
COMMENTS RECEIVED FOR PROPOSED RULE REVISIONS:
CITIZENS' PETITION TO PROHIBIT CERTAIN MARIJUANA USES
IN THE D-GN2 SUBDISTRICT

Part 3 of 3

The following pages compile written comments filed with the Maine Land Use planning Commission regarding the Citizens' Petition to prohibit certain marijuana uses in the D-GN2 subdistrict.

Rebuttal Comments: (Information or viewpoints that refute, contest, correct, or otherwise counter comments submitted during the comment period.) The deadline for submissions in rebuttal to prior comments is **August 2, 2021**. Rebuttal comments will be posted on the LUPC's rulemaking webpage (www.maine.gov/dacf/lupc/laws_rules/proposed_rules/rules.shtml) shortly thereafter.

[NOTE: Because personally identifiable information (PII)¹ can be used to conduct fraud (e.g., steal a person's identity), signatures and physical or mailing addresses have been redacted from these materials.]

¹ Information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, PII is defined as information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.) or (ii) by which an agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. [U.S. Dept. of Labor, www.dol.gov/general/ppii]

Memorandum

To: Land Use Planning Commission

cc: Judith C. East, Executive Director

From: Richard A. Spencer, Esq.
Petition Representative

Date: June 14, 2021

Re: Response to LUPC Staff Memorandum concerning Citizen’s Petition on Marijuana-Related Uses in the Community Center Development (D-GN2) Subdistrict

Please accept this memorandum on behalf of the 191 petitioners who filed a rulemaking petition with the Land Use Planning Commission (“LUPC”) to prohibit certain marijuana facilities and uses in the Community Center Development (D-GN2) Subdistrict (hereafter, referred to as the “Community Center Subdistrict”).

As you know, LUPC staff prepared an alternative draft rule that would have the same outcome as the rulemaking petition. The petitioners support the draft rule as rewritten by LUPC staff and we refer to it as the “draft rule” here.

This memorandum provides background information and context for why the petitioners filed the rulemaking petition, and also responds to a June 7, 2021 LUPC Staff Memorandum (hereafter, the “Staff Memo”), which was prepared to provide the Commission with “context and questions” that the LUPC staff anticipates would be valuable to the Commission in considering the draft rule.

BACKGROUND: THE PURPOSE OF THE DRAFT RULE

Under the draft rule, personal adult use of marijuana, medical marijuana home cultivation, and small-scale home-based medical marijuana caregiver operations that do not constitute retail stores (collectively “home based medical marijuana uses”) will continue to be allowed but adult use and medical marijuana cultivation, manufacturing, testing, and retail stores (collectively “major marijuana facilities”) will be prohibited in the following seven small Community Center Subdistricts located along the main public arterials and near population hubs in the three plantations located in the Rangeley Prospectively Zoned Area:

1. Dallas Plt.—along Route 16 near Gull Pond
2. Dallas Plt.—at the Evergreen Golf Club

3. Dallas Plt.—along Dallas Hill Road approaching golf club
4. Rangeley Plt.—at the intersection of Route 117 and Herbie Welch Trail
5. Rangeley Plt.—along the South Shore Road near southeast shore of Rangeley Lake
6. Rangeley Plt.—along Route 4 and northeast shore of Rangeley Lake
7. Sandy River Plt.—at the entry to Rangeley along Route 4

These Community Center Subdistricts are shown in pink on the map, below.



Source: LUPC Parcel Viewer. Community Center Subdistricts are shown in pink.

The Community Center Subdistrict was established, after a five-year long-term visioning and rulemaking process, for the purpose of accommodating land uses of a similar size, scale, and character that make up community centers. The Prospective Zoning Plan for the Rangeley Lakes Region (the “Rangeley Plan”) describes the essential character of Community Center Subdistricts as “livable community centers.” According to the Rangeley Plan:

These areas currently serve, or are planned to serve, as *focal points for community life*. They are characterized by a *mix of compatible residential, commercial, and civic uses that foster social interaction, provide access to local goods and services,* and are of a *scale and type* that reinforce the jurisdiction’s rural character.

(See Rangeley Plan Excerpts, attached hereto (emphasis added).)

The Community Center Subdistrict encompasses traditional or planned community centers and nodes of activity such as crossroads. Community Center Subdistricts are not intended to open the door to uses that are incompatible with residential uses. (*Id.*)

The Rangeley Plan sets limits on the size of commercial structures and identifies the types of uses to be permitted in community centers to those uses that are compatible with community centers and foot traffic. Notably, the Rangeley Plan and Chapter 10 list the following specific commercial uses as the type of commercial uses that are appropriate for and allowed in the Community Center Subdistrict:

- Retail shops
- Restaurants
- Bed and breakfasts
- Professional and financial services
- Trades such as cabinetry or shoe repair
- Artisan shops and galleries
- Retail sale of gas (up to 2 pumps)

To achieve the community’s vision for the area, the Rangeley Plan established a prospective zoning framework and raised the bar on rezoning so that everyone would “stick to the plan.” The LUPC staff’s recent interpretation of Chapter 10 and the Commission’s rulemaking in 2020, however, have altered this zoning framework by effectively declaring *all* marijuana uses to be commercial uses that are generally compatible with residential development and, therefore, allowed in the Community Center Subdistrict.

The Staff Memo likewise compares marijuana uses to traditional commercial uses that are commonly viewed as compatible with residential uses. These comparisons do not recognize the true nature of the marijuana facilities and uses currently being constructed and operated in Maine.

As explained next, major marijuana facilities (including marijuana cultivation, processing, manufacturing, and testing facilities and marijuana retail stores) are not compatible with residential uses; they are not comparable to commercial uses traditionally located in mixed-use zones; and they are not consistent with the land use policy goals of the Rangeley Plan—including, specifically, the unique purpose and nature of the Community Center Subdistrict.

In deciding whether major marijuana facilities should be permitted within the Community Center Subdistrict, it is important to understand the Legislature’s intent to provide broad discretion to communities over the regulation of marijuana businesses. The nature and scope of marijuana businesses that are operated outside of a primary residence, and the land use impacts that make these uses incompatible with residential uses have resulted in the majority of municipalities that allow and regulate these uses to classify them as light industrial or industrial use—not commercial uses.

At the core of the Marijuana Legalization Act and the local authorization provisions in the Medical Use of Marijuana Act is the principle that communities should have the final say in what marijuana activities are permitted within their community and how those uses are regulated. The reasons that the Legislature granted such broad discretion to local communities are threefold.

First, while Maine voted to legalize and regulate medical and then adult use marijuana through the citizen's initiative process, it was a close vote – 50.3% in favor of legalization and 49.7% against legalization – with the majority of municipalities voting against legalization.

Second, marijuana continues to be a Schedule I Drug under the federal Controlled Substances Act and, despite being legalized at the state level, similar to alcohol, which is also legal, can have significant impacts on public health and safety. For example, marijuana is a psychoactive and has an impairing effect on its users making impaired driving a concern; it has potential for addiction; regular use by minors can have long-term impacts on cognitive functioning; and because it is illegal at the federal level there continues to be a robust and lucrative illicit market.

Finally, legal marijuana operations – cultivation and manufacturing activities occurring indoors within a controlled environment – that are not being operated within a primary residence tend to be akin to industrial or light industrial uses. They also have very specific land use impacts. Those impacts include:

- **Odor** which is emitted from all marijuana plants in both the vegetative and generative phases of the plants' life cycle with the heaviest odor emissions come from flowering plants and harvesting activities;
- **Noise** from HVAC and other engineering systems necessary to maintain a controlled environment;
- **Security** issues arising from the fact that marijuana and marijuana products are more susceptible to theft than other commodities due to the lucrative illicit market (a pound of marijuana can be sold in the illicit market for \$5,000); and
- **Fire hazards** unique to these operations as demonstrated by the National Fire Protection Association (NFPA) decision to devote an entire chapter (chapter 38) of their model code to marijuana cultivation and manufacturing operations.

Because of the land use impacts of marijuana cultivation and manufacturing, most Maine communities that allow marijuana cultivation and manufacturing operations outside of the primary residence only allow these uses within their industrial and light industrial zones or, absent zoning, require these operations to be located certain distances and buffered from uses such as day cares, schools, playgrounds, churches, libraries, and residences. In many communities, the local ordinance provides that even if the operation is located within an industrial or light industrial zone, it must also be set back a certain distance from any residence or residential boundary. The reason for this is that marijuana cultivation and manufacturing – specifically, the odor, noise, and security – when occurring outside a primary residence, which naturally restricts the size and scope of the operation – are not compatible with residential uses.

For all of these reasons, major marijuana facilities are not compatible with the Community Center Subdistricts in Dallas, Sandy River, and Rangeley Plantations and should not be allowed in those subdistricts.

RESPONSE TO FIRST QUESTION IN STAFF MEMO: The Marijuana Uses Prohibited by the Draft Rule Are Not Similar To Other Allowed Commercial Uses in the Community Center Subdistrict

As noted above, the Rangeley Plan clearly sets out both the unique characteristics of the Community Center Subdistrict and lists the types of specific uses that are appropriate for this zone. When evaluated against these specific features and uses, it is quite clear that major marijuana facilities and uses are at odds with the unique features and characteristics of the Community Center Subdistrict.

Rangeley Plan Identified Features of D-GN2 Zoning:	Focal points for community life	Foster social interaction	Provide access to local goods and services	Provide a mix of compatible residential, commercial, and civic uses	Are of a rural scale and type
Commercial Uses identified as compatible with residential uses in the D-GN2:					
Retail shops	Yes	Yes	Yes	Yes	Yes
Restaurants	Yes	Yes	Yes	Yes	Yes
Bed and breakfasts	Yes	Yes	Yes	Yes	Yes
Professional and financial services	Yes	Yes	Yes	Yes	Yes
Trades such as cabinetry or shoe repair	Yes	Yes	Yes	Yes	Yes
Artisan shops and galleries	Yes	Yes	Yes	Yes	Yes
Retail sale of gas (up to 2 pumps)	Yes	Yes	Yes	Yes	Yes
Marijuana Uses Prohibited in the Community Center Subdistrict by the Draft Rule:					
Marijuana cultivation	No	No	No	No	No
Marijuana processing	No	No	No	No	No
Marijuana manufacturing and testing	No	No	No	No	No
Marijuana retail stores	No	No	See Note 1 ¹	No	No

¹ Under the draft rule, medical marijuana caregivers in the Community Center Subdistrict would be permitted to sell medical marijuana to their individual patients by appointment, but would not be permitted to operate a retail store

RESPONSE TO SECOND QUESTION IN STAFF MEMO: The Citizens' Petition is the Appropriate Public Process to Address the Policy Issues Regarding Marijuana Uses in the Community Center Subdistrict

The Staff Memo points out that the Rangeley Plan, including the designation and formulation of the Community Center Subdistrict, was created through a comprehensive community process and questions whether it would be appropriate to change the uses allowed in that subdistrict by a process involving a petition signed by 191 people and a public hearing, rather than a comprehensive community process similar to that conducted in 2001.

When the Community Center Subdistrict was created, medical marijuana uses were not considered in the planning process and they certainly were not discussed as permitted commercial uses in the Community Center Subdistrict; and, for the reasons previously described, they are not appropriate uses in this Subdistrict.

LUPC has interpreted Chapter 10 to permit marijuana uses wherever other commercial uses are permitted. This interpretation has been applied to the Community Center subdistricts in Dallas, Sandy River, and Rangeley Plantations with no public hearing allowed in these Plantations, and no recognition of the unique qualities of the Community Center Subdistrict in Rangeley, Dallas, and Sandy River Plantations. As a result, LUPC has expanded the uses allowed in the Community Center Subdistrict in those three plantations with no public participation by the residents of those plantations.

Now, when presented with a petition signed by 191 residents of these Plantations, which in effect seeks a return to the uses originally understood to be allowed in the Community Center Subdistrict, the staff memo questions whether more public process should be required in order for the Commission to modify the rule. Having expanded the uses allowed in the Community Center Subdistrict with no public participation by the residents of the affected plantations, how can it be true that a statutory citizens' petition of the affected Plantations, followed by a public hearing and a 45-day period for written comments, is not sufficient process to restore the status quo ante? The statutory petition process was specifically designed to allow citizens to initiate a rulemaking process and to give them a voice in a situation such as this. The petition provides far more public process on this issue by the residents of the affected plantations than the Commission employed in expanding the uses in the Community Center Subdistrict.

Moreover, this policy issue needs to be addressed immediately in order to protect the areas designated in the Rangeley Plan as community centers for future use for that purpose. The Commission should not delay its consideration of the proposed rule by kicking the can down the road until some future hypothetical planning process.

open to the general public with signage and regular business hours. Since medical marijuana retail stores are not permitted in most municipalities located near Dallas, Sandy River, and Rangeley Plantations, the primary function of a medical marijuana retail store most probably would be to serve out-of-town medical marijuana customers. As such, a medical marijuana retail store would not serve the purposes of the Community Center Subdistrict.

We also note that the draft rule will have no impact whatsoever on the previously approved marijuana use in the Community Center Subdistrict in Rangeley Plantation since that use has been permitted for the maximum allowable square footage and could not be further expanded. The only effect of the draft rule would be to protect the remaining lands in the three affected plantations zoned as Community Center Subdistricts from major marijuana facilities and uses. The rest of the LUPC jurisdiction will not be affected by the proposed rule in any way.

RESPONSE TO THIRD QUESTION IN STAFF MEMO: The draft rule sets a separate standard for medical marijuana home-based businesses that is different from the rule applicable elsewhere because the Community Center Subdistrict has a specific community center purpose which is not compatible with marijuana retail stores.

The staff memo raises a concern that the draft rule would create a separate standard for medical marijuana home-based businesses that is different from LUPC's general home-based business standards and asks, rhetorically, whether that separate category of home-based medical marijuana businesses proposed to be allowed in the Community Center Subdistrict would cause permitting or compliance issues for LUPC.

The separate standard for home-based medical marijuana businesses was not invented by the petitioners. The carve-out in the draft rule was designed to allow caregivers to provide medical marijuana to individual patients, as allowed under the Medical Use of Marijuana Act, without creating a medical marijuana retail store, as defined by the Act. The basic principle of land use zoning is to apply different standards to different categories of uses in different land use zones. As discussed above, medical marijuana caregiver operations are distinguishable from other types of home-based businesses, such as home-based jam or salsa businesses. The draft rule allows home based medical marijuana providers to sell medical marijuana to their individual patients by appointment but does not permit them to operate a retail store with regular business hours that is open to the general public.

The purpose of the petition language is clear and the standards distinguishing a medical marijuana caregiver operation from a medical marijuana retail store or other type of home-based business are clear. They can therefore be easily administered and enforced by LUPC, and will not create permitting or compliance problems.

RESPONSE TO FOURTH QUESTION IN STAFF MEMO: The citizens' petition is not based on a moral perspective opposing all marijuana uses; rather, it is based on sound land use planning and zoning principles.

The staff memo asks whether the basis for the petition is based on one perspective on a moral issue rather than a land use issue? The answer to that question is "NO." The petitioners are not suggesting that marijuana uses should not be allowed on moral grounds; rather, what they are saying is that certain pre-identified major marijuana facilities and uses are not an appropriate use in the Community Center Subdistricts which occupy a tiny portion of LUPC's service area and which are designed to be focal points for local community activity.

As discussed above, marijuana uses have very different land use characteristics from the other uses allowed in the Community Center Subdistrict. They have different land use requirements in terms of odor, light, security, and public safety. They do not foster community engagement.

They do not provide needed local services. They are not pedestrian friendly. They have to be screened and buffered from other uses, including residential uses.

The petitioners are not asking for a ban on marijuana uses. They are simply suggesting that there are many other much more appropriate locations for these types of marijuana uses in the Rangeley Area (for example, the D-ES subdistrict in Rangeley Plantation appears to be ideally suited for these types of uses).

RESPONSE TO THE FIFTH AND SIXTH QUESTIONS IN STAFF MEMO.

The staff memo then asks whether the concerns posed by the rulemaking process would be better addressed by the Maine Legislature by extending the local opt-in for medical marijuana to the organized and deorganized areas of the State, and asks how the Commission should deal with potential future conflicts with respect to local opt-in and specific zoning restrictions in the rest of its service area.

While these may be important issues for the Commission to consider in future planning and rulemaking, there is absolutely no need to address them in the context of this petition. The draft rule is very narrowly drawn to address a straightforward issue that will affect only the seven small areas that have been zoned as community centers in Dallas, Sandy River, and Rangeley Plantations. The petition does not involve moral judgments about marijuana businesses in general and it does not involve future planning issues throughout LUPC's jurisdiction. It has been carefully drafted to ask and answer a very simple question: Are certain major marijuana businesses appropriate uses in the existing community centers of Sandy River, Dallas, and Rangeley Plantations? For all of the reasons cited above, the answer to that is clear and simple—no, they are not. They do not contribute to the fabric of community life in any meaningful way and they have to be screened and isolated from other uses—the antithesis of mixed-use zoning.

OBSERVATIONS REGARDING TIMELINE ATTACHED TO STAFF MEMO.

The timeline attached to the staff memo demonstrates that LUPC decided on its own that all marijuana uses are commercial uses and thus to allow them in them in the Community Center Subdistricts in Dallas, Sandy River, and Rangeley Plantations. This change was made with no notice to, or participation by, the residents of these three plantations affected by the change.

The timeline attached to the staff memo makes repeated references to the Rodway application for a medical marijuana cultivation facility in a Community Center Subdistrict in Rangeley Plantation. Although the Rodway application may have triggered the public's concern about major medical marijuana facilities in the Community Center Subdistrict, the LUPC permit for that facility has become final and will not be affected by the proposed rule. The proposed rule is prospective only and is designed to prevent the future location of major marijuana facilities in the Community Center Subdistricts in Dallas, Sandy River, and Rangeley Plantations.

In submitting this citizens' petition, the people affected by the Rangeley Plan have spoken loudly and clearly. They do not believe that certain categories major marijuana businesses are an appropriate use within their Community Center Subdistricts.

On behalf of the petitioners, I respectfully request that LUPC approve the citizens petition as drafted by the LUPC staff as Option 2.



Richard A. Spencer

Enclosure

ATTACHMENT
Excerpt from Prospective Zoning Plan for the Rangeley Lakes Region

Maine Land Use Regulation Commission
Prospective Zoning Plan for the Rangeley Lakes Region

CONCEPTUAL DESCRIPTION OF ZONES

Community Center (D-GN2)

What is the essential character of this zone?

Livable community centers

These areas currently serve, or are planned to serve, as focal points for community life. They are characterized by a mix of compatible residential, commercial, and civic uses that foster social interaction, provide access to local goods and services, and are of a scale and type that reinforce the jurisdiction's rural character. This zone is not for isolated uses along highways or other locations outside of traditional or planned community centers or nodes of activity such as crossroads.

Why do we need this new zone?

The existing General Development Zone (D-GN) is too restrictive and the Commercial-Industrial Zone (D-CI) is too permissive.

The new zone allows slightly larger-sized commercial uses than is currently the case in the General Development Zone (D-GN). But it does not open the door to unlimited square footage and a broader range of uses than are compatible with residential uses, as does the existing Commercial-Industrial Zone.

How is the D-GN2 different from the existing D-GN?

It sets a firm limit on the size of commercial structures and specifies the types of uses permitted in community centers.

- ◆ Expands gross floor area of commercial uses from 2500 ft² to 4000 ft² for permitted uses and caps at 8000 ft², accompanied by specific conditions for special exceptions
- ◆ Specifies uses that are compatible with community centers and foot traffic, i.e. retail shops, restaurants, bed and breakfasts, professional and financial services, trades such as cabinetry or shoe repair, artisan shops and galleries
- ◆ Allows retail sale of gas (up to 2 pumps) as permitted use vs. special exception
- ◆ For use only in places appropriate for mixed community development

Where will this zone be applied?

D-GN2 is envisioned for plantations where growth is deemed most appropriate according to the regional vision developed for the Rangeley prospective planning area. These include Dallas, Sandy River, and Rangeley Plantations.

June 28, 2021

Stephen J. Marchacos


Oquossoc, Maine 04964-0019

Land Use Regulation Commission
932 US Route 2 East
Wilton, Maine 04294

Town Clerk/Board of Assessors
Rangeley Plantation
P.O. Box 308
293 South Shore Drive (Office)
Rangeley, Maine 04970

RECEIVED
JUL 01 2021
LUPC - RANGELEY

Attn: Liz Swiney, Town Clerk

Re: Petition circulation @ Transfer Station-Medical Use Facilities/Zoning

Hello Liz,

I am requesting my name, address and phone number be removed from the petition (that I signed) being circulated to seasonal residents and property owners requesting a signature and support to present to LURC inter-related to the forthcoming medical marijuana facility at the corner of Route 17 and Herbie Welch Trail in the Rangeley Plantation and future use in a zone under consideration.

On five separate occasions on weekend visits to the Town Transfer Station I overheard four conversations your worker **Doug Guy** was presenting to residents that were not only 'inconsistent' but eluded questions in attempts to dodge revelations and the content of the initiative was misleading and false information. Some of the justification was similar but the 'reasons' kept changing. Four out of four is not a good track record. Furthermore, accuracy is dwindled while attempting to operate the dump and hastily garnering support.

Unfortunately, on a subsequent visit I was unable to corroborate the discussion and presentation being made between Carry "Bubba" Keep and a party about to depart the re-use barn. Bubba entered the dump office to grab the signature clipboard and at a faster than normal pace approached potential signees before they departed. I was unable to hear what was being said. Doug Guy was present on that day.

My position is that this petition be suspended immediately and the entire effort curtailed and either presented to the residents at a public forum/ town meeting or 'at least' provide a **fact sheet** outlining and explaining the issues. This action represents poor management and hastily launched community involvement likely representative of 'personal agendas' and 'not' in the best interests of the community.

I am prepared to outline what was said to me in the future but in the short term please remove my name from support to this petition initiative.

I would urge the principals and agent in charge of the regional (Rangeley area) LURC office to phone a few of the individuals who signed the petition and corroborate what folks were being told. Simply put: **This is not a smart way to conduct business.**

Very Respectfully submitted

Stephenson, [REDACTED] 3005

Cc: Land Use Regulation Commission
Attorney: Wilmer Hale/RCK

RECEIVED
JUL 01 2021
LUPC - RANGELEY

From: [Richard A. Spencer](#)
To: [Beaucage, Timothy](#)
Cc: [East, Judith C](#)
Subject: RE: Concerning comment
Date: Friday, July 02, 2021 4:36:32 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tim,

Thanks for your email and for sending me a copy of the letter from Stephen Marchacos dated June 28, 2021 which he sent to LUPC.

As an initial matter, I would point out that Doug Guy never circulated, and Mr. Marchacos never signed, the statutory petition that is the foundation of the present LUPC rulemaking proceeding.

On the contrary, what Mr. Marchacos refers to as “the petition” was in reality the letters of support for the petition that were collected and submitted after the petition had been submitted to, and accepted by LUPC. I have reviewed the original petitions and Mr. Marchacos’ name does not appear on any of them. He did, however, sign a letter of support which can be found in the group of letters that I sent to the record of the rulemaking hearing on June 14th as Doc.975.pdf.

It is his letter of support that Mr. Marchacos apparently wishes to withdraw.

In an effort to find out the substance of Mr. Marchacos’ complaints against Mr. Guy, I called Mr. Marchacos yesterday afternoon after receiving your email and asked him what he had heard Doug Guy saying to the people who signed the four letters of support that he mentioned in his letter. Mr. Marchacos refused to tell me and instead complained to me about the way he had been treated by Mr. Guy at the Rangeley Plantation transfer station. When I pointed out that his letter to LUPC had been copied to an attorney at Wilmer Hale with the initials of RCK and offered to speak with his attorney, he advised me that he had not consulted any attorney at Wilmer Hale or elsewhere on this matter, and asked me not to call the Wilmer Hale attorney with those initials.

In order to gain additional insight into this matter, I called Doug Guy this morning to ask him what he could recall about what he had said to people who he had asked to consider signing the letters of support for the petition. By way of introduction Mr. Guy is an 80 year old retiree with a college degree, who formerly worked as an engineer, and who currently works part time as an attendant at the Rangeley Transfer Station. According to Mr. Guy, when he was gathering the letters of support, he would approach people at the transfer station and ask if they might be interested in signing a letter of support for changing the zoning to exclude marijuana uses from the two community center subdistricts in Rangeley Plantation. If they said “yes”, he would then read them the first paragraph of the printed form letter and provide them with an unsigned copy of the letter. He would have them read the whole letter and sign it if they wished to. When I asked Mr. Guy how he would respond to the suggestion by Mr.

Marchacos that he was misleading people, he said in slightly more colorful language: “That’s pure BS. I am eighty years old and I am not going to mislead anybody about anything”. If you have any questions about this, or feel the need to follow up, please feel free speak with Mr. Guy directly. He can be reached on his cell phone at 239 283 2904.

In conclusion, as the petitioners’ representative, I would state that we have no objection whatsoever to allowing Mr. Marchacos to withdraw his letter of support for the petition. We also believe that the withdrawal of his letter of support is the result of a personal dispute he has with Mr. Guy; that it has nothing to do with the substance of the rule making petition; and that it should have no bearing on the Commission’s response to the rule making petition.

On an unrelated matter, as you have suggested, we will be submitting a memo to LUPC with additional information relating to the treatment of marijuana manufacturing /cultivation facilities by most Maine municipalities as a light industrial use for zoning purposes and as a use that is not compatible with residential uses.

Respectfully submitted,
Dick Spencer
Petitioners’ Representative

Richard A. Spencer
Attorney

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From: Beaucage, Timothy <Timothy.Beaucage@maine.gov>
Sent: Thursday, July 1, 2021 2:13 PM
To: Richard A. Spencer <RSpencer@dwmlaw.com>
Cc: East, Judith C <Judith.C.East@maine.gov>
Subject: Concerning comment

Good afternoon Dick,

Please find the attached letter submitted today. We do not have enough information to understand to what extent this account is/is not true; and we do not presume that the actions of individual(s) are reflective of how this matter has been conveyed to residents, landowners, and the public at large. However, it is concerning enough that it be brought to your attention.

At the moment, I cannot yet confirm what (if anything) the LUPC staff or Commission will do with the information.

Tim

Tim Beaucage

Senior Planner, Land Use Planning Commission
22 State House Station, Augusta, Maine 04333-0022
Phone (Direct): (207) 287-4894; Fax: (207) 287-7439
Email: Timothy.Beaucage@maine.gov



MEMORANDUM

<p>TO: Land Use Planning Commission</p> <p>FROM: Richard A. Spencer, Esq. Drummond Woodsum</p> <p>DATE: July 16, 2021</p> <p>RE: Response to LUPC Staff Request Regarding Municipal Classification of Marijuana Cultivation and Manufacturing as Light Industrial or Industrial Use</p>

This memorandum supplements the June 14, 2021 memorandum submitted on behalf of the petitioners in support of the Land Use Planning Commission’s draft rule. By email correspondence dated July 22, 2021, LUPC staff requested additional information regarding the classification of marijuana cultivation and manufacturing as industrial/light industrial uses by Maine municipalities that allow and regulate these uses. The focus of this memorandum is on indoor marijuana cultivation and manufacturing facilities that are not being operated on a small scale within a primary residence or as a home occupation or outdoor cultivation operations.

Since 2018, when the Maine Medical Use of Marijuana Act was amended to give municipalities express authority to regulate medical marijuana cultivation and manufacturing operations, many Maine municipalities have classified such uses, and the structures associated with such uses, as manufacturing, industrial or light industrial uses. The reason for this is two-fold. First, marijuana cultivation and manufacturing activities occurring indoors within a controlled environment—that is, with artificial lighting extensive engineered climate controls; use of chemical fertilizers, pesticides, and nutrients; and industrial extraction processes—are akin to industrial or light industrial uses. Second, the land use impacts of marijuana cultivation and manufacturing activities—including odor impacts, noise impacts, security concerns, and fire hazards—are akin to the impacts of industrial or light industrial uses.

Even when municipalities do not classify these uses as manufacturing, industrial, or light industrial uses, many Maine municipalities have imposed setbacks from residential and other sensitive uses, such as parks and recreational facilities, dwelling units, places of worship, schools, and day care facilities. Such setback restrictions reflect an understanding that marijuana cultivation and manufacturing facilities are not compatible with residential neighborhoods, places where children gather, or downtown commercial or mixed-use districts.

The chart attached to this memo as Appendix A summarizes both the zoning and setback requirements for indoor marijuana manufacturing and cultivation operations in a sampling of Maine municipalities and provides citations to the relevant codes or ordinances. Appendix B is a non-exhaustive list of the municipalities that do not allow marijuana cultivation or manufacturing within their downtown commercial or mixed-use districts or in their residential zones. Appendix C contains photos that illustrate the types of equipment and infrastructure commonly associated with marijuana cultivation and manufacturing uses.

I. Marijuana Cultivation and Manufacturing Facilities Are Commonly Restricted to Industrial or Light Industrial Zones

As illustrated in the chart in Appendix A, a diverse range of municipalities—including Auburn, Bangor, Biddeford, Brunswick, Eliot, Gorham¹, Lewiston, Orono, Portland, Saco and Waterville—restrict marijuana cultivation and manufacturing to their industrial or light industrial zones, and allow these uses in other commercial or rural zones under very limited circumstances.

In Waterville, for example, marijuana manufacturing is only permitted in the General Industrial Zone. Marijuana cultivation is allowed only in the General Industrial Zone and the Commercial-C Zone. Notably, the purpose of the Commercial-C Zone is to accommodate establishments catering to the needs of motorists and users of motorized equipment, such as sales, service, and repair of motor vehicles. Residential uses are prohibited in the Commercial-C zone; indeed, a buffer strip of evergreen plantings at least 20 feet in width and 10 feet in height must be planted and maintained *and* a solid fence must be constructed on properties adjacent to residential districts or uses in this zone.

Likewise, in Portland, marijuana manufacturing and cultivation are only permitted in industrial zones and the B-4 zone. While the B-4 zone accommodates some commercial uses, its purpose is to provide appropriate locations in the city for the development and operation of businesses catering primarily to highway-oriented trade along major arterials (uses which have market areas which are primarily dependent on the regional highway network or serve a regional or larger market), as well as to provide appropriate locations for large-scale commercial uses that require larger land areas to accommodate their operations. Residential uses are prohibited in the B-4 zone. Indeed, in Portland, marijuana manufacturing and cultivation facilities, regardless of zoning, cannot be sited within 300 feet of the boundary of a residential zone.

More rural communities take a similar approach. For example, the Town of Eliot (pop. 6,204 at the 2010 census) is zoned into five broad categories: R (rural), S (suburban), V (village), MHP (mobile home park), and C/I (commercial and industrial). The Town only allows marijuana cultivation and manufacturing in its C/I zone subject to site plan review. The Town of Greenville (pop. 1,646 at the 2010 census) both prohibits marijuana uses within its downtown district and prohibits all marijuana cultivation and manufacturing facilities sited outside the downtown district from being located within 1,000 feet² of: a) a church, synagogue, or other house of religious worship; b) a public or private school; c) an athletic field, park, playground, or recreational facility; d) a public library; or e) a licensed day care facility.

Indeed, the issue of whether marijuana-related uses are compatible with residential and commercial uses is a key consideration when municipalities adopt zoning amendments to accommodate marijuana-related uses. For example, the Town of Kittery is in the process of finalizing draft zoning ordinance amendments and a licensing ordinance to allow new marijuana-related uses and to further regulate existing medical marijuana businesses. Town staff and officials, particularly members of the Planning Board, spent many hours over the past year in workshops and meetings discussing potential land use impacts of various marijuana-related uses and the zoning that would be appropriate for such uses. Town officials took into account the experiences

¹ The sole exception is for cultivation/manufacturing in the rural district when inside an existing agricultural building.

² For Tier 1 cultivation facilities the setback is 500 feet instead of 1,000.

in and approaches of other municipalities and conducted a site visit to a marijuana cultivation facility in a nearby town. Most recently, in a memorandum to the Town Council, the Town Manager recommended making adjustments to a proposed zoning ordinance amendment in order to prohibit marijuana cultivation facilities in the Town's commercial zone (C-1) and mixed-use neighborhood zone (MU). In making this adjustment, the Town Manager explained that "[a]ll who have been involved in the development and review of this ordinance are rightly concerned about marijuana cultivation and manufacturing preempting redevelopment in the C-1 and MU areas where the Town is hoping to see mixed-use affordable housing developments."³ The town of Old Orchard Beach has similarly been developing land use ordinance amendments over the past several months to allow adult use marijuana establishments. The recommendation from the Planning Board and staff to the Town Council was to limit cultivation and manufacturing activities to the town's Industrial District.⁴

Maine communities are not alone in treating marijuana cultivation and manufacturing as industrial or light industrial uses: this zoning and regulatory approach is consistent with practices in states with more mature cannabis markets, such as Washington State. The Municipal Research and Services Center in Washington, for example, reports the following marijuana zoning trends in cities and counties across the state since 2012:

City and county zoning measures adopted since initiative 502 was approved are diverse. Some jurisdictions have enacted total prohibitions, while others have allowed marijuana businesses in appropriate zoning districts (retail marijuana businesses in retail zones, outdoor marijuana production in agricultural zones, and indoor marijuana production and marijuana processing in industrial zones).

Most jurisdictions that allow indoor marijuana production in warehouse-type structures, such as Moses Lake or Ellensburg, have limited them to manufacturing and/or industrial zones. Some urban jurisdictions, like Vancouver, have chosen to allow all marijuana businesses only in industrial or light industrial zones – to keep them tucked away where they will be less obvious or controversial. Additionally, some cities, like the city of Newport, require a conditional use permit process and impose conditions concerning issues such as odors emanating from the property.⁵

A Note About Outdoor Cultivation of Marijuana

Most municipalities prohibit the outdoor cultivation of marijuana. The City of Auburn is an outlier: it allows outdoor cultivation in its agricultural and resource protection districts. An outdoor cultivation facility is different from a large indoor cultivation facility because an outdoor grow area does not require the same type of infrastructure (lighting, HVAC systems) typical of indoor cultivation operations. Notably, Auburn only allows marijuana manufacturing uses in its

³ See *Town Manager's Report to the Kittery Town Council* (dated June 28, 2021), available at https://www.kitteryme.gov/sites/g/files/vyhlf3316/f/agendas/council_packet_6-28-2021.pdf.

⁴ See *Planning Staff's Report to the Old Orchard Beach Town Council* (dated July 13, 2021), available at https://www.oobmaine.com/sites/g/files/vyhlf3621/f/events/council_workshop_packet_07_13_2021.pdf.

⁵ See *Marijuana Regulation in Washington State*, Municipal Research and Services Center, available at <https://mrsc.org/getdoc/8cd49386-c1bb-46f9-a3c8-2f462dcb576b/Marijuana-Regulation-in-Washington-State.aspx> (last visited July 7, 2021).

agricultural zone if it is an accessory use to an outdoor cultivation facility. Similarly, cultivation facilities are only allowed in the City’s general business district if they are accessory to a marijuana retail store. This regulatory framework allows for a vertically integrated business to have multiple licenses on the same site but ensures that the marijuana uses are of a scale and nature compatible with surrounding agricultural or commercial uses. The only zone where the City permits indoor cultivation of marijuana and marijuana principal manufacturing uses, however, is in its industrial district.

II. Marijuana Cultivation and Manufacturing Facilities Are Commonly Required to be Set Back and Buffered from Residential Uses and Public Gathering Places

In addition to restricting cultivation and manufacturing activities to industrial zones, municipalities typically impose setback and buffering requirements to separate marijuana-related uses from other uses, such as residential zones, dwelling units, and sensitive uses. While state law already requires municipalities to prohibit adult use marijuana businesses and registered dispensaries from being located within a certain distance from public and private schools⁶, most municipalities elect to include additional setback and buffer requirements for marijuana-related uses.

For example, Bangor, Bridgton, Eliot, Lewiston, and Portland specifically preclude marijuana-related uses from being located within a certain distance of a dwelling unit or a residential zoning boundary. Communities also frequently adopt requirements to separate and buffer marijuana-related uses from public parks, recreational facilities, public properties, houses of worship, schools, playgrounds, and childcare facilities. These types of restrictions are strong indicia that marijuana-related uses are be incompatible with residential uses and with public gathering places—the types of uses one would generally see in residential, mixed-use, or downtown commercial zones.

A sampling of municipalities that have established setback and buffering requirements is provided in Appendix B.

III. Carve-outs for Small-Scale Home-Based Caregivers

Truly small-scale caregivers operating out of their homes, cultivating a small number of plants, and engaging in limited manufacturing activities in home kitchens represent a very different operation than the marijuana cultivation and manufacturing activities representative of the modern cannabis industry. For this reason, many Maine municipalities distinguish small-scale caregiver operations from marijuana cultivation and manufacturing facilities in their zoning and land use ordinances. For example, the City of Portland enacted a definition for a “small-scale marijuana caregiver” use that is allowed in the City’s mixed use zones:

A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than:
1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

⁶ See 28-B M.R.S. § 402(2); 22 M.R.S. § 2428(6)(B).

An operation of this size can largely go unnoticed by neighbors with minimal risk of generating issues such as odor, noise, increased traffic, or fire hazards. While under state law a registered caregiver is authorized to serve an unlimited number of patients and cultivate up to 500 square feet of plant canopy, the City of Portland felt it was necessary to further restrict this activity under the local ordinance in order to allow caregivers to operate in non-industrial districts—so long as such operations remain truly small-scale.

Such limits on the amount of plant canopy, restrictions around manufacturing processes, and caps on the number of patients are indicators that a municipality recognizes that the cannabis industry is sophisticated and well-funded, and marijuana-related activities can quickly scale up to become industrial-scale operations.

Appendix C contains photographs of marijuana cultivation and manufacturing facilities, including some that have been recently constructed in in Maine.

IV. Conclusion

In municipalities where marijuana cultivation and manufacturing are allowed beyond small home-based caregiver operations, the general approach to regulating such uses is to classify them as industrial or light industrial uses; to prohibit them in residential and mixed-use commercial zones; and to establish stringent setback and buffering requirements from residential and other sensitive uses, including public gathering places.

As noted in testimony provided to the Commission, the Community Center Development (D-GN2) Subdistrict was created to establish a few very small areas in the plantations near Rangeley where there would be a mix of residential, civic, and pedestrian friendly businesses that could serve as community centers. Marijuana manufacturing and cultivation facilities and uses, other than small-scale home-based caregiver operations, are not consistent with the purposes of the D-GN2 Subdistrict and are far more appropriate in the Extended Settlement Development (D-ES) Subdistrict, which was specifically designed for industrial, light industrial, and transportation based wholesale distribution facilities.

I trust this memorandum is responsive to the LUPC staff's questions. If you have any further questions, please don't hesitate to reach out to me.

APPENDIX A

Maine Municipal Zoning and Regulatory Framework for Marijuana Cultivation and Manufacturing

The table, below, provides a sampling of how Maine municipalities zone and regulate marijuana cultivation and manufacturing uses.

Note: This list is not exhaustive.

	Zoning	Setbacks and Buffers from Sensitive Uses	Citations
Auburn	(1) Marijuana cultivation and manufacturing are permitted uses in the Industrial District; (2) Marijuana cultivation is a permitted use in the Agriculture and Resource Protection District (manufacturing only allowed if accessory to licensed cultivation site in this zone) ; (3) Marijuana cultivation is a permitted use in the General Business District (but only if accessory to a retail use); (4) Marijuana cultivation is a permitted use in the Minot Avenue (GBII) District (but only if accessory to a retail use)	(1) 750 feet from schools; (2) 1,000 feet from other marijuana businesses, but not applicable to cultivation or manufacturing facilities in the Industrial Zoning District specifically	City of Auburn Code of Ordinances, Chapter 60, Article IV – District Regulations; Article XVIII, Section 14-659
Bangor	Permitted uses in (1) Urban Industry District; (2) Industry and Service District	(1) 1,000 feet from, or on the other side of a controlled access highway from, the real property comprising any public or private elementary or secondary school or school dormitory, juvenile shelter, orphanage, public playground, or public park; (2) 300 feet from, or on the other side of a controlled access highway from, any church, chapel, parish house, other place of worship, day care, or dwelling on a residential parcel, measured by a straight line from building to building	City of Bangor Code of Ordinances, Part II, Chapter 165, Article XIII, Sec. 165-96; Article XIV, Sec. 165-102
Biddeford	Conditional uses in the Industrial zones (I-1, I-2, I-3)		Code of Ordinances of the City of Biddeford, Part III, Article V, Table A (available here)
Bridgton	Permitted uses in: (1) Inner Corridor District; (2) Outer Corridor District	(1); 1,000 foot buffer from schools, safe zones, churches or other houses of worship; (2) 100-foot	Town of Bridgton Land Use Ordinance, Article II, Section 2

	Zoning	Setbacks and Buffers from Sensitive Uses	Citations
		buffer from residential uses; (3) 300-foot buffer from other marijuana businesses	Town of Bridgton Site Plan Review Ordinance, Article XI, Section 4
Brunswick	Conditional use in the Growth Industrial District	500 feet from schools	Brunswick Zoning Ordinance, Chapter 3 - Property Use Standards Section 3.2 - Growth Area Permitted Use Table
Eliot	Site plan review (SPR) use in the Commercial and Industrial District	500 feet from the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility	Eliot Code of Ordinances, Subpart B, Chapter 33, Sec. 33-189; Sec. 33-190
Gorham	Permitted use in the following zones: (1) Industrial District; (2) Olde Canal Industrial District; (3) Rural District when inside an existing agricultural building	750 feet from schools	Gorham Land Use and Development Code, Chapter 1, Section 1; Town of Gorham Adult-Use and Medical Marijuana Licensing Ordinance
Greenville	Larger scale cultivation facilities and manufacturing facilities are prohibited in the downtown districts	(1) 1,000 feet (<i>500 feet instead for tier 1 cultivation facilities only</i>) from: a) a church, synagogue, or other house of religious worship; b) a public or private school; c) an athletic field, park, playground, or recreational facility; d) a public library; e) a juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation treatment center; or f) a licensed day care facility. (2) 500 feet from the boundaries of any land use district where these uses are prohibited for the largest category of cultivation/manufacturing (Tier 2 Manufacturing Facilities and Tier 4 Cultivation Facilities)	Land Use Ordinance for the Town of Greenville, Article V, Table V-1; Town of Greenville Marijuana Establishments Ordinance, Adopted November 3, 2020, available here: https://greenvilleme.com/wp-content/uploads/Greenville-Marijuana-Establishments-Ord.-11.3.2020-1.pdf
Lewiston	Permitted uses in zones categorized as “Industrial” in land use table: (1) Highway Business; (2) Office Service; (3) Industrial; (4) Urban Enterprise; (5) Mill	(1) 750 feet from schools and public parks, playgrounds, or recreational facilities owned by the City; (2) 300 feet from a dwelling in a residential zoning district; (3) 500 feet between marijuana stores	City of Lewiston Code of Ordinances, Appendix A: Zoning & Land Use Code, Article IX; Chapter 22, Article XV, Sec. 22-430

	Zoning	Setbacks and Buffers from Sensitive Uses	Citations
Orono	(1) Cultivation allowed in Forestry & Agriculture (F&A), Commercial-1 (C-1), and Economic Development Zone (EDZ) zones; (2) manufacturing allowed in C-1 and EDZ zones (all classified as industrial zones)	(1) 1,000 feet from a school or other educational facility; (2) 1,000 feet from any child-care or day-care facility; (3) 500 feet from a university	Orono Land Use Ordinance to Implement Standards for Marijuana Establishments (codified version not yet available online)
Portland	Permitted uses in the B-4 zone and Industrial zones (I-L/I-Lb, I-M/I-Mb, I-H/I-Hb)	(1) 500 feet from schools; (2) 300 feet from the following residential zones: R-1, R-2, R-3, R-4, R-5/R-5A, R-6/R-6A, or R-7.	City of Portland Land Use Code, Chapter 14, Article 6, Table 6-C, 6-E City of Portland Land Use Code, Chapter 14, Article 6, Section 6.4.10(B))
Presque Isle	(1) Cultivation allowed in industrial (I), light industrial (LI) and agricultural farming/forestry (AFF) zones; (2) manufacturing allowed in business (B), industrial (I), light industrial (LI), and agricultural farming/forestry (AFF) zones	(1) 1,000 feet from schools; (2) 150 from other marijuana businesses, churches, pre-schools, day cares, and community centers (cultivation and manufacturing facilities in the industrial zones exempt from this setback)	City of Presque Isle Municipal Ordinances, Chapter 59-A, Adult Use and Medical Marijuana Business Ordinance, Section J; land use chart
Saco	Medical marijuana caregivers only allowed in the Business-Industrial District and Industrial District	500 feet from schools/daycares	City of Saco City Code Chapter 230, Table 3-3; Sec. VIII12
Waterville	(1) Cultivation facilities allowed in the Rural Residential (R-R), Commercial-C (C-C), General Industrial (I) and Airport Industrial (AI) zoning districts; (2) Extraction facilities allowed in the General Industrial (I) and Airport Industrial (AI) zoning district.	500 feet from schools, places of religious worship, daycares, recreational areas designated for use by children up to eighteen (18) years of age, areas designated as municipal safe areas.	City of Waterville Marijuana Ordinance, Article VI

APPENDIX B

Municipalities Prohibiting Marijuana Cultivation and Manufacturing Facilities⁷ from Downtown and/or Residential Zones

1. Auburn
2. Bangor
3. Biddeford
4. Boothbay
5. Bridgton
6. Brunswick
7. Damariscotta
8. Eliot
9. Gorham
10. Greenville
11. Lewiston
12. Orono
13. Portland
14. Presque Isle
15. Saco
16. Scarborough
17. Topsham
18. Waterville
19. Wilton
20. Windham

⁷ This list is not exhaustive and does not include small-scale, home-based operations as discussed *supra*, Section. III.

APPENDIX C

Sample Photos of Marijuana Cultivation and Manufacturing Facilities



Indoor Cultivation Facility with Mezzanine



Greenhouse Cultivation Facility



Hydro-Carbon Marijuana Extraction Equipment (Photo 1) and C1/D1 Modular Fire Rated Extraction Booth* (Photo 2)

*NFPA Model Fire Code Chapter 38 and State Law Require that Hydro-Carbon and CO2 Extraction Occur within a C1/D1 Lab



Rotary Evaporator (Roto Vape) – Used in Marijuana Distillate Production



Marijuana Edibles Commercial Kitchen

Testimony of Richard A. Spencer, Petitioners' Representative
Maine Land Use Planning Commission Rulemaking Public Hearing

June 16, 2021

My name is Dick Spencer and I am an attorney at Drummond Woodsum in Portland. I am speaking as the petitioners' representative in connection with the citizens' petition.

The Rangeley Prospective Zoning Plan established the Community Center D-GN2 subdistrict to set aside a few small areas in Dallas, Sandy River, and Rangeley Plantations to facilitate the development of small village-like community centers to serve the local populations of those Plantations. Under the proposed rule, home-based cultivation of marijuana and home-based medical marijuana caregiver operations would still be permitted in the D-GN2. Non-home-based medical marijuana manufacturing/cultivation facilities would not be permitted. These medical marijuana manufacturing/cultivation facilities are more akin to light industrial pharmaceutical manufacturing facilities and they could still be located in the Extended Settlement D-ES subdistrict, which is where they would be more appropriately located.

I will address my remaining testimony to the five specific public policy issues that were raised in the staff memo that was dated June 7, 2021 and addressed to the public record of this proceeding..

The staff's first public policy question initially suggests that the medical marijuana manufacturing/cultivation facilities that would be prohibited by the proposed rule are similar to the commercial uses permitted in the D-GN2, and asks if we disagree. We strongly disagree.

Medical marijuana manufacturing/cultivation facilities will not serve as "focal points for community life," "foster social interaction, " be pedestrian friendly," or make a contribution to a "mix of compatible residential, commercial and civic uses" . The Rangeley Plan and Chapter 10 list examples of appropriate community center uses as follows: retail shops, restaurants, bed and breakfasts, artisan shops, galleries, and retail sale of gasoline (up to two pumps). The land use impacts of medical marijuana manufacturing/cultivation facilities are entirely different, and far more serious, than the impacts of these types of commercial use.

The staff's second public policy question suggests that because the D-GN2 was created through an extensive community process in Dallas, Sandy River, and Rangeley Plantations, a similar community process should be followed in order to change the uses permitted in the D-GN2 subdistrict. When the D-GN2 was created in the three Plantations, however, no one in those three Plantations ever thought that medical marijuana manufacturing/cultivation facilities could be located in the D-GN2subdistrict. It is subsequent decisions by the LUPC staff and the Commission, that were made with no public process the affected Plantations, that have made medical marijuana manufacturing/cultivation facilities a permitted use in D-GN2. The proposed rule would simply return the D-GN2 subdistrict to its original purpose. A rulemaking petition signed by 191 residents of the

affected Plantations, followed by approximately 200 letters of public support , followed by a public hearing, is ample public process, especially in this case, where there appears to be broad community support for the proposed change.

The staff's third public policy question asks whether it will create permitting and enforcement problems to treat medical marijuana home-based caregiver operations in a different manner from other home-based businesses in the LUPC jurisdiction. The answer to this question is "NO." Under Maine's marijuana statutes, a home-based medical marijuana caregiver can sell medical marijuana to individual patients by appointment, but cannot open their home to the general public for regular business hours and cannot display an exterior sign without creating a retail store. The essence of zoning is to apply different standards to different categories of use. This statutory definition of a medical marijuana caregiver as opposed to a retail store is clear and will not create permitting or enforcement problems for the Commission.

The staff's fourth and fifth policy questions ask whether the issues raised by the citizens' petition might be more appropriately addressed by the Maine Legislature by extending the medical marijuana opt-in to LUPC's jurisdiction; and if the Legislature were to do so, how LUPC would address potential conflicts between State law and local zoning.

There is no need to involve the Maine Legislature and the entire 10 million acre LUPC jurisdiction in order to address a land use issue that involves a land use subdistrict that only exists in a few very small areas in Dallas, Sandy River, and Rangeley Plantations. If the Legislature were to extend the opt-in provision to the LUPC jurisdiction, however, the Commission would have no difficulty dealing with potential conflicts between State law and local zoning, since State law would control over local regulation.

In conclusion, I would ask the members of the Commission to please read the memos we have submitted on behalf of the Petitioners before you vote on the proposed rule. .Please listen to the voices of the people from Dallas, Sandy River, and Rangeley Plantations; they know what is best for their communities. Please act on the on the petition promptly; it is the right thing to do for these communities.

Thank you for your consideration.

Respectfully submitted,

s/Richard A. Spencer

Richard A. Spencer.