



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2025-059

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<b>File ID:</b>	AB2025-059	<b>Version:</b>	1	<b>Status:</b>	Adopted
<b>File Created:</b>	01/06/2025	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>	02/25/2025		
<b>Agenda Date:</b>	02/25/2025	<b>Enactment #:</b>	ORD 2025-005		
<b>Related Files:</b>					

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

### TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to Whatcom County Code Titles 20 & 22 to enact SSB 5290 regarding local project review

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting amendments to Whatcom County Code Titles 20 & 22 to enact SSB 5290 regarding local project review

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/14/2025	Council	SUBSTITUTE INTRODUCED FOR PUBLIC HEARING Aye: 7 Donovan, Elenbaas, Stremmer, Buchanan, Galloway, Byrd, and Scanlon Nay: 0	Council
01/28/2025	Council	HEARD PUBLIC TESTIMONY AND REFERRED TO COMMITTEE Aye: 6 Buchanan, Byrd, Donovan, Elenbaas, Scanlon, and Stremmer Nay: 1 Galloway	Council Committee of the Whole
02/11/2025	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	

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02/11/2025 Council

INTRODUCED FOR PUBLIC Council  
HEARING

Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremler  
Nay: 0

02/25/2025 Council

ADOPTED

Aye: 6 Buchanan, Byrd, Elenbaas, Galloway, Scanlon, and Stremler  
Nay: 0  
Abstain: 1 Donovan

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**Attachments:** Email from BIAWC on 1.27.2025, Browne Handout Received 1.28.2025 for AB2025-059, Staff  
Memo for 2.11.2025, Revised Ordinance and Ex A for 2.11.2025, Notice of Hearing after 2.11.2025

PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. 2025-005

**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**, Planning and Development Services is taking this opportunity to address other, non-SSB 5290 processing issues in the code; 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. Regarding the requirement to refund fees unless three at least three (3) of the ten (10) permit review streamlining options in RCW 36.70B.160(1) (a – j)
  - a. *Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other*

*municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW. The fees imposed may not include a fee for the cost of processing administrative appeals. Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law;”*

- i. Whatcom County imposes reasonable fees that are consistent with RCW 82.02.020 within WCC 22.25. The fees imposed on applicants do not automatically include a fee to process the cost of an administrative appeal. Pursuant to WCC 22.05.160, a fee for administrative appeals is required of anyone applying for an appeal of a permit decision at the time of appeal. It may also be refunded if the appeal is dismissed in whole without hearing.
  - b. *Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly;*
    - i. The County has two consultants under contract that were chosen from the county's active on-call list established in 2023 that will be reviewed and renewed every three years. The consultants are Shannon & Wilson, Inc. and MacWhinney Environmental Consulting, LLC. The consultants are under contract to assist with permit review if permit volumes or staffing make efficient review infeasible. These on-call contracts were approved by the County Council in 2023, and again in 2024, for the 2024 through 2026 biennium time period.
  - c. *Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;*
    - i. Whatcom County Code lists the uses that are permitted outright (likely with the need of a building permit), permitted with an administrative use permit in addition to any necessary building permits, permitted with a conditional use permit in addition to any necessary building permits, or permitted with a major project permit in addition to any necessary building permits in each of the zones of the County. Housing is permitted outright in all residential zones (non-industrial) per WCC 20.20.050, WCC 20.22.050, WCC 20.24.050, WCC 20.32.050, WCC 20.34.050 and WCC 20.36.050. The housing types vary based on if the zones are primarily single-family or multi-family.
  - d. *Meeting with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information or corrections;*
    - i. Whatcom County adopts this statutory provision under WCC 22.05.080(2)(b), as shown in Exhibit A.
8. The County Council held a duly noticed public hearing on the proposed amendments on February 25, 2025.

9. 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.

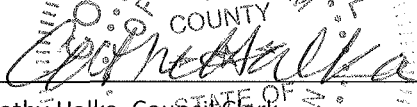
**Section 2.** Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

**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 25th day of February, 2025.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY WASHINGTON

ATTEST

  
Cathy Halka, Council Clerk

APPROVED as to form: ☆

  
George Roche, Civil Deputy Prosecutor

  
Kaylee Galloway, Council Chair

☒ Approved      ( ) Denied

  
Satpal Sidhu, Executive

Date: 2.26.25

# Exhibit A: Proposed Amendments to Implement SB 5290 (Local Permit Review)

February 3, 2025

## Editor's Notes:

- Ellipses (...) indicate that there is existing code either before or after the cited sections that is not being amended. However, the amendments should be read in context of the entire code.

## 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.

(...)

## TITLE 22 LAND USE AND DEVELOPMENT

### Chapter 22.05 Project Permits

#### 22.05.010 Purpose and applicability.

- (1) The purpose of this chapter is to specify the application, review, and approval processes for project permits and appeals. 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 WCC 22.05.020 Table 1.
- (3) For permit applications for personal wireless service facilities some of these regulations are modified by various sections, as federal regulations preempt some local regulations and processes.
- (4) This chapter also specifies processes for non-permit actions.

- (5) The meaning of words used in this chapter shall be as defined in WCC Chapters 20.97 (Definitions), 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 County is not responsible for the accuracy of information or plans provided to the County for review or approval.
- (3) The department, or any other County department reviewing an application, may inspect any development activity to enforce the provisions of this title. By submitting an application to the County, the applicant consents to entry upon the site by the County 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 County.

#### **22.05.020 Development Review & Approval Processes.**

- (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, below, indicates 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.



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)
<b>Building Permits</b>										
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
<b>Use Permits</b>										
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
<b>Personal Wireless Service Facilities Use Permits</b>										
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
<b>Shoreline Permits</b>										
Shoreline Exemptions (SHX)	I	22.07.020		✓					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)
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
<b>Land Division Permits &amp; Approvals</b>										
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									

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)
• 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								
<b>Nonconforming Uses &amp; Lots Approvals</b>										
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	<u>20.83.070</u>		✓	✓	✓			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	

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)
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
<b>Forest Practices Permits &amp; Approvals</b>										
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								
<b>Miscellaneous Permits</b>										
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
<b>Miscellaneous Non-Permit Reviews, Approvals, &amp; Actions</b>										
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
Surface Mining Annual Registration (SM(year mine started)-xxxxx)	I	20.80.900							N/A	N/A

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

As discussed with Stakeholders

February 3, 2025

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)
Pre-Application Meeting (PRE)		22.05.040							N/A	N/A
<b>Variances (Non-Shoreline) (e)</b>										
Minor Variances (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 Variances (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
<b>Council Quasi-Judicial Approvals &amp; Permits</b>										
Development Agreements (DEV)	IV	2.11.205	✓	✓	✓	✓	✓	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
<b>Council Legislative Actions</b>										
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

- (4) Notes on Table 1. As indicated in Table 1, certain project permits and approvals are subject to the following additional requirements:
- (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.
  - (b) Pursuant to WCC 22.07.060, final administrative determinations or decisions, as appropriate, shall be filed with, or approved by, the Washington State Department of Ecology.
  - (c) Building permit preapplication conference, subject to WCC 15.04.020(C)(1).
  - (d) The Hearing Examiner may choose to consult with the development standards technical advisory committee concerning technical matters relating to land division applications.
  - (e) A variance request may change the process type for the project permit. See WCC 22.05.024.

**22.05.023 Site Plan Approval.**

- (1) Except as provided in WCC 22.05.023(2) or (3), site plan approval is required for project permits and other development activities to ensure the proposal meets development requirements and standards. The applicant shall choose to process site plan reviews as either:
- (a) In conjunction with the project permit application; or
  - (b) As an individual site plan application.
- (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) If a site plan is not required for a commercial building permit per WCC 15.04.020, or when the scope and scale of proposed development is sufficiently minimal, the Director in their sole discretion may waive such review.

**22.05.024 Variances (Non-Shoreline).**

- (1) A variance is not a permit, but rather a request to deviate from the standards of WCC Title 20 (Zoning) or Chapter 16.16 WCC (Critical Areas). A request for a variance is applied for, processed, and considered 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) Variances may be authorized in specific cases that will not be contrary to the public interest, and where due to special conditions 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.
- (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% of a front yard setback;
    - ii. Minor variances for reduction of critical area buffers pursuant to WCC 16.16.273;
    - iii. A 25% to 50% reduction of critical area buffers pursuant to 16.16.273 (Variances).
    - 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.
  - (b) Major variances include all other variances.
- (4) The appropriate decision maker, as specified in WCC 22.05.020 Table 1, shall have the authority to grant variances when the conditions set forth in subsection (5) of this section have been found to exist. In such cases, a variance may be granted so that the spirit of the County's land use codes shall be observed, public safety and welfare secured, and substantial justice done.
- (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 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 WCC Chapter 16.16 (Critical Areas) is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in its zoning district. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section;
  - (c) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

**22.05.026 Conditional use permits.**

- (1) Application. Conditional use permit applications shall be processed per the provisions of this chapter.
- (2) Conditional use permits shall be nontransferable unless said transfer is approved by the Hearing Examiner.
- (3) Approval Criteria. Before approving an application, the Hearing Examiner shall ensure that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate evidence showing that the proposed use at the proposed location:
  - (a) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan, zoning regulations, and any other applicable regulations.

- (b) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
  - (c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.
  - (d) Will not be hazardous or disturbing to existing or future neighboring uses.
  - (e) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
  - (f) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
  - (g) Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.
  - (h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
  - (i) Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of major importance.
- (4) 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 Hearing 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, County approval shall be contingent upon approval of a shoreline permit;
  - (c) The applicant has documented to the 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 County 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 County 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 County 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 Hearing Examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:
  - (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:
    - i. Revisions involving new structures not shown on the original site plan shall require a new permit;
    - ii. Any revisions shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; and
    - iii. Any revisions shall be reviewed for consistency with the Comprehensive Plan;
  - (b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;
  - (c) The use authorized pursuant to the original permit is not changed;
  - (d) No additional over-water construction will be involved for shoreline conditional use permits;
  - (e) No substantial increase in adverse environmental impact will be caused by the project revision.

#### **22.05.028 Administrative approval use permits.**

- (1) Administrative approval applications shall be processed per the provisions of this chapter.
- (2) The Director 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 Director shall find that the proposed use at the proposed location satisfies or will satisfy all the following criteria:
- (a) The adult business will be consistent with WCC 20.66.131 (Light Impact Industrial District, Administrative approval uses).
  - (b) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:
    - i. An adult eating or drinking establishment; or
    - ii. An adult theater; or
    - iii. 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 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.

#### **22.05.030 Consolidated permit review.**

the County shall integrate and consolidate the review and decision on two or more project permits or actions that relate to the proposed project action unless the applicant requests otherwise. Consolidated permits or actions shall be reviewed under the process type required for the permit or action with the highest process type per WCC 22.05.020. Level IV is considered the highest and Level I is considered the lowest process type. This section shall not apply to building permits.

#### **22.05.032 Supplemental procedures for fossil fuel refinery and fossil fuel transshipment facility permitting.**

- (1) Upon request of the County, 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 County 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 County 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 County 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 County, the County 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.

#### **22.05.040 Preapplication conferences.**

The purpose of a preapplication conference is to assist applicants in preparing development applications for submittal to the County 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 County 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 Director grants a written waiver. For other applications, the applicant may request a preapplication conference. An applicant may request any number of preapplication conferences.
- (2) The County shall charge the applicant a fee for each preapplication conference per the unified fee schedule. If the County 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, 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 County.
- (5) The County 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 County 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 County 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 WCC Chapter 22.25, 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:
  - (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.
- (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) 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 County requirements.
- (3) Upon submittal by the applicant, the County will accept the application and note the date of receipt. The date of receipt shall be the date of submittal by the applicant. Receipt of an application does not constitute approval of the project proposal.
- (4) For personal wireless facilities, 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) 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.
- (5) For all other applications, within 28 calendar days of receiving 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. 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.
- (6) A project permit application (other than for personal wireless service facilities) is procedurally complete when it meets the submittal requirements of the permit application and 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 County 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 County does not issue a written determination to the applicant that the application is incomplete by the end of the 28<sup>th</sup> 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).

- (7) If the application is determined to be incomplete, the following shall take place:
  - (a) The County will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.
  - (b) The applicant shall have 60 calendar days from the date that the notification was issued to submit the necessary information to the County. If the applicant does not submit the necessary information to the County in writing within the 60-day period, the application shall be rejected.
  - (c) Upon receipt of the necessary information, the County 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 rejected.
- (8) 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
  - (c) determined complete by the department, the application shall be considered under the zoning or other land use control ordinances in effect on the date the preapplication conference request was submitted to the department.
- (4) **Continuation of Vesting.** Building or land fill and grade permit applications that are required to obtain one of the following project permits or approvals shall vest to the zoning and land use regulations in effect at the time the project permit application was determined to be complete:
  - (a) Administrative use;
  - (b) Site plan review;
  - (c) Conditional use;
  - (d) Major project permit;
  - (e) Planned unit development;
  - (f) Reasonable use exceptions;
  - (g) Shoreline conditional use permit;
  - (h) Shoreline exemption;

- (i) Shoreline substantial development permit;
  - (j) Variances
- (5) **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 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 County finds that a change in conditions creates a serious threat to the public health or safety.
- (6) **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) **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 County, 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), 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 processes per WCC 22.05.020, the County shall issue a notice of application within 14 calendar days of a determination of completeness. The date of notice shall be the date of publication.
- (2) If the County has made a State Environmental Policy Act (SEPA) threshold determination of significance concurrently with the notice of application, it 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 in the application, and, if applicable, a list of any studies requested by the County;
  - (c) The identification of other permits or approvals not included in the application to the extent known by the County;
  - (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 County;
  - (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. If there is no public hearing, public comment should be submitted 30 days prior to the decision on the project permit. Comments may be considered by the department prior to issuance of the decision. 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 County newspaper and on the Whatcom County website. The applicant shall bear the responsibility of paying for such notice.
  - (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 formatted and posted and on what date.
  - (c) Notices shall be sent to neighboring property owners as follows:
    - i. For sites within urban growth areas: 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 County 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: 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 County Assessor.
  - (d) Notices of applications shall be sent 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.
- (5) All public comments received on the notice of application must be received by the Department by 4:30 p.m. on the last day of the comment period.
- (6) Except for a determination of significance, the 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 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 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.
- (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 60 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 may be granted to the applicant to respond, and 30 days added to the County's permit time review periods provided in WCC 22.05.130. In no event shall a response to a NOAR be submitted beyond 90 days. "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 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.
  - (d) If the County determines a NOAR has been issued in error the County may withdraw that NOAR.

(e) The Director may grant a 90-day extension for any NOAR upon written request by the applicant, provided the request is submitted before the end of the NOAR response period.

- (3) **Burden of Proof.** Permit applicants/proponents have the burden of proving that the proposed development is consistent with all applicable policies and regulations using the “Preponderance of the Evidence” standard. **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. No more than one suspension is allowed.
- (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 WCC 22.05.020 Table 1, Type III and Type IV applications and appeals of some Type I and Type II applications require an open record public hearing before the Hearing Examiner.
- (2) Open Record Hearing Notice. Public hearings shall be noticed as follows:
  - (a) The Hearing Examiner shall publish a notice of open record hearing once in the official 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, 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).
  - (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 Hearing Examiner.
  - (c) An affidavit verifying distribution of the notice must be submitted to the Hearing Examiner two working days prior to the open record hearing.
  - (d) The Hearing 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 Hearing Examiner shall be responsible for such notification.
  - (e) The applicant shall pay all costs associated with providing notice.

- (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. This restriction does not apply to an appeal of a determination of significance as provided in RCW 43.21C.075.
- (4) Combined County and Agency Hearing. Unless otherwise requested by an applicant, the 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.
- (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 Hearing Examiner shall administer the open record hearing and issue decisions or recommendations in accordance with Chapter 42.36 RCW.

**22.05.110 Final decisions – Type I, II, and III Processes.**

- (1) The 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 Hearing 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 Hearing Examiner may grant Type III applications subject to conditions, modifications, or restrictions that they find 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 Hearing Examiner shall render a final decision within 14 calendar days following the conclusion of all testimony and hearings. Each final decision of the Hearing 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 Hearing Examiner shall be subject to administrative or quasi-judicial review, except as provided herein.
  - (e) The applicant, any person with standing, or any County department may appeal any final decision of the Hearing Examiner to the appeal body specified in WCC 22.05.020 Table 1.

**22.05.120 Recommendations and final decisions – Type IV Processes.**

- (1) For Type IV processes per WCC 22.05.020 the Hearing Examiner's recommendations to the County Council may be to grant, grant with conditions or deny an application. The Hearing 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 Hearing Examiner for an application identified as a Type IV process per WCC 22.05.020 shall be in writing to the Clerk of the County 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 County's Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.
- (3) The deliberation of the County 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, development agreements, and major project permits the following shall apply:
  - (a) The recommendation of the Hearing Examiner regarding planned unit developments, development agreements, and major project permits shall be based upon the criteria set forth in WCC 20.85.335, 2.11.205, and 20.88.130, respectively.
  - (b) The Hearing Examiner shall file the recommendation with the Clerk of the County Council within 21 calendar days following the conclusion of the open record hearing.
  - (c) The County Council shall conduct the following within the specified time frames, except as provided in subsection (iii) of this subsection:
    - i. Hold a closed record hearing to deliberate on the project application within 28 calendar days after receiving the Hearing Examiner's recommendation.
    - ii. Issue a final written decision within 21 calendar days of the closed record hearing.
    - iii. The County Council may exceed the time limits in subsection (4)(c)(i) or (4)(c)(ii) of this section if their meeting schedule does not accommodate a closed record hearing within the above timeframes, or if they make 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 County 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 County Council shall be based solely upon consideration of the record established by the Hearing Examiner, the recommendations of the Hearing Examiner, and the criteria set forth in applicable County code, the County Comprehensive Plan if applicable, and the

Whatcom County Shoreline Management Program, including compliance with SEPA, Chapter 197-11 WAC (SEPA Rules) as adopted and modified in the County code, and the County's adopted SEPA policies.

#### **22.05.130 Permit review time periods.**

- (1) The County shall issue a notice of final decision for all permit types (other than for personal wireless service facilities), including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application, within the number of calendar days listed in subsection (a) of the date the department determined the application complete, except as provided in subsections (b) – (h).
  - (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.
    - iv. For project permits required to undergo a Type IV 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;
    - ii. Any period during which an environmental impact statement is being prepared 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;
    - iv. The period specified for administrative variances from or appeals of development standards as provided in WCC Chapter 12.08;
    - 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 V process.
    - 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) The time periods of subsection (a) to process a permit shall start over if an applicant submits a revised plan that increases impacts to critical areas or neighboring properties, 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.

- (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.
- (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) 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) The provisions of this section notwithstanding, the failure to issue a final decision within the time frames specified shall not be considered an implicit approval or denial of the development permit, nor shall it be reason in and of itself for the County 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.

#### **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 County'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 County standards, and/or maintenance, repair, or replacement of such improvements.
- (3) The County 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 County'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 County 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 County 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 County 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 Director if, in his opinion, said guarantee of installation is not necessary.

- (5) Maintenance Securities. An applicant shall provide to the County 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 Director 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 Director'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 Director; 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 County, whichever is greater.
  - (b) Maintenance – Two years; extendable by the County if repairs are made at the end of the security period which, in the opinion of the Director, require additional guarantee of workmanship.
- (9) Security Agreement. In each case where a security is posted, the applicant and the Director shall sign a notarized security agreement, approved in form by the County 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 County 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 Director 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 Director 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 County in administering, maintaining, or making the improvements covered by the security(s). The County 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 County for any amount expended by the County that exceeds the proceeds of the security. The County may file a lien against the subject property for the amount of any excess.
- (d) In each case where the County 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) 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) 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) 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 County of the status of such contract. If there is no notice given to the County, 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) 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.**

- (1) Upon notification by the Director 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 Hearing Examiner 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 Hearing Examiner 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 Director of Planning and Development Services no less than 12 calendar days prior to the date of the hearing. At the hearing the Hearing Examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the Hearing Examiner'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 Hearing Examiner 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 Hearing Examiner, 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 Hearing Examiner by either the permit holder or the Director of Planning and Development Services. 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) 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 the Hearing Examiner, 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 Hearing Examiner 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 Hearing Examiner 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 County and the appellant.
  - (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 Hearing Examiner shall govern appeal procedures. The Hearing 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, any person with standing, or any County department may appeal any final decision of the Hearing 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 Hearing 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; 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 EIS shall not be included as part of the total amount of fees to be reduced by 25 percent:

- (1) Subdivision plat application;
- (2) Rezone application;
- (3) Shoreline substantial development permit, variance or conditional use;
- (4) Major development permit;
- (5) Conditional use permit;
- (6) Variance;
- (7) Planned unit development.

#### **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 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 14<sup>th</sup> calendar day after the date of application shall be eligible for a refund of 90% 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 30<sup>th</sup> calendar day after the date of application shall be eligible for a refund of 50% of all application fees except for any SEPA fees which shall not be eligible for a refund.
- iii. Applications withdrawn after the 30<sup>th</sup> calendar day after the date of application shall not be eligible for a refund.

(2) Refund of fees for amendments 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% 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% 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% 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.