



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham WA 98226

AGENDA September 26th, 2024

The Whatcom County Planning Commission will hold a **hybrid** meeting at 6:30 p.m., with the option to attend remotely or in person at 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of: September 12, 2024
- Meeting Topic - Work Session and Public Hearing regarding:
 - *Heavy Impact industrial (HII) in an Urban Growth Area, PLN2024-00007*
 - *Proposed amendments to WCC Title 22 (Land Use and Development) and Chapter 20.97 (Definitions) to enact SSB 5290 regarding local project review*
- Unfinished Business
- Adjournment

NOTE: For information on how to watch and participate in the meeting in real time, please visit the following web page: [Participate in Virtual Planning Commission Meeting](#)

Individuals who require special assistance to participate in the meetings are asked to contact "PDS_Planning_Commission@co.whatcom.wa.us" at least 96 hours in advance.

There are nine members on the Whatcom County Planning Commission. If you will be giving written information to the Commissioners, please give a copy to the Coordinator for our office files.

*For more information please contact Aileen Kogut-Aguon at (360)778-5935 or PDS_Planning_Commission@co.whatcom.wa.us
5280 Northwest Drive, Bellingham WA 98226*



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
September 12, 2024**

Regular Meeting and Work Session

1

1 **Call to Order**

2 The meeting was called to order by Whatcom County Planning Commission Chair,
3 Kelvin Barton at 6:31 p.m.

4 **Roll Call**

5 **Present:** Kelvin Barton, Suneeta Eisenberg, Atul Deshmane, Jim Hansen, Scott Van
6 Dalen

7 **Absent:** Frank James, Dominic Mocerri, Stephen Jackson, Julie Jefferson

8 **Staff Present:** Steve Roberge, Cliff Strong, Amy Keenan, Aileen Kogut-Aguon, Jacqui
9 Sullivan and Garrett Smith

10 **Department Update**

11 Steve Roberge, Assistant Director of Planning and Development Services (PDS),
12 provided information on what was discussed at the County Council meeting that
13 occurred on Tuesday. Council discussed the Planning Commission recommendation
14 regarding code scrub and is planning to hold a public hearing on it on September 24th.
15 Council also discussed the shoreline amendments that were recommended several
16 years ago from the Planning Commission and finally made their way back to the
17 Council. There may be a public hearing on that topic for council on September 24th.
18 Mr. Roberge mentioned the next Planning Commission meeting will have two public
19 hearings regarding the Heavy Impact Industrial (HII) in the Bellingham Urban Growth
20 Area (UGA) and the permit review timelines for 5290.

21 **Open Session Public Comment**

22 Lisa Adam, Bryan Sarni, Sarah Gardner, Perry Eskridge and Coleman Hoyt provided
23 public comment.

24 **Commissioner Comments**

25 Commissioner Hansen stated he met with the Forest Resilience Committee and they
26 are in the process of creating goals and objectives for a plan on forest resilience that
27 should be out by the end of the year hopefully before the Comp Plan revisions.

28 Commissioner Deshmane attended a conference for Building Industry Association of
29 Whatcom County (BIAWC), Government Relations meeting, where they discussed the
30 amendments to the code related to permitting based on the recent state legislation.

31 **Approval of Meeting Minutes**

32 **Timestamp: 6:53**

33 **1 Commissioner Eisenberg moved to approve the meeting minutes from August 22,**
34 **2024**

35 **Commissioner Deshmane seconded.**

36 **Roll Call Vote: Ayes- Deshmane, Eisenberg, Barton**

37 **Abstain- Van Dalen, Hansen (Ayes3-; Nays-0; Abstain-2). The motion passes.**



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
September 12, 2024**

Regular Meeting and Work Session

2

1 **Work Session Regarding Proposed Amendments to enact SSB 5290**

2 **Timestamp: 6:55**

3 Amy Keenan, Special Projects Manager PDS, provided information regarding what is
4 required to comply with new State legislation to update the code SSB 5290. This is an
5 informational presentation and will have the public hearing at the next Planning
6 Commission meeting. Right now, PDS is looking internally at how to improve their
7 permitting process as they are currently, looking at staffing and how permitting
8 processes can improve internally.

9 Ms. Keenan continued her presentation with the changes that will be made through
10 this new code change such as, timelines for permits, refund eligibility of permit fees,
11 and annual reporting.

12 Commissioner Hansen asked if the funding is in place to staff up to accommodate this
13 code change and the intricacies of herding applications through human resources.

14 Steve Roberge responded the department requested some funds to do a study on the
15 department. The study will be looking at staffing levels as well as some of the
16 department's processes. The hope is to get that contract out within the next month or
17 so and the review started.

18 Commissioner Chair Barton disclosed that the boundary line adjustment project he will
19 be doing on his property will have no influence on any proposed changes being made
20 on the documents that pertain to the code amendment regarding boundary line
21 adjustments.

22 Cliff Strong, PDS Senior Planner presented the code amendments that are being
23 requested for SSB 5290 which Ms. Keenan spoke on in her presentation. Mr. Strong
24 continued his presentation on some deficiencies that need to be fixed within WCC Title
25 22.

26 Commissioner Deshmane wondered about performance and simulation. There is an
27 intent in this legislation that will make the process timely, but how do we make sure
28 that intent is met.

29 Ms. Keenan responded that the law requires the code be changed regardless if we have
30 staffing for this change. PDS will be doing an outreach to acquire data on this and will
31 find the staffing for it.

32 Mr. Roberge stated that the short time frame will be the main issue in this new
33 change.

34 Commissioner Deshmane asked how will staff respond with what they discover in this
35 process moving into the new year? What will be the process to have the metric system
36 work within the new code?

37 Mr. Roberge responded that PDS hopes to do outreaches and see if what we are doing
38 works and create continuous improvement processes. The hope is to get the feedback
39 needed to create the efficiency needed.

40 Commissioner Deshmane suggested to structure the annual reporting in a way that will
41 be helpful to better look at the data.

42 Mr. Roberge stated that PDS has to comply with the state's reporting requirement



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
September 12, 2024**

Regular Meeting and Work Session

3

1 Garrett Smith, Natural Resources Division Manager, elaborated on what is being
2 reported to the public and what is being done internally such as number of permits
3 being submitted annually and permits being issued.

4 **Work Session Regarding Heavy Impact Industrial in the Bellingham UGA**

5 **Timestamp:**

6 Cliff Strong, PDS Senior Planner provided the uses that were requested at the prior
7 meeting to discuss tonight. Mr. Strong proposed to add definitions to primary and
8 secondary manufacture products within the code, to clarify what may or may not be
9 appropriate for the area. Mr. Strong continued discussing the specific uses the
10 Commissioners requested to discuss at the prior Commission meeting.

11 Commissioners discussed in further detail on the uses and prohibited uses within the
12 Bellingham UGA such as, bulk commodities storages (warehouses), thermal energy
13 plant, hemp and cannabis production facilities, and battery energy storage systems.

14 Mr. Roberge reminded the commission that Council laid out a two-step process with
15 looking at the initial zoning amendments and the second step being done through the
16 Comprehensive Plan.

17 Commissioner Deshmane recommended to either do a separate resolution to this topic
18 for now and make a future recommendation to Council to docket an item for the
19 Planning Commission to consider for an in-depth study in this particular UGA.

20

21 **Adjournment**

22 **Timestamp: 8:09**

23 The meeting was adjourned at 8:09p p.m.

24 Minutes prepared by Aileen Kogut-Aguon.

25 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

26

27 _____
Kelvin Barton, Chair

Aileen Kogut-Aguon, Secretary

Whatcom County
Planning & Development Services
Staff Report
(revised 9/17/24)

Review of Uses Allowed in the Heavy Impact Industrial District within Urban Growth Areas

I. File Information

File # PLN2024-00007

File Name: Review of uses allowed in the Heavy Impact Industrial District within Urban Growth Areas

Applicant: Whatcom County Planning and Development Services (PDS) on behalf of the County Council

Summary of Request: Amend Whatcom County Code Chapter 20.68 (Heavy Impact Industrial) and other relevant sections of Title 20 to define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area.

Location: Alderwood neighborhood, northwest of Bellingham and south of the airport

Recommendation(s): Planning and Development Services recommends that the Planning Commission review the exhibits and after holding a public hearing recommend to Council the appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area as shown in (revised) Exhibit A.

II. Background

Council Directive

In 2024 Council placed on the docket:

PLN2024-00007 – Heavy Impact Industrial Zones within city UGA

Amend Whatcom County Code Chapter 20.68 and other relevant sections of Title 20 to define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area.

Council added this to the docket in response to concerns from surrounding residential neighbors when a permit application for a metal recycling facility was submitted,¹ with the goal of reducing impacts from other similar potential uses in the future.

Pursuant to Council direction, this item is intended to be the first phase in assuring future uses are compatible and consistent with each other and the vision for the community. At the 5/21/24 Council meeting another motion was approved 7-0 "that the Council support re-examining the use of the HII zone in the UGA to include other zoning designations as possible." This motion institutes a second phase in planning for this area, which is intended to occur through the Comprehensive Plan Update and would include a more thorough review of zones, uses, compatibility, outreach, coordination with the City and Port of Bellingham, residents, businesses, etc. The Planning Commission's current task is addressing the docketed item above with deeper and broader discussions to follow with the second phase.

¹ Though has since been withdrawn.

Council Clarification

Upon the Planning Commission’s request for clarification from Council as to what they were looking for through their docket item, the Council’s Committee of the Whole, at their 4/23/24 meeting, provided a list of uses the Commission should review and consider prohibiting within the Bellingham UGA. Specifically, a motion was approved “that Planning and Development Services Department use this included and excluded list as a starting point for working with the Planning Commission on advancing a Phase 1 code changes discussion.” These lists are attached as Exhibits B and C.

Councilmember Donovan, who originally developed these lists, conferred with existing businesses and the Port of Bellingham (who owns some of the HII properties) to ensure that the excluded list does not significantly affect any existing businesses.

Affected Location(s)

There is only one location that this directive would affect, that being the Alderwood neighborhood, as it is within the Bellingham UGA and contains properties zoned Heavy Impact Industrial (HII). (There are no other areas in the county zoned HII within any other city UGAs.)

The area is located adjacent to the northwest portion of Bellingham. It is comprised of a mix of light and heavy industrial (LII and HII), residential (URMX, URM3, URM6, and URM18), commercial (NC), and recreation and open space (ROS) zoning and uses (see figures, below). It has been an industrial area since before zoning was first adopted, as it is near the port and is served by rail and the nearby shipping terminals. However, in the last few decades residential uses have intensely developed around and in between the industrial properties.



Figure 1. Aerial of the Alderwood Neighborhood

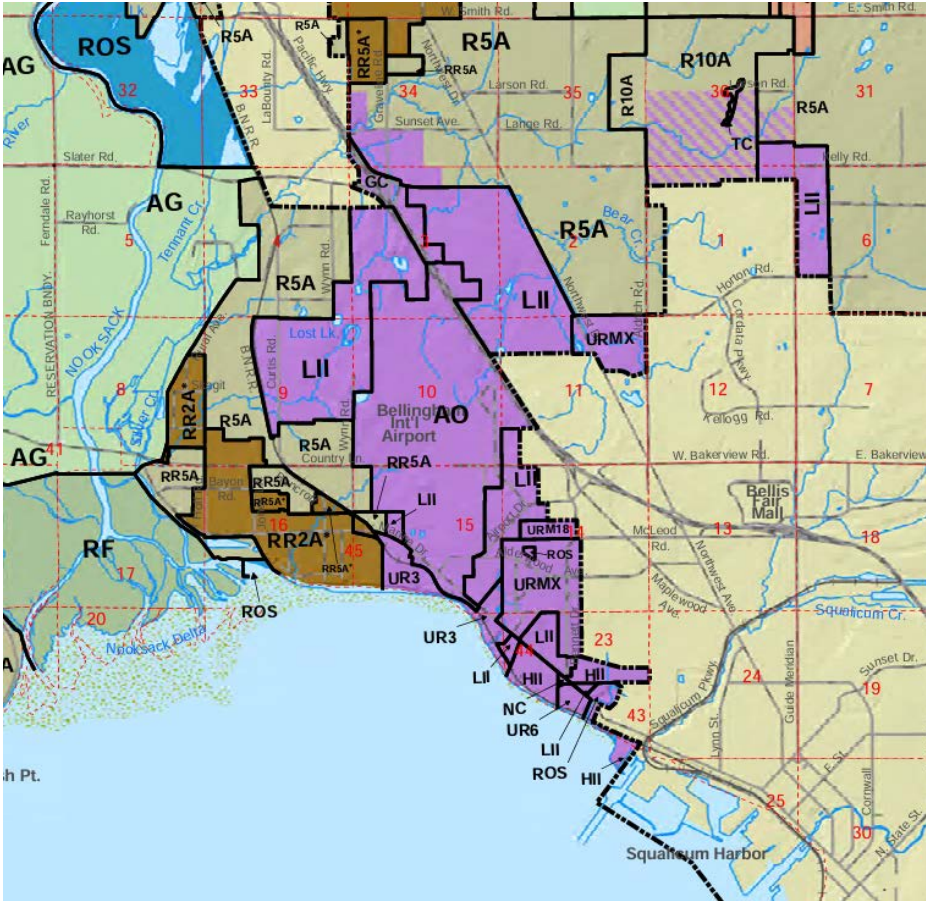
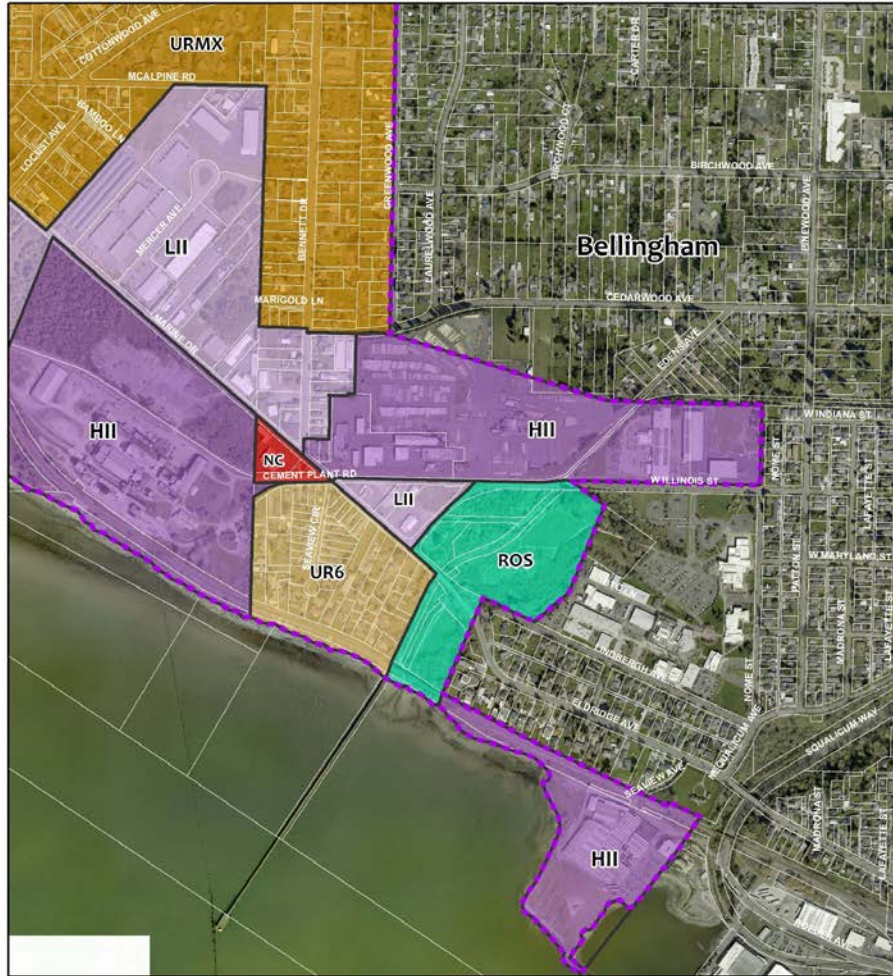


Figure 2. Portion of the Whatcom County Zoning Map for the Alderwood Neighborhood



Legend

Title 20 Zoning

- UR6 Urban Res. 6/Ac.)
- URMX (Urban Res. Mixed)
- NC (Neighborhood Comm.)
- ROS (Rec./Open Space)
- HII (Heavy Impact Industrial)
- LII (Light Impact Industrial)
- Urban Growth Area

USE OF WHITSON COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING EXEMPTION:
 Whitson County makes no warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. We represent and warrant to make reasonable efforts to ensure accuracy, completeness or quality of data displayed on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whitson County harmless from and against any claims, loss, or liability arising from any use of this map.

0 100 200 400 600 800 Feet

June 2024



Figure 3. Zoomed in Map of the Alderwood Neighborhood showing zoning districts

III. Code Amendments

WCC Title 20 regulates uses, and the permits they require, by categories: permitted, accessory, administrative, conditional, and (sometimes) prohibited uses. While historically the Alderwood neighborhood was predominantly an industrial area, there are uses allowed in the HII district that may not be appropriate for this area today. Council has tasked the Planning Commission with identifying those uses that might fit this category. The existing portion of the HII code showing the entire list of permitted, accessory, administrative, conditional, and prohibited uses is provided in Exhibit D.

Consolidation of Bellingham UGA Use Exceptions

Sprinkled throughout the existing code (in WCC 20.68.050, 20.68.150, and 20.68.200) are several exceptions to the use allowances that apply specifically within the Bellingham UGA. To make it easier to find these exceptions the draft amendments move them all to one new section 20.68.210, entitled "Use Allowances Specific to the Bellingham Urban Growth Area." The list of prohibited uses is based on Council's input (Exhibits B & C), modified based on community input. Exhibit A reflects both the Council's lists as well as some of these refinements.

Definitions

A proposed amendment necessitated by the Council's and Planning Commission's concerns to not effecting existing businesses is the modification of the County's definition of "manufacturing," and the addition of definitions for "primary manufacturing" and "secondary manufacturing." Currently the code distinguishes between the two as allowed or not allowed in numerous sections; however, there are no definitions specifying what the actual difference is. (See Exhibit A, page 3)

Prohibition of Certain Uses in the Bellingham UGA

Using the lists provided by Council (Exhibits B and C), PDS developed draft code amendments consistent with Council's direction and input. Since Council issued these lists PDS has also worked with the Port of Bellingham (POB) to refine them so as not to affect existing businesses or POB plans, and the Planning Commission has heard from residents, business owners, and the POB in their work sessions.

At the Commission's 8/22/24 work session the Commission triaged the list of potentially prohibited uses listed in §20.68.216 (Exhibit A), indicating which ones they wanted to discuss in more detail. This discussion ensued at their 9/12/24 work session, at which they directed staff to edit the amendments as follows. (Note, those sections not listed below have been left unchanged.)

(b) Primary manufacturing and processing of rubber, plastics, paper, asbestos, and products derived thereof;

Discussion: There was concern as to whether the manufacturing of paper products should be prohibited, as there are existing businesses that produce paper products. However, they use paper in a secondary manufacturing process rather than a primary manufacturing process.

Though this line is existing text and these items are currently prohibited in the Bellingham UGA, and Council has included it on their "excluded" list, the POB would like to retain paper manufacturing as a permissible use, as there are existing businesses that use paper to manufacture finished products. However, with the addition of definitions for primary and secondary manufacturing, the prohibition of the primary manufacturing of paper could stay, as those existing businesses using paper in their processes would be considered secondary.

However, staff pointed out that the phrase “and products derived thereof” seems to speak to secondary manufacturing. The Commission agreed that primary manufacturing of certain products should be prohibited, but that the secondary manufacturing of products using the primary products should be allowed. Thus, in the latest version of Exhibit A this phrase has been deleted.

(e) Primary manufacturing of chemicals and associated products, including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals;

Discussion: The Commission had concerns that there are existing businesses that use certain chemicals in their manufacturing processes, some of which are listed in (e). The Commission agreed that adding “primary,” in conjunction with adopting definitions for “primary manufacturing” and “secondary manufacturing” (see Definitions, above), would allow secondary manufactures to continue, but that primary manufactures of these chemicals would be prohibited.

(f) Packaginghouses and slaughterhouses and associated holding pens, except for seafood facilities;

Discussion: The POB would like to make sure that seafood processing is not excluded. Staff has added “except for seafood facilities.” The Commission agreed.

(h) Bulk commodity storage facilities, and truck, vessel and transshipment terminals and facilities applied for after [effective date of this ordinance];

Discussion: The POB would like to strike this subsection, arguing that this neighborhood has proximity to rail, truck routes, and storage/terminal facilities that may make this a viable use in the future and limits the ability to support new businesses and innovative ideas.

After discussion, the Commission suggested that a prohibition on these uses should only pertain to those applied for after the effective date of the ordinance effecting these amendments. Staff has added such language (with the date to be entered once known).

(i) Hazardous waste treatment and storage facilities as a primary use;

Discussion: Staff pointed out that many businesses need to be able to treat and/or store hazardous waste as part of their practices (e.g., an auto repair shop needs to be able to properly store and dispose of numerous chemicals). Staff believes it was Council’s intent not to exclude such as an accessory use, but only a primary use. Thus, we have added “as a primary use.” The Commission agreed.

(k) Thermal power plants as a primary use;

Discussion: The Commission had concerns that there may be business that have small-scale energy producing technologies that could be interpreted to fall under “thermal power plants,” and they didn’t want to preclude these. Thus, “as a primary use” has been added, which would mean that stand-alone power plants would be prohibited, but not small-scale power backup systems (e.g., generators).

(l) Battery Energy Storage System (BESS);

Discussion: Though Council included Battery Energy Storage Systems (BESS) on their “excluded” list (Exhibit B), the POB would like to retain BESS as a permissible use, as they’re looking to install a BESS for use by ships in-port. Additionally, many businesses have on-site BESS, used to manage their energy demands.

The POB also argues that:

PLN2021-0001 already addressed “Battery Energy Storage Systems” and allowed BESS of any storage capacity to be permitted in LII and HII zones.

Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development supports leaving this as an allowed use

Existing businesses, including the Port, are proposing battery energy storage facilities associated with other uses. Adding this to the prohibited list adds uncertainty as we are moving to diversifying energy sources, providing energy security and sustainability.

In their discussion on 9/12, additional direction to staff was not provided, as the Commission wanted to know more about the fire potential of BESS. Exhibit E provides some information from various sources on the internet.

(m) Type 2 cannabis production facilities;

Discussion: After an explanation by staff of what these are, the Commission had no concerns in keeping them on the prohibited list and the language has been left unchanged.

(n) Cannabis processing facilities;

Discussion: After an explanation by staff of what these are, the Commission had no concerns in keeping them on the prohibited list and the language has been left unchanged.

Clarification

A change is also proposed to WCC 20.68.152 (Conditional Uses), to provide additional clarity. The language is somewhat unclear as to which portions apply where, though the intent was for all of it to apply outside of the Bellingham UGA.

IV. Comprehensive Plan Evaluation

Whatcom County Comprehensive Plan

Though there are some CompPlan goals or policies that speak to joint planning in the Bellingham UGA, none specifically address the Alderwood neighborhood or HII designations. Staff finds no policies with which these amendments would be inconsistent. Thus, the proposed amendments are consistent with the Comprehensive Plan.

Urban Fringe Subarea Plan

The Urban Fringe Subarea Plan is a sub-plan of the Whatcom County Comprehensive Plan and contains policies specific to those areas in Urban Growth Areas. The following policies are applicable to the topic at hand:

- Policy 1.13 Minimize land use conflicts in the Urban Growth Area through the use of appropriate buffering mechanisms, design standards, and locational criteria. Promote compatibility between land uses, especially among residential, commercial, industrial and Airport Operations designations.
- Policy 4.2 The rationale of the Heavy Impact Industrial zoning designation in the Urban Fringe Subarea is to acknowledge existing heavy industrial uses situated in proximity to Bennett Drive, Marine Drive, and Roeder Avenue; to endorse a diverse economic base; and to attain compatibility between industrial activities and adjoining residential land uses.
- Policy 4.8 When practical, Whatcom County encourages industrial operations to take place within enclosed structures with the intent of minimizing potential light, glare, odors and noise impacts to adjoining residential uses.

Policy 4.9 Because the HII areas adjoin existing and planned residential areas situated in Whatcom County and the City of Bellingham, it is necessary to move toward obtaining mutual compatibility with these residential areas. To obtain mutual compatibility, it is the policy of Whatcom County to permit those existing uses and future uses which will minimize hazards, pollution, nuisances and odors to surrounding residential areas. The following uses will not be permitted in the Heavy Impact Industrial zoning district in the Urban Fringe Subarea: manufacturing and processing of asbestos and products derived therefrom; petroleum refining and the primary manufacture of products derived directly therefrom; primary manufacturing of rubber, plastics, chemicals, paper, and primary metal industries.

Policy 4.10 With the intent of fostering and promoting compatibility with surrounding residential land uses both in the county and the City of Bellingham, it is the policy of Whatcom County to require industrial users to provide a buffer which is situated on industrial land and adjoins the residential areas. The buffer may alternately be provided off-site by written agreement in the form of a deed restriction on the off-site parcel that runs with the land and that is filed with the County Auditor. The off-site buffer agreement will be written so that it may be revised or rescinded in the event that land uses or zoning designations are changed in such a way that the buffer is no longer necessary.

However, none of these conflict with what is being proposed and therefore the proposed amendments are consistent with the Urban Fringe Subarea Plan.

V. Proposed Findings of Fact and Reasons for Action

It is recommended the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 26, 2024. No comments have been received to date.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on August 1, 2024, for their 60-day review. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on September 26, 2024.
5. The Planning Commission considered the County Council's input in developing their recommendation, including the docket language as well as Exhibits B and C, though modified some language based on input from the community.
6. The County Council held a duly noticed public hearing on the proposed amendments on [REDACTED], 2024.
7. The amendments are consistent with Comprehensive Plan Policy Goal 2D to "refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner." There are no policies with which these amendments would be inconsistent.
8. The amendments are consistent with the Urban Fringe Subarea Plan.

VI. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VII. Recommendation

Planning and Development Services recommends that the Planning Commission review the exhibits and after holding a public hearing recommend to Council the appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area as shown in (revised) Exhibit A.

VIII. Exhibits

- A) Proposed Code Amendments
- B) Council's "Excluded" List
- C) Council's "Included" List
- D) Existing Heavy Impact Industrial Code
- E) BESS Safety Information

Exhibit A: Amendments to WCC Chapter 20.68 Heavy Impact Industrial District

WCC TITLE 20

Chapter 20.68 Heavy Impact Industrial (HII) District

20.68.050 Permitted uses.

(...)

~~.064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within the Heavy Impact Industrial District in the Bellingham UGA.~~

Commented [CES1]: Moved to 20.68.210.

(...)

20.68.150 Conditional uses.

The following uses require a conditional use permit in the HII Zoning District:

~~.152 Outside of the Bellingham Urban Growth Area, U~~uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.~~1050~~, ~~are allowed as condition uses~~, subject to the following:

Commented [CES2]: Citation corrected.

- (1) ~~Outside of the Bellingham Urban Growth Area, a~~approval shall be supported by a finding by the ~~H~~earing e~~X~~aminer that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.
- (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

(...)

20.68.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:

.201 Reserved.

.202 Adult businesses.

.207 Coal-fired power plants.

~~**.203** In the Bellingham Urban Growth Area the following uses are prohibited:~~

- ~~(a) petroleum refineries and the primary manufacturing of products thereof,~~
- ~~(b) primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof, and~~
- ~~(c) primary metal industries.~~

Commented [CES3]: Moved to 20.68.210

.204 New fossil fuel refineries or transshipment facilities.

.206 New piers, docks, or wharves in Cherry Point Industrial District.

.208 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV-Special forest practices, when located within an urban growth area.

.209 Slash burning, when located within an urban growth area.

20.68.210 Use Allowances Specific to the Bellingham Urban Growth Area.

This section modifies the permitted (WCC 20.68.050) and prohibited uses (WCC 20.68.200) for HII zoned properties in the Bellingham Urban Growth Area, within which the following uses are permitted or prohibited, as indicated. All other accessory (WCC 20.68.100), administrative (WCC 20.68.130), and conditional uses (WCC 20.68.150) remain the same.

. 212 Except as prohibited by WCC 20.68.216, uses allowed in the Light Impact Industrial district as permitted uses (WCC 20.66.4050) shall be permitted uses within the Heavy Impact Industrial District.

.216 The following uses are prohibited:

- (a) Fossil or renewable fuel refineries or transshipment facilities, and the primary manufacturing of products thereof;
- (b) Primary manufacturing and processing of rubber, plastics, paper, asbestos;
- (c) Primary metal industries including blast furnaces and steel works and mills for primary smelting;
- (d) Metal recycling or any outdoor manufacturing or processing of metal products described in WCC 20.68.054(6);
- (e) Primary manufacturing of chemicals and associated products, including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals;
- (f) Packinghouses and slaughterhouses and associated holding pens, except for seafood facilities;
- (g) Asphalt storage;
- (h) Bulk commodity storage facilities, and truck, vessel and transshipment terminals and facilities applied for after [effective date of this ordinance];
- (i) Hazardous waste treatment and storage facilities as a primary use;
- (j) Type I, II, or III solid waste handling facilities;
- (k) Thermal power plants as a primary use;
- (l) Battery energy storage systems (BESS);
- (m) Type 2 cannabis production facilities;
- (n) Cannabis processing facilities.

Chapter 20.97 Definitions

20.97.130 "M" definitions.

(...)

Manufacturing. Manufacturing is the process of turning raw materials or parts into finished goods through the use of tools, human labor, machinery, and chemical processing. "Manufacturing" means establishments engaged in the mechanical or chemical transformation of materials or substances into

Commented [CES4]: Citation corrected

Commented [CES5]: Moved from 20.68.064.

Commented [CES6]: Though the primary manufacturing and processing of paper is currently prohibited in the Bellingham UGA, and Council has included it on their "excluded" list, the POB would like to retain it as a permissible use, as there are existing businesses that use paper to manufacture finished products.

Commented [CES7R6]: With the addition of definitions for primary and secondary manufacturing, paper could stay, as those existing businesses using paper in their processes would be considered secondary.

Commented [CES8]: Existing language moved from 20.68.203

Commented [CES9]: The POB would like to make sure that seafood processing is not excluded. Staff has added "except for seafood facilities."

Commented [CES10]: Add effective date once known.

Commented [CES11]: The POB would like to strike this, arguing that this area has proximity to rail, truck routes and storage/terminal facilities that may make this a viable use in the future and limits the ability to support new businesses and innovative ideas.

Commented [CES12]: Many businesses need to be able to treat and/or store hazardous waste as part of their practices (e.g., an auto repair shop need to be able to properly store and dispose of numerous chemicals). Staff believes it was Council's intent not to exclude such as an accessory use, but only a primary use.

Commented [CES13]: Though Council has Battery Energy Storage Systems (BESS) on their "excluded" list, the POB would like to retain BESS as a permissible use, as they're looking to install a BESS for use by ships in-port. Additionally, many businesses have on-site BESS, used to manage their energy uses.

The POB goes on to argue: "PLN2021-0001 already addressed "Battery Energy Storage Systems" and allowed BESS of any storage capacity to be permitted in LII and HII zones. To allow for locations.

Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development supports leaving this as an allowed use

Existing businesses, including the Port, are proposing battery energy storage facilities associated with other uses. Adding this to the prohibited list adds uncertainty as we are moving to diversifying energy sources, providing energy security and sustainability."

Commented [CES14]: This list provided by Council for consideration by the P/C (though edited for brevity).

~~new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.~~

(...)

20.97.160 “P” definitions.

(...)

Primary Manufacturing. Primary manufacturing is the process of creating a product from raw or scrap materials. This can be done through machining, casting, forging, or other processes.

(...)

20.97.190 “S” definitions.

(...)

Secondary Manufacturing. Secondary manufacturing is the process of taking primary manufacturing products and further processing them into finished goods. This can be done through assembly, packaging, or other methods.

(...)

Exhibit B: Council's "Excluded" List

Re: AB 2024-427: Additional direction to Planning Commission for uses to be excluded in the HII UGA

(Editor's Note: The intent of this list is to provide direction to the Planning Commission as to which uses might not be compatible with the residential uses in the Alderwood neighborhood. Strikeouts shown are Council's.)

- Battery energy storage systems (BESS)
- Treatment and storage facilities for hazardous wastes
- Metal recycling and any new outdoor manufacturing or processing of metal products in relation to the metal production and processing uses allowed in WCC 20.68.054(6)
- Packinghouses and slaughterhouses
- Packinghouses and slaughterhouses
- Holding pens associated with packinghouses and slaughterhouses
- Primary metal industries including blast furnaces and steel works; mills for primary smelting
- The manufacture of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- Storage of asphalt
- Bulk commodity storage facilities, and ~~rail~~, truck, vessel and transshipment terminals and facilities
- Stationary thermal power plants
- Floating thermal power plants
- Cannabis processing facilities
- Type 2 (outdoor) cannabis production facilities
- New renewable fuel refineries or renewable fuel transshipment facilities
- Treatment and storage facilities for hazardous wastes
- Type I solid waste handling facilities.
- Type II solid waste handling facilities.
- Type III solid waste handling facilities
- The manufacture and process of paper including ~~pulp~~, paper and paperboard mills; and building paper and board mill products
- The manufacture and processing of rubber and plastic products.

Exhibit C: Council's "Included" List

Remaining HII permitted uses in HII UGA

(Editor's Note: This intent of this list is to show what uses would still be allowed on HII properties within the Bellingham UGA if those uses in Exhibit B are excluded. Strikeouts shown are Council's.)

20.68.050 Permitted Uses

(...)

.051 The manufacture and processing of food including meat ~~(including packinghouses and slaughterhouses)~~, dairy, fruits, vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

- (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.
- (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:
 - (a) State waste discharge permit (Chapter 173-216 WAC);
 - (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
 - (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

.052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

.053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and prefabricated wood products; wooden containers and cooperage.

.054 The following are permitted uses except as otherwise prohibited:

- (1) The manufacture and process of paper including ~~pulp~~, paper and paperboard mills; and building paper and board mill products.
- (2) ~~The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.~~
- (3) The manufacture and processing of rubber and plastic products.
- (4) Leather tanning and finishing.
- (5) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic mineral products.
- (6) ~~Primary metal industries including blast furnaces and steel works; mills for primary smelting,~~ secondary smelting, refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture of miscellaneous metal products.

.056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and materials handling equipment; machine tools and dies; and special and general industrial equipment.

.057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

.058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair, railroad equipment, bicycles and motorcycles.

~~.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities except as conditionally permitted under WCC 20.68.153 and 20.68.154 or prohibited under WCC 20.68.200.~~

.061 Heavy construction contractors.

.062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers, park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar noncommercial uses, excluding state education facilities and correction facilities.

.063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

.064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within the Heavy Impact Industrial District in the Bellingham UGA.

.065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.

.082 Marine port facilities, except as prohibited under WCC 20.68.200.

.108 Day care centers.

.110 Self-service storage facilities.

.111 Propane retail and distribution facility.

20.68.150 Conditional uses.

The following uses require a conditional use permit in the HII Zoning District:

.152 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, subject to the following:

- (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.
- (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

(...)

Exhibit D: Existing HII Code

WCC Title 20, Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.010 Purpose.

The purpose of the Heavy Impact Industrial District is to implement the Heavy Impact Industrial land use designation of the Comprehensive Plan by supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses. Heavy industrial uses are primarily related to producing, distributing and changing the form of raw materials; whereby, product demand and industrial employment are predominately basic, that is, serving nonlocal markets. In addition, the purpose of this district is to encourage the siting of industrial uses which will optimize the limited resource of land available for heavy impact industry. A further purpose of this district is to minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof; as enabled through the district's performance and development standards, and the buffer and setback requirements.

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapters 16.08 WCC (SEPA), 20.80 WCC (Supplementary Requirements) and 22.05 WCC (Project Permit Procedures), and WCC Titles 21 (Land Division Regulations) and 23 (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

.051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits, vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

- (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.
- (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.
- (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:
 - (a) State waste discharge permit (Chapter 173-216 WAC);
 - (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
 - (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

.052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

.053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and prefabricated wood products; wooden containers and cooperage.

.054 The following are permitted uses except as otherwise prohibited:

- (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill products.
- (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- (3) The manufacture and processing of rubber and plastic products.
- (4) Leather tanning and finishing.
- (5) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic mineral products.
- (6) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting, refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture of miscellaneous metal products.
- (7) Storage of asphalt in the Heavy Impact Industrial Zone.

.055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing fixtures, structural metal and stamping.

.056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and materials handling equipment; machine tools and dies; and special and general industrial equipment.

.057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

.058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair, railroad equipment, bicycles and motorcycles.

.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities except as conditionally permitted under WCC 20.68.153 and 20.68.154 or prohibited under WCC 20.68.200.

.060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.

.061 Heavy construction contractors.

.062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers, park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar noncommercial uses, excluding state education facilities and correction facilities.

.063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with

electrical power for lighting.

.064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within the Heavy Impact Industrial District in the Bellingham UGA.

.065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.066 Type 2 cannabis production facilities, subject to WCC 20.80.690.

.067 Cannabis processing facilities, subject to WCC 20.80.690.

.068 Existing fossil fuel refineries, existing fossil fuel transshipment facilities, renewable fuel refineries, renewable fuel transshipment facilities, piers and docks legally established as of August 8, 2021; provided, that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 and 20.68.154 to the county permitting authorities. Provided that a conditional use permit is not required by WCC 20.68.153 or 20.68.154, permitted uses include repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the following:

- (1) Accessory and appurtenant buildings, structures, and processing equipment.
- (2) Office space.
- (3) Parking lots.
- (4) Radio communications facilities.
- (5) Security buildings, fire stations, and operation centers.
- (6) Storage buildings.
- (7) Routine maintenance and repair.
- (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing biomass with petroleum.
- (9) Road projects and bridges.
- (10) Temporary trailers.
- (11) Heating and cooling systems.
- (12) Cable installation.
- (13) Information technology improvements.
- (14) Continuous emissions monitoring systems or analyzer shelters.
- (15) Wastewater and stormwater treatment facilities.
- (16) Replacement and upgrading of existing equipment.
- (17) Safety upgrades.
- (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial Zoning District.
- (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial Zoning District.
- (20) Renewable fuel production and shipment.
- (21) Transferring fossil fuels during emergency scenarios where contingencies require fossil fuels to be moved.
- (22) Necessary fossil fuels transfers during turn-arounds or maintenance periods.
- (23) Storage tanks; provided, that the county decision maker shall include in any approval of an application for storage tanks at an existing fossil fuel refinery, fossil fuel transshipment facility,

renewable fuel refinery, or renewable fuel transshipment facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of fuel to be stored and, if located within a fossil fuel refinery or renewable fuel refinery, whether the storage tank will or will not be used for transshipment.

(24) Other similar structures or activities.

.070 New renewable fuel refineries or renewable fuel transshipment facilities, except that new piers, docks, or wharves in the Cherry Point Industrial District are prohibited.

.071 Expansion of existing legal renewable fuel refineries or renewable fuel transshipment facilities; provided, that the expansion is for renewable fuels only.

.081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.

.082 Marine port facilities, except as prohibited under WCC 20.68.200.

.085 Type I solid waste handling facilities.

.086 Type II solid waste handling facilities.

.108 Day care centers.

.109 Battery energy storage systems of any storage capacity.

.110 Self-service storage facilities.

20.68.100 Accessory uses.

.101 Employee recreation facilities and play areas.

.102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the district.

.103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

.104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50-megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.

.105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

.106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.107 Repealed by Ord. 2023-078.

.108 Electric vehicle rapid charging stations and battery exchange facilities.

.109 Inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks.

20.68.130 Administrative approval uses.

.131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and

pursuant to the requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities).

20.68.150 Conditional uses.

The following uses require a conditional use permit in the HII Zoning District:

.152 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, subject to the following:

- (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.
- (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

.153 Expansion of existing fossil fuel refineries. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that meets any one of the following applicable thresholds:

- (1) Cumulatively increases the facility's total maximum atmospheric crude distillation capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- (2) Cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer in accordance with the definition of "maximum transshipment capacity" found in Chapter 20.97 WCC; or
- (3) Increases the frequency of fossil fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by county, state or federal authorities (where applicable) as of August 8, 2021, or the effective date of a previously approved conditional use permit, whichever is more recent.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

.154 Expansion of existing fossil fuel transshipment facilities. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with the definition of "maximum transshipment capacity" found in Chapter 20.97 WCC.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

.155 Treatment and storage facilities for hazardous wastes subject to the following:

- (1) The criteria for a conditional use listed under WCC 22.05.026.
- (2) The most current state siting criteria under Chapter 173-303 WAC.
- (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources, types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.

- (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10 percent of the total local hazardous waste stream.
- (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been constructed consistent with state requirements.
- (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types, amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit, following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be documented by county staff.
- (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and inspection reporting procedures.

If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an inspection by a qualified and independent inspection agency satisfactory to the county.

- (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health and safety, the permit may be revoked by the approving body following a public hearing.

.156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

.157 Trailheads with parking areas for more than 30 vehicles.

.158 Athletic fields.

.180 Major passenger intermodal terminals.

.187 Type III solid waste handling facilities; provided, that:

- (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;
- (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f) This 1,500-foot buffer does not apply to:

- (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
- (ii) Inert landfills;
- (3) Inert landfills shall be located at least 500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f) This 500-foot buffer does not apply to:
 - (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
- (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;
- (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;
- (6) The facility or site has complied with the provisions of WCC 22.05.026 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites;
- (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:
 - (a) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and
 - (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;
- (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);
- (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;
- (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;
- (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

.188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided,

applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.68.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:

.201 Reserved.

.202 Adult businesses.

.203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof; and primary metal industries.

.204 New fossil fuel refineries.

.205 New fossil fuel transshipment facilities.

.206 New piers, docks, or wharves in Cherry Point Industrial District.

.207 Coal-fired power plants.

.208 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV-Special forest practices, when located within an urban growth area.

.209 Slash burning, when located within an urban growth area.

Exhibit E: BESS Safety Information

In their discussion on 9/12, the Planning Commission wanted to know more about the fire potential of BESS. Below is some information from various sources on the internet, though staff cannot attest to their veracity.

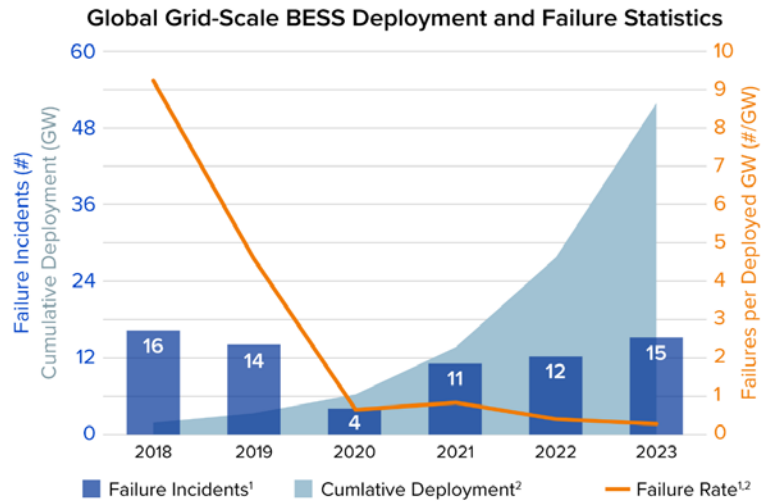
From Google's AI Overview

While there have been some fires in battery energy storage systems (BESS), the overall rate of incidents has been decreasing. Here is some information about BESS fires:

- Overall rate: The overall rate of BESS failure incidents has decreased, even as the global installed capacity has increased.
- Early fires: Early BESS fires in South Korea negatively impacted energy storage companies in that country.
- Safety concerns: Codes and standards for energy storage systems have evolved to address safety concerns.
- Risk during first two years: The California Public Utilities Commission estimates that the risk of major safety-related incidents is highest during the first two years of operation for grid storage facilities.
- Lithium-ion battery fires: Lithium-ion battery fires are rare but extremely difficult to put out.
- Cell failure rates: Cell failure rates are very low.
- Battery industry R&D: The battery industry continues to research and develop ways to reduce risk.

From the Electric Power Research Institute's StorageWiki

(https://storagewiki.epri.com/index.php/Welcome_to_StorageWiki)



Sources: (1) EPRI Failure Incident Database, (2) Wood Mackenzie. Data as of 12/31/23.

From American Clean Power

<https://cleanpower.org/resources/claims-vs-facts-energy-storage-leading-on-safety/>

CLAIM: The incidence of battery fires is increasing.

FACTS: Energy storage battery fires are decreasing as a percentage of deployments.

- Between 2017 and 2022, U.S. energy storage deployments increased by more than 18 times, from 645 MWh to 12,191 MWh¹, while worldwide safety events over the same period increased by a much smaller number, from two to 12.
- During this time, codes and standards regulating energy storage systems have rapidly evolved to better address safety concerns.

CLAIM: Today's larger battery systems use tens of thousands of cells, so fires are inevitable.

FACTS: Cell failure rates are extremely low, and safety features in today's designs further reduce the probability of fires.

- One estimate from 2012 quotes a failure rate ranging from 1 in 10 million to 1 in 40 million cells³, and there are undoubtedly improvements from these levels.
- Lithium-ion batteries experience extremely low failure rates, as shown by electric vehicle data.
- Tesla alone sold nearly 900,000 vehicles in the first half of 2023. These sales of new vehicles represent around three-quarters of a billion cells, but safety events involving all EVs on the road globally, from all manufacturers, amounted to just a few dozen fires.
- Today's energy storage systems (ESSs) predominantly use safer lithium-iron phosphate (LFP) chemistry, compared with the nickel-manganese-cobalt (NMC) technology found in EVs.
- LFP cell failure results in less energy release and a lower probability of fire.
- ESS designs incorporate features to avoid propagation of cell failure within the battery, contributing to improved safety.

CLAIM: E-bike and e-scooter fires have resulted in deaths—so large batteries for energy storage may be even more deadly.

FACTS: No deaths have resulted from energy storage facilities in the United States. Battery energy storage facilities are very different from consumer electronics, with secure, highly regulated electric infrastructure that use robust codes and standards to guide and maintain safety.

- E-mobility devices have been lightly regulated in the past, and some products have used poor-quality battery cells and ineffective safety systems.
 - They are also charged inside homes, sometimes along egress routes, creating a high level of risk.
- Like EV batteries, ESS battery systems are highly regulated and subject to stringent certification and testing requirements.
 - The difference in regulation is evident in vehicle statistics. Worldwide, for the first half of 2023, EV FireSafe cites 500+ light electric vehicle (E-bike and E-scooter) battery fires, but only 44 passenger EV fires.
 - Additionally, utility-scale energy storage systems are located within secure facilities with site plans explicitly designed around maximizing safety of those operating the facilities and their neighbors.
- The ESS industry meets with and shares best practices with first responders and communities.

- Lessons learned from earlier ESS incidents have been reflected in the evolution of codes and standards. Often, companies go beyond mandatory testing to test more extreme failure scenarios.
- Altogether, like other electric grid infrastructure, energy storage systems are highly regulated and there are established safety designs, features, and practices proven to eliminate risks to operators, firefighters, and the broader community.
- The industry is committed to meeting these standards, such as NFPA 855, which are regularly updated to reflect the latest evidence-based best practices.

CLAIM: Battery fires emit toxic fumes and pose a risk to the community

FACTS: Past incidents demonstrate that fires are contained within the facility, and air quality in neighboring areas remains at safe levels.

- Laboratory testing of emissions from Li-ion cells in thermal runaway shows that emissions are similar to those found in plastics fires.
- During an ESS battery fire, only trace amounts of chemicals are detected in sampling around the event, and overall air quality remains at safe levels.
- During a fire at a Tesla Megapack at Moss Landing in California, air-quality testing showed no hazards to human health.

CLAIM: Fire suppression systems should be mandatory for all lithium-ion battery systems.

FACTS: Regulations that aren't vetted by organizations like the National Fire Protection Association or are inconsistent with the International Fire Code may make projects less safe.

- Established national and international codes and standards already require BESS to incorporate the appropriate safety features to contain any potential fires or thermal events.
- Successful suppression of a fire does not guarantee that the underlying thermal runaway event has been terminated, so containing a fire is the best way to protect first responders and communities.
- The energy storage industry is working to avoid events such as the explosion at an installation in McMicken, Arizona, in which four firefighters were injured. Prior to this event, the industry was focused on extinguishing fires as quickly possible, but McMicken showed that explosion can be a greater hazard and fire containment is a better strategy.
- The accepted best practice for the rare ESS fires that do occur is to contain them, managing the burn of the limited affected unit in a controlled manner while protecting nearby structures and equipment. This strategy eliminates any explosion hazard, avoids issues with stranded energy and reignition, and minimizes contaminated runoff of firefighting water.
- Codes and standards are changing to reflect this practice, placing an emphasis on explosion prevention. One proposal for the 2026 edition of NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, would forbid installation of traditional clean-agent or aerosol fire suppression systems unless testing demonstrates that use of such systems does not create an explosion risk.

Whatcom County Planning & Development Services Staff Report

Amendments to WWC Title 22 to Enact SSB 5290 Regarding Local Project Review

I. File Information

File # PLN2023-00003

File Name: Local Project Review Amendments

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC Title 22 (Land Use and Development) and Chapter 20.97 (Definitions) to enact SSB 5290 regarding local project review and to fix some deficiencies.

Location: Countywide.

Recommendation(s): Planning and Development Services recommends approval.

II. Background

SSB 5290

On May 10, 2023, the governor signed SSB 5290 approving amendments to RCW 36.70B. Washington passed numerous bills, including SSB 5290, to combat the state's housing crisis. The bill encourages local governments to streamline their permitting processes for new housing. According to the legislation, "Senate Bill 5290 seeks to modernize permitting systems, providing grants to update the systems from paper to electronic, provides grants to augment permit review staff, and sets deadlines on when permits must be reviewed by, to be enforced by partial refunds on permitting fees if these deadlines are not met."

SSB 5290 amends the Local Project Review Act, Chapter 36.70B RCW, with the intent to increase the timeliness and predictability of local project review. The bill also establishes grant and technical assistance programs, which will be administered by the Washington State Department of Commerce (Commerce), to assist local governments in obtaining the capacity needed for timely permit processing.

Amendments to Chapter 36.70B are numerous and include, among other things, updated local permit review timelines, clarifications regarding the determination of completeness process, a new exemption from site plan review for certain interior projects that contain no exterior alterations, updated annual reporting requirements related to permit issuance, and provisions requiring partial permit fee refunds for failure to timely process permit applications.

All sections became effective as of July 23, 2023, except for the provisions in Section 7, which include the new permit review timelines and annual reporting requirements. That section is effective as of January 1, 2025.

Below is a summary of some of the major changes included in the amended law.

New Permit Review Timelines

There are new permit review timelines for project permit applications submitted to GMA-planning jurisdictions after January 1, 2025 (see RCW 36.70B.080):

- For projects that do not require public notice under RCW 36.70B.110, the final decision must be issued within 65 days of the determination of completeness under RCW 36.70B.070.
- For projects that do require public notice under RCW 36.70B.110, the final decision must be issued within 100 days of the determination of completeness under RCW 36.70B.070.
- For project permits which require both notice under RCW 36.70B.110 and a public hearing, the final decision must be issued within 170 days of the determination of completeness under RCW 36.70B.070.

The above timelines can be altered by local ordinance to address consolidated review time periods or to accommodate larger projects and other differentiating factors. The “shot clock”—or time limit on application review—starts with the determination of complete application and must include every calendar day (not just business days). Certain actions will stop the clock, such as a request by the applicant to temporarily suspend project review as well as the time during which a jurisdiction is waiting for additional information from the applicant. If an applicant does not provide requested information within a specified time, additional time can be added to the shot clock.

Failure to adhere to the established permit review timelines results in a requirement for a local government to refund an applicant’s permit fees on a pro-rated basis—up to a 20% refund depending on the length of the delay. If cities and counties have implemented at least three optional measures intended to streamline project review set forth in RCW 36.70B.160(1), then these permit fee refund provisions do not apply. There are 10 optional measures that local governments are encouraged to adopt. See discussion in Section III—Code Amendments.

Adoption of an ordinance amending timelines consistent with the new provisions will not be subject to appeal to the Growth Management Hearings Board, unless a jurisdiction chooses to adopt time periods for review that are different than those listed in the statute and exceed 170 days.

Revised Annual Reporting Requirements for Certain Jurisdictions

Counties subject to RCW 36.70A.215 (i.e., the buildable lands program) and cities within those counties with a population of at least 20,000 must post annual reports to their websites and submit these reports annually to Commerce by March 1. These reports must include the number of permits issued by type, length of processing decisions, and several other metrics as set forth in amended RCW 36.70B.080. This reporting requirement begins March 1, 2025.

Exemptions from Site Plan Review

Projects with only interior alterations must be exempt from site plan review provided no new sleeping quarters or bedrooms are added and certain other thresholds are not exceeded. See RCW 35.70B.140(3). This section was effective as of July 2023.

Commerce Grant Programs and Technical Assistance

SSB 5290 also places new responsibilities on Commerce to assist and support local governments in their efforts to speed up local permit review, including offering specialized grant programs.

Consolidated permit review grant program

Commerce will offer grants to local governments that commit to certain building permit review consolidation requirements. These include:

- A commitment to issue residential permit applications within 45 business days or 90 calendar days;
- Establishment of an application fee structure that allows for timely consolidated permit review; and
- Completion of a quarterly report to Commerce that includes the maximum and average time for permit review during participation in the program, among other requirements.

Digital permitting grant program

Commerce will offer grants to local governments to update software systems that enable an agency to process electronic permit applications and conduct virtual inspections. Grants will only be provided to a city if the city allows for development of at least two units per lot on all lots zoned predominantly for residential use.

Here are additional items, unrelated to funding, that SSB 5290 directs Commerce to do:

- Convene a digital permitting process workgroup consisting of stakeholders, including Association of Washington Cities, Washington State Association of Counties, cities, counties, building groups, and building inspectors. This group must provide a final report to the state legislature by August 1, 2024, that makes recommendations intended to encourage streamlined and efficient permit review, including consideration of the costs and benefits of implementing a statewide permitting software system.
- Provide technical assistance and guidance to counties and cities in setting fee structures that are reasonable and sufficient to recover true costs.
- Develop a template for annual report submissions required under RCW 36.70B.080.
- Develop a plan to help local governments find appropriately trained staff for temporary support to enable timely processing of residential housing permit applications. This plan is to be submitted to the state legislature by December 1, 2023.

III. Code Amendments

Not all of SSB 5290 requirements necessitate code amendments; some are procedural and some are budgetary. The proposed code amendments that we need to make are found in Exhibit A. While many have to do with implementing SSB 5290, PDS is also taking this opportunity to fix some deficiencies in WCC Title 22. A general description of the proposed amendments follows:

Amendments to Comply SSB 5290

Changing the time limit for determining whether an application is complete from 14 to 28 days (22.05.050(4))

Currently the WCC has a 14-day requirement within which the County must determine an application to be complete. SSB 5290 extends this to 28 days. Staff is proposing to amend 22.05.050(4) to comply with the state law.

Limiting the County's ability to request additional information or corrections to 3 times (22.05.080(2)(c))

During the permit review process, staff often finds information submitted with an application to be incomplete, lacking, or just plain wrong. To remedy this, we issue what's called a Notice of Additional Requirements (NOAR) requesting additional information or corrections (with the goal of being able to find that the application is consistent with the regulations and thus approve it). Generally, everything we've identified as incomplete, lacking, or wrong is compiled into one NOAR and sent to the applicant and their consultant. However, this often devolves into an endless loop, as they'll submit some of the items requested but not all, the submitted information is still inconsistent with the code, or elements have been added/removed that staff must re-review.

In an effort to curtail such an endless loop, SSB 5290 now limits jurisdictions' ability to issue NOARs to three times. SSB 5290 also requires that, upon issuance of a 2nd NOAR, we invite the applicant to meet so as to resolve any issues. And if upon issuing a 3rd NOAR the applicant's response is not adequate we must make a decision to approve or deny the application.

Practically, this means that PDS must be very thorough in determining application completeness and in issuing NOARs. Similarly, applicants (and their consultants) must be thorough in their responding to

NOARs; they will no longer be able to respond piecemeal. If after the 3rd NOAR they have not responded adequately, and staff cannot determine that the application is consistent with the regulations, the County will have to deny it. This may mean that in the coming years PDS will end up denying many more permits, and there may be an uptick in appeals, until the consultant community becomes more responsive.

Setting a 60-day time limit for an applicant to respond to a NOAR (22.05.080(2)(b))

Related to the previous change, SSB 5290 also limits the time for an applicant to respond to a NOAR to 60 days, extending the overall timeline by 30 days if they do not.

Setting new timelines for reviewing and deciding on permit applications (22.05.130(1)(a))

As explained in Section II, above, SSB 5290 sets new timelines for reviewing and deciding on permit applications, and these are being incorporated into §22.05.130(1)(a).

Project Type	Current Timeline	SSB 5290 Timeline
For projects that do not require public notice	120	65 days
For projects that do require public notice	120	100 days
For project permits that require both notice and a public hearing	120	170 days

Refining what actions suspend the overall permit timeline (22.05.130(1)(b))

Under SSB 5290 some actions can suspend the permit timelines. For the most part the WCC complies already, though staff is proposing to refine them a bit.

Excluding certain actions from these timelines (22.05.130(1)(c))

SSB 5290 also allows us to exclude certain actions from the required timelines. In general, these are legislative or other actions that require Council approval (e.g., Comp Plan and code amendments, rezones, development agreements, etc., which are subject to a Type IV process), but also includes substantial revision to an application by the applicant.

Penalties—Refund of a portion of permit fees if the timelines are not met (see RCW 36.70B.080 [Effective January 1, 2025])

As explained in Section II, above, SSB 5290 requires that jurisdictions can be penalized and must refund a certain portion of an applicant’s fees if the timelines are not met, as follows:

- 10% if issuance of the final decision is late but does not exceed 20% of the original time period;
- 20% if issuance of the final decision exceeds 20% of the original time period.

However, the bill also includes options at RCW 36.70B.080(1)(l)(ii) that local governments can implement to avoid those penalties—if the jurisdiction implements at least three (3) of the ten (10) permit review streamlining options in RCW 36.70B.160(1) (a – j).

The proposed amendments in this report do not include the addition of permit fee refunds because the County complies with RCW 36.70B.080(1)(l)(ii). In particular, Whatcom County complies with RCW 36.70B.160(1)(b), (d), (h) and (j) as further described below.

- b) Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW. The fees imposed may not include a fee for the cost of processing administrative appeals. Nothing in this subsection limits the ability of a county or*

city to impose a fee for the processing of administrative appeals as otherwise authorized by law;”

Whatcom County imposes reasonable fees that are consistent with RCW 82.02.020 within WCC 22.25. The fees imposed on applicants do not automatically include a fee to process the cost of an administrative appeal. Pursuant to WCC 22.05.160, a fee for administrative appeals is required of anyone applying for an appeal of a permit decision at the time of appeal. It may also be refunded if the appeal is dismissed in whole without hearing.

d) Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly;

The County has two consultants under contract that were chosen from the county’s active on-call list established in 2023 that will be reviewed and renewed every three years. The consultants are Shannon & Wilson, Inc. and MacWhinney Environmental Consulting, LLC. The consultants are under contract to assist with permit review if permit volumes or staffing make efficient review infeasible. These on-call contracts were approved by the County Council in 2023, and again in 2024, for the 2024 through 2026 biennium time period.

h) Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;

Whatcom County Code lists the uses that are permitted outright (likely with the need of a building permit), permitted with an administrative use permit in addition to any necessary building permits, permitted with a conditional use permit in addition to any necessary building permits, or permitted with a major project permit in addition to any necessary building permits in each of the zones of the County. Housing is permitted outright in all residential zones (non-industrial) per WCC 20.20.050, WCC 20.22.050, WCC 20.24.050, WCC 20.32.050, WCC 20.34.050 and WCC 20.36.050. The housing types vary based on if the zones are primarily single-family or multi-family.

j) Meeting with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information or corrections;

Whatcom County adopts this statutory provision under WCC 22.05.080(2)(b), as shown in Exhibit A.

Additional (non-SSB 5290) Amendments

While complying with SSB 5290 is the impetus for revising WCC Title 22, there are also other issues PDS proposes to fix.

Land Use Review and Approval Process Table (WCC 22.05.020, Table 1)

Table 1 was originally adopted in 2018 as part of the first iteration of Title 22. It specifies which permits undergo which process type, the steps required for each, who the decision maker is, and who the appeal body is. However, in the intervening years staff has realized that not all of the Department’s or County’s land use actions are listed and we’d like to make it more complete.

Permit Type v. Process Type (WCC 22.05.020(2))

In revamping Table 1 staff has added actions that are not permits but require decisions nonetheless. Yet all still fall within the 4-tiered schema Table 1 describes. Therefore, staff proposes to re-designate the 4-tiered schema as *process* types rather than *permit* types.

Removing critical areas review from the Site Plan Review process and making it a precursor to applying for a project permit or septic system or well approval (new §22.05.022)

In processing permits, undergoing critical areas review is often the phase that takes the most time, as field work and site visits are usually necessary and/or we have to await rain. Knowing what constraints are on a property is an important first step in designing one's development. Often times an applicant designs a project without knowing these constraints, only to have to redesign the project (at considerable expense) once they are known. Staff believes that significant time and money can be saved if an applicant does their critical area review prior to designing their project.

Staff is therefore proposing to require a critical areas review and determination before one even applies for a project permit. In the schema proposed, an applicant will submit a critical area assessment report for review and acceptance (pursuant to WCC 16.16, Critical Areas). Or, if critical areas are unlikely present, an applicant can request that PDS perform an initial determination of presence or absence based on a review of readily available information and/or a site visit. If determined to be present, then the applicant would submit an assessment report.

In either case, PDS would provide a written determination that critical areas and/or their buffers either are or are not present on the subject property. This would then help them in designing their project and avoiding impacts to critical areas. These written determinations would be valid for 5 years.

Note that there may be project for which such a review isn't necessary, and we have included a waiver process. Generally, waivers will be granted for projects that do not expand an existing structure's footprint or add no bedrooms or sleeping quarters, or are on a lot platted within the last 5 years, though others may present themselves.

Such a service would offer:

- Customers consistency and predictability in decision-making as applied to critical areas and associated buffers.
- Puts critical area review at the beginning of the permit review process. This means that customers will know where they can and cannot build on their property. In the case of wells, septic tanks and drainfields, customers will know prior to hiring an engineer or critical areas consultant where these systems can be located.
- Can save time and money associated with plan changes or redesigns that might occur in the middle of the permit review process, if critical area issues have not been addressed prior to Health Department review.
- Allows customers who wish to sell property an opportunity to identify critical areas and their buffers on site. The designation helps identify buildable areas and offers the associated predictability and reliability for 5 years after the determination.
- Allows for critical areas issues beyond location and classification to be addressed. For example, wetland buffer widths or a mitigation plan for driveway crossing impacts could be included within the designation.

This process is already being used in many jurisdictions, most notably King County, and has proven useful.

Clarifying that a variance is not a permit (WCC 22.05.024)

A variance is not a permit *per se*, as they don't allow one to develop, but rather a request to deviate from code standards. Variances are processed in conjunction with a project permit. They may, however,

change the process type of the project permit, as additional public notice and/or a public hearing may be required depending on the category of variance. Staff is proposing language to make this clear.

Formalizing how site plans for permitted and accessory uses are reviewed (new §22.05.023)

Currently, site plans (the development layout) are reviewed for all project permits. PDS reviews them for conformance to standards (e.g., setbacks, parking, landscaping, critical areas, shoreline management, etc.) as well as use (is the use allowed by zoning?) and other code requirements. When one applies for a use permit, a site plan is a required component of the application. Applicable staff then review the project for all applicable codes. However, for permitted and accessory uses, Whatcom County does not require a permit other than a building permit. Identifying the footprint of all aspects of the proposed development early on in the process is an integral part of an efficient permit process. Currently, PDS processes Site Plan Review applications for accessory and permitted uses so that applicants are aware of all of the potential permitting requirements as early as possible. To better clarify the requirements of a Site Plan Review, staff is proposing a new section WCC 22.05.023 to describe how these reviews are done.

Development Agreements (new §22.05.029)

Development agreements are a tool allowed and described by state law (RCW 36.70B.170 – 210). They allow a developer and the County to negotiate rules and standards otherwise not allowed with County Code and enter into a contract specifying what their development requirements will be for a particular property. Such agreements must be approved by the County Council.

While not used by many jurisdictions any more, Whatcom County has continued to use them. Yet we have no code specifying how one applies for one or how they're processed or decided on. Therefore, if Whatcom County wants to continue to allow them, staff believes we ought to have some code describing what development agreements may be used for and how they're processed. Thus, we're proposing new §22.05.029.

Moving all Personal Wireless Service Facilities processing exceptions into one section (WCC §22.05.034)

The County adopted specific regulations for the processing of personal wireless service facilities in 2014 in response to updated federal regulations. The federal regulations contained requirements specific to the processing of such facilities in order to standardize such regulations across all jurisdictions, ensuring that cellular service would be ubiquitous. And though most of our personal wireless service facilities regulations are contained in WCC Chapter 20.13, the processing regulations were interspersed throughout WCC Title 22 as exceptions to our standard processing rules. Unfortunately, being interspersed in all the various sections makes it difficult to find personal wireless service facilities processing rules.

Thus, staff is proposing to move all of the disparate processing rules for personal wireless service facilities into one consolidated section, §22.05.034. The specific rules are not being changed, however.

Transferring the responsibility of posting notices to the applicant, rather than staff (22.05.070(4)(b))

Many permit or action types require that notices (of application, hearings, SEPA, etc.) be posted on the subject property so that the public is aware of proposed development. The code currently requires the County to post such notices, and our staff does so, though it is quite time consuming. Most jurisdictions have switched to requiring applicants do the posting, to specific standards, and provide an affidavit of posting attesting that it has been done. Staff proposes amendments that would follow suit, which would provide more time for staff to do permit review.

IV. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan's Goal 2D to "Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner." Staff finds no policies with which these amendments would be inconsistent.

V. Proposed Findings of Fact and Reasons for Action

It is recommended the Planning Commission adopt the following findings of fact and reasons for action:

1. On May 10, 2023, the governor signed SSB 5290 approving amendments to RCW 36.70B to combat the state's housing crisis. The bill encourages local governments to streamline their permitting processes for new housing. The provisions in Section 7, which include the new permit review timelines and annual reporting requirements, become effective on January 1, 2025.
2. The provisions of SSB 5290 necessitate revising some of Whatcom County's permit processing code (WCC Title 22) as well as Planning and Development Services' processes so as to meet its requirements. Additional amendments are being made to make the permitting process more efficient.
3. Whatcom County Planning and Development Services has submitted an application to make various amendments to the Whatcom County Code (WCC) to comply with the requirements of SSB 5290, as well as making other corrections, updates, and clarifications to the County's permitting processes.
4. This project is exempt from SEPA pursuant to WAC 197-11-800(19).
5. Notice of the subject amendment was submitted to the Washington State Department of Commerce on August 27, 2024, for their 60-day review. No comments were received to date.
6. The Planning Commission held work session on September 12, 2024, and a duly noticed public hearing on the proposed amendments on August 26, 2024.
7. The County Council held a duly noticed public hearing on the proposed amendments on [REDACTED], 2024.
8. The amendments are consistent with Comprehensive Plan Policy Goal 2D to "refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner." There are no policies with which these amendments would be inconsistent.

VI. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VII. Recommendation

Planning and Development Services recommends that the Planning Commission approve the proposed amendments and Findings of Fact and forward its recommendation to County Council.

Attachments

1. Exhibit A – Proposed Code Amendments

Exhibit A: Proposed Amendments to Implement SB 5290 (Local Permit Review)

Editor's Note: Amendments already approved by Council through the 2020 Shoreline Management Program Update (Resolution 2022-027) though not yet adopted into code, as we are still awaiting Department of Ecology approval, are highlighted in yellow, while new proposed amendments are not. (If using Word, if you hover your mouse over the amendment it will either say "SMP Update" or "CStrong," which are the new edits.)

TITLE 20 ZONING

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.430 Tree removal not associated with development activity.

(...)

- (4) Tree Removal Permit Application Procedure and Appeals. Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the county.
 - (a) Applicable Permit.
 - (i) The permit application to remove trees within the shoreline jurisdiction is a shoreline permit (WCC Title 23).
 - (ii) The permit application to remove trees within a critical area or a critical area buffer is an activity allowed with notification (WCC 16.16.235).
 - (iii) The permit application to remove trees in other areas is a tree removal permit.
 - (b) ~~Tree removal permits shall be subject to a Type I process as specified in WCC 22.05.020. The director shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application, or request additional information.~~
 - (c) The removal shall be completed within one year from the date of permit approval.
 - (d) The decision of the director is appealable pursuant to WCC 22.05.160 (Appeals).

(...)

Chapter 20.71 Water Resource Protection Overlay District

20.71.354 Tree removal not associated with development activity.

- (4) Tree Removal Permit Application Procedure and Appeals. Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the county.
 - (a) Applicable Permit.
 - (i) The permit application to remove trees within the shoreline jurisdiction is a shoreline permit (WCC Title 23).
 - (ii) The permit application to remove trees within a critical area or a critical area buffer is an activity allowed with notification (WCC 16.16.235).
 - (iii) The permit application to remove trees in other areas is a tree removal permit.

- (b) ~~Tree removal permits shall be subject to a Type I process as specified in WCC 22.05.020. The director shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application, or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.~~
- (c) The removal shall be completed within one year from the date of permit approval.
- (d) The decision of the director is appealable pursuant to WCC 22.05.160.

Chapter 20.97 Definitions

20.97.190 “S” definitions.

(...)

Site Plan. A site plan is a scale drawing of property and the development or other land use action being proposed. A site plan graphically describes existing and proposed conditions, providing locations, measurements, descriptions, etc. The main purpose of a site plan is to show how the intended land use relates to the features of a parcel and its surrounding area, giving permit reviewers, decision makers, and the public the ability to verify compliance with Whatcom County Code. For a full list of items to be shown on a site plan, refer to Planning and Development Services’ Administrative Manual.

(...)

TITLE 22 LAND USE AND DEVELOPMENT

Chapter 22.05 Project Permit ~~Procedures~~

22.05.010 Purpose and applicability.

- (1) The purpose of this chapter is to ~~combine and consolidate~~ specify the application, review, and approval processes for project permits and appeals ~~as defined in WCC Chapter 20.97 (Definitions)WCC~~. It is further intended for this chapter to comply with the provisions of Chapter 36.70B RCW, and federal laws and regulations relating to personal wireless service facilities (47 USC Sections 253, 332, and 1455 and 47 CFR Sections 1.6001 through 1.6100). These procedures provide for a consolidated land use permit process and integrate the environmental review process with the procedures for review of land use decisions.
- (2) This chapter applies to the processing of project permit applications for development and appeals related to the provisions of WCC Title 15, Buildings and Construction; WCC Title 16, Environment; WCC Title 17, Flood Damage Prevention; WCC Title 20, Zoning; WCC Title 21, Land Division Regulations; and WCC Title 23, Shoreline Management Program. The provisions of this chapter shall apply to all project permit applications as defined in RCW 36.70B.020, and other administrative decisions, as listed ~~in the table~~ in WCC 22.05.020 ~~Table 1~~.
- (3) For permit applications for personal wireless service facilities some of these regulations are modified by WCC 22.05.190, as federal regulations preempt some local regulations and processes.
- ~~(2)(4)~~ This chapter also specifies processes for non-permit actions.

(5) The meaning of words used in this chapter shall be as defined in WCC ~~Title Chapters 20.97 (Definitions), or 23.60 (Definitions) or Chapter 20.13 (Personal Wireless Service Facilities)~~ as appropriate to the permit being applied for.

22.05.014 Obligations of property owner, occupant, and applicant.

- (1) It is the intent of this title to place the obligation of complying with the requirements of this title, Title 15 (Buildings and Construction), Title 16 (Environment), Title 20 (Zoning), Title 21 (Land Division Regulations), Title 23 (Shoreline Management Program), and all other applicable laws and regulations upon the owner, and jointly and severally upon the occupant of the land and buildings within its scope.
- (2) It is the responsibility of an applicant to provide accurate and complete information and plans to comply with the requirements of the cited titles and all applicable laws and regulations. The eCounty is not responsible for the accuracy of information or plans provided to the eCounty for review or approval.
- (3) The department, or any other eCounty department reviewing an application, may inspect any development activity to enforce the provisions of this title. By submitting an application to the eCounty, the applicant consents to entry upon the site by the eCounty during regular business hours for the purpose of making reasonable inspection to verify information provided by the applicant and to verify that work is being performed in accordance with the approved plans and permits and the requirements of this title. Consent to entry extends from the date of application to the date of final action by the eCounty.

22.05.020 Development Review & Approval Processes~~Project permit processing table.~~

- (1) Whatcom County Code requires project permits, approvals, or other actions to undergo different review processes. Some require little to no public participation; others require more public participation, including noticing and public hearings before the Hearing Examiner; and some require a legislative action by the County Council. Similarly, different types of appeals are heard by different appeals bodies.
- (2) However, these various processes can be generally classified into five basic types, identified below. These descriptions are generalized, as is Table 1, and the specific language of the code shall control if there is a contradiction. Type I is considered the lowest process type and Type V is considered the highest.
 - (a) A Type I process is an administrative review and decision-making process that requires no public participation. Review and approval of these actions are performed by the Director and are appealable to the Hearing Examiner.
 - (b) A Type II process is an administrative review and decision-making process that requires public noticing but no public hearing. Review and approval of these actions are performed by the Director and are appealable to the Hearing Examiner, though some to the Shorelines Hearings Board and some to a Court of Competent Jurisdiction, as specified in Table 1.
 - (c) A Type III process is a review and decision-making process that requires public noticing and a public hearing before the Hearing Examiner, who is the decision maker. The Hearing Examiner's

decisions are generally appealable to Superior Court, though some to the Shorelines Hearings Board and some to a Court of Competent Jurisdiction, as specified in Table 1.

(d) A **Type IV** process is a review and decision-making process for quasi-judicial actions that requires public noticing, an open-record public hearing before the Hearing Examiner, and a final decision by the County Council. In these instances, the Hearing Examiner makes a recommendation to the County Council, who holds a closed-record hearing before making the final decision. Their decisions on quasi-judicial actions are appealable to Superior Court.

(e) A **Type V** process is a review and decision-making process for legislative actions that requires public noticing and an open-record public hearing before the Planning Commission and then County Council, who is the decision maker. Decisions on legislative actions are appealable to the Western Washington Growth Management Hearings Board.

(3) Table 1. Land Use Review and Approval Process Table Table 1. Project Permit Processing Table

Marked boxes in the table, below, indicate the required general steps for processing all project permit applications or administrative actions. Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.

Permit Application Processing Table	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held-By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line Adjustment	21.03		✓					Director	Hearing Examiner
Building Permit	15.04	✓(a)	✓					Director	Hearing Examiner (i)
Commercial Site Plan Review	-		✓					Director	Hearing Examiner
Exempt Land Division	21.03		✓					Director	Hearing Examiner
Floodplain Development Permit	Title 17							Director	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80		✓					Director	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97		✓					Director	Hearing Examiner
Nonconforming Use	20.83		✓					Director	Hearing Examiner
Removal of Forest Practices Development Moratorium	20.76.220(2)							Director	Hearing Examiner
Shoreline Exemption	22.05 & 0723.60	✓(a)	✓					Director	Hearing Examiner

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Permit Application Processing Table	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2-11.210, 22.05.120)	Appeal Body (see 2-11.210, 22.05.160, 23.60.150(4))
Site Plan Review/ Notification of Activity	Title 16		✓					Director	Hearing Examiner
Zoning Interpretation	22.20							Director	Hearing Examiner
Permitted Personal Wireless Service Facilities	20.13		✓					Director	Court of competent jurisdiction
Type II Applications (Administrative Decision with Public Notice; No Public Hearing)									
Administrative Use	22.05.028	✓	✓	✓	✓		-	Director	Hearing Examiner
Administrative Use for Personal Wireless Service Facilities	20.13		✓	✓	✓		-	Director	Court of competent jurisdiction
Lot Consolidation Relief	20.83.070		✓	✓	✓		-	Director	Hearing Examiner
Reasonable Use (b)	16.16		✓	✓	✓		-	Director	Hearing Examiner
Shoreline Substantial Development Permit (a)	23.6022.05 & 07	✓(a)	✓	✓	✓		-	Director (db)	Shorelines Hearings Board (th)
Shoreline Conditional Use for single family development, uses, and activities (a)	23.6022.05 & 07	✓(a)	✓	✓	✓		-	Director (db)	Hearing Examiner
Minor Zoning or Critical Areas Variance (outside of shoreline jurisdiction); Minor	22.05.024	✓	✓				-	Director	Hearing Examiner
Zoning or Critical Areas Variance, Minor for Personal Wireless Service Facilities	22.05.024		✓				-	Director	Court of competent jurisdiction
Short Subdivision	21.04	✓	✓	✓	✓		-	Director	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	22.05.026	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Conditional Use for Personal Wireless Service Facilities	20.13		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Court of competent jurisdiction
Floodplain Development Variance	Title 17		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (db)	Superior Court

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Permit Application Processing Table	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(4))
Binding Site Plan	21.07	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (gc)	Superior Court
Reasonable Use (ec)	16.16	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Removal of Forest Practices Development Moratorium	20.76.220(5)(b)		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	22.05 & 0723.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (db)	Shorelines Hearings Board (fb)
Shoreline Substantial Development Permit	22.05 & 0723.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (db)	Shorelines Hearings Board (fb)
Shoreline Variance	22.05 & 0723.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (db)	Shorelines Hearings Board (fb)
Major Zoning or Critical Areas Variance (outside of shoreline jurisdiction), Major	22.05.024 or 16.16.273	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Zoning or Critical Areas Major Variance, Major for Personal Wireless Service Facilities	22.05.024 or 16.16.273		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Court of competent jurisdiction
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
Development Agreement	2.11.205	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Planned Unit Development	20.85	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court

Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

Table 1. Land Use Review and Approval Process Table

Permit/Approval/Action (CASE TYPE) (see footnote a)	Process Type	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.070)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 22.05.120, 2.11.210)	Appeal Body (see 22.05.160, 2.11.210)
Building Permits										
Building Permits (SFR/COM)	I	15.04	✓ (c)	✓					Director	Hearing Examiner
Ancillary Building Permits	I	15.04		✓					Director	Hearing Examiner
• Manufactured Homes (MOB)	I	15.04		✓					Director	Hearing Examiner
• Detached Accessory Structures (DET)	I	15.04		✓					Director	Hearing Examiner
• Mechanical (MEC-C/MEC-R)	I	15.04		✓					Director	Hearing Examiner
• Plumbing (PLB-R/PLB-C)	I	15.04		✓					Director	Hearing Examiner
• Fire (FIR, FIRE-CON, FIRE-OP, FIRE-OCC)	I	15.04	✓ (c)	✓					Director	Hearing Examiner
Use Permits										
Site Plan Approval (SPR)	I	22.05.023		✓					Director	Hearing Examiner
Administrative Uses (ADM)	II	22.05.028	✓	✓	✓	✓		-	Director	Hearing Examiner
Conditional Uses (CUP)	III	22.05.026	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Personal Wireless Service Facilities Use Permits										
Eligible Facility Request (COM)	I	20.13		✓					Director	Court of competent jurisdiction
Small Wireless Facilities (ADM)	II	20.13		✓	✓	✓			Director	Court of competent jurisdiction
Macro Wireless Facilities (CUP)	III	20.13		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Court of competent jurisdiction
Shoreline Permits										
Shoreline Exemptions (SHX)	I	22.07.020		✓					Director	Hearing Examiner

Permit/Approval/Action (CASE TYPE) (see footnote a)	Process Type	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.070)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 22.05.120, 2.11.210)	Appeal Body (see 22.05.160, 2.11.210)
Shoreline Substantial Development (SHR)										
• For single-family residential, agricultural, or commercial forestry projects or other projects whose value is less than \$500K	II	22.07.030		✓	✓	✓			Director (b)	Shorelines Hearings Board
• If project value exceeds \$500K (except for single-family residential, agricultural, or commercial forestry projects) or requires an EIS or a variance	III	22.07.030	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (b)	Shorelines Hearings Board
Shoreline Conditional Use (SHC) for:										
• Single-family development, uses, and activities	II	22.07.040		✓	✓	✓			Director (b)	Hearing Examiner
• All other development, uses, and activities	III	22.07.040	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (b)	Shorelines Hearings Board
Shoreline Variances (SHV)	III	22.07.050	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (b)	Shorelines Hearings Board
Land Division Permits & Approvals										
Boundary Line Adjustments (BLA)		21.03								
• Preliminary	I			✓					Director	Hearing Examiner
• Alterations	I			✓					Director	Hearing Examiner
• Final	I								Director	Hearing Examiner
Exempt Land Divisions (EXE)		21.03								
• Preliminary	II		✓	✓	✓	✓			Director	Hearing Examiner
• Final	I								Director	Hearing Examiner
Short Plats (SSS)		21.04								
• Preliminary	II		✓	✓	✓	✓			Director	Hearing Examiner
• Engineering Plans	I									

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Permit/Approval/Action (CASE TYPE) (see footnote a)	Process Type	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.070)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 22.05.120, 2.11.210)	Appeal Body (see 22.05.160, 2.11.210)
• Alterations	II		✓	✓	✓	✓			Director	Hearing Examiner
• Final	I								Director	Hearing Examiner
Agricultural Short Plats (SSS)		21.04.180								
• Preliminary	II		✓	✓	✓	✓			Director	Hearing Examiner
• Engineering Plans	I									
• Alterations	II		✓	✓	✓	✓			Director	Hearing Examiner
• Final	I									
Subdivisions (LSS)										
• Preliminary	III	21.05	✓	✓	✓	✓	✓	Hearing Examiner (d)	Hearing Examiner	Superior Court
• Engineering Plans	I									
• Alterations	III	21.05.110	✓	✓	✓	✓	✓	Hearing Examiner (d)	Hearing Examiner	Superior Court
• Final	I	21.06								
Binding Site Plans (BSP)										
• Preliminary	III	21.07	✓	✓	✓	✓	✓	Hearing Examiner (d)	Hearing Examiner	Superior Court
• Engineering Plans	I									
• General BSP	I	21.08								
• Specific BSP	I	21.08								
Nonconforming Uses & Lots Approvals										
Affidavit of Nonconforming Use (NON)	I	20.83.130		✓					Director	Hearing Examiner
Lot of Record Affidavit (LOR)	I	20.83.060		✓					Director	Hearing Examiner
Lot Consolidation (LOR)	I	20.83.070		✓					Director	Hearing Examiner
Lot Consolidation Relief (LOR)	II	20.83.070		✓	✓	✓			Director	Hearing Examiner
Conversion of a Nonconforming Residential Use to a Boarding Home, Mental Health Facility, or Substance Abuse Facility (COM)	I	20.83.010		✓					Director	

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Permit/Approval/Action (CASE TYPE) (see footnote a)	Process Type	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.070)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 22.05.120, 2.11.210)	Appeal Body (see 22.05.160, 2.11.210)
Expansion of a Nonconforming Use by Addition or Enlargement (CUP)	III	20.83.020	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Change from one Nonconforming Use to another (CUP)	III	20.83.040	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Forest Practices Permits & Approvals										
Forest Practices Permits (FPA) (processed as Land Fill and Grade Permit: see below)										
Conversion Option Harvest Plan Approval (COHP)	I	20.76.110		✓					Director	Director
Lifting of a Forest Practices 6-Year Development Moratorium (LFG) (processed as Land Fill and Grade Permit: see below)	I	20.76.220								
Miscellaneous Permits										
Land Fill and Grade (LFG)/ Forest Practices Permits (FPA)	I	15.04.050 20.80.730		✓					Director	Hearing Examiner
Land Clearing (Notice of Activity) (LCP)				✓					Director	Hearing Examiner
Floodplain Development Permits (COM/SFR)	I	17.12		✓					Director	Hearing Examiner
Tree Removal Permits (processed as a LCP)	I	20.51.430 20.71.354 20.72.653(3)		✓					Director	Hearing Examiner
Sign Permits (COM)	I	20.80.410		✓					Director	Hearing Examiner
Miscellaneous Non-Permit Reviews, Approvals, & Actions										
Critical Area Reviews & Determinations (CARD)	I	22.05.022		✓						
State Environmental Policy Act (SEPA) Reviews (SEP)	II	16.08		✓	✓	✓			SEPA Official (Director)	Hearing Examiner
Critical Areas Notification of Activity (LCP)	I	16.16.235		✓					Director	Hearing Examiner
Code Interpretations	I	22.20							Director	Hearing Examiner
Mitigation As-Built & Monitoring (MIT)	I	16.16.260							Director	Hearing Examiner

Permit/Approval/Action (CASE TYPE) (see footnote a)	Process Type	WCC Reference for Specific Requirements	Preapplication Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.070)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 22.05.120, 2.11.210)	Appeal Body (see 22.05.160, 2.11.210)
Surface Mining Annual Registration (SM(year mine started)-xxxx)	I	20.80.900							N/A	N/A
Pre-Application Meeting (PRE)		22.05.040							N/A	N/A
Variations (Non-Shoreline) (e)										
Minor Variations (outside of shoreline jurisdiction) (VAR-MIN)	II	22.05.024	✓	✓	✓	✓			Director	Hearing Examiner
Minor Variance for Personal Wireless Service Facilities (outside of shoreline jurisdiction) (VAR- MIN)	II	22.05.034		✓	✓	✓			Director	Court of competent jurisdiction
Major Variations (outside of shoreline jurisdiction) (VAR-MAJ)	III	22.05.024 16.16.273	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Reasonable Use Exceptions (RUE)	III	16.16.270	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Council Quasi-Judicial Approvals & Permits										
Development Agreements (DEV)	IV	22.05.029	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Major Project Permits (MPP)	IV	20.88	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Planned Unit Developments (PUD)	IV	20.85	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Council Legislative Actions										
County Code Amendments (PLN)	V	22.10					✓	Planning Commission and County Council	County Council	Growth Management Hearings Board
Zoning Map Amendments (Rezones) (PLN)	V	22.10					✓	Planning Commission and County Council	County Council	Growth Management Hearings Board
Comprehensive Plan Text Amendments (PLN)	V	22.10					✓	Planning Commission and County Council	County Council	Growth Management Hearings Board
Comprehensive Plan Land Use Map Amendments (PLN)	V	22.10					✓	Planning Commission and County Council	County Council	Growth Management Hearings Board

~~(1)~~(4) Notes on Table 1 Project Permit Processing Table Notes. As indicated in Table 1 in subsection (1) of this section, certain project permits and approvals are subject to the following additional requirements:

- ~~(a)~~ Preapplication conference subject to WCC Title 23, Shoreline Management Program.
- ~~(b)~~ Single-family residential uses in critical areas or critical area buffers, except all uses in geological hazardous areas and setbacks.
- ~~(c)~~ Whether a public hearing is required is Shoreline permit public hearing decision determined pursuant to 22.07.030(A) (Shoreline Substantial Development Permits) WCC Title 23, Shoreline Management Program. If a public hearing is required the shoreline permit shall be processed as a Type III application.
- ~~(a)~~ If a project requires SEPA review, it will change the process type the project permit must undergo from a Type I to Type II.
- ~~(d)~~(b) Pursuant to Chapters 23.60 and 23.70 WCC 22.07.060, final administrative determinations or decisions, as appropriate, shall be filed with, or approved by, the Washington State Department of Ecology.
- ~~(e)~~ All reasonable use exception applications in geological hazardous areas and setbacks and all non-single-family residential uses in critical areas or critical area buffers.
- ~~(c)~~ Building permit preapplication conference, subject to WCC 15.04.020(C)(1).
- ~~(e)~~(d) The H~~e~~aring e~~x~~aminer may choose to consult with the development standards technical advisory committee concerning technical matters relating to land division applications.
- ~~(h)~~(e) A variance request may change the process type for the project permit. See WCC 22.05.024.
- ~~(i)~~ Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use only when the applicant waives his/her right to a single appeal to the Shorelines Hearings Board. When an applicant has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of WCC 23.60.150(H).

22.05.022 Critical Areas Review and Determination.

- 1) Prior to the submittal of any application for any septic system or water availability approvals to the Health Department, or preapplication conference or project or building permits to Planning and Development Services, and unless waived per subsection (6), applicants shall undergo a critical areas review.
- 2) Such review determines the absence, or presence and type, of critical areas and/or their buffers on-site and adjacent to a subject property that may affect the design of intended development. The evaluation area can either be a portion of the subject parcel, the entirety of the subject property, and/or any offsite areas that may be impacted by the proposed development. A critical areas review and determination is not considered a permit, as it does not allow development, but is a precursor to designing a project.
- 3) In applying for a critical areas review and determination, the applicant shall submit a critical areas assessment report prepared by a qualified consultant for review and acceptance by the Director

pursuant to WCC Chapter 16.16. The Director may require revisions or amendments to the critical areas assessment report in order for such to be deemed acceptable.

- 4) Alternatively, applicants may request Planning and Development Services to perform an initial determination of presence or absence of critical areas. If it is determined that critical areas and/or their buffers are present, the applicant shall submit a critical areas assessment report pursuant to subsection (3).
- 5) In either case, the Director shall then provide a written determination that critical areas and/or their buffers either are or are not present on the subject property and, if present, a map of their defined limits as provided in the critical areas assessment report. The Director's written determination regarding (a) the absence of critical areas and/or their buffers or (b) acceptance of a critical areas assessment report as complete and accurate shall be valid for a period of 5 years from the date of such determination.
- 6) When the scope and scale of proposed development is sufficiently minimal that the Director determines a critical areas review and determination is not warranted, the Director may grant a written waiver of such review. Generally, waivers will be granted for projects that do not expand an existing structure's footprint or add bedrooms or sleeping quarters, or are on a lot platted within the last 5 years, though other cases may present themselves.
- 7) Appeals of a critical areas review and determination shall be considered in conjunction with an appeal of a proposed project or building permit.

22.05.023 Site Plan Approval.

- (1) Site plans are required for land use permits, building permits, and many other actions to ensure the proposal meets development requirements and standards. Where a site plan is submitted in conjunction with an application for a land use permit, it shall be reviewed as part of that project permit; otherwise, a site plan approval application is required to be submitted, unless waived by the Director.
- (2) When the scope and scale of proposed development is sufficiently minimal that the Director determines a site plan review is not warranted, the Director may grant a written waiver of such review.
- (3) Site plan review is not required for interior alterations that do not result in the following:
 - (a) Additional sleeping quarters or bedrooms;
 - (b) Nonconformity with Federal Emergency Management Agency substantial improvement thresholds; or,
 - (c) Increase the total square footage or valuation of the structure thereby requiring upgraded fire access or fire suppression systems.

22.05.024 Variances (Non-Shoreline).

- (1) A variance is not a permit, but rather a request to deviate from the standards terms of WCC Title 20 (Zoning) or Chapter 16.16 WCC (Critical Areas Ordinance). A request for a variance is applied for and processed in conjunction with a project permit. When a variance is requested, the project permit shall be reviewed under the process type required for the permit or action with the highest process type number per WCC 22.05.020. Error! Reference source not found..

~~(1)~~(2) **Variations** may be authorized in specific cases that will not be contrary to the public interest, and where, due to special conditions, literal enforcement of the provisions of those codes would result in unnecessary hardship. Generally, variations shall only be considered for dimensional standards, unless otherwise specified in those codes. Under no circumstances shall a variance be granted that allows a use not permissible or otherwise prohibited in the zoning district in which the subject property is located.

~~(2)~~(3) There are two types of **non-shoreline** variations: minor and major variations.

(a) Minor variations include those that are unlikely to have impacts on surrounding properties or people or need to be processed more rapidly to meet federal time frames. These shall be limited to variations for:

i. A reduction of up to 10% ~~percent~~ of a front yard setback;

ii. Minor variations for reduction of critical area buffers pursuant to WCC 16.16.273;

~~iii. The following personal wireless service facilities: Small wireless facilities, provided, that a~~
~~variance shall not be granted that would alter the dimensional, bulk, numerical, or other~~
~~criteria in the definition of small wireless facilities in WCC 20.13.~~
iii. **A 25% to 50% reduction of critical area buffers pursuant to 16.16.273 (Variations).**

(b) Major variations include all other variations.

~~(3)~~(4) The appropriate decision maker, as specified in WCC 22.05.020 (Project permit processing table) shall have the authority to grant variations when the conditions set forth in subsection ~~(4)~~(5) of this section have been found to exist. In such cases, a variance may be granted so that the spirit of the ~~€~~County's land use codes shall be observed, public safety and welfare secured, and substantial justice done.

~~(4)~~(5) Before any variance may be granted, it shall be shown that the following circumstances are found to apply:

(a) That any variance granted shall not constitute a grant of special privilege, **not** be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for ~~pecuniary financial or monetary~~ reasons alone;

(b) Because of special circumstances applicable to the subject property, including size, shape, topography, location, or surrounding, the strict application of WCC Title 20 (Zoning) or Chapter 16.16 WCC (Critical Areas Ordinance) is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in its zoning district. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section;

(c) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

22.05.026 Conditional use permits.

(1) Application. Conditional use permit applications shall be processed per the provisions of this chapter.

- (2) Conditional use permits shall be nontransferable unless said transfer is approved by the ~~H~~Hearing ~~e~~Examiner.
- (3) Approval Criteria. Before approving an application, the ~~director or H~~Hearing ~~e~~Examiner shall ensure that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate evidence showing that the proposed use at the proposed location:
- (a) Will be harmonious and in accordance with the general and specific objectives of Whatcom County’s Comprehensive Plan, zoning regulations, and any other applicable regulations.
 - (b) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
 - (c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.
 - (d) Will not be hazardous or disturbing to existing or future neighboring uses.
 - (e) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
 - (f) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
 - (g) Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.
 - (h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
 - (i) Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of major importance.
- (4) Approval Criteria for Expansion of Fossil Fuel Refineries Pursuant to WCC 20.68.153 and Expansion of Fossil Fuel Transshipment Facilities Pursuant to WCC 20.68.154. Before approving an application, the ~~H~~Hearing ~~e~~Examiner shall ensure that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate evidence showing that:
- (a) The conditional use permit approval criteria listed under subsection (3) of this section are met;
 - (b) Within shorelines, if applicable, ~~e~~County approval shall be contingent upon approval of a shoreline permit;
 - (c) The applicant has documented to the ~~e~~County decision maker (as applicable):
 - i. All of the anticipated types and volumes of substances to be processed, stored, or transferred in bulk with the proposed expansion;
 - ii. Changes in the maximum transshipment capacity or the maximum atmospheric crude distillation capacity occurring as a result of the proposed expansion, as applicable; and
 - iii. The mode of shipment vessels to be loaded or unloaded with the proposed equipment and/or as a result of the proposed expansion.

The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

- (d) Insurance requirements meet the provisions of WCC 22.05.125.
 - (e) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.
 - (f) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.
 - (g) Plans for stormwater and wastewater releases have been approved.
 - (h) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements, and it shall be demonstrated to the zoning administrator that the project applicant has met any federal or state permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions.
 - (i) The eCounty decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition.
 - (j) The permittee must inform the eCounty permitting authorities of a change in the aforementioned disclosures so that the department can document current capacity levels to ensure that the cumulative thresholds under WCC 20.68.153 or 20.68.154 (as applicable) have not been exceeded.
 - (k) The eCounty decision maker shall include, in any approval of an application for an expansion, as per WCC 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be stored and, if located at a fossil fuel refinery or renewable fuel refinery, whether the equipment will or will not be used for transshipment.
- (5) Revisions. The H Hearing e Examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:
- (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:
 - i. Revisions involving new structures not shown on the original site plan shall require a new permit;
 - ii. Any revisions shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; and
 - iii. Any revisions shall be reviewed for consistency with the Comprehensive Plan;
 - (b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;
 - (c) The use authorized pursuant to the original permit is not changed;

- (d) No additional over-water construction will be involved for shoreline conditional use permits;
- (e) No substantial increase in adverse environmental impact will be caused by the project revision.

22.05.028 Administrative approval uses.

- (1) Administrative approval applications shall be processed per the provisions of this chapter.
- (2) The ~~e~~Director ~~of planning and development services~~ is authorized to approve, approve with conditions, or deny all administrative approval use applications.
- (3) Approval Criteria. Decisions for all administrative approval use permits shall be based upon compliance with:
 - (a) The criteria established for the proposed use in the appropriate zone district;
 - (b) The Comprehensive Plan policies governing the associated land use designation;
 - (c) In rural areas, consideration will be given to the cumulative impacts of permitted uses in relation to the governing Comprehensive Plan policies and zoning district; and
 - (d) The criteria of WCC 22.05.026(3) (conditional use permits, approval criteria).
 - (e) Additionally, decisions for administrative approval use permits for adult businesses shall be based on the criteria in subsection (4) of this section.
- (4) Additional Approval Criteria for Adult Businesses. Prior to granting administrative approval for an adult business, the ~~e~~Director shall find that the proposed use at the proposed location satisfies or will satisfy all the following criteria:
 - (a) The adult business will be consistent with WCC 20.66.131 (Light Impact Industrial District, Administrative approval uses).
 - (b) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:
 - i. An adult eating or drinking establishment; or
 - ii. An adult theater; or
 - iii. Another adult commercial establishment; or
 - iv. One or more viewing booths.
 - (c) If the adult business includes one or more viewing booths, the interior of the adult business will incorporate all of the following measures:
 - i. Each viewing booth shall have at least a three-foot-wide opening where a customer enters and exits the booth that is without doors, physical barriers, or visual barriers; and
 - ii. Each viewing booth shall have at least one 100-watt light bulb that is properly working and turned on when business is open. The light bulb shall not be covered or otherwise shielded except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch durable metal sign shall be located at the entrance to each viewing booth area stating that lights shall remain on; and
 - iii. Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and
 - iv. There shall be no holes or openings in common walls between viewing booths.
 - (d) Additionally, for adult businesses containing one or more viewing booths, a condition of approval shall allow an unannounced inspection by Whatcom County every six months during business hours to ensure that measures in subsections (4)(c)(i) through (4)(c)(iv) of this section are being implemented on an ongoing basis.

- (5) Revisions. The ~~d~~irector may approve revisions to administrative approval use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:
- (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:
 - i. Revisions involving new structures not shown on the original site plan shall require a new permit; and
 - ii. Any revisions shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; and
 - iii. Any revisions shall be reviewed for consistency with the Comprehensive Plan;
 - (b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;
 - (c) The use authorized pursuant to the original permit is not changed;
 - (d) No additional over-water construction will be involved for shoreline conditional use permits;
 - (e) No substantial increase in adverse environmental impact will be caused by the project revision.

22.05.029 Development Agreements.

- (1) **Purpose.** The purpose of this section is to set forth the decision-making and appeal procedures for development agreement applications. In adopting these provisions, the County acknowledges the benefits of providing certainty regarding applicable development standards, uses, and/or mitigation for major projects or long-term, phased proposals.
- (2) **Applicability.** This section applies to development agreement applications made pursuant to RCW 36.70B.170 - 36.70B.210 and this chapter. These provisions do not apply to or affect the validity of any contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on or before the effective date of this chapter, or adopted under separate authority, even though such agreements may also relate to development standards, mitigation, and other regulatory requirements.
- (3) **Discretion to Enter Development Agreement.** A development agreement may or may not be entered at the sole discretion of the County. Discretion rests with the County in all cases, including when a development agreement is required per WCC.
- (4) **Who May Enter.** The property owner and the County shall be parties to a development agreement; provided, that if a proposed development is within an adopted municipal UGA, the applicable town or city may also be a party to the agreement. The following may be considered for inclusion as additional parties in a development agreement: contract purchasers, lenders, third-party beneficiaries and utility service providers.
- (5) **Content of Development Agreements.** A development agreement shall set forth the development standards and other conditions that shall apply to and govern the development, use, and mitigation of the property subject to the agreement. They shall also:
- (a) Specify a termination date upon which the agreement expires;
 - (b) Establish a vesting period for applicable standards; and,

- (c) Reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.
- (6) When Development Agreements May Be Approved.** A development agreement may be entered into prior to, concurrent with, or following approval of project permits for development of the property.
- (7) Consistency with Whatcom County Code.** The development standards and conditions set forth in a development agreement shall be consistent with the applicable development regulations set forth in the Whatcom County Code.
- (8) Standards to be Addressed.** A development agreement shall include one or more of the following types of development controls and conditions:

 - (a) Project elements such as permitted uses, residential densities, and nonresidential densities, intensities and/or building sizes;
 - (b) Impact fees, impact fee reimbursement provisions, other financial contributions by the property owner and dedications;
 - (c) Mitigation measures pursuant to environmental review;
 - (d) Design standards such as maximum heights, setbacks, drainage and water quality requirements and landscaping;
 - (e) Affordable housing;
 - (f) Parks and open space ;
 - (g) Phasing;
 - (h) Other appropriate development requirements.
- (9) Procedures.**

 - (a) A development agreement shall be initiated by a written request from the property owner to Planning and Development Services.
 - (b) If the Director determines in their discretion that a development agreement should be considered by the County, the property owner shall be so informed, except where a development agreement is specifically authorized by the County Council.
 - (c) Development agreements shall be reviewed in the manner and following the procedures for Type IV processes established in WCC 22.05.020. The Hearing Examiner’s recommendation shall include a proposed resolution or ordinance, as appropriate, for Council consideration that would adopt the Hearing Examiner’s recommendation as a final decision.
 - (d) When a development agreement is being considered prior to project permit approvals, the property owner shall provide the County with the same information that would be required for a complete application for such project permits in order for the County to determine the development standards and conditions to be included in the development agreement.
 - (e) When a development agreement is being considered following approval of project permits, the development standards and other conditions set forth in such project permits shall be used in the development agreement without modification.
 - (f) The County Council has final approval or denial authority for development agreements.
- (10) Decision criteria.** The County Council may adopt a development agreement upon passage of a resolution or ordinance, as appropriate, with findings that:

- (a) The proposed agreement is compatible with the goals and policies of the comprehensive plan;
- (b) The proposed agreement is consistent with applicable development regulations;
- (c) The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided that if the development is not defined at a project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts in the future; and
- (d) The proposed agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(11) **Recording required.** A development agreement shall be recorded with the County Auditor and shall be binding during its term on the parties and their successors, including any city that assumes jurisdiction through incorporation or annexation of the area covered by the development agreement.

(12) **Modification of development agreement.** Modification of an approved development agreement shall require processing as a new development agreement, except that a development agreement may provide a range of modifications that may be approved by the department at the time of initial development agreement approval.

(13) **Effect of development agreement.**

- (a) A development agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property subject to the development agreement.
- (b) A development agreement shall be enforceable during its term by a party to the agreement.
- (c) A development agreement shall govern during the term of the agreement all or that part of the development specified in the agreement and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement.
- (d) Permits issued by the County after the execution of the development agreement shall be consistent with the agreement.

(14) **Appeal of development agreement.** A development agreement shall be subject to appeal in Superior Court in accordance with the provisions of the Land Use Petition Act, Chapter 36.70C RCW.

22.05.030 Consolidated permit review.

Except for building permits, the eCounty shall integrate and consolidate the review and decision on two or more project permits or actions subject to this chapter that relate to the proposed project action unless the applicant requests otherwise. Consolidated ~~Type I, II, III and IV~~ permits or actions shall be reviewed under the process type required for the permit or action with the highest process type number per WCC 22.05.020. Level IV is considered the highest and Level I is considered the lowest process type.

22.05.032-126 Supplemental procedures for fossil fuel refinery and fossil fuel transshipment facility permitting.

- (1) Upon request of the eCounty, fossil fuel refineries or fossil fuel transshipment facilities shall fill out a supplemental checklist for the purpose of determining whether a project qualifies as a permitted use or requires a conditional use permit as specified in WCC 20.68.153 or 20.68.154. The checklist shall contain supplemental information to include:

- (a) Impact on maximum atmospheric crude distillation capacity (MACDC), maximum transshipment capacity, and fossil fuel unit train shipment frequency from the proposed activity;
 - (b) Confirmation of the acceptance of potential permit conditions as outlined in WCC 20.68.068(23);
 - (c) Applicant name, property owner information, and parcel information as appropriate; and
 - (d) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant and certified by a notary public.
- (2) Confidential Business Information.
- (a) For the purpose of checklists, permit applications and all other materials submitted by fossil fuel refineries or fossil fuel transshipment facilities for activities in the Cherry Point Heavy Impact Industrial District, the following shall apply:
 - i. The applicant shall clearly identify information the applicant considers to be confidential business information, not subject to disclosure under Chapter 42.56 RCW (Public Records Act) and/or WCC 1.32.090. If such information is contained in submittal documents, the applicant shall submit two copies of materials for eCounty use as follows:
 - (A) A copy with confidential business information clearly identified, with a watermark indicating the document contains such information; and
 - (B) A copy with confidential business information redacted, and a watermark added indicating that the document does not contain such information and is suitable for public disclosure.
 - ii. Confidential business information may include:
 - (A) Processing equipment technical specifications on internals, sidestream/pumparounds, design specifications, and process controls;
 - (B) Process unit design, instrumentation and controls;
 - (C) Feedstock, product, or process unit pump capacity and configuration; and
 - (D) Contractual agreements and all terms contained therein.
 - iii. The information listed above is not meant to be all-inclusive. Other information related to the applicant's processing activities, feedstock and product purchase, and/or sale and transportation methods and costs may be confidential business information and, if so, shall be marked as such when submitted.
 - iv. Calculation and permit material submittals may contain, but are not required to contain any of the above information.
 - v. Where no increase to MACDC, maximum transshipment capacity, or unit train frequency is proposed, submittal of confidential business information specifically related to the criteria of WCC 20.68.153 and 20.68.154 shall not be required to be submitted with the permit application materials.
- (3) Where calculations are to be submitted for maximum transshipment capacity of maximum atmospheric crude distillation capacity, the applicant shall provide calculations performed and certified by a professional engineer licensed in the state of Washington, clearly indicating the impact on MACDC and transshipment capacity. Confidential business information shall be clearly identified as required by subsection (2)(a)(i) of this section.

- (4) If the eCounty receives a public records request for records containing information the applicant has clearly indicated to be confidential business information pursuant to subsection (2)(a)(i) of this section, the eCounty will notify the applicant of the request and provide the applicant with a reasonable period of time of at least 15 days to file for an injunction under RCW 42.56.540 to prevent the disclosure of such information. If the applicant does not file for an injunction within the period of time set by the eCounty, the eCounty will disclose the records containing the information that the applicant has designated as confidential business information pursuant to subsection (2)(a)(i) of this section.

22.05.034 Modified Regulations for Personal Wireless Service Facilities.

This section modifies certain above regulations, as indicated.

- (1) WCC 22.05.024 (Variances (Non-Shoreline)) §(2)(a) is modified to include the following as a minor variance:

iv. The following personal wireless service facilities: Small wireless facilities; provided, that a variance shall not be granted that would alter the dimensional, bulk, numerical, or other criteria in the definition of small wireless facilities in WCC 20.13.

- (2) WCC 22.05.050 (Application and determination of completeness), §(1) is modified to read:

Project permit applications for personal wireless service facilities be submitted using current forms provided by the review authority, as listed below. The submittal shall include all applicable fees per Chapter 22.25 WCC, all materials required by the department’s administrative manual (unless waived pursuant to WCC 22.05.050(2)), and all items identified in the preapplication notice of site-specific submittal requirements. If a permit is denied, no reapplication for the same or essentially similar development may be made within one year of the date of denial.

- (a) Eligible Facility Requests. The County shall prepare and make publicly available an “Eligible Facilities Request Application” form used to determine whether a proposal qualifies as an eligible facilities request. An applicant’s submittal of a completed “Eligible Facilities Request Application” is the first procedural step in the County’s application process. The County may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the definition and requirements for an eligible facilities request. The County may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities. The applicant shall submit applicable fees per Chapter 22.25 WCC.
- (b) The County shall prepare and make publicly available a “Small Wireless Facility Application” form used to determine whether a proposal qualifies as a small wireless facility. An applicant’s submittal of a completed “Small Wireless Facility Application” is the first procedural step in the County’s application process. The applicant shall submit applicable fees per Chapter 22.25 WCC.
- (c) The County shall prepare and make publicly available a “Macro Wireless Facility Application” form for projects that do not qualify as an exempt activity pursuant to WCC 20.13.030, eligible facilities request, or small wireless facility. An applicant’s submittal of a completed “Macro

Commented [CES1]: Note: Shown as new (underlined) as this is a new (consolidated) section being created. The actual rules contained within have not been modified, just moved from other sections so as to consolidate all wireless processing rules into one place.

Wireless Facility Application” is the first procedural step in the County’s application process. The applicant shall submit applicable fees per Chapter 22.25 WCC.

(2) WCC 22.05.050 (Application and determination of completeness), §(4) is modified to read:

An application for personal wireless service facilities is complete if it meets the procedural submission requirements as outlined on the application. The County shall provide to the applicant a written determination which states either that the application is complete or the application is incomplete within:

(a) 10 calendar days of receiving a wireless eligible facilities request application;

(b) 10 calendar days of receiving a small wireless facility application;

(c) 30 calendar days of receiving a macro wireless facility application.

To the extent known by the County, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.

(3) WCC 22.05.050 (Application and determination of completeness), §(5) is modified to read:

A project permit application for personal wireless service facilities is complete when the application required pursuant to subsection (1) of this section is entirely filled out with the required information, as set forth in the department’s administrative manual, and submitted to the County. A determination of completeness shall not preclude the County from requiring additional information or studies at any time prior to permit approval. A project permit application for personal wireless service facilities is subject to the tolling provisions of WCC 22.05.130 (tolling refers to the time excluded from the permit review time frame).

(4) WCC 22.05.050 (Application and determination of completeness), §(6)(c) is modified to read:

Upon receipt of the necessary information, the County shall have 10 calendar days to make a determination and notify the applicant whether the application is complete or what additional information is necessary.

(5) WCC 22.05.070 (Notice of application), §(3) is modified to also include:

i. Notices relating to personal wireless service facilities may state the federal preemption of local regulation of radio frequency emissions.

(6) WCC 22.05.070 (Notice of application), §(4)(b)(i) is modified to read:

For sites within urban growth areas: Application notice for personal wireless service facilities shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the County Assessor.

(7) WCC 22.05.130 (Permit review time periods) is modified to read:

(1) For personal wireless service facilities permits the County shall issue a notice of final decision to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application as follows:

(a) Eligible facility requests for personal wireless service facilities shall be subject to the following permit review time frames, tolling, and deemed granted provisions:

i. Applications for an eligible facilities request shall be approved within 60 days of application submittal, unless it is determined that the proposal does not qualify as an eligible facilities request under WCC Chapter 20.13.

- ii. If the County determines that the applicant’s request does not qualify as an eligible facilities request it shall deny the application within 60 days of the date of application submittal. The denial shall be in writing and supported by substantial evidence contained in the written record. If an eligible facilities request application is denied, a new application may be submitted under the appropriate personal wireless service facilities provisions of Chapter 20.13 WCC.
 - iii. The 60-day review period begins to run when the application is filed and may be tolled only by mutual agreement by the County and the applicant or in cases where the County determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - iv. To toll the timeframe for incompleteness, the County must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.
 - v. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the County’s notice of incompleteness.
 - vi. Following a supplemental submission, the County will notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - vii. In the event the County fails to approve or deny an eligible facilities request within the timeframe for review (accounting for any tolling), the request shall be deemed granted if required by federal law or federal regulation. The deemed grant does not become effective until the applicant notifies the County in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted. The applicant shall provide a citation to the federal law or federal regulation that requires the deemed granted status.
- (b) Small wireless facilities shall be subject to the following permit review time frames and tolling periods (collectively known as shot clock periods):
- i. Review of an application to collocate a small wireless facility using an existing structure: 60 days.
 - ii. Review of an application to deploy a small wireless facility using a new structure: 90 days.
 - iii. Unless a written agreement between the applicant and the County provides otherwise, the tolling period for an application is as set forth below.
 - iv. For an initial application for small wireless facilities, if the County notifies the applicant on or before the tenth day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the

- date on which the applicant submits all the documents and information identified by the County to render the application complete.
- v. For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from the day after the date when the County notifies the applicant in writing that the applicant’s supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the County’s original request until the date when the applicant submits all the documents and information identified by the County to render the application complete. The notice pursuant to this section must be issued on or before the tenth day after the date when the applicant makes a supplemental submission in response to the County’s written notification.
- vi. The shot clock date for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified in this subsection (1)(e); provided, that if the date calculated in this manner is a federal, state, or local holiday, the shot clock date is the next business day after such date. The term “business day” means any day, except Saturday or Sunday, that is not a legal holiday.
- (c) Macro wireless facilities shall be subject to the following permit review time frames and tolling periods (collectively known as shot clock periods):
- i. Review of an application to collocate a macro wireless facility using an existing structure: 90 days.
- ii. Review of an application to deploy a macro wireless facility using a new structure: 150 days.
- iii. Unless a written agreement between the applicant and the County provides otherwise, the tolling period for an application is as set forth below.
- iv. For an initial application for macro wireless facilities, the tolling period shall be the number of days from: The day after the date when the County notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation until the date when the applicant submits all the documents and information identified by the County to render the application complete. The notice pursuant to this section must be issued on or before the thirtieth day after the date when the application was submitted to toll the review time frame.
- v. For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from the day after the date when the County notifies the applicant in writing that the applicant’s supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the County’s original request until the date when the applicant submits all the documents and information

identified by the County to render the application complete. The notice pursuant to this section must be issued on or before the tenth day after the date when the applicant makes a supplemental submission in response to the County’s written notification.

vi. The shot clock date for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified in this subsection (1)(f); provided, that if the date calculated in this manner is a federal, state, or local holiday, the shot clock date is the next business day after such date. The term “business day” means any day, except Saturday or Sunday, that is not a legal holiday.

(8) WCC 22.05.160 (Appeals), §(1) is modified to read:

For personal wireless service facilities, any person with standing may appeal any order, final permit decision, or final administrative determination made by the Director in the administration or enforcement of any chapter to a court of competent jurisdiction.

22.05.040 Preapplication conference.

The purpose of a preapplication conference is to assist applicants in preparing development applications for submittal to the eCounty by identifying applicable regulations and procedures. It is not intended to provide a staff recommendation on future permit decisions. Preapplication review does not constitute acceptance of an application by the eCounty nor does it vest an application, unless otherwise indicated in Whatcom County Code.

- (1) A preapplication conference is required as indicated in WCC 22.05.020, unless the ~~d~~Director ~~or designee~~ grants a written waiver. For other ~~permits~~applications, the applicant may request a preapplication conference. An applicant may request any number of preapplication conferences.
- (2) The eCounty shall charge the applicant a fee for ~~a~~each preapplication conference per the unified fee schedule. If the eCounty makes a determination of completeness on a project permit submitted within one year of the notice of site-specific submittal requirements per subsection (6) of this section, ~~the preapplication~~ 50% of the planning fee for one of the preapplication conferences shall be applied to the application cost.
- (3) It is the responsibility of the applicant to initiate a preapplication conference through a written application. The application shall, at a minimum, include all items identified on the preapplication form and the department’s administrative manual. The applicant may provide additional information to facilitate more detailed review.
- (4) A preapplication conference shall be scheduled as soon as possible and held no later than 30 calendar days from the date of the applicant’s request, unless agreed upon by the applicant and the eCounty.
- (5) The eCounty shall invite the appropriate city to the preapplication meeting if the project is located within that city’s urban growth area or which contemplates the use of any city utilities. Notice shall also be given to appropriate public agencies and public utilities, if within 500 feet of the area submitted in the application.

- (6) The eCounty should provide the applicant with notice of site-specific submittal requirements for application no later than 14 calendar days from the date of the conference.
- (7) A new preapplication conference shall be required if an associated project permit application is not filed with the eCounty within one year of the notice of site-specific submittal requirements per subsection (6) of this section or the application is substantially altered, unless waived per WCC 22.05.040(1).

22.05.050 Application and determination of completeness.

- ~~(1) Project permit applications shall be submitted using current forms provided by the review authority. The submittal shall include: all applicable fees per Chapter 22.25 WCC, all materials required by the department's administrative manual (unless waived pursuant to subsection (2)), and all items identified in the preapplication notice of site-specific submittal requirements, except for personal wireless service facilities which shall be as follows:~~
- ~~(2) Eligible Facility Requests. The county shall prepare and make publicly available an "Eligible Facilities Request Application" form used to determine whether a proposal qualifies as an eligible facilities request. An applicant's submittal of a completed "Eligible Facilities Request Application" is the first procedural step in the county's application process. The county may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the definition and requirements for an eligible facilities request. The county may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities. The applicant shall submit applicable fees per Chapter 22.25 WCC.~~
- ~~(3) The county shall prepare and make publicly available a "Small Wireless Facility Application" form used to determine whether a proposal qualifies as a small wireless facility. An applicant's submittal of a completed "Small Wireless Facility Application" is the first procedural step in the county's application process. The applicant shall submit applicable fees per Chapter 22.25 WCC.~~
- ~~(4) The county shall prepare and make publicly available a "Macro Wireless Facility Application" form for projects that do not qualify as an exempt activity pursuant to WCC 20.13.030, eligible facilities request, or small wireless facility. An applicant's submittal of a completed "Macro Wireless Facility Application" is the first procedural step in the county's application process. The applicant shall submit applicable fees per Chapter 22.25 WCC.~~
- (1) Project permit applications shall be submitted using current forms provided by the review authority. The submittal shall include: all applicable fees per Chapter 22.25 WCC, all materials required by the department's administrative manual (unless waived pursuant to subsection (2)), and all items identified in the preapplication notice of site-specific submittal requirements. **If a permit is denied, no reapplication for the same or essentially similar development may be made until within one year from the date of denial.**
- (2) The Director may vary or waive the requirements provided in the department's administrative manual on a case-by-case basis, though may also require additional specific information depending

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~~on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other eCounty requirements.~~

~~(5)(3)~~ Upon submittal by the applicant, the eCounty will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.

~~(6)(4)~~ An application is complete if it meets the procedural submission requirements as outlined on the application and the department's administrative manual, includes items identified through the preapplication conference, and contains sufficient information to process the application even if additional information may be required. The eCounty shall provide to the applicant a written determination which states either that the application is complete or the application is incomplete within 28 calendar days of receiving an application. ~~To the extent known by the eCounty, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.~~

- ~~(a) Ten calendar days of receiving a wireless eligible facilities request application;~~
- ~~(b) Ten calendar days of receiving a small wireless facility application;~~
- ~~(c) Thirty calendar days of receiving a macro wireless facility application; and~~
- ~~(d) Fourteen calendar days of receiving all other applications.~~

~~To the extent known by the county, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.~~

~~(7)(5)~~ A project permit application (other than for personal wireless service facilities) is complete when it meets the submittal requirements of the department's administrative manual, includes items identified through the preapplication conference process and contains sufficient information to process the application even if additional information will be required. ~~A project permit application for personal wireless service facilities is complete when the application required pursuant to subsection (1) of this section is entirely filled out with the required information, as set forth in the department's administrative manual, and submitted to the county.~~ A determination of completeness shall not preclude the eCounty from requiring additional information or studies at any time prior to permit approval. A project permit application (other than for personal wireless service facilities) shall be deemed complete under this section if the eCounty does not issue a written determination to the applicant that the application is incomplete by the end of the ~~fourteenth~~ 29th calendar day from the date of receipt. ~~A project permit application for personal wireless service facilities is subject to the tolling provisions of WCC 22.05.130 (tolling refers to the time excluded from the permit review time frame).~~

~~(8)(6)~~ If the application is determined to be incomplete, the following shall take place:

- (a) The eCounty will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.
- (b) The applicant shall have 960 calendar days from the date that the notification was issued to submit the necessary information to the eCounty. If the applicant does not submit the necessary information to the eCounty in writing within the 960-day period, the application shall be rejected. The dDirector or designee may extend this period for an additional 960 calendar days upon written request by the applicant.

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(c) Upon receipt of the necessary information, the ~~e~~County shall have 14 calendar days ~~(10 days for personal wireless service facilities)~~ to make a determination and notify the applicant whether the application is complete ~~or what additional information is necessary or rejected~~.

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~~(9)~~(7) A determination of an incomplete application is an appealable final administrative determination, subject to WCC 22.05.160(1).

22.05.060 Vesting.

(1) **Complete Applications.** For a project permit application the department has determined to be complete per WCC 22.05.050(4), the application shall be considered under the zoning or other land use control ordinances in effect on the date the application was submitted to the department.

(2) **Incomplete Applications.** For a project permit application the department has determined to be incomplete per WCC 22.05.050(5), the application shall be considered under the zoning or other land use control ordinances in effect on the date the department determines the application to be complete based on the necessary information required by the department.

~~(3) Applications Subject to Preapplication Conference. Notwithstanding the provisions of subsections (1) and (2) of this section, for a project permit application that is:~~
~~(a) subject to a preapplication conference per WCC 22.05.020 and 22.05.040; ;~~
~~(b) submitted no more than 28 calendar days from the date the department issued its notice of site specific submittal requirements; ; and;~~
~~— determined complete by the department,~~
~~the application shall be considered under the zoning or other land use control ordinances regulations in effect on the date the preapplication conference request was submitted to the department.~~

~~(4)~~(3) **Continuation of Vesting.** Building or land ~~disturbance fill and grade~~ permit applications that are required to ~~complete obtain one of the following project permits or approvals a valid (i.e., not expired) project permit approval for project permits or variances identified in the following list (subsections (4)(a) through (4)(m)) of this section)~~ shall vest to the zoning and land use ~~control ordinances regulations~~ in effect at the time the project permit application ~~identified below~~ was determined ~~to be~~ complete:

- (a) Administrative use;
- (b) ~~Commercial s~~Site plan review;
- (c) Conditional use;
- ~~(d) Critical areas variance;~~
- ~~(e)~~(d) Major project permit;
- ~~(f) Natural resource review;~~
- ~~(g)~~(e) Planned unit development;
- ~~(h)~~(f) Reasonable use ~~exceptions (Type II and III);~~
- ~~(i)~~(g) Shoreline conditional use permit;
- ~~(j)~~(h) Shoreline exemption;
- (i) Shoreline substantial ~~development permit~~;
- ~~(k)~~(i) Variances
- ~~(l) Shoreline variance;~~

~~(m) Zoning variance.~~

~~(5)~~(4) **Vesting of Building Permit Applications within Recorded Long and Short Subdivisions and**

Binding Site Plans. Building permit applications, including associated land disturbance permits, shall be governed by conditions of approval, statutes, and ~~ordinances-regulations~~ in effect at the time of final approval of the plat, short plat, or binding site plan pursuant to RCW 58.17.170. Vesting duration for those building permit applications shall be governed by the time limits established for long subdivisions in RCW 58.17.170, unless the eCounty finds that a change in conditions creates a serious threat to the public health or safety.

~~(6)~~(5) **Vesting of Building and Fire Code Requirements.** Building and fire code provisions adopted per WCC Title 15 vest at the time a building permit application is determined to be complete.

~~(7)~~(6) **Duration.** Vesting status established through subsections (1) through (5) of this section runs with the application and expires upon denial of the application by the eCounty, withdrawal of the application by the applicant, rejection of the application per WCC 22.05.050(5), expiration of the application per WCC 22.05.130(1)(a)(i), ~~or~~ expiration of the approved permit per WCC 22.05.140, or revocation of the permit per WCC 22.05.150.

22.05.070 Notice of application.

- (1) For permit applications of Type II, III, and IV ~~applications-processes~~ per WCC 22.05.020, the eCounty shall issue a notice of application within 14 calendar days of a determination of completeness. The date of notice shall be the date of ~~mailing~~ publication.
- (2) If the eCounty has made a State Environmental Policy Act (SEPA) threshold determination of significance concurrently with the notice of application, ~~the county~~ it shall combine the determination of significance and scoping notice with the notice of application.
- (3) Notice shall include:
 - (a) The date of application, the date of determination of completeness for the application, and the date of the notice of application;
 - (b) A description of the proposed project action and a list of the project permits or approvals requested included in the application, and, if applicable, a list of any studies requested by the eCounty;
 - (c) The identification of other permits or approvals not included in the application to the extent known by the eCounty;
 - (d) The identification of environmental reviews conducted, including notice of existing environmental documents that evaluate the proposed project (including but not limited to reports, delineations, assessments and/or mitigation plans associated with critical area reviews) and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
 - (e) Any other information determined appropriate by the eCounty;
 - (f) A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;
 - (g) A statement of the minimum public comment period, which shall be 14 calendar days for all project permits except for shoreline substantial development, shoreline conditional use,

shoreline variance, and major project permits for mitigation banks, which shall have a minimum comment period of no more than 30 calendar days. ~~The notice shall specify the first and last date and time by which written public comment may be submitted.~~

(h) A statement of the right of any person to comment on the application and receive notice of and participate in any hearings, request a copy of the decision once made, and to appeal a decision when allowed by law. The department may accept public comments at any time prior to the close of the open record public hearing, or if there is no public hearing, prior to the decision on the project permit. In addition, the statement shall indicate that any person wishing to receive personal notice of any decisions or hearings must notify the department.

~~(i) Notices relating to personal wireless service facilities may state the federal preemption of local regulation of radio frequency emissions.~~

(4) The department shall issue a notice of application in the following manner:

(a) The notice shall be published once in the official eCounty newspaper and on the Whatcom County website. The applicant shall bear the responsibility of paying for such notice.

~~(a)(b) On or before the notice of application date, the applicant shall post such notices on all road frontages and adjacent shorelines of the subject property. They shall be visible to adjacent property owners and passersby, in a format conforming to the standards found in the department's administrative manual. Said notices shall remain in place until 3 days after the comment period closes. The applicant shall provide the department an affidavit of posting, attesting that such notices have been posted and on what date.~~

~~(b)(c) Notices shall be sent to neighboring property owners as follows. Additional notice shall be given using the following method:~~

- i. For sites within urban growth areas and LAMIRDS: ~~Application nNotices~~ shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the eCounty assessor, ~~except that for personal wireless service facilities, notice shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor;~~
- ii. For sites outside urban growth areas and LAMIRDS: ~~Application nNotices~~ shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the eCounty aAssessor.

~~(e)(d) The county Notices of applications shall be sent d notices of application to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by the proposed development. Notice shall also be given to public utilities, if within 500 feet of the of the provider's service area area submitted in the application.~~

(5) All public comments received on the notice of application must be received by the department of ~~of planning and development services~~ by 4:30 p.m. on ~~or before~~ the last day of the comment period.

(6) Except for a determination of significance, the eCounty shall not issue its SEPA threshold determination or issue a decision or recommendation on a permit application until the end of the public comment period on the notice of application. If an optional determination of nonsignificance (DNS) process is used, the notice of application and DNS comment period shall be combined.

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(7) Public notice given for project permit applications, SEPA documents, project hearings, and appeals hearings as required by this chapter and other provisions of the eCounty code may be combined when practical, where such combined notice will expedite the permit review process, and where provisions applicable to each individual notice are met through the combined notice.

22.05.080 Posting of application.

~~Where posting of public notice is required per WCC 22.05.020, the department shall post public notices of the proposal on all road frontages of the subject property and adjacent shorelines on or before the notice of application date and shall be visible to adjacent property owners and to passing motorists. Said notices shall remain in place until three days after the comment period closes.~~

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22.05.080 Application Consistency review and recommendations.

~~(1) During project permit review, the review authority shall determine if the project proposal is consistent with the County's Comprehensive Plan, other adopted plans, and existing regulations and development standards.~~

~~(a) For Type I and II applications, the conclusions of a consistency determination made under this section shall be documented in the project permit decision.~~

~~(b) For Type III, IV, and V applications the department shall prepare a staff report on the proposed development or action. For Type III and IV applications, staff shall file one consolidated report with the Hearing Examiner at least 14 calendar days prior to the scheduled open record hearing. For Type V applications, the staff report shall be filed with the County Clerk pursuant to the Council's agenda procedures. The staff report shall:~~

~~i. Summarize the comments and recommendations of County departments, affected agencies, special districts and public comments received within the 14-day or 30-day comment period as established in WCC 22.05.070(6).~~

~~ii. Provide an evaluation of the project proposal for consistency as indicated in this section.~~

~~iii. Include recommended findings, conclusions, and actions regarding the proposal.~~

~~(2) **Notice of Additional Requirements (NOAR).**~~

~~(a) For all project permit applications except for personal wireless service facilities applications, if at any time in review of the application, more information or corrections are required to determine consistency, the Department may issue a notice of additional requirements (NOAR). A NOAR is not a final administrative determination.~~

~~(b) The applicant shall have 90 calendar days from the date of issuance of said notice to submit all required information. If an applicant fails to adequately respond to a written request for additional information (see WCC 22.05.080(2)) for more than 60 days, an additional 30 days shall be added to the time periods provided in WCC 22.05.130. "Non-responsiveness" means that an applicant is not making demonstrable progress on providing additional requested information, or there is no ongoing written communication from the applicant on their ability or willingness to provide the additional information. The Director may grant a one-time 90-day extension for one, and only one, NOAR upon written request by the applicant, provided the request is submitted before the end of the NOAR response period.~~

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(c) The Department shall issue no more than three NOARs for any one application. If a second NOAR is necessary, the Department will invite the applicant to meet—with the goal of resolving any issues—within 14 days of its issuance. If the meeting cannot resolve the issues and the Department must issue a third NOAR, upon receiving and reviewing the applicant’s response the decision-maker must either approve or deny the application.

- (3) **Burden of Proof.** Permit applicants/proponents have the burden of proving that the proposed development is consistent with all applicable policies and regulations.
- (4) **Permit conditions.** In granting, revising, or extending a permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the applicable policies and regulations (including the policies and provisions of the Shoreline Management Act for shoreline permits). In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be revoked in accordance with WCC 22.05.150 (Permit Revocation).

22.05.082 Application Suspension.

- (1) In case of unanticipated circumstances, an applicant may suspend review of an application for a period not to exceed 180 days. However, application suspension may not be used just to extend the time for responding to a NOAR (WCC 22.05.080(2)).
- (2) To suspend an application review, the applicant must inform the County, in writing, that they would like to temporarily suspend review of the project permit application. Review of the application shall continue once the applicant notifies the County, in writing, that they would like to resume review of the application.
- (3) Applications suspended for more than 180 days shall be expired.

22.05.090 Open record public hearings.

(1) Pursuant to As shown in WCC 22.05.020 Table 1 (Project permit processing table), Type III and Type IV applications and appeals of some Type I and Type II applications require an open record public hearing before the H Hearing e Examiner. These hearings are subject to the following:

(2) Open Record Hearing Notice. Public hearings shall be noticed as follows:

- (a) The H Hearing e Examiner shall publish a notice of open record hearing once in the official County newspaper and on the Whatcom County website at least 14 calendar days prior to the hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition, personal notice shall be provided to any person who has requested such notice in a timely manner, consistent with WCC 22.05.070 (Notice of Application 3)(H).
- (b) Within two days of the published notice the applicant shall be responsible for posting three copies of the notice in a conspicuous manner on the property upon which the use is proposed. Notices shall be provided by the H Hearing e Examiner.
- (c) An affidavit verifying distribution of the notice must be submitted to the H Hearing e Examiner two working days prior to the open record hearing.

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(d) The ~~h~~Hearing ~~e~~Examiner shall send notice of an open record hearing to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly by the proposed development. The ~~h~~Hearing ~~e~~Examiner shall be responsible for such notification.

(e) The applicant shall pay all costs associated with providing notice.

~~(2)~~(3) One Open Record Hearing. A project proposal subject to this chapter shall be provided with no more than one open record hearing and one closed record hearing pursuant to ~~RCW~~ Chapter 36.70B ~~RCW~~. This restriction does not apply to an appeal of a determination of significance as provided in RCW 43.21C.075.

~~(3)~~(4) Combined County and Agency Hearing. Unless otherwise requested by an applicant, the ~~e~~County shall allow an open record hearing to be combined with a hearing that may be necessary by another local, state, regional, federal or other agency for the same project if the joint hearing can be held within the time periods specified in Chapter 22.05 WCC, or if the applicant agrees to waive such time periods in the event additional time is needed in order to combine the hearings. The combined hearing shall be conducted in Whatcom County pursuant to Chapter 36.70B RCW.

~~(4)~~(5) Quasi-judicial actions, including applications listed as Type III and IV applications in WCC 22.05.020, are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. The ~~h~~Hearing ~~e~~Examiner shall administer the open record hearing and issue decisions or recommendations in accordance with Chapter 42.36 RCW.

~~22.05.100 Application Consistency review and recommendations.~~

~~(1) During project permit review, the review authority shall determine if the project proposal is consistent with the county's Comprehensive Plan, other adopted plans, and existing regulations and development standards.~~

~~(a) For Type I and II applications, the conclusions of a consistency determination made under this section shall be documented in the project permit decision.~~

~~(b) For Type III and IV applications the department shall prepare a staff report on the proposed development or action. Staff shall file one consolidated report with the hearing examiner at least 104 calendar days prior to the scheduled open record hearing. The staff report shall:~~

~~i. Summarize the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 14-day or 30-day comment period as established in WCC 22.05.070(6).~~

~~ii. Provide an evaluation of the project proposal for consistency as indicated in this section.~~

~~iii. Include recommended findings, conclusions, and actions regarding the proposal.~~

~~Additional Requirements.~~ For all project permit applications except for personal wireless service facilities applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The applicant notice of additional requirements shall allow the applicant have 180 calendar days from the date of issuance of said notice to submit all required information.

~~Permit Inactivity.~~ Any application that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the director or designee may grant a 1-year extension for good cause extend this period

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for no more than cumulative 24 months upon written request by the applicant, provided the request is submitted before the end of the first 180 day period. A notice of additional requirements is not a final administrative determination.

(2) **Burden of Proof.** Permit applicants/proponents have the burden of proving that the proposed development is consistent with all applicable policies and regulations.

Permit conditions. In granting, revising, or extending a permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the applicable policies and regulations (including the policies and provisions of the Shoreline Management Act for shoreline permits). In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be revoked in accordance with WCC 22.05.150 (Permit Revocation).

22.05.110 Final decisions – Type I, II, and III applicationsProcesses.

- (1) The ~~d~~Director's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.
- (2) The ~~h~~Hearing ~~e~~Examiner's final decision on all Type III applications per WCC 22.05.020 or appeals per WCC 22.05.160(1) shall either grant or deny the application or appeal.
 - (a) The ~~h~~Hearing ~~e~~Examiner may grant Type III applications subject to conditions, modifications, or restrictions that they ~~hearing examiner finds~~ are necessary to make the application compatible with its environment, ~~or~~ carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.
 - (b) Requirements.
 - i. Performance bonds or other security may be required to ensure compliance with the conditions, modifications, and restrictions consistent with WCC 22.05.134 (Security mechanisms).
 - ii. Fossil or renewable fuel refinery or fossil or renewable fuel transshipment facilities: The applicant shall provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with WCC 22.05.125.
 - (c) The ~~h~~Hearing ~~e~~Examiner shall render a final decision within 14 calendar days following the conclusion of all testimony and hearings. Each final decision of the ~~h~~Hearing ~~e~~Examiner shall be in writing and shall include findings and conclusions based on the record to support the decision.
 - (d) No final decision of the ~~h~~Hearing ~~e~~Examiner shall be subject to administrative or quasi-judicial review, except as provided herein.
 - (e) The applicant, any person with standing, or any ~~e~~County department may appeal any final decision of the ~~h~~Hearing ~~e~~Examiner to ~~superior court, except as otherwise~~ the appeal body specified in WCC 22.05.020 ~~Error! Reference source not found.~~

22.05.120 Recommendations and final decisions – Type IV ~~applications~~Processes.

- (1) For Type IV ~~applications~~processes per WCC 22.05.020 the ~~h~~Hearing ~~e~~Examiner’s recommendations to the ~~e~~County ~~e~~Council may be to grant, grant with conditions or deny an application. The ~~h~~Hearing ~~e~~Examiner’s recommendation may include conditions, modifications, or restrictions as may be necessary to make the application compatible with its environment ~~or~~; carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.
- (2) Each recommended decision of the ~~h~~Hearing ~~e~~Examiner for an application identified as a Type IV ~~application~~process per WCC 22.05.020 shall be in writing to the ~~e~~Clerk of the ~~e~~County ~~e~~Council and shall include findings and conclusions based upon the record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the ~~e~~County’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.
- (3) The deliberation of the ~~e~~County ~~e~~Council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and Chapter 42.36 RCW.
- (4) For planned unit developments and major project permits the following shall apply:
 - (a) The recommendation of the ~~h~~Hearing ~~e~~Examiner regarding planned unit developments and major project permits shall be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.
 - (b) The ~~h~~Hearing ~~e~~Examiner shall file the recommendation with the ~~C~~lerk of the ~~C~~eounty ~~e~~Council within 21 calendar days following the conclusion of the open record hearing.
 - (c) The ~~e~~County ~~e~~Council shall conduct the following within the specified time frames, except as provided in subsection (~~4~~)(~~e~~)(iii) of this subsection:
 - i. Hold a ~~public meeting, not an open~~closed record ~~public~~hearing, to deliberate on the project application within 28 calendar days after receiving the ~~h~~Hearing ~~e~~Examiner’s recommendation.
 - ii. Issue a final written decision within 21 calendar days of the ~~closed record hearing~~public ~~meeting~~.
 - iii. The ~~e~~County ~~e~~Council may exceed the time limits in subsection (4)(c)(i) or (4)(c)(ii) of this section if the ~~ir county council~~meeting schedule does not accommodate a ~~closed record hearing meeting~~ within the above time-frames, or if the ~~y county council~~ makes written findings that a specified amount of additional time is needed to process a specific application or project type, per RCW 36.70B.080(1).
- (5) The ~~e~~County ~~e~~Council’s final written decision may include conditions when the project is approved and shall state the findings of fact upon which the decision is based.
 - (a) Securities may be required to ensure compliance with the conditions, modifications and restrictions consistent with WCC 22.05.134 (Security mechanisms).
 - (b) Fossil or renewable fuel refinery or fossil or renewable fuel transshipment facilities: The applicant shall provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with WCC 22.05.125.

- (6) Any deliberation or decision of the eCounty eCouncil shall be based solely upon consideration of the record established by the hHearing eExaminer, the recommendations of the hHearing eExaminer, and the criteria set forth in applicable eCounty code, the eCounty Comprehensive Plan if applicable, and the Whatcom eCounty Shoreline Management Program, including compliance with SEPA, Chapter 197-11 WAC (SEPA Rules) as adopted and modified in the eCounty code, and the eCounty's adopted SEPA policies.

~~22.05.125 Proof of insurance for hazards created in the county.~~

~~For expansion projects requiring approval under a conditional use permit or major project permit at new or existing facilities per WCC 20.68.153 or 20.68.154, financial assurance for the benefit of Whatcom County shall be required. For such expansion projects, a permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit, insurance, self insurance, financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply with the financial responsibility requirements set forth in state and federal law, as applicable, prior to permit approval by a Whatcom County decision maker. If the financial assurance is in the form of insurance policies, the policies must name Whatcom County as an additional insured and provide Whatcom County with a certificate of insurance to that effect.~~

~~The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating the permitted facility. At the request of the permittee, the Whatcom County decision maker may approve new or altered forms of financial assurance to meet the requirements of this section; provided, that the new or altered form is consistent with the scope and intent of the original permit condition.~~

~~22.05.130 Permit review time frames periods.~~

- (1) ~~The county shall issue a notice of final decision fF~~ or all permit types ~~(other than for personal wireless service facilities, addressed in WCC 22.05.190)~~, including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, ~~the County shall issue a notice of final decision~~ to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application, within ~~120~~ ~~the number of~~ calendar days ~~listed in subsection (a)~~ of the date the department determined the application complete, except as provided ~~below in subsections (b) – (h):~~
- (a) ~~Permit time review periods:~~
- ~~i. For project permits required to undergo a Type I process: 65 days;~~
 - ~~ii. For project permits required to undergo a Type II process: 100 days;~~
 - ~~iii. For project permits required to undergo a Type III process: 170 days.~~
- (b) The following time periods shall be excluded from the calculation of the number of days elapsed:
- ~~i. Any period between the day that the County has notified the applicant, in writing, that additional information is required to further process the application and the day when responsive information is resubmitted by the applicant. Any period during which the applicant has been required by the county to correct plans, perform required studies, or~~

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~~provide additional, required information through a notice of additional requirements, per WCC 22.05.100(3). The period shall be calculated from the date the county issues a notice of additional requirements until the date the county receives all of the requested additional information;~~

- ii. Any period during which an environmental impact statement is being prepared ~~following a determination of significance~~ pursuant to Chapter 43.21C RCW and WCC Title 16. This period starts when a determination of significance is issued and ends when a final environmental impact statement (FEIS) is issued;
 - iii. The period ~~after which an administrative appeal is filed (WCC 2.11.215) until it is resolved, and any additional time period provided by the administrative appeal has expired, specified for administrative appeals of project permits as provided in Chapter 2.11 WCC;~~
 - iv. The period specified for administrative variances from or appeals of development standards as provided in WCC Chapter 12.08.035(4);
 - v. Any period in which the applicant has not met public notification requirements;
 - vi. Any period of time mutually agreed upon in writing by the applicant and the eCounty.
 - vii. Any period application review is suspended pursuant to WCC 22.05.082.
- (c) The time limits established by this section shall not apply to a project permit application that:
- ~~i. Is required to undergo a Type IV or V process.~~
 - ~~i. Requires an amendment to the Whatcom County Comprehensive Plan or a development regulation in order to obtain approval.~~
 - ii. Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200.
- (d) ~~Is substantially revised by the applicant, including all redesigns of proposed land divisions, in which case a new time period shall start from the date at which the revised project application is determined to be complete. The time periods of subsection (a) to process a permit shall start over if an applicant proposes a redesign of proposed land divisions, proposes a change in use, or removes commercial or residential elements from the original application that would make the application fail to meet the determination of procedural completeness, as required by the County under RCW 36.70B.~~
- (e) Additionally, for shoreline permits and exemptions, and pursuant to WAC 173-27-125, the following special procedures apply to Washington State Department of Transportation (WSDOT) projects:
- i. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
 - ii. Pursuant to RCW 90.58.140, WSDOT projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.
- ~~(e) The county may extend notice of final decision on the project if the county can document legitimate reasons for such a delay. In such a case the county shall provide written notice to the applicant at least 14 calendar days prior to the deadline for the original notice of final decision.~~

Commented [CES15]: Amended to match language of 5290

The notice shall include a statement of reasons why the time limits have not been met and a date of issuance of a notice of final decision.

(f) Eligible facility requests for personal wireless service facilities shall be subject to the following permit review time frames, tolling, and deemed granted provisions:

- i. An application for an eligible facilities request is reviewed by the county, who will approve the application within 60 days of the date an applicant submits an eligible facilities request application, unless it determines that the proposal does not qualify as an eligible facilities request under Chapter 20.13 WCC.
- ii. If the county determines that the applicant's request does not qualify as an eligible facilities request, the county shall deny the application within 60 days of the date an applicant submits an eligible facilities request application. The denial shall be in writing and supported by substantial evidence contained in the written record. If an eligible facilities request application is denied, a new application may be submitted under the appropriate personal wireless service facilities provisions of Chapter 20.13 WCC.
- iii. The 60-day review period begins to run when the application is filed and may be tolled only by mutual agreement by the county and the applicant or in cases where the county determines that the application is incomplete. The time frame for review is not tolled by a moratorium on the review of applications.
- iv. To toll the time frame for incompleteness, the county must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.
- v. The time frame for review begins running again when the applicant makes a supplemental submission in response to the county's notice of incompleteness.
- vi. Following a supplemental submission, the county will notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- vii. In the event the county fails to approve or deny an eligible facilities request within the time frame for review (accounting for any tolling), the request shall be deemed granted if required by federal law or federal regulation. The deemed grant does not become effective until the applicant notifies the county in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted. The applicant shall provide a citation to the federal law or federal regulation that requires the deemed granted status.

(g) Small wireless facilities shall be subject to the following permit review time frames and tolling periods (collectively known as shot clock periods):

- i. Review of an application to collocate a small wireless facility using an existing structure: 60 days.
- ii. Review of an application to deploy a small wireless facility using a new structure: 90 days.

- iii. ~~Unless a written agreement between the applicant and the county provides otherwise, the tolling period for an application is as set forth below.~~
- iv. ~~For an initial application for small wireless facilities, if the county notifies the applicant on or before the tenth day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the county to render the application complete.~~
- v. ~~For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from the day after the date when the county notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the county's original request until the date when the applicant submits all the documents and information identified by the county to render the application complete. The notice pursuant to this section must be issued on or before the tenth day after the date when the applicant makes a supplemental submission in response to the county's written notification.~~
- vi. ~~The shot clock date for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified in this subsection (1)(e); provided, that if the date calculated in this manner is a federal, state, or local holiday, the shot clock date is the next business day after such date. The term "business day" means any day, except Saturday or Sunday, that is not a legal holiday.~~
- (h) ~~Macro wireless facilities shall be subject to the following permit review time frames and tolling periods (collectively known as shot clock periods):~~
 - i. ~~Review of an application to collocate a macro wireless facility using an existing structure: 90 days.~~
 - ii. ~~Review of an application to deploy a macro wireless facility using a new structure: 150 days.~~
 - iii. ~~Unless a written agreement between the applicant and the county provides otherwise, the tolling period for an application is as set forth below.~~
 - iv. ~~For an initial application for macro wireless facilities, the tolling period shall be the number of days from: The day after the date when the county notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation until the date when the applicant submits all the documents and information identified by the county to render the application complete. The notice pursuant to this section must be issued on or before the thirtieth day after the date when the application was submitted to toll the review time frame.~~

v. ~~For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from the day after the date when the county notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the county's original request until the date when the applicant submits all the documents and information identified by the county to render the application complete. The notice pursuant to this section must be issued on or before the tenth day after the date when the applicant makes a supplemental submission in response to the county's written notification.~~

vi. ~~The shot clock date for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified in this subsection (1)(f); provided, that if the date calculated in this manner is a federal, state, or local holiday, the shot clock date is the next business day after such date. The term "business day" means any day, except Saturday or Sunday, that is not a legal holiday.~~

(2) ~~If an applicant believes a project permit application has not been acted upon by the county in a timely manner or otherwise consistent with this chapter, the applicant or authorized representative may request a meeting with the director to resolve the issue. Within 14 calendar days ~~of after~~ the meeting, the director shall:~~

~~(a) Approve the permit if it is within the director's authority to do so, provided the approval would not violate state or county regulations; or~~

~~(b) Deny the permit if it is within the director's authority to do so; or~~

~~(c) Respond in writing with the department's position, or a mutually acceptable resolution of the issue, which may include a partial refund of application fees at the director's discretion.~~

~~(3)(2)~~ Any final order, permit decision, or determination issued by Whatcom County shall include a notice to the applicant of his or her appeal rights per WCC 22.05.160 **Appeals**.

~~(4)(3)~~ The provisions of this section notwithstanding, the failure to issue a final decision within the time frames specified, except for eligible facility requests for personal wireless service facilities governed by WCC 22.05.190(7)(a)(vii), shall not be considered an implicit approval or denial of the development permit, nor shall it be reason in and of itself for the ~~e~~County to be liable for damages for failure to meet the specified time frames.

~~(a) Exception. Eligible facility requests for personal wireless service facilities shall be governed by WCC 22.05.130(1)(d).~~

22.05.132 Proof of Insurance for Hazards Created in the County.

(1) For expansion projects requiring approval under a conditional use permit or major project permit at new or existing facilities per WCC 20.68.153 or 20.68.154, financial assurance for the benefit of Whatcom County shall be required. For such expansion projects, a permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit, insurance, self-insurance, financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply with the financial responsibility requirements set forth in state and federal law, as applicable, prior to permit

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approval by a Whatcom County decision maker. If the financial assurance is in the form of insurance policies, the policies must name Whatcom County as an additional insured and provide Whatcom County with a certificate of insurance to that effect.

(2) The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating the permitted facility. At the request of the permittee, the Whatcom County decision maker may approve new or altered forms of financial assurance to meet the requirements of this section; provided, that the new or altered form is consistent with the scope and intent of the original permit condition.

22.05.134 Security mechanisms.

- (1) This section is applicable to securities required by planning and development services and the codes over which it has jurisdiction; those required by public works are governed by the Whatcom County development standards.
- (2) In approving any permit application, the decision maker may require the posting of financial securities, in a form acceptable to the eCounty's attorney, to ensure compliance with any code requirements or conditions imposed, including but not limited to the construction of improvements, environmental mitigation or improvements, installation of landscaping, the adherence to eCounty standards, and/or maintenance, repair, or replacement of such improvements.
- (3) The eCounty may accept any of the following: bonds, letters of credit from an insured bank, a secured account with an insured bank, or a cash deposit. Other forms of security may be accepted if approved by the eCounty's attorney.
- (4) Performance Securities.
 - (a) Except as provided in subsection (4)(c) of this section:
 - i. A performance security shall be provided to guarantee that a site can be closed and/or winterized if necessary, or that measures can be taken by the eCounty to respond to weather-related emergencies.
 - ii. In lieu of installing improvements or a condition of a permit, an applicant may propose to post a security to ensure completion of any improvements for which construction plans have been approved. Said improvements shall be installed within one year of final project permit approval. An extension not to exceed one year may be approved upon extension of the security or submission of a new one.
 - iii. A performance security may be required to cover the cost of installing any system-wide improvements that an applicant has agreed to install as part of his project where the lack of installation would cause the system to fail or not be completed in a timely manner.
 - iv. Performance securities are also required for certain improvements that the eCounty may want removed after a certain time or after the improvement is no longer used (e.g., telecommunications towers, wind turbines, etc.).
 - (b) Performance securities may be presented to the eCounty after preliminary approval of a project but in all circumstances shall be presented prior to any site work, including clearing, grading, or construction.

- (c) Submission of a performance security may be waived by the Director if, in his opinion, said guarantee of installation is not necessary.
- (5) Maintenance Securities. An applicant shall provide to the County a maintenance security to cover the cost of replacing or repairing any of the improvements installed per the Whatcom County Code or a condition of a permit.
- (6) Amount of the Security.
 - (a) The amount of a security shall be a percentage, as specified below, of the estimated cost of design, materials, and labor, based on the estimated costs on the last day covered by the device, of installing, replacing, or repairing (whichever is appropriate) the improvements covered by the security.
 - i. Performance – 125 percent of the costs specified in subsection (6)(a) of this section.
 - ii. Maintenance – 20 percent of the costs specified in subsection (6)(a) of this section.
 - (b) The Director shall approve the amount of a security under subsection (6)(a) of this section. The applicant shall prepare for his review and approval a certified cost estimate of the items to be covered by the security.
- (7) Reduction of Securities. In those cases where securities have been made, and only with the Director's approval, the amount of the security may be reduced upon acceptance of a portion of the required improvements. The amount of the reduction shall not exceed the percentage that the accepted improvements made up of all originally required improvements. In no case, however, shall the security be reduced to less than 25 percent of the original amount.
- (8) Duration of Securities. All securities shall be held until released by the Director; however, the standard duration of the various securities should be as follows:
 - (a) Performance – One year or until all improvements are installed and accepted by the County, whichever is greater.
 - (b) Maintenance – Two years; extendable by the County if repairs are made at the end of the security period which, in the opinion of the Director, require additional guarantee of workmanship.
- (9) Security Agreement. In each case where a security is posted, the applicant and the Director shall sign a notarized security agreement, approved in form by the County attorney. This agreement shall be recorded with the Whatcom County auditor. The agreement shall provide the following information:
 - (a) A description of the work or improvements covered by the security.
 - (b) Either the period of time covered by the maintenance security or the date after which the County will use the proceeds of the performance security to complete the required work or improvements.
 - (c) The amount and nature of the security and the amount of the cash deposit.
 - (d) The rights and duties of the County and the applicant.
 - (e) An irrevocable license to run with the property to allow the employees, agents, or contractors of the County to go on the subject property for the purpose of inspecting and, if necessary, doing the work or making the improvements covered by the security.

- (f) The mechanism by and circumstances under which the security shall be released. At a minimum, after the work or improvements covered by a performance security have been completed, or at the end of the time covered by a maintenance security, the applicant may request the eCounty to release the security. If the applicant has complied with the security agreement and this code, the eDirector shall release the security remaining. If the work has not been completed or repairs not made, then the eCounty shall not release the security until such work is completed per subsection (11) of this section (Use of Security Funds by the County). Partial release of the security may be allowed; provided, that the developer provides a new security in the amount specified in subsection (6) of this section (Amount of the Security) for the remaining work.
- (g) Upon release of any recorded security mechanism a copy of the letter of release shall be filed with the Whatcom County auditor.
- (10) Supplemental Administrative Costs. In addition to the security, the applicant shall pay a fee to the eCounty covering the eCounty's actual expenses of administering, and, if necessary, using the proceeds of the security. The amount of this fee will be set by the eCounty eCouncil in the Unified Fee Schedule.
- (11) Use of Security Funds by the County.
- (a) If during the period of time covered by a maintenance security, or after the date by which the required work or improvements are to be completed under a performance security, the eDirector determines that the security agreement has not been complied with, he shall notify the applicant of this. The notice must state:
- i. The work that must be done or the improvements that must be made to comply with the security agreement; and
 - ii. The amount of time, not to exceed 30 days, that the applicant has to commence and complete the required work or improvements; and
 - iii. That, if the work or improvements are not commenced and completed within the time specified, the eCounty will use the proceeds of the security to have the required work or improvements completed.
- (b) If the work or improvements covered by the security are not completed within the time specified in the notice, the eCounty shall obtain the proceeds of the security and shall cause such work to be completed.
- (c) The applicant is responsible for all costs incurred by the eCounty in administering, maintaining, or making the improvements covered by the security(s). The eCounty shall release or refund any proceeds of a performance or maintenance security remaining after subtracting all costs for doing the work or making the improvements covered by the security. The applicant shall reimburse the eCounty for any amount expended by the eCounty that exceeds the proceeds of the security. The eCounty may file a lien against the subject property for the amount of any excess.
- (d) In each case where the eCounty uses any of the funds of a security, it shall give the applicant an itemized statement of all funds used. (Ord. 2023-018 § 1 (Exh. A)).

22.05.140 Expiration of project permits.

~~(1)~~ This section shall apply to non-shoreline project permits and shoreline statements of exemption. Expiration of shoreline permits shall be subject to the rules of WCC 22.07.080 (Expiration of Shoreline Permits).

- ~~(2)~~ Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.
- ~~(3)~~ Any complete project permit application for which no information has been submitted in response to the department’s notice of additional requirements per WCC 22.05.100(3) shall expire at the end of the time limit established in 22.05.100(3).
- ~~(4)~~ For projects that have received a SEPA determination of significance per Chapter 16.08 WCC, all underlying project permit applications shall expire when one of the following occurs:
- (a) The applicant has not in good faith maintained a contract with a person or firm to complete the environmental impact statement (EIS) as specified in the scoping document. The applicant is responsible for informing the County of the status of such contract. If there is no notice given to the County, all underlying project permit applications shall expire upon the end date of the contract; or
 - (b) The mutually agreed time frame to complete the draft EIS or final EIS has lapsed.
- ~~(5)~~ Project permits which received preliminary approval or a final decision prior to February 22, 2009, that did not include an expiration time frame in the conditions of approval shall expire on June 16, 2020.

22.05.150 Permit revocation procedure.

- (1) Upon notification by the Director that a substantial violation of the terms and conditions of any previously granted zoning conditional use, shoreline substantial development, or shoreline conditional use permit exists, the Hearing Examiner shall issue a summons as per WCC 2.11.220 to the permit holder requiring said permit holder to appear and show cause why revocation of the permit should not be ordered. Failure of the permit holder to respond may be deemed good cause for revocation.
- (2) Upon issuance of a summons as set forth in subsection (1) of this section, the Hearing Examiner shall schedule an open record hearing to review the alleged violations. The summons shall include notice of the hearing and shall be sent to the permit holder and the Director of Planning and Development Services no less than 12 calendar days prior to the date of the hearing. At the hearing the Hearing Examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the Hearing Examiner’s office. Testimony shall be limited to that of the division and the permit holder except where additional evidence would be of substantial value in determining if revocation should be ordered. The land use division’s evidence may include the testimony of witnesses.

- (3) Upon a showing of violation by a preponderance of the evidence as alleged, the ~~h~~Hearing ~~e~~Examiner may revoke the permit or allow the permit holder a reasonable period of time to cure the violation. If the violation is not cured within the time set by the ~~h~~Hearing ~~e~~Examiner, the permit shall be revoked. Where a time to cure the violation has been set out, no further hearing shall be necessary prior to the revocation. The permit holder shall have the burden of proving that the violation has been cured within the time limit previously set. Such evidence as is necessary to demonstrate that the violation has been cured may be submitted to the ~~h~~Hearing ~~e~~Examiner by either the permit holder or the ~~d~~Director of ~~p~~lanning and ~~d~~Development ~~s~~Services. Any revocation shall be accompanied by written findings of fact and conclusions of law. The permit holder shall be notified of any revocation within 14 calendar days of the revocation.

22.05.160 Appeals.

- (1) ~~Except for decisions regarding personal wireless service facilities, addressed in WCC 22.05.190(9),~~ ~~a~~Any person with standing may appeal any order, final permit decision, or final administrative determination made by the ~~d~~Director ~~or designee~~ in the administration or enforcement of any chapter to the ~~h~~Hearing ~~e~~Examiner, who has the authority to hear and decide such appeals per WCC 2.11.210. ~~Appeals relating to personal wireless service facilities are filed with a court of competent jurisdiction rather than the hearing examiner.~~
- (a) To be valid, an appeal to the ~~h~~Hearing ~~e~~Examiner shall be filed, on a form provided by the department, with the department within 14 calendar days of the issuance of a final permit decision and shall be accompanied by a fee as specified in the Unified Fee Schedule. The written appeal shall include:
- i. The action or decision being appealed and the date it was issued;
 - ii. Facts demonstrating that the person is adversely affected by the decision;
 - iii. A statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;
 - iv. The specific relief requested; and
 - v. Any other information reasonably necessary to make a decision on the appeal.
- (b) The ~~h~~Hearing ~~e~~Examiner shall schedule an open record public hearing on the appeal to be held within 60 calendar days following the department’s receipt of the application for appeal unless otherwise agreed upon by the ~~e~~County and the appellant.
- (c) A party who fails to appeal within 14 calendar days is barred from appeal, per Chapter 2.11 WCC.
- (d) The business rules of the ~~h~~Hearing ~~e~~Examiner shall govern appeal procedures. The ~~h~~Hearing ~~e~~Examiner shall have the authority granted in the business rules, and that authority is incorporated herein by reference. See also WCC 2.11.220.
- (2) ~~For non-shoreline permits, the applicant,~~ any person with standing, or any ~~e~~County department may appeal any final decision of the ~~h~~Hearing ~~e~~Examiner to superior court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the ~~h~~Hearing ~~e~~Examiner, as provided in RCW 36.70C.040.

Commented [CES18]: Moved to wireless section, 22.05.034

(3) For shoreline permits, after the issuance of the appeal determination, a party with standing may appeal to the Shorelines Hearings Board a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use pursuant to RCW 90.58.180 within 21 days of the "date of filing" as defined in Title 23 (Shoreline Management Program) and RCW 90.58.140(6). The appeal to the Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C WAC. Appeals of a decision of the Department of Ecology shall be filed in accordance with the provisions of Chapter 461-08C WAC.

22.05.170 Annual report.

Staff shall prepare an annual report on the implementation of this chapter and submit it to the council.

22.05.180 Interpretation, conflict and severability.

- (1) **Interpret to Protect Public Welfare.** In the event of any discrepancies between the requirements established herein and those contained in any other applicable regulation, code or program, the regulations which are more protective of the public health, safety, environment and welfare shall apply.
- (2) **Severability.** The provisions of this chapter are severable. If a section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the remaining portions of this chapter.

TITLE 22 LAND USE AND DEVELOPMENT

Chapter 22.25 Land Use and Development Fees

22.25.010 Purpose and applicability.

- (1) The purpose of this chapter is to establish the authority for collecting fees for various land use and development review services, as well as provisions for reductions and refunds of those fees.
- (2) The provisions of this chapter shall apply to fees charged for procedures contained in the following titles of the WCC:
 - (a) WCC Title 15, Buildings and Construction;
 - (b) WCC Title 16, Environment;
 - (c) WCC Title 17, Flood Damage Prevention;
 - (d) WCC Title 20, Zoning;
 - (e) WCC Title 21, Land Division Regulations;
 - (f) WCC Title 22, Land Use and Development ~~Procedures~~; and
 - (g) WCC Title 23, Shoreline Management Program.

22.25.020 Application fees and other fees.

Fees for project permit applications, legislative amendments, land use and development code interpretations, and other approvals and reviews as set forth in this title shall be as provided in the Unified Fee Schedule.

~~22.25.030 Reduced application fees.~~

~~When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced by 25% percent of the required aggregate permit and application fees; provided, any fees required for processing of an Environmental Impact Statement (EIS) shall not be included as part of the total amount of fees to be reduced by 25% percent:~~

- ~~(1) Subdivision plat applications;~~
- ~~(2) Rezone applications;~~
- ~~(3) Shoreline substantial development permits, variances, or conditional uses;~~
- ~~(4) Major development permits;~~
- ~~(5) Conditional use permits;~~
- ~~(6) Non Shoreline Variances, minor or major;~~
- ~~(7) Planned unit developments;~~

22.25.040 Refund of application fees.

Refunds of application fees for project permits and for amendments to the Whatcom County Comprehensive Plan, development regulations and official maps shall be computed based on the following, unless otherwise indicated in the Whatcom County Code. All refund requests shall be submitted in writing to the department of planning and development services ~~and~~ Director. The date of application for a refund request shall be the date the written refund request is received by the

department. For the purpose of computing elapsed calendar days, the day after the date of application or deadline date as appropriate shall be counted as day one.

(1) Refund of Fees for Project Permits.

(a) Withdrawn Applications.

- i. Applications withdrawn on or before the ~~fourteenth-14th~~ calendar day after the date of application shall be eligible for a refund of ~~90% percent~~ of all application fees including any SEPA fees.
- ii. Applications withdrawn after the period set forth in subsection (1)(a) of this section but on or before the ~~ninetieth-30th~~ calendar day after the date of application shall be eligible for a refund of ~~50% percent~~ of all application fees except for any SEPA fees which shall not be eligible for a refund.
- iii. Applications withdrawn after the ~~ninetieth-30th~~ calendar day after the date of application shall not be eligible for a refund.

Commented [CES19]: Revising fee date as most projects will be approved well before the 90th day.

~~(b) Notwithstanding the above, no fees shall be refunded for any permit or approval that has been issued or granted by the county.~~

~~(c) The director may authorize a full refund of any project permit application fee paid in error.~~

(2) Refund of Fees for Aamendments to the Whatcom County Comprehensive Plan, Development Regulations, and Official Maps.

- (a) The docketing fee shall be nonrefundable.
- (b) The amendment application fee may be refunded, if the application is withdrawn, as follows:
 - i. If the application has been docketed, but review of the application has not commenced, ~~100% percent~~ of the application fee may be refunded.
 - ii. If the application has been docketed and review of the application has commenced, but the staff report has not been issued, ~~75% percent~~ of the application fee may be refunded.
 - iii. If the application has been docketed and a staff report has been issued, but a planning commission hearing has not been held, ~~50% percent~~ of the application fee may be refunded.
 - iv. If the application has been docketed and the planning commission has held a public hearing, then the application fee may not be refunded.
- (c) The SEPA checklist fee may be refunded if the application is withdrawn and SEPA review has not commenced.
- (d) The legal notice fee may be refunded if the application is withdrawn and legal notice has not been published.

~~(3) The Director may authorize a full refund of any project permit application fee paid in error.~~

~~(4) Notwithstanding the above, no fees shall be refunded for any permit or approval that has been issued or granted by the County.~~

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