

Code Scrub 2018

Exhibit A: Proposed Amendments

(Note: **Yellow highlight** indicates Planning Commission amendments.)

Chapter 20.38 Agriculture Protection Overlay

1. Clarify 20.38.060(7), as the language is confusing. The intent is to have greater setbacks for cluster subdivisions when adjacent to agricultural land so as to minimize nuisance complaints.

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

2. Revise 20.40.254(5)(a) & (b) to correspond to the minimum parcel sizes listed in Table 20.40.251. Pursuant to the table, one has to maintain a minimum lot size of "X acres," but the text inconsistently says "greater than X acres."

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

...

3. Add maximum density language to Chapter 20.40 similar to other zones. All other zoning chapters specify what the maximum density for that zone is. Though a maximum density of a dwelling unit/acre is implied by the 40 ac minimum parcel size, it's not explicitly stated.

20.40.550 Maximum Density.

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

Chapter 20.97 Definitions

4. Currently there are four definitions of hazard trees in various sections of the code. Staff had proposed to replace the definition of “Hazard Tree” with one recommended by our Prosecuting Attorney and delete the others so that they are all consistent.

The Planning Commission, though, found that definition was wanting in terms of grammar and clarity and amended it to try to fix it (see below).

However, upon further reflection, staff still found it ambiguous, especially in conjunction with the amendments proposed in Issue 5, below. Staff now proposes a new definition..

20.97.171.2 and 16.16.900 Hazard Tree

Original staff proposal: “Hazard Tree” means a tree which poses an imminent failure, poses a likelihood of striking the target, and has a significant consequence of tree failure as determined through a tree risk evaluation form provided by Whatcom. A tree which constitutes an airport hazard is considered a hazard tree.” “Imminent” in this case means failure has started or is most likely to occur in the near future, even if there is not significant wind or increased load. This is a rare occurrence to encounter, and it may require immediate action to protect people from harm.

Planning Commission rewrite: “Hazard Tree” means a tree that poses an imminent failure and poses a likelihood of causing damage to persons or property, has a significant consequence of tree failure (as determined through a tree risk assessment form provided by Whatcom County). A tree that constitutes an airport hazard is considered a hazard tree.” “Imminent” in this case means failure has started or is most likely to occur in the near future, even if there is no significant wind or increased load.

Final staff proposal: “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.

5. Amend the hazard tree exemption in 20.51.430(1)(a) and 20.71.354(1)(a). Though they both say the removal of hazard trees is exempt from obtaining a tree removal permit, they also say you have to meet the requirements of (5), which require obtaining a tree removal permit.

Staff had originally proposed, and the Planning Commission recommended approval of (with a few amendments for clarity's sake), the first versions in the following sections. However, upon further reflection, staff still found it ambiguous, especially in conjunction with the amendments proposed in Issue 4, above. Staff now proposed additional amendments, show in the second versions in the following sections.

Chapter 20.51 Lake Whatcom Watershed Overlay District

Original staff proposal, as amended and approved by the Planning Commission:

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:

- (a) When Whatcom County has approved an ISA Basic Tree Risk Assessment Form, removal of any hazard trees or as necessary to remedy an immediate threat to person or property, pursuant to the requirements in subsection (5) of this section;
- (b) Pruning and maintenance of trees of up to 25 percent of the foliage.

...

- (5) Hazard Tree Removal. Any property owner seeking to remove any number of significant trees that are a hazard shall first obtain approval of an ISA Basic Tree Risk Assessment Form or a tree removal permit and meet the requirements of this subsection.

- (a) Tree Risk **Assessment**. When the hazard is obvious, submit only the ISA Basic Tree Risk Assessment Form.
- (b) Tree Risk Assessment. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required.
- (c) Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or their buffers, tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.

Final staff proposal:

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

Original staff proposal, as amended by the Planning Commission:

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:
 - (a) When Whatcom County has approved an ISA Basic Tree Risk Assessment Form, removal of any hazard tree(s) as necessary to remedy an imminent threat to person or property, pursuant to the requirements in subsection (5) of this section;
 - (b) Pruning and maintenance of trees of up to 25 percent of the foliage.fdsdf

...

- (5) Hazard Tree Removal. Any property owner seeking to remove any number of significant trees that are a hazard shall first obtain approval of an ISA Basic Tree Risk Assessment Form or a tree removal permit and meet the requirements of this subsection.
 - (a) Tree Risk Assessment. When the hazard is obvious, submit only the ISA Basic Tree Risk Assessment Form.
 - (b) Tree Risk Assessment. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required. Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or their buffers, tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.
 - (c) Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or their buffers, tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.

Final staff proposal:

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

6. Amend the heading of 20.62.300, as the text describes a maximum, not a minimum, density.

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

7. Amend 20.66.550 to remove the increased setback from “principal arterials.” Whatcom County doesn’t have a “principal arterial” classification.

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.

8. In 20.68.552(5), delete the reference to the Cherry Point/Ferndale Subarea Plan, as it is slated for repeal. The intent of this policy is already included within the regulation of .552.

“Policy 1.05: To attain compatibility with surrounding nonindustrial land use designations and to minimize heavy industrial off-site impacts, it is the policy of Whatcom County to require industrial users to provide a buffer which is located within the designated HEAVY IMPACT INDUSTRIAL area and which adjoins said nonindustrial land use designations.

As a means of protecting the existing and planned residential uses in the Point Whitehorn area from detrimental environmental and visual impacts generated from the Heavy Impact Industrial area, a 660-foot buffer strip shall be established. Said buffer shall be situated adjacent to and south of Grandview Road between Jackson Road and Koehn Road; adjacent to and east of Koehn Road between Grandview Road and Brown Road; and adjacent to the east of the eastern property line of tax lots 2.27 and 2.28 between Brown Road and the shoreline. This buffer strip may be utilized for security or protective uses, parking, or the open space requirements of the Heavy Impact Industrial zone district. Land within the buffer strip which is not required for the above uses and is currently covered with natural vegetative species shall not be cleared, logged or altered in any manner which would reduce the natural screening characteristics of said buffer.”

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.
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Chapter 20.80 Supplementary Requirements

9. In 20.80.220(1)(a), clarify the “use of setback areas” language and add “uncovered decks” and “utilities,” as these are typically allowed in a front yard setback.

In 20.80.220(1)(a)(i)(A), updated the name of the adopted fire code.

In 20.80.220(1)(c), clarify that higher appurtenances (up to 6 feet) are allowed in rural areas. We distinguish that these are allowed in rural areas, but not urban areas, since in urban areas lots are smaller and typically built as suburban neighborhoods where 6-foot fences and hedges in front yards lead to isolation of neighbors, lessen safety (both sight distance and policing), break up the streetscape, and generally diminish “community.”

Additionally in 20.80.220(1)(c), delete the vision clearance requirements, as this is just a repeat of what’s found in WCC 20.80.210(3).

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.

10. In 20.83.050, clarify that nonconforming structures, while they can be rebuilt, must be rebuilt on one's own property and cannot cross onto someone else's property (even if it's been there awhile).

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.

11. Amend 20.80.230(2) so that reduced front yard setbacks can be applied wherever necessary to protect critical areas, not just shorelines.

20.80.230 Measurement of setbacks.

(4) 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.

12. Delete 20.80.545. The limitations of the first sentence are already covered by WCC 20.80.350 (Parking Areas). 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.

13. In 20.80.650, update the name of agency responsible for establishing minimum permissible emission levels (it was renamed many years ago).

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.

14. Delete WCC 20.80.670, as it is covered in the Shoreline Management Program (WCC 23.100.090). This is already covered by WCC 16.16.720.

Chapter 20.85 Planned Unit Developments (PUD)

15. Amend 20.85.101 to reference the correct building and fire codes.

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;

16. Add a new section 20.85.119 to Chapter 20.85. WCC 16.16.260(E) already has this allowance, but this insertion will help point readers to it.

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

17. Amend 20.88.275. If someone applies for a Planned Unit Development, we do not make them obtain a Master Project Permit. The same should be true of applying for a developer's agreement, as they, too, go before the Council.

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.

18. In 20.97, amend the definition of “party of record” and add a definition of “standing.” In other sections of the code, amend so that one must be a person with “standing” in order to file an appeal.

According to the Prosecuting Attorney, our current definition of “Party of Record” is a broad, somewhat confusing status for people who are in the record or contribute to the record. This status should only mean that you get notice of hearings. This does not mean that you automatically have standing. A person could be a Party of Record and have standing, but they don’t have standing just because they are a party of record. “Standing” should be the operative term that allows people to appeal. The proposed definition of “standing” is that found in RCW 36.70C.060 (Judicial Review of Land Use Decisions)

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.

20.97.293 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;
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

19. Delete 20.86.051(2) and (3), which require Transfer of Development Rights (TDRs) for certain rezones and UGA expansions. Similar provisions in WCC 2.160.080 and WCC 20.90.064 were repealed when Title 22 was adopted in June 2018 (Ordinance 2018-032). Additionally, the Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report (October 3, 2018) states:

“A Civil Deputy from the County Prosecuting Attorney’s Office stated that, in his opinion, the County cannot require TDRs for UGA expansions or rezones under RCW 82.02.020.

The TDR/PDR Work Group recommends that the County consider deleting WCC 20.89.051(2) and (3), which state that certain rezone requests and UGA expansions are required to transfer development rights from designated TDR sending areas” (pp. 55, see also pp. 50 and 51).

Therefore, deleting these code provisions should be considered.

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. In 20.97, add a definition of “director.”

20.97.099.4 Director.

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

Chapter 22.05 Project Permit Procedures

21. In 22.05.010, add a section that says all definitions are found in 20.97, as there is no definitions section of Title 22.

22.05.010 Purpose and applicability.

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

22. In 22.05.160(1):

- Clarify that an appeal application is only valid if it meets the listed requirements and that it must be filed with an application form developed by PDS.
- Clarify that appeal hearings before the Hearing Examiner are “open record public hearings.”
- Change “party of record” to “person with standing” for the reasons provided in Issue 18, above.

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.

23. Amend the definitions (20.97) of “electric vehicle charging station” and “electric vehicle rapid charging station” merging the two into one definition. We can merge the two definitions since the code doesn’t even address “electric vehicle charging stations,” and there isn’t much difference between the two other than how fast it can charge.

Additionally, wherever “electric vehicle rapid charging stations” are allowed as accessory uses, delete the word “rapid” and “accessory to conditionally approved service stations” (or the variants on that clause).

These rules were adopted when electric vehicles were relatively new and no one knew what charging stations would look like or how they would operate. Today, electric vehicle charging stations generally occupy a small number of parking spaces already existing in strip malls or other commercial centers, where people can stop and eat, shop, or run other errands while their car is changing, typically for 30-60 minutes. The equipment is relatively small, about the size of a traditional U.S. Postal drop box.





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.

24. The language of the “Drainage” sections varies between zones and should be standardized. Staff proposes to have them all say:

“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.”

The clause “within Whatcom County” can be deleted because our code only applies in Whatcom County, and the clause “unless specifically exempted” can be deleted because such exemptions are listed in WCC 20.80.631, one of the referenced sections.

In addition, delete 20.22.655(1) (URM District). This is old code inserted at a time when we thought Whatcom County was going to adopt the City of Bellingham’s code to apply within its UGA. However, the City of Bellingham never provided the County with the code to adopt, and since then both Bellingham and Whatcom County have adopted the Department of Ecology Stormwater Manual; therefore, this section isn’t needed.

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.

25. Allow park model trailers as a temporary ADU, similar to manufactured homes, travel trailers, and motorhomes.

20.97.292 Park model trailer.

“Park model trailer” means a trailer designed to provide seasonal or temporary living quarters which may be used with temporary connections to utilities necessary for operation of installed fixtures and appliances. It has a gross trailer area not exceeding 400 square feet or is approved by the state as a park model trailer.

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:

26. In the setback tables, delete the repetitious table notes. These “rules” are already found in WCC 20.80.250 (Special Setback Provisions by District) or other places. They have been copied here, often with slightly different language, which just confuses things and makes the setback table overly long.

Staff proposes to reformat the setback table to that shown below, and reduce the notes to just references to the sections that might modify the setbacks (thus reducing repetitious, inconsistent language).

Staff also proposes to delete the header references to “principal arterials,” “neighborhood collectors,” and “commercial” and “industrial” arterials as Public Works doesn’t have these roadway classifications.

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

27. In 20.80.254:

- Delete the reference to the Cherry Point/Ferndale Subarea Plan in subsection (3)(c), as it is slated for repeal. The intent of this policy is already included within the regulation of 20.68.552. Also,
- Fix the faulty cross-reference in subsection (3)(b).
- Delete the last sentence of (3)(e), as it makes no sense (refers to a process in (3)(d), but there is no process in that section).

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

28. The current refund code language is oriented towards short-term permit time periods rather than the lengthier docketing of Comprehensive Plan or code amendments. Docket items can take a year or more (sometimes several years) to process due to PDS workloads, state mandates, Council priorities, and/or work program resource limitations. However, the existing refund deadlines of 14 or 90 days precludes an applicant from receiving a refund after those deadlines even if work has not yet commenced on the project. This proposed amendment would allow for partial to full application fee refunds for docketed items depending upon the amount of review and work undertaken by PDS.

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.