

PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

AN ORDINANCE ADOPTING AMENDMENTS TO WCC TITLES 20 & 22 TO ENACT SSB 5290 REGARDING LOCAL PROJECT REVIEW

WHEREAS, On May 10, 2023, the governor signed SSB 5290 approving amendments to RCW 36.70B; and,

WHEREAS, 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; and,

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

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

FINDINGS OF FACT

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. Comments were received from the Building Industry Association of Whatcom County, which were addressed by staff, and on October 10th the Commission voted to recommend approval.
7. The County Council held a duly noticed public hearing on the proposed amendments on _____, 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.

CONCLUSIONS

1. The amendments are in 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.

Section 3. Severability. Should any part of this regulation be held to be illegal, unconstitutional, or otherwise unenforceable, the remainder of the regulation shall still apply.

ADOPTED this _____ day of _____, 2024.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Cathy Halka, Council Clerk

Barry Buchanan, Council Chair

APPROVED as to form:

() Approved () Denied

George Roche, Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

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 20.97 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.
- ~~(3)~~(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 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	✓(H)	✓					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

PLN 2024-00003 – Exhibit A: Proposed Amendments to Implement SB 5290 (Local Permit Review)

August 26, 2024

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))
Shoreline Exemption	22.05 & 0723.60	✓(a)	✗					Director	Hearing Examiner
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 (ca)	23.6022.05 & 07	✓(a)	✗	✗	✗		-	Director (db)	Shorelines Hearings Board (fb)
Shoreline Conditional Use for single family development, uses, and activities (ca)	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

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Long Subdivision	21.05	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (gc)	Superior Court
Binding Site Plan	21.07	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (gc)	Superior Court
Reasonable Use (bc)	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 (ht)
Shoreline Substantial Development Permit	22.05 & 0723.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (db)	Shorelines Hearings Board (ht)
Shoreline Variance	22.05 & 0723.60	✓(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (db)	Shorelines Hearings Board (ht)
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

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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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• 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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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~~earing ~~e~~xaminer 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:
- a) Applicants 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.
 - b) 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).
- 4) 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.
- 5) 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.
- 6) 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) Except as provided below, site plan approval is required for many actions, including land use and building permits, 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.
- (2) Site plan approval is not required for interior alterations unless they result in the following:
- (a) Additional sleeping quarters or bedrooms;
 - (b) Nonconformity with Federal Emergency Management Agency substantial improvement thresholds; or,
 - (c) An increase in the total square footage or valuation of the structure that requires upgraded fire access or fire suppression systems.
- (3) Additionally, when the scope and scale of proposed development is sufficiently minimal the Director in their sole discretion may grant a written waiver of such review.

22.05.024 Variances (Non-Shoreline).

- (1) A variance is not a permit, but rather a request to deviate. Variances 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 Table 1.

~~(2)~~(2) Variances may be authorized in specific cases that will not be contrary to the public interest, and where, due to special conditions, ~~literal enforcement compliance with~~ 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)~~(3) There are two types of non-shoreline variances: minor and major variances.

(a) Minor variances 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 variances for:

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

ii. Minor variances 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 (Variances).

(b) Major variances include all other variances.

~~(3)~~(4) The appropriate decision maker, as specified in WCC 22.05.020 ~~(Table 1 Project permit processing table)~~, shall have the authority to grant variances when the conditions set forth in subsection (45) of this section have been found to exist. In such cases, a variance may be granted so that the spirit of the ~~e~~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~~ 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 hHearing eExaminer 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 ~~d~~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 ~~d~~irector 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~~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.

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 Council. 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 that a development agreement should be considered by the County Council, the property owner shall be so informed.
 - (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 Planning and Development Services 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.

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.

- (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 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 dDirector 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.~~

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(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 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:

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- (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 eDirector or designee may extend this period for an additional 960 calendar days upon written request by the applicant.~~
- (c) Upon receipt of the necessary information, the eCounty 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;~~

- ~~(e)~~(e) Planned unit development;
- ~~(h)~~(f) Reasonable use **exceptions (Type II and III)**;
- ~~(j)~~(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** 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. The signs shall be in a format conforming to the standards found in the Department’s administrative manual and be visible to adjacent property owners and passersby. 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 properly 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 n~~Notices 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 n~~Notices 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.

~~(c)~~(d) The county Notices of applications shall be sent and 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.

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- (5) All public comments received on the notice of application must be received by the ~~d~~Department 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 ~~e~~County 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.
- (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 ~~e~~County 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.~~~~

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(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. However, if an applicant is non-responsive 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 permit time review 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.

(c) 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.

(d) 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~~earing ~~e~~ Examiner. ~~These hearings are subject to the following:~~

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

(a) The ~~H~~earing ~~e~~ Examiner shall publish a notice of open record hearing once in the official ~~e~~ 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,

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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 2~~).

- (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.
- (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.~~~~

Commented [CES13]: Section moved to 22.05.080

~~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 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 of 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 ~~the y 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 ~~e~~Clerk of the ~~e~~County ~~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 their ~~county council~~ meeting schedule does not accommodate a ~~closed record hearing meeting~~ within the above time-frames, or if they ~~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 ~~e~~County ~~e~~Council shall be based solely upon consideration of the record established by the ~~h~~Hearing ~~e~~Examiner, the recommendations of the ~~h~~Hearing ~~e~~Examiner, and the criteria set forth in applicable ~~e~~County code, the ~~e~~County Comprehensive Plan if applicable, and the ~~Whatcom e~~County Shoreline Management Program, including compliance with SEPA, Chapter 197-11 WAC (SEPA Rules) as adopted and modified in the ~~e~~County code, and the ~~e~~County’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~~ For 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).~~

Commented [CES14]: Moved to below.

- (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 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 County.
 - 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.~~

Commented [CES15]: Amended to match language of 5290

~~(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. 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.~~

~~(2)~~ (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.

~~(3)~~ (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~~

Commented [CES16]: Moved to wireless section, 22.05.190

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 eCounty 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 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.

Commented [CES17]: Moved from above.

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 dDirector if, in his opinion, said guarantee of installation is not necessary.

(5) Maintenance Securities. An applicant shall provide to the eCounty 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 dDirector 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 dDirector’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 dDirector; 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 eCounty, whichever is greater.
- (b) Maintenance – Two years; extendable by the eCounty if repairs are made at the end of the security period which, in the opinion of the dDirector, require additional guarantee of workmanship.

(9) Security Agreement. In each case where a security is posted, the applicant and the dDirector shall sign a notarized security agreement, approved in form by the eCounty 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 ~~C~~ounty 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 ~~€~~County to release the security. If the applicant has complied with the security agreement and this code, the ~~d~~irector shall release the security remaining. If the work has not been completed or repairs not made, then the ~~€~~County 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 ~~€~~County covering the ~~€~~County's actual expenses of administering, and, if necessary, using the proceeds of the security. The amount of this fee will be set by the ~~€~~County ~~€~~Council 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 ~~d~~irector 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 ~~€~~County 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 ~~€~~County 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)~~(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)~~(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)~~(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 eCounty of the status of such contract. If there is no notice given to the eCounty, 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)~~(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 eDirector 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 eHearing eExaminer 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 **hHearing eExaminer** 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 **dDirector of pPlanning and dDevelopment sServices** no less than 12 calendar days prior to the date of the hearing. At the hearing the **hHearing eExaminer** shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the **hHearing eExaminer’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 **hHearing eExaminer** 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 **hHearing eExaminer**, 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 **hHearing eExaminer** by either the permit holder or the **dDirector of pPlanning and dDevelopment sServices**. 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 **dDirector or designee** in the administration or enforcement of any chapter to the **hHearing eExaminer**, 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 **hHearing eExaminer** 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 **hHearing eExaminer** 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 **eCounty** and the appellant.

Commented [CES18]: Moved to wireless section, 22.05.034

- (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.
- (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.~~

Commented [CES20]: Moved from above.