



Whatcom County

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

Agenda Bill Master Report

File Number: AB2020-352

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File Created:	08/27/2020	Entered by:	CStrong@co.whatcom.wa.us		
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Assigned to:	Council	Final Action:	09/29/2020		
Agenda Date:	09/29/2020	Enactment #:	ORD 2020-045		

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

TITLE FOR AGENDA ITEM:

Ordinance adopting various amendments to WCC Titles 12 (Roads & Bridges), 16 (Environment), 20 (Zoning), 21 (Land Division Regulations), and 22 (Land Use and Development Procedures)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to WCC Titles 12, 16, 20, 21, and 22. This is an annual “code scrub,” wherein staff proposes amendments to clarify code, fix inconsistencies and grammar, and, this year, modify policies regarding LAMAIRD uses, stormwater requirements, boundary line adjustment requirements for nonconforming lots, exempt lots created by exempt agricultural subdivision from required lot consolidation; require that agriculture lots modified via a boundary line adjustment have an adequate building site, and create a new administrative variance process.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/15/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 6 Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner	
		Nay: 1 Elenbaas	
		Absent: 0	
09/29/2020	Council	ADOPTED	
		Aye: 7 Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner	

Nay: 0
Absent: 0

Attachments: Staff Report, Proposed Ordinance, Code Scrub 2019 - Exhibit A for 9.29.2020

PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. 2020-045

ADOPTING VARIOUS AMENDMENTS TO WHATCOM COUNTY CODE TITLES 12 (ROADS & BRIDGES), 16 (ENVIRONMENT), 20 (ZONING), 21 (LAND DIVISION REGULATIONS), AND 22 (LAND USE AND DEVELOPMENT PROCEDURES)

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 12, 16, 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 22, 2019.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 10, 2019. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on July 23, 2020.
5. The County Council held a duly noticed public hearing on the proposed amendments on September 29, 2020.
6. The amendments are consistent with Comprehensive Plan Policy Goal 2D to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
7. In reference to Exhibit A, Amendment No. 1: The proposed amendment to WCC 16.08.090(A) would make it clear that an applicant has to use Whatcom County’s SEPA Environmental Checklist form, which has been amended as allowed by state law. It also makes it clear that a fee may be required per the Unified Fee Schedule.
8. In reference to Exhibit A, Amendment No. 2: The proposed amendments would add a footnote to Tables WCC 20.20.255 and 20.22.254 (Minimum lot width and depth for the UR and URM Districts), as previously added to WCC 20.36.253 (Minimum lot width and depth for the Rural District). This would allow for boundary line adjustments on existing lots that often do not meet the “width at street line” standards for that zone.
9. In reference to Exhibit A, Amendment No. 3: For the Resort Commercial (RC) zoning district different setback requirements are listed in two different sections of Title 20, making it difficult to find them all. The proposed amendments would help rectify this by moving the exceptions of WCC 20.64.350

to 20.80.253(4), which contains other exceptions. Additionally, the setbacks are frustratingly difficult to interpret so the grammar is being cleaned up.

10. In reference to Exhibit A, Amendment No. 4: The amendment to WCC 20.64.700 would remove building size requirements from the Resort Commercial's "performance standards" section and place them in a new "maximum building size" section (WCC 20.64.330), making it easier for applicants to find as it is more similar to the code structure for other zoning districts.
11. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.64.450 would simplify the language by combining the two subsections into one sentence.
12. In reference to Exhibit A, Amendment No. 6: This amendment would repeal WCC 20.65, the Gateway Industrial zoning district. The City of Bellingham annexed the last GI zoning district properties on April 1, 2019. There are no other properties zoned GI in Whatcom County, nor does the County foresee ever using it again given its purpose.
13. In reference to Exhibit A, Amendment No. 7: The amendment to the "Maximum floor area per building" table in WCC 20.80.100 would add storage/warehouse as an allowed use in Glacier, setting the maximum floor area to that of an existing storage building (3,584 sq. ft.) allowing storage/warehouse uses in the Glacier LAMIRD where the underlying zoning district allows such (e.g., the Small Town Commercial zone) up to a maximum of 3,584 sq. ft. When this table was first created, the County inventory overlooked an existing storage building and thus the table did not reflect all the uses in existence in 1990, as was intended.
14. In reference to Exhibit A, Amendment No. 8: There remain three references to the Guide Meridian Improvement Plan in the code. However, that plan was repealed by Ordinance 2016-035 and references to it should be deleted.
15. In reference to Exhibit A, Amendment No. 9: The amendment to WCC 20.80.630, the Modified Thresholds for Stormwater Management Table, would require source control (i.e., using Best Management Practices to reduce pollution from non-point sources) for stormwater management systems where they are required.
16. In reference to Exhibit A, Amendment No. 10: Similar to those tables for the UR & URM districts, a footnote is being added to WCC 20.24.252 (Density and minimum lot size for the UR-MX district) where "conventional minimum lot size" indications "N/A." Otherwise when reviewing Lot of Record/Lot Consolidation requests, no applicant can meet WCC 20.83.070(2) "One or more of the lots in question does not meet the conventional minimum lot size of the applicable zone district."
17. In reference to Exhibit A, Amendment No. 11: WCC 20.83.110 contains a prohibition on making nonconforming lots more nonconforming through a Boundary Line Adjustment (BLA). However, this has led to instances of highly irregular lot lines, or the inability to preclude the need to impact critical areas. While in general making lots more nonconforming should be avoided, there are instances where it makes sense. The amendments to WCC 20.83.110 sets out the conditions where such would be acceptable, and would address and satisfy the intent of Docket Item PLN2014-00001.
18. In reference to Exhibit A, Amendment No. 12: Buildings in LAMRIDS are subject to maximum building sizes and it is unclear whether decks are to be included, or not, within the allowable floor area. This amendment to WCC 20.97.145 would exclude decks from the definition of floor area.
19. In reference to Exhibit A, Amendment No. 13: WCC 21.01.040(2)(b) allows an exempt subdivision with a minimum lot size of 20 acres, mirroring the state provision for exempt subdivisions. However,

the Agriculture and Commercial Forestry zones have a minimum lot size of 40 acres. One could argue that this provision, then, would allow someone to create parcels of 20 acres in these Ag zone, contrary to our minimum lot size for that zone. The amendment to WCC 21.01.040(2)(b) would fix this.

20. In reference to Exhibit A, Amendment No. 14: WCC 20.40.255 requires that all parcels in contiguous ownership be consolidated for the purposes of the subdivision, short subdivision, or boundary line adjustment (BLA). In general, requiring lot consolidation is a good practice, as it prevents someone from doing multiple short plats in lieu of a subdivision, which gets them out of installing some infrastructure (roads, drainage, sewer, etc.) otherwise necessary for the number of lots being created. Yet, in some instances, primarily in the Ag zone where there are larger lots (40+ acres), someone who has undergone an exempt land division per WCC 21.01.040(2)(i) (one of the few ways allowed under state law to subdivide without having to comply with the subdivision rules) has to reconsolidate those lots if they want to do a simple BLA, which is not the intent of the exempt subdivision rules. In these cases, staff has resorted to advising applicants to transfer their adjacent parcels into different ownership (e.g., another family member). The amendments to subsection (4) would exempt lots created by exempt subdivision from this required consolidation. It would have no effect on smaller lots, as only 40+acre lots can be created in this fashion.
21. In reference to Exhibit A, Amendment No. 15: In processing boundary line adjustments, the County needs to ensure that the final lots have sufficient area to build a house (the most common economic use of property). However, for some reason there is language that exempts BLAs in the Agriculture zone from this requirement, even though the lots could be sold to someone wanting to build a home. The proposed amendment to WCC 21.03.060(1)(b) would prevent someone from adjusting a lot such that it doesn't have enough room to build on.
22. In reference to Exhibit A, Amendment No. 16: While table 22.05.020 indicates that open record hearings are required both for Type III and IV applications and for appeals of Type I and Type II applications, the text for WCC 22.05.090 does not. This amendment would clarify this requirement.
23. In reference to Exhibit A, Amendment No. 17: This amendment would move the remainder of Chapter 20.84, which has to do with the processing of variances, conditional use permits, and administrative approval uses to Title 22 (Land Use and Development Procedures), Chapter 22.05 (Project Permit Procedures), as all processing mechanisms and criteria should now be in that Title. Chapter 20.84 would then be deleted in its entirety.
24. In reference to Exhibit A, Amendment No. 18: Throughout the code, various historic titles are used for the chief administrator of Planning and Development Services (director, administrator, zoning administrator, zoning official, etc.). Staff proposes to use "Director" throughout, and will continue to make these changes as we progress through future zoning amendments.
25. In reference to Exhibit A, Amendment No. 19: WCC 22.05.020, the Project Permit Processing Table, indicates that Whatcom County has an administrative shoreline conditional use permit. However, we do not; nor does the Shoreline Management Act or our own Shoreline Management Plan allow for them. This amendment would delete this nonexistent permit type from the table.
26. In reference to Exhibit A, Amendment No. 22: WCC 20.84.110 grants the Hearing Examiner the authority to grant variances from *all* provisions of Title 20 (Zoning Code). However, under state law variances can only be granted from dimensional standards, not uses, processes, etc. This amendment would better specify what variances can be granted for (i.e., the dimensional standards).

27. In reference to Exhibit A, Amendment No. 21: WCC 20.84.110 grants the Hearing Examiner authority to grant variances from all provisions of Title 22, which used to contain the Guide Meridian Improvement Plan but was repealed in 2019. Title 22 now contains permit procedures. As variances cannot be granted from processes, the reference to Title 22 should be deleted.
28. In reference to Exhibit A, Amendment No. 22: Planning and Development Services receives numerous variance requests for minor issues unlikely to have impacts on surrounding properties or people, in particular minor reductions to front yard setbacks or parking stall requirements so as to accommodate houses on challenging lots. The proposed amendments to WCC 20.84.100 (which would become 22.05.024 under Amendment # 19) and WCC 22.05.020 would create a new “minor variance” permit to be processed as a Type II Application. As such, public notice would still be provided wherein neighbors could comment and raise issues or objections, but there would be no public hearing: The decision would be made by the Director, not the Hearing Examiner. This would cut down on the time and costs to applicants for variances for which Planning and Development Services typically doesn’t receive much public involvement.
29. In reference to Exhibit A, Amendment No. 23: The amendments to WCC 22.20.020 would make it clear that a submittal for a code interpretation has to be on one of our official forms.
30. In reference to Exhibit A, Amendment No. 24: The amendment to WCC 22.25.020 would make it clear that that Council has adopted a fee for code interpretations.
31. In reference to Exhibit A, Amendment No. 25: Last year when Council updated (and consolidated) the setback table (WCC 20.80.210) an oversight was made in regards to setbacks in the Agriculture Zone. The required setback for habitable structures on small lots from was inadvertently changed from 30’ to 5’. Though it may be acceptable to have a non-habitable structure only 5’ from an agricultural field, the setback for habitable structures (i.e., homes) should remain at 30’. This amendment would rectify that oversight.

CONCLUSIONS

1. The amendments to the development regulations are the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

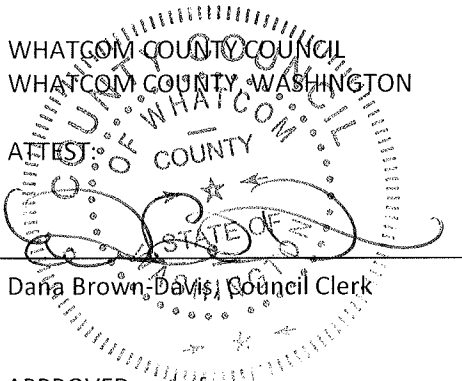
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

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

ADOPTED this 29th day of September, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY WASHINGTON
ATTEST
Dana Brown-Davis, Council Clerk




Barry Buchanan, Council Chair

APPROVED as to form:

Approved () Denied

/s/ Royce Buckingham via electronic signature/LB
Civil Deputy Prosecutor


Satpal Sidhu, Executive

Date: 10/06/2020

Exhibit A

Miscellaneous Code Amendments 2019

(Editor's note: Ellipses (...) indicate that sections of the code not being amended are not shown.)

Title 16 ENVIRONMENT

1. No policy change, just a clarification.

The proposed amendment to 16.08.090(A) would make it clear that an applicant has to use Whatcom County's SEPA Environmental Checklist form, which has been amended as allowed by state law. It also makes it clear that a fee may be required per the Unified Fee Schedule.

Chapter 16.08: State Environmental Policy Act (SEPA)

16.08.090 Environmental checklist.

- A. ~~Except as provided in subsection D of this section, a~~ completed environmental checklist ~~(or a copy), in the form provided in WAC 197-11-960,~~ shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the County and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. Except as provided in subsection (D) of this section, the checklist shall be on a form provided by the County, which is in the form of WAC 197-11-960 with additions required by the Responsible Official in accordance with WAC 197-11-906(4). The County shall use the environmental checklist to determine the lead agency and, if the County is the lead agency, for determining the Responsible Official and for making the threshold determination. A checklist submittal shall include any checklist review fee specified in the County's Uniform Fee Schedule.

...

TITLE 20 ZONING

2. No policy change *per se*, but would make a previous policy change applicable in other similar zones.

In 2017 Council added the following footnote to the Rural District’s minimum lot width and depth table (WCC 20.36.253) for boundary line adjustments (BLA):

**The “Width at Street Line” standards do not apply to lots being modified through boundary line adjustment (BLA) subject to WCC 21.03.060(2)(f).*

This language was added because many existing lots in that zone do not conform to this standard. Doing a BLA on such nonconforming lots then causes extremely irregular lot lines, or is otherwise impossible to accomplish. However, similar language was not added to the UR & URM districts, though the same prohibition applies if you don’t have public water & sewer. Staff believes this was an oversight.

Staff proposes adding the same footnote to the tables in WCC 20.20.255 (UR) and 20.22.254 (URM).

Chapter 20.20 Urban Residential (UR) District

20.20.255 Minimum lot width and depth.

District	Width at Street Line**		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
UR: all districts without public sewer and water	300'	70'	80'	100'
UR: with public sewer and water, and stormwater collection and detention facilities:				
• 3 units per acre	30'	30'	70'	80'
• 4 units per acre	30'	30'	60'	70'

*30' on a cul-de-sac only

**The “Width at Street Line” standards do not apply to lots being modified through boundary line adjustment (BLA), subject to WCC 21.03.060(2)(f).

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.254 Minimum lot width and depth.

District	Width at Street Line*		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
URM: all districts without public sewer and water and transferable development rights (TDRs)	300'	70'	80'	0'
URM: with public sewer and water and transferable development rights (TDRs)	N/A	N/A	N/A	N/A

*The “Width at Street Line” standards do not apply to lots being modified through boundary line adjustment (BLA), subject to WCC 21.03.060(2)(f).

Chapter 20.64: Resort Commercial (RC) District

3. No policy change, just moving sections and cleaning up grammar.

For the Resort Commercial (RC) zoning district different setback requirements are listed in two different sections of Title 20, making it difficult to find them all. The proposed amendments would help rectify this by moving the exceptions of WCC 20.64.350 to 20.80.253(4), which contains other exceptions. Additionally, the setbacks are frustratingly difficult to interpret so the grammar is being cleaned up.

20.64.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements), except as provided in 20.80.253(4) and 20.64.550 (Buffer area) and ~~20.80.200~~ except as provided below.

~~.351 Commercial uses shall be allowed to reduce the front yard setback to 15 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.~~

~~.352 Any single family development, for internal lots, may use a side yard setback of zero feet where the lot line setback on the opposite side yard is 10 feet; however, side yard setbacks adjacent to parcels not being developed under this exception shall be those provided in WCC 20.80.200.~~

~~.353 An additional five feet shall be added to each side yard and rear yard for each 10 feet of building height, or fraction thereof, in excess of 15 feet.~~

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 Highways, Urban Principal, and Urban Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
...							
Commercial Setbacks							
...							
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).							
...							
Industrial Setbacks							
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.							
...							

20.80.253 Commercial districts.

...

(4) Resort Commercial District.

- (a) Except for single-family residences, when a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Residential Rural, or Rural district, the project shall also meet the requirements of WCC 20.64.550 (Buffer area). Setbacks for those parcels situated adjacent to Urban Residential, Residential Rural, and Rural Zone Districts shall be administered pursuant to WCC 20.64.550 (Buffer area).
- (b) Side and rear yard setbacks requirements for multifamily housing, including all condominiums except time share condominiums recreational vehicle parks, and mobile home parks, shall be 20 feet for side and rear yards.
- (c) For recreational vehicle parks, and resort-oriented hotels and motels, front yard setbacks including time share condominiums shall be 45 feet for front yard, and 20 feet for side and rear yards.
- (d) Setback requirements for non-resort oriented hotels and motels and non-habitation commercial development, side yard setbacks shall be zero feet and for side-rear yard setbacks shall be and 10 feet for rear yards.
- (e) Commercial uses shall be allowed to reduce the front yard setback to 15 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.
- (f) For internal lots in a single-family development, the sideyard setback may be reduced to zero feet when the lot line setback on the opposite side yard is 10 feet; however, sideyard setbacks adjacent to parcels not being developed under this exception shall be those provided in WCC 20.80.200 (Setback Requirements).
- (g) An additional five feet shall be added to each side and rear yard for each 10 feet of building height, or fraction thereof, in excess of 15 feet.

Chapter 20.64: Resort Commercial (RC) District

4. No policy change, just moving text.

This amendment would remove building size requirements from the Resort Commercial’s “performance standards” section and place them in their own “maximum building size” section, making it easier for applicants to find as it is more similar to the code structure for other zoning districts.

20.64.700 Performance standards.

The following provisions shall apply to all uses within this district:

.701 There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.

.702 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.703 There shall be no emission of dust, dirt, odors, smoke or toxic gases and fumes.

.704 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

.705 There shall be no storage outdoors.

.706 There shall be no off-site release to soil or surface drainageways of water borne or liquid pollutants.

.707 Applicable health department permits must be secured before permit is issued.

~~**.708** Proposed development or redevelopment in Resort Commercial Zone Districts located within a rural community designation will be consistent with the character of the area in July 1, 1990, in terms of building size, scale, use, or intensity of existing uses, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~**.709** In a rural business designation, the maximum allowable floor area is 7,000 square feet except as provided in WCC 20.80.100(3) and (4).~~

20.64.330 Maximum Building Size.

(1) In a Rural Community designation, the maximum allowable floor area for a building shall not exceed the floor area of the largest building of the same type and use that existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1) (LAMIRD Requirements) except as provided in WCC 20.80.100(2).

(2) In a Rural Business designation, the maximum allowable floor area for a new use is 7,000 square feet per building except as provided in WCC 20.80.100(3) and (4).

5. No policy change, just combining text.

Staff proposes to simplify the language of WCC 20.64.450 by combining the two subsections into one sentence.

20.64.450 Lot coverage.

~~**.451** Buildings or structures for single family dwelling and duplex uses shall not occupy more than 35 percent of a parcel.~~

~~**.452** Buildings or structures for multifamily dwellings including all condominiums except time share condominiums shall not occupy more than 35 percent of a parcel.~~

The lot coverage for any single-, two-, or multi-family residential use shall not exceed 35% of the parcel.

6. Though this is a policy change, it has no effect.

Staff proposes to repeal WCC 20.65, the Gateway Industrial zoning district. The City of Bellingham annexed the last GI zoning district properties on April 1, 2019. There are no other properties zoned GI in Whatcom County, nor do we foresee ever using it again given its purpose.

This would also necessitate the deletion of the establishment of the zone in WCC 20.04.060, the required setbacks in WCC 20.80.210 (deletion shown in Amendment #5), its mention in WCC 20.13.085 and 20.15.070, and of the landscaping requirements for the GI district in WCC 20.80.360.

~~Chapter 20.65 Gateway Industrial (GI) District~~

Sections:

- ~~20.65.010 Purpose.~~
- ~~20.65.050 Permitted uses.~~
- ~~20.65.100 Accessory uses.~~
- ~~20.65.150 Conditional uses.~~
- ~~20.65.200 Prohibited uses.~~
- ~~20.65.250 Minimum lot size.~~
- ~~20.65.255 Minimum lot frontage.~~
- ~~20.65.350 Building setbacks.~~
- ~~20.65.400 Height limitations.~~
- ~~20.65.450 Site design.~~
- ~~20.65.500 Open space.~~
- ~~20.65.550 Buffer area.~~
- ~~20.65.600 Sign regulations.~~
- ~~20.65.650 Development criteria.~~
- ~~20.65.651 Facility design.~~
- ~~20.65.652 Landscaping.~~
- ~~20.65.653 Off-street parking and loading.~~
- ~~20.65.654 Sewer, water, and drainage.~~
- ~~20.65.655 Driveways.~~
- ~~20.65.656 Access.~~
- ~~20.65.657 Lighting.~~
- ~~20.65.658 Binding site plan.~~
- ~~20.65.659 Drainage.~~
- ~~20.65.700 Performance standards.~~

~~20.65.010 Purpose.~~

~~The purpose of the Gateway Industrial District is to supply sufficient areas arranged in a concentrated form for land use activities which promote Canadian-American business activity. In addition, the intent of this district is to encourage land uses and associated densities which will be complementary with light~~

impact industrial park standards while allowing reasonable transition uses of the properties. The district shall be located within urban growth areas and implemented consistent with the goals, objectives and policies of the Comprehensive Plan. The district should be located near major international transportation corridors in such a fashion as to provide safe and convenient access that would not impact adjacent nonindustrial activities. Further, the district should be in areas where adequate public services including but not limited to all-weather roads, public sewer and water and stormwater drainage are available. The district provides for uses that present a positive development image to business travelers and may provide for commercial uses that serve the traveling public; however, commercial activities may not be dependent upon attracting freeway motorists except in areas within one-quarter mile of a full freeway interchange.

~~20.65.050 Permitted uses.~~

The following permitted and accessory uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 WCC. No permitted or conditional use shall be issued a building permit without provision of public sewer and water as defined in Chapter 20.97 WCC except as provided in WCC 20.65.058 and 20.65.654. Further, each permitted and accessory use shall be administered pursuant to the applicable provisions of the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

~~.051~~ General office buildings, business firm headquarters and professional offices.

~~.052~~ Custom brokerage houses, freight terminals, indoor warehousing and storage, parcel delivery service, freight forwarding, inspection weighing services, and indoor packaging and crating.

~~.053~~ Wholesale trade or sales of industrial equipment, including indoor storage of durable and nondurable goods, and outdoor storage of new or reconditioned equipment where such outdoor storage areas individually meet all of the design and development standards.

~~.054~~ Light impact industrial uses that are primarily related to services, distribution, manufacture and assembly of finished products, and are contained within buildings except as provided in WCC 20.65.103.

~~.055~~ The following uses within one-quarter mile of a freeway interchange; except, that where this boundary divides a single parcel up to 10 percent of the area of a parcel that lies outside of this boundary may be included within it for the purposes of lot coverage and open space provisions:

- ~~(1)~~ Retail shops; provided, they do not exceed 10,000 square feet per shop in the Bellingham UGA. Retail shops in other Gateway Industrial areas shown on that map may not exceed 35,000 square feet per retail shop.
- ~~(2)~~ Tourist information centers.
- ~~(3)~~ Post offices.
- ~~(4)~~ Repair garages, and towing services when based at a service station.
- ~~(5)~~ Banks and/or bank machines.
- ~~(6)~~ Hotels and motels.
- ~~(7)~~ Indoor or outdoor commercial recreational facilities.

~~.056~~ The following uses; provided, that maximum allowable floor area of buildings on parcels located beyond one-quarter mile of a freeway interchange shall not exceed 6,000 square feet per individual use or an aggregate of 30,000 square feet within a single development:

- ~~(1) Barber and beauty shops.~~
- ~~(2) Bakery shops.~~
- ~~(3) Drug stores, hardware stores, food markets and other convenience retail shops.~~
- ~~(4) Adult care centers, mini-day care centers or day care centers.~~
- ~~(5) Recreational vehicle parks and associated sales and service facilities.~~
- ~~(6) Churches.~~
- ~~(7) Service stations.~~
- ~~(8) Laundry and dry cleaning establishments.~~
- ~~(9) Eating and drinking establishments.~~
- ~~(10) Commercial storage of personal recreational boats and trailers, recreational vehicles and accompanying mini-storage.~~

~~.057~~ Agriculture, including commercial horticulture and tree farming, but excluding intensive animal husbandry, with or without public services as long as services meet the requirements of the fire code and the health department.

~~.058~~ Public uses which because of locational requirements are necessary in the Gateway Industrial District, excluding state education facilities and correction facilities.

~~.059~~ One residential unit for owner-manager or caretaker when part of a building in which the primary use is located.

~~.060~~ One existing single-family unit per lot.

~~.061~~ One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

~~.062~~ Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.

~~.063~~ Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

~~.064~~ Activity centers.

~~.081~~ Freight railroad switching yards and terminals.

20.65.100 Accessory uses.

~~.101~~ Employee recreation facilities and play areas.

~~.102~~ Temporary buildings for construction purposes while a building permit is valid for the primary use for a period not to exceed two years or the duration of such construction, whichever is less.

~~.103~~ Screened outdoor storage not to exceed five percent of the gross indoor floor area except as provided for in WCC 20.65.053 for new or reconditioned industrial equipment. Outdoor storage may

~~exceed five percent where such storage is completely roofed with side screening preventing view from arterials or interstate highways, and meets the development and other standards of this district.~~

~~.104 Retail sales and repair of merchandise manufactured, assembled or stored on the site and consistent with the definition of accessory uses in Chapter 20.97 WCC (Definitions).~~

~~.105 Other accessory uses and buildings, including security and caretaker residences, customarily appurtenant to and necessary for a principally permitted use.~~

~~.106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.~~

~~.107 Mini-day care centers and day care centers operated by, maintained by or funded by business in the district for the purpose of serving the child care needs of employees whose place of employment lies within this zone district.~~

~~.108 Electric vehicle charging stations and battery exchange facilities.~~

~~**20.65.150 Conditional uses.**~~

~~.151 Trailheads with parking areas for more than 30 vehicles.~~

~~.152 Public or private parks that are not included in an adopted city or county Comprehensive Plan or Park Plan.~~

~~.153 Athletic fields.~~

~~.180 Major passenger intermodal terminals.~~

~~.185 Type I solid waste handling facilities.~~

~~.186 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.~~

~~**20.65.200 Prohibited uses.**~~

~~All uses not listed as permitted, accessory, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:~~

~~.201 Reserved.~~

~~.202 Adult businesses.~~

~~**20.65.250 Minimum lot size.**~~

~~.251 Hotels and motels shall have a minimum net parcel size of 20,000 square feet.~~

~~.252 Other uses shall have a minimum lot size consistent with the area required to meet the building setback, lot coverage and development standards of this district.~~

20.65.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, open space and development standards of the district. In no case shall the frontage be less than 30 feet.

20.65.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 except that all buildings shall have a minimum setback from all street classifications including interstate highways of 25 feet and side and rear yard setbacks shall be at least 10 feet.

20.65.400 Height limitations.

Maximum building height shall not exceed 35 feet; except, that an additional foot in height is allowed for each one-foot increase in setback in the yard adjoining the interstate highway up to 45 feet in the Bellingham Urban Growth Area. Height of structures, where applicable, shall also conform to the general requirements of WCC 20.80.675.

20.65.450 Site design.

In the Bellingham UGA, individual sites shall be designed in a clustered or concentrated form of development instead of lining the road frontage.

20.65.500 Open space.

~~.501~~ All commercial uses permitted by WCC 20.65.055 above shall keep 20 percent of the site free of buildings, structures, hard surfacing, parking areas and impervious surfaces.

~~.502~~ All other uses shall keep 35 percent of the site free of buildings, structures, hard surfacing, parking areas and impervious surfaces.

20.65.550 Buffer area.

When a parcel situated within this district adjoins an Urban Residential Medium Density District, side and rear yard setbacks shall be increased to 25 feet. In the Bellingham UGA, buffer areas shall be increased to 100 feet for commercial or industrial projects which exceed 5,000 square feet of floor area in one building or complex or generate more than 50 vehicle trips per day. Said area shall be landscaped consistent with the requirements of WCC 20.80.345. Use of buffer areas and setbacks for bicycle and pedestrian trails is encouraged.

20.65.600 Sign regulations.

Sign regulations shall be administered pursuant to the provisions of this chapter and of WCC 20.80.400. The following signs are permitted within this district:

~~.601~~ No on-premises signs advertising noncommercial uses shall be oriented to the freeway except one per use that meets the following standards:

- (1) Corporate or business names and/or registered trademarks that are not freestanding shall be integrated into the design of a building, and shall not exceed the following size:

Total area of building side on which sign is mounted	Maximum size of sign
800 sq. ft. or greater	15% of total area of side
between 360 and 800 sq. ft.	120 sq. ft.

less than 360 sq. ft.	64 sq. ft.
-----------------------	------------

~~(2) Or, a freestanding sign that is compatible in architectural design with the building and set in landscaped areas with a base treatment constructed of stone, masonry, or wood treated against water and insect damage that is at least two feet high, and at least one-half as wide as the sign face, and at least one-fourth as deep as the width of the sign face, and the sign shall not exceed 15 feet in height. The maximum size of the sign shall be 15 percent of the total area of the side of the building oriented towards the freeway or 250 square feet, whichever is less.~~

~~.602 No on-premises signs advertising commercial uses shall be oriented towards the freeway except on-site signs for commercial uses located within a one-fourth mile radius of a full freeway interchange.~~

~~.603 On-premises freestanding signs shall not exceed 30 feet in height nor 250 square feet in area on all faces, shall be set within landscaped areas, and shall not be located closer than 200 feet apart regardless of ownership or number of businesses.~~

~~.604 Wall mounted signs on walls facing away from the freeway are limited to one wall sign per business with a maximum size of 64 square feet. No roof-mounted signs are permitted.~~

~~.605 Lighted signs shall only be internally or indirectly illuminated.~~

~~.606 No off-premises advertising signs are allowed except as provided for in WCC 20.80.410, and as allowed by Chapter 47.42 RCW, the Washington Scenic Vistas Act. In addition, those signs along the interstate highway shall also meet the following requirements: maximum height of 20 feet; maximum size of 150 square feet; minimum separation between signs of 1,000 feet; and no more than two signs within any one mile of freeway frontage.~~

20.65.650 Development criteria.

20.65.651 Facility design.

- ~~(1) Each development shall screen roof-mounted mechanical equipment so as not to be visible from surrounding uses or roads.~~
- ~~(2) The site plan, building design, and landscape plan shall enhance the attractiveness and efficiency of the Gateway Industrial environment, within itself and in relation to other existing or proposed development through implementation of the following standards:~~
- ~~(a) The building masses, open spaces around them, landscaping, and signage are integrated so as to enhance the attractiveness of the project to the international traffic corridors.~~
 - ~~(b) Portals, service loading areas, automobile access points, exterior public activity locations, parking areas and similar features are located in a manner that maximizes the efficient use of these facilities without decreasing its attractiveness from local transportation corridors.~~
 - ~~(c) Individual developments are designed to accommodate additional development on adjacent property in an integrated manner.~~

20.65.652 Landscaping.

~~Refer to WCC 20.80.300 for landscaping requirements.~~

~~20.65.653 Off-street parking and loading.~~

~~Off-street parking and loading shall be administered pursuant to WCC 20.80.500, except that no gravel surfaces are permitted.~~

~~20.65.654 Sewer, water, and drainage.~~

~~Stormwater detention and retention shall be consistent with best management practices and shall be sufficient to prevent post-development runoff exceeding pre-development runoff. Drainage plans shall be reviewed and approved by the county engineer, pursuant to WCC 20.80.630. Public water and sewer service shall be provided by water districts, sewer districts, and/or municipalities before any development occurs with the following exceptions:~~

- ~~(1) Agriculture as specified in WCC 20.65.058 without public water and public sewer service; and~~
- ~~(2) In the Birch Bay-Blaine Subarea, all development that files a no-protest agreement to participate in a local improvement district to provide sewer and water services from Birch Bay Water and Sewer District or other public purveyor whenever the first one of the following occurs:
 - ~~(a) Total acreage of developed land reaches 67 acres; or~~
 - ~~(b) Application for a building permit is made for development that would necessitate either public water or public sewer service according to the Whatcom County health department or Whatcom County fire flow standards; or~~
 - ~~(c) The zone district is amended to Gateway Industrial for the area zoned Rural 10A located between Portal Way and Interstate 5 north of the existing district.~~~~

~~All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.~~

~~No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.~~

~~20.65.655 Driveways.~~

~~Consistent with WCC 20.80.640, driveway plans shall be reviewed and approved by the county engineer or, where applicable, the State Department of Transportation.~~

~~20.65.656 Access.~~

~~Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. Any changes or improvements necessary for county roads to maintain the current level of service and prevent any increase in the accident rate will be provided for by the development as determined by the Whatcom County engineer.~~

~~20.65.657 Lighting.~~

~~Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses.~~

~~20.65.658 Binding site plan.~~

~~Should the commercial or industrial use be developed as part of a binding site plan, it shall be administered pursuant to Title 21 of the Whatcom County Code (Subdivision Regulations) and additional requirements as applicable. The applicant shall demonstrate that the proposed development:~~

- ~~(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations;~~

- ~~(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and specifically that it is harmonious with the intent of all sign and development standards of this district;~~
- ~~(3) Will not be hazardous or disturbing to existing or future neighboring uses;~~
- ~~(4) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance; and~~
- ~~(5) Will meet all development, performance, and other standards of this 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.~~

~~20.65.700 Performance standards.~~

~~The following provisions shall apply to all uses within this district:~~

~~.701 The proposed use shall not be hazardous or disturbing to existing or future development within the district.~~

~~.702 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.~~

~~.703 There shall be no emission of significant quantities of dust, dirt, odors, smoke, or toxic gases and fumes.~~

~~.704 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.~~

~~.705 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.~~

Chapter 20.04 General Provisions

20.04.060 Establishment of districts.

For the purpose of furthering the goals and policies of the Comprehensive Plan and to carry out the provisions of this title, Whatcom County is hereby divided into the following districts:

Chapter	Abbreviation	District
...		
20.65	GI	Gateway Industrial
...		

Chapter 20.13 Wireless Communication Facilities

20.13.085 Siting priorities.

...

(2) For the purpose of this chapter:

...

(b) Nonresidential related districts include:

...

- (ii) Industrial districts including Heavy Impact Industrial (HII), Light Impact Industrial (LII), ~~Gateway Industrial (GI)~~, Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), Airport Operations (AO) and the Cherry Point Industrial District (CP-ID); and

...

Chapter 20.15 Commercial Mushroom Substrate Production Facilities

20.15.070 Buffer and setback requirements.

- (1) The commercial substrate production facility's active area shall meet the following minimum buffer requirements:
- (a) Two thousand six hundred forty feet from the following zoning districts: Urban Residential, Rural Residential, Residential-Island, Rural, Commercial, ~~Gateway Industrial~~, Light Impact Industrial, Point Roberts Special District, and Point Roberts Transitional Zoning.

...

Chapter 20.80 Supplementary Requirements

20.80.360 Special requirements for individual zone districts.

References to front yard landscaping in subsections (1) through ~~(6)~~ of this section shall be based on the property line except where the County Engineer determines the road is developed at its ultimate width, then the back of the sidewalk can be used.

- (1) Urban Residential Medium Density (URM), Neighborhood Commercial (NC), Resort Commercial (RC), and for nonresidential uses in the Residential and Rural Districts: 15 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.
- (2) Tourist Commercial (TC), Rural General Commercial (RGC) and General Commercial (GC): 10 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.
- ~~(3) Gateway Industrial (GI):~~
- ~~(a) Fifteen feet within the setback from Portal Way and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.~~
- ~~(b) Twenty five feet within the setback from Interstate 5 and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.~~
- ~~(4)(3)~~ Rural Industrial and Manufacturing (RIM), Light Impact Industrial (LII) and Airport Operations (AO): 15 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder

of the front yard setback may be used for parking. When the Light Impact Industrial Zone fronts a minor or local access street the requirements for the General Manufacturing Zone may be used.

- | ~~(5)~~(4) General Manufacturing (GM): Five feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking. Subject to approval of the county, street trees may be placed in the right-of-way and the five-foot landscaping strip provided contiguous to the building with the front yard setback used for circulation of trucks and heavy equipment. In this situation to provide visual relief open space should be primarily concentrated in the side yards unless natural habitat in the rear such as wetlands or streams is present which should take precedence.
 - | ~~(6)~~(5) Heavy Impact Industrial (HII): For heavy industrial uses refer to the buffering requirements in WCC 20.68.550. For all other uses the front yard landscaping shall be 15 feet, similar to the requirement for the Light Impact Industrial Zone.
-

Chapter 20.80 Supplementary Requirements

7. This is a policy change, though only rectifying an oversight.

Over a decade ago, Whatcom County was challenged before the Growth Management Hearings Board over the Rural Element of our Comprehensive Plan. In part, the appellants challenged our regulations for Limited Areas of More Intensive Rural Development (LAMIRDs). One of the results of that challenge was that the County had to adopt regulations that only allow uses, of a maximum size of the largest of each existing use, in existence in 1990 when the Growth Management Act (GMA) was first adopted. The County performed an inventory of uses and building sizes, which became the basis for the table found in WCC 20.80.100. Though the zone may allow a certain use in other areas of the County similarly zoned, if the use is not listed in that table for a particular LAMIRD, then it is not allowed in that LAMIRD.

Planning and Development Services recently received an inquiry about a potential permit application in the Glacier LAMIRD from someone who wishes to build a storage building as part of their proposal. As no storage buildings were found in the Glacier LAMIRD when constructing the regulations, the table in WCC 20.80.100 shows no such use, meaning it would not now be allowed. However, after further research, staff found that there actually is a storage building in the Glacier LAMIRD constructed in 1981 that was not accounted for when setting the regulations. This has occurred a couple of other times in other LAMIRDs, and the County has been able to update the regulations to account for those uses or building sizes not previously inventoried.

Thus, staff is proposing to amend the table in WCC 20.80.100, adding storage/warehouse as an allowed use in Glacier, and setting the maximum floor area to that of the existing storage building (3,584 sq. ft.), as shown below. If approved, the amendment would allow storage/warehouse uses in the Glacier LAMIRD where the underlying zoning district allows storage (e.g., the Small Town Commercial zone) up to the maximum square footage proposed.

20.80.100 LAMIRD requirements.

(1) Building Size in Rural Communities. Within areas designated in the Comprehensive Plan as rural community, which are limited areas of more intensive development as described in RCW 36.70A.070(5)(d)(i), permitted maximum building sizes shall be in accordance with building sizes that existed in each area on July 1, 1990, as shown in the following table.

**Maximum floor area per building, in square feet
(Maximum combined floor area for all buildings, in square feet)**

	Retail/Office/Restaurant/ Lodging	Storage/ Warehouse	Auto/ Equipment Repair	Public/ Community	Manufacturing/ Fabrication
Acme	2,734 (2,734)		2,070 (2,070)	17,784 (21,896)	
Axton & Guide Meridian	4,800 (4,800)		2,160 (2,160)		
Birch Bay- Lynden & V.V.	2,784 (3,684)				

	Retail/Office/Restaurant/ Lodging	Storage/ Warehouse	Auto/ Equipment Repair	Public/ Community	Manufacturing/ Fabrication
Cain Lake	2,060 (2,060)			2,473 (4,825)	
Custer	3,968 (3,968)		3,300 (3,300)	46,451 (46,451)	
Deming	11,790 (18,757)	2,400 (2,400)	1,392 (1,392)	30,099 (79,512)	
Diablo	513 (513)			10,872 (10,872)	
Glacier	3,500 (7,888)	<u>3,584</u> <u>(3,584)</u>		3,150 (3,150)	
Hinotes Corner	6,636 (9,036)		1,500 (1,500)	19,856 (19,856)	
Kendall	7,000 (7,000)			3,340 (3,340)	
Laurel	10,700 (11,000)		10,260 (10,260)	21,950 (63,360)	17,670 (23,590)
Lummi Peninsula		7,800 (18,540)			7,280 (7,280)
Maple Falls	8,020 (8,020)	4,620 (4,620)		8,822 (10,082)	
Newhalem	3,218 (3,218)			4,810 (12,981)	16,284 (28,924)
Nugents Corner	18,221 (19,499)			3,240 (3,240)	
Point Roberts	34,704 (34,704)	3,286 (3,286)	6,732 (6,732)	11,246 (11,246)	
Pole & Guide Meridian	6,400 (6,400)		4,548 (5,556)	4,000 (4,000)	
Sandy Point				1,428 (1,428)	
Smith & Guide Meridian	5,866 (7,068)	5,900 (5,900)	9,600 (17,100)		22,042 (22,042)
Sudden Valley	6,348 (10,320)			30,140 (44,945)	
Van Wyck	3,480 (3,480)	1,904 (1,904)			
Wiser Lake	24,690 (24,690)	11,222 (12,374)		2,130 (2,130)	6,368 (6,368)

8. No policy change.

There remain three references to the Guide Meridian Improvement Plan in the code. However, that plan was repealed by Ordinance 2016-035 and references to it should be deleted.

Two such deletions (WCC 20.80.210 & 12.08.04) are shown below. The third is shown under Issue #23 as there are other amendments proposed to that section as well.

20.80.210 Minimum setbacks.

...

- (3) ~~Repealed. Properties which are generally located on the Guide Meridian between Horton and Kellogg Roads, and specifically identified in the Guide Meridian Improvement Plan, shall be subject to the provisions of said plan. The provisions of said plan shall supersede this chapter where there is inconsistency.~~

...

TITLE 12 ROADS AND BRIDGES

Chapter 12.08 Construction Standards

12.08.040 Amendment by Ordinance 85-35.

~~Notwithstanding any other term or provision of the ordinance codified in this section, t~~This chapter shall not apply to any "forest practice," as defined in the Forest Practice Act of 1974 (RCW Chapter 76.09), except to the extent that such regulation is expressly permitted by said act, as now or hereinafter amended. (See RCW 76.09.240.) These standards shall be superseded by the specific standards of an official control that has been adopted by Whatcom County, ~~such as the Guide Meridian Improvement Plan Controls.~~

9. This is a minor policy change.

In WCC 20.80.630, the Modified Thresholds for Stormwater Management Table indicates that Source Control is not required. Source control is basically using Best Management Practices (BMPs) to reduce pollution from non-point sources, e.g., covering garbage, installing gutters and downspouts to disperse stormwater, managing other pollutants, etc. In reviewing the staff reports and notes from when we adopted this table, we could not find a reason for not requiring it, other than having copied it from Skagit County's table, which we used as a template. Staff would like to rectify this by amending the table as shown below.

Chapter 20.80 Supplementary Requirements

20.80.630 Stormwater and drainage.

- (1) Unless exempted in WCC 20.80.631 (Stormwater and Drainage, Exemptions), all development activity on lands within Whatcom County shall be subject to stormwater management requirements as follows:

- (a) NPDES Phase II Permit Area. Except in the Lake Whatcom Watershed Overlay District, development activity inside the NPDES Phase II permit area shall comply with:
- (i) The 2012 Washington State Department of Ecology Stormwater Management Manual for Western Washington (Stormwater Manual), as amended;
 - (ii) Appendix 1, Minimum Technical Requirements, of the Western Washington Phase II Municipal Stormwater Permit; and
 - (iii) Appendix 7, "Determining Construction Site Damage Transport Potential," of the Western Washington Phase II Municipal Stormwater Permit.
- (b) Lake Whatcom Watershed Overlay District. All development activity inside the Lake Whatcom Watershed Overlay District shall comply with Chapter 20.51 WCC, Lake Whatcom Watershed Overlay District, which satisfies all 2013 Western Washington Municipal Stormwater Permit development and redevelopment requirements.
- (c) Stormwater Special Districts. Except for areas within or that overlap with the NPDES Phase II permit area (see subsection (1)(a) of this section), development activity inside stormwater special districts (as defined by WCC 20.80.635) shall comply with the Stormwater Manual, using the following modified minimum requirements in the table below, and using the Stormwater Manual's definitions of terms for "stormwater site plan," "impervious surface," "hard surface," "land disturbing activity," "project," "site," and "replaced hard surface":

Within Special Stormwater Districts – Modified Thresholds for Stormwater Management Table

Minimum Requirement (MR) ¹	When Required
MR1 Stormwater Site Plan	> 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value
MR2 Construction SWPPP	Always required
MR3 Source Control	Not required Per manual
MR4 Preserve Natural Drainage	> 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value
MR5 On-Site Stormwater Management	<ul style="list-style-type: none"> Property ≥ 2 acres meeting MR1, provide dispersion Property < 2 acres meeting MR1 where soils are suitable for infiltration, provide infiltration Property < 2 acres meeting MR1 where soils are not suitable for infiltration and project does not increase the 24-hour, 100-year peak flow rate by ≥ 0.1cfs; provide dispersion
MR6 Treatment	Always required
MR7 Flow Control	Property < 2 acres meeting MR1 where project increases the 24-hour, 100-year peak flow rate by ≥ 0.1 cfs; provide detention
MR8 Wetlands Protection	> 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value
MR9 O&M	Required only if stormwater facility installed

...

Chapter 20.24 Urban Residential Mixed (UR-MX) District

10. No policy change per se, but would make a previous policy change applicable in the UR-MX district. Similar to those tables for the UR & URM districts a footnote should be added to WCC 20.24.252 where “conventional minimum lot size” indications “N/A.” Otherwise when reviewing Lot of Record/Lot Consolidation requests, no applicant can meet WCC 20.83.070(2) “One or more of the lots in question does not meet the conventional minimum lot size of the applicable zone district.”

20.24.252 Density and minimum lot size.

District	Gross Density	Minimum Lot Size		Maximum Lot Size	Minimum Reserve Area (Cluster Divisions)
		Conventional	Cluster	Clustered Lots	
UR-MX: all densities without public sewer and water	<ul style="list-style-type: none"> Maximum density: 1 dwelling unit/10 acres 	N/A*	4,000 sq. ft.	22,000 sq. ft.	80%

District	Gross Density	Minimum Lot Size		Maximum Lot Size	Minimum Reserve Area (Cluster Divisions)
		Conventional	Cluster	Clustered Lots	
UR-MX: all densities with public sewer or water	<ul style="list-style-type: none"> • Maximum density: 1 dwelling unit/10 acres 	N/A*	4,000 sq. ft.	22,000 sq. ft.	80%
UR-MX: with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> • Maximum gross density: 10 dwelling units/1 acre • Minimum net density: 6 dwelling units/1 acre 	4,000 sq. ft.	N/A	N/A	N/A
UR-MX (6 – 10): with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> • Maximum gross density: 10 dwelling units/1 acre • Minimum net density: 6 units/1 acre 	4,000 sq. ft.	N/A	N/A	N/A
UR-MX (6 – 12): with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> • Maximum gross density: 12 dwelling units/1 acre • Minimum net density: 6 units/1 acre 	N/A	N/A	N/A	N/A
UR-MX (10 – 24): with public sewer and water, and stormwater collection and detention facilities	<ul style="list-style-type: none"> • Maximum gross density: 24 dwelling units/1 acre • Minimum net density: 10 units/1 acre 	N/A	N/A	N/A	N/A

* For the purpose of administering the lot consolidation provisions of WCC 20.83.070, the conventional minimum lot size shall be 10 acres

(1) Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical areas regulations and infrastructure requirements.

(2) For development with densities over a zone’s minimum net density, transferable development rights (TDRs) from the Lake Whatcom watershed sending area must be used, pursuant to the provisions of Chapter 20.89 WCC, Density Transfer Procedure. Each development right transferred from the Lake Whatcom watershed may be used to develop three dwelling units in the UGA. TDRs must be used to attain any density greater than the minimum net density of a zone.

11. Policy change.

WCC 20.83.110 contains a prohibition on making nonconforming lots more nonconforming through a Boundary Line Adjustment (BLA). However, this has led to instances of highly irregular lot lines, or the inability to preclude the need to impact critical areas (e.g., the need to cross a wetland in order to access the only suitable building site).

While in general making lots more nonconforming should be avoided, there are instances where it makes sense, provided that no lot becomes smaller than the smallest nonconforming lot, no lot becomes nonconforming as to lot area and/or width requirements, and no density is gained. Additionally, in the Ag District, that no lot is reduced below 10 acres (which is what one could achieve through an ag subdivision).

Please note that this amendment satisfies the intent of Council's docket item PLN2014-00001, which reads:

"Amend Section 20.83.110 of the Whatcom County Zoning Ordinance relating to boundary line adjustments. The amendment would allow boundary line adjustments to nonconforming parcels to resolve encroachments such as fences, trees and other occupational indicators. The amendment would also allow boundary line adjustments that modify the boundaries between two nonconforming parcels based upon land owner preferences, as long as the smallest parcel is not decreased in size."

Chapter 20.83 Nonconforming Uses and Parcels

20.83.110 Reduction of area.

~~(1) The administrator-Director shall not cause or increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements through boundary line adjustments; provided, however, that:~~

~~(1) The administrator-Director or Hearing Examiner may approve boundary line adjustments required to satisfy an unidentified or disputed property line or to identify the same in accordance with RCW 58.04.007.~~

~~(2) Boundary line adjustments wherein lots become more nonconforming as to lot area and/or lot width requirements may be approved if all the following are met:~~

~~(a) No lot becomes smaller than the smallest nonconforming lot;~~

~~(b) No conforming lot becomes nonconforming as to lot area and/or width requirements; and,~~

~~(c) The boundary line adjustment does not result in an increase in overall density for the cumulative acreage.~~

~~(d) In the Agriculture District, no lot is reduced below 10 acres, except for (2) in addition, boundary line adjustments in the Agricultural Zone in conformance with WCC 20.40 (Agriculture District).253 and 20.40.254 shall be allowed.~~

12. No policy change, just a clarification.

Buildings in LAMRIDS are subject to maximum building sizes and it is unclear whether decks are to be included, or not, within the allowable floor area. This amendment would exclude decks from the definition of floor area.

Chapter 20.97: DEFINITIONS

20.97.145 Floor area.

“Floor area” means the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, decks, and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

TITLE 21 LAND DIVISION REGULATIONS

13. Not a policy change, just closing a loophole.

WCC 21.01.040(2)(b) allows an exempt subdivision with a minimum lot size of 20 acres, mirroring the state provision for exempt subdivisions. However, the Agriculture and Commercial Forestry zones have a minimum lot size of 40 acres. One could argue that this provision, then, would allow someone to create parcels of 20 acres in these zones, contrary to our minimum lot size for that zone. Staff proposes to fix this by including the below shown amendment (subsection (2)(b)).

14. Minor policy change.

WCC 20.40.255 requires that all parcels in contiguous ownership be consolidated for the purposes of the subdivision, short subdivision, or boundary line adjustment (BLA).

20.40.250 Division or modification of parcels.

.255 Consolidation of Adjacent Tracts.

Consolidation of adjacent tracts in the same ownership shall be required in accordance with WCC 20.83.070 in approval of any subdivision, short subdivision, or boundary line adjustment in the Agricultural District. The County may waive the permit fee for a boundary line adjustment where adjacent lots of record are not in the same ownership and are consolidated voluntarily for purposes of the boundary line adjustment.

In general, requiring lot consolidation is a good practice, as it prevents someone from doing multiple short plats in lieu of a subdivision, which gets them out of installing some infrastructure (roads, drainage, sewer, etc.) otherwise necessary for the number of lots being created. Yet, in some instances, primarily in the Ag zone where there are larger lots (40+ acres), someone who has undergone an exempt land division per WCC 21.01.040(2)(i) (which is one of the few ways allowed under state law to subdivide without having to comply with the subdivision rules) has to reconsolidate those lots if they want to do a simple BLA. We think this is not the intent of the exempt subdivision rules. In these cases, staff has resorted to advising the applicant to transfer their adjacent parcels into different ownership (e.g., another family member). Thus, we propose the following amendments to subsection (4), which would exempt lots created by exempt subdivision from this required consolidation. It would have no effect on smaller lots, as only 40+acre lots can be created in this fashion.

Chapter 21.01 General Provisions

WCC 21.01.040 Applicability and exemptions.

...

(2) The subdivision and short subdivision provisions of this title shall not apply to:

...

(b) Divisions of land into lots or tracts none of which are smaller than 20 acres or 1/32 of a section of land, or 40 acres or 1/16 of a section of land in the Agriculture or Commercial Forestry districts, and not containing a dedication; provided, that a certificate of exempt land division is obtained from Whatcom County in accordance with this title;

...

(4) The following rules shall govern questions of precise applicability of these regulations to land divisions:

(a) **Contiguous Parcels.** All contiguous parcels of land in the same ownership, if consolidated in accordance with WCC 20.83.070 (Lot Consolidation), shall be included within the boundaries of any proposed long or short subdivision of any of the properties. For the purpose of this section, the lots so situated shall be considered as one parcel; provided, that any of the contiguous parcels that are within a recorded long or short plat that was filed with the county auditor at least five years prior to the new land division, or lots created by exemption pursuant to WCC Title 21, shall not be required to be included if the lot or lots are in conformance with the applicable zoning standards.

(b) **Pre-1972 Parcels.** Parcels of land legally divided prior to the effective date of the ordinance codified in this title (as originally adopted February 3, 1972) shall be considered in accordance with land division laws and resolutions applicable at the time of plat recording per RCW 58.17.170 or other division.

15. Minor policy change.

In processing boundary line adjustments, the County needs to ensure that the final lots have sufficient area to build a house (the most common economic use of property). However, for some reason there is language that exempts BLAs in the Agriculture zone from this requirement, even though the lots could be sold to someone wanting to build a home. Staff proposes to strike that language so that one can't adjust a lot such that it doesn't have enough room to build on.

Chapter 21.03 Exempt Land Divisions and Boundary Line Adjustments

21.03.060 Boundary line adjustments.

(1) Decision Criteria. In reviewing a proposed boundary line adjustment, the subdivision administrator or hearing examiner shall use the following criteria for approval:

...

(b) ~~With the exception of those boundary line adjustments located within the agricultural zone,~~
 ¶The boundary line adjustment shall result in lots which contain sufficient area and dimensions

to meet minimum requirements for width and area for a building site pursuant to this title, except as provided in WCC 20.40 (Agricultural District).

Title 22 LAND USE AND DEVELOPMENT PROCEDURES

16. No policy change, just clarification.

Open record hearings are required both for Type III and IV applications and for appeals of Type I and Type II applications. While table 22.05.020 indicates this, the text for WCC 22.05.090 does not. Staff proposes to rectify this and make it clear with the following amendment.

Chapter 22.05 Project Permit Procedures

22.05.090 Open record hearings.

As shown in WCC 22.05.020 (Project Permit Processing Table), Type III and Type IV applications and appeals of Type I and Type II applications require an open record public hearing. These hearings are subject to the following:

...

In the following sections several concepts are being proposed:

17. No policy change; just moving a chapter from one Title to another and renaming the title.

Staff proposes to move the remainder of Chapter 20.84, which has to do with the processing of variances, conditional use permits, and administrative approval uses to Title 22 (Land Use and Development), Chapter 22.05 (Project Permit Procedures), as all processing mechanisms and criteria should now be in that Title. Chapter 20.84 would then be deleted in its entirety. This change is indicated by the renumbering of the sections below. Note that this amendment will necessitate staff working with Code Publishing to correct and update many cross-references made ineffective by this amendment.

18. No policy change; just language cleanup.

We also proposed to amend the table and subsequent sections to replace "Administrator" with "Director." Throughout the code, various historic titles are used for the chief administrator of Planning and Development Services (director, administrator, zoning administrator, zoning official, etc.). Staff proposes to use "Director" throughout, and will continue to make these changes as we progress through future zoning amendments. In WCC 20.97, "Director" is defined to include his/her designees. While the Director does not personally issue every permit, they are issued in his/her name.

19. PROPOSED AMENDMENT WITHDRAWN after the Planning Commission hearing and recommendation.

Staff had proposed, and the Planning Commission concurred, to delete the Type II (administrative) shoreline conditional use permit from WCC 22.05.020, the Project Permit Processing Table, as we currently don't have such a permit. However, through the Shoreline Management Program update staff will be proposing to create such a mechanism, so we would like to leave it for now.

20. Policy change to comply with state statutes.

WCC 20.84.110 grants the Hearing Examiner the authority to grant variances from *all* provisions of Title 20 (Zoning Code). However, under state law variances can only be granted from dimensional standards,

not uses, processes, etc. Thus, staff proposes that the code be more specific as to what variances can be granted for (i.e., the dimensional standards).

21. No policy change; just cleaning up a bad reference.

WCC 20.84.110 also grants the Hearing Examiner authority to grant variances from all provisions of Title 22, which used to contain the Guide Meridian Improvement Plan but was repealed in 2019 (see Issue #10, above). Title 22 now contains permit procedures. As variances cannot be granted from processes, staff proposes deleting the reference to Title 22.

22. Policy change.

The Director also proposes to create a new administrative variance permit type. Planning and Development Services receives numerous variance requests for minor issues unlikely to have impacts on surrounding properties or people, in particular minor reductions to front yard setbacks or parking stall requirements so as to accommodate houses on challenging lots. The proposed amendments to WCC 20.84.100 (which would become 22.05.024 under Amendment # 19) and WCC 22.05.020 would create a new "minor variance" permit to be processed as a Type II Application. As such, public notice would still be provided wherein neighbors could comment and raise issues or objections, but there would be no public hearing: The decision would be made by the Director, not the Hearing Examiner. This would cut down on the time and costs to applicants for variances for which Planning and Development Services typically doesn't receive much public involvement.

Chapter 20.84 Variances, Conditional Uses and Administrative Approval Uses and Appeals

Repealed in its entirety, with the regulations being moved to Chapter 22.05.

Chapter 22.05 Project Permit Procedures

22.05.020 Project Permit Processing Table.

..

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.160, 23.60.150 ^(h))	Appeal Body (see 2.11.210, 22.05.160, 23.60.150 ^(h))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line Adjustment	21.03		✓					Director/Administrator	Hearing Examiner
Building Permit	15.04	✓ ^(f)	✓					Director/Administrator	Hearing Examiner ⁽ⁱ⁾
Natural Resource Assessment	Title 16		✓					Director/Administrator	Hearing Examiner
Commercial Site Plan Review			✓					Director/Administrator	Hearing Examiner
Exempt Land Division	21.03		✓					Director/Administrator	Hearing Examiner
Floodplain Development Permit	Title 17							Director/Administrator	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80		✓					Director/Administrator	Hearing Examiner

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150 ^(h))
Lot of Record/Lot Consolidation	<u>20.83</u> and <u>20.97.220</u>		✓					<u>Director/Administrator</u>	Hearing Examiner
Nonconforming Use	<u>20.83</u>		✓					<u>Director/Administrator</u>	Hearing Examiner
Removal of Development Moratorium	<u>20.80.738(3)</u>								
Shoreline Exemption	<u>23.60</u>	✓ ^(e)	✓					<u>Director/Administrator</u>	Hearing Examiner
Zoning Interpretation	<u>22.20</u>							<u>Director/Administrator</u>	Hearing Examiner
Type II Applications (Administrative Decision with Public Notice, No Public Hearing)									
Administrative Use	<u>20.84.235</u>	✓	✓	✓	✓			<u>Director/Administrator</u>	Hearing Examiner
Lot Consolidation Relief	<u>20.83.070</u>		✓	✓	✓			<u>Director/Administrator</u>	Hearing Examiner
Reasonable Use (b)	<u>16.16</u>	✓	✓	✓	✓			<u>Director/Administrator</u>	Hearing Examiner
Shoreline Substantial(c)	<u>23.60</u>	✓ ^(a)	✓	✓	✓			<u>Director/Administrator</u> ^(d)	Shorelines Hearings Board ^(h)
Shoreline Conditional Use(c)	<u>23.60</u>	✓ ^(a)	✓	✓	✓			<u>Director/Administrator</u> ^(d)	Hearing Examiner
Zoning or Critical Areas Variance_Minor	<u>22.05.024</u>	✓	✓					<u>Director</u>	<u>Hearing Examiner</u>

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.160, 23.60.150 ^(h))	Appeal Body (see 2.11.210, 22.05.160, 23.60.150 ^(h))	
Short Subdivision	<u>21.04</u>	✓	✓	✓	✓			Director/Administrator	Hearing Examiner	
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)										
Conditional Use	<u>20.84.200</u>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court	
Floodplain Development Variance	Title <u>17</u>		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court	
Long Subdivision	<u>21.05</u>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(e)	Superior Court	
Binding Site Plan	<u>21.07</u>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(e)	Superior Court	
Reasonable Use ^(e)	<u>16.16</u>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court	
Removal of Development Moratorium	<u>20.80.738(2)</u>		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court	
Shoreline Conditional Use	<u>23.60</u>	✓ ^(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(d)	Shorelines Hearings Board ^(h)	
Shoreline Substantial	<u>23.60</u>	✓ ^(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(d)	Shorelines Hearings Board ^(h)	
Shoreline Variance	<u>23.60</u>	✓ ^(a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ^(d)	Shorelines Hearings Board ^(h)	
Zoning or Critical Areas Ordinance Variance, <u>Major</u>	<u>22.05.02420.84.100</u> or <u>16.16.2730</u>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court	

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150 ^(H))
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
Development Agreement	<u>2.11.205</u>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Major Project Permit	<u>20.88</u>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Planned Unit Development	<u>20.85</u>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court

...

20.84.10022.05.024 Variances.

- (1) Variances from the terms of Title 20 (Zoning) or Chapter 16.16 (Critical Areas Ordinance) may be authorized in specific cases that will not be contrary to the public interest, and where, due to special conditions, literal enforcement of the provisions of those codes would result in unnecessary hardship. Generally, variances shall only be considered for dimensional standards, unless otherwise specified in those codes. Under no circumstances shall a variance be granted that allows a use not permissible or otherwise prohibited in the zoning district in which the subject property is located.
- (2) There are two types of variances: Minor and Major Variances.
- (a) Minor variances include those that are unlikely to have impacts on surrounding properties or people. These shall be limited to variances for:
- i. A reduction of up to 10% of a front yard setback
 - ii. A reduction in parking stall dimensions down to 9 feet by 18 feet.
- (b) Major variances include all other variances.
- (3) ~~110~~ The hearing examiner appropriate decision maker, as specified in 22.05.020 (Project permit processing table) shall have the authority to grant a variances from the provisions of this ordinance and of WCC Title 22, the Guide Meridian Improvement Plan, when, in the opinion of the hearing examiner, the conditions set forth in WCC 20.84.120 subsection (4) have been found to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this ordinance so that the spirit of this ordinance the County's land use codes shall be observed, public safety and welfare secured, and substantial justice done; provided, that no variance shall be granted which authorizes a use which is not permitted by the underlying zoning.
- (4) ~~120~~ Before any variance may be granted, it shall be shown that the following circumstances are found to apply:
- (1)(a) That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone;
 - (2)(b) Because of special circumstances applicable to the subject property, including size, shape, topography, location, or surrounding, the strict application of the Title 20 (Zoning) or Chapter 16.16 (Critical Areas Ordinance) ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical its zoning district classification. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section;
 - (3)(c) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

20.84.200 22.05.026 Conditional Use Permits.**20.84.210 Application.**

- (1) **Application.** Conditional use permit applications shall be processed per the provisions of Chapter 22.05 WCC this chapter.

(2) Conditional use permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.

20.84.220 Criteria.

(3) **Approval Criteria.** Before approving an application, the ~~Director or~~ Hearing Examiner ~~or Zoning Administrator~~ shall ensure that any specific standards of the ~~use zoning~~ district defining the use are fulfilled, and shall find adequate evidence showing that the proposed use at the proposed location:

- (1)(a) _____ Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan, ~~and zoning regulations, and any other applicable regulations.~~
- (2)(b) _____ Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
- (3)(c) _____ If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.
- (4)(d) _____ Will not be hazardous or disturbing to existing or future neighboring uses.
- (5)(e) _____ Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- (6)(f) _____ Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
- (7)(g) _____ Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.
- (8)(h) _____ Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
- (9)(i) _____ Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of major importance.

20.84.225 Revisions to conditional use permits.

(4) **Revisions.** The Hearing Examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. "Within the scope and intent of the original permit" shall mean the following:

- (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:
 - (i) revisions involving new structures not shown on the original site plan shall require a new permit; ~~and provided further,~~
 - (ii) ~~that any revisions authorized under this paragraph~~ shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; and,

- ~~(1)(iii)~~ provided further that any revisions authorized under this paragraph shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan;
- ~~(2)(b)~~ Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;
- ~~(3)(c)~~ The use authorized pursuant to the original permit is not changed;
- ~~(4)(d)~~ No additional over-water construction will be involved for shoreline conditional use permits;
- ~~(5)(e)~~ No substantial increase in adverse environmental impact will be caused by the project revision.

~~20.84.235-22.05.026~~ **Administrative Approval Uses.**

- (1) Administrative approval applications shall be processed per the provisions of this Chapter 22.05 WCC.
- ~~(2)~~ The Director of Planning and Development Services is authorized to shall approve, approve with conditions, or deny all administrative approval use applications.
- ~~(2)(3)~~ **Approval Criteria.** Decisions for all administrative approval use permits ~~except adult businesses~~ shall be based upon compliance with:
- (a) The criteria established for the proposed use in the appropriate zone district;
 - (b) The Comprehensive Plan policies governing the associated land use designation;
 - (c) In rural areas, consideration will be given to the cumulative impacts of permitted uses in relation to the governing Comprehensive Plan policies and zoning district; and
 - (d) ~~The criteria of requirement of this section and of WCC 20.84.220~~ WCC 22.05.026 (Conditional Use Permits), subsection (3) (Approval Criteria).
 - ~~(e)~~ Additionally, decisions for administrative approval use permits for adult businesses shall be based solely upon the criteria in subsection (3) of this section.
- ~~(3)(4)~~ **Additional Approval Criteria for Adult Businesses.** Prior to granting administrative approval for an adult business, ~~planning and development services~~ the Director shall find that the proposed use at the proposed location satisfies or will satisfy all the following criteria:
- (a) The adult business will be consistent with WCC 20.66.131 (Light Impact Industrial District, Administrative Approval Uses).
 - (b) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:
 - (i) An “adult eating or drinking establishment” as defined by WCC 20.97.008(2); or
 - (ii) An “adult theater” as defined by WCC 20.97.008(3); or
 - (iii) An “other adult commercial establishment” as defined by WCC 20.97.008(4); or
 - (iv) One or more viewing booths.
 - (c) If the adult business includes one or more viewing booths, the interior of the adult business will incorporate all of the following measures:
 - (a) Each viewing booth shall have at least a three-foot wide opening where a customer enters and exits the booth that is without doors, physical barriers, or visual barriers; and
 - (b) Each viewing booth shall have at least one 100-watt light bulb that is properly working and turned on when business is open. The light bulb shall not be covered or otherwise shielded

except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch durable metal sign shall be located at the entrance to each viewing booth area stating that lights shall remain on; and

- (c) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and
- (d) There shall be no holes or openings in common walls between viewing booths.

~~(d) Additionally f~~For adult businesses containing one or more viewing booths, a condition of ~~administrative approval shall require~~ allow an unannounced inspection by Whatcom County every six months during business hours ~~by Whatcom County~~ to ensure that measures in subsections ~~(34)~~(c)(i) through (iv) of this section are being implemented on an ongoing basis.

~~20.84.236 Revisions to administrative approval use permits.~~

~~(5)~~ **Revisions.** The Director ~~Planning and development services~~ may approve revisions to administrative approval use permits; provided, that the proposed changes are within the scope and intent of the original permit. "Within the scope and intent of the original permit" shall mean the following:

~~(1)~~(a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:

- (i) revisions involving new structures not shown on the original site plan shall require a new permit; and
- (ii) ~~provided further, that any revisions authorized under this subsection shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; and~~

~~(2)~~(iii) ~~provided further, that any revisions authorized under this subsection shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan;~~

~~(3)~~(b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

~~(4)~~(c) The use authorized pursuant to the original permit is not changed;

~~(5)~~(d) No additional over-water construction will be involved for shoreline conditional use permits;

~~(6)~~(e) No substantial increase in adverse environmental impact will be caused by the project revision.

23. No policy change; just a process clarification.

Like with other submittals, staff would like to make it clear that a submittal for a code interpretation has to be on one of our official forms.

Chapter 22.20: Land Use and Development Code Interpretation Procedures

22.20.020 Request for interpretation prior to project permit application.

A person may request an interpretation of the code prior to submission of a project permit. The person shall submit a written request on a form provided by the department specifying each provision of the code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation. Interpretations of a pending project permit shall be made through the applicable permitting process as established in WCC Chapter 22.05 WCC (Project Permit Procedures).

24. No policy change; just a process clarification.

Staff would also like to make it clear that Council has adopted a fee for code interpretations.

Chapter 22.25: Land Use and Development Fees

22.25.020 Application fees and other fees.

Fees for project permit applications, legislative amendments, land use and development code interpretations, and ~~fees for~~ other approvals and reviews as set forth in this title shall be as provided in the Unified Fee Schedule.

25. No policy change; just correcting a previous error.

Last year when we updated (and consolidated) the setback table (WCC 20.80.210) an oversight was made in regards to setbacks in the Agriculture Zone. The required setback for habitable structures on small lots was inadvertently changed from 30' to 5'. Though it may be acceptable to have a non-habitable structure only 5' from an agricultural field, the setback for habitable structures (i.e., homes) should remain at 30'. Thus, staff proposes to distinguish these in the setback table as shown below.

20.80.210 Minimum setbacks.

...

(b) Setbacks Table.

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Highways, Urban Principal, and Urban Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
...							
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
○ <u>Habitable structures</u>	<u>45</u>	<u>35</u>	<u>25</u>	<u>25</u>	<u>20</u>	<u>30</u>	<u>30</u>
○ <u>Non-habitable, accessory structures</u>	<u>45</u>	<u>35</u>	<u>25</u>	<u>25</u>	<u>20</u>	<u>5</u>	<u>5</u>
Note: Depending on circumstances, some AG setbacks may differ pursuant to WCC <u>20.38.060(7)</u> and <u>20.80.255</u> .							
...							