

# Whatcom County Planning & Development Services Staff Report

## Code Scrub 2018

### I. Background Information

**File #** PLN2018-00014

**File Name:** Code Scrub 2018

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

**Summary of Request:** Proposed minor amendments to WCC Titles 20, 21, and 22. This is an annual “code scrub,” wherein staff proposes numerous amendments to clarify code and fix inconsistencies and grammar. No policy changes are proposed.

**Location:** Countywide.

**Staff Recommendation:** Approve. The amendments are necessary to add clarity to development regulations and procedures and to keep the code up to date.

**Background:** From time to time, the County adopts a series of minor code amendments to improve unclear wording or procedures, or to correct errors or outdated text. This collection of 27 code amendments includes such items.

### II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided.

### III. 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.”

### IV. Proposed Findings of Fact and Reasons for Action

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

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on October 19, 2018, 2018.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 15, 2018.

4. The Planning Commission held a public hearing on the proposed amendments on December 13, 2018, notice of which was published in the Bellingham Herald on October 26 and November 30, 2018. November 8, 2018, notice of which was published in the Bellingham Herald on October 26, 2018.
5. Comprehensive Plan Policy Goal 2D is to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
6. WCC 0.38.060(7) provides increased setbacks for cluster subdivisions when adjacent to agricultural properties so as to minimize nuisance complaints. However, it is confusing in its current state. The amendment would clarify its intent.
7. WCC 20.40.254(5)(a) & (b) is inconsistent with the minimum parcel sizes listed in Table 20.40.251. Table 20.40.251 lists the minimum parcel sizes as 40 and 10 acres, whereas the text of 20.40.254(5)(a) & (b) says “larger/greater than” 40 and 10 acres. The amendments would rectify this inconsistency.
8. WCC Chapter 20.40 is the only zone chapter that doesn’t explicitly specify what the maximum density is in that zone. Though a maximum density of a dwelling unit/acre is implied by the 40 ac minimum parcel size, it’s not explicitly stated. The amendment would rectify this.
9. Both WCC 20.51.430 (Lake Whatcom Watershed Overlay District) and 20.71.354 (Water Resource Protection Overlay District) exempt hazard tree removal from having to obtain a tree removal permit provided they meet the requirements of subsection (5) of their respective sections. However, each of the subsection (5)s specifically state that a tree removal permit is required. The amendments would rectify this inconsistency.
10. The text of WCC 20.62.300 describes a maximum density, not a minimum as the heading implies. The amendment would rectify this inconsistency.
11. WCC 20.66.550 (Light Impact Industrial (LII) District) includes increased setbacks from certain adjacent zones, as well as from “principal arterials.” However, Whatcom County has no such roadway classification. The amendment would rectify this inconsistency.
12. WCC 20.68.552(5) contains increased setbacks and buffers in the LII District under certain circumstances. It also conformance to Policy 1.05 of the Cherry Point/Ferndale Subarea Plan. However, the intent and specifics of this policy are already included in the regulations. Furthermore, the Cherry Point/Ferndale Subarea Plan is slated for repeal. Therefore this reference isn’t required. The amendment would rectify this.
13. WCC 20.80.220, subsection (a) specifies what appurtenances are allowed in setback areas. However, decks and utilities, which are common uses in front and side yard setbacks, are not specified allowances, and neighbors have been trying to use this section to protest development. The amendments would also update an old reference to the Uniform Fire Code to the International Fire Code, which Whatcom County has adopted. Additionally, the amendment would delete the repetitious language regarding vision clearance, already found in the referenced section.
14. WCC 20.83.050 allows someone to rebuild a damaged or destroyed nonconforming structure exactly where it was. However, as it stands, owners have argued that they can rebuild over property lines. The amendment would rectify this.
15. WCC 20.80.230(2) allows property owners on constrained lots in the shoreline jurisdiction to consider their front yard (that next to road) their rear yard, and their rear yard (that next to the

water) their front yard, effectively reducing their setback next to the road to down to 20 feet. The amendments would effectively do the same; though also allow the same consideration for other critical areas.

16. WCC 20.80.545 contains rules for parking areas. However, the rule in the first sentence is already covered by WCC 20.80.350 (Parking Areas). And the second sentence requires that a driveway be at least 30 feet long (20' for the parking spot, plus the 10' setback), which is greater than the typical front yard setback (20-25'). Driveways on typical suburban development are 20 feet long. The existing language basically makes it illegal to park in a typical driveway and is not enforced. The deletion of this section would rectify this.
17. WCC 20.80.650 refers to the Northwest Air Pollution Control Agency, which was renamed the Northwest Clean Air Agency many years ago. The amendment would rectify this.
18. WCC 20.80.670 contains dock requirements. However, these are also addressed in the Shoreline Management Program (Title 23) and the Critical Areas Ordinance (Chapter 16.16), so these are duplicative. The deletion of this section would rectify this.
19. WCC 20.85.101 contains an old reference to the Uniform Building Code, whereas Whatcom County has adopted the International Building Code. The amendment would rectify this.
20. The Critical Areas Ordinance (WCC 16.16.260(E)) allows someone doing a Planned Unit Development to develop alternative mitigation plans. The amendment would add a section to Chapter 20.85 (Planned Unit Developments) pointing readers to that possibility.
21. WCC 20.88.275 exempt applicants for a Planned Unit Development from having to obtain a Master Project Permit, as it goes before Council for a decision anyways. The amendment would provide the same exemption for development agreement applicants, as they, too, go before Council.
22. WCC 20.97.293 contains an outdated definition of "party of record," and WCC 20.97 contains no definition of "standing." The amendments would rectify this by amending the definition of "party of record" and adding a definition of "standing" consistent with RCW 36.70C.060 (Judicial Review of Land Use Decisions). Additionally, various sections of the code pertaining to appeals are amended to specify that in order to appeal, one must have standing.
23. WCC 20.86.051 defines receiving areas for Whatcom County's Transfer of Development Rights program. However, the County's Prosecuting Attorney has advised against requiring TDRs for UGA expansions or rezones under RCW 82.02.020. The amendments would delete these two requirements.
24. WCC Chapter 20 (Zoning) contains no definition of "Director." The amendment would add such a definition to WCC 20.97.
25. WCC Chapter 22 (Project Permit Procedures) does not have a definitions section. The amendment would rectify this, by referring to the definitions found in WCC 20.97.
26. WCC 22.05.160 contains rules for processing appeals. The amendments would clarify that appeals need to be filed on a department-provided form and the application would need to meet the rules contain in subsection (a) to be valid. The amendments would also clarify that the Hearing Examiner would hold an open record public hearing on administrative appeals and that one has to have standing to appeal.
27. When charging stations for electric cars were relatively new and no one knew what they would look like or how they would operate, Whatcom County adopted regulations for where they can be

located, making them accessory to conditionally approved automobile service stations, and differentiating between rapid and standard charging stations. However, given how they are actually used (users typically charge their cars for 45-60 minutes while shopping or eating), and what they actually look like, it makes more sense to allow them accessory to any permitted use in commercial or industrial zones. Nor do rapid and standard charging stations look different. The amendments would merge the two existing definitions into one, and allow charging stations accessory to any permitted use in certain commercial and industrial zones.

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

## **V. Proposed Conclusions**

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

## **VI. Recommendation**

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

## **Attachments**

1. Draft Ordinance
2. Exhibit A – Proposed Code Amendments