



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-018

File ID:	AB2019-018	Version:	1	Status:	Substitute Adopted
File Created:	12/21/2018	Entered by:	CStrong@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Ordinance		
First Assigned to:	Council				
Agenda Date:	02/12/2019	Next Mtg. Date:		Hearing Date:	02/12/2019

TITLE FOR AGENDA ITEM:

Ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations), and 22 (Land Use and Development Procedures), making corrections, updates, and clarifications

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
01/15/2019	Council	WITHDRAWN	
01/29/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council
02/12/2019	Council	SUBSTITUTE ADOPTED	

Attachments: Memo (2) to Council P&D Comm, 2019-01-22, for January 29 Agenda, PLN2018-00014 Staff Report to Council, Ordinance, PC approved 2018-12-13, Exhibit A (PC approved, staff revised, with Council edits, 2018-01-22) for January 29 Agenda, Substitute Exhibit A

Final Action: 02/12/2019
Enactment Date: 02/12/2019
Enactment #: ORD 2019-013

ORDINANCE NO. 2019-013

ADOPTING VARIOUS MINOR AMENDMENTS TO WHATCOM COUNTY CODE TITLES 20 (ZONING), 21 (LAND DIVISION REGULATIONS), AND 22 (LAND USE AND DEVELOPMENT PROCEDURES) MAKING CORRECTIONS, UPDATES, AND CLARIFICATIONS

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

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

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

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on October 19, 2018, 2018.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 15, 2018.
4. The Planning Commission held a public hearing on the proposed amendments on December 13, 2018, notice of which was published in the Bellingham Herald on October 26 and November 30, 2018.
5. Comprehensive Plan Policy Goal 2D is to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
6. WCC 0.38.060(7) provides increased setbacks for cluster subdivisions when adjacent to agricultural properties so as to minimize nuisance complaints. However, it is confusing in its current state. The amendment would clarify its intent.
7. WCC 20.40.254(5)(a) & (b) is inconsistent with the minimum parcel sizes listed in Table 20.40.251. Table 20.40.251 lists the minimum parcel sizes as 40 and 10 acres, whereas the text of 20.40.254(5)(a) & (b) says “larger/greater than” 40 and 10 acres. The amendments would rectify this inconsistency.
8. WCC Chapter 20.40 is the only zone chapter that doesn’t explicitly specify what the maximum density is in that zone. Though a maximum density of a dwelling unit/acre is implied by the 40 ac minimum parcel size, it’s not explicitly stated. The amendment would rectify this.
9. Both WCC 20.51.430 (Lake Whatcom Watershed Overlay District) and 20.71.354 (Water Resource Protection Overlay District) exempt hazard tree removal from having to obtain a tree removal permit provided they meet the requirements of subsection (5) of their

respective sections. However, each of the subsection (5)s specifically state that a tree removal permit is required. The amendments would rectify this inconsistency.

10. The text of WCC 20.62.300 describes a maximum density, not a minimum as the heading implies. The amendment would rectify this inconsistency.
11. WCC 20.66.550 (Light Impact Industrial (LII) District) includes increased setbacks from certain adjacent zones, as well as from "principal arterials." However, Whatcom County has no such roadway classification. The amendment would rectify this inconsistency.
12. WCC 20.68.552(5) contains increased setbacks and buffers in the LII District under certain circumstances. It also conformance to Policy 1.05 of the Cherry Point/Ferndale Subarea Plan. However, the intent and specifics of this policy are already included in the regulations. Furthermore, the Cherry Point/Ferndale Subarea Plan is slated for repeal. Therefore this reference isn't required. The amendment would rectify this.
13. WCC 20.80.220, subsection (a) specifies what appurtenances are allowed in setback areas. However, decks and utilities, which are common uses in front and side yard setbacks, are not specified allowances, and neighbors have been trying to use this section to protest development. The amendments would also update an old reference to the Uniform Fire Code to the International Fire Code, which Whatcom County has adopted. Additionally, the amendment would delete the repetitious language regarding vision clearance, already found in the referenced section.
14. WCC 20.83.050 allows someone to rebuild a damaged or destroyed nonconforming structure exactly where it was. However, as it stands, owners have argued that they can rebuild over property lines. The amendment would rectify this.
15. WCC 20.80.230(2) allows property owners on constrained lots in the shoreline jurisdiction to consider their front yard (that next to road) their rear yard, and their rear yard (that next to the water) their front yard, effectively reducing their setback next to the road to down to 20 feet. The amendments would effectively do the same; though also allow the same consideration for other critical areas.
16. WCC 20.80.545 contains rules for parking areas. However, the rule in the first sentence is already covered by WCC 20.80.350 (Parking Areas). And the second sentence requires that a driveway be at least 30 feet long (20' for the parking spot, plus the 10' setback), which is greater than the typical front yard setback (20-25'). Driveways on typical suburban development are 20 feet long. The existing language basically makes it illegal to park in a typical driveway and is not enforced. The deletion of this section would rectify this.
17. WCC 20.80.650 refers to the Northwest Air Pollution Control Agency, which was renamed the Northwest Clean Air Agency many years ago. The amendment would rectify this.
18. WCC 20.80.670 contains dock requirements. However, these are also addressed in the Shoreline Management Program (Title 23) and the Critical Areas Ordinance (Chapter 16.16), so these are duplicative. The deletion of this section would rectify this.
19. WCC 20.85.101 contains an old reference to the Uniform Building Code, whereas Whatcom County has adopted the International Building Code. The amendment would rectify this.

20. The Critical Areas Ordinance (WCC 16.16.260(E)) allows someone doing a Planned Unit Development to develop alternative mitigation plans. The amendment would add a section to Chapter 20.85 (Planned Unit Developments) pointing readers to that possibility.
21. WCC 20.88.275 exempt applicants for a Planned Unit Development from having to obtain a Master Project Permit, as it goes before Council for a decision anyways. The amendment would provide the same exemption for development agreement applicants, as they, too, go before Council.
22. WCC 20.97.293 contains an outdated definition of "party of record," and WCC 20.97 contains no definition of "standing." The amendments would rectify this by amending the definition of "party of record" and adding a definition of "standing" consistent with RCW 36.70C.060 (Judicial Review of Land Use Decisions). Additionally, various sections of the code pertaining to appeals are amended to specify that in order to appeal, one must have standing.
23. WCC 20.86.051 defines receiving areas for Whatcom County's Transfer of Development Rights program. However, the County's Prosecuting Attorney has advised against requiring TDRs for UGA expansions or rezones under RCW 82.02.020. The amendments would delete these two requirements.
24. WCC Chapter 20 (Zoning) contains no definition of "Director." The amendment would add such a definition to WCC 20.97.
25. WCC Chapter 22 (Project Permit Procedures) does not have a definitions section. The amendment would rectify this, by referring to the definitions found in WCC 20.97.
26. WCC 22.05.160 contains rules for processing appeals. The amendments would clarify that appeals need to be filed on a department-provided form and the application would need to meet the rules contain in subsection (a) to be valid. The amendments would also clarify that the Hearing Examiner would hold an open record public hearing on administrative appeals and that one has to have standing to appeal.
27. When charging stations for electric cars were relatively new and no one knew what they would look like or how they would operate, Whatcom County adopted regulations for where they can be located, making them accessory to conditionally approved automobile service stations, and differentiating between rapid and standard charging stations. However, given how they are actually used (users typically charge their cars for 45-60 minutes while shopping or eating), and what they actually look like, it makes more sense to allow them accessory to any permitted use in commercial or industrial zones. Nor do rapid and standard charging stations look different. The amendments would merge the two existing definitions into one, and allow charging stations accessory to any permitted use in certain commercial and industrial zones.
28. The language of the various "Drainage" sections varies between zones, even though it's intended to mean the same thing. The amendments would standardize the language in all the zoning district chapters.
29. Various sections allow a temporary second dwelling unit in various zones in the form of a manufactured home, a fully serviced travel trailer, or motor home. The amendments would allow park model trailers, which aren't much different from those allowed, to be used as such as well.

30. WCC 20.80.210(b) lists the various setbacks from roads or other properties. However, it lists some setbacks from some roadway classifications that Whatcom County Public Works no longer use in their transportation planning. Additionally, the table contains 67 footnotes that repeat sections of the code that modify the standard setbacks. Not only is the language of the footnotes different from the actual code, but the inclusion of the inaccurate language makes the table 14 pages long. The amendment rectifies this by removing the non-used road classifications and reformatting the table, with notes only referring to the modifying sections, also allowing the table to fit on two pages.
31. WCC 20.68.554 contains additional setback requirements in the Heavy Industrial District. However, it contains a faulty cross-reference (subsection (b)), a policy contained in the Cherry Point/Ferndale Subarea Plan which is slated for repeal and the intent of which is already addressed by another section of the code (subsection (c)), and another faulty reference to a process that does not exist. The amendment rectifies this.
32. WCC 20.97.436.2 is a definition for “Tree, hazard.” However, there is a different definition for “Hazard tree” in 20.97.171, which itself reads the same as that in 16.16.900 (Critical Areas Ordinance) and 23.110.080 (Shoreline Management Program). The amendment would eliminate this discrepancy.
33. WCC 22.25.040 contains the policy for refunds of fees for permit and docket applications. However, the deadline thresholds for docket application refunds are set at 14 and 90 days, where in reality the docket applications may take a year or more to process, during which varying amounts of work may or may not have commenced. The amendment would set the thresholds for docket application refunds to coincide more closely to how much staff time has been expended.

CONCLUSIONS

1. The amendments to the development regulations 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.

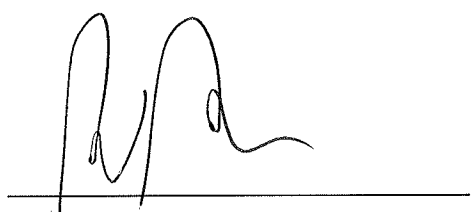
ADOPTED this 12th day of February, 2019.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

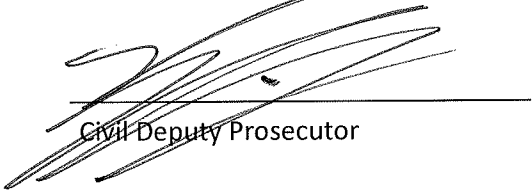


Dana Brown-Davis, Council Clerk

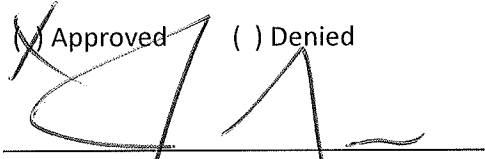


Rud Browne, Council Chair

APPROVED as to form:



Civil Deputy Prosecutor

Approved Denied


Jack Louws, Executive

Date: 2/13/19

Exhibit A: Proposed Code Amendments

*Code Scrub 2018 (Clean copy of what Council approved on 2/12/19. All
strikeout/underline and explanatory notes removed.)*

Chapter 20.38 Agriculture Protection Overlay

20.38.060 Development and use standards.

- (7) Any inhabitable structure within the cluster subdivision shall be set back a minimum of 100 feet, and any accessory or other non-inhabitable structures shall be set back at least 30 feet, from the property line of any parcel that is an APO reserve tract or designated or taxed for agricultural purposes.

Chapter 20.40 Agriculture (AG) District

20.40.250 Division or modification of parcels.

.254 Separation of the Farmstead Parcel Criteria.

...

- (5) Division or Boundary Line Adjustment for Agricultural Purposes Only. Lots smaller than the minimum lot size of WCC 20.40.251 may be created through land division or rearranged through a boundary line adjustment provided the following:
- (a) The parent parcel does not contain an existing residence, or said existing residence will remain on a parcel 40 acres or larger in size; and
 - (b) The parcel created is 10 acres or larger or is appended to another parcel; and

...

20.40.550 Maximum Density.

The maximum density in the Agricultural District shall be 1 dwelling unit per 40 acres.

Chapter 20.97 Definitions and 16.16.900 Definitions

20.97.171.2 and 16.16.900 Hazard Tree

“Hazard Tree” means a tree whose risk evaluation, as determined through a Whatcom County approved tree risk assessment method, is high. Risk evaluation is the combined measurement of: tree failure identification, probability of failure, potential damage to permanent physical improvements to property causing personal injury, and consequences. A tree that constitutes an airport hazard is considered a hazard tree. A hazard tree whose failure is imminent and consequences of damage to permanent physical improvements to property causing personal injury is significant is considered an emergency. “Imminent” in this instance means failure has started or is most likely to occur in the near future, even if

there is no significant wind or increased load. Imminent may be determined by a qualified consultant (defined in WCC 16.16.900) or when mutually agreed upon by a land owner and Whatcom County.

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.430 Tree removal not associated with development activity.

- (1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Whatcom watershed, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless the activity is exempted below; provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer:
 - (a) Removal of any hazard trees considered an emergency within the definition of hazard tree in WCC 20.97. Within 30 days after the emergency is abated the land owner shall submit photo documentation with a form provided by Whatcom County.
 - (b) Pruning and maintenance of trees of up to 25 percent of the foliage....
 - (5) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided, that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter 16.16 WCC.
-

Chapter 20.71 Water Resource Protection Overlay District

20.71.354 Tree removal not associated with development activity.

- (1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Padden and Lake Samish watersheds, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless the activity is exempted below; provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer:
 - (a) Removal of any hazard trees considered an emergency within the definition of hazard tree in WCC 20.97. Within 30 days after the emergency is abated the land owner shall submit photo documentation with a form provided by Whatcom County.
 - (b) Pruning and maintenance of trees of up to 25 percent of the foliage....
- (5) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) above must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided that

removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter 16.16 WCC.

Chapter 20.62 General Commercial (GC) District

20.62.300 Maximum density.

.301 Hotels and motels shall not exceed a floor area ratio of .60.

Chapter 20.66 Light Impact Industrial (LII) District

20.66.550 Buffer area.

.551 When a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Urban Residential-Mixed, Rural, or Residential Rural District, setbacks shall be increased to 50 feet. A minimum of 25 feet shall be landscaped consistent with the requirements of WCC 20.80.345.

Chapter 20.68 Heavy Impact Industrial (HII) District

20.68.550 Buffer area.

.552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory structures shall be established consistent with the following options:

- (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security roads, parking, or open space.
- (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the setback(s) may be used for security roads, parking, or open space.
- (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.
- (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.
- (5) In no case shall the setback from the northern and western boundaries of the Cherry Point Heavy Industrial area not contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and security or protective.

Chapter 20.80 Supplementary Requirements

20.80.220 Use of setback areas

All setback measurements are minimum requirements. All front yard and rear yard setback areas shall be open from side-to-side of the lot except as otherwise provided by the following:

(1) Front Yards.

- (a) Appurtenances, including but not limited to: uncovered patios and decks less than 30 inches in height; driveways and walkways; pools and other recreation equipment; utilities, septic systems, and propane tanks with fuel capacities up to 500 gallons; and fences, walls, and vegetative hedges up to four feet in height may be placed in this front yard setback area subject to the limitations of WCC 20.80.210(3) (Vision Clearance); and provided, that:
 - (i) The location of propane tanks with fuel capacities up to 500 gallons is restricted to the rear 50 percent of front yard setbacks. All such propane tanks shall be:
 - (A) Inspected and approved by the Whatcom County fire marshal for compliance with the most currently adopted International Fire Code and, when required by the Fire Marshal, isolated from other uses by a noncombustible wall or fence; and
 - (B) Screening by a fence or with shrub vegetation planted to a minimum height of six inches above the top surface of the propane tank is encouraged.

...

- (c) Outside of Urban Growth Areas fences, walls, and vegetative hedges up to a maximum of six feet in height may be located within the front yard setback area subject to the limitations of WCC 20.80.210(3) (Vision Clearance).
- (3) Side yards must be kept open; provided, that uncovered patios and decks less than 30 inches in height; driveways, walkways, and parking areas; pools and other recreational equipment; and fences, walls, and vegetative hedges up to seven feet in height may be placed in the side yard.

20.83.050 Damage or destruction – Rebuilding permitted.

If a nonconforming use or structure is damaged or destroyed by any means, that use or structure may be permitted to be rebuilt to the same square footage of damaged or destroyed structure(s), for the same use and location on the site; except, no portions of said rebuilt structure may extend onto property not belonging to the owner.

20.80.230 Measurement of setbacks.

- (2) Reduction of setbacks. In situations where a property is so encumbered by shoreline setbacks, critical areas, and/or their buffers that a typical structure for that zone cannot be built due to dimensional requirements, the Zoning Administrator or Hearing Examiner, whichever is the decision maker on the permit, may reduce the standard front yard setback to 20 feet.

20.80.545 Minimum distance and setbacks. (deleted)

20.80.650 Air quality.

No development, including traffic generated directly by it, should generate air pollution exceeding the minimum permissible emission levels established by the Northwest Clean Air Agency (NWCAA) or the Environmental Protection Agency.

20.80.670 Docks. (deleted)

Chapter 20.85 Planned Unit Developments (PUD)

20.85.100 Design and development standards.

20.85.101 Conformance.

All uses and development shall conform to all relevant requirements and standards of:

- (2) The International Building and Fire Codes;

20.85.119 Critical Areas – Alternative Mitigation Plans.

The Hearing Examiner may recommend and the County Council may approve alternative mitigation plans for planned unit developments in accordance with WCC 16.16.261, which may be used to satisfy the requirements of WCC Chapter 16.16 and relief from the specific standards and requirements thereof.

Chapter 20.88 Major Project Permits

20.88.200 Procedure

.275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that project shall be exempt from the requirement to obtain a major project permit.

Chapter 20.97 Definitions

20.97.293 Party of record.

“Party of record” means any of the following:

1. The applicant and any appellant;
2. The property owner as identified by Whatcom County Assessor’s records;

3. Any person, County department, and/or public agency who individually submitted written comments or testified at the open record hearing on the merits of the case (excluding persons who have only signed petitions or mechanically produced form letters); and;
4. Any person, County department, and/or public agency who specifically request notice of decision by entering their name and mailing address on a register provided for such purpose at the open record hearing.

A party of record does not include a person who has only signed a petition or mechanically produced form letters. A party of record to an application/appeal shall remain such through subsequent county proceedings involving the same application/appeal. The county may cease mailing material to any party of record whose mail is returned by the postal service as undeliverable.

A Party of Record does not have standing unless they meet the standing criteria. Persons who do not qualify as a party of record may still receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner with a request for such notice.

20.97.429.05 Standing.

“Standing” is the status required for a person, agency, or other entity to bring an action before the Hearing Examiner. A person has standing per RCW 36.70C.060 if they are:

1. The applicant and the owner of property to which the land use decision is directed; or
2. Another person, County department, and/or public agency aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 - (a) The land use decision has prejudiced or is likely to prejudice that person;
 - (b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
 - (c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
 - (d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

Chapter 21.02 Variances, Appeals and Amendments

21.02.030 Appeals.

- (1) Any person with standing may appeal any order, final permit decision, final administrative determination including pre-approval or preliminary approval in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160.
-

Chapter 22.05 Project Permit Procedures

22.05.110 Final decisions.

- (1) The director or designee'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 the hearing examiner finds are necessary to make the application compatible with its environment, 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) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.
 - (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 superior court, except as otherwise specified in WCC 22.05.020.

Chapter 22.20 Land Use and Development Code Interpretation Procedures

22.20.060 Appeals.

Any person with standing may file an appeal of a formal code interpretation. The appeal shall follow all rules and procedures for appeals to the Hearing Examiner as set forth in WCC 22.05.160.

Chapter 20.89 Density Transfer Procedure

20.89.050 Receiving areas.

.051 Designation of Receiving Areas. In addition to those areas which qualify as receiving areas according to the official Whatcom County zoning map, the county council may approve additional areas as receiving areas.

- (1) Designated Receiving Areas. Such additional areas may be approved through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 22.10 WCC, Amendments.
- (2) Cities. In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to

this chapter. Under the above provisions, the designation of additional TDR receiving areas shall be based upon findings that the area/site is appropriate for higher residential densities, is not limited by significant critical areas, and neighboring areas would not be significantly adversely impacted. If such areas are determined to be appropriate for designation as TDR receiving areas/sites, prior to development, parcel owners shall be required to purchase TDRs to attain the maximum gross density requested under the proposed zoning. The purchase of TDRs shall not be required until such time that the requirements of WCC 20.89.060 have been met.

- (3) Water Resource Protection Overlay District. Development rights may be transferred within the Water Resource Protection Overlay District for an increase in impervious surface pursuant to Chapter 20.71 WCC.

Chapter 20.97 Definitions

20.97.099.4 Director.

“Director” means the Director of Planning and Development Services or his/her designee.

Chapter 22.05 Project Permit Procedures

22.05.010 Purpose and applicability.

- (3) The meaning of words used in this chapter shall be as defined in WCC 20.97.

22.05.160 Appeals.

- (1) Any person with standing may appeal any order, final permit decision, or final administrative determination made by the director or designee 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.
 - (a) To be valid, an appeal 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) The applicant, 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.

Chapter 20.97 Definitions

20.97.113 Electric vehicle charging station.

“Electric vehicle charging station” means a parking space that is served by battery charging equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle and that meets or exceeds any standards, codes, and regulations set forth by RCW Chapter 19.28 and consistent with rules adopted under RCW 19.27.540.

Chapter 20.59 Rural General Commercial (RGC) District

20.59.100 Accessory uses.

.107 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.60 Neighborhood Commercial Center (NC) District

20.60.100 Accessory uses.

.105 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.61 Small Town Commercial (STC) District

20.61.100 Accessory uses.

.109 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.62 General Commercial (GC) District

20.62.100 Accessory uses.

.105 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.63 Tourist Commercial (TC) District

20.63.100 Accessory uses.

.105 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.65 Gateway Industrial (GI) District

20.65.100 Accessory uses.

.108 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.67 General Manufacturing (GM) District

20.67.100 Accessory uses.

.109 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.69 Rural Industrial and Manufacturing (RIM) District

20.69.100 Accessory uses.

.111 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.70 Airport Operations (AO) District

20.70.100 Accessory uses.

.107 Electric vehicle charging stations and battery exchange facilities.

Chapter 20.20 Urban Residential (UR) District

20.20.656 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.655 Drainage.

All development activities are subject to the stormwater management provisions of the WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.24 Urban Residential Mixed (UR-MX) District

20.24.656 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.32 Residential Rural (RR) District

20.32.656 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.34 Rural Residential-Island (RR-I) District

20.34.659 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.35 Eliza Island (EI) District

20.35.654 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.36 Rural (R) District

20.36.656 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.37 Point Roberts Transitional Zone (TZ) District

20.37.655 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.40 Agriculture (AG) District

20.40.652 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.42 Rural Forestry (RF) District

20.42.657 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.43 Commercial Forestry (CF) District

20.43.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.44 Recreation and Open Space (ROS) District

20.44.652 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.59 Rural General Commercial (RGC) District

20.59.704 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.60 Neighborhood Commercial Center (NC) District

20.60.655 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.61 Small Town Commercial (STC) District

20.61.704 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.62 General Commercial (GC) District

20.62.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.63 Tourist Commercial (TC) District

20.63.654 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.64 Resort Commercial (RC) District

20.64.655 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.65 Gateway Industrial (GI) District

20.65.659 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.66 Light Impact Industrial (LII) District

20.66.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.67 General Manufacturing (GM) District

20.67.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.68 Heavy Impact Industrial (HII) District

20.68.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.69 Rural Industrial and Manufacturing (RIM) District

20.69.655 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.70 Airport Operations (AO) District

20.70.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.72 Point Roberts Special District

20.72.658 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.74 Cherry Point Industrial (CP) District

20.74.100 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.40 Agriculture (AG) District

20.40.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.34 Rural Residential-Island (RR-I) District

20.34.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.36 Rural (R) District

20.36.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.32 Residential Rural (RR) District

20.32.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.42 Rural Forestry (RF) District

20.42.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.37 Point Roberts Transitional Zone (TZ) District

20.37.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.24 Urban Residential Mixed (UR-MX) District

20.24.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.20 Urban Residential (UR) District

20.20.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.130 Administrative approval uses.

.131 A temporary second dwelling unit of no more than 1,248 square feet in floor area, in the form of a manufactured home, a fully serviced travel trailer, park model trailer, or motor home, to provide:

Chapter 20.80 Supplementary Requirements

20.80.210 Minimum setbacks.

(5) Setbacks.

(b) Setbacks Table.

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Hwys, Urban Principal, & Urban Minor Arterials	Urban Collector Arterials & Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
Residential Setbacks							
Rural Residential (RR)	45	35	25	25	20	5	5
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some RR setbacks may differ pursuant to WCC 20.80.210(5)(a)(iv) and 20.80.251(2).							
Rural Residential-Island (RR-I)	-	-	25	25	20	5	5
Note: Depending on circumstances, some RR-I setbacks may differ pursuant to WCC 20.80.251(4).							
Point Roberts Transitional Zone (TZ)	45	35	25	25	20	5	5
Urban Residential Mixed Use (UR-MX)	45	35	25	10	10	5	5
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Urban Residential Medium (URM)	45	35	25	25	20	5	5
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some URM setbacks may differ pursuant to WCC 20.80.251(3).							
Urban Residential (UR)	45	35	25	25	20	5 ¹	5
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some UR setbacks may differ pursuant to WCC 20.80.251(1).							
Rural Setbacks							
Rural (R)	45	45	35	25	20	5	5
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some R setbacks may differ pursuant to WCC 20.38.060(7), 20.80.210(5)(a)(iv), and 20.80.252.							
Commercial Setbacks							
General Commercial (GC)	30	30	25	25	20	0	10
Note: Depending on circumstances, some GC setbacks may differ pursuant to WCC 20.62.550.							
Rural General Commercial (RGC)	30	30	25	25	20	0	10
Note: Depending on circumstances, some RGC setbacks may differ pursuant to WCC 20.59.600.							
Tourist Commercial (TC)	30	30	25	25	20	0	10
Note: Depending on circumstances, some TC setbacks may differ pursuant to WCC 20.63.550 and 20.80.253(3).							
Small Town Commercial (STC)	30	30	25	25	20	0	10
Note: Depending on circumstances, some STC setbacks may differ pursuant to WCC 20.59.600, 20.61.400(1), and 20.61.600.							
Resort Commercial (RC)	30	30	25	25	20	5	5
Note: Depending on circumstances, some RC setbacks may differ pursuant to WCC 20.64.350, 20.64.550, and 20.80.253(4).							
Neighborhood Commercial	25	25	25	25	20	0	10

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Hwys, Urban Principal, & Urban Minor Arterials	Urban Collector Arterials & Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
(NC)							
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	0	10
Note: Depending on circumstances, some NC setbacks may differ pursuant to WCC 20.80.253 and 20.60.550.							
Industrial Setbacks							
Heavy Impact Industrial (HII)	100	100	100	100	30	30	30
Note: Depending on circumstances, some HII setbacks may differ pursuant to WCC 20.68.552 and 20.80.254(3).							
Light Impact Industrial (LII)	30	30	30	30	20	10	10
Note: Depending on circumstances, some LII setbacks may differ pursuant to WCC 20.80.254(1).							
General Manufacturing (GM)	30	30	30	30	20	10	10
Note: Depending on circumstances, some GM setbacks may differ pursuant to WCC 20.80.254(2).							
Gateway Industrial (GI)	25	25	25	25	25	10	10
Note: Depending on circumstances, some GI setbacks may differ pursuant to WCC 20.65.400.							
Airport Operations (AO)	30	30	30	30	20	10	10
Note: Depending on circumstances, some AO setbacks may differ pursuant to WCC 20.70.550 and 20.80.254(4).							
Rural Industrial – Manufacturing (RIM)	30	30	30	30	20	10	10
Note: Depending on circumstances, some RIM setbacks may differ pursuant to WCC 20.69.350 and 20.69.550.							
Resource Lands Setbacks							
Agricultural (AG)							
- parcels ≥ 5 acres	50	50	50	50	50	20	20
- parcels < 5 acres	45	35	25	25	20	5	5
Note: Depending on circumstances, some AG setbacks may differ pursuant to WCC 20.38.060(7) and 20.80.255							
Rural Forestry (RF)	45	35	25	25	20	20	20
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	20	20
Note: Depending on circumstances, some RF setbacks may differ pursuant to WCC 20.80.210(5)(a)(iv) and 20.80.256.							
Commercial Forestry (CF)	45	35	25	25	20	100	100
- If in a WRPO ¹ or LWWO ²	30	30	20	20	20	100	100
Note: Depending on circumstances, some CF setbacks may differ pursuant to WCC 20.80.256(2).							
Other Setbacks							
Recreation Open Space (ROS)	100	100	50	50	50	50	50
Note: Depending on circumstances, some ROS setbacks may differ pursuant to WCC 20.80.257.							

¹ Water Resources Protection Overlay district

² Lake Whatcom Watershed Overlay district

20.80.250 Special setback provisions by district.**20.80.254 Industrial districts.****(3) Heavy Impact Industrial District.**

- (a) All setbacks shall be increased by one foot for each foot of building height (excluding tanks and similar structures) that exceeds 50 feet in height.
- (b) The building setbacks of WCC 20.80.210 shall not apply to utility or security structures such as poles, meters, fences, guard structures and the like, nor to structures relating to shipment on railroad rights-of-way; provided, that no traffic hazards are created. For nonindustrial buildings, the provisions of subsection (3)(e) of this section shall apply.
- (c) Setbacks for parcels adjoining a nonindustrial district(s) shall be administered pursuant to WCC 20.68.550 (Buffer Area).
- (d) The setback requirements of the Heavy Impact Industrial District shall apply to the storing and handling of hazardous materials; provided, that if federal and/or state regulations require different setbacks, the greater setback (county, federal, or state) shall be used.
- (e) The zoning administrator may reduce setbacks for nonindustrial buildings to those of Light Impact Industrial if the reduced setbacks would not interfere with existing sewer, water and other easements.

Chapter 20. 25 Land Use and Development Fees**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) Fees for Project Permits.

- (a) Applications withdrawn on or before the fourteenth calendar day after the date of application shall be eligible for a refund of 90 percent of all application fees including any SEPA fees.
- (b) Applications withdrawn after the period set forth in subsection (1)(a) of this section but on or before the ninetieth calendar day after the date of application shall be eligible for a refund of 50 percent of all application fees except for any SEPA fees which shall not be eligible for a refund.
- (c) Applications withdrawn after the ninetieth calendar day after the date of application shall not be eligible for a refund.
- (d) Notwithstanding the above, no fees shall be refunded for any permit or approval that has been issued or granted by the county.
- (e) The director may authorize a full refund of any project permit application fee paid in error.

- (2) Fees for Amendments to the Whatcom County Comprehensive Plan, Development Regulations, and Official Maps.
- (a) The docketing fee shall be non-refundable.
 - (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.