



Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

JACK MOORE, CBCO *Building Official*

Memorandum

From: Dale Pernula, AICP, Director
Re: Final Proposed Land Use Regulations for Marijuana Facilities
Date: July 16, 2015

Contents

Procedural Background	1
Summary of 2E2SHB 2136	2
Next Steps	3
Responses to Selected Comments	4

Procedural Background

The Skagit County Commissioners adopted interim ordinances in December 2014 to regulate the siting of marijuana facilities. After public hearing, the Board adopted a new interim ordinance on March 3 and sent that interim ordinance to the Planning Commission for a public hearing and its recommendation.

On April 14, 2015, the Legislature adopted a new law that integrated medical marijuana into the recreational marijuana (I-502) system.¹ Governor Inslee signed (and partially vetoed) that law April 24. The Planning Commission took the new law into account in issuing its recommendation.

On May 12, 2015, the Board reviewed the Planning Commission recorded motion and supplemental Department recommendations and directed release of a final proposal with multiple options; see the [May 21 staff report](#) for a complete summary of the proposal and options; see the [May 11 memo](#) for the Department recommendations. The Board then directed that a written comment period and public hearing be held; see Responses to Selected Comments on page 4.

On June 27, the Legislature adopted a second new bill, 2E2SHB 2136, that significantly changes some of the land use components of the state marijuana regulatory system. Governor Inslee signed the legislation on June 30.

¹ 2SSB 5052 (2015).

Summary of 2E2SHB 2136

The new legislation contains a number of important provisions related to land use:

1. **Buffers.** Counties, cities, and towns are granted the authority to reduce the 1000-foot buffer zones required by I-502 and implemented by the LCB, around certain types of facilities within which licensed marijuana producers, processors, or retailers could not be located. The Department recommends taking no action with respect to buffers, which will leave them at 1000 feet.
2. **Signage.** Licensed retail marijuana stores are now allowed to have two signs on premises instead of just one sign. Each on-premises sign is limited to 1,600 square inches.
3. **Public notice.** Counties, cities, and towns may adopt an ordinance requiring that license applicants provide individual notice of their application to listed entities (schools, parks, child care centers, churches, etc) within 1000 feet at least 60 days before the license is granted. The Department recommends the Board address this through its ordinance adopting permanent marijuana regulations.

Additionally, applicants for marijuana licenses must post a sign, provided by the LCB, on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. The sign must be posted within seven days of submitting an application to the LCB.

4. **Cooperatives.** The legislation establishes buffer zones within which medical marijuana cooperatives may not locate, and makes it clear that counties may prohibit cooperatives within their jurisdiction.

Next Steps

This topic is scheduled on the Board's agenda for July 21 at 1:30 p.m. The Department needs to know which of the following elements, which have received public comment, the Board wants to include in the final ordinance for adoption. After the Board makes its selection, the Department can prepare final code text for adoption. Because many of these options are interrelated or interdependent, some discussion or additional Department review may be necessary to ensure that contradictory options are not selected. If the Board wants to go beyond the options discussed here, it may need to offer another opportunity for public comment, either in written form or as a public hearing, or both.

General

- Characterize marijuana as industrial, not agricultural
- Prohibit hazardous chemical processing in zones other than BR-HI
- Notify the local fire district or other fire authority whenever the Department approves a permit for any Marijuana Production or Processing Facility
- Prohibit medical marijuana collective gardens and cooperatives

Notification Distances

- Expand standard special use permit notification distance from 300/500 ft to all parcels within 1000 feet of marijuana facilities special use permit applications
- Require that license applicants provide individual notice of their application to listed entities (schools, parks, child care centers, churches, etc)

Buffer Distances

- 400-ft setback from property lines for all marijuana facilities and their security fences
- Reduce 1000-ft setback to 100 feet for certain entities (enabled by 2E2SHB 2136)

Zoning

- Prohibit marijuana production/processing in greenhouses in any zone
- Require special use permits for marijuana retail facilities anywhere they are allowed

Zoning Table

Where slashes exist in the table below (highlighted), the Board needs to select one of the options.

<i>Zone</i>	<i>Retail</i>	<i>Production/Processing in an Opaque Structure</i>	<i>Production/Processing in a Translucent Structure</i>
Agricultural—Natural Resource Lands (Ag-NRL)	X	AD, only in structures existing as of 1/1/2014	X
Bayview Ridge Light Industrial (BR-LI)	X	P; AD when within 1000 ft of a residential zone [or a residence]	X/P; HE when within 1000 ft of a residential zone [or a residence]
Bayview Ridge Heavy Industrial (BR-HI)	X	P	X/P
Hamilton Industrial (H-I)	X	AD	X/HE
Natural Resource Industrial (NRI)	X	X	X
Rural Business (RB)	SUP/X	X	X
Rural Center (RC)	P/AD/X	X	X
Rural Freeway Service (RFS)	P	X	X
Rural Resource—Natural Resource Lands (RRc-NRL)	X	X/P, except prohibited on Guemes Island	X/AD, except prohibited on Guemes Island
Rural Village Commercial (RVC)	P/AD/X	X	X
Urban Reserve Commercial-Industrial (URC-I)	P/AD	HE	X

Responses to Selected Comments

Skagit County opened a written comment period on May 21, 2015, held a public hearing on June 16, and closed the written comment period on June 18, 2015. The full text of the comments received are available at www.skagitcounty.net/marijuana. The following is not a complete summary of the comments received.

☛ Proposed regulations do not prohibit marijuana retail establishments from advertising to children and youth.

Liquor Control Board rules, specially [WAC 314-55-155](#), prohibit advertising that is appealing to people under 21 years of age and prohibit advertising within 1000 feet of specified entities (e.g., schools, playgrounds, game arcades). Marijuana licensees must comply with LCB rules. County code does not need to address this issue because the LCB has better mechanisms for enforcement (i.e., revocation of licenses).

☛ Proposed regulations should require child-resistant packaging.

These requirements are already addressed by Liquor Control Board rule and are beyond the scope of a proper land use regulation. The Department strongly opposes adding such requirements.

🗨️ **Proposed regulations should address water usage in other parts of the county, not just Guemes Island.**

Water usage throughout the rest of the County is constrained and regulated by restrictive Department of Ecology instream flow rules. Special attention is due to Guemes Island because of the sole-source aquifer and saltwater intrusion problems that are not addressed by Ecology rules.

🗨️ **Proposed regulations should require mailed notice to property owners within 1000 ft, or ¼ mile.**

Under current code, special use permits require notification within 300 feet, as measured from the exterior boundary of the parcel upon which the special use is proposed. See SCC 14.06.150. The code allows the Administrative Official to expand the notice radius to 500 feet. The Department believes that marijuana facilities will not create a special need for an expanded notification radius; if 300/500 feet is not sufficient notification radius for rural areas, the Board should consider whether *all* special use permits should have a 1000-ft notification radius.

🗨️ **Proposed regulations should eliminate grandfathering for existing marijuana facilities.**

Typically when zoning codes change, existing uses are allowed to continue. Such uses are called “pre-existing non-conforming” uses and have only limited rights to expand or rebuild after fire, and may be terminated if allowed to idle. While it may be unconstitutional to require immediate cessation of non-conforming uses, it is also possible to terminate the grandfather protections of non-conforming uses after a “reasonable amortization period” allowing for the continued operation of the use for a period of time sufficient to recoup the investment.

Depending on the zoning constraints or new setbacks that the Board adopts as part of the final marijuana regulations, several existing facilities that have not generated complaints may become pre-existing non-conforming uses.

The Department does not believe it is necessary to reach this issue because nearly all of the existing marijuana facilities that have generated neighbor complaints have been shut down due to failure to comply with existing zoning laws, licensing rules, or criminal laws.