

Browne: updated (01/14/2024) comments on AB2025-059 Exhibit A:

Proposed Amendments to Implement SB 5290 (Local Permit Review)

Note: while a productive discussion was held with County PDS staff on 01/09/2025 relating to our previous submitted remarks, the comments below represent the areas where we were unable to reach a meeting of the minds:

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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.~~

Recommend Deleting:

~~For a full list of items to be shown on a site plan, refer to Planning and Development Services' Administrative Manual.~~

Comment:

The intent of SB 5290 is to streamline and simplify permitting. SB 5290 Sec. 6 (2) states: "*the procedural submission requirements*" must be "*outlined on the project permit application*" It appears SB 5290 Sec. 6 (2) requires a list of every element required to complete a Site Plan for a project permit application should be listed on the project permit application. Requiring the applicant to locate an external administrative manual and then try to identify additional compliance requirements within this manual appears contrary to the purpose of SB 5290.

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22.05.023 Site Plan Approval

Comment: *Same comments as for page 1 (Site Plan Definition)*

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22.05.080 Application Consistency review and recommendations

Recommend Deleting:

~~(3) — Burden of Proof. Permit applicants/proponents have the burden of proving that the proposed development is consistent with all applicable policies and regulations.~~

Comment: *There are nine legal standards of "Burden of Proof" in the US, which one applies here? Burden of Proof is already used 8 different across the WCC, twice it is defined as "the preponderance of the evidence" and 6 times without a legal definition. As this is a new section that was neither copied from WCC 22.05.100, nor required by*

SB 5290, why is it needed just in the NOAR section and what legal standard would apply? Perhaps it should be deleted for now and a consistent standard of "Burden of Proof" be defined later to cover all WCC permitting processes, not just NOAR's

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Recommend Adding:

"iv. For project permits required to undergo a Type IV process: 170 days"

Comment:

It has been proposed that a new provision in SB 5290 (as coded in RCW 36.70B.140) allows the County to avoid defining the review time for Type IV processes (Major Projects, Development Agreements and Planned Unit Developments).

As written the draft would eliminate any Permit Review Period commitment for Type IV applications. Whereas SB 5290 Sec. 7 (1) (a) requires a Permit Review time be established, and SB 5290 Sec. 7. (1)(d)(iii) requires that the Permit review time for "*permits which require public notice under RCW 36.70B.110 and a public hearing*", (both Type III and IV process) must be no longer than 170 days.

This raises two questions:

1. Are local governments allowed to use RCW 36.70B.140 to avoid defining any time period for Type IV permit applications contrary to the intent of SB 5290?
2. If local governments are allowed to use RCW 36.70B.140 to make the timeline for any permit longer than statute (or undefined), then it appears the Council would first by "*ordinance or resolution*" have to determine the "*present special circumstances that warrant a review process or time periods for approval which are different from that provided*" in RCW 36.70B.080.

Findings of fact would need to be provided as to why the current 120 day timeline defined in WCC 22.05.130(1) should be deleted and replaced with no defined timeline rather than SB 5290's 170 day timeline as codified in RCW 36.70B.080

Personal Analysis:

The authority provided in RCW 36.70B.140 to deviate from the timelines required in RCW 36.70B.080 must be read as applying to a very narrow list of minor project permit types that may be excluded from the requirements of RCW 36.70B.080.

To do otherwise would require RCW 36.70B.140 to be interpreted as:

- (a) granting local government carte blanche to avoid the responsibilities created by RCW 36.70B.080 by simply determining by council resolution that any or all permits types present "*special circumstances*" that warrant a review process or time periods for approval which are longer or more onerous than the requirements of RCW 36.70B.080
- (b) therefore, rendering RCW 36.70B.080 (part of SB 5290) to be merely aspirational, rather than required by law

RCW 36.70B.080 states specific permitting time limits bases on permit types:

RCW 36.70B.080 Development regulations—Requirements—Report on implementation costs.
(Effective January 1, 2025.)

...

(d) The time periods for local government action to issue a final decision for each type of complete project permit application or project type subject to this chapter should not exceed the following time periods unless modified by the local government pursuant to this section or RCW 36.70B.140:

(i) For project permits which do not require public notice under RCW 36.70B.110, a local government must issue a final decision within 65 days of the determination of completeness under RCW 36.70B.070;

(ii) For project permits which require public notice under RCW 36.70B.110, a local government must issue a final decision within 100 days of the determination of completeness under RCW 36.70B.070; and

(iii) For project permits which require public notice under RCW 36.70B.110 and a public hearing, a local government must issue a final decision within 170 days of the determination of completeness under RCW 36.70B.070. **[Type IV permits – emphasis added]**

RCW 36.70B.140 defines Project permits that may be excluded from review.

(1) A local government by ordinance or resolution may exclude the following project permits from the provisions of RCW 36.70B.060 through 36.70B.090 and 36.70B.110 through 36.70B.130: Landmark designations, street vacations, or other approvals relating to the use of public areas or facilities, or other project permits, whether administrative or quasi-judicial, that the local government by ordinance or resolution has determined present special circumstances that warrant a review process or time periods for approval which are different from that provided in RCW 36.70B.060 through * 36.70B.090 and 36.70B.110 through 36.70B.130.

(2) A local government by ordinance or resolution also may exclude the following project permits from the provisions of RCW 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other project permits.

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22.05.130 Permit review time

(c) i. Is required to undergo a Type IV or V process.

Comment: SB 5290 Sec. 7 (1)(a) and SB 5290 Sec. 7. (1)(d)(iii) requires the processing time limit for a TYPE IV be no longer than 170 days

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22.05.130 Permit review time

(d) 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.

Comment: SB 5290 Sec. 7. (1)(h) is specific as to what limited events shall cause a start over of the permit processing time periods. It does not appear to authorize additional reasons like "proposes a redesign of proposed land divisions,"

This clause could cover immaterial changes and would likely discourage subdivision applicants from proposing changes that could benefit the public such as moving Lot lines around to improve critical areas setbacks or reduce impacts, preserve more APO soils, add a park or trail and/or improve livability.

TWO OPTIONS ARE PROPOSED

1. Delete the words ~~"proposes a redesign of proposed land divisions"~~
2. Edit paragraph as follows:

The time periods of subsection (a) to process a permit shall start over if an applicant ~~proposes a~~ submits a written request for a redesign of proposed land divisions, ~~proposes a~~ change in use, or removes commercial or residential elements from the original application that is substantial enough it would make the application fail to meet the determination of procedural completeness, as required by the County under RCW 36.70B. Upon payment of the applicable Revision Fee per the Unified Fee Schedule, the applicant shall receive a determination within 14 days as to whether the proposed redesign or changes are considered substantial enough to cause the permit process to start over. The applicant shall have a further 14 days to either confirm they wish to proceed with or withdraw their change request. Withdrawal of a change request will add the days it takes the applicant to respond plus 14 days to the processing time but will not otherwise impact the Permit review process.