



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham WA 98226

AGENDA January 13, 2022

The Whatcom County Planning Commission will hold a **virtual*** meeting at 6:30 p.m., with staff located at the Northwest Annex Conference Room, 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of November 18, 2021
- Proposed amendments to Whatcom County Code Titles:
 - 20 (Zoning)
 - 22 (Land Use Development)
 - *Public Hearing and Work Session*
- Unfinished Business
- Adjournment

*** This is a virtual meeting only.**

Physical attendance is not permitted due to COVID-19 restrictions.

NOTE: For information on how to watch and participate in the meeting in real time, please visit the following web page: [Participate in Virtual Planning Commission Meeting](#)

Individuals who require special assistance to participate in the meetings are asked to contact "PDS_Planning_Commission@co.whatcom.wa.us" at least 96 hours in advance.

Upcoming Meeting Topics

- Wireless Code Amendments
- Annual Business Meeting
- Cottage Industry
- Wind Energy Systems

Pending Items Commissioners would like to address

Code related implications of climate modeling

**For more information please contact Tammy Axlund at (360)778-5935 or
PDS_Planning_Commission@co.whatcom.wa.us
5280 Northwest Drive, Bellingham WA 98226**



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
November 18, 2021**

Public Hearing and Work Session

1

1 **Call to Order**

2 The virtual meeting was called to order by Whatcom County Planning Commission
3 Chair, Kelvin Barton at 6:32 p.m.

4 **Roll Call**

5 **Present:** Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Stephen Jackson,
6 Kimberley Lund, Natalie McClendon

7 **Absent:** Jon Maberry, Dominic Mocerri

8 **Staff Present:** Josh Fleischmann and Tammy Axlund

9 **Department Update**

10 Mark Personius, Director of Planning and Development Services (PDS), was not
11 available to provide an update.

12 **Open Session Public Comment**

13 There was no public comment.

14 **Commissioner Comments**

15 Commissioner Deshmane disclosed that Penny Friedman called him and that she
16 stayed at his house as a tenant for approximately a year. They have stayed in touch.
17 He offered to recuse himself from the vote regarding her property if the other
18 commissioners wished him to do so.

19 Commissioner McClendon announced that her second full term ends at the end of
20 January 2022, and there will be a position open in District 5. She is moving out of the
21 county in January, and may do her last meeting remotely from her new location.

22 Commissioner Barton referred to a motion chart and reminded commissioners that
23 when they need more information on a topic, they may use the motion to "postpone to
24 a certain time." This will postpone the topic to a future meeting, so it is not dropped,
25 but allows for time to obtain more information.

26 **Approval of Meeting Minutes**

27 **Timestamp: 14:12**

28 **Commissioner Bartel moved** to approve the meeting minutes from October 28,
29 2021.

30 **Commissioner Deshmane seconded.**

31 **Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Lund, McClendon; Abstain-**
32 **Jackson (Ayes-5; Nays-0; Abstain-1*).** The motion carried.

33 *Commissioner Hansen had technical difficulties and joined after the vote.

34 **Proposed Amendments to Open Space Land**

35 **Timestamp: 18:03**

36 Josh Fleischmann, Open Space Land Administrator in Planning and Development
37 Services (PDS), gave a PowerPoint presentation providing information regarding the
38 history of the program and the purpose of the Open Spaces Taxation Act, as well as



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Public Hearing and Work Session

2

1 open space policy and the public benefit rating system. He then described the merits of
2 the following open space land applications, and answered Commissioners' questions.

- 3
- 4 • OSP2020-00003: Penny Friedman, parcel #400121192200
 - 5 • OSP2020-00004: Donald and Barbara Taylor, parcel #390329490363
 - 6 • OSP2020-00005: Whatcom Land Trust, parcel #400117071051

7 **a) Public Hearing and Work Session Regarding Open Space**

8 **Timestamp: 25:47**

9 Penny Friedman provided public comment.

10 Mr. Fleischmann and Ms. Friedman responded to commissioners' questions.

11 **Timestamp: 1:10:25**

12 **Commissioner Bartel moved** to recommend reclassification of the Friedman parcel
13 to County Council for approval.

14 **Commissioner Lund seconded.**

15 Commissioners discussed whether to recommend approval for a waiver of open space
16 requirements for this application. No amendment or motion was made in this regard.

17 **Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Hansen, Lund, McClendon;
18 Nays-Jackson; (Ayes-6; Nays-1; Abstain-0). The motion carried.**

19 **Timestamp: 1:17:26**

20 Alex Jeffers advised that he would be available to answer questions on behalf of
21 Whatcom Land Trust during the work session.

22 The Chair closed the public hearing.

23 **Timestamp: 1:19:08**

24 **Commissioner Lund moved** to accept the reclassification of the Whatcom Land Trust
25 parcel as recommended by staff.

26 **Commissioner Jackson seconded.**

27 **Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Hansen, Jackson, Lund,
28 McClendon; (Ayes-7; Nays-0; Abstain-0). The motion carried.**

29 **Adjournment**

30 **Timestamp:**

31 The meeting was adjourned at 7:54 p.m.

32 Minutes prepared by Tammy Axlund.

33 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

34

Kelvin Barton, Chair

Tammy Axlund, Secretary

Whatcom County Planning & Development Services Staff Report

Miscellaneous Code Amendments 2021

I. Background Information

File # PLN2019-00006

File Name: Miscellaneous Code Amendments 2021

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC Titles 20 (Zoning) and 22 (Land Use and Development). This is an annual “code scrub,” wherein staff proposes amendments to clarify code, fix inconsistencies and grammar, and modify certain policies to a small degree.

Location: Countywide.

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

Background: Planning and Development Services annually proposes a series of code amendments to improve unclear wording or procedures, or to correct errors or outdated text. This year’s 8 proposed code amendments include such items as well as one proposed policy change.

II. Code Amendments

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

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 the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 17, 2021.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on December 10, 2021, for their 60-day review. No comments were received.

4. The Planning Commission held a duly noticed public hearing on the proposed amendments on January 13, 2022.
5. The County Council held a duly noticed public hearing on the proposed amendments on _____, 2022.
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 amendments to WCC 20.04.035 only clean up outdated references to certain County departments and divisions.
8. In reference to Exhibit A, Amendment No. 2: The proposed amendments to WCC 20.38.060 only fix grammar.
9. In reference to Exhibit A, Amendment No. 3: Unlike in other districts the existing lot coverage section of the Rural Forestry district contains both lot coverage rules *and* forestland retention rules. The proposed amendments to WCC 20.42.450 and addition of 20.42.455 would split these concepts into separate sections. Additionally, the current forestland protection regulation allows the 20% limit to be exceeded through a Conditional Use Permit (CUP), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsides more and more houses are being built in this district, and builders are using the CUP process to clear more forest so as to obtain hilltop views, contrary to the intent of this district. Changing the process for exceeding the 20% clearing limit would require that such applicants show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria.
10. In reference to Exhibit A, Amendment No. 4: The amendments to WCC 20.22.662, 20.24.652, 20.32.652, 20.34.652, 20.36.652, 20.37.651, 20.40.662, 20.42.652, and 20.43.662 would make the mineral lands disclosure requirement of 500 (rather than 300) feet consistent with WCC 14.06.030(B) (Mineral Resource Land – Disclosure), a change Council made in 2003 (ORD2003-061). Though Council updated that section, the revised distance was not carried through to the language in the individual districts, creating an inconsistency. These amendments would rectify that.
11. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.36.156, 20.40.165, 20.42.157, 20.51.101, 20.59.201, 20.61.051, 20.62.155, 20.66.082, 20.71.221, 20.72.154, and 20.72.204, and the addition of 20.97.004 would standardize the language used for kennels and accessory kennels.
12. In reference to Exhibit A, Amendment No. 6: In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, and adopted new definitions. However, the previous (then existing) definitions were not deleted. Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they’re listed as both in 5 of those zones. Thus, staff proposes to delete family day care homes as a permitted use in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM, UR-MX, RR-I, R, TZ, AG, NC, and RGC districts. The deletion of 20.20.059, 20.22.057, 20.24.057, 20.37.056, 20.40.057, and 20.97.052.1 would clean up these inconsistencies.
13. In reference to Exhibit A, Amendment No. 7: The amendments to WCC 20.40.254 clarify which general standards apply only to agricultural short plats vs. agricultural boundary line adjustments.

14. In reference to Exhibit A, Amendment No. 8: The amendment to WCC 22.05.100(3) clarifies the timeline for applicants to respond to a Notice of Additional Requirements.

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. Exhibit A – Proposed Code Amendments

Exhibit A: Proposed Miscellaneous Code Amendments 2021

WCC TITLE 20 (ZONING)

1) Clean-up of Department & Division Names

This is just clean-up of department and division names.

Chapter 20.04 General Provisions

20.04.035 Administrative responsibilities.

~~The land use division of t~~The ~~Department of p~~lanning and ~~d~~Development ~~s~~Services ~~department~~ is responsible for the administration of this ~~t~~itle. ~~The division, and~~ shall act as a coordinating agent to ensure that the regulatory process is expeditious. ~~In so doing, the Department and~~ shall recognize input provided by other departments ~~and divisions~~ having appropriate expertise, including: ~~the Public Works' division of e~~Engineering ~~Services division~~ for ~~solid waste,~~ road, drainage, and land alteration; the ~~f~~ire ~~m~~arshal for fire-related issues; the Whatcom County ~~h~~Health ~~d~~epartment for domestic water, waste disposal, ~~solid waste~~, and noise; and the ~~Department's P~~lanning ~~d~~ivision for land use and general site design. All ~~County~~ departments ~~and divisions of county government~~ shall cooperate fully ~~with the land use division~~ in the exercise of their duties relative to land use controls and regulations.

2) Habitable v. Inhabitable

This is just a grammatical change. Though “habitable” and “inhabitable” mean the same thing, “habitable” is used more commonly in the code and permitting staff are more used to it. Therefore staff would like to exchange the terms in the below section.

Chapter 20.38 Agriculture Protection Overlay

20.38.060 Development and use standards.

Subdivisions or segregations for nonagricultural uses shall be clustered. Development on all parcels subject to this section shall follow the requirements below:

...

- (7) Any ~~in~~habitable structure within the cluster subdivision shall be set back a minimum of 100 feet, and any accessory or other non-~~in~~habitable structures shall be set back at least 30 feet, ~~from the~~ property line of any parcel that is an APO reserve tract or designated or taxed for agricultural purposes; and

...

3) Rural Forestry Lot Coverage (1 POLICY CHANGE)

The primary purpose of this district is to implement the forestry designation of the Whatcom County Comprehensive Plan, established pursuant to RCW 36.70A.170, by providing the opportunity for non-industrial landowners to **manage their land for long-term productivity and sustained use of forest resources**. In addition, the district encourages the **management of land for wildlife, aesthetics, and other non-commodity values**. It also provides for uses that are compatible with these activities, while maintaining water quality and soil productivity. Lummi Island Scenic Estates shall be administered under the RR-I zone district regulations. A secondary purpose of this district is **to serve as a holding district within the urban growth area** Comprehensive Plan designations **to allow forestry uses** in the near term **while protecting the area from suburban sprawl and preserving the potential for future urban development**. [WCC 2042.010, emphasis added]

When calculating lot coverage only, areas of roofed structures are included (as shown in the following definition) in all zones except the Rural Forestry district.

20.97.217 Lot coverage.

“Lot coverage” means the percent of a lot or parcel which is, or will be, covered by all structures located thereon. Coverage is determined by measuring areas covered by a weather tight roof. For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used to compute lot coverage.

In Rural Forestry, §20.42.450 indicates that we’re to include in the calculation everything that is not in forest product production. This would include roads and other open areas not containing roofed structures; basically anything (but critical areas) not containing forest. Unfortunately the language of §20.42.450 addresses two issues: primarily maintaining forest land but a little about lot coverage.

Staff proposes to break this section into two: One actually addressing lot coverage as it’s addressed in other districts (i.e., how much land can be covered in structures), and the other addressing forest land protection (which is what the existing language is primarily about). The proposed lot coverage language is taken from that of the Rural district. The proposed forestland retention language (§20.42.455) comes from the existing “lot coverage” language. This part of the amendment is not a policy change.

However, one policy amendment staff is proposing is to require a variance, rather than a conditional use permit. The current forestland protection regulation allows the 20% limit to be exceeded (up to 35%) through a Conditional Use Permit (CUP), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsides more and more houses are being built in this district, and builders are using the CUP process to clear more forest so as to obtain hilltop views. This is contrary to the intent of this district, which is for “for nonindustrial landowners to manage their land for long-term productivity and sustained use of forest resources” (§20.42.010). Changing the process for exceeding the 20% clearing limit would require that such applicants show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria.

Additionally, staff recommends that we get rid of WCC 20.40.900, which contains CUP criteria specific to this zone. The criteria for other CUPs are found in WCC 22.05.026 and are almost identical, with the exception of a few that are already covered by other sections of the code (e.g., stormwater, critical areas, etc.). We find it odd to have different CUP criteria for different zones and believe this is a holdover from days past.

Chapter 20.42 Rural Forestry (RF) District

20.42.450 Lot coverage.

~~No more than 20 percent of the lot area shall be permanently altered or removed from production of forest products, excluding natural meadows, bogs, surface water and rock outcrops, unless authorized as a conditional use or the planned unit development provision of Chapter 20.85 WCC, in which case no structure or combination of structures, including accessory buildings, shall occupy or cover more than 35 percent of the lot. No structure or combination of structures, except for forest production structures, shall occupy or cover more than 5,000 square feet or 20%, whichever is greater, of the total lot area, not to exceed 25,000 square feet.~~

20.42.455 Forestland Retention.

~~No more than 20% of a lot's area shall be permanently altered or removed from the production of forest products, unless authorized by a variance (WCC 22.05.024) or as a Planned Unit Development (WCC Chapter 20.85), in which case no more than 35% of the lot's area shall be permanently altered or removed from the production of forest products.~~

20.42.150 Conditional uses.

The conditional uses listed herein shall be administered pursuant to the applicable provisions of Chapters ~~20.80 WCC (Supplementary Requirements), and Chapter 22.05 WCC (Project Permit Procedures), 16.08 the Whatcom County (SEPA) Ordinance, and Titles 21 (Land Division Regulations) the Whatcom County Subdivision Ordinance and 23 (the Whatcom County Shoreline Management Program).~~ Applicable conditional use permit criteria are established in the provisions of WCC 20.42.900 and will not be subject to the conditional use criteria provided for in WCC 22.05.026.

...

Editor's Note: The list of conditional uses is not being shown as they are not proposed for amendment.

~~20.42.900 Conditional use permit criteria.~~

~~.901 The conditional uses listed in WCC 20.42.150 shall be subject to the following forestry conditional use criteria. Said criteria listed in WCC 20.42.902 shall supersede the criteria listed in WCC 22.05.026.~~

~~.902 Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled and shall find adequate evidence showing that the proposed conditional use at the proposed location will:~~

- ~~(1) Be in accordance with all applicable local and state laws, standards and regulations;~~
- ~~(2) Be reasonably compatible with the surrounding environment and with the policies of the Whatcom County Comprehensive Plan;~~
- ~~(3) Not generate traffic in excess of capacity of the public road system at reasonable safety and service levels;~~
- ~~(4) Not create unreasonable demands for public expenditures to provide services, facilities, or utilities beyond those which are normally required for permitted uses in the Forestry District;~~
- ~~(5) Provide entrances to public roads or private roads open to public use in accordance with applicable county or state standards;~~

- ~~(6) Provide reasonable sound and sight buffering so as not to detract from normal use of surrounding property, public and private roads, and trails open to public use;~~
- ~~(7) Be located a reasonable distance from areas of actual or potential natural hazard;~~
- ~~(8) Not unreasonably contribute to actual or potential water quality or quantity problems;~~
- ~~(9) Be designed to provide reasonable safety from fire hazard;~~
- ~~(10) Not unreasonably interfere with any territorial or otherwise significant view from surrounding property and public roads;~~
- ~~(11) Not remove areas of native vegetation which protect shorelines and streambanks from erosion, except as necessary for such uses as culverts, bridges, boat ramps, recreation areas and stream bank stabilization projects; and~~
- ~~(12) Include reasonable soil erosion plans necessary to prevent soil, organic debris and other pollutants from entering streams, ponds, or lakes.~~

4) Mineral Lands Notification Distance

In 2003, Council amended WCC 14.06.030(B) (Mineral Resource Land – Disclosure) to require that—upon conveyance of a fee interest in real property or upon the issuance of a discretionary development permit—property owners sign a disclosure acknowledging that the property is within 500 feet of Mineral Resource Lands (it had previously been 300 feet). The purpose of this requirement was “to promote a good neighbor policy between mineral and non-mineral property owners by requiring notification to purchasers and users of property adjacent to or near mine operations of the inherent potential problems associated with such purchase or use.” (WCC 14.06.010(B))

There are similar requirements in various zones; however, they all require disclosure if within 300 feet of an MRL. It appears that the change in distance was not updated everywhere (nor mentioned in the ordinance ORD2003-061). Staff would like to rectify this inconsistency, and since ORD2003-061 was the most recent amendment to this policy we proposed to change the distance to 500 feet in each of the Title 20 sections in which this inconsistency is found.

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300-500~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.24 Urban Residential Mixed (UR-MX) District

20.24.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300-500~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.32 Residential Rural (RR) District

20.32.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.34, Rural Residential-Island (RR-I) District

20.34.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.36 Rural (R) District

20.36.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~500~~300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.37 Point Roberts Transitional Zone (TZ) District

20.37.651 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of an area designated as Rural or within ~~3500~~ feet of an area upon which farm operations are being conducted shall be subject to the right to farm, ~~right to practice forestry, and mineral land~~ disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.40 Agriculture (AG) District

20.40.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~500~~300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.42 Rural Forestry (RF) District

20.42.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500 ~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

Chapter 20.43 Commercial Forestry (CF) District

20.43.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500 ~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

5) Standardizing Kennel Language
 In 2021 the Hearing Examiner issued a decision on an appeal of a PDS Code Interpretation (APL2020-0004) in which he raised a code construction problem: That throughout the code we use (and in the past have used) “kennel” in different ways and with different “intent” language. The following table indicates where the term “kennel” appears and its various iterations:

Zone	Permitted	Conditional Use	Prohibited	Term Used
Rural		20.36.155		Animal hospitals and accessory kennels and stables (subject to 3 standards)
		20.36.156		Commercial kennels and stables intended for the boarding or training of domestic animals
Agriculture		20.40.165		Commercial kennels (subject to numerous standards)
Rural Forestry		20.42.157		The operation of fur farms and kennels
Lake Whatcom Overlay District			20.51.100	Animal hospitals and accessory kennels and stables
			20.51.101	Commercial kennels and stables
Rural General Commercial		20.59.201		Animal kennels
Small Town Commercial	20.61.051(3)			Veterinary practices with accessory indoor kennels
		20.61.201(4)		Animal kennels not associated with a veterinary practice
General Commercial		20.62.155		Animal kennels

Rural Industrial and Manufacturing	20.69.053(5)			Animal hospital and accessory kennels and stables
Water Resources Protection Overlay District			20.71.220	Animal hospitals and accessory kennels and stables
			20.71.221	Commercial kennels and stables
Point Roberts Special District		20.72.154(2)		In the STC, animal kennels for kenneling up to six animals and that are associated with an animal groomer
			20.72.204(2)	In the STC, animal kennels , except as allowed by 20.72.154(2)

In accordance with of the Hearing Examiner’s suggestion, staff would like to remedy this by standardizing the language and by adding a new definition of “accessory kennel.” Note that we are not proposing to amend the definition of “kennel,” nor the conditions by which they’re allowed in some of the zones.

For reference, the definition of “kennel” is:

20.97.191 Kennel.
 “Kennel” means a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include grooming and/or training as accessory uses.

Additionally, staff recommends that kennels be allowed in the Light Impact Industrial district and proposes to add them to the permitted use section of Chapter 20.66.

Chapter 20.97 Definitions

20.97.004 Accessory kennels and accessory stables

“Accessory kennel” or “accessory stable” means the indoor facilities necessary for an animal hospital or veterinarian to house overnight animals undergoing medical care or treatment.

Chapter 20.36 Rural (R) District

20.36.150 Conditional uses.

...

.156 Commercial k Kennels and stables.

...

Chapter 20.40 Agriculture (AG) District

20.40.150 Conditional uses.

...

.165 Commercial k Kennels, as identified in WCC 20.97.191, which shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area, provided the following criteria are met:

...

Chapter 20.42 Rural Forestry (RF) District

20.42.150 Conditional uses.

...

.157 ~~The operation of f~~ur farms and kennels.

...

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.080 Prohibited uses.

...

.101 ~~Commercial k~~ennels and stables.

...

Chapter 20.59 Rural General Commercial (RGC) District

20.59.200 Conditional uses.

...

.201 Retail and office type uses.

(1) ~~Animal k~~ennels.

...

Chapter 20.61 Small Town Commercial (STC) District

20.61.050 Permitted uses.

...

.051 Retail and office type uses.

...

(3) Veterinary practices ~~with and~~ accessory ~~indoor~~ kennels.

...

Chapter 20.62 General Commercial (GC) District

20.62.150 Conditional uses.

...

.155 ~~Animal k~~ennels.

...

Chapter 20.66 Light Impact Industrial (LII) District

20.66.050 Permitted uses.

...

.082 Kennels

...

Chapter 20.71 Water Resource Protection Overlay District

20.71.200 Prohibited uses.

...

.221 ~~Commercial k~~ kennels and stables.

...

Chapter 20.72 Point Roberts Special District

20.72.150 Conditional uses.

...

.154 In the Small Town Commercial District:

...

(2) Animal groomers and accessory kennels for ~~kenneling~~ up to six animals ~~and that are associated with an animal groomer.~~

20.72.200 Prohibited uses.

...

.204 The following uses are prohibited in the Small Town Commercial Zone District:

(2) ~~Animal k~~ kennels, except as allowed pursuant to WCC 20.72.154(2).

6) Childcare Facilities Definitions.

In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, adopting the following definitions:

20.97.092 Day care center.

“Day care center” means a structure other than an occupied dwelling unit regularly providing care during part of the 24-hour day to 13 or more children.

20.97.126 Family day care home.

“Family day care home” means an occupied dwelling unit regularly providing care during part of the 24-hour day for six or fewer children in the family abode of the person or persons under whose direct care the children are placed. Such care in a family day care home is limited to six or fewer children, including those children living in the home or children of other close relatives cared for in the home.

20.97.241 Mini-day care center.

“Mini-day care center” means a structure other than an occupied dwelling unit regularly providing care during part of the 24-hour day for 12 or fewer children. Such care in a mini-day care center is limited to 12 or fewer children, including those children of the faculty or children of other close relatives cared for by the faculty.

20.97.242 Mini-day care home.

“Mini-day care home” means an occupied dwelling unit regularly providing care during part of the 24-hour day for seven to 12 children in the family abode of the person or persons under whose direct care the children are placed. Such care in a mini-day care home is limited to 12 or fewer children, including those children living in the home or children of other close relatives cared for in the home.

However, the previous (then existing) definitions were not deleted by Ord. 2009-034. As clean up, staff proposes to do that now so that our code doesn't contain conflicting definitions.

Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they're listed as both in 5 of those zones. Thus, staff proposes to delete family day care homes as a permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM, UR-MX, RR-I, R, TZ, AG, NC, and RGC districts.

Chapter 20.20 Urban Residential (UR) District

20.20.050 Permitted uses.

...

~~.059 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.050 Permitted uses.

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

Chapter 20.24 Urban Residential Mixed (UR-MX) District

20.24.050 Permitted uses.

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

Chapter 20.37 Point Roberts Transitional Zone (TZ) District

20.37.050 Permitted uses.

...

~~.056 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

Chapter 20.40 Agriculture (AG) District

20.40.050 Permitted uses.

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

Chapter 20.97 Definitions

~~20.97.052.1 Child care facilities.~~

~~“Child care facilities” means a family day care home, mini day care center, and day care center as defined below:~~

- ~~(1) “Family day care home” means a person regularly providing care during part of the 24-hour day to six or fewer children in the family abode of the person or persons under whose direct care the children are placed.~~
- ~~(2) “Mini-day care center” means a person or agency providing care during part of the 24-hour day to 12 or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through 12 children in the family abode of such person or persons.~~
- ~~(3) “Day care center” means a person or agency that provides care for 13 or more children during part of the 24-hour day. (Ord. 99-068, 1999).~~

7) Agricultural Boundary Line Adjustments

The language of WCC 20.40.254 contains the general criteria that apply to the separation of farmstead parcels through both agricultural short plats and boundary line adjustments. However, some of the language is confusing as it mixes requirements for the two even though certain ones only apply to one or the other. In particular, the sections addressing “remainder parcels” only apply to short plats, not BLAs. Staff proposes to alleviate this confusion by clarifying which criteria only apply to short plats, and which apply to BLAs. No policy amendments are proposed, only grammatical ones.

20.40.250 Division or modification of parcels.

.254 Separation of the Farmstead Parcel Criteria.

- (1) The criteria for approval for the farmstead parcel and remainder parcel created through agricultural boundary line adjustment or agricultural short subdivision shall be the following:
 - (a) The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and
 - (b) The farmstead parcel size shall be as stated in WCC 20.40.251, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed the maximum lot size consistent with the exceptions in WCC 20.40.253; and
 - (c) The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and
 - (d) For agricultural short plats:
 - (i) A remainder parcel shall be created equal to or greater than 10 nominal acres; and
 - (ii) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) ~~or (5)~~ shall be included on the short plat ~~or boundary line adjustment~~ for the remainder parcel prior to final approval; and
 - (iii) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the

remainder parcel for purchase of the farmstead parcel before they are offered on the open market; and

(e) For boundary line adjustments the language as provided in WCC 20.40.250(5) shall be included on the boundary line adjustment prior to final approval;

~~(d)~~(f) A right to farm disclosure statement as provided for in WCC 14.02.040(B) will be signed by the farmstead parcel owner and subsequent purchasers of the farmstead parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and

~~(e)~~(g) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

~~(f)~~(h) The overall submittal shall comply with WCC 20.40.250 et seq.

8) Time Period for Responding to NOARs

Under state law, all jurisdictions (including Whatcom County) are required to act on permits within 120 days. However, this clock is stopped at certain points in the review process, one of which is when the County requests additional information when an application doesn't contain enough information to ensure consistency with our codes (done through a Notice of Additional Requirements, or NOAR). To keep this schedule, and keep projects from inaction, §22.05.100(3) sets a 180-day time limit for applicants to provide this information. But it also provides an opportunity for applicants to request additional time (up to 2 years). However, staff has found that the language allowing the applicant to request additional time is unclear and would like to adjust it, as shown below.

Title 22 LAND USE AND DEVELOPMENT

Chapter 22.05 Project Permit Procedures

22.05.100 Consistency review and recommendations.

During project permit review, the review authority shall determine if the project proposal is consistent with the county's comprehensive plan, other adopted plans, existing regulations and development standards.

...

(3) For all project permit applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The notice of additional requirements shall allow the applicant 180 calendar days from the date of issuance to submit all required information. The ~~d~~Director ~~or designee~~ may extend this period for no more than cumulative 24 months upon written request by the applicant, provided the first request is submitted before the end of the first 180-day period. Additional extension requests may be considered if submitted before the end of any subsequent extension period. A notice of additional requirements is not a final administrative determination.

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