

# Whatcom County Planning & Development Services Staff Report

## Miscellaneous Code Amendments 2019

### I. Background Information

**File #** PLN2019-00006

**File Name:** Miscellaneous Code Amendments 2019

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

**Summary of Request:** 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.

**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annually proposes a series of code amendments to improve unclear wording or procedures, or to correct errors or outdated text.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 25 proposed code amendments include such items as well as a few proposed policy changes.

### 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 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, for their 60-day review. 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 X.
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.

## **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