



Skagit County Planning & Development Services

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Memorandum

From: Dale Pernula, AICP, Director
Re: Public Comments and Possible Paths Forward on Marijuana Facilities
Date: February 12, 2015

Contents

Background.....	1
Public Comments.....	3
Proposed Approach.....	4
For More Information.....	6

Background

Recreational Marijuana Facilities (I-502)

In November 2012, voters approved Initiative 502, which legalized recreational marijuana in Washington State and directed the Washington State Liquor Control Board (“LCB”) to develop regulations for permitting marijuana production, processing, and retail facilities. The LCB filed its rules on October 21, 2013.

In December 2013, the Planning Department issued a memo on marijuana permitting (the “Guidance Memo”) on its website that established how the Department would apply existing county code to marijuana facilities. In general, the Guidance Memo considered outdoor marijuana production operations to be “agriculture” under the zoning code, but indoor marijuana production and processing facilities to be industrial uses. Marijuana retail facilities were considered similar to other retail or commercial uses. Each were allowed in the zones that already allowed “agriculture,” “industrial,” or “retail” uses. In January 2014, Attorney General Bob Ferguson issued [a formal opinion](#) confirming that local government has the authority to regulate or prohibit the sale of I-502 marijuana within its jurisdiction.

Medical Marijuana Facilities (Collective Gardens)

Washington State has allowed the limited use of marijuana for medicinal purposes since voters approved Initiative 692 in 1998. In 2011, the Legislature adopted a bill expanding the use of medical marijuana and allowing the establishment and cultivation of “collective gardens” for growing marijuana for medicinal purposes.¹

¹ More precisely, the law provides an affirmative defense to qualifying patients and their designated providers, post-arrest, in state criminal prosecutions for violations of the Uniform Controlled Substances Act. It does not “legalize” medical marijuana, although it may be said to have had that effect. Seattle City Attorney Pete Holmes recently issued a memo, [“Moving Marijuana Policy Forward,”](#) that clearly articulates this point.

At the time, the U.S. Department of Justice took the position that state and local officials that enabled distribution of medical marijuana could be subject to federal criminal prosecution. Consequently, then-Governor Gregoire vetoed several sections of the bill. The effect of those vetoes was not immediately apparent; most cities and counties believed that the bill legalized medical marijuana and collective gardens, but it left them unregulated by state authorities.

In April 2012, the Board of County Commissioners adopted a complete moratorium on cannabis dispensaries and medical marijuana collective gardens. The moratorium lasted for a year, but then expired without the County taking action to adopt permanent regulations. It was not renewed, and collective gardens were not prohibited from locating in Skagit County, although none applied for permits.

In March 2014, the Division 1 Court of Appeals, in [*Cannabis Action Coalition v. City of Kent*](#), interpreting the effects of then-governor Gregoire's line-item vetoes of portions of the 2011 bill, held that neither medical marijuana nor collective gardens have been legalized under state law. After the decision, the Department modified the Guidance Memo to remove any reference to medical marijuana facilities. Medical marijuana remains obtainable at a few facilities around the county.

The Legislature is expected to amend state law in the next legislative session to harmonize the medical marijuana statute with the recreational statute (I-502) and make other changes to the marijuana statutes to comply with directives from the U.S. Department of Justice.

Current County Regulations (the Interim Ordinance)

On December 15, 2014, in response to public comments and complaints about the locations and impacts of marijuana production and processing operations, the Board adopted an interim ordinance ([O20140008](#)) that created a partial moratorium on new recreational marijuana production or processing facilities in the following zones: Rural Intermediate, Rural Reserve, Rural Business, Rural Center, Rural Resource-NRL, Rural Village Commercial, Bayview Ridge Residential, and Hamilton Residential. The ordinance also included a complete moratorium on new medical marijuana collective gardens or dispensaries.²

On December 22, 2014, the Board of County Commissioners adopted a new interim ordinance ([O20140009](#)) that retained the partial moratorium but modified the other restrictions. Marijuana production or processing facilities, in the remaining zones where they are allowed, are currently required to comply with the following:

- a structure constructed with transparent or translucent siding, and any security fencing, must be set back at least 250 feet from any residence not owned by the facility operator;
- any other marijuana production or processing structure must be set back at least 100 feet from any residence not owned by the facility operator; and
- in the Natural Resource Zones (Agricultural-NRL and Secondary Forest-NRL), a marijuana production or processing facility must be situated on a lot of at least five acres.

In the municipal UGAs where municipalities' development regulations apply (i.e., A-UD, MV-UD, and L-UD), the setbacks and lot size requirements do not apply. The interim ordinance is effective for one year and may be renewed by the Board.

² Snohomish County had a similar experience, adopting permanent regulations in November 2013 but then [adopting emergency ordinances](#) at the end of September 2014 to prohibit marijuana facilities in their R-5 rural zone.

Currently Permitted Facilities

Facilities legally established prior to the date of the ordinance are not affected by the new rules. Under the Guidance Memo (or subsequent interim regulations), the Department has approved two facilities in Ag-NRL by administrative special use permit, with another under review. One facility in the Rural Reserve zone has received a Hearing Examiner special use permit. Four other facilities that do not require special use permits (in Rural Intermediate, Rural Resource-NRL, and two in Natural Resource Industrial) have applied for building permits. Several others may be in operation that did not require permits.

Public Comments

The Board of County Commissioners took public comment on the interim ordinance at a public hearing on January 6, 2015, which it continued to February 3, and a written comment period between December 18, 2014, and February 5, 2015. The County heard public testimony from 48 people and received 78 properly submitted written comments. The written comments are posted to the [project webpage](#).

General Comments Regarding Marijuana Facilities

Without attempting to completely summarize the public comments, some recurring themes include:

- Government should take every precaution to protect kids from marijuana
- Skagit County should be drug free, or drugs should be substantially limited
- Preferences should be given to small, local growers
- County should evaluate each facility on a case-by-case basis
- Marijuana facilities should not be allowed in residential areas (many comments)
- Marijuana facilities should not be allowed near school bus stops
- Marijuana production is not typical rural agriculture; not like corn or blueberries
- The component in medical marijuana used therapeutically is CBD, which does not make you high, and is important for some medical conditions
- Marijuana producer/processor facilities will create good jobs and generate tax revenue
- Moratorium discourages those interested in starting marijuana businesses in Skagit County
- Ten or more acres should be the minimum lot size for marijuana production
- Five acre minimum lot size for marijuana production is not justified for opaque structures
- Marijuana facilities should have 250-ft setbacks from property lines (some propose more and note that Snohomish and Whatcom Counties require 300 ft and Burlington and Lynden require 1000 ft)
- Marijuana facilities should not be allowed on Guemes because it has no police presence
- No outdoor or greenhouse marijuana growing should be allowed
- Marijuana facilities will have significant amounts of cash on site (because of federal banking regulations) making them a significant target and attracting burglaries and other crimes; street value of marijuana contained on site for a Tier 3 facility is 'astounding'
- No grandfathering of existing marijuana facilities should be allowed

Perceived Impacts

The public comments described a variety of potential impacts on surrounding properties and the county in general:

- Production facilities in forest zoning will destroy the county's natural beauty
- Marijuana facilities are incompatible with the rural landscape and rural communities
- Marijuana cultivation may require 2½ gallons of water per plant per day
- Marijuana production should not be allowed on Guemes due to limited aquifer and possibility of groundwater contamination from fertilizer, pesticides, and waste (many comments)
- Marijuana facilities will adversely affect neighboring property values
- Smell of marijuana is like skunk, overpowering (many comments), can cause allergic reactions
- Growing lights at night are bothersome to neighbors
- Potential for added car and truck traffic
- Potential for added burden on police and fire departments
- LCB requires security cameras for outdoor grows, which are capable of watching neighbors
- LCB security requirements may not be sufficient
- Explosion hazard from marijuana processing facilities using butane oil for extraction

Proposed Approach

Based on its experience over the past year and recent public comments and complaints, the Department finds that production/processing facilities are much more likely to have significant impacts on neighboring properties than retail facilities. We also believe that production or processing in *transparent* facilities has larger impacts than that in opaque structures because of nighttime lighting impacts, LCB-required security fencing, and LCB-required security cameras. Because the LCB allows combination production/processing licenses, we propose treating production and processing facilities the same. Otherwise, the Department believes the general direction articulated by the Guidance Memo— that marijuana production and processing should be treated as an industrial operation, not agriculture—is largely sound.

Substantive Regulations

The Department recommends that the County move toward permanent regulations that would take the following steps:

1. **Prohibit outdoor growing of marijuana countywide.** Outdoor growing is unlikely to be desirable for serious producers, and introduces additional security and odor concerns.
2. **Allow only those marijuana facilities that are licensed by the Liquor Control Board.** Medical marijuana facilities, which are illegal under existing law, are likely to be rolled up into the recreational system during the current legislative session.
3. **Prohibit the use of flammable or combustible liquids or gases for marijuana extraction.** Butane and propane extraction processes have potential for explosions. Non-flammable CO₂ systems are available alternatives.

4. **Require all marijuana production or processing facilities to employ ventilation systems such that no odors from the production or processing are detectable off the premises.** This has been a frequently cited neighborhood concern, but was not one that the Department could address without new regulation.
5. **Require that any LCB-required security cameras be aimed so as to view only the facility property, not public rights-of-way or neighboring properties.** This has been a frequently cited neighborhood concern.
6. **Allow I-502 facilities only in the following zones, by type.** Zones not listed would not allow any I-502 facilities. Zones within municipal UGAs where municipalities' development regulations apply (i e., A-UD, MV-UD, and L-UD) would continue to apply the municipalities' regulations.

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

P = Permitted; AD= Administrative Special Use Permit; HE = Hearing Examiner Special Use Permit; X = Prohibited

7. **When required, special use permits must address impacts on surrounding properties,** including but not limited to the appropriate distance of the facility from residences, schools, daycare facilities, public parks, other public facilities, and other marijuana facilities and include appropriate controls on odor; screening or other requirements to avoid lighting impacts; protections against security cameras infringing on neighbors' privacy; controls on hazardous processing methods; and mitigation of other impacts. The Special Use Permit process provides the ability to review projects on a case-by-case basis.

Process to Adopt Permanent Rules

The Department appreciates the needs of some prospective marijuana operators to determine quickly where they will be able to locate in Skagit County. Under SCC Chapter 14.08, review by the Planning Commission and additional public comment and public hearing is required before the Board can adopt permanent rules, a process that takes about 60 days. To afford prospective operators more immediate relief, the Board could immediately adopt revisions to the interim ordinance and then send the interim ordinance as its proposal to the Planning Commission for a public hearing and Planning Commission review and recommendation through the standard adoption process.

Potential Adoption Schedule

The schedule below is consistent with the Department's recommended path for County adoption of permanent regulations.

	<i>Date</i>	<i>Item</i>
✓	December 4, 2013	Department issues Guidance Memo
✓	December 15, 2014	Board adopts interim ordinance O20140008
✓	December 22, 2014	Board adopts interim ordinance O20140009
▶	February 17	Board decides path forward
	Tuesday, March 3	Board adopts revised interim ordinance
	Early March	Department releases proposed code amendments for public comment
	Tuesday, April 7	Planning Commission public hearing at 6 pm
	Thursday, April 9	Written comment period ends
	Tuesday, April 21	Planning Commission deliberates and forwards recommendation
	Tuesday, April 28	Board adopts permanent ordinance and repeals interim ordinance

Next Board of Commissioners Meeting

The Department has scheduled 30 minutes on Tuesday, February 17 at 2 pm to discuss this memo and the Board's preferred path forward.

For More Information

Please visit the Department website at www.skagitcounty.net/planning and click on "I-502 Marijuana Implementation."