



Skagit County Planning & Development Services

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I-502 Marijuana Permitting

*Where can marijuana producers, processors, and retail outlets locate in Skagit County?
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Overview

In 2012, voters approved Initiative 502, which legalized recreational marijuana in Washington State and directed the **Washington State Liquor Control Board** (“WSLCB”) to develop regulations for permitting marijuana production, processing, and retail facilities.

The Liquor Control Board allocated four at-large I-502 retail licenses to Skagit County. Those facilities can locate either within unincorporated Skagit County or any of the incorporated areas that did not receive a direct allocation (La Conner, Concrete, Hamilton, Lyman). For incorporated areas, please consult the towns for more information about business licensing or land use policies. The WSLCB does not similarly limit the number of I-502 production and processing facilities.

This memo does not address medical marijuana collective gardens. In March, the state Court of Appeals for Division 1 held in [Cannabis Action Coalition v City of Kent](#) that medical marijuana and collective gardens are illegal. The Legislature is expected to reform or repeal the medical marijuana and collective gardens statutes in 2015.

How to Apply

Persons or entities interested in pursuing an I-502-authorized activity must obtain a license from the WSLCB. Skagit County will not provide pre-approval for any I-502 license; the Board of County Commissioners will only evaluate a license application when the WSLCB sends it to the County for possible objection. The Board will likely object to the license, or will pursue code enforcement after the operation begins, if the operation’s location does not comply with County land use regulations (see below). For more information on the Liquor Control Board’s process and rules, please visit <http://lcb.wa.gov/marijuana>.

Compliance with Land Use Regulations

All land uses in Skagit County must comply with Skagit County's land use code. This memo provides generalized guidance to applicants as well as County staff as to where an I-502 activity is allowed under the land use code, but an applicant should schedule a free pre-development meeting with the Planning & Development Services Department to evaluate their particular activity at a specific site. County staff will not confirm if a particular site is zoned or otherwise acceptable for marijuana-related activity. Staff can, in general terms, confirm whether property can be used for agricultural production, agricultural processing, or retail sales.

No County Business License Required

Unlike the cities, Skagit County does not require or offer business licenses. You may still need a business license from the State of Washington. You can learn more about starting a business in Washington at www.ora.wa.gov/business.asp.

No Health Department Review of Infused Food Products

Under state law, the WSLCB has sole authority to regulate recreational marijuana, including “marijuana infused products.” The County Health Department will not, therefore, be involved in permitting or regulating such products.

Liquor Control Board Regulations

The WSLCB’s licensing rules impose a number of restrictions on land use for I-502-authorized activities. Those rules include:

- Prohibition on locations within 1000 feet of “elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those age 21 and older”
- Requirement for alarm systems and security cameras at licensed facilities
- Requirement for signage prohibiting consumption of marijuana on the premises and prohibiting access by persons under 21
- Limited hours of operation

Skagit County cannot provide assistance in identifying separation distances or in complying with these or any of the other WSLCB rules. The WSLCB, not Skagit County, is responsible for enforcing these rules.

Zoning Constraints

The tables below describe which I-502 uses are allowed in which zones. You can find a map of these zones by visiting www.skagitcounty.net and clicking on iMap. In the column for type of review, P=permitted use, AD=Administrative Special Use, and HE=Hearing Examiner Special Use.

For more information about a specific use at a specific site, schedule a pre-development meeting with Skagit County Planning & Development Services for individualized review of the land use code’s applicability and requirements.

I-502 Retail Outlets

The table below lists which zones may permit retail facilities.

Zone	Use Category	Type	Code Cite
Rural Village Commercial (RVC)	Small retail and service businesses	P	14.16.100(2)(q)
Rural Center (RC)	Small retail and service businesses	P	14.16.110(2)(m)
Rural Business (RB)	Change of use from existing rural business use if specific criteria met	HE	14.16.150(2)(e)
Bayview Ridge Community Center (BR-CC)	Retail and service business (as part of PUD/master site plan).	HE	14.16.155(4)(ix)
Urban Reserve Commercial-Industrial (URC-I)	Retail and service businesses; Small retail and service businesses	P	14.16.195(2)(q); 14.16.195(2)(u)

I-502 Processor

The table below lists which zones may permit agricultural processing facilities. Businesses with I-502 licenses for both growing and processing on the same site will need to comply with zoning for both uses.

Zone	Use Category	Type	Code Cite
Rural Village Commercial (RVC)	Small-scale production or manufacture of products and goods, including food products...	AD	14.16.100(2)(j); 14.16.100(3)(j)
Natural Resource Industrial (NRI)	Agricultural processing facilities	P	14.16.160(2)(a)(ii)
Hamilton Industrial (H-I)	Agricultural processing facilities	P	14.16.175(2)(a)(ii)
Bayview Ridge Light Industrial (BR-LI)	Agricultural and food processing, storage and transportation; Manufacture, processing,...of any product from natural or synthetic materials	P	14.16.180(2)(a); 14.16.180(2)(k)
Bayview Ridge Heavy Industrial (BR-HI)	Manufacture, processing, treatment, storage, fabrication, assembly, or packaging of any product from natural or synthetic materials.	P	14.16.190(2)(n)
Urban Reserve Commercial-Industrial (URC-I)	Natural resource support services...; Warehouses and distribution and wholesale uses.	P	14.16.195(2)(l); 14.16.195(2)(w)
Rural Reserve (RRv)	Agricultural processing facilities	P	14.16.320(2)(c)
Hamilton Urban Reserve (H-URv)	Agricultural processing facilities	P	14.16.385(2)(c)
Agricultural—Natural Resource Lands (Ag-NRL)	Agricultural processing facilities; On-site sorting, bagging, storage, and similar wholesale processing...	P	14.16.400(2)(c); 14.16.400(2)(m)
Rural Resource—Natural Resource Lands (RRc-NRL)	Agricultural processing facilities	P	14.16.430(2)(c)

I-502 Producer

The land use code distinguishes **outdoor production** from **production inside a greenhouse** and **production inside an opaque structure**. Carefully consider which type of production you are planning. Most production is likely inside an opaque structure.

Outdoor Production

Production outdoors and not inside any kind of structure, qualifies as “agriculture,” which is permitted in many zones:

Zone	Use Category	Type	Code Cite
Bayview Ridge Light Industrial (BR-LI)	Agricultural uses, on an interim basis until industrial development	P	14.16.180(2)(b)
Bayview Ridge Heavy Industrial (BR-HI)	Agricultural uses, on an interim basis until industrial development...	P	14.16.190(2)(e)
Rural Intermediate (RI)	Agriculture	P	14.16.300(2)(a)
Rural Reserve (RRv)	Agriculture	P	14.16.320(2)(a)
Bayview Ridge Residential (BR-R)	Agricultural uses, on an interim basis until residential development.	P	14.16.340(2)(a)
Bayview Ridge Urban Reserve (BR-URv)	Agricultural uses, on an interim basis until residential development.	P	14.16.350(2)(a)
Hamilton Residential (HR)	Agriculture	P	14.16.380(2)(a)
Hamilton Urban Reserve (H-URv)	Agriculture	P	14.16.385(2)(a)
Agricultural—Natural Resource Lands (Ag-NRL)	Agriculture	P	14.16.400(2)(a)
Rural Resource—Natural Resource Lands (RRc-NRL)	Agriculture	P	14.16.430(2)(a)

Indoor Production

Most marijuana producers desire to grow marijuana indoors so that growing conditions can be carefully controlled to promote the growth of the non-native plants. Skagit County allows such indoor production in various zones as described in the tables on the following pages, subject to several caveats. Skagit County does not consider indoor marijuana production to be “agriculture” (see page 7). Instead, indoor marijuana production must fit into other land use categories that more closely approximate the use.

Qualifying uses that allow new structures for indoor production

Under SCC 14.16.020(3), the Administrative Official (the Planning Director) may determine that a given use may be allowed if, among other factors, it meets “the stated purpose and general intent of the zone in which the use is proposed to be located,” and shares “characteristics common with and not be of greater intensity, density or generate more environmental impact than those uses listed in the land use zone in which it is to be located.” The Administrative Official has determined that indoor marijuana production most closely approximates “*small-scale production*” or “*manufacture...of any product from natural materials.*”¹ New structures for marijuana production may locate in any zone where these uses are allowed:

Zone	Use Category	Type	Code Cite
Rural Village Commercial (RVC)	Small-scale production or manufacture of products and goods, including...	AD	14.16.100(3)(j)
Small Scale Business (SSB)	Small-scale production....of products and goods...	P	14.16.140(2)(d)
Natural Resource Industrial (NRI)	[Industrial] Uses related to agriculture...	P	14.16.160(2)(a)
Bayview Ridge Light Industrial (BR-LI)	Manufacture...of any product from natural or synthetic materials	P	14.16.180(2)(k)
Bayview Ridge Heavy Industrial (BR-HI)	Manufacture, processing, treatment, storage, fabrication, assembly or packaging of any product from natural or synthetic materials.	P	14.16.190(2)(n)
Urban Reserve Commercial-Industrial (URC-I)	Small scale production or manufacture of products and goods...	P	14.16.195(2)(v)

¹ Note that production does not qualify as a “nursery” because that term is only applicable to sale of live plants. SCC 14.04.020. I-502 production involves the growing of plants and the harvest of buds, and not the sale of live plants.

Additionally, the Skagit County Administrative Official has determined that indoor production is very similar to a *greenhouse*² even when the proposed or existing structure is opaque, and may be allowed consistent with a greenhouse use in all of the following zones, with the exception of Ag-NRL (see next section):

Zone	Use Category	Type	Code Cite
Rural Center (RC)	Wholesale...greenhouses	P	14.16.100(2)(l)
Small Scale Recreation and Tourism (SRT)	Wholesale...greenhouses	AD	14.16.310(4)(g)
Small Scale Business (SSB)	Wholesale...greenhouses	P	14.16.140(2)(e)
Natural Resource Industrial (NRI)	Wholesale...greenhouses	P	14.16.160(2)(a)(xiv)
Hamilton Industrial (H-I)	Wholesale...greenhouses	P	14.16.175(2)(a)(xii)
Bayview Ridge Light Industrial (BR-LI)	Wholesale...greenhouses.	P	14.16.180(2)(q)
Urban Reserve Commercial-Industrial (URC-I)	Wholesale...greenhouses	P	14.16.195(2)(s)
Rural Reserve (RRv)	Wholesale...greenhouses	HE	14.16.320(4)(aa)
Urban Reserve Residential	Wholesale...greenhouses	HE	14.16.370(4)(s)
Hamilton Urban Reserve (H-URv)	Wholesale...greenhouses	AD	14.16.385(3)(f)
Secondary Forest—Natural Resource Lands (SF-NRL)	Wholesale...greenhouses, provided there is no permanent conversion of resource land required...	AD	14.16.420(3)(g)
Rural Resource—Natural Resource Lands (RRc-NRL)	Wholesale...greenhouses...	AD	14.16.430(3)(j)

Indoor production in a greenhouse in Ag-NRL

In the Ag-NRL zone, a greenhouse is an outright permitted use (requiring no special use permit) if it “is an integral part of a local soil-based commercial agriculture operation.” The Department’s longstanding interpretation of this provision, intended to prevent the conversion of agricultural land, is that this provision allows only greenhouses without a floor that make actual use of the ground and soil beneath the structure. A greenhouse that has a solid floor can be permitted as an administrative special use, but must record a deed restriction requiring the property owner “to return the land to its former state or otherwise place the land in agricultural production” if the greenhouse ceases operation. The Department recognizes the ability of a pre-existing greenhouse in Ag-NRL to convert crops without permit or review.

The Department considers an *existing* opaque structure in Ag-NRL to be a “greenhouse” and therefore allowable for indoor agricultural production. The Ag-NRL landscape is peppered with other large agricultural accessory uses, including large opaque barns, that are allowed under the zoning code when they support “on-site soil-dependent agriculture.”³ The Department considers

² Greenhouse is defined as “a building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants.” SCC 14.04.020.

³ Definition of “agricultural accessory use” in SCC 14.04.020.

adaptation of an existing opaque structure, that does not convert additional agricultural land, to be substantially similar to an existing greenhouse use and therefore allowable for indoor marijuana production. But a *new* opaque structure that would not support on-site soil-dependent agriculture and would convert Ag-NRL land, i.e. take the prime ag soils out of production, is *not* considered a greenhouse in Ag-NRL and not allowed for indoor production.

Why isn't indoor marijuana production just considered "agriculture"?

In determining whether a land use fits within one of the uses listed in the County's development code, the County's Administrative Official examines the impacts on the neighborhood, landscape, and resources.⁴ Indoor marijuana production—which requires buildings, significant energy use, fans, and security systems—has potential impacts on the surroundings that may not be compatible with the purpose and character of the land use zones where agriculture is allowed, or the expectations of the people that live in those zones.

Agriculture is outright permitted in most zones, and it fits into those zones based on an expectation that the agricultural activities are traditional agriculture that uses the land and soil to produce crops. The purpose of many of the County's rural zones is to preserve the open space character of the landscape, and traditional agriculture fulfills that purpose.⁵

Skagit County prides itself on preserving and maintaining its rich agricultural land base. Consistent with that principle and state statutes requiring the conservation of agricultural land, the County has developed Comprehensive Plan policies and development regulations that promote agriculture where land supports it, and prioritizes keeping agricultural lands in production for the long-term future. Lands with highly-productive agricultural soils are zoned "Agricultural-Natural Resource" (Ag-NRL). The uses allowed in the Ag-NRL zone reflect the prioritization of keeping prime agricultural lands available for production. The adopted purpose of the zone is to "conserve agricultural land" especially with respect to the highly productive soil that characterizes the zone:

Provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the district. Non-agricultural uses are allowed only as accessory uses to the primary use of the land for agricultural purposes. The district is composed mainly of low flat land with highly productive soil and is the very essence of the County's farming heritage and character.⁶

The related definitions of "agriculture" and other terms emphasize agriculture as the "use of land" and require its use "for on-site **soil-dependent** agriculture" [emphasis added].⁷ Indoor marijuana production is not soil-dependent, and therefore does not need to be located on, or even near, prime agricultural land.

⁴ Under SCC 14.16.020(3), the Administrative Official may determine that a given use may be allowed if, among other factors, it meets "the stated purpose and general intent of the zone in which the use is proposed to be located," and shares "characteristics common with and not be of greater intensity, density or generate more environmental impact than those uses listed in the land use zone in which it is to be located."

⁵ See e.g. SCC 14.16.320(1).

⁶ SCC 14.16.400(1)

⁷ See SCC 14.04.020 for definitions of agriculture in and "agricultural accessory use."