

## Whatcom County Planning & Development Services Staff Report

### Vacation Rentals Title 20 Zoning Code Amendments & Title 23 Shoreline Master Program Amendments

#### I. BACKGROUND INFORMATION

**File #s** PLN2014-00020 (Title 20 Zoning Code Amendments) & PLN2016-00011 (Title 23 Shoreline Master Program Amendments)

**File Name:** Vacation Rentals – Zoning and Shoreline Master Program Code Amendments

**Applicant:** Whatcom County Planning and Development Services (PDS)

**Summary of Request:** Amend Whatcom County Code Title 20 (Zoning) to define and regulate short-term rentals of residential units, and Whatcom County Code Title 23 (Shoreline Master Program (SMP)) to add definitions of “bed and breakfast establishment” (B&Bs) and “vacation rental unit” and to remove B&Bs from the list of commercial uses that are subject to a shoreline conditional use permit.

**Location:** Countywide.

**Staff Recommendation:** As it has been awhile since Council has considered this proposal, Planning and Development Services recommends that the Council Planning & Development (P&D) Committee review the proposed code amendments and provide direction to staff. If the P&D Committee chooses to schedule the ordinance before the whole Council for action, staff will schedule it for introduction and a public hearing.<sup>1</sup>

#### **Reason for Amendments**

Over the past several years, the County has received public complaints regarding vacation rental units, generally regarding noisy behavior of guests, which is enforced by the Sheriff under the “disorderly house” provisions of WCC 9.40. Complaints related to land use considerations (such as overflow parking) have occurred when a rental property is used as a special event venue for weddings, retreats, or other gatherings. Council directed staff to develop regulations for vacation rentals to help minimize impacts to surrounding residents.

#### **Existing Code**

##### **Zoning Code**

The Whatcom County Zoning Code (WCC Title 20) does not currently prohibit rental of single-family dwellings, either short or long term. Lacking such a prohibition, PDS interprets the Zoning Code to permit vacation rentals wherever single family dwellings are permitted.

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<sup>1</sup> The Council has already held a public hearing on PLN2016-00011 prior to the SMP amendments being sent to the Department of Ecology; however, Council has not held a hearing on PLN2014-00020.

Whatcom County's zoning code does not list vacation rentals as a distinctive land use that is either permitted or prohibited. The zoning code does define and regulate transient room rentals for bed and breakfasts, rooming houses, and hotels as shown in Table 1:

Table 1. Current Zoning Regulation of Transient Room Rentals

<i>Use</i>	<i>Number of Persons</i>	<i>Number of Rooms</i>	<i>Owner Occupied</i>	<i>Permitted Use in:</i>	<i>Accessory Use in:</i>	<i>Conditional Use in:</i>
<b>B&amp;B Establishment</b> WCC 20.97.027		1 or 2	Yes	RC in Pt. Roberts,	UR, URM, URMX, RR, RRI, TZ, RC, STC, AG, R	RF
<b>B&amp;B Inn</b> WCC 20.97.028		3 to 5	Yes	RC in Pt. Roberts	RC, STC	UR, URM, URMX, RR, RRI, TZ, AG, R
<b>Rooming House</b> WCC 20.97.355	3 or more	No minimum or maximum		RC (except Maple Beach in Pt. Roberts) 3-8 persons		URM
<b>Motel</b> WCC 20.97.260		No minimum or maximum		RC (16 or fewer rooms), AO, TC, GI, GC, STC		RGC, Pt. Roberts Special District
<b>Hotel</b> WCC 20.97.185		6 or more		RC (16 or fewer rooms), AO, TC, GI, GC, STC		RGC, Pt. Roberts Special District

“Rooming house” is a permitted use only in the RC zone (except the Maple Beach section of Point Roberts) and a conditional use in URM. A “hotel” or “motel” is a permitted use only in commercial zones, including RC. A “bed and breakfast establishment” (an accessory use in residential and rural zones) allows for renting 1 or 2 rooms, while a “bed and breakfast inn” (a conditional use in residential and rural zones) allows for renting 3 to 5 rooms. Both types of bed and breakfast establishments must be owner-occupied.

In September 2014, staff compiled potential options for regulating vacation rentals from a land use standpoint and discussed them with the P&D Committee:

1. **Permitted outright as a single family dwelling.** Allow vacation rentals of any duration in residential zones without conditions.
2. **Permitted with performance standards.** Allow vacation rentals as a permitted use in all rural and residential zones, subject to conditions.
3. **Permitted in specified locations, with performance standards.** Same as 2 but permitted only in certain zones or geographic areas.
4. **Permitted with registration.** Same as 2 or 3 but with licensing or registration requirements.
5. **Prohibition.** Prohibit vacation rentals in all residential zones.

The P&D Committee expressed a preference for exploring Option 2, permitting vacation rentals countywide with performance standards, but with no additional licensing or registration requirements.

**Shoreline Management Program**

The SMP does not list or define a vacation rental unit use. However, the SMP definition of “residential development” expressly excludes “camping sites or clubs, recreational vehicle parks, motels, hotels and other transient housing.” Therefore PDS believes vacation rental units, like B&Bs, would be considered commercial uses under the current SMP.

During the course of the discussion with the P&D Committee, staff pointed out that even if vacation rentals and B&Bs were allowed under the zoning code, the current SMP regulations would make it very

difficult to locate them within the SMP jurisdiction (generally within 200 feet of a shoreline). A *new* B&B or vacation rental development within shoreline jurisdiction would be subject to a shoreline substantial development permit, though a *conversion* from an existing residence to one of these uses would likely be exempt from that requirement. However, whether it is a new development or a conversion, the B&B or vacation rental *use* within the SMP jurisdiction would be subject to a shoreline conditional use permit under the current regulations.

And it would likely be difficult to obtain a conditional use permit for a B&B or vacation rentals under current SMP criteria. The SMP currently lists B&Bs among commercial uses in its regulations for the “urban conservancy” and the “conservancy” shoreline designations. Those commercial uses are subject to a shoreline conditional use permit. WCC 23.60.040(B)(1), which lists shoreline conditional use permit criteria, requires that “the proposed use will be consistent with the policy of RCW 90.58.020 and this program.” That RCW section lists criteria in order of preference and gives preference to shoreline protection and public access over other uses.<sup>2</sup>

**Extent of B&B and Vacation Rental Uses**

Based on a November 2015 compilation of online listings, staff estimated that about one quarter of the approximately 400 short term rental units then advertised on the VRBO.com and airbnb.com websites in unincorporated Whatcom County were within shoreline jurisdiction (typically 200 feet from ordinary high water mark of an affected waterbody) (Table 2). While these uses are widespread throughout the County, they tend to cluster in areas traditionally characterized by recreational housing, such as Glacier and Birch Bay. Smaller clusters also exist in areas that have not been primarily recreational in nature, such as Lake Whatcom.

A large majority of these short term rental units are vacation rentals (Table 3 and Table 4). At present, conversion of a residence to a vacation rental does not require a permit or registration through PDS. Without such a requirement, there has been no action that would prompt PDS to inform owners within the SMP jurisdiction that a conditional use permit is required.

Table 2. VRBO and Airbnb Listings by Location and Shoreline Designation, November 2015

Location	Shoreline Designation (based on approximate location mapped in online listing)							Total
	Conservancy	Natural	Rural	Shoreline Residential	Urban Conservancy	Urban Resort	Outside Shoreline	
Birch Bay				8		11	46	65
Birch Point				1			2	3
Cain Lake				2				2
Chuckanut				7			3	10
Columbia Valley							4	4

<sup>2</sup> **RCW 90.58.020** “...The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.”

Location	Shoreline Designation (based on approximate location mapped in online listing)							Total
	Conservancy	Natural	Rural	Shoreline Residential	Urban Conservancy	Urban Resort	Outside Shoreline	
Deming	1							1
Drayton Harbor					3			3
E Bellingham							5	5
Emerald Lake				1			2	3
Everson							1	1
Glacier	14						128	142
Glacier Springs							49	49
Gooseberry Point				1			2	3
Lake Samish				3				3
Lake Whatcom			5	11			18	34
Lummi Island	4		12				11	27
Maple Falls							4	4
Marietta							1	1
North County							3	3
N Bellingham							3	3
Point Roberts		1		8		1	10	20
Sandy Point				8				8
Silver Lake	10						5	15
Squalicum Lake							2	2
Van Zandt							1	1
Welcome	2							2
<b>Total</b>	<b>31</b>	<b>1</b>	<b>17</b>	<b>50</b>	<b>3</b>	<b>12</b>	<b>300</b>	<b>414</b>

Table 3. VRBO and Airbnb Listings by Location and Type, November 2015

Location	Bed & Breakfast	Vacation Rental	Total
Birch Bay		65	65
Birch Point		3	3
Cain Lake		2	2
Chuckanut	1	9	10
Columbia Valley	1	3	4
Deming		1	1
Drayton Harbor		3	3
E Bellingham	1	4	5
Emerald Lake		3	3
Everson	1		1
Glacier		142	142
Glacier Springs		49	49
Gooseberry Point		3	3
Lake Samish		3	3
Lake Whatcom	3	31	34
Lummi Island		27	27

Location	Bed & Breakfast	Vacation Rental	Total
Maple Falls		4	4
Marietta		1	1
North County		3	3
N Bellingham	2	1	3
Point Roberts		20	20
Sandy Point		8	8
Silver Lake		15	15
Squalicum Lake		2	2
Van Zandt		1	1
Welcome		2	2
<b>Total</b>	<b>9</b>	<b>405</b>	<b>414</b>

Table 4. VRBO and Airbnb Listings by Type and Shoreline Designation, November 2015

Type	Shoreline Designation (based on approximate location mapped in online listing)							Total
	Conservancy	Natural	Rural	Shoreline Residential	Urban Conservancy	Urban Resort	Outside Shoreline	
Bed & Breakfast	0	0	0	1	0	0	8	9
Vacation Rental	31	1	17	49	3	12	292	405
<b>Total</b>	<b>31</b>	<b>1</b>	<b>17</b>	<b>50</b>	<b>3</b>	<b>12</b>	<b>300</b>	<b>414</b>

## Status of Amendments

### Zoning Code Amendments

The Planning Commission held a December 2014 work session and January 2015 public hearing regarding proposed zoning code amendments to regulate short-term rentals. The Commission recommended approval of the proposal to list B&Bs and vacation rentals as accessory uses in most zones.

The Council P&D Committee has discussed the issue four times since then. Committee discussion focused on permitting vacation rentals as accessory uses per the Planning Commission recommendations, adding a provision making them a conditional use in the Lake Whatcom Watershed, and adding a series of performance standards intended to protect the safety of guests and prevent negative impacts to nearby residents. The proposed amendments shown in Exhibit A are based on the P&D Committee's latest recommendation, with clarifying amendments proposed by staff since its last review. These are to §20.80.960, trying to better lay out the registration requirements, and amending the definition of "vacation rental unit" to match that of the DOE revised definition in the SMP amendments.

### Shoreline Management Program Amendments

The Planning Commission held a public hearing on June 23, 2016, on the SMP amendments and recommended approval.

On October 25, 2016, the County Council held a public hearing and pre-approved the proposed amendments, passing Resolution 2016-039 (attached), forwarding the SMP amendments to the Department of Ecology (DOE) for its review.

On April 3, 2018, the DOE granted condition approval of Resolution 2016-039, providing recommended minor changes to some of the definitions for clarity. These changes have been incorporated into the proposed draft amendments (Exhibit B).

## II. PROPOSED AMENDMENTS

### Zoning Code Amendments

The proposed code amendments (Exhibit A) would add vacation rentals as an accessory use in UR, URM, URMX, RR, RRI, TZ, RC, STC, AG, and R, subject to a series of standards listed in WCC 20.80, the “supplemental requirements” chapter of the zoning code. These are the zones where “bed and breakfast establishments” are currently permitted as an accessory use (see Table 1). Vacation rentals would also be required to annually register as such with PDS.

The amendment would also add a definition of vacation rentals to distinguish them from long-term rentals. The definition uses 30 days as the vacation rental threshold, which is consistent with the County’s transient occupancy definition (WCC Chapter 3.36 Transient Occupancy Tax) and with the definitions of bed and breakfast establishments and inns. The definition also specifies no food service, to distinguish them from the bed and breakfast uses.

### SMP Amendments

The proposed amendments (Exhibit B) would make B&Bs and vacation rental units residential rather than commercial uses in the SMP. This would be consistent with the proposed zoning code amendments, which would allow them as accessory uses to residential uses. Specifically, the amendment would:

- Remove B&Bs from the list of commercial uses subject to shoreline conditional use permits in the Urban Conservancy and Conservancy shoreline designations (WCC 23.30.055 and .095, and 23.100.050(C)(3) and .050(C)(7))
- Add a definition of “bed and breakfast” (WCC 23.110.020(4))
- Exclude B&Bs and vacation rental units from the definition of “commercial development” (WCC 23.110.030(6))
- Add B&Bs and vacation rental units to the definition of “residential development” (WCC 23.110.180(7)), and
- Add a definition of “vacation rental unit” (WCC 23.110.220(1))

The added definitions of B&B and vacation rental unit are consistent with those proposed in the Title 20 (zoning code) amendments. If enacted, the proposed zoning code amendments coupled with these amendments to the SMP would allow for a use that is already becoming a significant non-urban economic activity in the county, while placing performance standards on these uses to prevent negative impacts to surrounding residents.

## III. COMPREHENSIVE PLAN EVALUATION

### Zoning Code Amendments

The proposed zoning code amendment to add a definition and standards for vacation rental uses is consistent with the following policies of the Whatcom County Comprehensive Plan:

**Goal 2A:** Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.

Policy 2A-13 Allow for adequate economic development to provide economic sustainability, adequate employment opportunities, and services in and for the rural areas.

**Goal 2DD:** Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations ...

**Goal 2FF: Provide employment opportunities in the rural parts of Whatcom County.**

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

Policy 2FF-3: Ensure that business operations do not adversely impact adjacent residential, agricultural or forest land, or compromise water quality and quantity.

Policy 2FF-4: Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

**Goal 7K: Enable a geographic balance for economic growth within the capacities of the county's natural resources, natural systems, public services, and public facilities.**

Policy 7K-4: Consider establishing more resource and tourism based recreational, commercial, and industrial uses to create economic opportunity in the rural areas of the county.

### **Shoreline Management Program Amendments**

The proposed SMP amendment, in conjunction with the proposed zoning code amendments, is consistent with the following policies of the Whatcom County Comprehensive Plan:

**Goal 2A: Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.**

Policy 2A-13 Allow for adequate economic development to provide economic sustainability, adequate employment opportunities, and services in and for the rural areas.

**Goal 2DD: Retain the character and lifestyle of rural Whatcom County.**

Policy 2DD-2: Protect the character of the rural area through the County's development regulations ...

**Goal 2FF: Provide employment opportunities in the rural parts of Whatcom County.**

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

Policy 2FF-4: Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

**Goal 7K: Enable a geographic balance for economic growth within the capacities of the county's natural resources, natural systems, public services, and public facilities.**

Policy 7K-4: Consider establishing more resource and tourism based recreational, commercial, and industrial uses to create economic opportunity in the rural areas of the county.

#### **IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

Staff recommends the Council adopt the following findings of fact and reasons for action:

##### **PLN2014-00020 (Title 20 Zoning Code Amendments)**

1. Whatcom County Planning and Development Services submitted an application for a zoning code amendment to add a definition and standards for vacation rental units.
2. The amendment would add vacation rentals as an accessory use in zones where “bed and breakfast establishments” are currently permitted as an accessory use.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 1, 2014.
4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on November 26, 2014.
5. On January 8, 2015, the Whatcom County Planning Commission held a duly noticed public hearing on a proposal to amend the Zoning Code (WCC Title 20) to allow vacation rental units as accessory uses in most zones, and recommended approval.
6. On \_\_\_\_\_, 2018, the Whatcom County Council held a duly noticed public hearing on the proposed amendments.
7. WCCP Policies 2A-13, 2FF-1, 2FF-3, 2FF-4, and 7K-4 support small home-based businesses in the rural areas of the county.
8. WCCP Policies 2FF-3 and 2FF-4 support rural businesses provided they do not adversely impact rural character or surrounding uses.
9. WCCP Policy 2DD-2 supports protecting rural character through development regulations.

##### **PLN2016-00011 (Title 23 Shoreline Master Program Amendments)**

10. Whatcom County Planning and Development Services submitted an application for a SMP code amendment to define B&Bs and vacation rental units as residential uses.
11. PDS estimates that about a quarter of vacation rental and bed and breakfast uses offered on two of the most popular vacation rental websites is located within the Shoreline Master Program jurisdiction.
12. The amendment would list vacation rental and bed and breakfast uses as residential uses in the Shoreline Master Program, consistent with the proposed zoning code amendments.
13. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2016.
14. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 28, 2016.
15. The Planning Commission held a public hearing on the proposed amendments on June 23, 2016, notice of which was published in the Bellingham Herald on June 10, 2016.



16. The County Council held a duly noticed public hearing on the amendments on October 25, 2016, and passed Resolution 2016-039, directing staff to forward the SMP amendments to the Department of Ecology for its review.
17. Pursuant to WAC 173-26-110 and Resolution No. 2016-039, the staff forwarded the proposed SMP amendments to the Washington State Department of Ecology for review as a limited master program amendment.
18. On April 3, 2018, the Department of Ecology granted conditional approval of the proposed amendments, requesting some minor definitional changes that have been incorporated into the proposal.
19. WCCP Policies 2A-13, 2FF-1, 2FF-4, and 7K-4 support economic sustainability in the rural areas of the County.
20. WCCP Policy 2FF-4 supports rural home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

## **V. PROPOSED CONCLUSIONS**

1. The zoning amendments defining vacation rental units and regulating their operation is in the public interest.
2. The Shoreline Master Program amendments regarding vacation rental units and bed and breakfasts in the shoreline jurisdiction is in the public interest.
3. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VI. RECOMMENDATION**

Planning and Development Services recommends that the Council P&D Committee review the proposed code amendments and provide direction to staff. If the P&D Committee chooses to schedule the ordinance before the whole Council for action, staff will schedule it for introduction and a public hearing.

## **ATTACHMENTS**

- Draft Ordinance No. \_\_\_\_
- Exhibit A – Proposed Title 20 (Zoning) amendments
- Exhibit B – Proposed Title 23 (Shoreline Master Program) amendments
- Resolution 2016-039