



# WHATCOM COUNTY

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## WASHINGTON

### Planning & Development Services

5280 Northwest Drive  
Bellingham, WA 98226  
[PDS@co.whatcom.wa.us](mailto:PDS@co.whatcom.wa.us)  
360-778-5900

### MEMORANDUM

Date: January 28, 2025

To: Whatcom County Council

From: Mark Personius AICP, PDS Director

Re.: AB2025-059

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Dear Councilmembers,

This evening a public hearing is scheduled to consider amendments to Whatcom County Code Titles 20 and 22, the purpose of which is to enact SSB 5290 regarding local project review. A focus of this new State law is the setting of maximum permit processing periods as follows:

- 65 days for Type I permits – those requiring Administrative Decisions with No Public Notice or Hearing
- 100 days for Type II permits – those requiring Administrative Decisions with Public Notice but No Public Hearing
- 170 days for Type III permits – those requiring Hearing Examiner Decision with Public Notice and Public Hearing

As you recall during the last few months, a number of draft code amendments have been submitted for consideration by PDS and Council Member Galloway aimed at addressing SSB 5290, as well as “housekeeping” text changes and a handful of others topics. PDS would like to bring attention to the challenges the department has been facing, in timely processing the sheer volume of permits with existing staffing levels, even before the new State law went into effect. As such, PDS’s proposed ordinance includes various amendments deemed useful by the department in implementing the state code requirements, overall clarity and expedites permit review.

With the assistance of some Council Members, PDS conducted additional stakeholder engagement during December 2024 and January 2025 to discuss the proposed amendments and seek a common understanding on the amendments. PDS appreciated working with the BIAWC and local stakeholders and have reached consensus on nearly all issues. At its Committee of the Whole meeting on January 14, 2025, PDS shared with Councilmembers a revised ordinance, with the belief that such version had sufficiently met the concerns of the stakeholders. However, at that meeting additional public comment expressed concern with how PDS proposes the Site Plan Review (SPR) permit/process.

The proposed ordinance aims to conduct SPRs prior to and separate from a Building Permit. This is not a new process or procedure for PDS, and SPRs are a common permit type for many jurisdictions. PDS has been conducting the SPR process since 2013, the process for which is currently identified in WCC 22.05.020 Project Permit Processing Table (listed as a Type I Application). Not all Building Permit types are required to be processed through a Site Plan Review (for example, interior remodels, reroofs, and basic plumbing or mechanical permits). The proposed ordinance also authorizes the Director to waive the SPR process in

certain circumstances which we commonly do, for example, for Cherry Point industries when projects are proposed that are sited within the existing footprints of those industrial developments.

PDS believes it is appropriate to have the SPR conducted prior to the building permit process in an attempt to save an applicant time and money by avoiding unnecessary design changes. This could occur, for example, in a situation where the location of the proposed structures and improvements need to be redesigned and/or relocated to meet adopted development regulations. Additionally, County departments accrue wasted staff time when employees need to conduct redundant reviews in the above described situation. When a SPR is approved it provides an applicant with vesting for a 2-year period (along with a 1-year extension possible) and certainty with regard to the location of critical areas and development requirements.

Feedback from the stakeholder group focused on reducing permit review timeframes. Prior to SSB 5290, our code allowed for up to 120 days for each permit type, which would result in 240 days anticipated for conducting SPR and then a building permit. For comparison, the proposed new code would result in a maximum of 130 days for the two separate 65-day permit processing periods—reducing the overall permitting timeframe almost in half.

PDS has evaluated its 2024 permits and, for those projects where the SPR is complete, the vast majority of building permits have been reviewed/issued well within the new 65-day period. Applications that have taken more time to approve are typically those that required design changes to meet code especially for stormwater, health, flood, geohazard, or critical areas requirements.

In their most recent comments to Council, delivered yesterday, the BIAWC states that SPRs are not a permit. However, state law specifically defines “site plan review” as a distinct “permit” separate from a building permit (see RCW 36.70B.020(4) *reference below*).

*RCW 36.70B.020(4) "**Project permit**" or "**project permit application**" means any land use or environmental permit or license required from a local government for a project action, including but not limited to subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, **site plan review, permits or approvals required by critical area ordinances**, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection. [emphasis added]*

Furthermore, in the BIAWC comments, some language is proposed within the Site Plan Approval section (WCC 22.05.023) that reads “Applicants shall consult the Whatcom County Planning and Development Services Administrative Manual to determine when site plans are required.” PDS would note that the purpose of the Administrative Manual is to provide application completeness requirements, not a permit path. While the Administrative Manual is present to assist the applicant, it should be PDS staff that confirms when site plans are required and not the applicant.

SSB 5290 requires the County to render a decision for a SPR or Building Permit within 65 days, with that decision being either an approval or denial. Furthermore, the code identifies that only three NOARs (Notice of Additional Requirements) can be issued and to which an applicant needs to respond. If the SPR and Building Permit were processed simultaneously a likely outcome would be that a Building Permit application would either “time out” or expire by the time the SPR could be approved or PDS would be forced to deny the building permit by day 65 if we cannot demonstrate code compliance (i.e., approval). Both outcomes are undesirable and PDS would not support a permitting system designed to fail.

Without the SPR process applicants would be required to submit all items for a building permit including structural design. If one element is not approvable, this could result in an expensive series of redesigns or submittals of new applications.

While PDS appreciates the valuable input from the stakeholder group, it's important to understand the significant distinction between processing a permit within an urban city versus a rural county. Development on typical city lots is anticipated to require a shorter review time. In general, these lots are smaller in size, easier to access and have readily available known critical area data. Frequently these lots are already served by water, sewer, stormwater, roads and fire hydrants. Compare this to properties within the rural county, where development sites are typically much larger and critical areas must be identified and mitigated at a larger scale. These lots are generally not served by existing infrastructure including water, sewer, stormwater, fire hydrants and access that must be built onsite.

PDS would highlight that the stakeholder group expressed support for the code amendments if they were consistent with existing process and policy. The proposed ordinance, as currently drafted, is consistent with existing policies and procedures while adopting SSB 5290 requirements.

The department would also like to reiterate its position, identified in prior discussions with the stakeholders and Council, that the County's implementation of SSB 5290 is fully expected to be refined as we move forward. We aim to conduct application processing under the new process, obtain feedback from applicants, work with the BIAWC to identify other areas of improvement, and report back on its success and areas that might need to be improved.

Thank you for your time and consideration of the proposed ordinance as currently presented by the department.