



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 2, 2015

DATE: 11/23/15

FROM: Matthew Martin Community Development Department 541-330-4620

TITLE OF AGENDA ITEM:

Public Hearing - File No. 247-15-000-542-TA, Proposed Land Use Regulations of Marijuana Related Businesses

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

Recreational marijuana became legal for personal use in Oregon on July 1, 2015. The Oregon Liquor Control Commission (OLCC) adopted temporary administrative rules on Oct. 22, 2015, effective January 1, 2016, to administer and implement the law to regulate recreational marijuana purchase, sale, production, processing, transportation and delivery. The OLCC will begin receiving license applications by January 4, 2016, to produce, process, wholesale and retail recreational marijuana. Medical marijuana production, processing and retailing are regulated by the Oregon Health Authority (OHA) with changes to the existing state law in these areas set to take effect on March 1, 2016.

State law provides for four categories of OLCC-licensed, marijuana-related uses—recreational marijuana production, recreational marijuana processing, recreational marijuana wholesaling and recreational marijuana retailing—and three categories of OHA-registered, marijuana-related uses—medical marijuana production, medical marijuana processing and medical marijuana dispensaries.

Deschutes County may not completely prohibit any of the defined types of marijuana-related land uses without a vote of the people. However, state law gives the county the authority to adopt “reasonable regulations” regarding these uses. Alternatively, the County may decide to opt out of one or more marijuana-related businesses by December 27, 2015 (the last Board meeting prior to this deadline is December 21, 2015).

In September 2015, the Board held a series of work sessions to identify policy decisions and draft proposed standards for marijuana-related businesses in unincorporated Deschutes County for the Deschutes County Planning Commission to review and provide a recommendation.

On November 5 and 12, 2015, the Planning Commission conducted public hearings to receive public testimony on the proposed regulations. Subsequently, on November 16 and 23, the Planning Commission deliberated on the proposed regulations. The Planning Commission voted 7-0 to forward a package of recommendations to regulate marijuana businesses in unincorporated Deschutes County.

The Commission also voted 5-2 to recommend the County not prohibit or “opt out” of any marijuana business type regulated by the State.

FISCAL IMPLICATIONS:

None

RECOMMENDATION & ACTION REQUESTED:

No action is requested at the work session.

ATTENDANCE: Matthew Martin, Associate Planner, Nick Lelack, Community Development Director

DISTRIBUTION OF DOCUMENTS:

Matthew Martin, CDD

**PRELIMINARY STATEMENT FOR A
LEGISLATIVE PUBLIC HEARING BEFORE
THE DESCHUTES COUNTY BOARD OF COMMISSIONERS**

- The applicants have the burden of proving that they are entitled to the approval requested.
- Testimony and evidence at this hearing must be directed toward the approval criteria, as well as toward any other criteria in the comprehensive land use plan of the County or land use regulations which any person believes apply to this decision.
- Failure on the part of any person to raise an issue with sufficient specificity to afford the Board of County Commissioners and parties to this proceeding an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue. Additionally, failure of the applicant to raise constitutional or other issues relating to the approval with sufficient specificity to allow the Board to respond to the issue precludes an action for damages in circuit court.
- The Board's decision on this application will be based upon the record and the Staff Report and the testimony and evidence presented at this hearing.
- The hearing will be conducted in the following order.
 1. The staff will give a report.
 2. The applicant presents testimony and evidence.
 3. Proponents and opponents testify and present evidence.
 4. The applicant presents rebuttal testimony.
 5. At the Board's discretion, if the applicants presented new evidence on rebuttal, opponents may be recognized for a rebuttal presentation.
 6. Staff will be afforded an opportunity to make any closing comments.
- The Board may limit the time period for presentations.
- If anyone wishes to ask a question of a witness, the person may direct the question to the Chair. The Chair is free to decide whether or not to ask such questions of the witness.
- The grant of a continuance or record extension shall be at the discretion of the Board.
- If the Board grants a continuance, it shall continue the public hearing to a date certain.

- If, at the conclusion of the hearing, the Board leaves the record open for additional written evidence or testimony, the record shall be left open to a date certain for submittal of new written evidence or testimony.
- If the hearing is continued or the record left open, the applicant shall also be allowed a period to a date certain after the record is closed to all other parties to submit final written arguments but no new evidence in support of the application.
- Commissioners must disclose any conflicts of interest. Does any commissioner have anything to disclose and, if so, please state the nature and extent?
- Does any party wish to challenge any Commissioner based on conflicts of interest?

LEGISLATIVE HEARING OPENING PROCESS:

1. **CHAIR:** "This is the time and place set for hearing County file number is 247-15-000542-TA."
2. **CHAIR** to CDD staff: "Staff will outline the hearing procedures that will be followed."
3. **CDD STAFF** informs the audience as follows:
 - The hearings body – the Board of County Commissioners, in this case - will take testimony and receive written evidence concerning proposed amendments to Deschutes County Code Titles 18, 19, 20, and 21 to define, permit, and establish standards for marijuana-related uses in unincorporated Deschutes County
 - All testimony shall be directed to the hearings body
 - At the conclusion of this hearing the hearings body will deliberate towards a decision or continue the hearing or deliberations to a date and time certain
 - The hearing will proceed as follows:
 - staff will provide a brief report
 - opponents and proponent will present testimony and evidence
 - any other interested persons will then present testimony or evidence
 - the staff will then be afforded an opportunity to present rebuttal testimony
4. **CDD STAFF:** "A full written version of the hearing procedures is available at the table at the side of the room."
5. **CDD STAFF:** "Commissioners must disclose any conflicts of interest. Does any Commissioner have anything to disclose and, if so, please state the nature of same and whether you can proceed?"
6. **CHAIR:** "Does any Commissioner have anything to disclose and, if so, please state the nature of same and whether you can proceed?"
7. **BOARD:** The hearings body discloses conflicts and states whether they are withdrawing from the hearing or whether they intend to continue with the hearing.
8. **BOARD:** The hearings body discloses conflicts and states whether they are withdrawing from the hearing or whether they intend to continue with the hearing.
9. **CDD STAFF:** "Does any party wish to challenge any Commissioner (member of the hearings body) based on conflicts?"
10. **CHAIR:** open the hearing and direct staff to proceed with brief staff report.

PLANNING COMMISSION RECOMMENDATIONS

SUMMARY OF ZONES PERMITTING MARIJUANA RELATED BUSINESSES

(This table identifies the zones where marijuana related businesses are recommended to be allowed.)

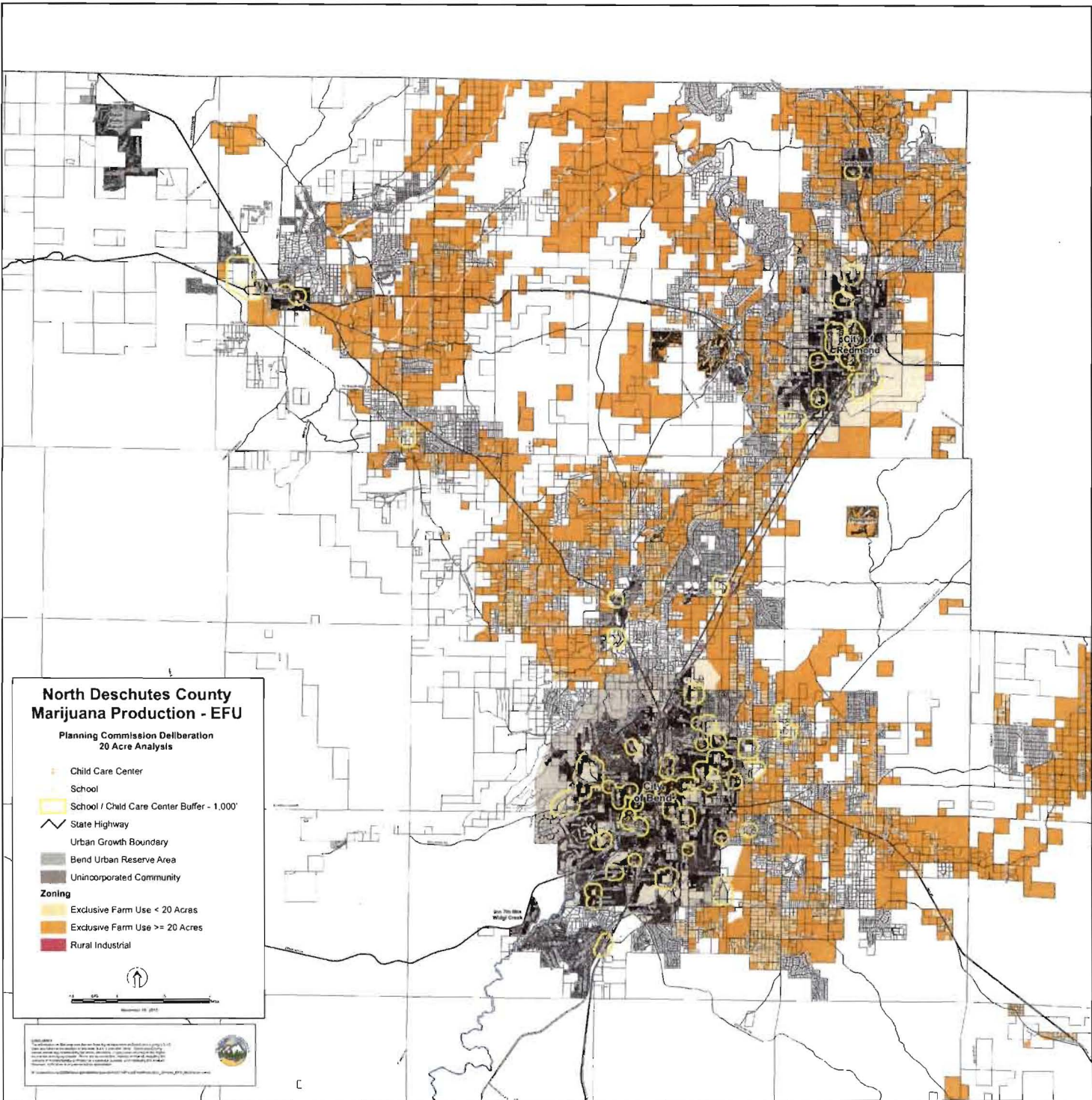
Zone	Processing	Production	Retail	Wholesale	Comments
Permitted: P Conditional Use: CU Not Allowed: -					
	Excluding Extracts	Including Extracts			
TITLE 18 – Deschutes County					
18.16 Exclusive Farm Use – EFU	P	P	P	-	Recommendation is to require 20-acre minimum parcel size
18.65 RURAL SERVICE CENTER – UC					
18.65.020 Commercial Mixed Use District (Brothers, Hampton, Millican, Whistlestop, Wildhunt)	-	-	-	CU	P
18.65.021 Commercial Mixed Use (Alfalfa)	-	-	-	CU	P
18.66 TERREBONNE RURAL COMMUNITY					
18.66.040 Commercial – TeC	CU	CU	-	CU	P Recommendation is wholesaling to be office only with <u>no</u> storage of marijuana products allowed.
18.66.050 Commercial Rural – TeCR	CU	CU	-	CU	P Recommendation is wholesaling to be office only with <u>no</u> storage of marijuana products allowed.
18.67 TUMALO RURAL COMMUNITY					
18.67.030 Residential 5-acre – TuR5	-	-	-	-	-
18.67.040 Commercial – TuC	CU	CU	-	CU	P Recommendation is wholesaling to be office only with <u>no</u> storage of marijuana products allowed.
18.67.060 Industrial – Tul	P	CU	-	CU	-
18.74 RURAL COMMERCIAL					
18.74.020 Deschutes Junction and Deschutes River Woods Store	-	-	-	CU	
18.74.025 Spring River	-	-	-	CU	-
18.74.027 Pine Forest and Rosland	-	-	-	CU	P
18.100 Rural Industrial					
	P/CU	CU	CU	CU	-
18.108 SUNRIVER UUC					
18.108.050 Commercial - SUC	-	-	-	CU	P
18.108.055 Town Center - TC	-	-	-	CU	-
18.108.110 Business Park - SUBP	P	CU	-	CU	P
TITLE 19 - BEND					
No Marijuana Related Businesses Allowed					
TITLE 20 - REDMOND					
No Marijuana Related Businesses Allowed					
TITLE 21 - SISTERS					
No Marijuana Related Businesses Allowed					

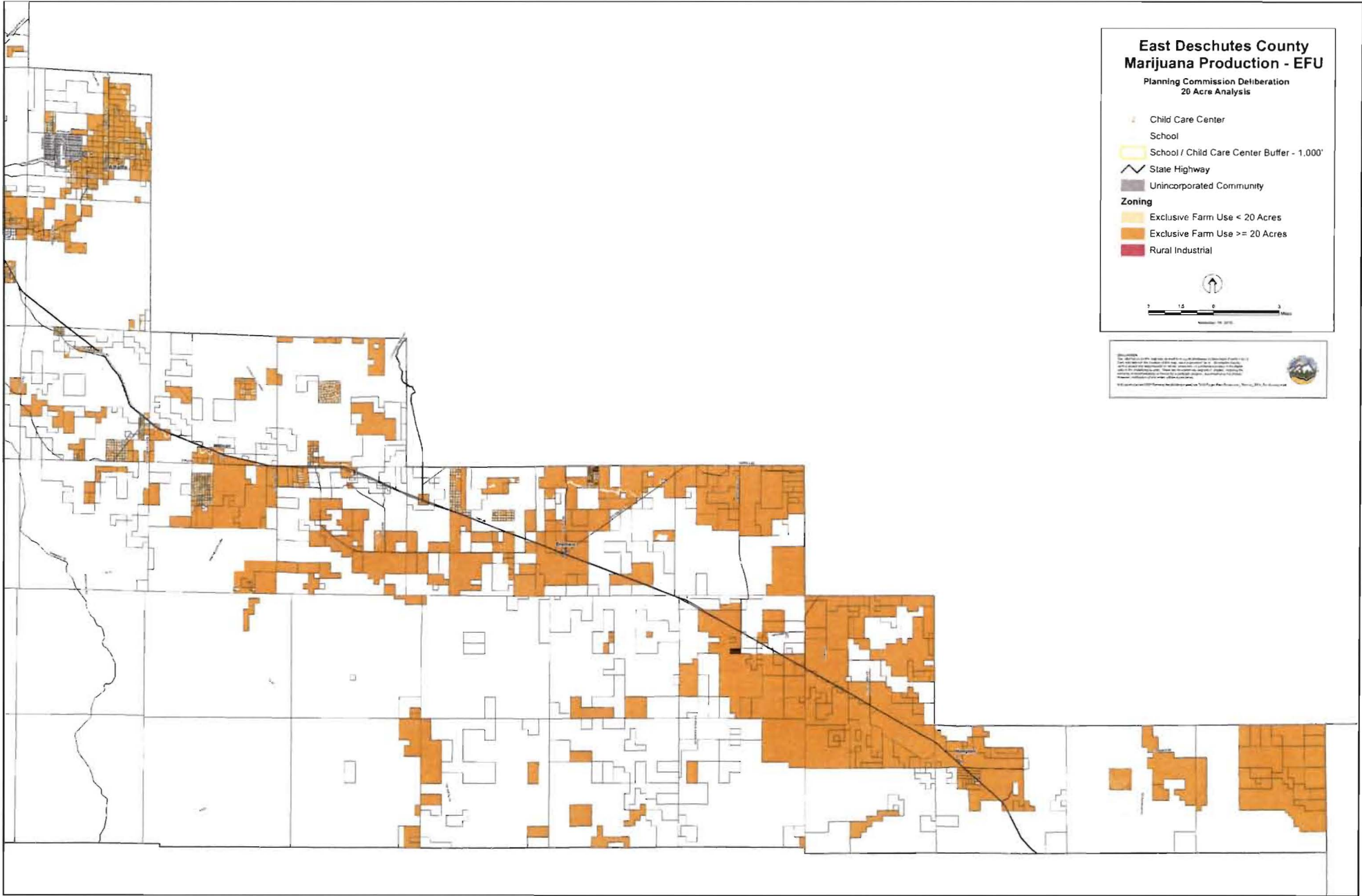
**PLANNING COMMISSION RECOMMENDATIONS
SUMMARY OF STANDARDS FOR MARIJUANA RELATED BUSINESS**

	Marijuana Processing	Marijuana Production	Marijuana Retail	Marijuana Wholesaling	Staff Comments / Recommendations
Section 18.116.280					
Home Occupation	Prohibited	Prohibited	Prohibited	Prohibited	
Section 18.116.320					
Medical Marijuana Dispensaries (Repeal)					This section will be repealed and replaced by a combined dispensary/retail standards section.
Section 18.116.330					
Yard Setback	200 feet	200 feet			
Additional Setback	300 feet from an existing dwelling unit not located on the same property	300 feet from an existing dwelling unit not located on the same property			
Access	<ul style="list-style-type: none"> Public road Exclusive road or easement If shared private road or easement, all other property owners who have access rights to the private road or easement must agree 	<ul style="list-style-type: none"> Public road Exclusive road or easement If shared private road or easement, all other property owners who have access rights to the private road or easement must agree 			
Odor	<p>Buildings and Greenhouses shall:</p> <ul style="list-style-type: none"> Equipped with carbon Filtration system Consist of 1 or more fans. The fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the required CFM. The filtration system shall be maintained in working order and shall be in use. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required. 	<p>Buildings and Greenhouses shall:</p> <ul style="list-style-type: none"> Equipped with carbon Filtration system Consist of 1 or more fans. The fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the required CFM. The filtration system shall be maintained in working order and shall be in use. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required. 			<p>Staff recommends further refinement including:</p> <ul style="list-style-type: none"> Reducing the CFM rate because it is to be excessive and unreasonable. Requiring doors and windows to remain closed excepts as needed for ingress/egress. Negative pressures shall be maintained inside the building.
Lighting	<p>General consensus to mitigate light and preserve dark skies, but no consensus on to what extent or method (i.e., require shielding or obscuring roof/walls of greenhouses).</p> <ul style="list-style-type: none"> Light cast by light fixtures inside any building, including greenhouses, shall be screened or shielded from view outside the building to the maximum extent possible from sunset to sunrise the following day. Outdoor marijuana grow lights shall not be illuminated from sunset to sunrise the following day. Light cast by exterior light fixtures shall comply with the outdoor lighting standards of DCC 15.10. 	<p>General consensus to mitigate light and preserve dark skies, but no consensus on to what extent or method (i.e., require shielding or obscuring roof/walls of greenhouses).</p> <ul style="list-style-type: none"> Light cast by light fixtures inside any building, including greenhouses, shall be screened or shielded from view outside the building to the maximum extent possible from sunset to sunrise the following day. Outdoor marijuana grow lights shall not be illuminated from sunset to sunrise the following day. Light cast by exterior light fixtures shall comply with the outdoor lighting standards of DCC 15.10. 			<p>Keep in the marijuana-related business regulations and reference the applicability of DCC 15.10, Outdoor Lighting Ordinance ("Dark Skies Ordinance") to greenhouses and transparent buildings.</p> <p>Amend, DCC 15.10 to specifically apply to marijuana production and processing in greenhouses and transparent buildings.</p> <p>Policy question of whether to apply lighting regulations to existing greenhouses and transparent buildings by Dec. 31, 2016. If yes, please see staff comments in the "Non-conformance" section below pertaining to potential legal issues.</p> <p>Consider revising "sunset to sunrise" to "7:00 p.m. to 7:00 a.m. the following day" to make it easier to enforce.</p>
Security Cameras	Shall be directed to record only the subject property and public rights-of-way.	Shall be directed to record only the subject property and public rights-of-way.			In addition to the PC's recommendation, add a statement "except as required to comply with licensing requirements of OLCC or registration requirements of OHA."

Secure Disposal	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.		
Noise	Move to Noise Control Ordinance 8.08, and apply to all marijuana production and processing building and mechanical equipment outside of a commercial or industrial zone.	Move to Noise Control Ordinance 8.08, and apply to all marijuana production and processing building and mechanical equipment outside of a commercial or industrial zone.			Reference the applicability of these noise standards to marijuana-related businesses in the marijuana regulations, and move the regulations to DCC 8.08.
Screening	<p>Do not apply to buildings and greenhouses for new operations because OLCC's security and site obscuring requirements combined with Planning Commission recommendations (i.e., increased setbacks) will mitigate impacts.</p> <p>These standards should only apply to existing, non-conforming operations, including buildings and greenhouses to mitigate impacts:</p> <p>a. A row of evergreen trees or shrubs along the outside perimeter of the land area and buildings, including greenhouses, shall be no less than 4 feet in height when planted, and spaced in such a way as to reduce the visual impacts of the land areas and buildings as viewed from roads, rivers, streams, and abutting private properties.</p> <p>b. Vegetation shall be continuously maintained.</p> <p>c. Combination of existing vegetation, berming, topography, wall, fence, or other can be used.</p> <p>d. All materials used for buildings, structures, and fencing, excluding greenhouses shall be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the marijuana production and processing area.</p>	<p>Do not apply to buildings and greenhouses for new operations because OLCC's security and site obscuring requirements combined with Planning Commission recommendations (i.e., increased setbacks) will mitigate impacts.</p> <p>These standards should only apply to existing, non-conforming operations, including buildings and greenhouses to mitigate impacts:</p> <p>a. A row of evergreen trees or shrubs along the outside perimeter of the land area and buildings, including greenhouses, shall be no less than 4 feet in height when planted, and spaced in such a way as to reduce the visual impacts of the land areas and buildings as viewed from roads, rivers, streams, and abutting private properties.</p> <p>b. Vegetation shall be continuously maintained.</p> <p>c. Combination of existing vegetation, berming, topography, wall, fence, or other can be used.</p> <p>d. All materials used for buildings, structures, and fencing, excluding greenhouses shall be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the marijuana production and processing area.</p>			Please see staff comments under "Non-conforming" below comments
Water	Proof from the watermaster that proposed water supply complies all applicable local, state, and federal laws.	Proof from the watermaster that proposed water supply complies all applicable local, state, and federal laws.			
Minimum Separation Distances	<ul style="list-style-type: none"> 1000 from public/private elementary and secondary schools, licenses child care center, licensed preschool, parks, and all approved/licensed youth activity centers (i.e., Boys & Girls Club) with a 501c3 status or description stating youth activities, excluding in-home child care. All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the subject property Change of use (i.e. new school) shall not cause violation of this standard 	<ul style="list-style-type: none"> 1000 from public/private elementary and secondary schools, licenses child care center, licensed preschool, parks, and all approved/licensed youth activity centers (i.e., Boys & Girls Club) with a 501c3 status or description stating youth activities, excluding in-home child care. All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the subject property Change of use (i.e. new school) shall not cause violation of this standard 	<ul style="list-style-type: none"> 1000 from public/private elementary and secondary schools, licenses child care center, licensed preschool, parks, and all approved/licensed youth activity centers (i.e., Boys & Girls Club) with a 501c3 status or description stating youth activities, excluding in-home child care. All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the subject property Change of use (i.e. new school) shall not cause violation of this standard 		<p>Need to decide:</p> <ul style="list-style-type: none"> What qualifies as a youth activity center-501c3 status with title or description stating youth activities? How to obtain information on such activity centers during application review process? What happens if something is missed in the application review process? Could be challenging to include all such centers. Staff recommends this be clear and objective if it is included in the requirements.
Fire Protection		Marijuana processing of cannabinoid extracts shall only be permitted on properties located within a fire district.			

<p>Nonconformance:</p> <p>Applying to lawfully established medical marijuana grows that continue to by only medical marijuana grows</p>	<p>Shall comply with odor, lighting, security camera, secure disposal, noise, and screening requirements by 12/31/16.</p>	<p>Shall comply with odor, lighting, security camera, secure disposal, noise, and screening requirements by 12/31/16.</p>			<p>Existing, lawfully established (by OHA and County building, electrical, mechanical, etc. permits) medical marijuana production/grow sites should be clearly established in DCC as "legal, non-conforming" buildings and land uses.</p> <p>Legal and operational questions, however, exist about whether these standards can be applied retroactively to current medical marijuana production/grow sites. NOTE: Processing requires a land use permit under DCC, and no permits have been applied for or approved.</p> <p>QUESTIONS / ISSUES</p> <p>Is it legal to apply these standards to lawfully established pre-existing medical marijuana production/grow sites?</p> <p>Operationally, the County's imposing new requirements on pre-existing medical marijuana production/grow sites raises the following issues:</p> <ol style="list-style-type: none"> 1. The County does not have a list of properties already approved by OHA for medical marijuana production/growing. Therefore, identifying locations, the number of registered and active productions/grows, etc. is unknown, and obtaining this information is legally challenging and may not be possible beyond responding to code enforcement complaints. 2. Imposing these regulations require active code enforcement rather than complaint-drive code enforcement, resulting in a change in the program. 3. Given the potential large number of properties and expected legal and compliance challenges, additional code enforcement, administrative, and legal resources (i.e., financial, limited duration staff) would be required for implementation. <p>NOTE: The County applied the Outdoor Lighting Ordinance (DCC 15.10) to all properties in the County and provided several years to comply. Staff is aware of imposing lighting and signage requirements retroactively with time to comply, but not other requirements.</p>
<p>Hours</p>			<p>10:00 a.m. - 7:00 p.m.</p>		
<p>Window Service</p>			<p>Shall not have a walk-up window or drive-thru window service.</p>		
<p>Co-Location</p>			<p>Shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.</p>		
<p>Limit the Number of licenses a parcel</p>		<p>Consider limiting the number of OLCC production licenses of one type on a parcel to 1 indoor and 1 outdoor license per 10 or 20 acres.</p>			<p>Staff is researching this issue. If the Board supports this recommendation, staff will draft text to include it in the marijuana regulations.</p>
<p>Require inspections in 1-2 years to determine compliance</p>	<p>County to conduct inspections of each approved site in 1-2 years to determine compliance and to learn what's working and what's not. Require property owner to grant County access to conduct the inspection.</p>	<p>County to conduct inspections of each approved site in 1-2 years to determine compliance and to learn what's working and what's not. Require property owner to grant County access to conduct the inspection.</p>	<p>County to conduct inspections of each approved site in 1-2 years to determine compliance and to learn what's working and what's not. Require property owner to grant County access to conduct the inspection.</p>		<p>Most of the staff comments under "Nonconformance" above apply to this requirement. Specifically, the resource requirements and proactive code enforcement comments apply. In addition, staff cannot trespass. Therefore, if the Board supports this recommendation, the same requirement in the Agri-tourism and Other Commercial Events and Activities requiring the property owner to grant access should be required for marijuana production and processing permits.</p>
<p>Task Force</p>	<p>Create a stakeholder task force to monitor the program and regulations, make recommendations for improvements</p>	<p>Create a stakeholder task force to monitor the program and regulations, make recommendations for improvements</p>	<p>Create a stakeholder task force to monitor the program and regulations, make recommendations for improvements</p>		<p>If the Board supports establishing and staffing a task force, the options are:</p> <ol style="list-style-type: none"> 1. Add to a future CDD Planning Division Work Plan; 2. Re-evaluate and re-prioritize the current Work Plan to create capacity for this project; or 3. Hire additional staff to establish and staff the Task Force immediately.





East Deschutes County Marijuana Production - EFU

Planning Commission Deliberation
20 Acre Analysis

-  Child Care Center
 -  School
 -  School / Child Care Center Buffer - 1,000'
 -  State Highway
 -  Unincorporated Community
- Zoning**
-  Exclusive Farm Use < 20 Acres
 -  Exclusive Farm Use >= 20 Acres
 -  Rural Industrial



Map prepared by the Planning Commission on 10/15/2014. The map is for informational purposes only and does not constitute a legal document. The map is based on the most current data available at the time of preparation. The map is subject to change without notice. The map is not to be used for any purpose other than that for which it was prepared. The map is the property of the Planning Commission and is loaned to you. It is to be returned to the Planning Commission upon request. The map is not to be used for any purpose other than that for which it was prepared. The map is the property of the Planning Commission and is loaned to you. It is to be returned to the Planning Commission upon request.



South Deschutes County Marijuana Production - EFU

Planning Commission Deliberation
20 Acre Analysis

- Child Care Center
- School
- School / Child Care Center Buffer - 1,000'
- State Highway
- Urban Growth Boundary
- Unincorporated Community
- Zoning**
- Exclusive Farm Use < 20 Acres
- Exclusive Farm Use >= 20 Acres
- Rural Industrial



November 19, 2013

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