49. Marijuana Laws. While a local government's authority to regulate land use and development is generally broad under Oregon law, a local government's authority to regulate land use on exclusive farm use (EFU)-zoned land is governed by state law. Land that is planned and zoned for exclusive farm use must be used exclusively for defined farm uses or limited listed exceptions provided by state law. Production of marijuana is an outright permitted farm use on land zoned EFU. While state law controls permitted uses on farm land and the regulation of marijuana production, local governments may adopt reasonable "time, place, and manner" regulations for marijuana production. *MJAI Oregon 5, LLC v. Linn County*, 78 Or LUBA 366 (2018).

49. Marijuana Laws. A county's decision is "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances," pursuant to ORS 197.835(10)(a)(A), where petitioner's application for marijuana production meets a county's clear and objective standards for marijuana production on EFU-zoned land, no evidence was submitted that contradicted petitioner's assertion that it could and would meet the county's marijuana production standards, and the county relied upon factors and considerations in denying petitioner's application that are not contained in the applicable approval criteria. Accordingly, the proper disposition of the county's denial is reversal with an order instructing the county to grant approval of the application. *MJAI Oregon 5, LLC v. Linn County*, 78 Or LUBA 366 (2018).

49. Marijuana Laws. Where a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the ordinance is not a de facto amendment of the city's land use code provisions governing "agriculture," and therefore is not a "land use" decision. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

49. Marijuana Laws. Where a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the city is not required to apply its comprehensive plan provisions or adopt findings addressing those policies. ORS 475B.968 allows the city to enact a prohibition on marijuana businesses and refer that prohibition to the city's electors for approval, and nothing within that broad grant of authority suggests the legislature intended to subject that grant of authority to review for compliance with local governments' comprehensive plans. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

49. Marijuana Laws. When a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the city's decision is not a significant impacts land use decision because any provisions of ORS 475B.968 that arguably could contain what would qualify as standards have no bearing on or relationship to the use of land or to the city's planning and zoning responsibilities. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

49. Marijuana Laws. Ballot Measure 56 (codified at ORS 215.503) requires a county to provide advance, individual, written notice by mail of the first hearing on an ordinance to property owners whose property could be "rezoned" by the proposed ordinance. Where an ordinance amending a county's land use and development code "limits" the size of, or in some cases "prohibits" entirely, a use – the growing of cannabis – that was previously allowed in the applicable zone, Measure 56 notice is required. *Cossins v. Josephine County*, 77 Or LUBA 240 (2018).

49. Marijuana Laws. Ballot Measure 56 (codified at ORS 215.503) contains mandatory language and is specific regarding what is required to be included in the notice of a land use change. Where

a county's notice does not: identify the date of the first hearing or even reference a hearing regarding the ordinance, reference any proposed ordinance or identify an ordinance by number, and was not sent at least 20 days but not more than 40 days before the date of the first hearing on the ordinance, the notice is defective. *Cossins v. Josephine County*, 77 Or LUBA 240 (2018).

49. Marijuana Laws. Where a county failed to provide petitioners adequate Ballot Measure 56 (codified at ORS 215.503) notice of a proposed ordinance that proposed to limit the size of, or in some cases prohibit entirely, a use – the growing of cannabis – that was previously allowed in the applicable zone, causing some petitioners to only be able to participate at the final hearing before the board of county commissioners on the proposed ordinance by submitting written comments prior to the record closing, such last-minute participation at the last of many hearings is not "an adequate opportunity to prepare and submit their case and a full and fair hearing" and therefore "prejudiced the substantial rights" of the petitioners. ORS 197.835(9)(a)(B). *Cossins v. Josephine County*, 77 Or LUBA 240 (2018).

49. Marijuana Laws. A hearings officer's decision that an applicant has a nonconforming use right to grow up to 18 marijuana plants for medical purposes under the Oregon Medical Marijuana Act is supported by substantial evidence in the record, and LUBA will reject an assignment of error that argues that the hearings officer's decision is not supported by substantial evidence in the whole record, where (1) the record includes copies of at least twelve cards issued by the Oregon Health Authority (OHA), administrator of the medical marijuana program, some of which are expired, duplicates, or outside of the relevant consideration dates; (2) the hearings officer relied on some of those OHA cards to reach his conclusion about the number of plants allowed; (3) the hearings officer adopted eight pages of findings explaining his decision and his understanding of the evidence; and (4) petitioner fails to challenge those findings or explain why the evidence supports his application. *Feetham v. Jackson County*, 77 Or LUBA 296 (2018).

49. Marijuana Laws. Where county code requires a building in which marijuana is grown to be "equipped with an effective odor control system" which must "prevent unreasonable interference of neighbors' use and enjoyment of their property," and the odor control system is deemed permitted only after the applicant submits "a report by a [licensed] mechanical engineer * * * demonstrating that the system will control odor so as not to unreasonably interfere with neighbors' use and enjoyment of their property," a board of county commissioners' conclusion that the application satisfies these requirements is supported by substantial evidence where it relies upon an engineers' report which demonstrates that the applicant's proposed odor control system "will control" odor as designed. The odor control system need not be actually built prior to the project receiving approval. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

49. Marijuana Laws. LUBA will deny a petitioner's challenges to a county board of commissioners' conclusion that a project application satisfies the county code requirement that "[s]ustained noise" generated from a building in which marijuana is grown "shall not exceed 30 dB(A)," based upon statements made in the applicant's engineers' report where petitioner argues the engineer reports failed to adequately describe the system as built, did not consider site-specific characteristics or address allegations that the odor control systems will generate noise in excess of 30 dB(A), but petitioner failed to point to any evidence in the record that calls into question the engineer's statements that the operation will not produce "sustained" noise that exceeds permissible levels. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

49. Marijuana Laws. LUBA will deny a petitioner's challenge to a county board of commissioners' conclusion that a marijuana production project applicant had satisfied the requirement to provide proof that water is available to the property by providing a "statement that water is supplied from a public or private water provider," by providing a letter from a private company stating it would supply water to the property where petitioner argues the letter is insufficient because the private water provider does not hold a water right. Based on its plain language, the county code does not require such a statement, but only requires a statement from a "private water provider" that they will provide water for the operation. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

49. Marijuana Laws. LUBA will deny petitioner's challenge that the provider of water must have "an authorized source of water under Oregon Water Law" where county code requires an applicant for marijuana production to provide proof that water is available to the property by providing a statement that "water is supplied from a public or private water provider," the county code does not further define "provider of water," and the county imposed a condition of approval requiring "the use of water from any source for marijuana production shall comply with all applicable state statutes and regulations including ORS 537.545 and OAR 690-340-0010." *King v. Deschutes County*, 77 Or LUBA 339 (2018).

49. Marijuana Laws. For purposes of determining whether land is agricultural land under OAR 660-033-0020(1)(a)(B), a county's findings are not deficient when they do not address whether marijuana production is a viable farm use or crop on the subject property. The analysis under OAR 660-033-0020, which gives effect to Statewide Planning Goal 3, focuses on the land and its suitability for farm use, not on whether a particular crop can be grown on the site regardless of the qualities of the land. Such an analysis would be entirely removed from an analysis of the agricultural qualities of the land, which is contrary to the plain text of the rule, and therefore a county's failure to adopt findings addressing that issue does not provide a basis for reversal or remand. *Landwatch Lane County v. Lane County*, 77 Or LUBA 368 (2018).

49. Marijuana Laws. An amendment to the county's zoning ordinance that prohibits marijuana production in a rural residential zone is not "inconsistent with" a provision of the county's comprehensive plan that describes the predominant farm uses in the county and describes small scale agriculture on parcelized lands as one of those farm uses. That general language does not require the county to allow marijuana production on rural residential-zoned land. *Diesel v. Jackson County*, 74 Or LUBA 286 (2016).

49. Marijuana Laws. LUBA will deny an assignment of error that challenges findings that cite a newly enacted statute as additional support for its decision to prohibit marijuana production in a rural residential zone, where petitioner does not explain why any faulty interpretation of that newly enacted statute compels the conclusion that the county is required by the statute or its comprehensive plan to allow marijuana production in a rural residential zone. *Diesel v. Jackson County*, 74 Or LUBA 286 (2016).

49. Marijuana Laws. ORS 475B.340(2) and ORS 475.500(2) allow local governments to adopt "reasonable regulations" on marijuana production, processing, and sales. Absent any argument that establishes a protected First Amendment interest in marijuana production, cases that address

the reasonableness of restrictions on protected First Amendment activity have no relevance to interpreting the phrase "reasonable regulation" used in ORS 475B.340(2) and ORS 475.500(2). *Diesel v. Jackson County*, 74 Or LUBA 286 (2016).

49. Marijuana Laws. ORS 475B.340(2) and ORS 475.500(2) allow local governments to adopt "reasonable regulations" on marijuana production, processing, and sales. A county zoning ordinance that prohibits marijuana production in a rural residential zone while allowing marijuana production in an exclusive farm use zone and on lands zoned farm and forest, which together include more than one million acres in the county, is a "reasonable regulation" within the meaning of the statutes. *Diesel v. Jackson County*, 74 Or LUBA 286 (2016).