Larger marijuana operations expected to spring up on farmland

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positive or negative depends on a person's perspective: Where some see the potential for economic rejuvenation, others see a disruption to the pastoral landscape.

"People can now make a living on 10 to 20 acres of marginal land," said Katie Kulla.

"It brings farming activity to an area that probably hasn't seen any except for a horse or two," her husband added.

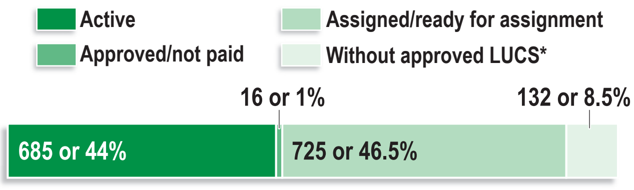
The novelty of marijuana production in such areas has drawn complaints that are occasionally contradictory.

While some fear declining real estate values, others lament once-affordable properties that now sell for high prices because of their suitability for marijuana cultivation.

Mateusz Perkowski/Capital Press

Casey Kulla and his wife, Katie, inspect marijuana plants growing at their farm near McMinnville, Ore. As Oregon's marijuana industry has grown, it's raised questions about the "right to farm" and other land use issues.

Oregon marijuana producer license applications by status (As of July 27)



Source: Oregon Liquor Control Commission

*Land Use Compatibility Statement

Alan Kenaga/EO Media Group

Land use questions

Regardless of these conflicting arguments, it's become clear the land use issues have grown more pronounced since the legalization of recreational marijuana.

As the marijuana industry emerges from the shadows, larger operations are expected to spring up on traditional farmland. At the same time, legal questions have arisen about regulating marijuana differently from other crops in farm zones.

Traditionally, the vast majority of medical marijuana wasn't produced on properties zoned for "exclusive farm use," with growers often preferring rural residential zones, said Peter Gendron, president of the Oregon Sungrown Growers Guild, which represents outdoor cannabis producers.

Under the Oregon Liquor Control Commission's rules, recreational marijuana operations can have nearly an acre of crop canopy, which many properties in rural residential zones can't accommodate.

Recreational marijuana operations must generally also have access to water rights, which are more prevalent in exclusive farm use zones, Gendron said. "That forces those onto farmland."

As more marijuana is produced on a bigger, outdoor scale, prices for the crop will fall and cultivating it indoors will likely stop being affordable, he said.

Cooling, lighting and ventilation are too expensive to support commercial marijuana production in the long term, so indoor operations will likely focus on breeding and research, Gendron said.

"It's primarily cost-driven," he said.

Meanwhile, regulations aimed at curtailing black market marijuana sales are expected to steer medical marijuana growers into the recreational system.

Under House Bill 2198, which lawmakers approved this year, minimally regulated medical marijuana operations will be limited to 12 plants. Anybody growing more than that amount must follow OLCC's strict "seed-to-sale" tracking system. In return, they will be allowed to sell up to 20 pounds through recreational marijuana channels.

"They wanted an outlet for surplus product where they could get some money," said Tom Burns, a marijuana consultant who formerly worked for OLCC.

In the current market, a pound of marijuana fetches roughly $800-$1,200 for the grower, said Gendron. An experienced outdoor grower can produce a pound for $200-$400, but an inexperienced grower may not generate any profit at all.

Actual prices and costs will depend on the desirability and yield of the marijuana cultivar, he said.

Oregon's new rules will probably cause medical marijuana production to "shrink and stabilize" over time, said Rep. Carl Wilson, R-Grants Pass, vice chairman of the Oregon Legislature's Joint Committee on Marijuana Regulation.

Stopping the diversion of marijuana into the black market — where it's often smuggled into other states — is necessary to prevent federal intervention, as the crop remains illegal at the federal level, he said.

"I think they will make good on their pledge to shake things up if that doesn't stop," Wilson said.

With Oregon growing five times more marijuana than can realistically be consumed in the state, though, producers are faced with a looming oversupply, Wilson said, citing committee testimony from marijuana industry participants.

"This green rush is going to hit a bump one of these days," he said.

Given this uncertainty, some wonder whether overzealous marijuana production will inflict long-term harm to farmland.

Certain marijuana operations are covering the ground with gravel, or even paving portions of it, to better grow the plants in containers and greenhouses, said Gordon Lyford, an agricultural engineer and certified water rights examiner in Southern Oregon, a hotbed of cannabis production.

"They don't even use the natural soil," he said. "These guys are just destroying the soils."

While such practices are a common source of criticism, it's worth noting they're not limited to cannabis. Ornamental plants are frequently grown in containers on gravel, which is allowed outright in exclusive farm use zones.

"We don't prevent somebody from putting in a greenhouse to grow nursery crops on EFU," said Sunny Jones, cannabis policy coordinator for the Oregon Department of Agriculture.

Right to farm?

Unlike other crops grown in such farm zones, though, it's unclear to what extent Oregon's "right to farm" law protects marijuana production.

The statute, passed in 1993, prohibits local governments from enacting nuisance and trespass ordinances that restrict common farming practices, such as those that stir up dust or emit unpleasant livestock smells.

Under Oregon's marijuana laws, though, local governments can impose "reasonable" regulations on the "time, place and manner" of cannabis production. County commissions can opt out of any marijuana production altogether, as long as 55 percent or more of the county voted against legalization. Those counties where fewer than 55 percent of the people voted against legalization can also opt out, but the matter must be put to an election.

In response, some counties have opted to allow production but are requiring setbacks between marijuana plots and neighboring properties, among other rules.

Since the laws are so new and untested in court, it's uncertain at which point these limits become unreasonable and impinge on the marijuana producers' "right to farm."

"That's the $100,000 question. There's been no precedent set," said Corinne Celko, an attorney with the Emerge Law Group. "Cities and counties are in some instances pushing the envelope but nobody has been pushing back in a formal, legal way, saying, 'They've gone too far.'"

Marijuana's distinctive odor is cited by critics to justify restrictions, for example, but the smell of a dairy or livestock farm could not serve as a basis for such regulations.

The tension between the "time, place and manner" law and the "right to farm" law may eventually be resolved in court, unless lawmakers first clarify how the two statutes interact.

If the matter does end up before a judge, the more-recent "time, place and manner" law would probably be assumed to be a valid modification of the "right to farm" law specific to cannabis, said Tim Bernasek, an agricultural attorney with the Dunn Carney law firm.

"There's a presumption the legislature knows what it's doing," Bernasek said.

No recreational marijuana grower has yet filed a lawsuit against county "time, place and manner" restrictions, but that doesn't mean they're at peace with the rules.

Deschutes debate

The situation is particularly inflamed in Deschutes County, which is unique in subjecting marijuana applicants to a full land use process that includes neighbor notification and public hearings if a proposal encounters opposition.

Marijuana growers in the county can produce the maximum canopy of nearly an acre only on properties larger than 60 acres.

Plots must be a minimum of 100 feet from neighboring property lines, 300 feet from neighboring dwellings and 1,000 feet from schools, childcare facilities and youth centers.

Greenhouses in Deschutes County are prohibited from using lights at night, whether they contain cannabis or other crops.

Andrew Anderson, a marijuana grower and board member of the Deschutes County Farm Bureau, can only utilize 20,000 square feet of his 31,000 square feet of greenhouses because his property is less than 60 acres.

Even so, Anderson considers himself luckier than other prospective marijuana growers in the county, who were unable to win approval under the land use process despite sizable investments.

"It's really frustrating to have that happen to people who are following all the rules," he said. "Our goal is just to have reasonable rules."

Anderson believes Deschutes County is nominally allowing marijuana production to get state cash from marijuana taxes while effectively regulating it out of existence.

"It's skirting the system to bring in tax revenues without granting licenses," he said.

Nick Lelack, the county's community development director, disagrees that the rules are intended to discourage marijuana production.

Rather, they're crafted to meet the distinct needs of Deschutes County, where vegetation is too sparse to provide an effective buffer around marijuana plots compared to more verdant parts of the state, Lelack said.

"We tried to thread the needle between allowing this emerging industry to be successful here and mitigating a lot of issues rural residents raised," he said.

Water complaints over marijuana spike

By MATEUSZ PERKOWSKI
Capital Press

With marijuana legalization spurring a "green rush" in Oregon, some newly arriving cannabis entrepreneurs have drawn the ire of deep-rooted rural residents.

The accusations often center on behaviors such as speeding in all-terrain vehicles, late-night partying and otherwise pestering neighbors.

"None of that is inherent to growing this plant," said Katie Kulla, who grows marijuana and vegetables near McMinnville, Ore. "The culture clash is the issue, not the crop."

For farmers, the culture clash is worrisome due to suspicions that some marijuana growers illegally irrigate their crop — either out of ignorance or disrespect for the Western system of "prior appropriations" water law.

"What concerns me is people stealing water from rivers," said Gordon Lyford, a certified water rights examiner in Southern Oregon.

In the West, water rights are based on a "first in time, first in right" system in which properties with the earliest "senior" claims to water have priority over "junior" users.

Recreational marijuana growers must prove to the Oregon Liquor Control Commission that they have water rights or can otherwise lawfully irrigate the crop, but not all producers are licensed under the system. Medical growers must be registered and receive cards from the Oregon Health Authority. Under a law going into effect next year, they will be able to sell up to 20 pounds into the recreational system under certain conditions.

Some medical marijuana growers are coming from the Eastern U.S., where water law is different, leading them to believe they can irrigate from a stream simply because it flows through their property, Lyford said.

Domestic wells aren't supposed to irrigate commercially grown cannabis or any other crop, but medical marijuana farmers can use them as long as they're not growing for profit.

In reality, though, it's well known that medical marijuana is diverted onto the black market, Lyford said.

In those cases, producers can simply lie to water masters, who enforce water rights for the Oregon Water Resources Department, he said. "They've got a story to tell Water Resources."

Since recreational marijuana became legal, the department has seen a spike in complaints about cannabis. In some cases, they're legitimate, in other cases, people simply don't like marijuana, said Racquel Rancier, the agency's senior policy coordinator.

The question of whether medical growers are diverting their crop for profit, and thus illegally irrigating with domestic wells, is tough for the agency to answer, she said.

"That continues to be a challenge for us," Rancier said. "It's not always an easy process to demonstrate they're using it illegally."

Since the agency isn't equipped to run sting operations or in-depth investigations, it must effectively take medical marijuana growers at their word that no profits are being earned.

"We don't have the tools or the training or the authority to run some sort of fiscal audit," said Ivan Gall, administrator of the department's field services division.

However, there's no evidence that illegal use of domestic wells by medical growers has reduced available water for legitimate irrigators, since the marijuana plots use fairly modest amounts of water, he said.

"I've yet to document any well-to-well interference that would injure other users in the area," Gall said.

The agency stops illegal irrigation regardless of whether it's affecting senior water rights, and roughly 99 percent of unlawful users comply voluntarily without the department issuing an enforcement order, he said.

Killing wolves not a simple process

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The pack's territory includes land previously used by the Imnaha Pack. ODFW killed four Imnaha Pack wolves in March 2016 after five confirmed livestock attacks in a month.

Killing wolves is not a simple process, however. Under Oregon's management rules, ODFW may authorize "lethal take" if there have been two confirmed livestock depredations by wolves in the area, or one confirmed depredation followed by three attempted attacks, which can include "testing or stalking," department spokeswoman Michelle Dennehy said in an email.

However, the person requesting lethal control must document that non-lethal protection has been unsuccessful, and the producer must show nothing was done that attracted wolf-livestock conflict and that he or she has complied with laws and conditions of any harassment or take permit.

ODFW may authorize lethal control to be done by its staff, by authorized agents or by USDA's Wildlife Services.

ICE estimates annual cost for contracting with Jerome County at $1.46M

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workers have told dairy producers they no longer feel this is a safe area and they're going to move on, he told Capital Press.

They see a contract with ICE for jail space as the first step in increased enforcement in the area, he said.

ICE spokesperson Virginia Kice stated in an email to Capital Press that federal regulations preclude the agency from speculating about possible future detention contracts.

The Jerome County Sheriff's Office, however, provided Capital Press with an ICE memorandum dated Jan. 26 which states the county would provide all personnel and services relating to detentions, including escort and transport. It further states the Jerome facility would house no on-site ICE compliance personnel and that existing staffing at the ICE field office in Salt Lake City is adequate to support the Jerome facility.

Charlie Howell, chairman of the Jerome County Commission, said the county sheriff entered into discussions with ICE about six weeks ago but commissioners have not yet seen a final proposal.

Bob Naerebout, executive director of the Idaho Dairymen's Association maintains the Hispanic community has brought a large amount of value to the area, and the dairy industry wants to support that community.

The county facility already houses inmates from other counties, and the plan being discussed is to lease 50 beds to ICE for $75 per bed per day. The proposal would generate additional county income of about $1.34 million annually, he said.

Naerebout counters that economic gain with a much larger economic jeopardy from the loss of Hispanic workers.

While the impact would be broader than just dairy or agriculture, an economic analysis from the University of Idaho shows that a 1 percent decrease in milk processed in a local market for cheese alone would result in an annual loss of $27 million in local revenue, he said.

"This is not a contract that is needed," he said.

He maintains the Hispanic community has brought a large amount of value to the area, and the dairy industry wants to support that community. Both IDA and Idaho Milk Processors Association are united in their opposition to the proposed contract with ICE, he said.

The dairy industry doesn't qualify for the H-2A program or any other visa program for foreign workers, and a strong percentage of the Hispanic community that came to the area to work in agriculture arrived without legal work status, he said.

There is little commissioners can do about the immigration problem, but they need to weigh the potential benefits of the contract with ICE against the potential consequences and consider the harm to the community, he said.

Reactions from residents to the proposal are across the board, with most residents in support and most businesses opposed, Howell said.

About 40 protesters showed up at the commission's July 3 meeting, but comment is coming in on both sides. One concern is that illegal parents of legal children will get picked up, he said.

In the dairy arena, he said he's heard from one Hispanic worker in support of the proposal because he says dairymen are getting foreign workers to "fix their employment problem." He's heard from a dairy owner who is opposed because all of his workers are illegal. And he's heard from another in support because he's worked hard to get his legal workers the correct paperwork.

The ICE memorandum said a loss of 300 beds for detainees at the Utah County jail prompted consideration of a contract with the Jerome facility, noting that it is strategically located between the Boise and Twin Falls sub-field offices.

ICE estimates the annual cost for contracting with Jerome County at $1.46 million, including $1.37 million for housing and services at the correctional facility and $92,710 for transportation.

The agency is also looking at the potential for a future 60-bed expansion and adding infrastructure to conduct detainee hearings at the Jerome facility.