



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-352

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File Created:	08/27/2020	Entered by:	CStrong@co.whatcom.wa.us		
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Assigned to:	Council	Final Action:	09/29/2020		
Agenda Date:	09/29/2020	Enactment #:	ORD 2020-045		

Primary Contact Email: cstrong@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance adopting various amendments to WCC Titles 12 (Roads & Bridges), 16 (Environment), 20 (Zoning), 21 (Land Division Regulations), and 22 (Land Use and Development Procedures)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to WCC Titles 12, 16, 20, 21, and 22. This is an annual “code scrub,” wherein staff proposes amendments to clarify code, fix inconsistencies and grammar, and, this year, modify policies regarding LAMAIRD uses, stormwater requirements, boundary line adjustment requirements for nonconforming lots, exempt lots created by exempt agricultural subdivision from required lot consolidation; require that agriculture lots modified via a boundary line adjustment have an adequate building site, and create a new administrative variance process.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/15/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 6 Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner	
		Nay: 1 Elenbaas	
		Absent: 0	
09/29/2020	Council	ADOPTED	
		Aye: 7 Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner	

Nay: 0
Absent: 0

Attachments: Staff Report, Proposed Ordinance, Code Scrub 2019 - Exhibit A for 9.29.2020

PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. 2020-045

ADOPTING VARIOUS AMENDMENTS TO WHATCOM COUNTY CODE TITLES 12 (ROADS & BRIDGES), 16 (ENVIRONMENT), 20 (ZONING), 21 (LAND DIVISION REGULATIONS), AND 22 (LAND USE AND DEVELOPMENT PROCEDURES)

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 12, 16, 20, 21, and 22; and,

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on October 22, 2019.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 10, 2019. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on July 23, 2020.
5. The County Council held a duly noticed public hearing on the proposed amendments on September 29, 2020.
6. 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.”
7. In reference to Exhibit A, Amendment No. 1: The proposed amendment to WCC 16.08.090(A) would make it clear that an applicant has to use Whatcom County’s SEPA Environmental Checklist form, which has been amended as allowed by state law. It also makes it clear that a fee may be required per the Unified Fee Schedule.
8. In reference to Exhibit A, Amendment No. 2: The proposed amendments would add a footnote to Tables WCC 20.20.255 and 20.22.254 (Minimum lot width and depth for the UR and URM Districts), as previously added to WCC 20.36.253 (Minimum lot width and depth for the Rural District). This would allow for boundary line adjustments on existing lots that often do not meet the “width at street line” standards for that zone.
9. In reference to Exhibit A, Amendment No. 3: For the Resort Commercial (RC) zoning district different setback requirements are listed in two different sections of Title 20, making it difficult to find them all. The proposed amendments would help rectify this by moving the exceptions of WCC 20.64.350

to 20.80.253(4), which contains other exceptions. Additionally, the setbacks are frustratingly difficult to interpret so the grammar is being cleaned up.

10. In reference to Exhibit A, Amendment No. 4: The amendment to WCC 20.64.700 would remove building size requirements from the Resort Commercial's "performance standards" section and place them in a new "maximum building size" section (WCC 20.64.330), making it easier for applicants to find as it is more similar to the code structure for other zoning districts.
11. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.64.450 would simplify the language by combining the two subsections into one sentence.
12. In reference to Exhibit A, Amendment No. 6: This amendment would repeal WCC 20.65, the Gateway Industrial zoning district. The City of Bellingham annexed the last GI zoning district properties on April 1, 2019. There are no other properties zoned GI in Whatcom County, nor does the County foresee ever using it again given its purpose.
13. In reference to Exhibit A, Amendment No. 7: The amendment to the "Maximum floor area per building" table in WCC 20.80.100 would add storage/warehouse as an allowed use in Glacier, setting the maximum floor area to that of an existing storage building (3,584 sq. ft.) allowing storage/warehouse uses in the Glacier LAMIRD where the underlying zoning district allows such (e.g., the Small Town Commercial zone) up to a maximum of 3,584 sq. ft. When this table was first created, the County inventory overlooked an existing storage building and thus the table did not reflect all the uses in existence in 1990, as was intended.
14. In reference to Exhibit A, Amendment No. 8: There remain three references to the Guide Meridian Improvement Plan in the code. However, that plan was repealed by Ordinance 2016-035 and references to it should be deleted.
15. In reference to Exhibit A, Amendment No. 9: The amendment to WCC 20.80.630, the Modified Thresholds for Stormwater Management Table, would require source control (i.e., using Best Management Practices to reduce pollution from non-point sources) for stormwater management systems where they are required.
16. In reference to Exhibit A, Amendment No. 10: Similar to those tables for the UR & URM districts, a footnote is being added to WCC 20.24.252 (Density and minimum lot size for the UR-MX district) where "conventional minimum lot size" indications "N/A." Otherwise when reviewing Lot of Record/Lot Consolidation requests, no applicant can meet WCC 20.83.070(2) "One or more of the lots in question does not meet the conventional minimum lot size of the applicable zone district."
17. In reference to Exhibit A, Amendment No. 11: WCC 20.83.110 contains a prohibition on making nonconforming lots more nonconforming through a Boundary Line Adjustment (BLA). However, this has led to instances of highly irregular lot lines, or the inability to preclude the need to impact critical areas. While in general making lots more nonconforming should be avoided, there are instances where it makes sense. The amendments to WCC 20.83.110 sets out the conditions where such would be acceptable, and would address and satisfy the intent of Docket Item PLN2014-00001.
18. In reference to Exhibit A, Amendment No. 12: Buildings in LAMRIDS are subject to maximum building sizes and it is unclear whether decks are to be included, or not, within the allowable floor area. This amendment to WCC 20.97.145 would exclude decks from the definition of floor area.
19. In reference to Exhibit A, Amendment No. 13: WCC 21.01.040(2)(b) allows an exempt subdivision with a minimum lot size of 20 acres, mirroring the state provision for exempt subdivisions. However,

the Agriculture and Commercial Forestry zones have a minimum lot size of 40 acres. One could argue that this provision, then, would allow someone to create parcels of 20 acres in these Ag zone, contrary to our minimum lot size for that zone. The amendment to WCC 21.01.040(2)(b) would fix this.

20. In reference to Exhibit A, Amendment No. 14: WCC 20.40.255 requires that all parcels in contiguous ownership be consolidated for the purposes of the subdivision, short subdivision, or boundary line adjustment (BLA). In general, requiring lot consolidation is a good practice, as it prevents someone from doing multiple short plats in lieu of a subdivision, which gets them out of installing some infrastructure (roads, drainage, sewer, etc.) otherwise necessary for the number of lots being created. Yet, in some instances, primarily in the Ag zone where there are larger lots (40+ acres), someone who has undergone an exempt land division per WCC 21.01.040(2)(i) (one of the few ways allowed under state law to subdivide without having to comply with the subdivision rules) has to reconsolidate those lots if they want to do a simple BLA, which is not the intent of the exempt subdivision rules. In these cases, staff has resorted to advising applicants to transfer their adjacent parcels into different ownership (e.g., another family member). The amendments to subsection (4) would exempt lots created by exempt subdivision from this required consolidation. It would have no effect on smaller lots, as only 40+acre lots can be created in this fashion.
21. In reference to Exhibit A, Amendment No. 15: In processing boundary line adjustments, the County needs to ensure that the final lots have sufficient area to build a house (the most common economic use of property). However, for some reason there is language that exempts BLAs in the Agriculture zone from this requirement, even though the lots could be sold to someone wanting to build a home. The proposed amendment to WCC 21.03.060(1)(b) would prevent someone from adjusting a lot such that it doesn't have enough room to build on.
22. In reference to Exhibit A, Amendment No. 16: While table 22.05.020 indicates that open record hearings are required both for Type III and IV applications and for appeals of Type I and Type II applications, the text for WCC 22.05.090 does not. This amendment would clarify this requirement.
23. In reference to Exhibit A, Amendment No. 17: This amendment would move the remainder of Chapter 20.84, which has to do with the processing of variances, conditional use permits, and administrative approval uses to Title 22 (Land Use and Development Procedures), Chapter 22.05 (Project Permit Procedures), as all processing mechanisms and criteria should now be in that Title. Chapter 20.84 would then be deleted in its entirety.
24. In reference to Exhibit A, Amendment No. 18: Throughout the code, various historic titles are used for the chief administrator of Planning and Development Services (director, administrator, zoning administrator, zoning official, etc.). Staff proposes to use "Director" throughout, and will continue to make these changes as we progress through future zoning amendments.
25. In reference to Exhibit A, Amendment No. 19: WCC 22.05.020, the Project Permit Processing Table, indicates that Whatcom County has an administrative shoreline conditional use permit. However, we do not; nor does the Shoreline Management Act or our own Shoreline Management Plan allow for them. This amendment would delete this nonexistent permit type from the table.
26. In reference to Exhibit A, Amendment No. 22: WCC 20.84.110 grants the Hearing Examiner the authority to grant variances from *all* provisions of Title 20 (Zoning Code). However, under state law variances can only be granted from dimensional standards, not uses, processes, etc. This amendment would better specify what variances can be granted for (i.e., the dimensional standards).

27. In reference to Exhibit A, Amendment No. 21: WCC 20.84.110 grants the Hearing Examiner authority to grant variances from all provisions of Title 22, which used to contain the Guide Meridian Improvement Plan but was repealed in 2019. Title 22 now contains permit procedures. As variances cannot be granted from processes, the reference to Title 22 should be deleted.
28. In reference to Exhibit A, Amendment No. 22: Planning and Development Services receives numerous variance requests for minor issues unlikely to have impacts on surrounding properties or people, in particular minor reductions to front yard setbacks or parking stall requirements so as to accommodate houses on challenging lots. The proposed amendments to WCC 20.84.100 (which would become 22.05.024 under Amendment # 19) and WCC 22.05.020 would create a new “minor variance” permit to be processed as a Type II Application. As such, public notice would still be provided wherein neighbors could comment and raise issues or objections, but there would be no public hearing: The decision would be made by the Director, not the Hearing Examiner. This would cut down on the time and costs to applicants for variances for which Planning and Development Services typically doesn’t receive much public involvement.
29. In reference to Exhibit A, Amendment No. 23: The amendments to WCC 22.20.020 would make it clear that a submittal for a code interpretation has to be on one of our official forms.
30. In reference to Exhibit A, Amendment No. 24: The amendment to WCC 22.25.020 would make it clear that that Council has adopted a fee for code interpretations.
31. In reference to Exhibit A, Amendment No. 25: Last year when Council updated (and consolidated) the setback table (WCC 20.80.210) an oversight was made in regards to setbacks in the Agriculture Zone. The required setback for habitable structures on small lots from was inadvertently changed from 30’ to 5’. Though it may be acceptable to have a non-habitable structure only 5’ from an agricultural field, the setback for habitable structures (i.e., homes) should remain at 30’. This amendment would rectify that oversight.

CONCLUSIONS

1. The amendments to the development regulations are the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this 29th day of September, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:


Dana Brown-Davis, Council Clerk

APPROVED as to form:

/s/ Royce Buckingham via electronic signature/LB
Civil Deputy Prosecutor


Barry Buchanan, Council Chair

Approved () Denied


Satpal Sidhu, Executive

Date: 10/06/2020

Exhibit A

(Editor's note: Ellipses (...) indicate that sections of the code not being amended are not shown.)

Title 16 ENVIRONMENT

Chapter 16.08: State Environmental Policy Act (SEPA)

16.08.090 Environmental checklist.

A. A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the County and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. Except as provided in subsection (D) of this section, the checklist shall be on a form provided by the County, which is in the form of WAC 197-11-960 with additions required by the Responsible Official in accordance with WAC 197-11-906(4). The County shall use the environmental checklist to determine the lead agency and, if the County is the lead agency, for determining the Responsible Official and for making the threshold determination. A checklist submittal shall include any checklist review fee specified in the County's Uniform Fee Schedule.

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TITLE 20 ZONING

Chapter 20.20 Urban Residential (UR) District

20.20.255 Minimum lot width and depth.

District	Width at Street Line**		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
UR: all districts without public sewer and water	300'	70'	80'	100'
UR: with public sewer and water, and stormwater collection and detention facilities:				
• 3 units per acre	30'	30'	70'	80'
• 4 units per acre	30'	30'	60'	70'

*30' on a cul-de-sac only

**The "Width at Street Line" standards do not apply to lots being modified through boundary line adjustment (BLA), subject to WCC 21.03.060(2)(f).

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.254 Minimum lot width and depth.

District	Width at Street Line*		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
URM: all districts without public sewer and water and transferable development rights (TDRs)	300'	70'	80'	0'
URM: with public sewer and water and transferable development rights (TDRs)	N/A	N/A	N/A	N/A

*The "Width at Street Line" standards do not apply to lots being modified through boundary line adjustment (BLA), subject to WCC 21.03.060(2)(f).

Chapter 20.64: Resort Commercial (RC) District

20.64.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements), except as provided in 20.80.253(4) and 20.64.550 (Buffer area).

Chapter 20.80: Supplementary Requirements

20.80.210 Minimum setbacks.

(5) Setbacks. ...

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(b) Setbacks Table.

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Highways, Urban Principal, and Urban Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
...							
Commercial Setbacks							
...							
Resort Commercial (RC)	30	30	25	25	20	5	5
Note: Depending on circumstances, some RC setbacks may differ pursuant to WCC 20.64.550 and 20.80.253(4).							
...							
Industrial Setbacks							
...							

20.80.253 Commercial districts.

...

(4) Resort Commercial District.

- (a) Except for single-family residences, when a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Residential Rural, or Rural district, the project shall also meet the requirements of WCC 20.64.550 (Buffer area).
- (b) Side and rear yard setbacks for multifamily housing, recreational vehicle parks, and mobile home parks shall be 20 feet.
- (c) For recreational vehicle parks and resort-oriented hotels and motels, front yard setbacks shall be 45 feet.
- (d) For non-resort oriented hotels and motels and non-habitation commercial development, side yard setbacks shall be zero feet and rear yard setbacks shall be 10 feet.
- (e) Commercial uses shall be allowed to reduce the front yard setback to 15 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.
- (f) For internal lots in a single-family development, the sideyard setback may be reduced to zero feet when the lot line setback on the opposite side yard is 10 feet; however, sideyard setbacks adjacent to parcels not being developed under this exception shall be those provided in WCC 20.80.200 (Setback Requirements).
- (g) An additional five feet shall be added to each side and rear yard for each 10 feet of building height, or fraction thereof, in excess of 15 feet.

Chapter 20.64: Resort Commercial (RC) District**20.64.700 Performance standards.**

The following provisions shall apply to all uses within this district:

- .701** There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.
- .702** There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.
- .703** There shall be no emission of dust, dirt, odors, smoke or toxic gases and fumes.
- .704** There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.
- .705** There shall be no storage outdoors.
- .706** There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.

.707 Applicable health department permits must be secured before permit is issued.

20.64.330 Maximum Building Size.

- (1) In a Rural Community designation, the maximum allowable floor area for a building shall not exceed the floor area of the largest building of the same type and use that existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1) (LAMIRD Requirements) except as provided in WCC 20.80.100(2).
- (2) In a Rural Business designation, the maximum allowable floor area for a new use is 7,000 square feet per building except as provided in WCC 20.80.100(3) and (4).

20.64.450 Lot coverage.

The lot coverage for any single-, two-, or multi-family residential use shall not exceed 35% of the parcel.

Chapter 20.04 General Provisions

20.04.060 Establishment of districts.

For the purpose of furthering the goals and policies of the Comprehensive Plan and to carry out the provisions of this title, Whatcom County is hereby divided into the following districts:

Chapter	Abbreviation	District
...		
...		

Chapter 20.13 Wireless Communication Facilities

20.13.085 Siting priorities.

...

(2) For the purpose of this chapter:

...

(b) Nonresidential related districts include:

...

- (ii) Industrial districts including Heavy Impact Industrial (HII), Light Impact Industrial (LII), Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), Airport Operations (AO) and the Cherry Point Industrial District (CP-ID); and

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Chapter 20.15 Commercial Mushroom Substrate Production Facilities

20.15.070 Buffer and setback requirements.

- (1) The commercial substrate production facility's active area shall meet the following minimum buffer requirements:
 - (a) Two thousand six hundred forty feet from the following zoning districts: Urban Residential, Rural Residential, Residential-Island, Rural, Commercial, Light Impact Industrial, Point Roberts Special District, and Point Roberts Transitional Zoning.

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Chapter 20.80 Supplementary Requirements

20.80.360 Special requirements for individual zone districts.

References to front yard landscaping in subsections (1) through (5) of this section shall be based on the property line except where the County Engineer determines the road is developed at its ultimate width, then the back of the sidewalk can be used.

- (1) Urban Residential Medium Density (URM), Neighborhood Commercial (NC), Resort Commercial (RC), and for nonresidential uses in the Residential and Rural Districts: 15 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.
- (2) Tourist Commercial (TC), Rural General Commercial (RGC) and General Commercial (GC): 10 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.
- (3) Rural Industrial and Manufacturing (RIM), Light Impact Industrial (LI) and Airport Operations (AO): 15 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking. When the Light Impact Industrial Zone fronts a minor or local access street the requirements for the General Manufacturing Zone may be used.
- (4) General Manufacturing (GM): Five feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking. Subject to approval of the county, street trees may be placed in the right-of-way and the five-foot landscaping strip provided contiguous to the building with the front yard setback used for circulation of trucks and heavy equipment. In this situation to provide visual relief open space should be primarily concentrated in the side yards unless natural habitat in the rear such as wetlands or streams is present which should take precedence.
- (5) Heavy Impact Industrial (HII): For heavy industrial uses refer to the buffering requirements in WCC 20.68.550. For all other uses the front yard landscaping shall be 15 feet, similar to the requirement for the Light Impact Industrial Zone.

Chapter 20.80 Supplementary Requirements

20.80.100 LAMIRD requirements.

- (1) Building Size in Rural Communities. Within areas designated in the Comprehensive Plan as rural community, which are limited areas of more intensive development as described in RCW 36.70A.070(5)(d)(i), permitted maximum building sizes shall be in accordance with building sizes that existed in each area on July 1, 1990, as shown in the following table.

**Maximum floor area per building, in square feet
(Maximum combined floor area for all buildings, in square feet)**

	Retail/Office/Restaurant/ Lodging	Storage/ Warehouse	Auto/ Equipment Repair	Public/ Community	Manufacturing/ Fabrication
Acme	2,734 (2,734)		2,070 (2,070)	17,784 (21,896)	
Axton & Guide Meridian	4,800 (4,800)		2,160 (2,160)		
Birch Bay- Lynden & V.V.	2,784 (3,684)				
Cain Lake	2,060 (2,060)			2,473 (4,825)	
Custer	3,968 (3,968)		3,300 (3,300)	46,451 (46,451)	
Deming	11,790 (18,757)	2,400 (2,400)	1,392 (1,392)	30,099 (79,512)	
Diablo	513 (513)			10,872 (10,872)	
Glacier	3,500 (7,888)	3,584 (3,584)		3,150 (3,150)	
Hinotes Corner	6,636 (9,036)		1,500 (1,500)	19,856 (19,856)	
Kendall	7,000 (7,000)			3,340 (3,340)	
Laurel	10,700 (11,000)		10,260 (10,260)	21,950 (63,360)	17,670 (23,590)
Lummi Peninsula		7,800 (18,540)			7,280 (7,280)
Maple Falls	8,020 (8,020)	4,620 (4,620)		8,822 (10,082)	
Newhalem	3,218 (3,218)			4,810 (12,981)	16,284 (28,924)
Nugents Corner	18,221 (19,499)			3,240 (3,240)	
Point Roberts	34,704	3,286	6,732	11,246	

	Retail/Office/Restaurant/ Lodging	Storage/ Warehouse	Auto/ Equipment Repair	Public/ Community	Manufacturing/ Fabrication
	(34,704)	(3,286)	(6,732)	(11,246)	
Pole & Guide Meridian	6,400 (6,400)		4,548 (5,556)	4,000 (4,000)	
Sandy Point				1,428 (1,428)	
Smith & Guide Meridian	5,866 (7,068)	5,900 (5,900)	9,600 (17,100)		22,042 (22,042)
Sudden Valley	6,348 (10,320)			30,140 (44,945)	
Van Wyck	3,480 (3,480)	1,904 (1,904)			
Wiser Lake	24,690 (24,690)	11,222 (12,374)		2,130 (2,130)	6,368 (6,368)

20.80.210 Minimum setbacks.

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(3) *Repealed.*

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TITLE 12 ROADS AND BRIDGES**Chapter 12.08 Construction Standards****12.08.040 Amendment by Ordinance 85-35.**

This chapter shall not apply to any "forest practice" as defined in the Forest Practice Act of 1974 (RCW Chapter 76.09), except to the extent that such regulation is expressly permitted by said act, as now or hereinafter amended. (See RCW 76.09.240.) These standards shall be superseded by the specific standards of an official control that has been adopted by Whatcom County.

Chapter 20.80 Supplementary Requirements**20.80.630 Stormwater and drainage.**

- (1) Unless exempted in WCC 20.80.631 (Stormwater and Drainage, Exemptions), all development activity on lands within Whatcom County shall be subject to stormwater management requirements as follows:
 - (a) NPDES Phase II Permit Area. Except in the Lake Whatcom Watershed Overlay District, development activity inside the NPDES Phase II permit area shall comply with:
 - (i) The 2012 Washington State Department of Ecology Stormwater Management Manual for Western Washington (DOE Stormwater Manual), as amended;

- (ii) Appendix 1, Minimum Technical Requirements, of the Western Washington Phase II Municipal Stormwater Permit; and
 - (iii) Appendix 7, “Determining Construction Site Damage Transport Potential,” of the Western Washington Phase II Municipal Stormwater Permit.
- (b) Lake Whatcom Watershed Overlay District. All development activity inside the Lake Whatcom Watershed Overlay District shall comply with Chapter 20.51 WCC, Lake Whatcom Watershed Overlay District, which satisfies all 2013 Western Washington Municipal Stormwater Permit development and redevelopment requirements.
- (c) Stormwater Special Districts. Except for areas within or that overlap with the NPDES Phase II permit area (see subsection (1)(a) of this section), development activity inside stormwater special districts (as defined by WCC 20.80.635) shall comply with the Stormwater Manual, using the following modified minimum requirements in the table below, and using the Stormwater Manual’s definitions of terms for “stormwater site plan,” “impervious surface,” “hard surface,” “land disturbing activity,” “project,” “site,” and “replaced hard surface”:

Within Special Stormwater Districts – Modified Thresholds for Stormwater Management Table

Minimum Requirement (MR) ¹	When Required
MR1 Stormwater Site Plan	> 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value
MR2 Construction SWPPP	Always required
MR3 Source Control	Always required
MR4 Preserve Natural Drainage	> 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value
MR5 On-Site Stormwater Management	<ul style="list-style-type: none"> • Property ≥ 2 acres meeting MR1, provide dispersion • Property < 2 acres meeting MR1 where soils are suitable for infiltration, provide infiltration • Property < 2 acres meeting MR1 where soils are not suitable for infiltration and project does not increase the 24-hour, 100-year peak flow rate by ≥ 0.1cfs; provide dispersion
MR6 Treatment	Always required
MR7 Flow Control	Property < 2 acres meeting MR1 where project increases the 24-hour, 100-year peak flow rate by ≥ 0.1 cfs; provide detention
MR8 Wetlands Protection	> 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value
MR9 O&M	Required only if stormwater facility installed

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Chapter 20.24 Urban Residential Mixed (UR-MX) District

20.24.252 Density and minimum lot size.

District	Gross Density	Minimum Lot Size (sq. ft.)		Maximum Lot Size (sq. ft.)	Minimum Reserve Area (Cluster Divisions)
		Conventional	Cluster	Clustered Lots	
UR-MX: all densities without public sewer and water	<ul style="list-style-type: none"> Maximum density: 1 dwelling unit/10 acres 	N/A*	4,000	22,000	80%
UR-MX: all densities with public sewer or water	<ul style="list-style-type: none"> Maximum density: 1 dwelling unit/10 acres 	N/A*	4,000	22,000	80%
UR-MX: with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> Maximum gross density: 10 dwelling units/1 acre Minimum net density: 6 dwelling units/1 acre 	4,000	N/A	N/A	N/A
UR-MX (6 – 10): with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> Maximum gross density: 10 dwelling units/1 acre Minimum net density: 6 units/1 acre 	4,000	N/A	N/A	N/A
UR-MX (6 – 12): with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> Maximum gross density: 12 dwelling units/1 acre Minimum net density: 6 units/1 acre 	N/A	N/A	N/A	N/A
UR-MX (10 – 24): with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> Maximum gross density: 24 dwelling units/1 acre Minimum net density: 10 units/1 acre 	N/A	N/A	N/A	N/A

* For the purpose of administering the lot consolidation provisions of WCC 20.83.070, the conventional minimum lot size shall be 10 acres

(1) Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical areas regulations and infrastructure requirements.

(2) For development with densities over a zone's minimum net density, transferable development rights (TDRs) from the Lake Whatcom watershed sending area must be used, pursuant to the provisions of Chapter 20.89 WCC, Density Transfer Procedure. Each development right transferred from the Lake Whatcom watershed may be used to develop three dwelling units in the UGA. TDRs must be used to attain any density greater than the minimum net density of a zone.

Chapter 20.83 Nonconforming Uses and Parcels

20.83.110 Reduction of area.

The Director shall not cause or increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements through boundary line adjustments; provided, however, that:

- (1) The Director or Hearing Examiner may approve boundary line adjustments required to satisfy an unidentified or disputed property line or to identify the same in accordance with RCW 58.04.007.
- (2) Boundary line adjustments wherein lots become more nonconforming as to lot area and/or lot width requirements may be approved if all the following are met:
 - (a) No lot becomes smaller than the smallest nonconforming lot;
 - (b) No conforming lot becomes nonconforming as to lot area and/or width requirements;
 - (c) The boundary line adjustment does not result in an increase in overall density for the cumulative acreage; and,
 - (d) In the Agriculture District, no lot is reduced below 10 acres, except for boundary line adjustments in conformance with WCC 20.40.253 and 20.40.254.

Chapter 20.97: DEFINITIONS

20.97.145 Floor area.

“Floor area” means the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, decks, and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

TITLE 21 LAND DIVISION REGULATIONS

Chapter 21.01 General Provisions

WCC 21.01.040 Applicability and exemptions.

...

- (2) The subdivision and short subdivision provisions of this title shall not apply to:

...

- (b) Divisions of land into lots or tracts none of which are smaller than 20 acres or 1/32 of a section of land, or 40 acres or 1/16 of a section of land in the Agriculture or Commercial Forestry districts, and not containing a dedication; provided, that a certificate of exempt land division is obtained from Whatcom County in accordance with this title;

...

- (4) The following rules shall govern questions of precise applicability of these regulations to land divisions:
 - (a) **Contiguous Parcels.** All contiguous parcels of land in the same ownership, if consolidated in accordance with WCC 20.83.070 (Lot Consolidation), shall be included within the boundaries of any proposed long or short subdivision of any of the properties. For the purpose of this section, the lots so situated shall be considered as one parcel; provided, that any of the contiguous parcels that are within a recorded long or short plat that was filed with the county auditor at least five years prior to the new land division, or lots created by exemption pursuant to WCC

Title 21, shall not be required to be included if the lot or lots are in conformance with the applicable zoning standards.

- (b) **Pre-1972 Parcels.** Parcels of land legally divided prior to the effective date of the ordinance codified in this title (as originally adopted February 3, 1972) shall be considered in accordance with land division laws and resolutions applicable at the time of plat recording per RCW 58.17.170 or other division.

Chapter 21.03 Exempt Land Divisions and Boundary Line Adjustments

21.03.060 Boundary line adjustments.

- (1) Decision Criteria. In reviewing a proposed boundary line adjustment, the subdivision administrator or hearing examiner shall use the following criteria for approval:

...

- (b) The boundary line adjustment shall result in lots which contain sufficient area and dimensions to meet minimum requirements for width and area for a building site pursuant to this title, except as provided in WCC 20.40.254(5) (Division or Boundary Line Adjustment for Agricultural Purposes Only).

Title 22 LAND USE AND DEVELOPMENT

Chapter 22.05 Project Permit Procedures

22.05.090 Open record hearings.

As shown in WCC 22.05.020 (Project Permit Processing Table), Type III and Type IV applications and appeals of Type I and Type II applications require an open record public hearing. These hearings are subject to the following:

...

Repealed in its entirety, with the regulations being moved to Chapter 22.05.

Chapter 22.05 Project Permit Procedures

22.05.020 Project Permit Processing Table.

...

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application 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	<u>21.03</u>		✓					Director	Hearing Examiner
Building Permit	<u>15.04</u>	✓ ^(I)	✓					Director	Hearing Examiner ^(I)
Natural Resource Assessment	Title <u>16</u>		✓					Director	Hearing Examiner
Commercial Site Plan Review			✓					Director	Hearing Examiner
Exempt Land Division	<u>21.03</u>		✓					Director	Hearing Examiner
Floodplain Development Permit	Title <u>17</u>							Director	Hearing Examiner
Land Disturbance Permit	<u>15.04</u> and <u>20.80</u>		✓					Director	Hearing Examiner

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application 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))
Lot of Record/Lot Consolidation	<u>20.83</u> and <u>20.97.220</u>		✓					Director	Hearing Examiner
Nonconforming Use	<u>20.83</u>		✓					Director	Hearing Examiner
Removal of Development Moratorium	<u>20.80.738(3)</u>								
Shoreline Exemption	<u>23.60</u>	✓ ^(a)	✓					Director	Hearing Examiner
Zoning Interpretation	<u>22.20</u>							Director	Hearing Examiner
Type II Applications (Administrative Decision with Public Notice; No Public Hearing)									
Administrative Use	<u>20.84.235</u>	✓	✓	✓	✓			Director	Hearing Examiner
Lot Consolidation Relief	<u>20.83.070</u>		✓	✓	✓			Director	Hearing Examiner
Reasonable Use (b)	<u>16.16</u>	✓	✓	✓	✓			Director	Hearing Examiner
Shoreline Substantial ^(c)	<u>23.60</u>	✓ ^(a)	✓	✓	✓			Director ^(d)	Shorelines Hearings Board ^(h)
Shoreline Conditional Use ^(c)	<u>23.60</u>	✓ ^(a)	✓	✓	✓			Director ^(d)	Hearing Examiner
Zoning or Critical Areas Variance, Minor	<u>22.05.024</u>	✓	✓	✓	✓			Director	Hearing Examiner

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application 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))
Short Subdivision	21.04	✓	✓	✓	✓			Director	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	20.84.200	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Floodplain Development Variance	Title 17		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(g)	Superior Court
Binding Site Plan	21.07	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(g)	Superior Court
Reasonable Use ^(e)	16.16	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	23.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(d)	Shorelines Hearings Board ^(h)
Shoreline Substantial	23.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(d)	Shorelines Hearings Board ^(h)
Shoreline Variance	23.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(d)	Shorelines Hearings Board ^(h)
Zoning or Critical Areas Variance, Major	22.05.024 or 16.1 6.273	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application 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 ⁽¹⁾)
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
Development Agreement	<u>2.11.205</u>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Major Project Permit	<u>20.88</u>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Planned Unit Development	<u>20.85</u>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court

..

22.05.024 Variances.

- (1) Variances from the terms of Title 20 (Zoning) or Chapter 16.16 (Critical Areas Ordinance) 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, variances 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) There are two types of variances: Minor and Major Variances.
 - (a) Minor variances include those that are unlikely to have impacts on surrounding properties or people. These shall be limited to variances for:
 - i. A reduction of up to 10% of a front yard setback
 - ii. A reduction in parking stall dimensions down to 9 feet by 18 feet.
 - (b) Major variances include all other variances.
- (3) The appropriate decision maker, as specified in 22.05.020 (Project permit processing table) shall have the authority to grant variances when the conditions set forth in subsection (4) 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) 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, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone;
 - (b) Because of special circumstances applicable to the subject property, including size, shape, topography, location, or surrounding, the strict application of Title 20 (Zoning) or Chapter 16.16 (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 Hearing Examiner.
- (3) **Approval Criteria.** Before approving an application, the Director or Hearing 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) **Revisions.** The Hearing 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.

22.05.026 Administrative Approval Uses.

- (1) Administrative approval applications shall be processed per the provisions of this Chapter.
- (2) The 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 (Conditional Use Permits), subsection (3) (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 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) An other 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:
 - (a) 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
 - (b) 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
 - (c) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and
 - (d) 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 (iv) of this section are being implemented on an ongoing basis.
- (5) **Revisions.** The Director 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.
-

Chapter 22.20: Land Use and Development Code Interpretation Procedures

22.20.020 Request for interpretation prior to project permit application.

A person may request an interpretation of the code prior to submission of a project permit. The person shall submit a written request on a form provided by the department specifying each provision of the code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation. Interpretations of a pending project permit shall be made through the applicable permitting process as established in WCC Chapter 22.05 (Project Permit Procedures).

Chapter 22.25: Land Use and Development Fees

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.

20.80.210 Minimum setbacks.

...

(b) Setbacks Table.

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Highways, Urban Principal, and Urban Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
...							
Resource Lands Setbacks							
Agricultural (AG)							
• parcels ≥ 5 acres	50	50	50	50	50	20	20
• parcels < 5 acres							
○ Habitable structures	45	35	25	25	20	30	30
○ Non-habitable, accessory structures	45	35	25	25	20	5	5
Note: Depending on circumstances, some AG setbacks may differ pursuant to WCC <u>20.38.060(7)</u> and <u>20.80.255</u> .							
...							