PLANNING COMMISSION

AGENDA

May 10, 2016

CITY OF OAK HARBOR
PLANNING COMMISSION
SPECIAL MEETING
CITY HALL

AGENDA
May 10, 2016
7:00 P.M.

ROLL CALL: **WASINGER**_____ **FREEMAN**_____

PETERSON_____ **PIERCE** _____

WALKER-WYSE_____ **HOVEY**_____

MERRIMAN_____

1. Approval of Minutes – April 26, 2016

2. Public Comment – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

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3. <u>2016 COMPREHENSIVE PLAN UPDATE</u> – Public Hearing
Staff will brief the Commission on the draft 2016 Comprehensive Plan update highlighting the process followed for the update and the various elements that were amended. The Planning Commission will open the public hearing and continue it to the May 24th meeting when they will make a recommendation to the City Council.

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4. <u>2017 – 2022 CAPITIAL IMPROVEMENT PLAN</u> – Public Meeting
Staff will introduce the 2017 – 2022 Capital Improvement Plan to the Planning Commission. The Capital Improvement Plan identifies necessary capital projects to serve the community such as streets, waterlines and sewer lines.

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5. <u>MEDICAL MARIJUANA CODE UPDATE</u> – Public Meeting
Staff has been monitoring implementation of SB 5052 (Cannabis Patient Protection Act) by the Washington Department of Health and Washington Liquor and Cannabis Board. This presentation will provide an update to the Planning Commission on the various actions which have occurred and will present a work plan to meet the September 1, 2016 moratorium deadline.

MINUTES

April 26, 2016

Oak Harbor Planning Commission
Regular Meeting Minutes
April 26, 2016

1. Roll Call

Present:	Staff Present:
Greg Wasinger	Steve Powers
Bruce Freeman	Cac Kamak
Sandi Peterson	Dennis Lefevre
Jes Walker-Wyse	Ray Lindenburg
Cecil Pierce	Arnold Peterschmidt
Hal Hovey	
Alyssa Merriman	

2. Approval of Minutes - April 13, 2016

Motion: Jes Walker-Wyse moved to approve the April 13, 2016 minutes. Motion seconded by Bruce Freeman, majority approved. Corrections were made to the motion approving the February 23, 2016 minutes (Commissioners were incorrectly titled Councilmembers) and Cac Kamak was removed from the roll call since he didn't attend the April 13th meeting.

VOTE: Motion majority approved 6 - 0

AYES: Greg Wasinger, Bruce Freeman, Sandi Peterson, Jes Walker-Wyse, Hal Hovey, Alyssa Merriman
NOES: None
ABSTAIN: Cecil Pierce

3. Public Comment

No public comments.

4. NONCONFORMING USE CODE AMENDMENT - Public Hearing

Ray Lindenburg reported that the amendment is a minor change to OHMC 19.18.030(1)(b) to allow for nonconforming single-family residential units to be rebuilt in case of damage to more than 50 percent of the real valuation. Currently you cannot rebuild, which creates a situation for the homeowner that is trying to sell the home, lenders will not write a mortgage for the property.

Planning Commission Questions/Comments:
Commissioners asked how many properties would be affected. Mr. Lindenburg didn't have an exact number but said it wasn't a large number. There was concern about OHMC 19.18.030(1)(a). The concern was that if there was a natural disaster and a homeowner wasn't able to occupy the residence they wouldn't be allowed to rebuild. Mr. Powers explained that in the case of a natural disaster it is common for communities to pass an emergency resolution that suspends rules as necessary or acknowledges that compliance with the rules will be difficult

because of the natural disaster. There was further discussion about the terms "zoning district" and "use" and how those terms apply in OHMC 19.18.030(1)(b).

Mr. Wasinger opened the public hearing at 7:50 p.m.

Kathi Phillips was called to speak and spoke in support of the amendment.

Seeing no further public comment the public hearing was closed at 7:52 p.m.

Motion: Sandi Peterson moved to approve amendments to nonconforming uses, OHMC 19.18.030. Motion seconded by Cecil Pierce, majority approved.

VOTE: Motion majority approved 6 - 0

AYES: Greg Wasinger, Bruce Freeman, Sandi Peterson, Cecil Pierce, Hal Hovey, Alyssa Merriman
NOES: None
ABSTAIN: Jes Walker-Wyse

5. 2016 COMPREHENSIVE PLAN UPDATE – Public Meeting

Mr. Kamak displayed a PowerPoint presentation (Attachment 1) and reviewed progress of 2016 Comprehensive Plan update process for benefit of new Commissioners and the public. Mr. Kamak reported that the Planning Commission will be reviewing the Utilities and the Government Services Elements at tonight's meeting. Mr. Kamak noted that there have been minor updates to dates, statistics, outdated or obsolete information have be removed or updated to clarify or clearly state intent. Updates have been made to strengthening policies based on current applications/requirements/practices and redundancies and non-comprehensive plan items have been eliminated.

Mr. Kamak also reported that the Transportation Element is created from Transportation Plan and sections are still under review. The draft element will be included at the next meeting. Staff is hoping to have the Draft Comprehensive Plan ready for the Planning Commission's next meeting and have two public hearings in May.

Mr. Kamak reported that the new Land Use Element and the change to the generalized land use map will have an impact on the zoning regulations OHMC 19.20.010 that establishes the translation of the land use designation to the implementing zoning district. Therefore, this section of the zoning code will need to be amended to reflect the changes in the Land Use Element. Mr. Kamak reported that City staff are currently working with Island County in implementing the Countywide Planning Policies (CWPP) related to the Joint Planning Area (JPA) and detailed some of the challenges that have been realized with implementing the policies as written. Staff will provide updates as the City and County will continue to work through the issues.

Planning Commission Questions/Comments:
Asked for clarification on the Utilities Element item 5(i) on page 35. Mr. Kamak explained that the policy refers to water conservation but needs to be reworded to make that clear.

Noted that the Government Services Element page 60 item 2(d) says "volunteer" and needs to be revised to say "Paid-on-Call (POC).

Asked about page 5 of the draft Transportation Plan. What does that mean where it states the 2005 Plan by WDOT for the SR20 corridor was funded by DOT in 2015? Arnold Peterschmidt explained that WSDOT is planning to move forward with major highway improvements on the south end of town in the next decade. The centerpiece is roundabout designed intersections but at this stage it is still a concept.

Asked if we have any "shovel ready projects" for city streets? Mr. Peterschmidt responded no and explained that there are risks with spending money to design a project and putting it on the shelf to be a shovel ready project. Conditions change or the project may become irrelevant so spending considerable money on the design would not be well spent.

There was additional discussion about County and City collaboration on their respective Comprehensive Plans.

6. WINDJAMMER PARK INTEGRATION PLAN – Public Meeting

Steve Powers displayed a PowerPoint presentation (Attachment 2) and updated Commission on WPIP reviewed process to date. On March 29th there was a Citizen Advisory Group (CAG) meeting and an open house. March 30th there was an online open house which yielded 356 unique visitors. There were 49 in-person and online feedback forms on draft plan preferred concept. Feedback indicated that family-friendly elements and activities should be prioritized, especially supporting the splash park, there was concern about the effect on Waterside Condos, varied opinion on inclusion of dunes as part of the walking path, CAG agreed with removing/relocating the RV Park and ballfields if other locations can be found. Public opinion varies on this. The consensus is that the waterfront is a resource and an asset.

Mr. Powers reviewed the Council and CAG process. The final CAG meeting should be May 5th where summary feedback will be presented, refinements to the plan based on the feedback, discussion about phasing and planning level estimate costs. Staff will continue briefings with the Planning Commission and Council working our way to Council approval possibly in June. From there the pieces that are deemed Phase 1 pieces that are necessary because of the Clean Water Facility construction will be moved into the planning and design process and construction document process so they can become part of the bidding process as we move forward.

Planning Commission Questions/Comments:
Planning Commissioners discussed the project from a maintenance standpoint and the proximity of the water park being close to shoreline which gets battered during storms. Mr. Powers replied that the project will be broken into phases and will be refined. As we work in the shoreline area the rules are different from what they used to be and will likely be further from the shoreline.

There was a comment about the water intrusion in the construction area. Mr. Power indicated that the land form will change considerably because of the water table.

There was a question as to whether the plan shown is where we are headed as the preferred plan. Mr. Powers stated that it is still a work in progress.

It was noted that the RV Park and the baseball fields were not on the plan. Mr. Powers stated that the City still needs to make a decision on the RV Park and the ball fields will have to be built

somewhere else in a future phase, if ever, and part of the consultant's job is to show us how all the pieces fit together so that it can be accomplished incrementally over time.

There was a comment that some of the people didn't realize they had to hit the submit button at the bottom of the online questionnaire and wondered how many comments were missed because of that. Mr. Powers said he will see if there is a way to ascertain how many comments were started and then stopped for whatever reason.

7. Adjourn 8:35 p.m.

Katherine Gifford
Administrative Assistant
Development Services

2016 UPDATE COMPREHENSIVE PLAN

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Planning Commission

4/29/2016

April 26, 2016 Planning Commission Meeting

- Utilities and Government Services Element
- Transportation Element – Draft Transportation Plan
- Development Regulations updates related to the Comprehensive Plan update
- Countywide Planning Policies (CWPP)

Planning Commission

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

UTILITIES AND GOVERNMENT SERVICES ELEMENT

- Minor updates – dates, stats etc.
- Removal of outdated or obsolete information
- Tweaks to clarify or clearly state intent
- Strengthening policies based on current applications/requirements/practices
- Eliminate redundancies and non-comprehensive plan items
- Active tense where applicable

- Transportation Element
  - Created from the Transportation Plan
  - Draft provided to PC
  - Sections are still under progress
  - Draft Element will be included in the next meeting

2016 COMPREHENSIVE PLAN

Planning Commission

- Development Regulations
  - OHMC 19.12 will be impacted by the adoption of the 2016 Comprehensive Plan
  - Progressing to a generalized land use map impacts the establishment of zoning districts
  - Land Uses are implemented by multiple zoning districts

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

2016 COMPREHENSIVE PLAN

Planning Commission

Comprehensive Plan Land Use Designation		Zoning District	
PRE	Planned Residential Estate	PRE	Planned Residential Estate
LD	Low Density Residential	R-1	Single Family Residential
		R-2	Limited Multifamily Residential
		R-3	Multifamily Residential
HR/LC	High Intensity Residential/Low Intensity Commercial	R-4	Multifamily Residential
		RO	Residential Office
		C-1	Neighborhood Commercial
HIC	High Intensity Commercial	C-3	Community Commercial
		C-4	Highway Service Commercial
		C-5	Highway Corridor Commercial
CBD	Central Business District	CBD	Central Business Districts
IBP	Industrial/Business Park	PBP	Planned Business Park
		PIP	Planned Industrial Park
		I	Industrial
PF	Public Facilities	PF	Public Facilities
ORA	Open Space, Recreation and Agriculture	OS	Open Space

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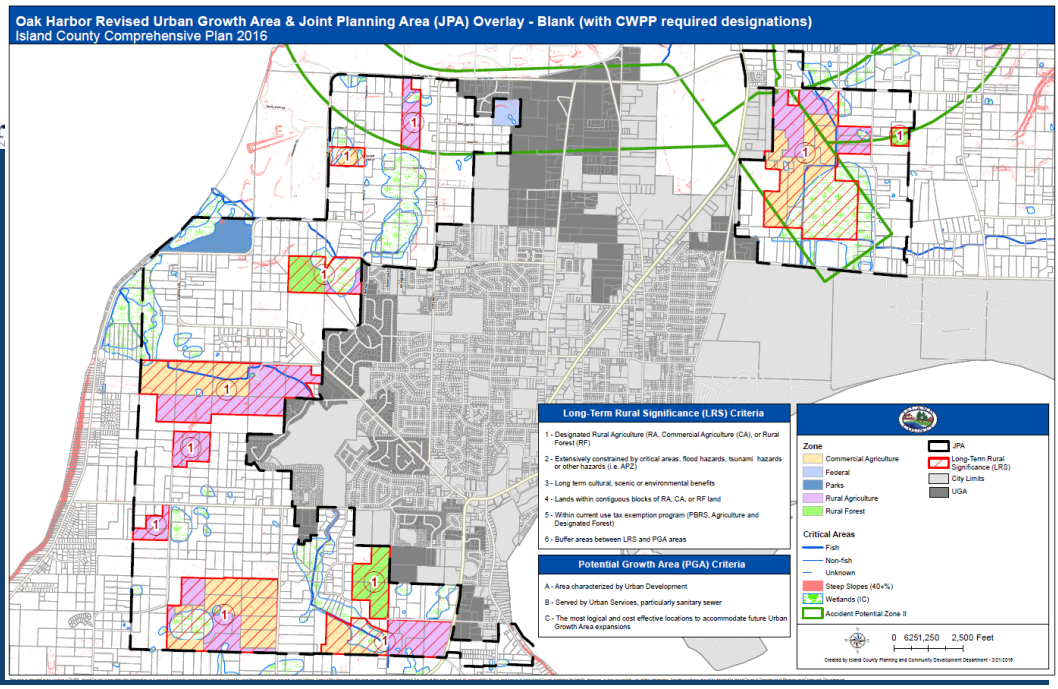
WHIDBEY ISLAND, WASHINGTON

2016 COMPREHENSIVE PLAN

Planning Commission

CWPP - UPDATE

- Island County Comprehensive Plan
  - Requesting extension
  - Not allocating additional population at this time
  - Tentative Oct 2016 adoption
- Joint Planning Areas
  - Re-establish JPA boundaries
  - Denote only JPA and LRS 1 areas
  - Option for a delayed owner-driven designation process



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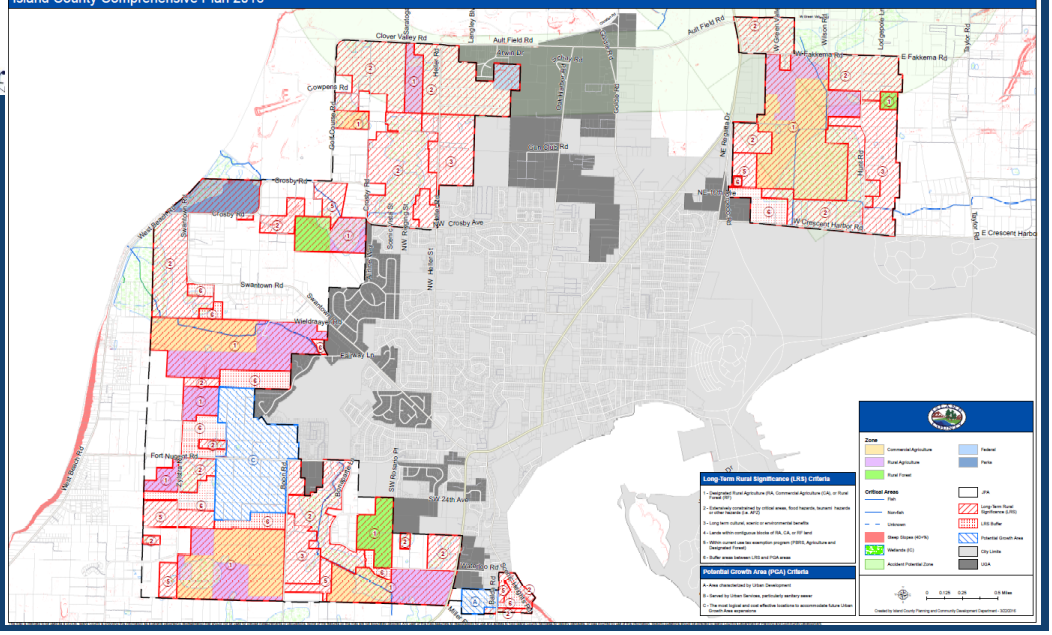
Oak Harbor Joint Planning Area (JPA) Overlay - Recommendations from the 3/17/16 BOCC/PC Workshop - DRAFT

Island County Comprehensive Plan 2016



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Questions?

Windjammer Park Integration Plan

Planning Commission Meeting– April 26, 2016

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

WPIP CAG Process to Date

- Convened community volunteers representing variety of perspectives
- Four meetings, gathering thoughtful and informed feedback on what should be 'given elements' and priority park programs
- CAG members reflect a high level of satisfaction in the draft plan, recognizing a variety of values and programs to be balanced in the future plan (on whole)
- When asked, CAG members satisfied by the process and feel they have been able to meaningfully contribute to the draft plan process/see their input to date reflected

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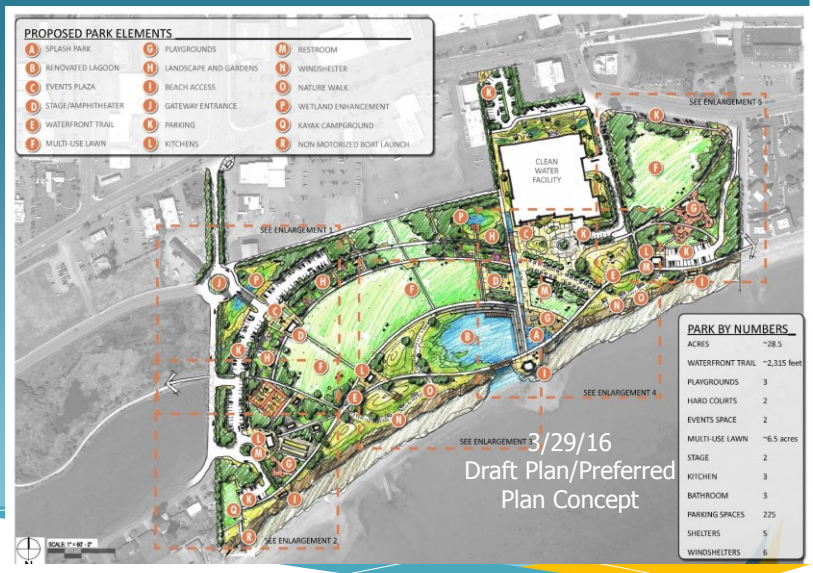
Community Participation

- **March 29:** Community Advisory Group Meeting and Open House (30+ attendees)
- March 30 – April 8: Online open house (356 unique visitors)
- 49 in-person and online feedback forms



3/29/16
Draft Plan/Preferred Plan Concept

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3

Draft Plan Feedback

- Family-friendly elements and activities should be prioritized, especially supporting splash park.
- Observations that there are a lot of different elements in the park plan.
- Concern about effect on Waterside Condos (due to new activities or driveway/ parking).
- Varied opinions on the inclusion of dunes as part of walking path, potentially needing additional information/clarity of design.
- CAG generally agrees with removing/relocating RV Park and ballfields, if other locations can be found. Public opinion varies.
- Consensus that the waterfront is a resource and asset.

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WHIDBEY ISLAND, WASHINGTON

4

Council and CAG Process

COUNCIL
- Programming priorities
- Approves CAG

COUNCIL
CAG formation update and initial priorities list/ design guidelines

COUNCIL
Report: Alternatives and Public feedback

COUNCIL
Approves plan

CAG # 1 | CAG # 2 | CAG # 3 | CAG # 4 | CAG # 5

December 2015 | January 2016 | February 2016 | March 2016 | April 2016 | May/ June 2016

- CAG forms
- CAG provides feedback on design guidelines

- Introduce CAG and WPIP to community
- Gather community feedback (Public Open House)

- Provide feedback on 3 concept alternatives

- Present WPIP concept to community
- Gather community feedback (Public Open House and Online Open House)

- Review preferred plan to be presented to City Council
- Provide final feedback

CITY OF Oak Harbor WHIDBEY ISLAND, WASHINGTON

5

Next Steps

- Assess feedback received as consideration for Draft Plan refinement
- **May 5** – CAG meeting #5
  Additional feedback on draft recommended plan
- **May 25** – City Council Workshop
  Review final recommended plan
- **June 7** – City Council Meeting
  Potential action on the final plan

CITY OF Oak Harbor WHIDBEY ISLAND, WASHINGTON

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Questions?

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

7

2016

Comprehensive Plan

Update

Public Hearing

City of Oak Harbor
Planning Commission

Bill No. _____
Date: May 10, 2016
Subject: 2016 Comprehensive Plan Update

FROM: Cac Kamak,
Senior Planner

RECOMMENDED ACTION

The Planning Commission is requested to open a public hearing on the 2016 Comprehensive Plan Update, take testimony, and continue the hearing to the May 24, 2016 meeting. The Planning Commission will be expected to close the hearing on May 24th and make a recommendation to the City Council.

BACKGROUND / SUMMARY INFORMATION

Oak Harbor adopted its first Growth Management Act (GMA) required comprehensive plan in 1995. Since the original adoption, the Plan has mostly seen minor amendments, mostly within the annual amendment process. The exception was the major update completed in 2005. The GMA requires that cities and counties review, and if needed, revise the Comprehensive Plan to ensure that the plan and regulations comply with the latest requirements (RCW 36.70A.130(4)), and lays out a schedule for each county and the cities within each counties to do so. The schedule for Island County and the cities within is June 30, 2016.

Oak Harbor began the update process for its Comprehensive Plan back in 2013. The process began by reviewing the current plan against a checklist prepared by the Washington State Department of Commerce. The checklist identified areas within the Plan that need to be updated. This information was presented to the Planning Commission in a report (Attachment A).

Subsequently a Public Participation Plan (Attachment B) was adopted in 2014. The Public Participation Plan identified the Planning Commission as the lead body to review the updates since the commission meetings are at a predictable time, they entertain public input, and are recorded for re-broadcasting twice a week for four weeks.

One of the initial steps that the Planning Commission and the City Council took in the update process was to review the Vision statement in the Comprehensive Plan. It was decided that the Vision should be slightly modified to reflect current sentiment, but most of the original ideas should remain. Therefore the Vision was slightly modified to provide more clarity and structured to address four major themes –

Culture, Education, Economy and Recreation. The Vision was also disseminated to the public via a survey that provided an opportunity for input.

Prior to tackling individual elements in the comprehensive plan, the Planning Commission and the City Council reviewed the demographics of Oak Harbor to get a better understanding of its residents, housing, and its economy. The City also cooperatively worked with Island County in determining the 20 year population projection, which is the basis for determining whether adequate land and services are available for the next 20 years. The population projection, which establishes consistency between the City and County, was adopted by the City in Resolution 13-17(Attachment C) in 2013.

There are 12 elements in Oak Harbor's Comprehensive Plan. Not all elements of the Plan are required by the Growth Management Act. The City has chosen to include elements, such as Urban Design, Community Coordination etc., since these elements are important to fulfilling its vision. Due to the extensive nature of the update and limited resources, the Planning Commission and the City Council chose to update only elements that necessitated changes to be GMA compliant. The City can choose to update elements of the Plan that were not updated in this cycle at any time as part of the annual amendment process. A short description of the elements that were updated with the 2016 Update is provided below.

Land Use Element

The Land Use Element is the workhorse of the comprehensive plan and sets the foundation for most other elements. The 2016 Update introduces a shift from the one-to-one land use to zoning ratio to a more generalized land use ratio where one land use category is implemented by multiple zoning districts. The generalized land use approach allows a more efficient and flexible approach to land use changes. The 2016 Update also introduces the concept of true neighborhoods. The neighborhood concept has a potential to grow as a tool in the future when diverse policies are needed to tackle various issues within the city. The goals and policies within the land use element have been re-organized to form five distinct and simple goals. Most of the content from the existing 20 goals have been transferred to policies within these five goals. Policies that are invalid or irrelevant have been removed. Policy statements have also been re-written to an active tense where applicable.

Housing Element

New demographic information from the US Census and Washington State were incorporated into the update along with housing density, availability and affordability information. There were no major shifts in housing policies, however, the policies were update to reflect an active tense.

Utilities Element

This element received minor updates with the 2016 Updates. No major shifts in policy were considered with this update.

Transportation Element
The City is updating its Transportation Plan, concurrently with the 2016 Update process, and will therefore contribute towards new language in this element. The new language will have five distinct and simple goals with clear policies. The element will also identify the major projects to be undertaken in the next six years.

Urban Growth Areas
Although this is not a GMA required element, the City has chosen to include this in the Comprehensive Plan to facilitate coordination with Island County. The City and the County worked cooperatively to update the Countywide Planning Policies (CWPP), which were adopted in 2015. This element was updated to reflect the adopted CWPP.

Environmental Element
The update to this element can be considered minor since there were now significant shifts in policy. Language within this element was refined to reflect clarity and intent. The information within the element has been slightly reorganized to remove extensive language discussing policies and clearly state policy directions.

Government Services Element
This element has not been updated since the original adoption. Therefore a lot of information within this element was outdated. The 2016 Update has no significant changes in policy, but statistics and other data related information was updated.

Community Coordination Element
This element is not a required element and is included in the Comprehensive Plan by community choice. Some minor updates will be done to this element to remove irrelevant and out dated information.

Development Regulations
The change in the Land Use Element to a generalized land use planning methodology triggers changes to the development regulations in OHMC 19.12.010 that designates the implementing zoning district for each land use. A new revised version (Attachment D) will need to be adopted with the Update.

A DRAFT of the updated plan is included in your packet (Attachment E). The DRAFT is still a work in progress and refinements are continuing to be incorporated into the document as it goes through the hearing process for final adoption.

FISCAL IMPACT

The adoption of the 2016 Update to the Comprehensive Plan does not in itself create a fiscal impact. However, implementation of the Plan over time will require fiscal expenditure. For example, the Transportation Element identifies projects to be done in the next six years. The adoption of the 2016 Update does not authorize the expenditure of funds to do these projects. These project will be reviewed individually prior to implementation.

PROCESS

The 2016 Update, as mentioned earlier, began back in 2013. The Planning Commission's public meetings where used as the main forum to discuss the many issues related to the comprehensive plan. Joint workshops of the Planning Commission and the City Council were also used to discuss the more complex shifts in policy such as the land use planning methodology. Since the Planning Commission meetings are public meetings, opportunities for early and continuous public input was provided throughout the update process. The update process also included a community wide survey on the vision statement.

The SEPA checklist for the update was submitted on March 29, 2016. A SEPA determination of non-significance was issued on April 15, 2016. The appeal period for the Determination ended on May 6, 2015.

The Planning Commission is scheduled to hold a hearing on the 2016 Update on May 10, 2016 and continue it to the May 24, 2016 meeting. The Planning Commission is expected to close the public hearing on May 24th and make a recommendation to the City Council.

The City Council will open a public hearing on the 2016 Update at their June 7th meeting and continue it to the June 15th special meeting. The City Council is expected to close the hearing on June 15th and take action.

ATTACHMENTS

Attachment A – October 9, 2013 Planning Commission memo on checklist review
Attachment B – Public Participation Plan
Attachment C – Resolution approving 20 year projected Island County population
Attachment D – OHMC 19.12.010 Establishment and designation of use district
Attachment E – DRAFT Comprehensive Plan – 2016 Update (Attached to the packet seperately)

CITY OF OAK HARBOR

TO: PLANNING COMMISSION

FROM: CAC KAMAK, SENIOR PLANNER

SUBJECT: 2016 COMPREHENSIVE PLAN UPDATE – COUNTY/CITY

DATE: 10/9/2013

CC: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

2016 Comprehensive Plan Update – Checklist

The Department of Commerce has provided a checklist that cities can use to determine if their current comprehensive plan meets the requirements of the Growth Management Act (GMA) and other legislation that have been adopted in recent years. City staff has reviewed Oak Harbor's Comprehensive Plan against this checklist. The checklist is attached to this memo and includes comments related to the requirements.

The checklist provided by the State is formatted with four columns. Column one lists the requirements that the plan must meet. Column two indicates whether the current plan meets that requirement. Column three indicates whether an update is required or whether further research is required to determine that. Check marks have been placed to indicate whether requirements are met or need to be addressed. The last column has notes by staff indicating locations of existing goals and policies that help meet the requirement and other comments if an update is necessary to meet the requirement.

A summary of the potential updates that need to be done for each of the elements is provided below.

Land Use Element

- Update the Future Land Use map to reflect the approved UGA boundaries. These will reflect the County's decision on the 2005 UGA expansions. The City's work with the County may lead to other potential amendments if deemed necessary for the 2016 update.

- Demographics and population statistics need to be updated. The population projection must be consistent throughout the Plan, so other elements such as Housing may need to be updated to reflect the most recent projections.

- Population densities and building intensities – acreage of each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how it meets the twenty year population projection

- Research on the latest Best Available Science (BAS) needs to be done to determine if the current regulations on critical areas need to be updated.

Housing Element

- Update the statistics on housing that includes an inventory and analysis of existing and projected housing needs for the 20 year population projection.

- Identify sufficient land for housing – government assisted housing, housing for low income families, manufactured housing, group homes, and foster care facilities. – Inclusion in the zoning districts

- Adequate provisions for existing and projected housing needs for all economic segments –

- Policy regarding regulations of manufactured homes may need to be revised

Capital Facilities Plan Element

- Projects need to be identified for impact fees allocation. This can be done by identifying projects that are growth and non-growth related.

Transportation Element

- The Transportation Plan was adopted in 2007 and was intended to be a six year plan to identify improvements. However, it was also a long term plan with forecasts to 2035. The Plan needs to be updated. The Transportation Plan, in goals and policies, meets most requirements needed for the update, however, LOS analysis, financing plan, etc need to be updated.

- Since land use and transportation are closely linked, an update to the transportation plan could consider various land use scenarios and assessments in the long term planning for improvements and level of service.

Consistency

- Consistency is a primary goal for the County Wide Planning Policies (CWPP). The city is working with the county to maintain consistency in policies that impact both jurisdictions.

It can be generally noted from the extensive list of requirements that are in the attached checklist provided by the State that the current plan addresses most of the requirements and may not need to be amended. However, the amendments that do need to be done are fairly significant.

The attached checklist covers only the updates that are required for the Comprehensive Plan. Staff is currently reviewing the Development Regulations that need to be updated. Information on that will be provided at the next meeting.

ATTACHMENT B

Public Participation Plan

2016 Comprehensive Plan Update

Section RCW 36.70A.140 of Washington Statutes requires local governments to establish and broadly communicate to the public a Public Participation Plan which identifies procedures providing for "early and continuous public participation" in the amendment of the Comprehensive Plan and development regulations implementing such plan.

Development Services Department
City of Oak Harbor
9/16/2014

Introduction

Oak Harbor's comprehensive plan and development regulations need to reviewed periodically and updated to reflect current laws, correct errors, input new data, and/or clarify intent. Washington State's Growth Management Act (GMA) requires Oak Harbor to do this review and update its comprehensive plan and development regulations by June 2016.

As part of this update process, Section RCW 36.70A.140 of Washington Statutes requires local governments to establish and broadly communicate to the public a Public Participation Plan which identifies procedures providing for "early and continuous public participation" in the amendment of the Comprehensive Plan and development regulations implementing such plan.

The city recognizes the importance and necessity of the public involvement process. The city has several boards and commissions that serve in various capacities to foster public input, discuss complex issues, further goals and policies of adopted plans and make recommendations to the governing body. The Planning Commission of Oak Harbor serves as the hearing board for amendments and updates to the city's comprehensive plan and development regulations. The Planning Commission makes recommendations to the City Council who ultimately decides on the adoption of amendments and updates. All meetings of the Planning Commission and the City Council are open to the public and have dedicated time for public input on their agenda.

Goals and Objectives

The goal of the Public Participation Plan is to provide the public with complete information, timely public notice, full public access to key decisions, and support early and continuous involvement in the process. It is also the goal of the PPP to provide the public with sufficient information so that there is an understanding of the process, and opportunities to review and comment on update decisions before they are made. Public is defined broadly to include individual citizens, interest groups, trade groups, government agencies, utilities and service providers and businesses.

The city's current comprehensive plan and development regulations integrates public involvement into its decision making process. OHMC 18.15 outlines the requirements on public involvement during annual amendments to the comprehensive plan and OHMC 18.20 provides the regulations for public noticing for permit process and other development regulated activities. Though the city will abide by all the existing requirements, this Public Participation Plan describes the steps that the City of Oak Harbor will take to involve the community in decisions regarding the 2016 Comprehensive Plan Periodic Update.

Stakeholders and Public Groups

The GMA does not exempt any portion of a comprehensive plan or development regulation from being subject to review and evaluation. However, there are some key elements that need to be

reviewed and updated based on changes to laws. The Department of Commerce has provided a checklist to help cities determine the portions of a comprehensive plan that needs to be updated. A review of the plan against this checklist provides a scope of the amendments necessary to comply with GMA.

The scope of the update will determine the involvement of key stakeholders and interest groups. It is beneficial to identify these groups and involves them early in the process.

Some of the groups and individuals that could have a potential interest in public input and involvement opportunities are identified below. This list serves as an initial identifier of interested groups and is not intended to exclude any groups from the process.

- Government agencies – state, county, school districts etc.
- NAS Whidbey
- Chamber of Commerce and other business groups
- Media – newspaper
- Organizations and individuals who have been notified of public hearings for major projects, or organizations and individuals who have submitted written comments on other major projects.
- Whidbey Environmental Action Network
- SICBA

Information Access

All reports and documents generated for the 2016 Update to the Comprehensive Plan is available to the public for review. This information can be viewed at Oak Harbor's city hall or online at the city's website www.oakharbor.org under the Development Services Department/Planning Division and under the Plans under progress.

Outreach Techniques

As mentioned earlier, the Planning Commission shall serve as the primary body to discuss, review and recommend changes to policies and regulations regarding the 2016 update. The Planning Commission meetings will be advertised on the city's website and in the local newspaper. The agenda for the Planning Commission meeting are noticed in the newspaper two week prior to the meeting date. Reports to the Planning Commission are posted on the city's website five days before the meeting date.

The City maintains an active involvement in the local government access cable channel. All Planning Commission meeting are recorded and then played back on channel 10 at a minimum of 5 times a week till the next meeting. The rebroadcasting provides the public access to the process and information of key decisions during the review process.

The City's website www.oakharbor.org has links on the home page to the Planning Commission's agendas and reports. It lists the date of the next upcoming Planning Commission meeting on the calendar. The website also has an "Oak Harbor News" section on the homepage that will also be used to notice of any special meetings associated with the 2016 update.

The city's website also contains information on the 2016 update in the Development Services section under "Departments" tab on the homepage. It is under the "Plans under progress" section of the Planning Division. This section of the website will have access to reports, studies, and issue papers that are related to the update.

The Development Services Department maintains a list of interested groups and individuals that have expressed interest in Comprehensive Plan related issues since 2005. Notices of meeting related to the 2016 update will be mailed to them.

During the update process, various other methods of outreach may be used based on the kind of input that is most efficient and helpful to the issue under consideration. This can range from open houses, surveys, ad hoc committees, workshops, public displays etc.

Input Mechanisms

The City accepts input and comments from the public through a variety of means. Members of the public can visit with planners in the Development Services Department to make comments and provide input. Members of the public can also make comments by calling the Development Services Department at 360-279-4510. Written comments are the most effective way to get on record with the comprehensive plan update. Comments can be faxed to the city at 360-279-4519 or mailed to

Development Services Department
Attn: 2016 Update
865 SE Barrington Ave
Oak Harbor, WA 98277

Public comments can also be emailed to a dedicated 2016 update email account – 2016update@oakharbor.org.

The public may also make verbal comments or submit written comments at Planning Commission meetings and City Council meetings. There is a dedicated time on the agenda for public input on general issues at these meetings. The Planning Commission and City Council always entertain public comments when a particular comprehensive plan item is on the agenda for discussion.

Interested members of the public or a representative of a group, with expressed comments on a particular topic may request to serve on committees if one it activated.

Contact information

The City of Oak Harbor believes firmly in the essential role of the public in the 2016 Comprehensive Plan update process, welcoming any and all comments from citizens or groups concerning comprehensive plan policies or development regulations. Members of the public can provide comments to any of the planners in the Development Services Department. The primary contact for the update is provided below.

Senior Planner, Cac Kamak, AICP.
Development Services Division
Attn: 2016 Update
865 SE Barrington Ave
Oak Harbor, WA 98277

Email: 2016update@oakharbor.org
Website: www.oakharbor.org

RESOLUTION NO. 13- 17

A RESOLUTION ACCEPTING THE 20 YEAR POPULATION PROJECTION FOR ISLAND COUNTY AS A BASIS FOR THE 2016 COMPREHENSIVE PLAN UPDATE AND THE COUNTY WIDE PLANNING POLICIES

WHEREAS, in accordance with RCW 36.70A.110, counties planning under RCW 36.70A.040 are required to plan for growth projected to occur for the succeeding twenty year period; and

WHEREAS, RCW 36.70A.210 requires each county planning under the Growth Management Act (GMA) to adopt county-wide planning policies (CWPP) in cooperation with cities located within the county; and

WHEREAS, the CWPP is used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to GMA; and

WHEREAS, the framework for the CWPP is to ensure that city and county comprehensive plans are consistent; and

WHEREAS, selecting a twenty year population projection is the basis for planning for growth in the county and the cities within it; and

WHEREAS, accepting the twenty year (2016-2036) population projection for the County provides consistency between City and County Comprehensive Plans; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Oak Harbor accepts the population of 87,917 for Island County as the projected population for the 2016-2036 planning period:

PASSED by the City Council and approved by its Mayor this 7th day of August, 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

City Clerk

Approved as to form:

Grant Weed, Interim City Attorney

Chapter 19.12

ESTABLISHMENT OF DISTRICTS

Sections:
19.12.010 Establishment and designation of use districts.

19.12.010 Establishment and designation of use districts.

In order to classify, regulate, restrict and segregate the uses of land and building, to regulate and restrict the height and size of buildings, to regulate the area of yards and other open spaces about buildings, and to regulate the density of population, classes of use districts are established. The following table identifies the zoning districts which implement the land use designations from the comprehensive plan:

Comprehensive Plan Land Use Designation		Zoning District	
PRE	Planned Residential Estate	PRE	Planned Residential Estate
LD	Low Density Residential	R-1	Single Family Residential
		R-2	Limited Multifamily Residential
		R-3	Multifamily Residential
HR/LC	High Intensity Residential/Low Intensity Commercial	R-4	Multifamily Residential
		RO	Residential Office
		C-1	Neighborhood Commercial
HIC	High Intensity Commercial	C-3	Community Commercial
		C-4	Highway Service Commercial
		C-5	Highway Corridor Commercial
CBD	Central Business District	CBD	Central Business Districts
IBP	Industrial/Business Park	PBP	Planned Business Park
		PIP	Planned Industrial Park
		I	Industrial
PF	Public Facilities	PF	Public Facilities
ORA	Open Space, Recreation and Agriculture	OS	Open Space

2017—2011

Capital Improvement Plan

Public Meeting

City of Oak Harbor
Planning Commission Report

Date: May 10, 2016
Subject: 2017-2011 Capital Improvement Plan

FROM: Steve Powers, Development Services Director

The 2017-2011 Capital Improvement Plan (CIP) was still under review at the time the Planning Commission packet was distributed, therefore the Draft CIP will be presented at the meeting.

Medical Marijuana Code Update

Public Meeting

City of Oak Harbor
Planning Commission Report

Date: May 10, 2016
Subject: Medical Marijuana Update

FROM: Dennis Lefevre, Senior Planner, Development Services Department

PURPOSE

By Ordinance No. 1740 (passed September 1, 2015) the City Council extended the moratorium on the establishment of medical marijuana dispensaries and collective gardens for one year. The one-year extension was also intended to provide an opportunity to monitor amendments and new legislation pertaining to the Cannabis Patient Protection Act (CPPA) passed in April 2015. There has been some implementation of this Act by the Washington State Liquor and Cannabis Board (LCB) and Department of Health (DOH). The purpose of this meeting is to update the Planning Commission on the implementation steps which have occurred and discuss potential next steps.

BACKGROUND

Ordinance No. 1685 established parameters for the siting of recreational marijuana producers, processors and retailers through creation of Oak Harbor Municipal Code (OHMC) Chapter 19.22, Marijuana Related Uses. Chapter 19.22 allows producers and processors to locate in the city's planned industrial park and industrial zones. Retailers may locate in the city's industrial and highway service commercial zones (C-4). Neither facility is allowed within 1000 feet of sensitive areas[1].

The passage of the CPPA provided guidance to link the regulatory structure developed for the recreational marijuana industry to the previously un-regulated medical marijuana industry. As yet, the City of Oak Harbor has no specific regulations to guide the siting of potential medical marijuana producers, processors, or retailers.

DISCUSSION

Cooperatives

As of July 1, 2016, medical collective gardens will be prohibited. In their place will be cooperatives. These cooperatives are formed by four or fewer qualifying patients who share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative. All members must hold valid recognition cards[2]. Qualifying patients and designated providers who wish to form a cooperative must register the location with LCB. The location must be in the domicile of one of the cooperative members. Cooperatives are

[1] Sensitive areas include: elementary and secondary schools; playgrounds; recreation center or facility; child care center, public park; public transit center; library; or any game arcade venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted.

[2] Recognition cards are issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana authorization database.

prohibited within one-mile of a licensed marijuana retailer (note: the CPPA - Section 26(1) - is not specific whether the retailer is for recreational or medical marijuana).

In addition to the one-mile restriction, cooperatives are also prohibited within 1,000' feet of a sensitive areas (RCW 69.51A.250(3)(b)(i).

In March, 2016 the Municipal Research and Services Center (MRSC) issued an opinion regarding locational restrictions for qualifying medical marijuana patients and cooperatives. As suggested by MRSC, a city may not restrict the growing of marijuana plants by qualifying patients in their own housing units in compliance with state law. RCW 69.51A.210 allows a qualifying patient to grow "in his or her domicile" up to either four, six, or fifteen plants as long as they are not "readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit (RCW 69.51A.260(2)". While, under RCW 69.51A.250(3)(c), a city or county may prohibit the newly-authorized marijuana cooperatives in certain zones or, presumably, even entirely. The MRSC opinion is included as Attachment 1.

Licensing

As authorized under the CPPA[3], the LCB increased the number of licensed marijuana retailers statewide from 334 to 556 to ensure the needs of medical marijuana qualifying patients were met. One additional license was allocated to Oak Harbor.

As of July 1, 2016, every licensed marijuana retailer has the opportunity to add a medical marijuana endorsement. The CPPA directed the DOH to establish consultant certification requirements in order for retailers to achieve certification as a medical marijuana retailer. These requirements include:

- Be 21 years of age or older;
- Complete a DOH approved 20-hour training or education program[4];
- Complete CPR training; and,
- Complete and submit the Medical Marijuana Consultant Certification application.

All LCB marijuana license applications or cooperative registrations are provided to the local jurisdiction for review and comment. The local jurisdiction has twenty days to respond to the license request.

Specialty Clinics

The DOH was required[5] to: "develop recommendations on establishing medical marijuana specialty clinics that would allow for the authorization and dispensing of medical marijuana to patients of

[3] 2SSB 5052 Section 8.

[4] This program must include: The medical conditions that constitute terminal or debilitating conditions, and the symptoms of those conditions; Short and long-term effects of cannabinoids; Products that may benefit qualifying patients based on the patient's terminal or debilitating medical condition; Risks and benefits of various routes of administration; Safe handling and storage of useable marijuana, marijuana-infused products, and marijuana concentrates, including strategies to reduce access by minors; demonstrated knowledge of RCW 69.51A and the rules adopted to implement it; and other subjects deemed necessary and appropriate by the DOH secretary to ensure medical marijuana consultant certificate holders are able to provide evidence-based and medically accurate advice on the medical use of marijuana.

health care professionals who work on-site of the clinic and who are certified by the DOH in the medical use of marijuana".

The DOH acted on this mandate and prepared a document which provided their findings and recommendations. The DOH did not support establishing medical marijuana specialty clinics in Washington at this time. The attached document "Medical Marijuana Specialty Clinics", December, 2015, provides the four-point rationale for their recommendation. Those points are summarized below:

- Under federal law, marijuana is a schedule I controlled substance. This means it is classified as having a high potential for abuse, no accepted medical use, and a lack of accepted safety. Healthcare practitioners cannot legally prescribe or dispense schedule I controlled substances and would potentially risk criminal prosecution, as well as civil and financial liability.
- Injured patients may be left without an adequate remedy if malpractice does occur.
- Further research using accepted scientific protocols is needed.
- Significant changes to existing licensing laws for commercial marijuana would be needed. Without such changes, practitioners at specialty clinics would not be able to access the marijuana they would later dispense to patients, which could present issues with supply.

Specific Siting Limitations

Both recreational and medical marijuana producers, processors and retailers are also restricted from locating within 1,000' of a sensitive area. This distance and sensitive areas, identified in the CPPA Section 6(8), are identical to the distance and sensitive areas identified in OHMC Chapter 19.22.

E2SSB 2136, passed by the State Legislature in June 2015, gave deference to local jurisdictions to reduce this 1,000' restricted zone to not less than 100' provided the local jurisdiction enacts an ordinance authorizing such distance reduction. This distance reduction does not apply to elementary and secondary schools or playgrounds.

NEXT STEPS

With OHMC Chapter 19.22 addressing recreational marijuana producers, processors and retailers, the focus is on the medical marijuana providers. The existing recreational retailer and the potential new retailer (Goldie Road) have both indicated their intent to pursue licensing as a medical marijuana provider as authorized under the CPPA.

With the allocation of retail licenses for both recreational and medical potentially exhausted, expansion of OHMC Chapter 19.22 to include medical marijuana producers, processors and retailers may be a relatively simple code amendment. Limiting producers and processors to the same zones as recreational producers and processors may also be acceptable.

As noted earlier in this report, individual marijuana production and use by a qualifying patient is permitted by state statute. Local jurisdictions have civil recourse if the activity is seen or smelled

[5] 2SSB 5052 Section 41.

from another location.

The somewhat more difficult issue will be addressing cooperatives. As noted, under RCW 69.51A.250(3)(c), a city or county may prohibit the newly-authorized marijuana cooperatives in certain zones or, presumably, even entirely, according to MRSC. Statute restricts the operation of a cooperative to the domicile of one of the registered members and these cooperatives must be one-mile from a licensed marijuana retailer and 1,000' from sensitive areas (RCW 69.51A.250(3)(b)(i). No restrictions are placed on distance from one cooperative to another. Map 1 shows the one-mile radius from the marijuana retailers.

Open for discussion is the level of locational restrictions, if any, the community should place on cooperatives which may locate in any housing unit outside of the one-mile radii shown on Map 1.

RECOMMENDATION

No formal action is required. Your comments and feedback on this issue are welcome.

ATTACHMENTS

1. Municipal Research Service Center's opinion on medical marijuana cooperatives.
2. Medical Marijuana Specialty Clinics, Washington State Department of Health, December, 2015.
3. Map 1 – 1-Mile Radius Prohibiting Cooperatives in Oak Harbor

ATTACHMENT 1

Source: Municipal Research Services Center website: mrsc.org

May a city regulate, through zoning, where in the city medical marijuana patients may grow marijuana plants in their own housing units?

In our opinion, a city may not restrict the growing of marijuana plants by qualifying patients in their own housing units in compliance with state law. RCW 69.51A.210, enacted as part of the 2015 medical marijuana legislation, allows a "qualifying patient" (defined in RCW 69.51A.010(19)) to grow "in his or her domicile" up to either four, six, or fifteen plants, the number depending on factors identified in that statute. The growing of such plants may not, however, "be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit." RCW 69.51A.260(2).

While, under RCW 69.51A.250(3)(c), a city or county may prohibit the newly-authorized (as of 7/1/2016) marijuana cooperatives in certain zones or, presumably, even entirely, no such authorization is provided to cities and counties with respect to the growing of plants by individual, qualifying patients in their housing units. Any such prohibition of qualifying patients growing marijuana plants in their housing units in a particular zone or citywide would be in conflict with state law that permits such growing by qualifying patients in their housing units.

As such, it is our opinion that the right given by statute to qualifying patients to grow marijuana plants in their housing units cannot be restricted or prohibited by local zoning.

Note, however, that the city "may create and enforce civil penalties, including abatement procedures, for the growing or processing of marijuana and for keeping marijuana plants beyond or otherwise not in compliance with" RCW 69.51A.260.

ATTACHMENT 2

Information Summary and Recommendations

Medical Marijuana Specialty Clinics

December 2015

Publication Number 631-059

For more information or additional
copies of this report contact:

Health Systems Quality Assurance
Office of the Assistant Secretary
P.O. Box 47850
Olympia, WA 98504-7850
360-236-4612

John Wiesman, DrPH, MPH
Secretary of Health

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Executive Summary

During the 2015 legislative session, Second Substitute Senate Bill 5052 (SB 5052) was passed by the legislature. It was signed by Governor Inslee on April 24, 2015. Section 41 requires the Department of Health (department) to "develop recommendations on establishing medical marijuana specialty clinics that would allow for the authorization and dispensing of marijuana to patients of health care professionals who work on-site of the clinic and who are certified by the department in the medical use of marijuana."

The medical use of marijuana was first authorized by Washington State Voter Initiative 692 in 1998. Legalization of recreational marijuana followed in 2012 by Initiative 502, which allowed the purchase and possession of small amounts of marijuana for adults, and created a taxed and highly regulated system for the production, processing and retail sale of marijuana. This resulted in the existence of two distinct markets – the unregulated medical market and the regulated recreational market. The legislature reconciled the two markets with the passage of SB 5052 and Second Engrossed Second Substitute House Bill 2136 earlier this year. However, the medical use of marijuana remains illegal at the federal level despite a certain level of tolerance conditioned upon full compliance with applicable state laws.

Recommendation

The department does not support establishing medical marijuana specialty clinics in Washington at this time.

Rationale:

- Healthcare practitioners cannot legally prescribe or dispense schedule I controlled substances and would potentially risk criminal prosecution, as well as civil and financial liability.
- Injured patients may be left without an adequate remedy if malpractice does occur.
- Further research using accepted scientific protocols is needed.
- Significant changes to existing licensing laws for commercial marijuana would be needed. Without such changes, practitioners at specialty clinics would not be able to access the marijuana they would later dispense to patients, which could present issues with supply.

Instead, the department recommends that individual practitioners become, to the extent possible given limited scientific research, educated and knowledgeable about the risks and benefits of the medical use of marijuana so they can provide their patients with accurate information and safe, competent care.

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Background

Requirements of Second Substitute Senate Bill 5052

During the 2015 legislative session, SB 5052 was passed by the legislature. It was signed by Governor Inslee on April 24, 2015. Section 41 requires the department to "develop recommendations on establishing medical marijuana specialty clinics that would allow for the authorization and dispensing of marijuana to patients of health care professionals who work on-site of the clinic and who are certified by the department in the medical use of marijuana." Recommendations must be reported to the chairs of the healthcare committees of both the Senate and House of Representatives by December 1, 2015.

Brief History of Medical Marijuana in Washington

The medical use of marijuana was first authorized by Washington State Voter Initiative 692 in 1998. It granted an affirmative defense to criminal prosecution to qualifying patients and their primary caregivers.[1] The patient was required to have a recommendation from a healthcare practitioner and could possess no more than a 60-day supply of marijuana.

The initiative, codified as chapter 69.51A RCW, was amended many times over the years. For example, the list of terminal or debilitating conditions has been expanded, as has the list of healthcare professionals who may recommend or authorize the medical use of marijuana. Notably, a 2011 amendment allowed up to 10 qualifying patients and designated providers to form a collective garden for the purposes of combining resources.

In November of 2012, Washington voters passed Initiative 502. I-502 legalized the purchase and possession of small amounts of marijuana for all adults. It also created a taxed and highly regulated system for the production, processing and retail sale of marijuana. This resulted in the existence of two distinct markets – the unregulated medical market and the regulated recreational market.

The legislature reconciled the two markets with the passage of SB 5052 and Second Engrossed Second Substitute House Bill 2136 earlier this year. It is important to note, however, that the medical use of marijuana is not yet legal at either the state[2] or federal level. Beginning July 1, 2016, SB 5052 will legalize the medical use of marijuana for patients and designated providers who are entered into a patient authorization database. Patients and designated providers who choose not to be entered in the database will continue to have an affirmative defense to criminal prosecution. The medical use of marijuana remains illegal at the federal level despite a certain level of tolerance conditioned upon full compliance with applicable state laws.[3]

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[1] "Primary caregiver" was changed to "designated provider" in ESSB 6032 (2007).

[2] State v. Reis, No. 90281-0 (Washington Supreme Court, May 7, 2015)

[3] A 2015 federal spending bill contained the following language, "None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California…Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." The U.S. Department of Justice also indicated tolerance of recreational marijuana if states enact strong regulatory and enforcement systems that promote eight priorities that are particularly important to the federal government. http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf, accessed November 5, 2015.

Summary of Information

Marijuana Remains Illegal Under Federal Law

Under federal law, marijuana is a schedule I controlled substance. This means it is classified as having a high potential for abuse, no accepted medical use, and a lack of accepted safety.[4] Healthcare practitioners cannot legally prescribe or dispense schedule I controlled substances.

In 2011, former Governor Chris Gregoire, together with the governor of Rhode Island, petitioned the Drug Enforcement Administration (DEA) to reclassify marijuana as a schedule II controlled substance. Such rescheduling would make marijuana a drug with accepted medical uses but strict regulation due to a potential for addiction. This would seriously impact patients' ability to grow their own marijuana. It would also conflict with Washington's existing regulatory system for both medical and recreational marijuana because schedule II controlled substances can only be dispensed by healthcare practitioners authorized to do so by law.

The DEA has not acted on the petition to reschedule marijuana. Thus, it remains illegal under federal law for practitioners to prescribe or dispense marijuana.[5]

Conant v. Walters[6]

California became the first state to recognize the medical use of marijuana with the passage of Proposition 215 in 1996. Shortly thereafter, the federal government promulgated a policy declaring a physician's action of recommending or prescribing a schedule I controlled substance would lead to revocation of the physician's DEA registration to prescribe controlled substances. Two months later, the Department of Justice and Department of Health and Human Services sent a letter to national, state, and local practitioner associations outlining the policy and warning that physicians who intentionally provide their patients with oral or written statements in order to enable them to obtain controlled substances in violation of federal law risked revocation of their DEA prescription authority.

Patients suffering from serious illnesses, physicians licensed in California, a patient organization, and a physicians' organization (collectively "Conant") filed an action in 1997 to enjoin enforcement of the government's policy insofar as it threatened to punish physicians for communicating with their patients about the medical use of marijuana. The District Court granted Conant a permanent injunction against the government which was later upheld by the Ninth Circuit Court of Appeals.[7] The United States Supreme Court declined to hear further appeal of the case. Thus, it remains binding case law to this day.

The Court in Conant held that physician speech, including speech about the potential benefits of medical marijuana, is entitled to First Amendment protection because of the significance of the doctor-patient relationship. The possibility that the physician's recommendation may lead to

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[4] 21 U.S.C. § 812(b)(1)

[5] The National Institute of Drug Abuse (NIDA) does contract with the University of Mississippi to grow marijuana for use in approved research studies. It also provides marijuana to a very small number of patients under the Compassionate Investigational New Drug Program which was established in the late 1970s and is currently closed to new participants. Neither of these actions by NIDA alters the federally illegal status of marijuana.

[6] Conant v. Walters, 309 F.3d 629, United States Court of Appeals, 9th Circuit, 2002

[7] The Ninth Circuit includes California, Arizona, Nevada, Hawaii, Montana, Idaho, Alaska, Oregon and Washington.

federally illegal conduct by the patient, i.e. possession of marijuana, is not sufficient to overcome the physician's First Amendment rights. However, the Court recognized the slippery slope between orally recommending the medical use of marijuana and taking affirmative steps toward facilitating a federal crime. The injunction specifically did not bar federal prosecution of a physician when government officials in good faith believe they have probable cause to charge under aiding and abetting or conspiracy charges.

While the Court held that merely recommending the medical use of marijuana does not rise to the level of aiding and abetting or conspiracy, it stated:

> "A doctor would aid and abet by acting with the specific intent to provide a patient with the means to acquire marijuana. Similarly, a conspiracy would require that a doctor have knowledge that a patient intends to acquire marijuana, agree to help the patient acquire marijuana, and intend to help the patient acquire marijuana."[8]

Under this holding, healthcare practitioners who dispense marijuana to their patients would be at significant risk of federal administrative and criminal prosecution.[9]

Liability Issues

Under current Washington law, authorizing practitioners do not prescribe or dispense marijuana. Instead, they may authorize or recommend its medical use. This is consistent across the other 22 states and Washington, D.C. that have some sort of medical marijuana laws, as well as the 17 states that currently allow high CBD/low THC[10] products for medical use. Most often, the patients themselves ask for the authorization. Once the authorization is provided, patients typically obtain the marijuana from a third party or grow it themselves. The authorizing practitioner may or may not discuss specific types of products available or routes of administration.

To date, the department has not identified any medical malpractice cases relating to the medical use of marijuana. This is not surprising given that patients typically expect to receive no more than an authorization from the healthcare practitioner, and the practitioner is not dispensing or administering the marijuana. However, as the medical use of marijuana becomes more widely accepted, it is likely that the expectations for practitioners will increase. Lawsuits alleging improper authorization, inadequate examination, adverse drug interactions, or failure to warn of risks such as driving under the influence, cognitive effects, or the potential for addiction are likely. This risk would increase if the practitioner also dispensed the marijuana. For example, a practitioner could be held liable for providing marijuana containing mold, unapproved pesticides, or other contaminants.

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[8] Conant at 636.

[9] A subsequent U.S. Supreme Court case held the U.S. Attorney General cannot, by interpretive rule, prohibit practitioners from prescribing Schedule II controlled substances in compliance with Oregon's Death with Dignity Act. Gonzales v. Oregon, 546 U.S. 243 (2006). However, that case involved prescribing and dispensing legal Schedule II drugs for a purportedly improper reason (i.e. to hasten death) rather than prescribing and dispensing marijuana, a Schedule I drug.

[10] Cannabidiol (CBD) is a cannabinoid that does not result in a "high" whereas tetrahydrocannabinol (THC) is the primary psychoactive component of marijuana.

In early October of 2015, a lawsuit was filed in Colorado by a pair of marijuana users, one of them a medical patient with a brain tumor. They sued a large state-licensed marijuana grower for allegedly using a potentially dangerous pesticide on products later introduced into the retail market. Had this marijuana been provided by a healthcare practitioner rather than purchased at a retail store, the practitioner could also potentially be held liable for distributing a tainted product.

Most healthcare liability insurers do not have specific exclusions for practitioners who authorize the medical use of marijuana, but many do have exclusions for any claim alleging a criminal violation of a state or federal law or rule. In the case of a medical malpractice claim based on authorizing or dispensing marijuana, coverage could be denied based on these exclusions until such time as the federal law is amended to allow prescribing and dispensing marijuana. This would leave the practitioner without liability insurance and vulnerable to significant financial loss. It could also lead to an injured patient having limited ability to collect on a claim against an insolvent practitioner.

Medicaid/Medicare Provider Eligibility

To provide services to Medicaid recipients in Washington, a healthcare practitioner must "[p]rovide all services according to federal and state laws and rules…" WAC 182-502-0016(1)(b). A practitioner's status as a Medicaid provider may be terminated for failure to abide by this requirement. WAC 182-502-0030(1)(ix). A practitioner who has been suspended or excluded from Medicaid may also be excluded from participation as a Medicare provider. 42 U.S.C. § 1320a-7(b)(5).

Healthcare practitioners in Washington who prescribed and dispensed marijuana in violation of federal law could be excluded from participation in both Medicaid and Medicare. In addition, they could be subject to financial penalties for services rendered to those patients.

Supply Issues

Currently, patients with a valid authorization for the medical use of marijuana have limited options for accessing products. They have an affirmative defense to criminal prosecution for growing up to 15 plants at any given time. They have the same affirmative defense if they participate in a collective garden with up to nine other patients or designated providers. Dispensaries, which are common although not authorized by law, are an off-shoot of the collective garden model. Patients age 21 and older can also purchase marijuana products from more than 200 stores licensed by the Washington State Liquor and Cannabis Board (LCB).

On July 1, 2016, collective gardens will be abolished. Patients and designated providers entered into the authorization database will be able to legally grow plants[11] and participate in small, noncommercial cooperative grows. All legal commercial marijuana, whether intended for medical or recreational use, will be grown, processed, and sold through the LCB's licensed system.

Under Washington's existing licensing laws for commercial marijuana, practitioners at a medical marijuana specialty clinic would not be able to access the marijuana they would later dispense to patients. Significant changes to the law would be required.

[11] The presumptive plant count will be six. A healthcare practitioner may authorize up to 15.

Lack of Scientific Evidence Regarding Efficacy and Standardized Dosing

Existing evidence does not prove that marijuana either is or is not beneficial for medical use. Many people claim marijuana provides more relief than approved prescription drugs, but this is still largely anecdotal. The level of health risks involved with the various routes of administration is also unknown. There is a genuine difference of expert opinion on the subject, with growing amounts of scientific and anecdotal evidence supporting both points of view.

In June of this year, the Journal of the American Medical Association (JAMA) printed a series of articles related to the efficacy of medical marijuana.[12] One article found the use of medical marijuana for chronic pain, neuropathic pain, and spasticity due to multiple sclerosis is "supported by high-quality evidence" and suggested that marijuana may be efficacious for these indications.[13] A second article found only low-quality evidence that marijuana was associated with improvements in weight gain in patients with HIV infection, and in treating nausea and vomiting due to chemotherapy, sleep disorders, and Tourette's syndrome. It also found an increased risk of short-term adverse events.[14]

A third article detailed a study of dose and label accuracy in edible marijuana products. It evaluated 75 products purchased at medical dispensaries in Seattle, San Francisco and Los Angeles. Of the 75 products, 17 percent were accurately labeled, 23 percent were under-labeled, and 60 percent were over-labeled with respect to THC content. Labeling of other cannabinoids was similarly problematic. Because the products were intended for use by patients with serious health conditions, these inaccuracies raise concerns about the quality and consistency of marijuana used for medical purposes.[15]

Finally, JAMA published an editorial pointing out that most of the conditions for which a patient may be authorized for the medical use of marijuana are based on "low-quality scientific evidence, anecdotal reports, individual testimonials, legislative initiatives, and public opinion." It further notes that unlike approved medications that have a relatively uniform composition, marijuana products vary substantially which makes precise dosing difficult. Marijuana is a complex organism with more than 400 compounds including more than 70 cannabinoids. Each of these cannabinoids has individual, interactive, and entourage effects that are not yet fully understood. Similarly, the interaction of marijuana with prescription drugs has not been sufficiently tested.[16]

These articles illustrate the compelling need for further research performed according to accepted scientific protocols. HB 2136 created a research license in order to allow clinical investigations and research regarding the efficacy and safety of administering marijuana as part of medical treatment.

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[12] http://jama.jamanetwork.com/Issue.aspx?journalid=67&issueID=934167&direction=P
[13] http://jama.jamanetwork.com/article.aspx?articleid=2338266
[14] http://jama.jamanetwork.com/article.aspx?articleid=2338251
[15] http://jama.jamanetwork.com/article.aspx?articleid=2338239
[16] http://jama.jamanetwork.com/article.aspx?articleid=2338230

Requirement to Certify Practitioners in the Medical Use of Marijuana

As described in SB 5052, healthcare practitioners working in medical marijuana specialty clinics would both authorize and dispense marijuana. These practitioners would require certification from the department "in the medical use of marijuana."

A license to practice a healthcare profession in the state of Washington grants the licensee the full scope of practice for that profession unless good cause exists to restrict the licensee's ability to practice. The department and our partner boards and commissions do not grant licenses based on practice specialties. For example, the Medical Quality Assurance Commission does not issue a license to practice as a pediatrician or a psychiatrist but instead sets the licensure standards for allopathic physicians generally. Specialty designations are granted by entities such as the American Board of Pediatrics or the American Board of Psychiatry and Neurology.

Multiple states require practitioners to register their intent to recommend or authorize marijuana with state licensing entities. Some states require a certain level of training prior to recommending or authorizing marijuana. In Massachusetts, a physician must have two hours of continuing education related to medical marijuana. In New Jersey, physicians must have completed medical education in addiction medicine and pain management within the past two years. New York law requires physicians to complete a four and one half hour online training course before they can provide guidance to patients regarding marijuana.

Findings

- **Marijuana remains illegal under federal law**

  Marijuana's federal status as an illegal schedule I controlled substance creates numerous obstacles to successful implementation. Healthcare practitioners cannot legally prescribe or dispense schedule I controlled substances.

- **Participating healthcare practitioners would potentially risk criminal prosecution**

  Although the court in Conant held that physician speech about the potential benefits of medical marijuana is entitled to First Amendment protection because of the significance of the doctor-patient relationship, it specifically did not bar federal prosecution of a physician when government officials in good faith believe they have probable cause to pursue aiding and abetting or conspiracy charges.

- **Liability issues**

  Liability coverage related to authorizing or dispensing marijuana is unlikely. This could leave practitioners vulnerable to significant financial loss, and injured patients without the ability to collect on potential malpractice claims. Practitioners could also be excluded from participation as Medicaid and Medicare providers.

- **Further research is needed**

  There is a compelling need for further research on the medical use of marijuana that is performed according to accepted scientific protocols. Without such research, healthcare practitioners have limited information about product efficacy, routes of administration, or standardized dosing.

- **Supply issues**

  Under existing licensing laws for commercial marijuana, practitioners at a specialty clinic would not be able to access the marijuana they would later dispense to patients. Significant changes would be required to allow them to either: 1) grow and process the marijuana themselves for the exclusive use of their patients; or 2) purchase large amounts of products at wholesale or retail from LCB licensees. Either option would present inventory issues due to the wide variation of strains and products used to treat Washington's diverse patient population – everything from edibles, infused liquids, tinctures, oils, lotions, capsules, transdermal patches, and suppositories to the hundreds of purported strains of dried marijuana.[17] Both scenarios would have to be carefully evaluated to assess and address concerns regarding security and diversion. If such changes to the law are made, the clinic should be required to be licensed by the LCB and fully participate in the seed-to-sale traceability system.

- **Certification of practitioners**

  There may be a more effective alternative to department certification of practitioners in the medical use of marijuana. A certain number of continuing education credits for any authorizing practitioner regardless of the practice setting could be required. The University of Washington's two-hour online continuing medical education course on medical marijuana is an example of an existing, accessible and low-cost option.

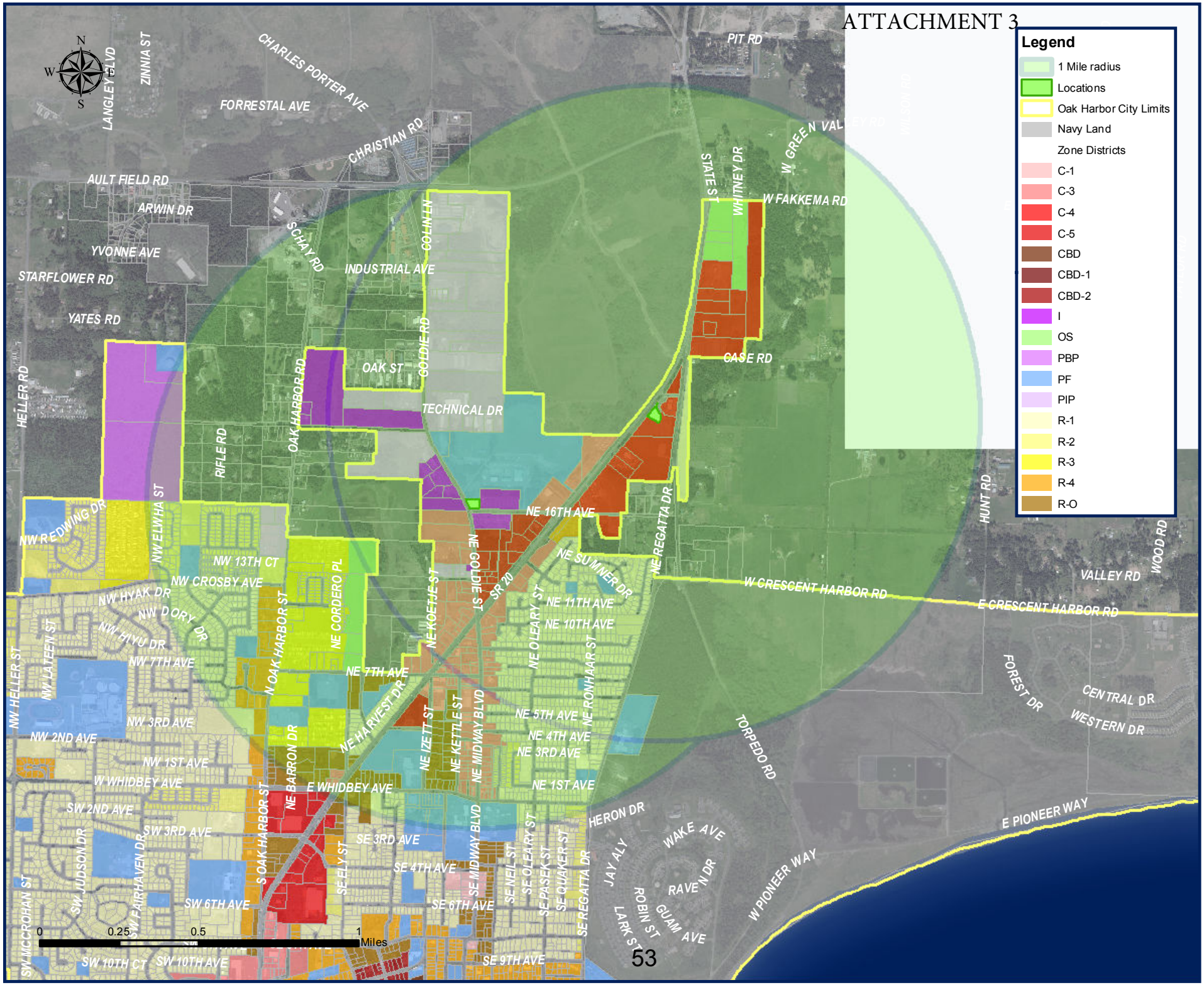
Recommendation

The department does not recommend establishment of medical marijuana specialty clinics at this time.

Rationale:

- Healthcare practitioners cannot legally prescribe or dispense schedule I controlled substances and would potentially risk criminal prosecution, as well as civil and financial liability.
- Injured patients may be left without an adequate remedy if malpractice does occur.
- Further research using accepted scientific protocols is needed.
- Significant changes to existing licensing laws for commercial marijuana would be needed. Without such changes, practitioners at specialty clinics would not be able to access the marijuana they would later dispense to patients, which could present issues with supply.

Instead, the department recommends that individual practitioners become, to the extent possible given limited scientific research, educated and knowledgeable about the risks and benefits of the medical use of marijuana so they can provide their patients with accurate information and safe, competent care.

[17] As of October 20, 2015, Leafly.com lists 1,614 strains of marijuana. https://www.leafly.com/explore/sort-alpha

ATTACHMENT 3