



# SAN JUAN COUNTY

## MARIJUANA FREQUENTLY ASKED QUESTIONS

### If marijuana is not an agricultural product and if its production is not considered an agricultural activity why is it treated like agriculture in land use regulations?

The director of the Department of Community Development has the authority to interpret San Juan County Code (SJCC) Title 18, Unified Development Code (SJCC 18.10.030). "Agricultural activities" is defined in SJCC 18.20.010 as agricultural uses and practices defined in RCW [90.58.065](#). The definition includes horticulture, the art of cultivation and management. Marijuana is the plant *Cannabis*. It is planted and grown as a crop. Thus, growing marijuana is considered similar to growing agricultural crops and is allowed subject to the same land use regulations as agriculture in the development code. RCW [90.58.065](#) (excerpt):

Application of guidelines and master programs to agricultural activities.

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW [90.58.080](#) shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the \*current exception to the definition of substantial development in RCW [90.58.030](#)(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

PO Box 947  
Friday Harbor, WA 98250

WAC 314-55-084 related to the production of marijuana indicates that marijuana is a crop and includes regulations similar to those for agricultural products:

Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:(1) Pesticides registered by WSDA under chapter [15.58](#) RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements. (2) Commercial fertilizers registered by WSDA under chapter [15.54](#) RCW.(3) Potting soil and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

Some folks are using the definition of agricultural product in Chapter [82.04](#) RCW Business and Occupation Tax to suggest that the County should not consider marijuana production as agriculture. This State code is specifically about taxation and is not applicable to the County's interpretation of County code. RCW [82.04.213](#):

(1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW [15.85.020](#); plantation Christmas trees; short-rotation hardwoods as defined in RCW [84.33.035](#); turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW [15.85.020](#), or a bird, or insect, or the substances obtained from such an animal including honey bee products. "Agricultural product" does not include marijuana, useable marijuana, or marijuana-infused products, or animals defined as pet animals under RCW [16.70.020](#).

### **What is the status of County rule making for marijuana production?**

The County began discussion about creating specific regulations for marijuana production, processing and retailing in 2014 and worked with the community to obtain input. In addition to the committee meetings, the Council discussed and worked on the issue in at least fifteen meetings. The proposals that were brought forward by staff and the work group were inadequate and widely opposed especially by the Ag community. The process was discontinued for multiple reasons including staff resource issues, prioritization of State mandated work on the Shoreline Management Program, flood hazard regulations and Comprehensive Plan update, and evolving State marijuana laws.

### **Please explain how the SEPA review process will work for this project.**

SEPA requirements will be evaluated when there is a concrete proposal/activity. SEPA processes are outlined in SJCC [18.80.050](#) SEPA implementation rules:

<https://www.codepublishing.com/WA/SanJuanCounty/#!/SanJuanCounty18/SanJuanCounty1880.html#18.80.050>



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

PO Box 947  
Friday Harbor, WA 98250

### **What is the legality of growing this product in a designated wetland?**

San Juan County treats this crop like agriculture. Because the County adopted a Voluntary Stewardship Program managed by the SJI Conservation District, agriculture is allowed in wetlands and their buffers under SJCC Table 18.35.100-4:

Agricultural activities conducted in accordance with a voluntary stewardship program developed pursuant to RCW [36.70A.705](#), with the exception of the construction of agricultural structures which are subject to the same provisions as other structures.

The Lopez Island property proposed for an outdoor grow operation and minimal plant processing by hand was cleared as part of an historic homestead that included pastureland, orchards and other development. Recently, the property has been used for agriculture activities including haying and animal husbandry. The wetland area appears to have been degraded.

A 2018 wetland reconnaissance on the property indicated that there are seasonal Category IV wetlands on the property. Legally conducted agricultural activities may continue and are not considered nonconforming to critical area regulations. New agricultural structures will have to comply with critical area regulations. Filling or draining of the wetlands would require regulatory notice and permitting through State and Federal permit processes.

### **What will be the water source for irrigation of the proposed marijuana grow operation?**

The proponent has not told the Department of Community Development and Planning how they plan to water the crop. Under State law, the following apply:

Water Resource Regulations – For outdoor irrigation growers have four options to supply water to the plants: 1) Relying on rainfall; 2) Obtaining a water right permit; 3) Relying on the water right permit exemption for small uses of water or; 4) Obtaining water from a water purveyor such as an irrigation district.

- A Water Right Permit from the state Department of Ecology (Ecology) is needed for ground water withdrawals over 5,000 gallons a day or any surface water withdrawal.
- A Water Right Permit Exemption is available for groundwater withdrawals (“exempt wells”) of no more than 5,000 gallons a day. Although this withdrawal does not need a permit, it is still subject to the same privileges and restrictions as a permitted water right. Only one groundwater exemption is allowed for any one project, regardless of size.
- Rainwater collection systems are allowed in Washington without requiring a water right. They can be used to store water collected in wet seasons for later use. Groundwater from exempt wells can also be pumped to a rainwater collection system and stored until needed for beneficial use as long as the 5,000 gallon per day is not exceeded.
- Collected rain or ground water can only be used on the same parcel from which it was captured.



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

PO Box 947  
Friday Harbor, WA 98250

### How Can Solid Waste be Disposed?

Outdoor growers have several options for disposal of marijuana waste but each has different requirements.

- Unadulterated marijuana crop residues may be tilled under, *in place only*, and do not need to be ground and mixed with 50% other waste as required by the marijuana licensing rules. If marijuana crop residues are not tilled under in place, they will need to be rendered unusable by mixing with 50% other materials and ground before disposal. This mix is considered a “solid waste” by Washington State regulations and its management and disposal must comply with “Solid Waste Handling Standards, WAC 173-350.” Ground materials can be handled in several ways:
- Crop residues which have been ground and mixed with 50% other materials can be land applied at agronomic rates. Land application will need a permit from the local health district.
- Composting of the ground marijuana mix on-site is allowed and the composted material can be returned to the fields.
- The ground marijuana mix may be shipped off-site to a regulated solid waste facility for disposal, composting or other handling.

Regulatory oversight of solid wastes is the responsibility of local health districts (sometimes called “environmental health”).

Also see: <https://apps.leg.wa.gov/wac/default.aspx?cite=314-55-097>