

**Whatcom County
Planning & Development Services
Staff Report**

Battery Energy Storage Systems Zoning Amendment

I. FILE INFORMATION

File #: PLN2021-00001

File Name: Title 20 Zoning Code Amendments – Battery Energy Storage Systems

Applicants: NextEra Resources Development, LLC, attn: Keleigh Wright

Summary of Request: Amend Whatcom County Code (WCC) Title 20 to allow Battery Energy Storage Systems (BESS).

Location: Countywide.

II. BACKGROUND

Battery energy storage systems (BESS) are rechargeable battery systems that store energy from the electrical grid and then sell energy back to the energy provider when needed or provide energy directly to a home or business. Excess energy from the grid is stored in the BESS during times of low usage and is discharged from the system at times of high usage. BESS can also increase the resiliency of the energy grid in the nearby communities by providing backup power during outages. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

As this is a new technology not anticipated when our code was written, Battery Energy Storage Systems are not a specified use in Title 20. Since the WCC is structured such that any use not identified as permissible is prohibited¹, a code amendment is necessary in order to allow the use in Whatcom County.

III. CODE AMENDMENTS

NextEra Resources Development, LLC, requests that WCC Title 20 (Zoning) be amended to allow Battery Energy Storage Systems (BESS) as a conditional use in the Rural zone (see Attachment C).

However, after consideration, and in order to accommodate future anticipated BESS facilities, PDS has expanded on NextEra’s request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses. Because BESS is a new technology that staff believes will become more and more prevalent, we propose that:

- BESS of any storage capacity be a permitted use in the Light Impact Industrial (LII) and Heavy Impact Industrial (HII) districts.

¹ Each district has a “Prohibited Uses” section reading “All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited” (e.g., WCC 20.36.200).

- BESS of less than 5 MWs of storage capacity be allowed with an Administrative Approval Use Permit in the Residential Rural (RR), Residential Rural Island (RRI), and Rural (R) zoning districts, with setback, screening, lighting, and noise standards.
- BESS of 5 MW or more of storage capacity and within one (1) mile of an existing electrical substation be allowed in the Rural (R) district as a Conditional Use, with setback, screening, lighting, and noise standards. Proposed BESS of 5 MW or more storage capacity that are more than one (1) mile of an existing electrical substation will be prohibited.
- A definition of BESS be added in WCC 20.97 to clarify the use.

Please note that any project that requires an administrative use permit approval is required to send a notice of application to surrounding property owners within 300 (if within a UGA) or 1,000 feet (outside of a UGA) so that they may comment on the project. Similarly, any project that requires a conditional use permit is required to send notice to surrounding property owners within the same distances, and must also have a public hearing before the Hearing Examiner. Such projects must also meet the approval criteria for Conditional Use Permits found in WCC 22.05.026(3). Under either process an application could be approved subject to conditions or denied.

Also note that the lot coverage limit in the Rural zone (WCC 20.36.450) is 5,000 square feet or 20% of the total lot area, whichever is greater, not to exceed 25,000 square feet (unless specified otherwise). Staff proposes that the maximum lot coverage for BESS with more than 5 MW of storage capacity be up to 40% of the total lot area, with no limit on structure (or combination of structures) size. Amending the lot coverage limit in the Rural zone for BESS will allow larger facilities near existing substations in the Rural zone with conditional use permit approval. BESS of 5 MW or less of storage capacity are smaller in size and should not exceed the existing lot coverage limit in any of the zones where it would be allowed with administrative use permit approval.

NextEra has reviewed staff's expanded proposal and is in agreement with this approach.

Realize that approval of this code amendment does not permit NextEra (or any other BESS developer) to install their BESS project; it only allows them to submit a permit to do so. Such permits would be processed and evaluated for consistency with this and all other relevant codes before approval.

IV. COMPREHENSIVE PLAN EVALUATION

The Comprehensive Plan contains four policies that support the development and use of new utility and information technologies.

Policy 5B-1: Facilitate the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.

Policy 5B-2: Support development and use of new technologies.

Policy 5F-1: Periodically review existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

Policy 7C-3: Work with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

Staff found no policies with which the proposed amendments would be inconsistent.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the County Council adopt the following findings of fact and reasons for action:

1. NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 2, 2021, for their 60-day review.
4. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
5. The County Council held a duly noticed public hearing on the proposed amendments on August 10, 2021.
6. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
7. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
8. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.
9. The amendments are consistent with 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.

VI. PROPOSED CONCLUSIONS

1. The amendments to the zoning code 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 County Council approve the proposed amendments as shown in Exhibit A, based on the Findings of Fact and Conclusions provided in this staff report.

ATTACHMENTS

- A. Draft Code Amendments
- B. Draft Ordinance
- C. Code Amendment Application