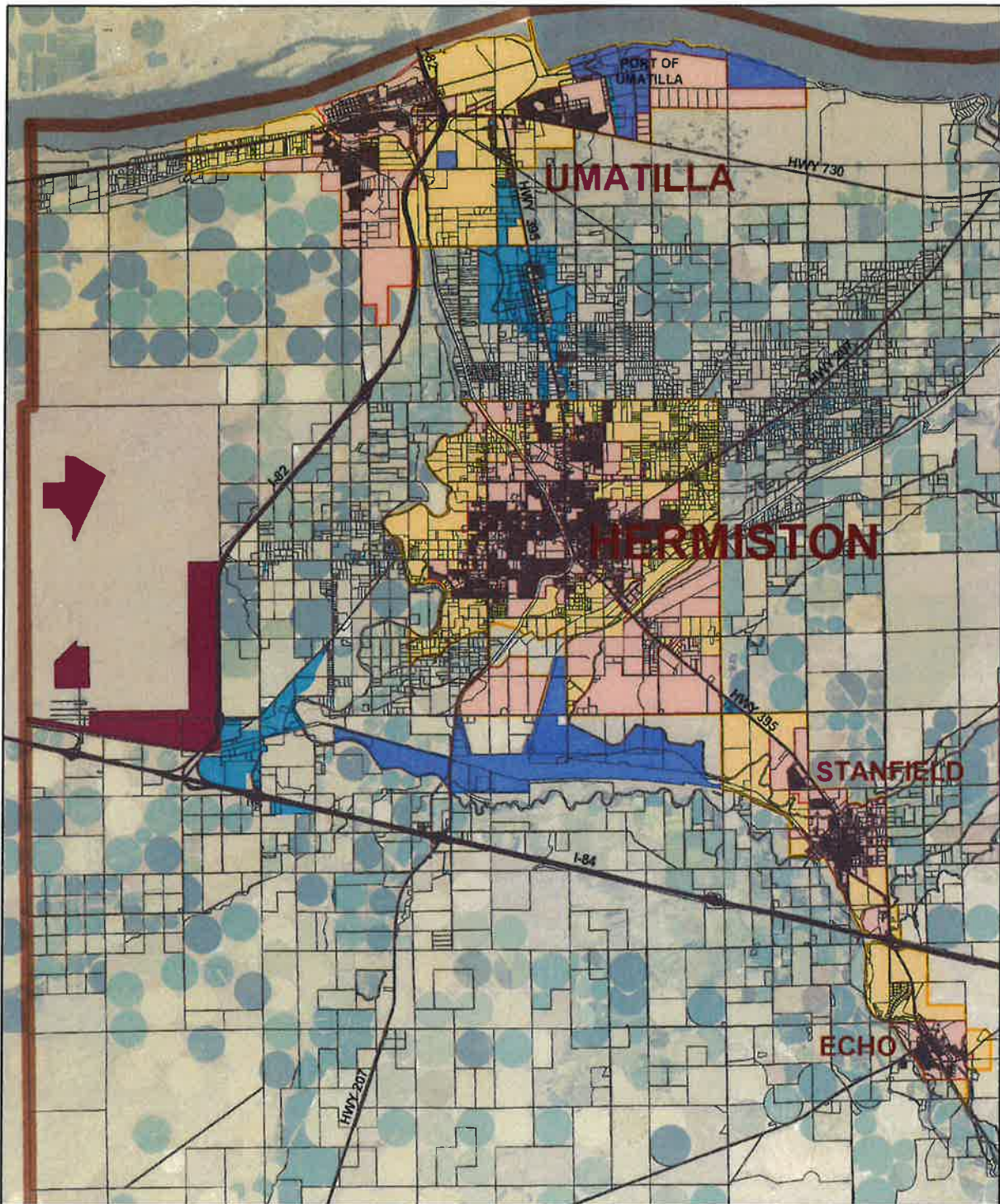
The purpose of permitting a medical marijuana grow facility is to provide sufficient regulatory oversight so as to prevent the public, especially youth,

from adverse exposure. Zones where a Grow Operation may be permitted are listed above.

Conditional Use Permit Standards 152.616(JJJ)

- a. A grow facility must be secured to prevent public access.
- b. Facilities must not be visible from the street or alley abutting the property.
- c. Medical marijuana must be grown indoors or fully shielded from off-premise view.
- d. Use of the product on site is prohibited.
- e. Operator/owner must possess a permit or license granted by the Oregon Health Authority and be in good standing with licensing requirements of Oregon Health Authority. The address/location listed on the OHA license shall be the same as for the grow facility permitted by county.
- f. A grow facility located on a single parcel of land may grow medical marijuana for a maximum of four (4) medical marijuana card holders.
- g. Hazardous materials storage and containment must be reviewed and approved by the local Fire Marshall and the Building Official.
- h. The facility shall be setback a minimum of one mile from any school, licensed daycare, medical or addiction treatment or rehabilitation facility.
- i. Operator/owner must have on-site at all times current documentation of inventory and OHA license.

- j. Operator/owner shall make available to the public, information about public health concerns. Such information shall be made available by County Health Department.
- k. Violation of the standards and conditions will result in immediate notice to revoke the land use permit and issuance of a citation to Circuit Court. Note: Where a warning is not issued and a citation is issued immediately, this process is shorter than the process for other land use violations.
- l. Permit shall be subject to annual review and associated fee, by the Planning Department.



West Umatilla County Industrial Zoned Areas

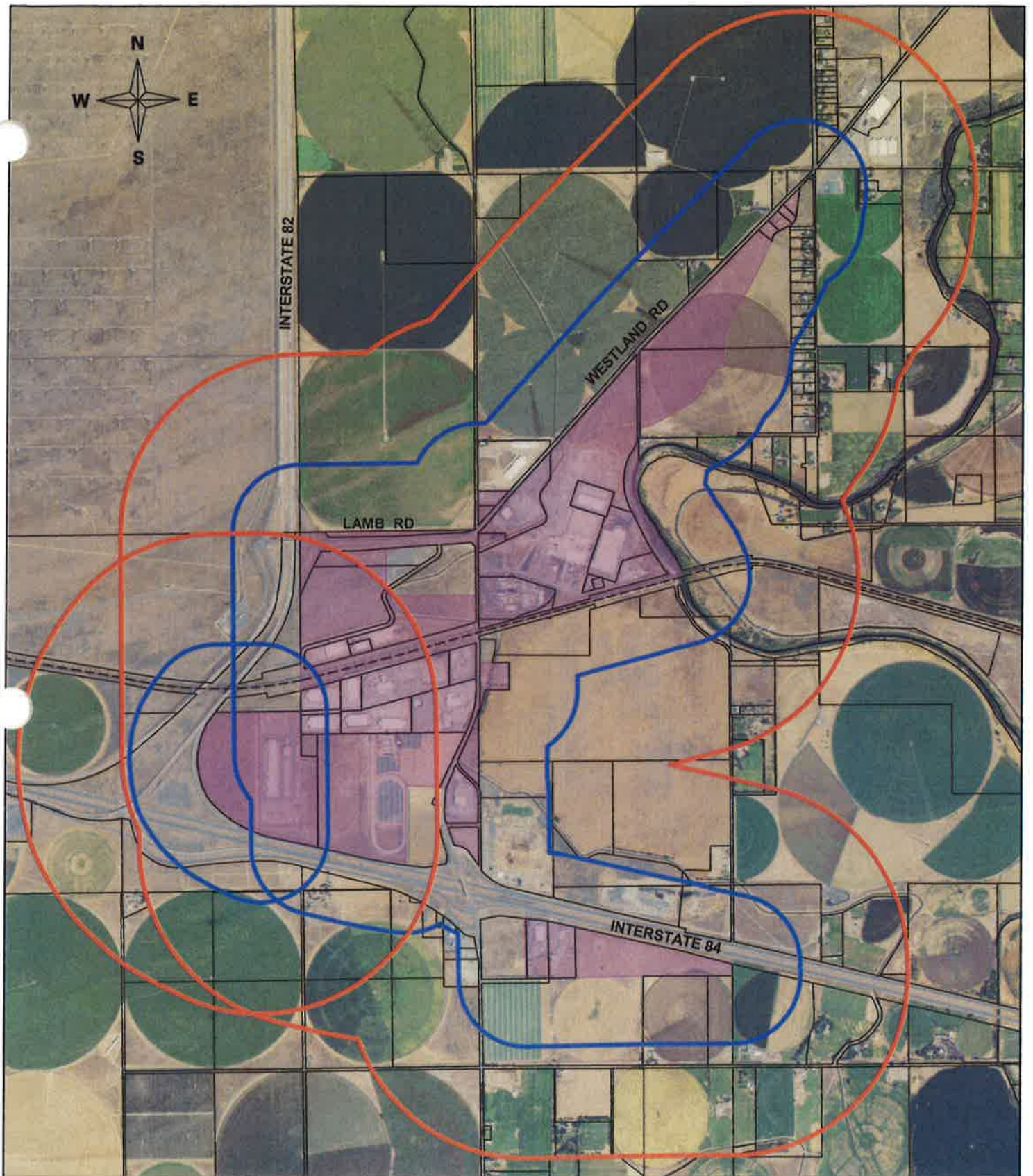


Legend

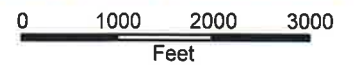
- City Limits
- Urban Growth Boundary
- Light Industrial Zone
- Heavy & General Industrial Zone
- Depot Industrial Zone



MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Not intended for legal use.
Created by J. A. Ford, Umatilla County Planning Department
Date: 11/21/14



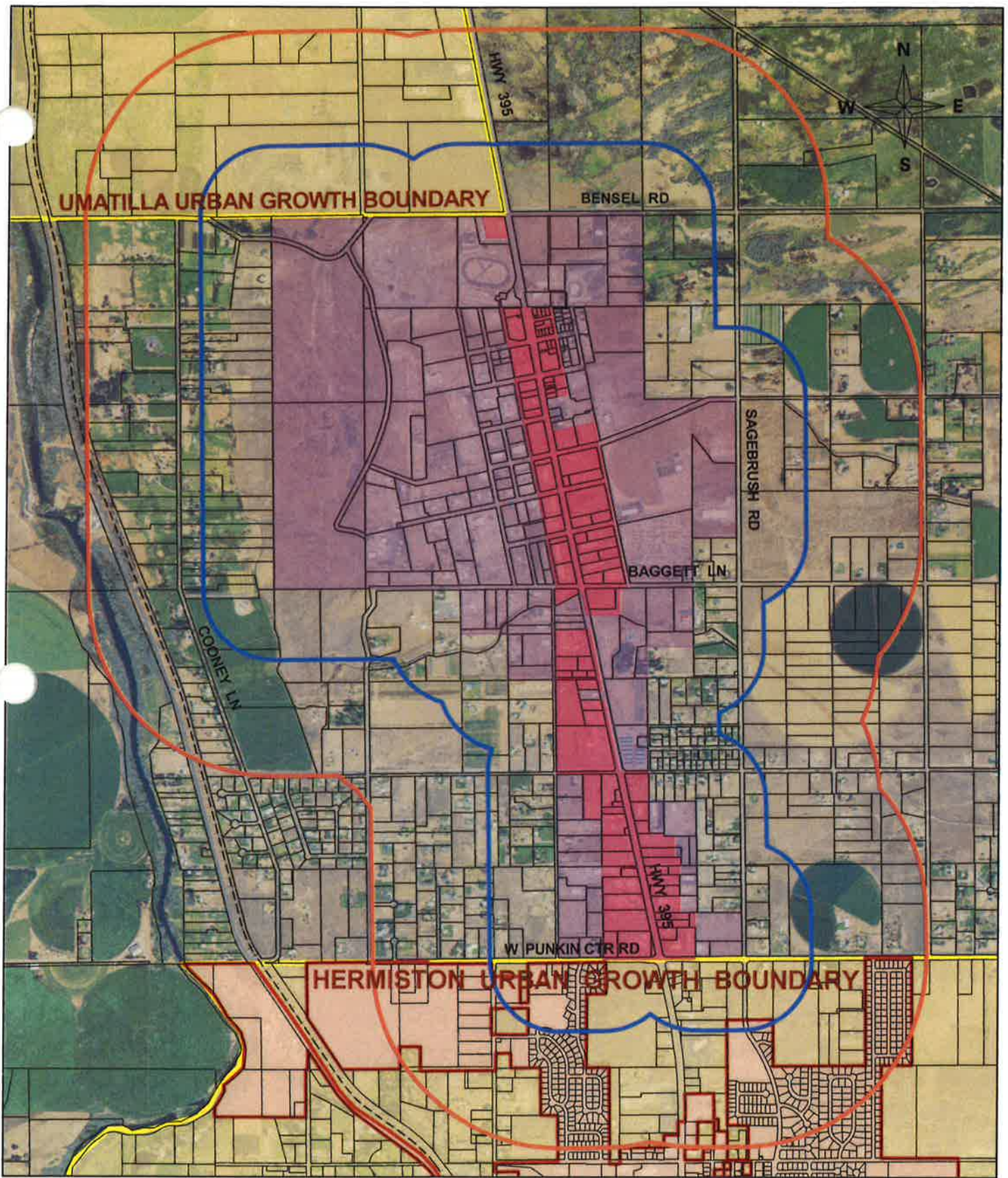
WESTLAND ROAD AREA



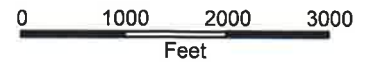
Legend

- Light Industrial Zones
- 1000' Buffer
- 1/2 Mile Buffer

2014 AERIAL PHOTO
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 Created by Julie Alford, Umatilla County Planning Dept.
 DATE: 4/13/15

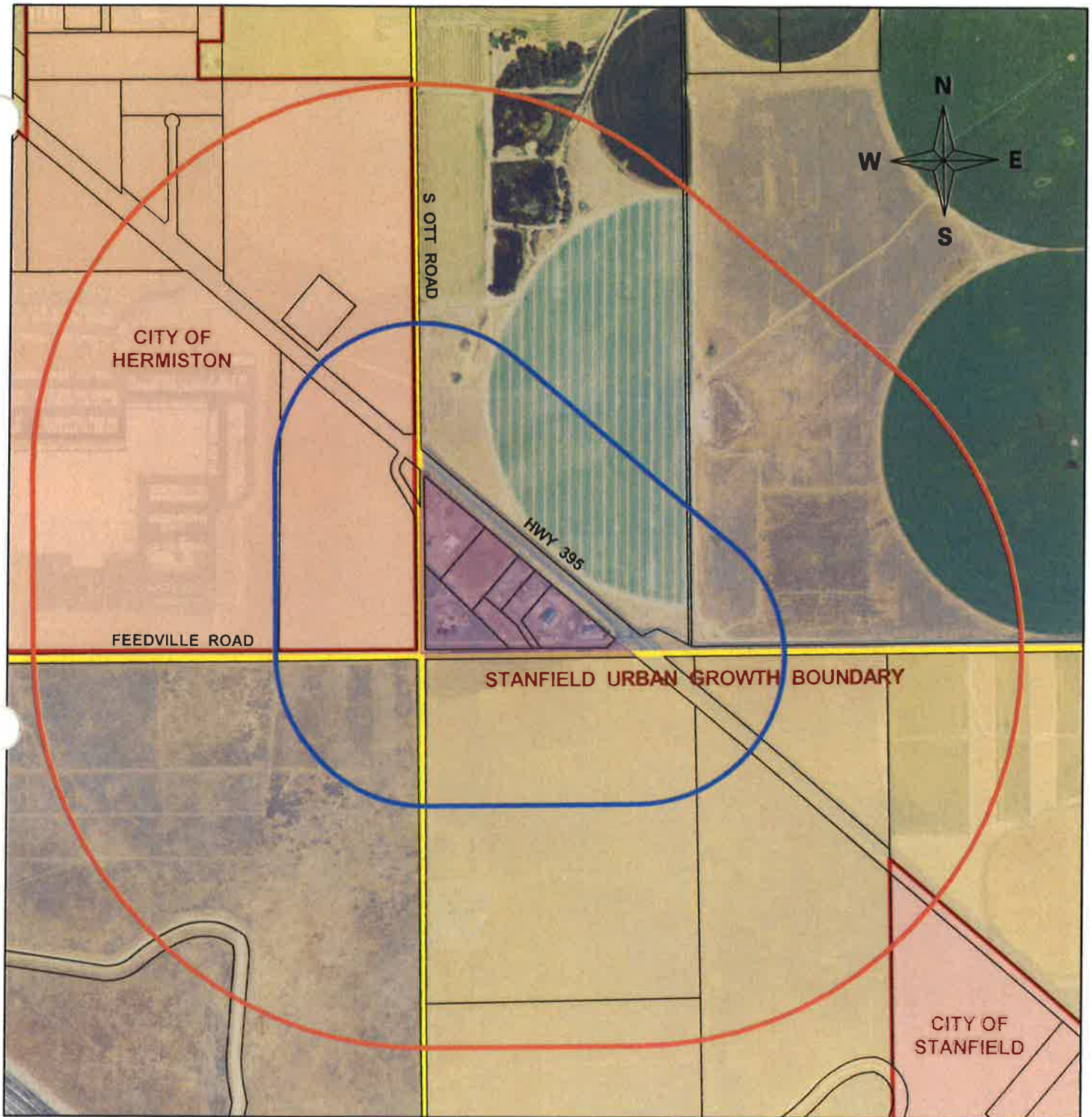


HIGHWAY 395 N COMMERCIAL & LIGHT INDUSTRIAL SITES

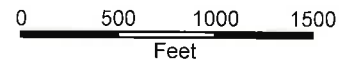


- Legend
-  City Limits Area
 -  Commercial Zones
 -  Light Industrial Zones
 -  1/2 Mile Buffer
 -  Urban Growth Area
 -  1000' Buffer

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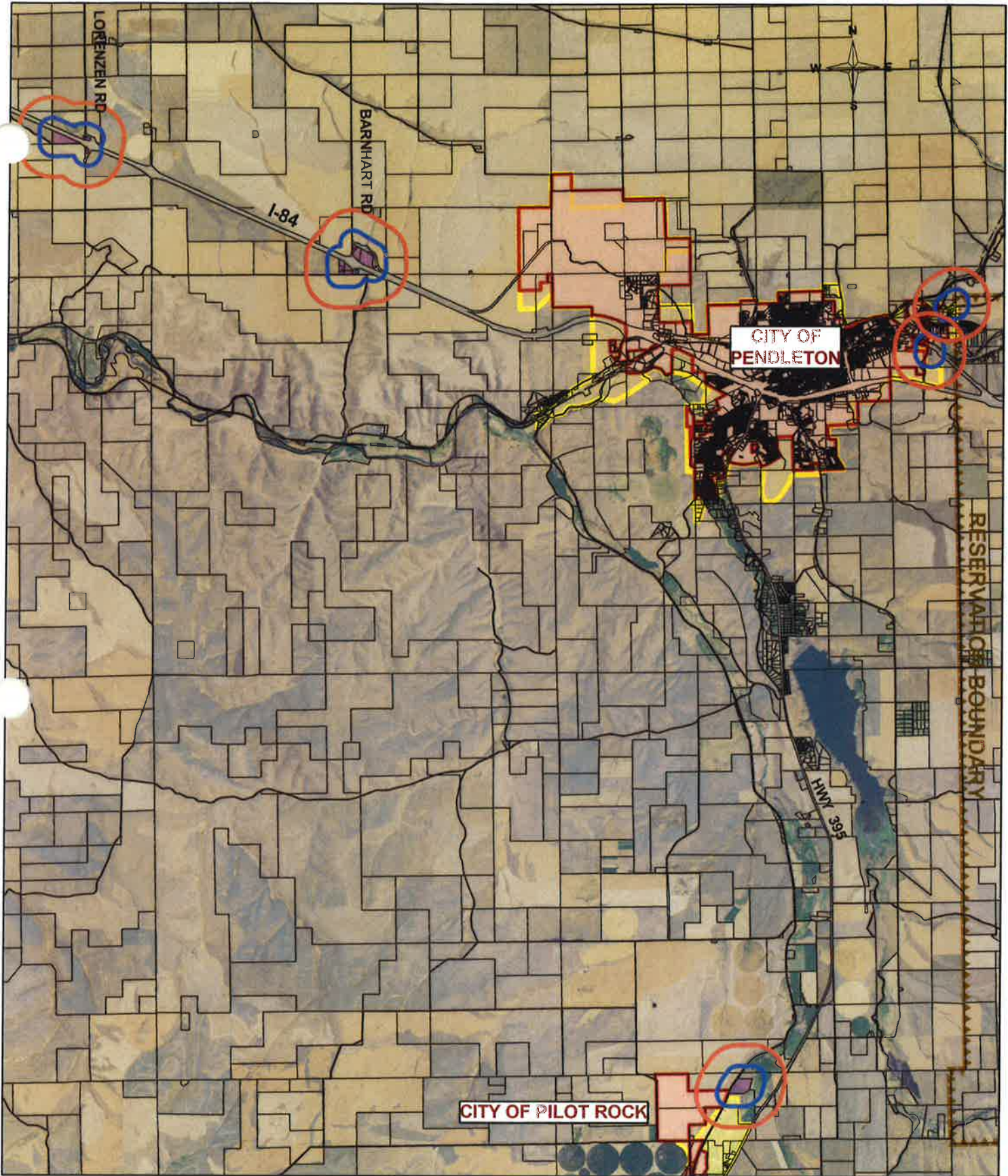
HIGHWAY 395 S COMMERCIAL & LIGHT INDUSTRIAL SITES



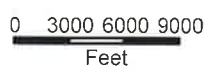
Legend

- | | | | |
|---|------------------------|---|-----------------|
|  | City Limits |  | 1/2 Mile Buffer |
|  | Urban Growth Area |  | 1000' Buffer |
|  | Light Industrial Zones | | |

2014 AERIAL PHOTO
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CENTRAL COUNTY COMMERCIAL & LIGHT INDUSTRIAL SITES

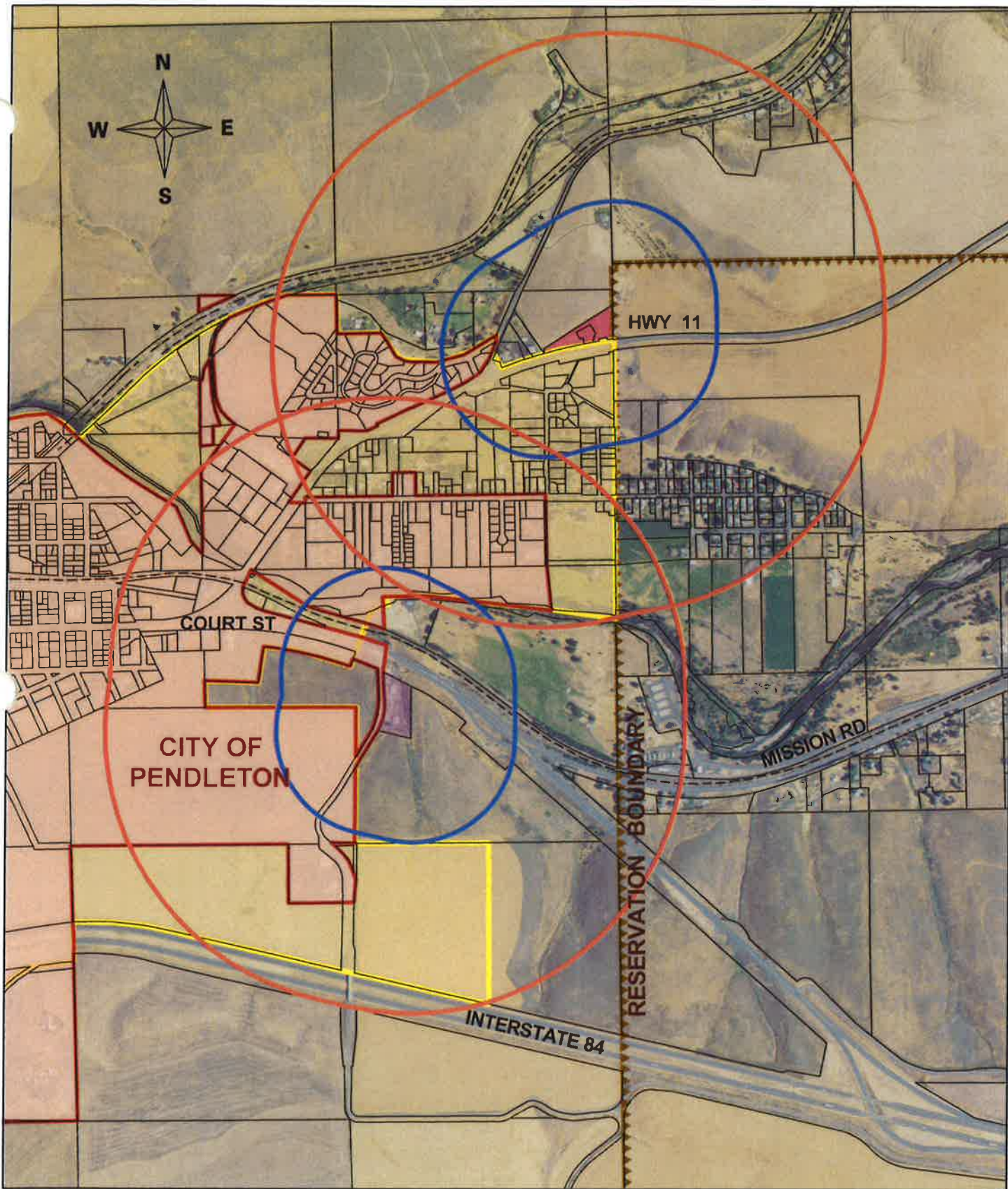


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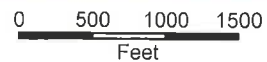
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City Limits Light Industrial Zones 1/2 Mile Buffer
 Urban Growth Area Commercial Zones 1000' Buffer

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 Created by Julie Alford, Umatilla County Planning Dept.
 DATE: 4/13/15



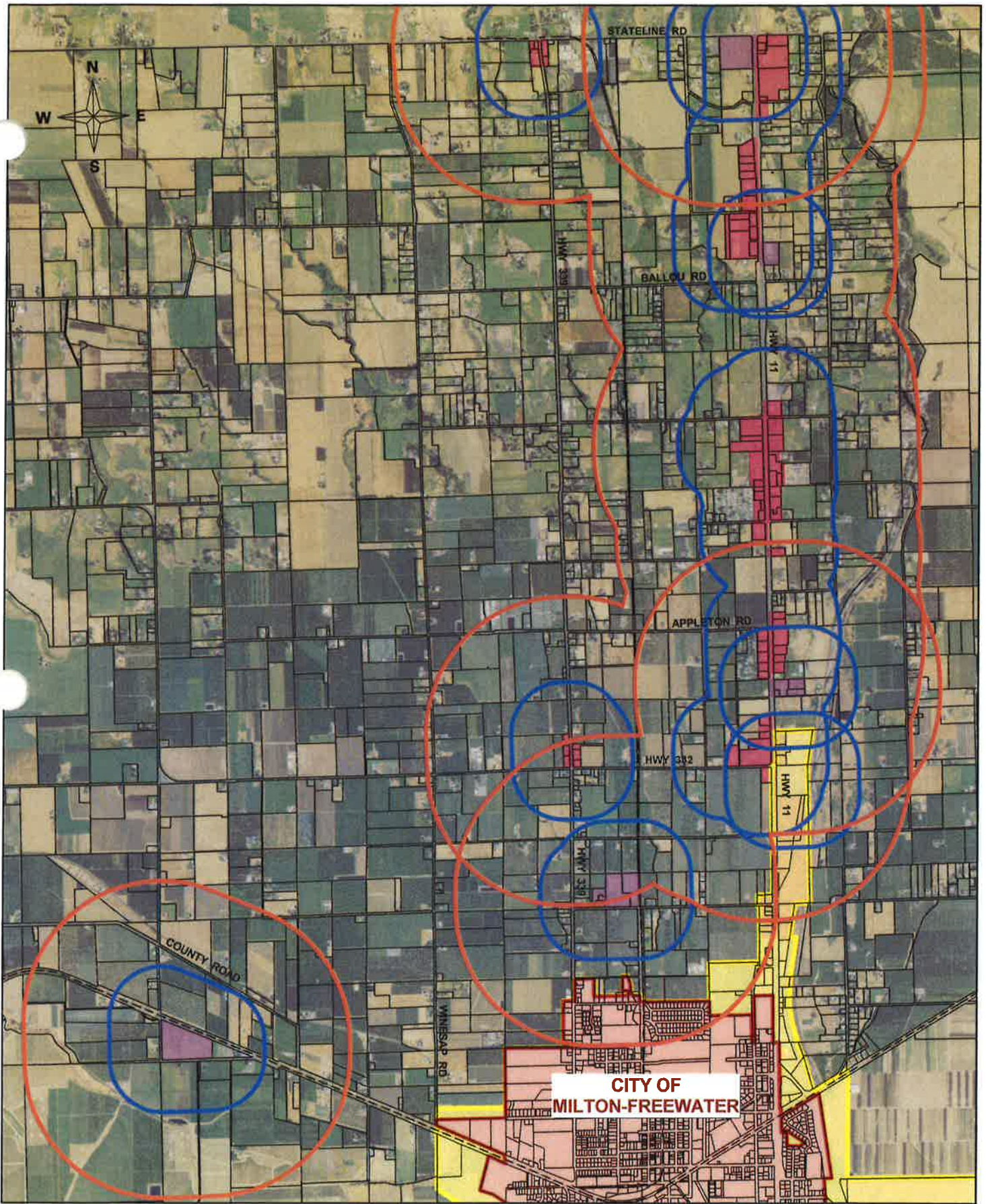
CENTRAL COUNTY DETAIL COMMERCIAL & LIGHT INDUSTRIAL SITES



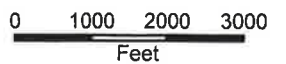
Legend

- City Limits Area
- Commercial Zones
- 1/2 Mile Buffer
- Urban Growth Area
- Light Industrial Zones
- 1000' Buffer

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MILTON-FREEWATER VALLEY COMMERCIAL & LIGHT INDUSTRIAL SITES



- City Limits
- Light Industrial Zones
- 1/2 mile Buffer
- Urban Growth Area
- Commercial Zones
- 1000' Buffer

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 DATE: 4/13/15

Oregon Health Authority

Oregon Medical Marijuana Program: overview

This guide to the Oregon Medical Marijuana Program provides an overview of the program. Patients, growers, caregivers and interested parties can use it to understand how the program works, what it covers, its authority and rules.

Summary

The Oregon Medical Marijuana Program (OMMP) is a state program that registers patients to use medical marijuana in Oregon. OMMP is part of the Oregon Health Authority Public Health Division. The program's role is to administer the Oregon Medical Marijuana Act. Oregon voters approved the act in November 1998. Many states use Oregon's program as a model for their own medical marijuana initiatives and registration systems.

History

On Nov. 3, 1998, Oregon voters approved Ballot Measure 67, the Medical Marijuana Act, which allowed registered cardholders to legally use marijuana for medical reasons in this state within specified limits. The law also established a state-controlled permit system. The law went into effect in January 1999. It does the following:

- Gives legal protections to qualified patients;
- Requires a physician to write a statement of the patient's qualifying medical condition;

- Allows a caregiver to provide help; and
- Mandates an Oregon Health Authority registration system.

In May 1999, the Oregon Department of Human Services (DHS) implemented the Oregon Medical Marijuana Program (OMMP) by issuing the first OMMP registration cards. The program registers patients under the Oregon Medical Marijuana Act.

During the program's first year, from May 1, 1999, to May 1, 2000, the program served approximately 600 registered patients. By July 2014, the program reached more than 60,000 registered patients.

The Oregon Medical Marijuana Program is totally fee-supported. No state funds support the program.

Contents

Overview

Summary	1
History.....	1

The Oregon Medical Marijuana Act (OMMA)

Limits of protection.....	3
Qualifying medical conditions	3
Who may document qualifying medical conditions.....	4
Who may act as a caregiver	5
Who may act as a grower.....	5
Growing and possession	6
Medical marijuana cannot be prescribed	7
Cardholders are not immune from criminal laws.....	7

The Oregon Medical Marijuana Program (OMMP)

Services the OMMP provides	8
What the OMMP does not do.....	8
Reciprocity with other states	9

Application process

Patients.....	10
Growers and growsites.....	11
Medical conditions and fees	12
Making changes	13
Administering medical marijuana at a licensed health care facility	14

Oregon Medical Marijuana Program statistics

For more information.....

Glossary

17

- Seizures, including but not limited to those caused by epilepsy;
- Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis.

Who may document qualifying medical conditions

The patient's attending physician must provide current written documentation of the patient's medical condition to the OMMP by completing the "Attending Physician's Statement Form."

ATTENDING PHYSICIAN'S STATEMENT FORM

Health		ATTENDING PHYSICIAN'S STATEMENT Oregon Medical Marijuana Program	Office use only: OMBE
<p>Instructions: Please complete all sections of this form in order to comply with the registration requirements of the Oregon Medical Marijuana Act OR provide relevant portions of the patient's medical record containing all information required on this form. This does not constitute a prescription for marijuana.</p> <p>If you need this document in an alternate format, please call (971) 673-1234</p> <p>**This form must be received by the OMMP within 90 days of the physician's signature date.**</p> <p>**You cannot renew more than three months prior to your current card expiration date.**</p> <p>PLEASE TYPE OR PRINT LEGIBLY.</p>			
A PATIENT INFORMATION			
PATIENT NAME (LAST, FIRST, M.I.):		DATE OF BIRTH:	
MAILING ADDRESS:		TELEPHONE #: ()	
CITY, STATE AND ZIP CODE:			
B PHYSICIAN INFORMATION			
PHYSICIAN NAME:		MD/DO #:	
MAILING ADDRESS:		TELEPHONE #: ()	
CITY, STATE AND ZIP CODE:			
C PHYSICIAN'S STATEMENT			
Debilitating Medical Condition. Check all appropriate boxes:			
<input type="checkbox"/> 1. Malignant neoplasm (Cancer)			
<input type="checkbox"/> 2. Glaucoma			
<input type="checkbox"/> 3. Positive status for Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS)			
<input type="checkbox"/> 4. Agitation due to Alzheimer's Disease			
<input type="checkbox"/> 5. Post-Traumatic Stress Disorder (PTSD)			
6. A medical condition or treatment for a medical condition that produces for a specific patient one or more of the following (check all that apply):			
<input type="checkbox"/> a. Cachexia			
<input type="checkbox"/> b. Severe pain			
<input type="checkbox"/> c. Severe nausea			
<input type="checkbox"/> d. Seizures, including but not limited to seizures caused by epilepsy			
<input type="checkbox"/> e. Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis.			
Comments:			
I hereby certify that I am a physician duly licensed to practice medicine in Oregon under ORS Chapter 677. I have primary responsibility for the care and treatment of the above-named patient. The above-named patient has been diagnosed with the above debilitating medical condition(s). Marijuana used medically may mitigate the symptoms or effects of this patient's condition. This is not a prescription for the use of medical marijuana.			
PHYSICIAN'S SIGNATURE:			DATE:

The Oregon Medical Marijuana Act

Limits of protection

The OMMA protects medical marijuana users who comply with the law's requirements from state prosecution. They cannot be prosecuted for producing, possessing or delivering marijuana as a controlled substance.

However, federal law contradicts state law. Thus, the OMMA **does not** protect marijuana plants from being seized or people from being prosecuted if the federal government chooses to take action against registered cardholders under the Federal Controlled Substances Act.

Qualifying medical conditions

Under the OMMA, medical marijuana can be used for these medical conditions:

- Cancer;
- Glaucoma;
- Agitation due to Alzheimer's disease;
- HIV/AIDS;
- Post-traumatic stress disorder (PTSD).

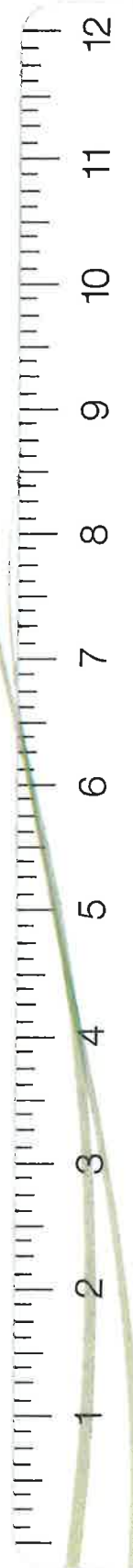
Medical marijuana can also be used for any other medical condition or treatment that produces one or more of the following:

- Cachexia (a weight-loss disease that can be caused by HIV or cancer);
- Severe pain;
- Severe nausea;

registry identification cardholder for five years from the conviction.

Growing and possession

- A grower may produce marijuana for up to four medical marijuana patients at the same time.
- A grower may grow up to six mature plants and 18 seedlings or starts at a registered growsite for each patient who gets marijuana from the grower.
 - » **Seedling or start** must meet the following criteria or it is considered a mature plant:
 - No flowers;
 - Less than 12 inches in height;
 - Less than 12 inches in diameter.
 - » **Mature plant** means a marijuana plant that does not fall within the definition of a seedling or a start.
 - » **Immature plant** has the same meaning as seedling or start.
- A patient and his or her grower and caregiver may possess a **combined total** of up to 24 ounces of usable marijuana.
- All usable marijuana, plants, seedlings and starts belong to the patient. The grower must return all marijuana to the patient whenever the patient asks for them.
- A patient may reimburse his or her grower for the cost of supplies and utilities associated



The attending physician must also state that the medical use of marijuana may relieve the symptoms or effects of the patient's medical condition.

The attending physician must be a doctor of medicine (MD) or doctor of osteopathy (DO) licensed to practice medicine in Oregon.

The OMMP verifies with the Oregon Medical Board that each patient's attending physician has a valid license to practice medicine in Oregon. Naturopaths, chiropractors and nurse practitioners **cannot** be attending physicians.

Who may act as a caregiver

A caregiver is an individual 18 years of age or older who is the main person managing the well-being of a patient.

The patient does not have to have a caregiver to apply for the OMMP. However, a patient who has a caregiver must include the caregiver's name and address on the application.

A patient may have only one caregiver at any given time.

Who may act as a grower

- A patient does not have to designate a grower and growsite on the form.
- A grower must be 18 years or older.
- The OMMP will do a criminal records check of any person submitted as a grower.
- A person convicted of a Class A or Class B felony for the manufacture or delivery of a controlled substance cannot get a marijuana growsite registration card for five years from being convicted. That person also cannot produce marijuana for a

The Oregon Medical Marijuana Program

Services the OMMP provides

The Oregon Medical Marijuana Program:

- Reviews applications to issue medical marijuana cards to:
 - » Patients with qualifying medical conditions; and
 - » Eligible caregivers and growers;
- Maintains records that comply with state confidentiality laws;
- Provides administrative support to the Advisory Committee on Medical Marijuana (ACMM), whose members are appointed by the Oregon Health Authority (OHA) director;
- Educates patients, caregivers and growers about the Oregon Medical Marijuana Act, program policies and processes; and
- Updates the OMMP database for law enforcement to have an up-to-date listing of valid OMMP cardholders and locations of valid growsites.

What the OMMP DOES NOT do

- **The OMMP does not have a physician referral list.** However, any doctor of medicine (MD) or doctor of osteopathy (DO) licensed in Oregon can recommend a patient for the program.
- **The OMMP does not give legal advice.** Those with questions about the OMMA should consult a private attorney.
- **The OMMP does not conduct medical research or**

with producing medical marijuana. The patient may not reimburse the grower for any other costs associated with producing marijuana for the patient, including the cost of labor. A grower must always display a growsite registration card for each patient who receives marijuana from the grower.

- A grower must possess his or her OMMP identification card when transporting marijuana.

Medical marijuana cannot be prescribed

Pharmacies can only give out medications that a physician prescribes. The federal government classifies marijuana as a Schedule I narcotic, which means a **physician cannot prescribe it.**

Cardholders are not immune from criminal laws

Having a medical marijuana card does not allow cardholders to engage in illegal activity. Law limits cardholders as follows. You **cannot:**

- Give medical marijuana to a non-OMMP cardholder;
- Sell medical marijuana, even to another OMMP cardholder;
- Use medical marijuana in a public place or in public view;
- Drive under the influence of marijuana; and
- Manufacture or produce marijuana anywhere other than at the growsite address you list on your application.

Application process

Patients

- In order for an application to be considered complete, the patient must submit the following:
 - » An application form that the patient has signed and dated;
 - » Copies of legible, current and valid U.S. state or federally issued photographic identification. This ID must include the last name, first name and date of birth of the patient

Samples of forms of identification



Passport



Military ID



Driver's license

address the health effects of using medical marijuana.

This is outside the program's authority.

- **The OMMP cannot find a caregiver or grower for a patient.** The OMMP does not have a referral list for people who want to be caregivers or growers for patients.
- **The OMMP does not have information about where to get the seeds or plants to start growing medical marijuana.**

Reciprocity with other states

Oregon cardholders are only protected from prosecution in another state if that state legally accepts Oregon's medical marijuana card. Medical marijuana programs vary by state. Contact the state you are traveling to for information on its laws.

A cardholder who possesses, produces or delivers medical marijuana in another state without a medical marijuana card from that state acts at his or her own risk.

A cardholder should contact the state he or she is traveling to for information about its laws.

Medical conditions and fees

- The patient must attach an "Attending Physician's Statement Form" (see page 4 for sample) to the application. It must include current documentation of the patient's medical condition and that the use of marijuana may relieve its symptoms or effects.
- The patient must include with the application a money order or personal check for the non-refundable application fee.
- Patients who choose to designate growers other than themselves must include a non-refundable grower site registration fee in addition to the application fee.

A patient must demonstrate current receipt of one of the following programs to qualify for a reduced application fee:

- » The Oregon Health Plan (OHP);
 - » Oregon Supplemental Nutrition Assistance Program (SNAP);
 - » Supplemental Security Income (SSI) benefits; or
 - » Service-connected compensation from the Veterans Administration based on the VA's finding of 100% service-connected disability **OR** receipt of a VA needs-based pension.
- The patient must provide the following information for one of these programs to qualify for a reduced fee:
 - » OHP— a copy of the patient's current eligibility statement;
 - » VA — proof that the patient receives a service-connected compensation from the VA. This is based on a finding from the VA of 100% service-connected disability OR receipt of a needs-based VA pension;

as well as of the grower and caregiver, as applicable.

- » The following are acceptable forms of U.S. state or federally issued photographic identification. They include but are not limited to:
 - Driver's license;
 - State identification card;
 - Passport; or
 - Military identification card.
- A patient must register each year to stay in the program. The patient must submit an application before his or her current card expires.

Growers and growsites

- A patient who decides to grow for himself or herself or designates a grower may register a marijuana growsite. OMMP will register only one growsite per patient. The growsites must be in Oregon. A patient registering a growsite must complete **both** the **grower** and **growsite** sections on his or her application, including:
 - » Name of the grower;
 - » Date of birth of the grower;
 - » Physical address of the marijuana growsite;
 - » Mailing address of the grower; and
 - » U.S. state or federally issued photographic identification.

Administering medical marijuana at a licensed health care facility

A health care professional who is licensed to administer pharmaceuticals may administer medical marijuana to a patient who:

- Has a registry identification card; and
- Resides in a licensed health care facility.

Medical marijuana:

- Cannot be dispensed in a public place;
- Cannot be dispensed in the presence of a person less than 18 years old;
- If smoked, must be in an area that is well ventilated;

Licensed health care professionals are not required to administer medical marijuana or set up a space for its administration.

- » SSI benefits — copy of the patient's current SSI benefit statement;
- » SNAP benefits — current active status in Oregon Food Stamp Management Information System and have proof of current food stamp benefits.

Making changes

- A patient is required to submit an OMMP "Change Request Form" if any of the following changes:
 - » Address,
 - » Caregiver,
 - » Grower, or
 - » Growsite.
- A patient must notify the OMMP within 30 calendar days of the change(s). Patients can mail the form or deliver it to the OMMP drop box. The program does not accept registration information changes by fax or over the telephone.
- OMMP will charge a non-refundable card replacement fee if a patient adds or updates a designated caregiver, grower or growsite, or the registration card has been lost or stolen.

No fee payment is required to:

- » Change mailing addresses;
 - » Remove a caregiver;
 - » Remove a grower/growsite.
- The OMMP recommends that the patient or cardholder keep copies of all change forms submitted to the OMMP when moving plants to a new growsite.

For more information

Oregon Medical Marijuana Program

Please visit our website for more Oregon Medical Marijuana Program information. You will find frequently asked questions, basic facts, statistics, forms, application and fee information, and more.

www.oregonhealth.org/ommp

Advisory Committee on Medical Marijuana (ACMM)

The ACMM advises the OMMP on administrative aspects of the program, reviews proposed rule changes and gives annual feedback on fees.

public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Pages/acmm.aspx

Current rules and statutes

public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Pages/legal.aspx

Medical Marijuana Dispensary Program

This program licenses and regulates facilities that distribute medical marijuana.

mmj.oregon.gov

Oregon Medical Marijuana Program Statistics

The program tracks how many patients currently hold cards and the number of new applications. This information is updated and posted every quarter on the OMMP website at www.oregonhealth.org/ommp.

The Oregon Health Authority (OHA) is a leader in the effort to innovate for quality and affordable health care in Oregon by putting the care back in health care, improving the health of Oregonians, and working to lower the cost of care so it is affordable and accessible to everyone. A nine-member, citizen-led group called the Oregon Health Policy Board oversees the Oregon Health Authority. To learn more about OHA, visit www.oregon.gov/OHA. Connect with OHA at www.facebook.com/OregonHealthAuthority and www.twitter.com/OHAOregon.

apartment houses and hotels not constituting rooms or apartments designed for actual residence. It also includes highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

Seedling or start: a marijuana plant that is less than 12 inches in height and diameter and has no flowers. A seedling or start that does not meet all these criteria is a mature plant.

Usable marijuana: the dried leaves and flowers of the plant Cannabis family Moraceae. It also includes any mixture or preparation of Cannabis for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

Glossary

Attending physician: a licensed doctor of medicine (MD) or doctor of osteopathy (DO), who has primary responsibility for the care and treatment of a person diagnosed with a medical condition.

Caregiver: an individual 18 years of age or older who manages the well-being of a person with a medical condition. The caregiver is designated on that person's application for a registry identification card or in other written notification to the Oregon Medical Marijuana Program. "Designated primary caregiver" does not include the person's attending physician.

Grower (person responsible for a marijuana growsite): a person selected by a patient to produce medical marijuana for the patient. The Oregon Medical Marijuana Program has registered the grower for this purpose.

Growsite: The physical address where a patient's marijuana is produced.

Mature plant: a marijuana plant is not a seedling or a start.

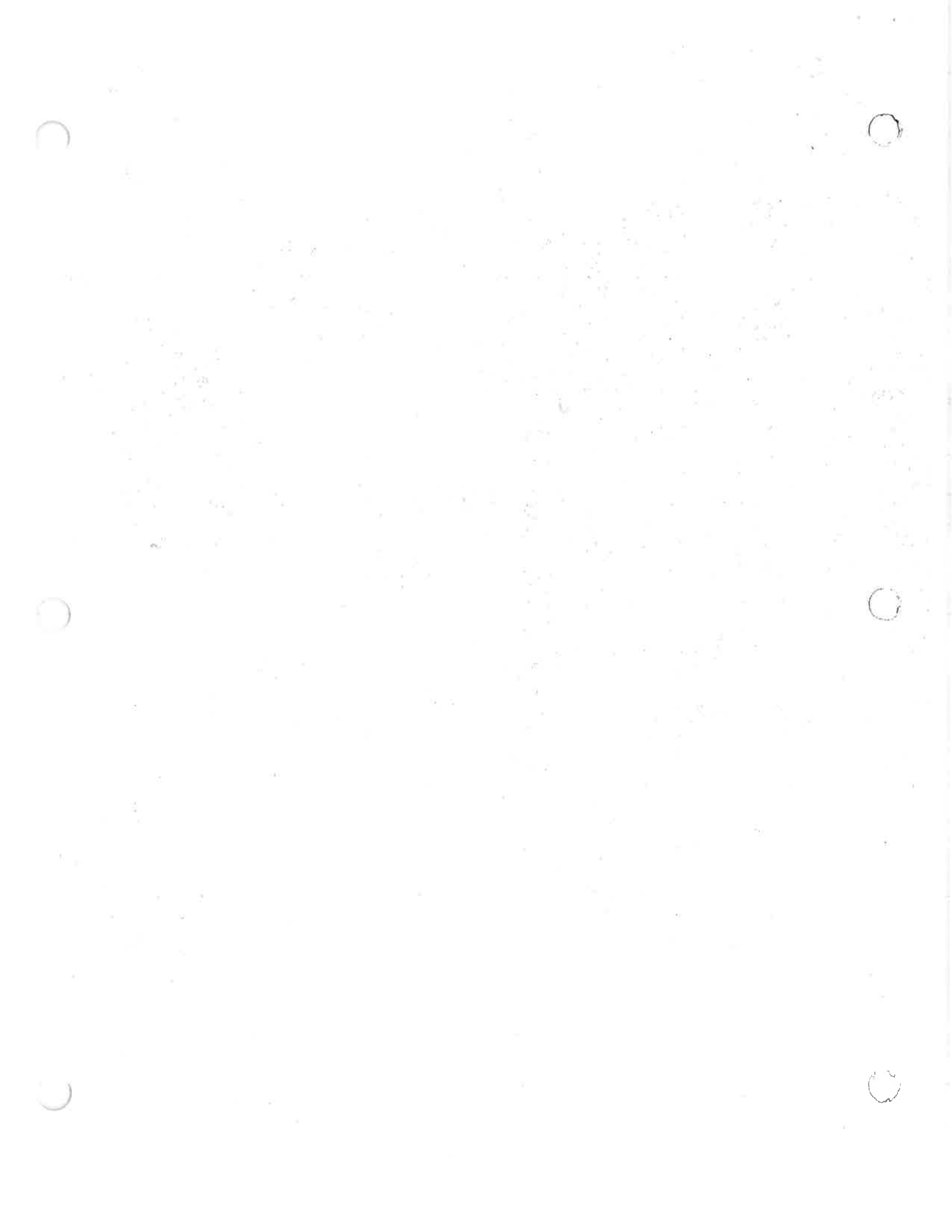
Patient: a person who the attending physician has diagnosed with a medical condition. Using medical marijuana may relieve the symptoms or effects of the person's medical condition. The Oregon Medical Marijuana Program has issued the person a patient registry identification card.

Public place: A place that the public can access. It includes, but is not limited to, hallways, lobbies and other parts of

The logo for the Oregon Health Authority. It features the word "Oregon" in a small, white, serif font above the word "Health" in a large, white, serif font. Below "Health" is the word "Authority" in a smaller, white, serif font. The entire logo is set against a dark blue background with a green and orange curved graphic element on the right side.

Oregon Health Authority

This document can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request this publication in another format or language, contact Oregon Medical Marijuana Program (OMMP) at 971-673-1234 or 971-673-0372 for TTY.



Who may act as a grower?

- A patient may grow for his or herself or designate an individual 18 years or older to act as his or her grower.
- The OMMP conducts a criminal background check on all designated growers.
- If a grower has been convicted of felony violating ORS 475.840 through 475.920 on or after January 1, 2006, that person is prohibited from growing marijuana for a patient for five years from the date of conviction for the first offense.
- Individuals with more than one conviction are permanently prohibited from growing.

Do I have to list a grower and growsite address on my application?

Only if you are growing your own medical marijuana or are designating another person to grow medical marijuana for you.

- Patients growing medical marijuana or designating a grower are required to provide the OMMP with the growsite address.
- Only one growsite address may be registered per patient.
- Growsites must be a physical address located in Oregon.



LEAGUE OF OREGON CITIES

**LOCAL GOVERNMENT
REGULATION OF
MEDICAL MARIJUANA
IN OREGON**

MARCH 2015



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Oregon Cities

Table of Contents

Introduction and a Word of Caution	1
Home Rule in Oregon	2
An Overview of Oregon’s Medical Marijuana Act	4
Federal Law	4
Growing and Possession	4
Limitations	5
Dispensaries	5
Legislation on Local Regulation	6
Local Government Options for Regulation of Medical Marijuana.....	8
Taxation	8
Moratoriums, Bans and Other Prohibitions	8
Time, Place and Manner Regulations	10
Appendix A: Time, Place and Manner Restrictions on Medical Marijuana Dispensaries	A1
Overview of Subject Areas Covered.....	A3

Introduction and A Word of Caution

The League of Oregon Cities (League) has prepared this guide to assist cities in evaluating local needs and issues regarding medical marijuana so that city councils can find local solutions that are in the best interests of their community. The League does not take a position on which choices a city council should make. Rather, part of the League's mission is to protect the home rule authority of cities and their governing bodies to make local decisions and to assist city councils in implementing the decisions they make, whatever those decisions might be.

This guide discusses only the local regulation of medical marijuana. Although Oregon voters adopted Ballot Measure 91 in November 2014 which legalized personal possession and the growing, processing, delivery and sale of non-medical marijuana, at the time this document was published, the Legislature was considering refinements to that measure, and the Oregon Liquor Control Commission (OLCC) had yet to issue rules implementing the measure. In fact, the OLCC is not required to begin accepting applications for non-medical marijuana production, processing, wholesale and retail licenses until January 2016. Just as the gusts off the Pacific Ocean can alter the shape and course of the Oregon sand dunes, so too the political and legal winds could end up reshaping the contours of Measure 91 and the degree to which local governments can regulate non-medical marijuana. Consequently, given the potential for that area of the law to change, this guide does not address local regulation of non-medical marijuana. Once the Legislature adjourns and the OLCC issues its rules, the League anticipates publishing separate guidance for cities that desire to regulate non-medical marijuana within their communities.

If the law relating to non-medical marijuana can be compared to a shifting sand dune, then it is fitting to say that the legal landscape is only slightly more stable with regard to medical marijuana. To be certain, the law with regard to local government regulation of medical marijuana is complex because it involves the interplay of state and federal law, and the law continues to evolve. At press time, there were several court cases pending regarding the legal authority of local governments to regulate, up to and including prohibiting, the operation of medical marijuana facilities. As noted above, there remains the possibility that the Legislature might pass legislation affecting a city's authority to regulate medical marijuana facilities. Consequently, the League will endeavor to update its members as new laws are adopted and court decisions are issued.

As a final word of caution, city councils considering regulating or prohibiting medical marijuana facilities should not rely solely on this guide or the resources contained within it. **This guide is not a substitute for legal advice.** Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach. Legal counsel can also assist a city in preparing an ordinance that is consistent with existing ordinances and with a city's charter, and advise on what process is needed to adopt the ordinance. The sample ordinance provisions included in this guide are intended to be a starting point, not an ending point, for any jurisdiction considering regulating medical marijuana facilities.

Home Rule in Oregon

Any discussion of a city's options for regulating a subject also regulated by state law must begin with a discussion of the home rule provisions of the Oregon Constitution from which cities in Oregon derive their legal authority. Home rule is the power of a local government to set up its own system of governance and gives that local government the authority to adopt local ordinances without having to obtain permission from the state.

The concept of home rule stands in contrast to a corollary principle known as Dillon's Rule, which holds that municipal governments may engage only in activities expressly allowed by the state because municipal governments derive their authority and existence from the state.¹ Under Dillon's Rule, if there is a reasonable doubt about whether a power has been conferred to a local government, then the power has not been conferred. Although many states follow Dillon's Rule, Oregon does not.

Instead, city governments in Oregon derive home rule authority through the adoption of a home rule charter by the voters of that community pursuant to Article XI, section 2, of the Oregon Constitution, which was added in 1906 by the people's initiative. Article XI, section 2, provides, in part, that:

“The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation of any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon.”

A home rule charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter, or preempted by state or federal law. According to the League's records, all of Oregon's 242 incorporated cities have adopted home rule charters.

The leading court case interpreting Oregon's home rule amendment is *La Grande/Astoria v. PERB*, 281 Or 137, 148-49, 576 P2d 1204, *aff'd on reh'g*, 284 Or 173, 586 P2d 765 (1978). In that case, the Oregon Supreme Court said that home rule municipalities have authority to enact substantive policies, even in an area also regulated by state statute, as long as the local enactment is not “incompatible” with state law, “either because both cannot operate concurrently or because the Legislature meant its law to be exclusive.” In addition, the court said that where there is a local enactment and state enactment on the same subject, the courts should attempt to harmonize state statutes and local regulations whenever possible.²

¹ See John F. Dillon, 1 *The Law of Municipal Corporations* § 9b, 93 (2d ed 1873).

² Criminal enactments are treated differently. Local criminal ordinances are presumed invalid, and that presumption cannot be overcome if the local enactment prohibits what state criminal law allows or allows what state criminal law prohibits. See *City of Portland v. Dollarhide*, 300 Or 490, 501, 714 P2d 220 (1986). Consequently, as discussed later in this guide, the Supreme Court's case law is clear that a local government may not recriminalize conduct for which state law provides criminal immunity. See *City of Portland v. Jackson*, 316 Or 143, 147-48, 850 P2d 1093 (1993) (explaining how to determine whether a state law permits what an ordinance prohibits, including where the Legislature expressly permits specified conduct).

In a subsequent case, the Oregon Supreme Court directed courts to presume that the state did not intend to displace a local ordinance in the absence of an apparent and unambiguous intent to do so.³ Along the same lines, the Oregon Court of Appeals has explained, “[a] local ordinance is not incompatible with state law simply because it imposes greater requirements than does the state, nor because the ordinance and state law deal with different aspects of the same subject.”⁴

Where the Legislature’s intent to preempt local governments is not express and where the local and state law can operate concurrently, there is no preemption. As such, the Oregon Supreme Court has concluded that generally a negative inference that can be drawn from a statute is insufficient to preempt a local government’s home rule authority.⁵ For example, where legislation “authorizes” a local government to regulate in a particular manner, a court will not read into that legislation that the specific action authorized is to the exclusion of other regulatory alternatives, unless the Legislature makes it clear that the authorized regulatory form is to be the exclusive means of regulating.

³ See, e.g., *State ex rel Haley v. City of Troutdale*, 281 Or 203, 210-11, 576 P2d 1238 (1978) (finding no manifest legislative intent to preempt local provisions that supplemented the state building code with more stringent restrictions).

⁴ *Thunderbird Mobile Club v. City of Wilsonville*, 234 Or App 457, 474, 228 P3d 650, rev den, 348 Or 524 (2010).

⁵ *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803 (2012) (explaining that even if a preemption based on a negative inference is plausible, if it is not the only inference that is plausible, it is “insufficient to constitute the unambiguous expression of preemptive intention” required under home rule cases).

An Overview of Oregon's Medical Marijuana Act

On November 3, 1998, Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA) (codified at ORS 475.300 - ORS 475.346), which allowed medical use of marijuana in Oregon within specified limits for persons suffering from a qualifying debilitating health condition. Specifically, the act:

- Requires a physician-written statement of a patient's qualifying debilitating medical condition;
- Directs the Oregon Health Authority to establish a registration system for the issuance of what is commonly referred to as a medical marijuana card; and
- Provides protection from state prosecution for qualified patients, their caregivers and identified growers.

The Legislature subsequently amended the OMMA to expand the list of qualifying debilitating health conditions and to increase the marijuana possession limits. As discussed below, in 2013, the Legislature again amended the OMMA to provide for medical marijuana dispensaries.

Federal Law

It is important to note that marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA). Schedule I substances are those for which the federal government has made the following findings:

- The drug or other substance has a high potential for abuse;
- The drug or other substance has no currently accepted medical use in treatment in the United States; and
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.

The OMMA does not, and could not, give immunity from federal prosecution. Consequently, the OMMA does not protect marijuana plants from being seized or people from being prosecuted if the federal government chooses to take action under the CSA against registered cardholders. Similarly, cities cannot provide immunity from federal prosecution.

Growing and Possession

Patients may grow for themselves or identify a grower. A patient and his or her grower and caregiver may possess a combined total of up to 24 ounces (1.5 pounds) of usable marijuana. A grower may produce marijuana for up to four medical marijuana patients at the same time. A grower may grow up to six mature plants and 18 seedlings or starts (also known as immature plants)⁶ at a registered growsite for each patient who gets marijuana from the grower. All usable

⁶ A seedling or start must meet the following criteria or it is considered a mature plant: no flowers; less than 12 inches in height; less than 12 inches in diameter. A mature plant is a marijuana plant that does not fall within the definition of a seedling or a start.

marijuana, plants, seedlings and starts belong to the patient. The grower must return all marijuana to the patient whenever the patient asks for it.

A grower must be 18 years or older and cannot have been convicted within the last five years of a Class A or Class B felony for the manufacture or delivery of a controlled substance. There are no other limitations on growers. Consequently, a patient (who has identified another grower) may also be a grower for up to four other patients. Those patients may likewise be a grower for up to four other patients each, and those patients can each grow for four other patients, and so on and so on. Thus it is possible under the OMMA to build an exponentially growing pyramid of growers who are also patients with their own identified growers. Doing so is a process commonly referred to as card stacking and results in very large medical marijuana grow operations.

A patient may reimburse his or her grower for the cost of supplies and utilities associated with producing medical marijuana. The patient may not reimburse the grower for any other costs associated with producing marijuana for the patient, including the cost of labor. A grower must always display a growsite registration card for each patient who receives marijuana from the grower. A grower must possess his or her OMMA identification card when transporting marijuana.

Limitations

The state criminal immunity provided to a medical marijuana cardholder is not absolute. Cardholders can lose immunity from state prosecution if they:

- Give medical marijuana to a non-OMMA cardholder;
- Sell medical marijuana, even to another cardholder, unless that sale is pursuant to Oregon's dispensary laws discussed below;
- Grow, deliver or consume medical marijuana in a public place or in public view;
- Drive under the influence of marijuana; or
- Manufacture or produce marijuana anywhere other than at the growsite address listed on the patient's application.

Dispensaries

The original OMMA did not envision a dispensary system. Rather, the OMMA was built on the assumption and foundation that patients would grow marijuana for themselves or identify someone to grow for them. However, given card stacking and the quantities allowed, growers were soon producing more marijuana than their patients needed. The marijuana that exceeded what patients needed is commonly referred to as "excess marijuana" and a market soon developed in which other patients sought to obtain the excess marijuana from growers who were not identified as those patients' growers. Dispensaries grew out of those demands in order to connect patients with the growers of excess marijuana.

Because the original OMMA allowed transfer of marijuana only between a patient and his or her identified grower, soon-to-be dispensary operators and others sought legislation that would

create a system whereby a registered facility could lawfully purchase excess marijuana from a grower and then sell it to a patient cardholder or their caregiver. Those efforts would eventually lead to the enactment of House Bill (HB) 3460 by the Oregon Legislature in 2013.

HB 3460 provided state criminal immunity to any registered medical marijuana dispensary (which the law calls a medical marijuana facility) that transfers marijuana between any identified grower and any qualified patient or caregiver. The bill required the Oregon Health Authority to develop and implement a process to register medical marijuana facilities. The bill also set out certain restrictions. Specifically, HB 3460 provided that registered facilities must be located only on property zoned for agricultural, commercial, industrial or mixed uses (no residential zones). The bill also prohibited a medical marijuana facility from locating within 1,000 feet of another registered facility, within 1,000 feet of a school, or at the same location as a grow site. Finally, HB 3460 also required background checks of dispensary owners (but not their employees), certain security requirements, and testing of medical marijuana.

Although HB 3460 established a registration system, thereby allowing local governments to know where dispensaries were operating, the bill did not completely address a number of concerns that local governments had relating to the dispensing of medical marijuana.

Specifically, the law did not:

- Regulate or license marijuana testers;
- Regulate or license growers;
- Regulate product types, including edibles and products that might be enticing to children;
- Address product labeling;
- Address whether dispensaries could locate in places where children congregate (such as day care centers, parks, libraries, etc.); and
- Require background checks for dispensary employees.

The Oregon Health Authority adopted interim rules implementing HB 3460 and has since amended the rules several times. Those rules are codified at OAR 333-008-0000 to OAR 333-008-1400.

Legislation on Local Regulation

Based on the gaps left open by HB 3460, and because the bill was neither expressly preemptive nor did it mandate local governments to accept dispensaries, several local governments began considering ordinances that regulated or prohibited the operation of medical marijuana dispensaries in their communities.

In September 2013, the Legislature adopted and the governor signed into law Senate Bill (SB) 863, commonly known as the genetically modified organism, or GMO bill. SB 863 was in response to a local government's regulation of genetically modified crops. The bill was intended to preempt all local governments from regulating whether or not genetically modified organisms could be grown, processed or sold within their jurisdictions so that the state could create a

uniform statewide standard. SB 863, however, does not use the term genetically modified organism and its preemption was written broadly. Specifically, SB 863 provides:

“ . . . a local government may not enact or enforce a local law or measure, including but not limited to an ordinance, regulation, control area or quarantine, to inhibit or prevent the production or use of agricultural seed, flower seed, nursery seed or vegetable seed or products of agricultural seed, flower seed, nursery seed or vegetable seed.”

Based on that broad preemption, some people asserted that SB 863's preemption extended to medical marijuana, which they believed qualified as a product of an “agricultural seed” or in the alternative “nursery seed.” Other people also asserted that, despite the wording of HB 3460, its provisions were also preemptive. In response, in 2014 the Legislature adopted SB 1531, which accomplished two things. First, SB 1531 stated, without deciding, that if SB 863's preemptions reached medical marijuana, local governments could nonetheless adopt reasonable time, place and manner regulations. Second, SB 1531 stated, without deciding, that if HB 3460's provisions were preemptive, a local government could impose a one-year moratorium on the operation of a medical marijuana facility if the moratorium was adopted before May 1, 2014 and a copy was filed with the Oregon Health Authority.

SB 1531 also did something local governments could not do under their home rule authority. The bill removed immunity from state prosecution for any person operating a dispensary in a jurisdiction with a moratorium adopted in accordance with SB 1531's provisions.⁷

Because SB 1531's moratorium provisions were limited to one year, expiring on May 1, 2015, local governments are and have been considering what options are available to them with respect to the regulation of medical marijuana dispensaries. The following section explores those options as they currently exist under Oregon law.

⁷ As noted above, cities in Oregon that have obtained home rule authority through the adoption of a home rule charter do so subject to the criminal laws of the state of Oregon. As such, a city may not allow that which state criminal law expressly prohibits, nor prohibit that which state criminal law expressly allows. As applied to medical marijuana dispensaries, that means that a city that enacts a general prohibition on the operation of a medical marijuana dispensary may not enforce that prohibition through its criminal ordinances. SB 1531, however, gave cities the option to adopt a one-year moratorium and obtain the benefit of being able to enforce that moratorium through a criminal prosecution.

Local Government Options for Regulation of Medical Marijuana

Under Oregon's constitutional home rule provision and the case law interpreting it, the League believes that local governments retain local control over all issues relating to medical marijuana, provided however that local governments may not recriminalize conduct for which the OMMA provides criminal immunity from state prosecution or allow conduct that remains unlawful under state law. As explained below, this means that unless a court declares otherwise or the Legislature adopts preemptive legislation, the League believes that cities that desire to do so currently have the authority to ban medical marijuana operations within their jurisdictions, or in the alternative to regulate those operations, including imposing local taxes.

However, cities that decide to prohibit or tax medical marijuana operations should understand that there are others in the state that disagree with the League's conclusions. As such, cities considering banning or taxing medical marijuana operations should consult with their legal counsel on the risks of litigation and the likelihood of prevailing. Those cities should also carefully monitor court decisions as these issues make their way through the Oregon appellate courts.

Before adopting regulations, another consideration for a city is whether existing state law would effectively preclude a person from obtaining a state license from the Oregon Health Authority to operate a medical marijuana facility. It is important to keep in mind that HB 3460 does not allow a dispensary to operate within 1,000 feet of a school or locate in a residential zone, or by Oregon Health Authority rule, another zone that does not allow retail activity. Consequently, it may well be that state law effectively forecloses any possibility of a medical marijuana facility operating in smaller communities.

Taxation

Nothing in the OMMA, HB 3460, nor any other legislation, expressly or by operation of its provisions, precludes a local government from imposing a tax on medical marijuana operations. Consequently, recognizing that the use of medical marijuana can increase demands on public safety resources, several cities have elected to impose a medical marijuana tax, including Ashland, Lake Oswego, West Linn and Wilsonville. A city desiring to impose such a tax can look to those communities for sample ordinance wording.

Moratoriums, Bans and Other Prohibitions

As noted above, it is the League's position that local governments that desire to ban the operation of medical marijuana dispensaries may do so. Although some people believe that SB 1531 limits local governments to only time, place and manner restrictions, thus far at least one Oregon court that has looked at this issue has concluded that HB 3460 is not preemptive, that

SB 863's preemptions do not reach medical marijuana, and that, as such, SB 1531's time, place and manner provisions do not provide the only option available to local governments.⁸

A city that desires to prohibit medical marijuana operations has several options to implement that prohibition. Specifically, a city might do so through a direct ban, amendments to the land use code, or restrictions on the issuance of a business license or other permit. Each of those options is briefly discussed below.

Direct Ban

A direct ban is one in which the city expressly prohibits the operation of a medical marijuana facility. The city of Jacksonville, Oregon has adopted an ordinance with that type of ban, and jurisdictions considering a direct ban might look to the Jacksonville ordinance for sample wording. It is important to note, however, that under Oregon's Home Rule provisions and the case law interpreting them, a city that adopts this type of ban likely would not be able to bring a local criminal action against a person violating the ban. Consequently, cities that desire to enact a direct ban should work closely with their legal counsel to determine what enforcement mechanisms could lawfully be put in place.

Land Use Code

Cities that desire to prohibit medical marijuana operations might also do so through amendments to their land use codes. Before considering this option, cities should work with their legal counsel to first determine if the wording of their zoning codes already prohibits medical marijuana operations, and if not, to identify the appropriate land use procedures and the amount of time it would take to comply with them. If the wording in a city's zoning codes does not prohibit medical marijuana operations, the city has different options. One option is to add wording such as "an allowed use is one that does not violate local, state or federal law" to the city's zoning code. Because marijuana remains a Schedule I controlled substance under the federal CSA, the effect of that wording would be to preclude medical marijuana operations. Cities that adopt a prohibition that references federal law would then rely on existing mechanisms in their ordinances for dealing with zoning violations.⁹

⁸ See *City of Cave Junction v. State of Oregon*, Josephine County Circuit Court Case #14CV0588, currently on appeal to the Oregon Court of Appeals. Cities considering a ban and their legal counsel may obtain more information on that court case and read the League's legal briefs on the A to Z page on the League's website (www.orcities.org), under medical marijuana.

⁹ Under existing law, the League believes it is clear that a city may enforce civil regulations of general applicability (such as zoning codes, business licenses and the like) through the imposition of civil penalties. Although a city likely cannot directly recriminalize conduct allowed under state criminal law, it is a different legal question whether a city may impose criminal penalties for violating a requirement of general applicability when the conduct at issue is otherwise immune from prosecution under state law (i.e. whether a city may impose criminal penalties for operation of a medical marijuana dispensary in violation of a city's land use code). *Cf. State v. Babson*, 355 Or 383, 326 P3d 559 (2014) (explaining that generally applicable, facially neutral law, such as a rule prohibiting use of public property during certain hours, may be valid even if it burdens expressive conduct otherwise protected under Article I, section 8, of the Oregon Constitution). Consequently, a city should work closely with its city attorney before imposing criminal penalties against a person operating a medical marijuana facility in violation of a local civil code, such as a zoning, business license or development code.

Business License Ordinance

Cities could also impose a ban through a local business license ordinance that provides that it is unlawful for any person to operate a business within the city without a business license, and further provides that the city will not issue a business license to any person operating a business that violates local, state or federal law. Indeed, cities that have a business license ordinance in place should review their existing codes to determine if such wording already exists.

Additionally, whether adopting a new business license program or amending an existing one to provide that the city will not issue a business license to any person operating a business that violates local, state or federal law, a city should work with its legal counsel to ensure that its business license ordinance includes an enforcement mechanism to address a situation where a person is operating a business without a business license.

Development Code

Cities that lack a business license (or that do not wish to require a business license) but desire to impose a prohibition on medical marijuana operations could include in their development codes a provision stating that the city will not issue a development permit to any person operating a business that violates local, state or federal law. If not already defined, or if defined narrowly, the city will want to amend its code to provide that a development permit includes any permit needed to develop, improve or occupy land including, but not limited to, public works permits, building permits, or occupancy permits.

The four options described above are not exclusive. A city could elect to impose more than one of these options. Other mechanisms for prohibiting medical marijuana operations not otherwise covered here might also exist. The key is that any city wanting to prohibit medical marijuana operations should work closely with its legal counsel to survey existing code, develop a means to implement and enforce such a prohibition, and then craft the necessary amendments to the city's code to accomplish the council's intent.

Time, Place and Manner Regulations

As recognized by SB 1531, cities may also opt to regulate medical marijuana dispensaries by imposing time, place and manner restrictions on their operations. Appendix A includes sample wording that a city could use when developing a time, place and manner regulation. As explained further in that appendix, the means for implementing a time, place and manner regulation can vary. Cities could decide to establish a new licensing/registration requirement for medical marijuana dispensaries and impose restrictions as a condition of that license.

Alternatively, cities could impose time, place and manner restrictions generally through their community enforcement code, or through restrictions in their zoning regulations, such as amendments that expressly prohibit medical marijuana operations in certain zones. Whatever the means, cities should work closely with their city attorney to ensure adequate enforcement mechanisms are in place to deal with violations of those codes.

Appendix A

Time, Place and Manner Restrictions on Medical Marijuana Dispensaries

APPENDIX A

Time, Place and Manner Restrictions on Medical Marijuana Dispensaries

Cities that desire to implement time, place and manner restrictions on medical marijuana dispensaries have several options to do so. Among those options, cities could impose and enforce restrictions through development or zoning codes.¹⁰ Cities could also develop a new licensing/registration scheme, impose restrictions as a condition on the license, and establish a penalty for any person operating a dispensary without a license or in violation of the license terms. Cities could also impose time, place and manner restrictions through general civil ordinances and enforce those provisions with existing code enforcement mechanisms. None of those options are exclusive, and a city could also take a combined approach.

Whether to impose time, place and manner restrictions and the way in which the city does so are decisions that should be made after carefully considering the following:

- Community values;
- Availability of staff and budget for regulation and enforcement; and
- Existing regulatory and enforcement mechanisms, such as availability of code enforcement staff, law enforcement staff, and municipal court.

Given the diversity among cities and the various options and combinations available to cities, the League prepared this document to provide sample wording that could be applied in a variety of circumstances. What follows is sample wording that a city could use in developing an ordinance, which is preceded by a discussion of what the sample text does, other options and additional considerations. Put differently, what follows is not a model ordinance that can or should be adopted in its entirety. Rather, the sample ordinance text provided is meant to provide a menu of options that can be used to facilitate a discussion and aid in the development of a local ordinance that reflects local choices. Whatever option a city chooses, this document is intended to be a starting point, not an ending point, for cities that are considering adopting time, place, and manner restrictions on medical marijuana dispensaries.

This document is not a substitute for legal advice. Any local jurisdiction considering time, place and manner regulations should consult with legal counsel to obtain advice regarding the advantages, disadvantages, limitations and applicability of such an ordinance to local circumstances. Legal counsel can assist a city in preparing an ordinance that is consistent with existing ordinances and with a city's charter, and advise on what process is needed to adopt the ordinance. The law in this area is complex, and jurisdictions might face unintended

¹⁰ Note, a city electing this option will have to take into account statutory notice procedures, which could delay implementation of the regulations beyond May 1, 2015, when SB 1531 moratoriums will expire. Cities that desire to impose regulations through a land use ordinance should work with their legal counsel to evaluate those timelines and to put a temporary provision in place if need be.

consequences by simply adopting any of the following wording without the advice of legal counsel.

Finally, although the sample wording addresses a variety of subjects, and is intended to be extensive: it is not necessarily a complete list of all subjects that a city's ordinance should address. Local circumstances and community values might require an ordinance to address subjects not covered by this document. Additionally, as Oregon's experience with medical marijuana continues to develop, cities will need to revisit their ordinances and make adjustments as necessary. Likewise, the League will endeavor to do the same by periodically updating this document.

Time, Place and Manner Restrictions on Medical Marijuana Dispensaries: Overview of Subject Areas Covered

This document is not a substitute for legal advice. This document is not intended to be a complete or comprehensive code chapter on medical marijuana dispensaries. A city should not adopt the sample wording in its entirety. Rather, this document, much like a restaurant menu, covers various subjects, which a city may or may not want to include in a medical marijuana dispensary ordinance, and provides different options under each of those subjects. Consequently, this document is organized by subject area and includes a discussion of the subject followed by sample text on the following:

- Findings
- Definitions
- Rulemaking
- Licenses / Registration
 - Facility License Required
 - License Application
 - Issuance of License
 - Fees
 - Display of License
 - License Term, Renewal and Surrender
 - Transferability
 - Indemnification
- Criminal Background Checks
- Standards of Operation
 - Registration and Compliance with Oregon Health Authority Rules
 - Compliance with Other Laws
 - Hours of Operation
 - Public View into Facility
 - Odors
 - Lighting
 - Registry Identification Card Required
 - Sales in Facility
 - On-Site Use
 - On-Site Manufacturing
 - Outdoor Storage

- Secure Disposal
- Home Occupation
- Drive-Through, Walk-Up
- Labeling
- Accounting Systems
- Accounting Records

- Location
- Signs
- Edible Marijuana Products
- Examination of Books, Records and Premises
- Civil Enforcement
- Public Nuisance
- Criminal Enforcement
- Confidentiality
- Emergency Clause

Findings

Discussion

Findings provide the background and purpose of the legislation. Cities should consider how the sample findings below need to be modified to reflect their unique circumstances.

In preparing the findings, as well as other provisions of the ordinance, cities should keep in mind that marijuana remains an illegal drug under the federal Controlled Substances Act. To avoid allegations that city officials are violating federal law by authorizing the commission of a federal offense, the sample findings make clear that the authorization to operate a medical marijuana dispensary comes from state law, and not local law. As such, the sample has been drafted in a manner to be restrictive rather than permissive.

To illustrate that point, this sample includes wording for cities that desire to create a local licensing program as a way to implement their time, place and manner regulations. The sample's wording is drafted with care, however, to indicate that the source of authority to operate a medical marijuana dispensary derives from state law and that the local license is a means to impose restrictions on the operator and is not intended to be a separate source of authority. Consequently, the wording of the following sample text carefully avoids terms that would affirmatively "allow" or "authorize" medical marijuana dispensaries.

Sample Text

1. State law authorizes the operation of medical marijuana facilities and provides those facilities with immunity from state criminal prosecution.
2. Although the State of Oregon has passed legislation authorizing medical marijuana facilities and providing criminal immunity under state law, the operation of those facilities remains illegal under federal law.
3. The city council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the city and subject to the general and police powers of the city, except when local action has been clearly and unambiguously preempted by state statute.
4. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.
5. *[If using an existing or creating a new license/registration system for medical marijuana facilities]* The city's licensing *[or registration]* and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other license or regulatory requirement imposed by any other provisions of city ordinance or local, regional, state or federal law.

6. The city council wants to regulate the operation of medical marijuana facilities in the city in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city.

Definitions

Discussion

Definitions should be used to clarify intent and avoid ambiguity. The specific terms defined in a medical marijuana ordinance will depend on the provisions of that ordinance. The terms listed here are offered as examples and cover some of the most commonly-used terms in state law relating to medical marijuana facilities. They may or may not be applicable, depending on the ordinance the city adopts. In addition, depending on the needs of a particular city, it may be useful or necessary to include additional definitions not listed below.

The definitions of “marijuana” and “registration identification card” are taken primarily from ORS 475.302, which is the provision of the Oregon Revised Statutes that provides definitions for the Oregon Medical Marijuana Act. The sample text uses the term “medical marijuana facility”—rather than the term “dispensary”—because that is the term used in state statute. Another source for potential definitions is the Oregon Health Authority’s administrative rules regulating the dispensary program at OAR 333-008-1010.

It is important to note that when interpreting ordinances that contain specific references to state law, the courts will use the version of the state statute that was in effect at the time that the ordinance was adopted. Put differently, if the Legislature amends a state statute, a city ordinance that references that statute is not automatically updated to reflect the legislative change. Consequently, if using statutory cites, the city will need to periodically review and update their ordinances if the city wants the benefit of the new statutory wording.

Sample Text

1. Marijuana or medical marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. As used in this chapter, “marijuana” or “medical marijuana” refers to marijuana dried, produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person’s debilitating medical condition as defined in ORS 475.302.
2. Medical marijuana facility means a facility that is registered with the Oregon Health Authority and that sells, distributes, transmits, gives, dispenses or otherwise provides medical

marijuana to a person with a registry identification card. A facility includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

Alternative Sample Text: any facility or operation designed, intended or used for the purpose of delivering, dispensing or transferring marijuana to a person with a registry identification card.

3. **Operator** means a person who owns, operates or otherwise has legal responsibility for a facility and who meets the qualifications established by the Oregon Health Authority and has been approved by the Oregon Health Authority to operate a medical marijuana facility.
4. **Principal** means members, partners or corporate officers, and all stockholders holding more than 10 percent of the voting stock for any applicant who is not a natural person.
5. **Registration identification card** means a document issued by the Oregon Health Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated caregiver, if any.

Rulemaking

Discussion

Depending on the size and structure of the city, a city may want to provide the city manager/ administrator or that person's designee, or another appointed city official such as the chief of police, with authority to adopt administrative rules to implement and enforce the city's medical marijuana ordinances.

Sample Text

1. Rulemaking. The city manager [*administrator*] or the city manager's [*administrator's*] designee [*or some other designated public official, such as "chief of police"*] has authority to adopt administrative rules and procedures necessary for the proper administration and enforcement of this chapter [*or if not creating a new chapter, "ordinances relating to the operation of a medical marijuana facility"*].

Licenses / Registration

Facility License Required

Discussion

Cities that want to regulate medical marijuana facilities can do so in a number of ways. Many cities, particularly those with larger staffs, have decided to regulate medical marijuana facilities

through a license or permit system. Even those cities that are using a licensing system are imposing differing levels of regulation, from basic registration and tracking to extensively restricting the activities of medical marijuana facilities. Because a licensing approach allows cities to both track and regulate medical marijuana facilities, with multiple enforcement mechanisms, the sample wording provides for a licensing system. Although this sample only requires a facility license, a city could also require the employees of medical marijuana facilities to get licenses.

As explained above, to avoid conflicts with federal law, the sample text is drafted to make clear that the authority for medical marijuana dispensaries to operate comes from state, and not local, law. Although the sample text uses the word “license,” the text is intended to clarify that the license operates as a registration system, and not as a grant of authority to violate federal law. Cities that want to further emphasize that point may want to avoid the use of the word “license” and instead convert the sample text to “registration.”

Cities that adopt a licensing/registration system will have to determine where to incorporate that system into their code. For example, cities with police protection licenses may want to add medical marijuana facilities to those licensing provisions.

Sample Text

1. **Local License Required.** Medical marijuana facilities must possess a valid license issued under this chapter to operate within the city. The license required by this chapter facilitates the registration and the city’s oversight of a medical marijuana facility. The license required by this chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of city ordinance or local, regional, state or federal law.
2. **State Registration Required.** To be eligible to apply for a license under this chapter, medical marijuana facilities must be registered with the Oregon Health Authority and authorized by state law to operate.

License Application

Discussion

Cities using a licensing/registration system will have to decide what information to request in an application. The sample list of information provided below is a compilation of application requirements from different city ordinances. Cities may determine that they want to require less, more or different information from applicants.

In addition, although this sample requires the same information for both an initial and renewal application, cities may want to use a less intensive or otherwise different process for license renewals.

Sample Text

1. Application / Renewals. Applications for new and renewed licenses must be submitted to _____ [*designated public official or city department*]. A separate application must be submitted for each proposed facility. The initial or renewal application must include the following information:
 - a. Certification that the proposed facility is registered at that location as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475.314.
 - b. The applicant's name, residence address, and date of birth. [*A city may want to require photo identification, such as a driver's license or other government-issued identification.*]
 - c. The names and residence addresses of:
 - i. Any person or legal entity that has an ownership interest in the facility, including all principals of the applicant;
 - ii. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by the proposed facility within the preceding year;
 - iii. Any person or legal entity that has leased real property to the applicant for use by the facility and any person who manages that property; and
 - iv. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.
 - d. The business name.
 - e. The address and telephone number of the proposed facility.
 - f. The mailing address for correspondence about the license.
 - g. A detailed description of the type, nature and extent of the business.
 - h. The proposed days and hours of operation.
 - i. A detailed description of the proposed accounting and inventory system of the facility.
 - j. Certification that the facility has met all applicable requirements of the city development and sign code.
 - k. Certification that all applicable taxes and fees have been paid.
 - l. A complete application for a criminal background check for the applicant, and all principals, persons with a financial interest, employees, and volunteers of the proposed medical marijuana facility.

Alternative Sample Text on Criminal Background: A statement whether the applicant, principals, persons with a financial interest, employees or volunteers have been convicted

- of a misdemeanor within the past ____ [*time period*] that relates to _____, [*relevant crimes, such as fraud, theft, manufacture or delivery of a Schedule I controlled substance*] or have ever been convicted of a felony.
- m. The names of at least three natural persons who can give an informed account of the business and moral character of the applicant and principals.
 - n. The signature, under penalty of perjury, of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person.
 - o. Other information deemed necessary by _____ [*designated public official*] to complete review of the application.
2. Continuing obligation to update information. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each licensee shall notify _____ [*designated public official or department*] in writing within _____ [*time period, such as ten business days*] of any change in the information provided to obtain the license.

Issuance of License

Discussion

Each city that adopts a licensing/registration system will have to determine the process for issuing licenses, the criteria for issuing or denying a license, and who within the city will apply those criteria. Cities may want to look to how other local licenses, such as business licenses, are issued in crafting a process for issuing medical marijuana facility licenses.

If a city wants to cap the number of licenses that it will issue, the city could address that issue in this section. If a city takes that approach, it should consider what method it will use to determine which applicants will receive licenses when the number of applications exceeds the cap.

Sample Text

1. Determination. Within ____ [*time period*] after receiving a complete [*initial or renewal*] application and license fee for a medical marijuana facility license, the _____ [*designated public official or department*] will issue the license if _____ [*designated public official or department*] finds that the facility is registered as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475.314 and that all other requirements under this chapter have been met.
2. Denial. In addition to denial for failure to meet the requirements of this chapter, the _____ [*designated public official or department*] may deny a license if:
 - a. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;

- b. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or
- c. The _____ [*applicant, principals, employees, volunteers, persons with a financial interest in the facility*] have been convicted of _____ [*specified crimes*].

Fees

Discussion

Cities adopting a licensing system may want to charge a one-time initial license application fee, an annual license fee, or both. Cities may want to look at how their other licensing fees are structured when setting the medical marijuana facility license fee. Some cities prorate the license fee for licenses that are issued after a certain point in the licensing year. For example, if all licenses expire on December 31 each year, a city might prorate the fees for licenses issued after June 30 of that year. Some cities also provide that license fees are not refundable.

Sample Text

1. Fee. An initial license application or renewal application must be accompanied by a license fee. The fee amount will be established by _____ [*method for setting fees, commonly through council resolution; alternatively, fee amount may be set by ordinance*].

Display of License

Sample Text

1. Display. When requested, the licensee shall show the license issued under this chapter to any person with whom the licensee is dealing as part of the licensed activity or to _____ [*designated public official*].

Alternative Sample Text: The license issued under this chapter must be prominently displayed at all times in an easily visible location inside the facility.

License Term, Renewal and Surrender

Discussion

Cities with licensing/registration systems will need to set a term and create a renewal process. The two options in the first subsection below provide different means of tracking expiration and renewal. The first option would put all renewals at one time of year and the second option would

put renewals on a rolling basis. Cities may want to consider schedules for other local license and renewal processes to determine whether to align medical marijuana facility licenses with those other processes. In addition, cities may want to provide a process for surrendering a license/registration.

Sample Text

1. Termination. A license terminates automatically _____ [*on month and day of each year/certain years or some time period from the date of issuance*], unless a license renewal application has been approved.
2. Renewal. A license may be renewed for additional _____ [*duration*] terms as provided by this chapter.
3. Renewal Application. Renewal applications shall be submitted, with the required license fee, to _____ [*designated public official or department*] not less than _____ [*days, months*] prior to the expiration date of the existing license.
4. Termination Due to Change in Law. A license terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the facility under this ordinance.
5. Surrender. A licensee may surrender a medical marijuana facility license by delivering written notice to the city that the licensee thereby surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

Transferability

Discussion

Cities should consider whether they want to allow licensees to transfer their license, and, if so, the process for allowing such a transfer. For example, under certain circumstances, a city might allow the license to be transferred if the business is sold. The alternative sample text below provides for a license transfer. Cities that allow for transfer might consider creating a transfer application, which could require an accompanying fee, to ensure that the new licensee is eligible to hold the license. In addition, cities that allow for transfer should review the restrictions in state law. For example, under OAR 333-008-1050(7), a facility's registration may not be transferred to another location, and OAR 333-008-1090 describes additional limits on transfers between individuals.

Sample Text

1. Transferability. Licenses issued under this chapter shall not be transferred to any other person.

Alternative Sample Text: Licenses issued under this chapter may be transferred to another person upon determination by _____ [*designated public official*] that the person receiving the license meets the requirements of this chapter for licensees.

Indemnification

Sample Text

1. Waiver. By accepting a medical marijuana facility license issued under this chapter, the licensee waives and releases the city, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a facility owner or operator, principal, person or legal entity with a financial interest in the facility, person or entity that has leased real property to the facility, employee, volunteer, client or customer for a violation of federal, state or local laws and regulations.
2. Indemnification. By accepting a medical marijuana facility license issued under this chapter, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the city, its officers, elected officials, employees, volunteers, and agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the medical marijuana facility that is the subject of the license.

Criminal Background Checks

Discussion

Under state statute, only the “person responsible for a medical marijuana facility” —in most cases, the owner—is required to submit to a criminal background check. Cities may want to require additional background checks for employees, volunteers or other individuals associated with a medical marijuana facility. Alternatively, cities could require license applicants and others associated with licensed facilities to self-report that information as part of the application process, as provided in the License Application alternative sample text above.

State statute limits the class of convictions that would prohibit a person from registering with the Oregon Health Authority as a facility owner. Cities may want to include additional disqualifying convictions.

Alternatively, some cities may want to use their licenses solely for tracking purposes, without limiting who is eligible to receive a license or work at a licensed facility. In that case, a city may not want to require criminal background checks.

Sample Text

1. Background Check Required / Disqualification. All _____ [*applicants, principals, employees, volunteers, persons with a financial interest in the facility*] must submit to a criminal background check performed by _____ [*designated public official*] before _____ [*a license will be issued; beginning employment at a facility; etc.*]. A person who has been convicted of _____ [*specified crimes*] may not be _____ [*a licensee, employee, volunteer, etc.*].

Standards of Operation

Discussion

The topics covered in this section are examples of some of the many issues that a city may want to address in regulating medical marijuana facilities, but the list is not exhaustive. In drafting provisions for a section covering standards of operation, there are at least three considerations to keep in mind.

First, SB 1531 provides that time, place and manner regulations need to be “reasonable,” however the bill does not define that term. As noted above, the preemptive effect of SB 1531 is currently the subject of litigation. Nonetheless, until that litigation is resolved, regulations that exceed what others think are needed to meet public health, welfare and safety concerns could face legal challenge as being “unreasonable.” Consequently, a city will be better positioned against a potential legal challenge if it makes specific findings as to why the regulations serve public health, welfare and safety concerns.

Second, as a reminder, a city should consider drafting ordinances to restrict, rather than authorize, certain activities in an effort to avoid conflicts with federal law. For example, rather than providing that a medical marijuana facility *may* operate between the hours of 8:00 a.m. and 5:00 p.m., the ordinance should provide that a facility *may not* operate between the hours of 5:00 p.m. and 8:00 a.m. If the city does not want to restrict activity, it should simply remain silent on that issue, rather than affirmatively authorizing conduct that is illegal under federal law.

Third, when deciding what restrictions to impose, cities should become familiar with the conditions the state is placing on dispensaries by reviewing the most recent version of OAR 333-008-0000 to OAR 333-008-1400. After reviewing those conditions, cities should consider whether they want to impose additional requirements or whether they want to include similar requirements in their code so that they can independently enforce those provisions of state law through local enforcement mechanisms.

Sample Text

1. **Registration and Compliance with Oregon Health Authority Rules.** The facility's registration as a medical marijuana facility under ORS 475.314 must be in good standing with the Oregon Health Authority, and the facility must comply with all applicable laws and regulations administered by the Oregon Health Authority for facilities.
2. **Compliance with Other Laws.** The facility must comply with all applicable laws and regulations, including, but not limited to, the building and fire codes.
3. **Hours of Operation.** Operating hours for medical marijuana facilities must be no earlier than _____ and no later than _____ on the same day. [*consider using same time period as allowed under any applicable ordinance relating to liquor stores*]
4. **Public View into Facility.** All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area.
5. **Odors.** The facility must use an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
6. **Lighting.** Facilities must maintain adequate outdoor lighting over each exterior exit.
7. **Registry Identification Card Required.** All persons allowed within the facility, except _____ [*designated public officials*], must have a valid registry identification card and be in compliance with rules adopted by the Oregon Health Authority.
8. **Sales in Facility.** Sales or any other transfers of marijuana on the facility premises must occur inside the facility building and must be conducted only between the facility and individuals with registry identification cards.
9. **On-Site Use.** Marijuana and tobacco products must not be smoked, ingested, consumed or otherwise used on the premises of a medical marijuana facility.
10. **On-Site Manufacturing.** Manufacturing or production of any extracts, oils, resins or similar derivatives of marijuana is prohibited at a facility. Use of open flames or gases in the preparation of any products is prohibited at a facility.
11. **Outdoor Storage.** Outdoor storage of merchandise, raw materials or other material associated with the facility is prohibited.
12. **Secure Disposal.** The facility must provide for secure disposal of marijuana remnants or by-products; marijuana remnants or by-products shall not be placed within the facility's exterior refuse containers.
13. **Home Occupation.** A facility may not be operated as a home occupation.

14. Drive-Through, Walk-Up. A facility may not have a walk-up window or a drive-through. *[Note, if the mobile dispensary provisions discussed below under Location are not used, a city might consider adding them here.]*
15. Labeling. All products containing medical marijuana intended to be ingested (i.e. edibles) must be labeled with the product's serving size and the amount of tetrahydrocannabinol in each serving.
16. Accounting Systems. The medical marijuana facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the _____ *[designated public official]* finds the books and records of the facility are deficient in any way or if the facility's accounting system is not auditable, the facility must modify the accounting system to meet the requirements of the _____ *[designated public official]*.
17. Accounting Records. Every facility must keep and preserve, in an accounting format established by _____ *[designated public official]*, records of all sales made by the dispensary and such other books or accounts as may be required by the _____ *[designated public official]*. Each facility must keep and preserve for a period of at least _____ *[time period]* records containing at least the following information:
 - a. Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expenses journal;
 - b. State and federal income tax returns;
 - c. True names and any aliases of any owner, operator, employee or volunteer of the facility;
 - d. True names and addresses and any aliases of persons that have, or have had within the preceding year, a financial interest in the facility; and
 - e. _____ *[designated public official]* may require additional information as he or she deems necessary.

Location

Discussion

A city can regulate the location of a medical marijuana dispensary either through amendments to its zoning code, made in accordance with local and statutory land use procedures, or by imposing conditions on the medical marijuana facility license. Cities should consult their city attorney to discuss the benefits, risks and timelines associated with each approach.

Cities may want to impose restrictions on where medical marijuana facilities can locate in relation to other zones or specified locations. For example, a city could impose limits on the distance of medical marijuana facilities from:

- A residential zone or residentially zoned property;
- Places where children congregate;
- A public elementary, private elementary, secondary, or career school attended primarily by individuals under the age of 21;
- A public library;
- A public park, public playground, recreation center, or facility;
- A licensed child care facility;
- A public transit center;
- Any game arcade where admission is not restricted to persons aged 21 or older;
- Another licensed medical marijuana facility;
- Any public property, not including the right of way; or
- Any combination of the above.

Cities that impose those types of distance restrictions should consider how those provisions will operate if one of the protected properties, such as a school, locates within a restricted area of an existing medical marijuana facility. An ordinance could provide that the medical marijuana facility may remain in place, that the license will be revoked, or that the license will no longer be eligible for renewal. Cities should work closely with their city attorney to evaluate the risks and benefits of those options. In addition, cities may want to look to the state regulations for guidance. For example, under OAR 333-008-1090(4), a facility may no longer transfer medical marijuana if certain types of schools are “found to be within 1,000 feet of the registered facility.”

In addition, cities should consult their city attorney if they are imposing restrictions that are more stringent than those imposed under state law, by, for example, requiring facilities to locate 2,000 feet from other medical marijuana facilities. Although the courts have generally upheld local authority to impose more stringent requirements than those imposed by state law, a city should consult its city attorney regarding the risks associated with taking a more restrictive approach. That is true particularly if the regulations have the effect of prohibiting dispensary operations within the city. As noted above, the League believes SB 1531’s provisions are not exclusive, and that a city may prohibit dispensary operations. Consequently, even if a city’s regulations effectively result in prohibiting dispensaries from operating, the League believes it is within a city’s authority to adopt such regulations. However, a city that takes that route should work closely with its legal counsel to follow current court cases in this area and be prepared to defend its regulations against a legal challenge.

Cities that adopt distance restrictions will also need to consider how the distance will be measured. For example, one city provided that the distance would be measured in a straight line from the closest edge of each property line, while another city provided that the distance would be measured from the property line of the affected property, such as a school, to the closest point of space occupied by the medical marijuana facility. Another city provided that the distance would be measured between the closest points of the respective lot lines.

In addition to distance restrictions, some cities have imposed restrictions on what types of businesses can collocate with medical marijuana facilities. For example, some cities have prohibited collocation with tobacco smoking lounges, marijuana social clubs, and retail marijuana facilities. Some cities have also required medical marijuana facilities to be located at fixed, permanent locations. For example, an ordinance might provide, “A medical marijuana facility may not be located at a temporary or mobile site. No person shall locate, operate, own, allow to be operated or aid, abet or assist in the operation of any mobile medical marijuana facility which transports or delivers, or arranges transportation or delivery, of medical marijuana to a person.”

Sample Text

1. Restrictions on Location. A medical marijuana facility shall not locate:
 - a. Within a residence or mixed-use property that includes a residence.
 - b. Within _____ zone(s).
 - c. Within _____ [distance] of _____ [certain zones, types of properties, medical marijuana facilities, etc.]
 - d. On the same property or within the same building with _____ [other types of facilities, such as marijuana social clubs].
2. Distances. For purposes of this section, all distances shall be measured _____ [method for measuring distance].

Signs

Discussion

No sample text is provided because cities that want to regulate the signs on medical marijuana facilities should consider applying their existing sign code. If a city does not have a sign code, the League has “A Guide for Drafting a Sign Code,” which includes a sign code template, available in the Library on the League’s website (www.orcities.org). Cities that want to impose sign restrictions on medical marijuana facilities other than those already in the city sign code should consult their city attorney about possible free speech implications.

Edible Marijuana Products

Discussion

SB 1531 requires certain marijuana products to be packaged in child-resistant safety packaging and prohibits the transfer of certain marijuana products that are manufactured or packaged in a manner that is attractive to minors. The Oregon Health Authority has enacted rules that further clarify those standards. See OAR 333-008-1225 (defining what qualifies as “child-resistant safety packaging” and “packaged in a manner not attractive to minors”). A city might wish to review those sections and replicate them in local code so that it may use local enforcement procedures in the event that the state declines to take an enforcement action under state law.

Examination of Books, Records and Premises

Discussion

Cities regulating medical marijuana facilities should consider who will enforce those regulations and how. One aspect of that decision is whether a city will provide for inspections, and, if so, what those inspections will entail and who will conduct them. In addition, cities that provide for inspection of a facility and its records may want to specify which records a medical marijuana facility must keep, and for how long. Sample text on records retention is provided in the Standards of Operation section above.

Sample Text

1. Examination of Books, Records and Premises. To determine compliance with the requirements of this chapter and other chapters of _____ [*city's code*], a licensee shall allow _____ [*designated public official*] to examine or cause to be examined by an agent or representative designated by _____ [*designated public official*], at any reasonable time, the premises of the facility, including wastewater from the facility, and any and all facility financial, operational and facility information, including books, papers, payroll reports, and state and federal income tax returns. Every licensee is directed and required to furnish to _____ [*designated public official*] the means, facilities and opportunity for making such examinations and investigations.
2. Compliance with Law Enforcement. As part of investigation of a crime or a violation of this chapter which law enforcement officials reasonably suspect has taken place on the facility's premises or in connection with the operation of the facility, the _____ [*designated public official*] shall be allowed to view surveillance videotapes or digital recordings at any reasonable time. Without reducing or waiving any provisions of this chapter, the _____ [*law enforcement department*] shall have the same access to the facility, its records and its operations as allowed to state inspectors.

Alternative Sample Text: Facilities shall be open for inspection and examination by _____ [*public official charged with enforcement*] during all operating hours.

Civil Enforcement

Discussion

A licensing system allows a city multiple methods of enforcement. As included in the sample text below, the city can deny, suspend or revoke a license, but it may also impose penalties on a facility owner that does not comply with local ordinances.

If a city adopts a license suspension and revocation provision like the one listed below, a city may want to consider whether to address additional issues such as:

- Will the ordinance list all possible reasons for revocation, or will it include a more general revocation provision based on noncompliance with this chapter, as provided in the sample?
- Will the ordinance provide the form and timing of the suspension or revocation? For example, “Any denial, suspension or revocation under this section shall be in writing, including the reasons for the denial, suspension or revocation, and sent by first-class mail at least _____ [*time period*] prior to the effective date of the denial, suspension or revocation.” If the licensee is given advanced notice of the pending suspension or revocation, as is the case in this sample language, the city may want to give the licensee a period of time within which to correct the problem to avoid suspension or revocation.
- Will the ordinance allow for an appeal, and, if so, can that decision be appealed? For example, “A denial, suspension, or revocation under this section may be appealed to _____ [*designated public official*]. The findings of _____ [*designated public official*] shall be final and conclusive.” In addition, if the ordinance allows for an appeal, the city may want to include in the ordinance whether the appeal stays the pending enforcement action.
- Will the ordinance put limitations on how soon after revocation a person or entity can apply for a new license? For example, “A person or entity who has had a license revoked may not apply for a new license until _____ [*time period*] from the date of the revocation.”

Cities may also want to review their existing city codes to see if there are other violation provisions that they want to incorporate by reference here.

Sample Text

1. Enforcement. _____ [*designated public official*] may deny, suspend or revoke a license issued under this chapter for failure to comply with this chapter [*and rules adopted under this chapter*], for submitting falsified information to the city or the Oregon Health Authority, or for noncompliance with any other city ordinances or state law.
2. Civil Penalty. In addition to the other remedies provided in this section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this chapter or the terms of a license issued under

this chapter, who undertakes an activity regulated by this chapter without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this chapter, or who fails to comply with state law shall be subject to a civil penalty not to exceed _____ [amount] per violation.

3. **Other Remedies.** In addition to the other remedies provided in this section, the city may institute any legal proceedings in circuit court necessary to enforce the provisions of this chapter. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of a licensed activity, and any use or occupation of any building or structure used in violation of this chapter.
4. **Remedies not Exclusive.** The remedies provided in this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under city ordinance or state law.

Public Nuisance

Discussion

Public nuisance ordinances provide a means for cities to take action to protect the public in general. Adding a public nuisance provision to a medical marijuana facility ordinance provides the city with another means of enforcing its local regulations. A city that has a municipal court might also consider working with its legal counsel to determine whether it can provide for private nuisance actions in municipal court.

Sample Text

1. **Public Nuisance.** Any premises, house, building, structure or place of any kind where medical marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this chapter, or any place where medical marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this chapter, is a public nuisance.
2. **Action to Remedy Public Nuisance.** The city may institute an action in circuit court in the name of the city to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The city shall not be required to give bond in such an action.

Criminal Enforcement

Discussion

As noted, cities generally cannot criminalize what state law expressly allows. However, it is an open question whether a city can impose criminal penalties for violating a law of general applicability that reaches conduct expressly authorized under state law. For example, it is an open question whether a city can impose criminal penalties on a medical marijuana facility that operates without a business license, in violation of local law, because state law does not expressly provide that a facility is exempt from criminal prosecution for operating without a business license. Therefore, cities that want to impose criminal penalties should work closely with their city attorney to determine whether the city can impose criminal penalties for failure to comply with the city's licensing provisions or other provisions of general applicability.

Confidentiality

Sample Text

1. Confidentiality. Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall prohibit the following:
 - a. The disclosure of names and facility addresses of any licensee under this chapter or of _____ [*other individuals associated with a medical marijuana facility, such as other owners*];
 - b. The disclosure of general statistics in a form which would prevent identification of financial information regarding a facility [*or facility operator*];
 - c. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city under this chapter;
 - d. The disclosure of information upon request of a local, state or federal law enforcement official; or
 - e. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures [*or when such disclosure is ordered under the Oregon Public Records Law*].

Emergency Clause

Discussion

The League's model charter, available on the Library page under Publications on the League's website (www.orcities.org), provides that ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. The model charter provides an exception to that general rule and allows an ordinance to take effect as soon as adopted, or on another date less than 30 days after adoption, if it contains an emergency clause. Cities that want their ordinance to have immediate effect should review their charter and talk to their city attorney about whether an emergency clause is needed.

Sample Text

This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on _____ [date].

RECEIVED

APR 15 2015

UMATILLA COUNTY
RECORDS

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Imposition of)
Moratorium on Marijuana) ORDINANCE NO. 2015-02
Dispensaries in Umatilla County)

WHEREAS in 2013, the Oregon Legislature enacted House Bill 3460, which requires the Oregon Health Authority to develop and to implement a process to register medical marijuana facilities and directed that persons who operate or are employed by a registered medical marijuana facility would enjoy immunity from state prosecution;

WHEREAS the issue of whether a local government believes a certain type of business should operate within its jurisdictional limits is a local government decision, the enforcement of which is subject to the general and police powers of that jurisdiction;

WHEREAS, on April 2, 2014, the Board of Commissioners adopted Ordinance No. 2014-02, imposing a moratorium on Marijuana Dispensaries in Umatilla County, through May 1, 2015;

WHEREAS on April 17, 2014, the Board of Commissioners created and appointed a Umatilla County Marijuana Dispensary Study Committee to review the options available to Umatilla County for the regulation of marijuana dispensaries and to provide to the Board available alternatives prior to the expiration of the period for the moratorium;

WHEREAS the Umatilla County Marijuana Dispensary Study Committee provided a report that recommended that amendments to the Umatilla County Development Code be considered and that the moratorium on medical dispensaries should continue to at least December 31, 2015;

WHEREAS this Ordinance is enacted pursuant to one or more of the following authorities:

- (1) The inherent powers of Umatilla County pursuant to the Oregon Constitution, Oregon law and the Umatilla County Charter;
- (2) The federal Controlled Substances Act, 21 USC 801, et seq.;

WHEREAS, the Umatilla County Board of Commissioners believes it is in the best interests of the health, safety and welfare of the citizens of Umatilla County to enact a moratorium prohibiting the operation of medical marijuana facilities within the jurisdictional boundaries of Umatilla County.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains the adoption of the following:

1. There is a moratorium on the operation of any marijuana dispensary in any area subject to the jurisdiction of Umatilla County, and the operation of any registered medical marijuana facilities area subject to the jurisdiction of Umatilla County is suspended.

2. As used in this ordinance, marijuana dispensary includes any facility that dispenses marijuana pursuant ORS 475.314, or any other provision of Oregon law.

3. The moratorium imposed by this ordinance shall be effective until January 1, 2016, unless rescinded sooner.

4. This moratorium does not preclude or pre-empt a City in Umatilla County from adopting any ordinance allowing marijuana dispensaries within the City limits of that City.

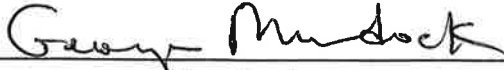
5. The remedies available for a violation of the moratorium imposed by this ordinance are those remedies available under any applicable federal, state or local law. It is within the discretion of Umatilla County to seek cumulative remedies for a violation of the moratorium imposed by this ordinance.

6. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

7. By unanimous vote of those present, the Board of Commissioners deems this Ordinance necessary for the immediate preservation of public peace, health, and safety; therefore, it is adjudged and decreed that an emergency does exist in the case of this Ordinance and it shall be in full force and effect from and after its adoption.

DATED this 15th day of April, 2015.

UMATILLA COUNTY BOARD OF COMMISSIONERS



George L. Murdock, Chair

ABSENT

W. Lawrence Givens, Commissioner



William J. Elfering, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS



Records Officer

