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via electronic mail (adam.crawfords@state.or.us) *only*

Senator Ginny Burdick and Representative Ann Lininger
Co-Chairs, Measure 91 Implementation Committee
900 Court Street NE, Room 347
Salem, Oregon 97301

RE: -5 Amendments to Senate Bill 844

Co-Chairs Burdick and Lininger:

This letter is in regards to the -5 Amendments to Senate Bill 844. I want to thank you and the other members of the Joint Committee on Implementing Measure 91 for all of the hard work you have put in on making Ballot Measure 91 (2014) work. I have been able to attend all of the committee's hearings to date. Unfortunately I will not be able to attend tonight's hearing. Accordingly, I would like to submit these comments on the -5 Amendments to Senate Bill 844.

My comments are confined to Section 3 of the -5 Amendments.

Section 3(2) of the -5 Amendments would prohibit the siting of a primary dwelling in conjunction with a farm use if the crop that is being grown is marijuana.

The -5 Amendments make a substantial change in Oregon's land use laws by carving out a large exception for farmers growing one type of crop. This amendment would allow a farmer who grows corn on her 80-acre parcel to build a dwelling, but a farmer who grows marijuana would not be allowed to build a dwelling on his 80-acre parcel.

The fundamental premise of Oregon's land use system is to protect resource lands for resource uses. The -5 Amendments would establish that growing marijuana is a farm use (i.e. a resource use) but not allow a dwelling in conjunction with that farm use. This makes no sense. Either growing marijuana is a farm use (and should be treated as a farm use like other crops – including the application of related land use laws) or it is not.

I understand the economic realities of growing marijuana that would make it easier for a landowner to qualify for a farm dwelling under the "$80,000 farm income test". If the concern is that it will now be easier to build dwellings on farm land because of the value of marijuana, I

would suggest amending the farm income test, not by effectively disallowing a farm use (growing marijuana) on farm land. Again, that makes no sense.

Subsection 3(2) of the -5 Amendments make no practical sense either. The fact is that marijuana is a far more valuable crop than, say, corn. It is far more likely someone will try to abscond with marijuana flowers than ears of corn. As a matter of security (and to prevent "leakage") it would seem that allowing a marijuana farmer to actually live on her property makes good sense. Subsection 3(2) of the -5 Amendments would make it nearly impossible for a marijuana farmer to live on her property.

Subsection 3(5) of the -5 Amendments are also somewhat troubling. This subsection of the -5 Amendments would require the Oregon Liquor Control Commission to withhold a license until a land use compatibility statement is received from the city or county where the proposed licensee is to be located.

My concern with this section of the -5 Amendments is the lack of a deadline for the local government to provide the land use compatibility statement. A city or county that is resistant to having licensees in their jurisdiction could take weeks or months delaying the issuance of a land use compatibility statement. I would suggest adding a maximum number of days for the jurisdiction to provide the land use compatibility statement to the Oregon Liquor Control Commission. If a land use compatibility statement is not received within that time period, it would be presumed the licensee's use is allowed in the zone where the licensee proposes to locate her business.

Finally, Subsection 3(6) of the -5 Amendments to Senate Bill 844 would require cities and counties to allow for marijuana licensees to be allowed in at least one zoning designation within the city or county. I have two concerns with this subsection.

First, few cities have land zoned for agriculture, and few counties have land zoned industrial. My concern is that cities and counties will "allow" marijuana licensees to operate in zoning designations (i.e. industrial) when no such land exists in the jurisdiction. A city could create an agricultural use designation (even though there may not be any agricultural land within the city's limits) and then say that marijuana licensees can only operate in agricultural zones. A county could do likewise with an industrial land zoning designation.

Although such a scenario may seem a bit far-fetched from inside the Capitol building, on the outside such a scenario is very close to reality. Several jurisdictions (e.g. city of Aumsville, city of Phoenix) have adopted ordinances that effectively make it impossible to locate a marijuana facilities within their jurisdictions. If the -5 Amendments were to be adopted as written, it would not surprise me in the least to see local governments take the approach I have described above.

Second, Subsection 3(6) of the -5 Amendment seem to conflict with Section 1 of the -5 Amendments. Section 1 of the -5 Amendments establishes the regulation of producing, processing, distributing and dispensing marijuana to be a matter of statewide concern; pre-empting local laws on the subject.

Subsection 3(6) of the -5 Amendments, however, requires local governments to amend existing comprehensive plans and zoning ordinances to allow for marijuana licensees. My concern is that under this grant of authority local governments will pass overly restrictive ordinances that would otherwise conflict with state law. When challenged, local jurisdictions will point to the -5 Amendments noting that while Section 1 established statewide pre-emption, Subsection 3(6) of the -5 Amendments carved out an exception to the statewide pre-emption of marijuana regulation as the regulation relates to zoning or such businesses.

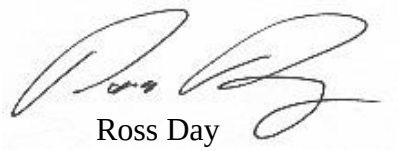
Such an argument may prevail in court. When interpreting a statute, the specific prevails over the general. ORS 174.020(2); *Kambury v. DaimlerChrysler Corp.*, 334 Or. 367, 50 P.3d 1163 (2002). Arguably Section 1 of the -5 Amendments provides a general statewide pre-emption of local regulation of marijuana, but Subsection 3(6) of the -5 Amendments provides a specific exception to that general rule.

I would suggest Subsection 3(6) of the -5 Amendments be amended itself as follows:

1. Make it clear that the zoning designation must currently exist in the city or county (perhaps at the time Senate Bill 844 is signed into law), and
2. Subsection 3(6) should not be interpreted to allow cities and counties to enact zoning ordinances that are inconsistent with the concept of statewide pre-emption contained in Section 1 of the -5 Amendments.

Thank you for taking the time to consider my concerns.

Best regards,



Ross Day

cc: Leland Berger, Esq.