

**Whatcom County
Planning & Development Services
Staff Report to Council**

**Amendments to WWC Titles 20 & 22 to Enact SSB 5290
Regarding Local Project Review**

I. File Information

File # PLN2024-00003

File Name: Local Project Review Amendments

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC Title 22 (Land Use and Development) and Chapter 20.97 (Definitions) to enact SSB 5290 regarding local project review and to fix some deficiencies.

Location: Countywide.

Recommendation(s): The Planning Commission recommends approval; Planning and Development Services concurs.

II. Background

SSB 5290

On May 10, 2023, the governor signed SSB 5290 approving amendments to RCW 36.70B. Washington passed numerous bills, including SSB 5290, to combat the state’s housing crisis. The bill encourages local governments to streamline their permitting processes for new housing. According to the legislation, “Senate Bill 5290 seeks to modernize permitting systems, providing grants to update the systems from paper to electronic, provides grants to augment permit review staff, and sets deadlines on when permits must be reviewed by, to be enforced by partial refunds on permitting fees if these deadlines are not met.”

SSB 5290 amends the Local Project Review Act, Chapter 36.70B RCW, with the intent to increase the timeliness and predictability of local project review. The bill also establishes grant and technical assistance programs, which will be administered by the Washington State Department of Commerce (Commerce), to assist local governments in obtaining the capacity needed for timely permit processing.

Amendments to Chapter 36.70B are numerous and include, among other things, updated local permit review timelines, clarifications regarding the determination of completeness process, a new exemption from site plan review for certain interior projects that contain no exterior alterations, updated annual reporting requirements related to permit issuance, and provisions requiring partial permit fee refunds for failure to timely process permit applications.

All sections became effective as of July 23, 2023, except for the provisions in Section 7, which include the new permit review timelines and annual reporting requirements. That section is effective as of January 1, 2025.

Below is a summary of some of the major changes included in the amended law.

New Permit Review Timelines

There are new permit review timelines for project permit applications submitted to GMA-planning jurisdictions after January 1, 2025 (see RCW 36.70B.080):

- For projects that do not require public notice under RCW 36.70B.110, the final decision must be issued within 65 days of the determination of completeness under RCW 36.70B.070.
- For projects that do require public notice under RCW 36.70B.110, the final decision must be issued within 100 days of the determination of completeness under RCW 36.70B.070.
- For project permits which require both notice under RCW 36.70B.110 and a public hearing, the final decision must be issued within 170 days of the determination of completeness under RCW 36.70B.070.

The above timelines can be altered by local ordinance to address consolidated review time periods or to accommodate larger projects and other differentiating factors. The “shot clock”—or time limit on application review—starts with the determination of complete application and must include every calendar day (not just business days). Certain actions will stop the clock, such as a request by the applicant to temporarily suspend project review as well as the time during which a jurisdiction is waiting for additional information from the applicant. If an applicant does not provide requested information within a specified time, additional time can be added to the shot clock.

Failure to adhere to the established permit review timelines results in a requirement for a local government to refund an applicant’s permit fees on a pro-rated basis—up to a 20% refund depending on the length of the delay. If cities and counties have implemented at least three optional measures intended to streamline project review set forth in RCW 36.70B.160(1), then these permit fee refund provisions do not apply. There are 10 optional measures that local governments are encouraged to adopt. See discussion in Section III—Code Amendments.

Adoption of an ordinance amending timelines consistent with the new provisions will not be subject to appeal to the Growth Management Hearings Board, unless a jurisdiction chooses to adopt time periods for review that are different than those listed in the statute and exceed 170 days.

Revised Annual Reporting Requirements for Certain Jurisdictions

Counties subject to RCW 36.70A.215 (i.e., the buildable lands program) and cities within those counties with a population of at least 20,000 must post annual reports to their websites and submit these reports annually to Commerce by March 1. These reports must include the number of permits issued by type, length of processing decisions, and several other metrics as set forth in amended RCW 36.70B.080. This reporting requirement begins March 1, 2025.

Exemptions from Site Plan Review

Projects with only interior alterations must be exempt from site plan review provided no new sleeping quarters or bedrooms are added and certain other thresholds are not exceeded. See RCW 35.70B.140(3). This section was effective as of July 2023.

Commerce Grant Programs and Technical Assistance

SSB 5290 also places new responsibilities on Commerce to assist and support local governments in their efforts to speed up local permit review, including offering specialized grant programs.

Consolidated permit review grant program

Commerce will offer grants to local governments that commit to certain building permit review consolidation requirements. These include:

- A commitment to issue residential permit applications within 45 business days or 90 calendar days;
- Establishment of an application fee structure that allows for timely consolidated permit review; and
- Completion of a quarterly report to Commerce that includes the maximum and average time for permit review during participation in the program, among other requirements.

Digital permitting grant program

Commerce will offer grants to local governments to update software systems that enable an agency to process electronic permit applications and conduct virtual inspections. Grants will only be provided to a city if the city allows for development of at least two units per lot on all lots zoned predominantly for residential use.

Here are additional items, unrelated to funding, that SSB 5290 directs Commerce to do:

- Convene a digital permitting process workgroup consisting of stakeholders, including Association of Washington Cities, Washington State Association of Counties, cities, counties, building groups, and building inspectors. This group must provide a final report to the state legislature by August 1, 2024, that makes recommendations intended to encourage streamlined and efficient permit review, including consideration of the costs and benefits of implementing a statewide permitting software system.
- Provide technical assistance and guidance to counties and cities in setting fee structures that are reasonable and sufficient to recover true costs.
- Develop a template for annual report submissions required under RCW 36.70B.080.
- Develop a plan to help local governments find appropriately trained staff for temporary support to enable timely processing of residential housing permit applications. This plan is to be submitted to the state legislature by December 1, 2023.

III. Code Amendments

Not all of SSB 5290 requirements necessitate code amendments; some are procedural and some are budgetary. The proposed code amendments that we need to make are found in Exhibit A. While many have to do with implementing SSB 5290, PDS is also taking this opportunity to fix some deficiencies in WCC Title 22. A general description of the proposed amendments follows:

Amendments to Comply SSB 5290

Changing the time limit for determining whether an application is complete from 14 to 28 days (22.05.050(4))

Currently the WCC has a 14-day requirement within which the County must determine an application to be complete. SSB 5290 extends this to 28 days. Staff is proposing to amend 22.05.050(4) as allowed by state law.

Limiting the County's ability to request additional information or corrections (i.e., issue NOARs) to 3 times (22.05.080(2)(c))

During the permit review process, staff often finds information submitted with an application to be incomplete, lacking, or just plain wrong. To remedy this, we issue what's called a Notice of Additional Requirements (NOAR) requesting additional information or corrections (with the goal of being able to find that the application is consistent with the regulations and thus approve it). Generally, everything we've identified as incomplete, lacking, or wrong is compiled into one NOAR and sent to the applicant and their consultant. However, this often devolves into an endless loop, as they'll submit some of the items requested but not all, the submitted information is still inconsistent with the code, or elements have been added/removed that staff must re-review.

In an effort to curtail such cycles, SSB 5290 now limits jurisdictions' ability to issue NOARs to three times. SSB 5290 also requires that, upon issuance of a 2nd NOAR, we invite the applicant to meet so as to resolve any issues. And if upon issuing a 3rd NOAR the applicant's response is not adequate we must make a decision to approve or deny the application.

Practically, this means that PDS must be very thorough in determining application completeness and in issuing NOARs. Similarly, applicants (and their consultants) must be thorough in their responding to

NOARs; they will no longer be able to respond piecemeal. If after the 3rd NOAR they have not responded adequately, and staff cannot determine that the application is consistent with the regulations, the County will have to deny it. This may mean that in the coming years PDS will end up denying many more permits, and there may be an uptick in appeals, until the consultant community becomes more responsive.

Setting a 60-day time limit for an applicant to respond to a NOAR (22.05.080(2)(b))

Related to the previous change, SSB 5290 also limits the time for an applicant to respond to a NOAR to 60 days, extending the overall timeline by 30 days if they do not.

Setting new timelines for reviewing and deciding on permit applications (22.05.130(1)(a))

As explained in Section II, above, SSB 5290 sets new timelines for reviewing and deciding on permit applications, and these are being incorporated into §22.05.130(1)(a).

Project Type	Current Timeline	SSB 5290 Timeline
For projects that do not require public notice	120	65 days
For projects that do require public notice	120	100 days
For project permits that require both notice and a public hearing	120	170 days

Refining what actions suspend the overall permit timeline (22.05.130(1)(b))

Under SSB 5290 some actions can suspend the permit timelines. For the most part the WCC complies already, though staff is proposing to refine them a bit.

Excluding certain actions from these timelines (22.05.130(1)(c))

SSB 5290 also allows us to exclude certain actions from the required timelines. In general, these are legislative or other actions that require Council approval (e.g., CompPlan and code amendments, rezones, development agreements, etc., which are subject to a Type IV process), but also includes substantial revisions to an application by the applicant.

Penalties—Refund of a portion of permit fees if the timelines are not met (see RCW 36.70B.080 [Effective January 1, 2025])

As explained in Section II, above, SSB 5290 requires that jurisdictions can be penalized and must refund a certain portion of an applicant’s fees if the timelines are not met, as follows:

- 10% if issuance of the final decision is late but does not exceed 20% of the original time period;
- 20% if issuance of the final decision exceeds 20% of the original time period.

However, the bill also includes options at RCW 36.70B.080(1)(l)(ii) that local governments can implement to avoid those penalties—if the jurisdiction implements at least three (3) of the ten (10) permit review streamlining options in RCW 36.70B.160(1) (a – j).

The proposed amendments in this report do not include the addition of permit fee refunds because the County complies with RCW 36.70B.080(1)(l)(ii). In particular, Whatcom County complies with RCW 36.70B.160(1)(b), (d), (h) and (j) as further described below.

- b) Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW. The fees imposed may not include a fee for the cost of processing administrative appeals. Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law;”*

Whatcom County imposes reasonable fees that are consistent with RCW 82.02.020 within WCC 22.25. The fees imposed on applicants do not automatically include a fee to process the cost of an administrative appeal. Pursuant to WCC 22.05.160, a fee for administrative appeals is required of anyone applying for an appeal of a permit decision at the time of appeal. It may also be refunded if the appeal is dismissed in whole without hearing.

- d) Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly;*

The County has two consultants under contract that were chosen from the county's active on-call list established in 2023 that will be reviewed and renewed every three years. The consultants are Shannon & Wilson, Inc. and MacWhinney Environmental Consulting, LLC. The consultants are under contract to assist with permit review if permit volumes or staffing make efficient review infeasible. These on-call contracts were approved by the County Council in 2023, and again in 2024, for the 2024 through 2026 biennium time period.

- h) Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;*

Whatcom County Code lists the uses that are permitted outright (likely with the need of a building permit), permitted with an administrative use permit in addition to any necessary building permits, permitted with a conditional use permit in addition to any necessary building permits, or permitted with a major project permit in addition to any necessary building permits in each of the zones of the County. Housing is permitted outright in all residential zones (non-industrial) per WCC 20.20.050, WCC 20.22.050, WCC 20.24.050, WCC 20.32.050, WCC 20.34.050 and WCC 20.36.050. The housing types vary based on if the zones are primarily single-family or multi-family.

- j) Meeting with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information or corrections;*

Whatcom County adopts this statutory provision under WCC 22.05.080(2)(b), as shown in Exhibit A.

Additional (non-SSB 5290) Amendments

While complying with SSB 5290 is the impetus for revising WCC Title 22, there are also other issues PDS proposes to fix.

Land Use Review and Approval Process Table (WCC 22.05.020, Table 1)

Table 1 was originally adopted in 2018 as part of the first iteration of Title 22. It specifies which permits undergo which process type, the steps required for each, who the decision maker is, and who the appeal body is. However, in the intervening years staff has realized that not all of the Department's or County's land use actions are listed and we'd like to make it more complete.

Permit Type v. Process Type (WCC 22.05.020(2))

In revamping Table 1 staff has added actions that are not permits but require decisions nonetheless. Yet all still fall within the 5-tiered schema the new Table 1 describes. Therefore, staff proposes to re-designate the 4-tiered schema to a 5-tiered schema and define them as *process* types rather than *permit* types.

Removing critical areas review from the Site Plan Review process and making it a precursor to applying for a project permit or septic system or well approval (new §22.05.022)

In processing permits, undergoing critical areas review is often the phase that takes the most time, as field work and site visits are usually necessary and/or we have to await rain. Knowing what constraints are on a property is an important first step in designing one's development. Often times an applicant designs a project without knowing these constraints, only to have to redesign the project (at considerable expense) once they are known. Staff believes that significant time and money can be saved if an applicant does their critical area review prior to designing their project.

Staff is therefore proposing to require a critical areas review and determination before one even applies for a project permit. In the schema proposed, an applicant will submit a critical area assessment report for review and acceptance (pursuant to WCC 16.16, Critical Areas). Or, if critical areas are unlikely present, an applicant can request that PDS perform an initial determination of presence or absence based on a review of readily available information and/or a site visit. If determined to be present, then the applicant would submit an assessment report.

In either case, PDS would provide a written determination that critical areas and/or their buffers either are or are not present on the subject property. This would then help them in designing their project and avoiding impacts to critical areas. These written determinations would be valid for 5 years.

Note that there may be project for which such a review isn't necessary, and we have included a waiver process. Generally, waivers will be granted for projects that do not expand an existing structure's footprint or add no bedrooms or sleeping quarters, or are on a lot platted within the last 5 years, though others may present themselves.

Such a service would offer:

- Customers consistency and predictability in decision-making as applied to critical areas and associated buffers.
- Puts critical area review at the beginning of the permit review process. This means that customers will know where they can and cannot build on their property. In the case of wells, septic tanks and drainfields, customers will know prior to hiring an engineer or critical areas consultant where these systems can be located.
- Can save time and money associated with plan changes or redesigns that might occur in the middle of the permit review process, if critical area issues have not been addressed prior to Health Department review.
- Allows customers who wish to sell property an opportunity to identify critical areas and their buffers on site. The designation helps identify buildable areas and offers the associated predictability and reliability for 5 years after the determination.
- Allows for critical areas issues beyond location and classification to be addressed. For example, wetland buffer widths or a mitigation plan for driveway crossing impacts could be included within the designation.

This process is already being used in many jurisdictions, most notably King County, and has proven useful.

Clarifying that a variance is not a permit (WCC 22.05.024)

A variance is not a permit *per se*, as they don't allow one to develop, but rather a request to deviate from code standards. Variances are processed in conjunction with a project permit. They may, however, change the process type of the project permit, as additional public notice and/or a public hearing may be required depending on the category of variance. Staff is proposing language to make this clear.

Formalizing how site plans for permitted and accessory uses are reviewed (new §22.05.023)

Currently, site plans (the development layout) are reviewed for all project permits. PDS reviews them for conformance to standards (e.g., setbacks, parking, landscaping, critical areas, shoreline management, etc.) as well as use (is the use allowed by zoning?) and other code requirements. When one applies for a use permit, a site plan is a required component of the application. Applicable staff then review the project for all applicable codes. However, for permitted and accessory uses, Whatcom County does not require a permit other than a building permit. Identifying the footprint of all aspects of the proposed development early on in the process is an integral part of an efficient permit process. Currently, PDS processes Site Plan Review applications for accessory and permitted uses so that applicants are aware of all of the potential permitting requirements as early as possible. To better clarify the requirements of a Site Plan Review, staff is proposing a new section WCC 22.05.023 to describe how these reviews are done.

Development Agreements (new §22.05.029)

Development agreements are a tool allowed and described by state law (RCW 36.70B.170 – 210). They allow a developer and the County to negotiate rules and standards otherwise not allowed with County Code and enter into a contract specifying what their development requirements will be for a particular property. Such agreements must be approved by the County Council.

While not used by many jurisdictions any more, Whatcom County has continued to use them. Yet we have no code specifying how one applies for one or how they're processed or decided on. Therefore, if Whatcom County wants to continue to allow them, staff believes we ought to have some code describing what development agreements may be used for and how they're processed. Thus, we're proposing new §22.05.029.

Moving all Personal Wireless Service Facilities processing exceptions into one section (new WCC §22.05.034)

The County adopted specific regulations for the processing of personal wireless service facilities in 2014 in response to updated federal regulations. The federal regulations contained requirements specific to the processing of such facilities in order to standardize such regulations across all jurisdictions, ensuring that cellular service would be ubiquitous. And though most of our personal wireless service facilities regulations are contained in WCC Chapter 20.13, the processing regulations were interspersed throughout WCC Title 22 as exceptions to our standard processing rules. Unfortunately, being interspersed in all the various sections makes it difficult to find personal wireless service facilities processing rules.

Thus, staff is proposing to move all of the disparate processing rules for personal wireless service facilities into one consolidated section, §22.05.034. The specific rules are not being changed, however.

Transferring the responsibility of posting notices to the applicant, rather than staff (22.05.070(4)(b))

Many permit or action types require that notices (of application, hearings, SEPA, etc.) be posted on the subject property so that the public is aware of proposed development. The code currently requires the County to post such notices, and our staff does so, though it is quite time consuming. Most jurisdictions have switched to requiring applicants do the posting, to specific standards, and provide an affidavit of posting attesting that it has been done. Staff proposes amendments that would follow suit, which would provide more time for staff to do permit review.

IV. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan's Goal 2D to "Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner." Staff finds no policies with which these amendments would be inconsistent.

V. Proposed Findings of Fact and Reasons for Action

It is recommended the Planning Commission adopt the following findings of fact and reasons for action:

1. On May 10, 2023, the governor signed SSB 5290 approving amendments to RCW 36.70B to combat the state's housing crisis. The bill encourages local governments to streamline their permitting processes for new housing. The provisions in Section 7, which include the new permit review timelines and annual reporting requirements, become effective on January 1, 2025.
2. The provisions of SSB 5290 necessitate revising some of Whatcom County's permit processing code (WCC Title 22) as well as Planning and Development Services' processes so as to meet its requirements. Additional amendments are being made to make the permitting process more efficient.
3. Whatcom County Planning and Development Services has submitted an application to make various amendments to the Whatcom County Code (WCC) to comply with the requirements of SSB 5290, as well as making other corrections, updates, and clarifications to the County's permitting processes.
4. This project is exempt from SEPA pursuant to WAC 197-11-800(19).
5. Notice of the subject amendment was submitted to the Washington State Department of Commerce on August 27, 2024, for their 60-day review. No comments were received to date.
6. The Planning Commission held work session on September 12, 2024, and a duly noticed public hearing on the proposed amendments on August 26, 2024. Comments were received from the Building Industry Association of Whatcom County, which were addressed by staff, and on October 10th the Commission voted to recommend approval.
7. The County Council held a duly noticed public hearing on the proposed amendments on [REDACTED], 2024.
8. The amendments are consistent with Comprehensive Plan Policy Goal 2D to "refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner." There are no policies with which these amendments would be inconsistent.

VI. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VII. Recommendation

The Planning Commission recommends approval of the proposed amendments and Findings of Fact; Planning and Development Services concurs.

Attachments

1. Draft Ordinance and Exhibit A – Proposed Code Amendments