



August 14, 2017

Keith Cubic, Director
Douglas County Planning Department
1036 SE Douglas Avenue
Justice Building Room 106
Roseburg, OR 97470

Mr. Cubic:

The Oregon Department of Agriculture (ODA) is writing to acknowledge receipt of your letter dated July 26, 2017. In your letter you contend that the growing of industrial hemp and agricultural hemp seed production is similar to the growing of medical marijuana and as such, is subject to a land use permitting process. You ask that the ODA address an oversight in its rulemaking and permitting process to include consideration of land use requirements in our licensing process of industrial hemp production and processing.

We agree that the processing of agricultural products, whether hemp or any other commodity requires a land use approval because processing is not a farm use and involves consideration of discretionary criteria. We will look into the land use compatibility requirements under state agency coordination rules related to processing. However, ODA does not agree with your assertion that the growing or production of industrial hemp or agricultural hemp seed is a decision that involves discretion and thus is a considered a "land use decision" under state law. It is simply growing an agricultural crop.

Your contend that that the growing of hemp is similar to the growing of medical marijuana and thus is subject to the same review process and standards. We do not believe this to be a correct interpretation for the following reasons:

1. State statute specifically states that medical cannabinoid products do not include "industrial hemp, as defined in ORS 571.300. See ORS 475B.410 (15)(b)(D).
2. State statute is silent on the regulation of industrial hemp. Yet the legislature specifically addressed (allows for) the regulation of both medical and recreational cannabis. If the legislature intended for local government to regulate, they would have provided enabling language similar to other cannabis production.
3. The legislature did provide for local government to opt out of "allowing for" any land use related to recreational cannabis and for the siting of medical cannabis dispensaries. The statute is silent related to hemp.

4. The legislature did authorize the production and possession of industrial hemp and commerce in industrial hemp products. See ORS 571.305(1). No other outside jurisdiction is offered in state statute.
5. The legislature declared that “industrial hemp is an **agricultural** product that is subject to regulation by the State Department of Agriculture.” (emphasis supplied)

Because hemp and hemp seed production involve the “raising, harvesting and selling of crops,” we contend that it is a farm use as defined in ORS 215.203. And because there is no authorization to regulate this farm use by state law, it appears that the regulation by Douglas County violates Oregon “Right to Farm” statutes that preclude local regulation of a farming practice. We also believe that it is questionable under state law, that the production of industrial hemp and seed is a land use decision because there is no discretion involved in determining what the use is, especially in a farm zone. Thus, a Land Use Compatibility Statement (LUCs) is not required. We agree that a LUCs for processing facilities could be required and will investigate the need for one related to ODA licensing.

Thank you for opportunity to respond to your concerns. If you would like to discuss this matter further, please feel free to contact the department.

Sincerely,

A handwritten signature in blue ink that reads "James W. Johnson". The signature is written in a cursive, flowing style.

James W. Johnson
Land Use and Water Planning Coordinator

Cc: Douglas County BCC
Sen. Jeff Kruse
Sen. Floyd Prozanski
Sen. Arnie Roblan
Rep. Brock Smith
Rep. Heard
Rep. McKeown
Rep. Hayden
Rep. Wilson
AOC
Lauri Aunan
Jim Rue, DLCD
Alexis Taylor