



# Skagit County Planning & Development Services

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## Memorandum

To: Board of County Commissioners  
From: Dale Pernula, AICP, Director  
Re: Planning Commission’s Recorded Motion on Marijuana Facilities  
Date: May 11, 2015

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### Background

Skagit County currently has an interim ordinance in place with interim rules for marijuana production, processing, and retail facilities. Under direction from the Board of Commissioners, the Planning Department has expedited the process for permanent regulations, and released a code proposal on March 12. The comment period ended on April 9; on April 14, the Legislature passed a new bill that significantly changes state regulation of medical marijuana. The Department proposed changes to the proposal to deal with that state legislation before the Planning Commission began deliberations on April 21. The PC has now issued its recommendation, and it is now time for the Board of County Commissioners to review the proposal.

The Department has produced a number of memos on this subject, each of which is available on the webpage dedicated to this proposal at [www.skagitcounty.net/marijuana](http://www.skagitcounty.net/marijuana) along with public comment:

- [Staff Report \(March 24, 2015\)](#): provides background on the County’s marijuana policy since 2012, summarizes the interim ordinances and the Department’s permanent code proposal, and describes adoption schedule.
- [Supplemental Staff Report \(April 16, 2015\)](#): describes Liquor Control Board’s regulatory system and legality of medical marijuana, includes table of other county cities’ regulations and map of other county’s regulations, explains why we treat marijuana as industrial instead of agricultural, and summarizes new state law.
- [Supplemental Staff Report II \(April 29, 2015\)](#): describes the new marijuana “cooperatives” that the new state law will allow; describes LCB siting and advertising rules; lists locations of existing facilities in Skagit County; describes special use permit process and criteria.

## Summary of Planning Commission’s Recorded Motion

The Planning Commission’s recommendation differs from the Planning Department’s code proposal in several ways and has the following effects:

- Marijuana production/processing facilities would be allowed only in Ag-NRL, BR-LI, BR-HI, and URC-I. See the zoning table on page 3 of the [Recorded Motion](#) or page 4 of the [initial staff report](#). In the table, P = Permitted, AD = Administrative Special Use, HE = Hearing Examiner Special Use, X = Prohibited.
- Marijuana production/processing facilities would not be allowed at all in greenhouses (“translucent structures”) in Ag-NRL.
- Marijuana retail facilities would require Administrative Special Use Permits in any zone where they are permitted except Rural Freeway Service, where they would be allowed.
- Marijuana production/processing facilities would have to be setback at least 400 ft from a residence not owned by a facility operator.
- Hazardous chemical processing would be prohibited in any zone other than BR-HI.
- The notification distance for marijuana facility special use permits would be expanded from 300/500 to 1000 feet.
- Medical marijuana cooperatives would not be allowed anywhere in Skagit County (but medical marijuana could be grown at home by individuals, consistent with state law).

## Requested Board Action

The Department will present the Recorded Motion and this memo to the Board on Tuesday, May 12. The Department does not expect, and no other timeline requires, any decision from the Board right away. The Board may take its time to consider the following questions:

- 1. What should be included in the final proposal?** The Planning Commission (“PC”) has received public comment, deliberated, and issued its recommendation in the form of a Recorded Motion (attached). Consistent with RCW 36.70.040, the Planning Department has considered the PC recommendation and has made additional recommendations that are included below in this memo.
- 2. What additional process does the Board want for the final proposal?** Unless the Board wants to simply adopt the Department’s March 12 code proposal with no substantial modifications, the County needs to take additional public comment on the proposal. It may do that with a public hearing and written comment period, or just a written comment period. The Department recommends the latter, which may not begin until the Department integrates the Board’s requested changes into the code proposal. At least a 14-day written comment period, beginning and ending on Thursdays, is standard.

## Department Recommendation

The Department recommends that the Board move forward with the Planning Commission's recommendation but with the following exceptions and considerations:

1. **Do not require 1000-ft notification radius.** The PC recommended requiring mailed notification to all parcels within a 1000-ft radius of any marijuana facility that requires a special use permit. That distance is inconsistent with what the County requires for any other special use permit, including uses that have much greater impacts on surrounding uses. Under existing code, notices for special use permits are posted onsite and published in the paper, and mailed to parcels within 300 feet (or 500 ft if the Administrative Official determines it necessary). Distances are measured from the external property lines of the proposal's parcel. No rational basis has been articulated to expand the notification distance to a 1000-ft radius for marijuana production facilities when a smaller radius is allowed for much more significant uses.
2. **Delete "from a residence" in the measure of distance for BR-LI.** The Department found only one existing residence in BR-LI, so this provision affects only that one parcel on Peterson Road. Residences in an industrial zone are pre-existing non-conforming uses that would otherwise not be allowed to locate there and should expect much more significant industrial uses (e.g., a FedEx distribution center) than an opaque marijuana production facility.
3. **If greenhouses are prohibited in Ag-NRL, prohibit them everywhere.** The PC recommended prohibiting greenhouses (or, translucent structures) in Ag-NRL and allowing them only in Bayview Ridge Light Industrial and Heavy Industrial, and Hamilton Industrial. Hamilton Industrial does not exist on our zoning map because it has all been incorporated into the Town of Hamilton.

As the Department has explained before, we anticipate that translucent structures are the most likely to have significant impacts on neighboring uses and the least likely to be desirable by serious marijuana producers. Greenhouses don't allow for the control of lighting that is required for efficient marijuana production, require sight-obscuring fencing and more security cameras, make it more difficult to install HVAC systems that prevent the release of odors, and will not comply with the State Energy Code requirements, resulting in greater greenhouse gas emissions.

In Ag-NRL, there are many existing greenhouses that producers may want to utilize for production. In Bayview Ridge, there are none, and opaque buildings are cheaper and more desirable for new construction. The Department therefore recommends simplifying the code by requiring all marijuana production and processing facilities to be in opaque buildings.

4. **Carefully consider whether to prohibit marijuana production in Ag-NRL.** Under existing code, greenhouses in Ag-NRL are permitted uses only if they do not have a floor and directly use the soil. Greenhouses in Ag-NRL are an admin special use if they do have a floor, and must return the soil to its previous state when the use is discontinued. The Department's original proposal would allow marijuana production in a greenhouse in Ag-

NRL if it was existing as of January 1, 2014. If the Board so desired, the final proposal could harmonize the existing soil-based requirement with new marijuana uses so that establishing a new marijuana use in an existing greenhouse does not create a defense against the floor-removal requirement upon discontinuance of the use, or require an Administrative Special Use, or both.

5. **Consider allowing marijuana production in Rural Resource.** The PC recommended prohibition of all marijuana in Rural Resource. The Department's original proposal would have allowed marijuana production/processing in an opaque structure in Rural Resource, except on Guemes Island. The Rural Resource zone is characterized by large parcels, including old gravel pits with limited potential for other uses, in remote areas. The Department recommends the Board consider allowing marijuana production/processing at least by Admin Special Use in Rural Resource.
6. **Outright permit (or prohibit) retail facilities in Rural Center and Rural Village Commercial.** The PC recommended that Admin Special Use Permits be required for these two zones (and RB and URC-I). The problem is that, for retail uses, we do not have a list of special use criteria other than the basic criteria for all special uses in SCC 14.16.900(1)(b)(v). Properly permitted marijuana retail facilities, such as 221 in Conway, have not been the source of any complaints. By state law and Liquor Control Board rule, access is restricted to people age 21 and over, and ID is checked at the door. Signage is limited to 1600 sq inches. The Department does not anticipate public comments on such special use permits other than general complaints about the presence of marijuana, which is a concern that cannot be mitigated, and the Department does not want to create a public expectation that a special use permit process would deny a marijuana permit on that basis.

Retail facilities are under other existing constraints: The number of LCB retail licenses is controlled; the County (including the towns) were allocated only four licenses, although the LCB may adjust that in the future to permit additional license(s) to allow for conversion of the medical marijuana system. LCB rule also prohibits facilities within 1000 feet of schools, parks, libraries, and child care centers.

7. **Allow conversion of retail facilities in Rural Business per existing code.** The Planning Commission recommended requiring Admin SUPs for marijuana retail in Rural Business. The Rural Business zone exists to allow for continuation of existing non-residential uses in rural areas, and SCC 14.16.150(2)(b) and (4)(d) and (4)(e) allow for changes of use from the existing use to a new use with administrative or hearing examiner review to ensure rural compatibility. No other new commercial uses are allowed outright or by special use in this zone, and it would be incongruent with the existing code and with the GMA foundation of the zone to list marijuana retail facilities that way. The Department strongly recommends relying on the existing change of use provisions to allow for marijuana retail, where appropriate, in this zone.
8. **Outright permit retail facilities in URC-I.** The URC-I zone is different from the RC, RVC, and RB zones in that it is not a spot zone but instead a large UGA zone intended for commercial and industrial uses. For the same reasons as above, the Department does not believe that a Special Use Permit process is appropriate for retail facilities in this zone; the

Department also believes that the URC-I zone is one of the most appropriate zones for these types of facilities, and that they will likely have less neighborhood impact than a convenience store.

9. **Delete the 400-foot setback from residences.** The PC recommended a new 400-ft setback from residences not owned by the facility operator for production or processing facilities. Such a setback is problematic for the following reasons:

- The setback is not from the property line, so some of the setback may “use” neighboring property rather than the facility operator’s property.
- In some cases there may be a residence on the same parcel as the marijuana facility, but the marijuana facility may be owned by a renter of the real property; the house would therefore not be “owned by the facility operator,” willing to give its consent, but not allowed to by code.
- No rational basis for the 400-ft distance has been articulated. For a permanent regulation that imposes a prohibition, there needs to be some basis for the distance.
- The only zones at issue are Ag-NRL, BR-LI, and BR-HI (and possibly Rural Resource). There is only one residence that we found in BR-LI and none in BR-HI. In Ag-NRL, almost all residences are located close to the roads, because that is part of our longstanding policy to help preserve open tracts of agricultural land. In all zones, residences are not preferred uses and should expect greater impacts from outright permitted industrial or agricultural uses than they would incur from opaque structures.
- One possible alternative would be to require an Admin Special Use Permit for facilities in all three of these zones when locating within 1000 ft of a residential zone (or a residence, as the PC recommended for BR-LI). That would allow additional review and additional requirements (including landscaping screening, controls on lighting and odor, etc, as listed in the proposal) without imposing a fixed and arbitrary numeric distance.

10. **Add a line characterizing marijuana production and processing as industrial, not agricultural.** To avoid confusion with those that might want to argue for marijuana production to receive the same protections as agriculture, such as in SCC 14.38 (Right to Manage Natural Resource Lands), the Department would like to add a line to SCC 14.16.855 declaring marijuana production to be an industrial use and not an agricultural use.