

Planning Commission Approved Draft,
updated to incorporate as existing text the
County Council's amendments regarding
the Cherry Point UGA pursuant to Ord.
2021-046, October 29, 2021

Exhibit E: Proposed Amendments to WCC Title 22

Shoreline Management
Program Periodic Update
2020

Whatcom County Planning and Development
Services

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

Chapter 22.05 Project Permit Procedures

22.05.010 Purpose and Applicability.

- (1) The purpose of this chapter is to combine and consolidate the application, review, and approval processes for project permits and appeals as defined in WCC 20.97-~~321~~ (Definitions). It is further intended for this chapter to comply with the provisions of Chapter 36.70B RCW. These procedures provide for a consolidated land use permit process and integrate the environmental review process with the procedures for review of land use decisions.
- (2) This chapter applies to the processing of project permit applications for development and appeals related to the provisions of WCC Title 15, Buildings and Construction; WCC Title 16, Environment; WCC Title 17, Flood Damage Prevention; WCC Title 20, Zoning; WCC Title 21, Land Division Regulations; and WCC Title 23, Shoreline Management Program. The provisions of this chapter shall apply to all project permit applications as defined in RCW 36.70B.020, and other administrative decisions, as listed in ~~the table in~~ WCC 22.05.020 Table 1.
- (3) The meaning of words used in this chapter shall be as defined in WCC Chapters 20.97 (Definitions) or 23.60 (Definitions), as appropriate to the permit being applied for.

22.05.020 Project Permit Processing Table.

- (1) ~~Table 1. Project Permit Processing Table~~ Marked boxes in the table below indicates the required general steps for processing all project permit applications or administrative actions. Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 **Table 1. Project Permit Processing Table**

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210 , 22.05.120)	Appeal Body (see 2.11.210 , 2.05.160 , 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line Adjustment	21.03		✓					Director	Hearing Examiner
Building Permit	15.04	✓ (fd)	✓					Director	Hearing Examiner (ig)
Natural Resource Assessment	Title 16		✓					Director	Hearing Examiner
Commercial Site Plan Review			✓					Director	Hearing Examiner
Exempt Land Division	21.03		✓					Director	Hearing Examiner
Floodplain Development Permit	Title 17							Director	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80		✓					Director	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97.220		✓					Director	Hearing Examiner
Nonconforming Use	20.83		✓					Director	Hearing Examiner
Removal of Forest Practices Development Moratorium	20.80.738(3)							<u>Director</u>	<u>Hearing Examiner</u>
Shoreline Exemption	23.60 22.05 & 07	✓ (a)	✓					Director	Hearing Examiner

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

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Zoning Interpretation	22.20							Director	Hearing Examiner
Type II Applications (Administrative Decision with Public Notice; No Public Hearing)									
Administrative Use	20.84.235	✓	✓	✓	✓			Director	Hearing Examiner
Lot Consolidation Relief	20.83.070		✓	✓	✓			Director	Hearing Examiner
Reasonable Use (b)	16.16	✓	✓	✓	✓			Director	Hearing Examiner
Shoreline Substantial (ea)	23.60 22.05 & 07	✓ (a)	✓	✓	✓			Director (db)	Shorelines Hearings Board (H)
Shoreline Conditional Use for single-family development, uses, and activities (ea)	23.60 22.05 & 07	✓ (a)	✓	✓	✓			Director (db)	Hearing Examiner
Zoning or Critical Areas Minor Variance, Minor	22.05.024	✓	✓	✓	✓			Director	Hearing Examiner
Short Subdivision	21.04	✓	✓	✓	✓			Director	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	20.84.200	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court

Comment [CES1]: Commensurate with proposal to have reasonable use permits decided on by the H/E.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

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Floodplain Development Variance	Title 17		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (ee)	Superior Court
Binding Site Plan	21.07	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (ee)	Superior Court
Reasonable Use (ec)	16.16	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	22.05 & 0723.60	✓ (a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (eb)	Shorelines Hearings Board (hf)
Shoreline Substantial	22.05 & 0723.60	✓ (a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (eb)	Shorelines Hearings Board (hf)
Shoreline Variance	22.05 & 0723.60	✓ (a)	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner (eb)	Shorelines Hearings Board (hf)
Zoning or Critical Areas Major Variance, Major	22.05.024 or 16.16.273	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
Development Agreement	2.11.205	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

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Major Project Permit	20.88	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Planned Unit Development	20.85	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court

1 | ~~Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.~~

2

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (2) **Project Permit Processing Table Notes.** As indicated in Table 1 the table in subsection (1) of this
2 **section**, project permits are subject to the following additional requirements:
- 3 ~~(a)~~ Pre application conference subject to WCC Title 23, Shoreline Management Program.
4 ~~(b)~~ Single family residential uses in critical areas or critical area buffers, except all uses in geological
5 hazardous areas and setbacks.
6 ~~(c)~~(a) Shoreline permit public hearing decision determined pursuant to
7 22.07.030(A) (Shoreline Substantial Development Permits) WCC Title 23, Shoreline Management
8 Program. If a public hearing is required the shoreline permit shall be processed as a Type III
9 application.
10 ~~(d)~~(b) Pursuant to ~~Chapters 23.60 and 23.70~~ WCC 22.07.060, final administrative
11 determinations or decisions as appropriate shall be filed with, or approved by, the Washington
12 State Department of Ecology.
13 ~~(e)~~(c) All reasonable use exception applications in geological hazardous areas and setbacks
14 and all non-single-family residential uses in critical areas or critical area buffers.
15 ~~(f)~~(d) Building permit pre-application conference, subject to WCC 15.04.020(A)(3)(a).
16 ~~(g)~~(e) The Hearing Examiner may choose to consult with the development standards technical
17 advisory committee concerning technical matters relating to land division applications.
18 ~~(h)~~(f) Whatcom County shall consider an appeal of a decision on a shoreline substantial
19 development permit, shoreline variance, or shoreline conditional use only when the applicant
20 waives his/her right to a single appeal to the Shorelines Hearings Board. When an applicant has
21 waived his/her right to a single appeal, such appeals shall be processed in accordance with the
22 appeal procedures of section WCC 23.60.1560(H) (Appeals).
23 ~~(i)~~(g) Except that appeals of WCC Title 15 fire and building code requirements shall be made
24 to the board of appeals per current building code, as adopted in WCC 15.04.010.

25 **22.05.024 Variances.**

- 26 (1) Variances from the terms of Title 20 (Zoning) or Chapter 16.16 (Critical Areas Ordinance) may be
27 authorized in specific cases that will not be contrary to the public interest, and where, due to special
28 conditions, literal enforcement of the provisions of those codes would result in unnecessary
29 hardship. Generally, variances shall only be considered for dimensional standards, unless otherwise
30 specified in those codes. Under no circumstances shall a variance be granted that allows a use not
31 permissible or otherwise prohibited in the zoning district in which the subject property is located.
- 32 (2) There are two types of variances: Minor and Major Variances.
- 33 (a) Minor variances include those that are unlikely to have impacts on surrounding properties or
34 people. These shall be limited to variances for:
- 35 i. A reduction of up to 10% of a front yard setback
36 ii. A reduction in parking stall dimensions down to 9 feet by 18 feet.
37 ~~iii.~~ A 25% to 50% reduction of critical area buffers pursuant to 16.16.273 (Variances).
38 (b) Major variances include all other variances.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (3) The appropriate decision maker, as specified in 22.05.020 (Project permit processing table) shall
2 have the authority to grant variances when the conditions set forth in subsection (4) have been
3 found to exist. In such cases, a variance may be granted so that the spirit of the County's land use
4 codes shall be observed, public safety and welfare secured, and substantial justice done.
- 5 (4) Before any variance may be granted, it shall be shown that the following circumstances are found to
6 apply:
- 7 (a) That any variance granted shall not constitute a grant of special privilege, be based upon
8 reasons of hardship caused by previous actions of the property owner, nor be granted for
9 pecuniary reasons alone;
- 10 (b) Because of special circumstances applicable to the subject property, including size, shape,
11 topography, location, or surrounding, the strict application of Title 20 (Zoning) or Chapter 16.16
12 (Critical Areas Ordinance) is found to cause a hardship and deprive the subject property of a use
13 or improvement otherwise allowed in its zoning district. Aesthetic considerations or design
14 preferences without reference to restrictions based upon the physical characteristics of the
15 property do not constitute sufficient hardship under this section;
- 16 (c) The granting of the variance will not be materially detrimental to the public welfare, or injurious
17 to the property or improvements in the vicinity and zone in which the subject property is
18 situated.

19 **22.05.026 Conditional Use Permits.**

- 20 (1) **Application.** Conditional use permit applications shall be processed per the provisions of this
21 chapter.
- 22 (2) Conditional use permits shall be nontransferable unless said transfer is approved by the Hearing
23 Examiner.
- 24 (3) **Approval Criteria.** Before approving an application, the Director or Hearing Examiner shall ensure
25 that any specific standards of the zoning district defining the use are fulfilled, and shall find
26 adequate evidence showing that the proposed use at the proposed location:
- 27 (a) Will be harmonious and in accordance with the general and specific objectives of Whatcom
28 County's Comprehensive Plan, zoning regulations, and any other applicable regulations.
- 29 (b) Will be designed, constructed, operated, and maintained so as to be harmonious and
30 appropriate in appearance with the existing or intended character of the general vicinity, and
31 that such use will not change the essential character of the same area.
- 32 (c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural
33 land use policies as designated in the rural lands element of the Comprehensive Plan.
- 34 (d) Will not be hazardous or disturbing to existing or future neighboring uses.
- 35 (e) Will be serviced adequately by necessary public facilities such as highways, streets, police and
36 fire protection, drainage structures, refuse disposal, water, sewers, and schools; or that the
37 persons or agencies responsible for the establishment of the proposed use shall be able to
38 provide adequately any such services.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (f) Will not create excessive additional requirements at public cost for public facilities and services,
2 and will not be detrimental to the economic welfare of the community.
- 3 (g) Will not involve uses, activities, processes, materials, equipment, and conditions of operation
4 that will be detrimental to any persons, property, or the general welfare by reasons of excessive
5 production of traffic, noise, smoke, fumes, glare or odors.
- 6 (h) Will have vehicular approaches to the property which shall be so designed as not to create an
7 interference with traffic on surrounding public streets.
- 8 (i) Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of
9 major importance.
- 10 (4) Approval Criteria for expansion of Fossil Fuel Refineries pursuant to WCC 20.68.153 and expansion
11 of Fossil Fuel Transshipment Facilities pursuant to WCC 20.68.154. Before approving an application,
12 the hearing examiner shall ensure that any specific standards of the zoning district defining the use
13 are fulfilled, and shall find adequate evidence showing that:
- 14 (a) The conditional use permit approval criteria listed under WCC 22.05.026(3) are met;
- 15 (b) Within shorelines, if applicable, County approval shall be contingent upon approval of a
16 shoreline permit;
- 17 (c) The applicant has documented to the County decision maker (as applicable):
- 18 (i) All of the anticipated types and volumes of substances to be processed, stored, or
19 transferred in bulk with the proposed expansion,
- 20 (ii) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric Crude
21 Distillation Capacity occurring as a result of the proposed expansion, as applicable; and
- 22 (iii) The mode of shipment vessels to be loaded or unloaded with the proposed equipment
23 and/or as a result of the proposed expansion.
- 24 (iv) The permit shall be limited exclusively to those types and volumes of materials or products
25 as documented and approved.
- 26 (d) Insurance requirements meet the provisions of WCC 22.05.125.
- 27 (e) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation
28 Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.
- 29 (f) Mitigation of impacts to other services including fire and emergency response capabilities,
30 water supply and fire flow, to address risks created by expansions.
- 31 (g) Plans for stormwater and wastewater releases have been approved.
- 32 (h) Prior to commencement of any site preparation or construction activities, all necessary state
33 leases shall be acquired for any piers or aquatic lands improvements, and it shall be
34 demonstrated to the zoning administrator that the project applicant has met any federal or
35 state permit consultation requirements, including tribal treaty rights or the provisions of the
36 Magnuson Amendment through state and federal permitting decisions.
- 37 (i) The County decision maker may approve a conditional use permit with a condition to obtain
38 relevant leases and complete any necessary federal and state permitting requirements, and may
39 restrict the conditional use permittee from undertaking site preparation or construction
40 activities until it has fulfilled that condition.

Comment [CES2]: This section has been added since the P/C acted on it to incorporate as existing text Council's Cherry Point amendments (Ord. 2021-046, 7/27/2021)

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (j) The permittee must inform the county permitting authorities of a change in the aforementioned
2 disclosures so that the department can document current capacity levels to ensure that the
3 cumulative thresholds under WCC 20.68.153 or WCC 20.68.154 (as applicable) have not been
4 exceeded.
- 5 (k) The County decision maker shall include, in any approval of an application for an expansion, as
6 per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the
7 manner described by the project proponent in the application and approved in the permit. The
8 application shall describe the intended use, including the type of fuel to be stored and, if located
9 at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be
10 used for transshipment.
- 11 (5) **Revisions.** The Hearing Examiner may administratively approve revisions to conditional use permits;
12 provided, that the proposed changes are within the scope and intent of the original permit. "Within
13 the scope and intent of the original permit" shall mean the following:
- 14 (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the
15 original permit; provided, that:
- 16 (i) revisions involving new structures not shown on the original site plan shall require a new
17 permit;
- 18 (ii) any revisions shall not exceed height, lot coverage, setback, or any other requirements of
19 the regulations for the area in which the project is located; and,
- 20 (iii) any revisions shall be reviewed for consistency with the Comprehensive Plan;
- 21 (b) Landscaping may be added to a project without necessitating an application for a new permit;
22 provided, that the landscaping is consistent with conditions (if any) attached to the original
23 permit and is consistent with the regulations for the area in which the project is located;
- 24 (c) The use authorized pursuant to the original permit is not changed;
- 25 (d) No additional over-water construction will be involved for shoreline conditional use permits;
- 26 (e) No substantial increase in adverse environmental impact will be caused by the project revision.
- 27 **22.05.028 Administrative Approval Uses.**
- 28 (1) Administrative approval applications shall be processed per the provisions of this Chapter.
- 29 (2) The Director of Planning and Development Services is authorized to approve, approve with
30 conditions, or deny all administrative approval use applications.
- 31 (3) **Approval Criteria.** Decisions for all administrative approval use permits shall be based upon
32 compliance with:
- 33 (a) The criteria established for the proposed use in the appropriate zone district;
- 34 (b) The Comprehensive Plan policies governing the associated land use designation;
- 35 (c) In rural areas, consideration will be given to the cumulative impacts of permitted uses in relation
36 to the governing Comprehensive Plan policies and zoning district; and
- 37 (d) The criteria of WCC 22.05.026 (Conditional Use Permits), subsection (3) (Approval Criteria).
- 38 (e) Additionally, decisions for administrative approval use permits for adult businesses shall be
39 based on the criteria in subsection (4) of this section.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (4) **Additional Approval Criteria for Adult Businesses.** Prior to granting administrative approval for an
2 adult business, the Director shall find that the proposed use at the proposed location satisfies or will
3 satisfy all the following criteria:
- 4 (a) The adult business will be consistent with WCC 20.66.131 (Light Impact Industrial District,
5 Administrative Approval Uses).
- 6 (b) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:
7 (i) An adult eating or drinking establishment; or
8 (ii) An adult theater; or
9 (iii) Another adult commercial establishment; or
10 (iv) One or more viewing booths.
- 11 (c) If the adult business includes one or more viewing booths, the interior of the adult business will
12 incorporate all of the following measures:
- 13 (a) Each viewing booth shall have at least a three-foot wide opening where a customer enters
14 and exits the booth that is without doors, physical barriers, or visual barriers; and
15 (b) Each viewing booth shall have at least one 100-watt light bulb that is properly working and
16 turned on when business is open. The light bulb shall not be covered or otherwise shielded
17 except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch
18 durable metal sign shall be located at the entrance to each viewing booth area stating that
19 lights shall remain on; and
20 (c) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and
21 (d) There shall be no holes or openings in common walls between viewing booths.
- 22 (d) Additionally for adult businesses containing one or more viewing booths, a condition of approval
23 shall allow an unannounced inspection by Whatcom County every six months during business
24 hours to ensure that measures in subsections (4)(c)(i) through (iv) of this section are being
25 implemented on an ongoing basis.
- 26 (5) **Revisions.** The Director may approve revisions to administrative approval use permits; provided,
27 that the proposed changes are within the scope and intent of the original permit. "Within the scope
28 and intent of the original permit" shall mean the following:
- 29 (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the
30 original permit; provided, that:
- 31 (i) revisions involving new structures not shown on the original site plan shall require a
32 new permit; and
33 (ii) any revisions shall not exceed height, lot coverage, setback, or any other requirements
34 of the regulations for the area in which the project is located; and
35 (iii) any revisions shall be reviewed for consistency with the Comprehensive Plan;
- 36 (b) Landscaping may be added to a project without necessitating an application for a new permit;
37 provided, that the landscaping is consistent with conditions (if any) attached to the original
38 permit and is consistent with the regulations for the area in which the project is located;
- 39 (c) The use authorized pursuant to the original permit is not changed;
- 40 (d) No additional over-water construction will be involved for shoreline conditional use permits;

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

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

2 **22.05.030 Consolidated Permit Review.**

3 The County shall integrate and consolidate the review and decision on two or more project permits
4 ~~subject to this chapter~~ that relate to the proposed project action unless the applicant requests
5 otherwise. Consolidated Type I, II, III and IV permits shall be reviewed under the process required for the
6 permit with the highest process type number per WCC [22.05.020](#). Level IV is considered the highest and
7 Level I is considered the lowest process type.

8 **22.05.040 Pre-Application Conference.**

9 The purpose of a pre-application conference is to assist applicants in preparing development
10 applications for submittal to the County by identifying applicable regulations and procedures. It is not
11 intended to provide a staff recommendation on future permit decisions. Pre-application review does not
12 constitute acceptance of an application by the County nor does it vest an application, unless otherwise
13 indicated in Whatcom County Code.

- 14 (1) A pre-application conference is required as indicated in WCC [22.05.020](#), unless the Director or
15 designee grants a written waiver. For other permits, the applicant may request a pre-application
16 conference.
- 17 (2) The County shall charge the applicant a fee for a pre-application conference per the unified fee
18 schedule. If the County makes a determination of completeness on a project permit submitted
19 within one year of the notice of site-specific submittal requirements per subsection (6) of this
20 section, the pre-application fee shall be applied to the application cost.
- 21 (3) It is the responsibility of the applicant to initiate a pre-application conference through a written
22 application. The application shall, at a minimum, include all items identified on the pre-application
23 form and the department's administrative manual. The applicant may provide additional
24 information to facilitate more detailed review.
- 25 (4) A pre-application conference shall be scheduled as soon as possible and held no later than 30
26 calendar days from the date of the applicant's request, unless agreed upon by the applicant and the
27 County.
- 28 (5) The County shall invite the appropriate city to the pre-application meeting if the project is located
29 within that city's urban growth area or which contemplates the use of any city utilities. Notice shall
30 also be given to appropriate public agencies and public utilities, if within 500 feet of the area
31 submitted in the application.
- 32 (6) The County should provide the applicant with notice of site-specific submittal requirements for
33 application no later than 14 calendar days from the date of the conference.
- 34 (7) A new pre-application conference shall be required if an associated project permit application is not
35 filed with the County within one year of the notice of site-specific submittal requirements per
36 subsection (6) of this section or the application is substantially altered, unless waived per
37 WCC [22.05.040](#)(1).

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

22.05.050 Application and Determination of Completeness.

(1) Project permit applications shall be submitted using current forms provided by the review authority.

The submittal shall include: all applicable fees per Chapter [22.25](#) WCC, all materials required by the department's administrative manual (unless waived pursuant to subsection (2)), and all items identified in the pre-application notice of site-specific submittal requirements. If a permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.

(2) The Director may vary or waive the requirements provided in the department's administrative manual on a case-by-case basis, though may also require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.

~~(2)(3)~~ Upon submittal by the applicant, the County will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.

~~(3)(4)~~ Within 14 calendar days of receiving the application, the County shall provide to the applicant a written determination which states either that the application is complete or the application is incomplete. To the extent known by the County, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.

~~(4)(5)~~ A project permit application is complete when it meets the submittal requirements of the department's administrative manual, includes items identified through the pre-application conference process and contains sufficient information to process the application even if additional information will be required. A determination of completeness shall not preclude the County from requiring additional information or studies at any time prior to permit approval. A project permit application shall be deemed complete under this section if the County does not issue a written determination to the applicant that the application is incomplete by the end of the fourteenth calendar day from the date of receipt.

~~(5)(6)~~ If the application is determined to be incomplete, the following shall take place:

(a) The County will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.

(b) The applicant shall have 90 calendar days from the date that the notification was issued to submit the necessary information to the County. If the applicant does not submit the necessary information to the County in writing within the 90-day period, the application shall be rejected. The Director or designee may extend this period for an additional 90 calendar days upon written request by the applicant.

(c) Upon receipt of the necessary information, the County shall have 14 calendar days to make a determination and notify the applicant whether the application is complete or what additional information is necessary.

(7) A determination of an incomplete application is an appealable final administrative determination, subject to WCC [22.05.160](#)(1).

Comment [CES3]: Moved from 23.60.090
(Permit Application Review)

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 **22.05.060 Vesting.**
2 (1) **Complete Applications.** For a project permit application the department has determined to be
3 complete per WCC [22.05.050](#)(4), the application shall be considered under the zoning or other land
4 use control ordinances in effect on the date the application was submitted to the department.
5 (2) **Incomplete Applications.** For a project permit application the department has determined to be
6 incomplete per WCC [22.05.050](#)(5), the application shall be considered under the zoning or other
7 land use control ordinances in effect on the date the department determines the application to be
8 complete based on the necessary information required by the department.
9 (3) **Applications Subject to Pre-Application Conference.** Notwithstanding the provisions of subsections
10 (1) and (2) of this section, for a project permit application that is (a) subject to a pre-application
11 conference per WCC [22.05.020](#) and [22.05.040](#), (b) submitted no more than 28 calendar days from
12 the date the department issued its notice of site-specific submittal requirements, and (c)
13 determined complete by the department, the application shall be considered under the zoning or
14 other land use control ordinances in effect on the date the pre-application conference request was
15 submitted to the department.
16 (4) **Continuation of Vesting.** Building or land disturbance permit applications that are required to
17 complete a valid (i.e., not expired) project permit approval for project permits identified in the
18 following list (subsections (4)(a) through (m) of this section) shall vest to the zoning and land use
19 control ordinances in effect at the time the project permit application identified below was
20 determined complete:
21 (a) Administrative use;
22 (b) Commercial site plan review;
23 (c) Conditional use;
24 (d) Critical areas variance;
25 (e) Major project permit;
26 (f) Natural resource review;
27 (g) Planned unit development;
28 (h) Reasonable use exceptions (Type II and III);
29 (i) Shoreline conditional use permit;
30 (j) Shoreline exemption;
31 (k) Shoreline substantial;
32 (l) Shoreline variance;
33 (m) Zoning variance.
34 (5) **Building Permit Applications within Recorded Long and Short Subdivisions and Binding Site Plans.**
35 Building permit applications, including associated land disturbance permits, shall be governed by
36 conditions of approval, statutes, and ordinances in effect at the time of final approval pursuant to
37 RCW [58.17.170](#). Vesting duration for those building permit applications shall be governed by the
38 time limits established for long subdivisions in RCW [58.17.170](#), unless the County finds that a change
39 in conditions creates a serious threat to the public health or safety.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (6) **Building and Fire Code Requirements.** Building and fire code provisions adopted per WCC
2 Title [15](#) vest at the time a building permit application is determined complete.
- 3 (7) **Duration.** Vesting status established through subsections (1) through (5) of this section runs with
4 the application and expires upon denial of the application by the County, withdrawal of the
5 application by the applicant, rejection of the application per WCC [22.05.050](#)(5), expiration of the
6 application per WCC [22.05.130](#)(1)(a)(i), or expiration of the approved permit per WCC [22.05.140](#).
- 7 **22.05.070 Notice of Application.**
- 8 (1) For Type II, III, and IV applications per WCC [22.05.020](#), the County shall issue a notice of application
9 within 14 calendar days of a determination of completeness. The date of notice shall be the date of
10 mailing.
- 11 (2) If the County has made a State Environmental Policy Act (SEPA) threshold determination of
12 significance concurrently with the notice of application, the County shall combine the determination
13 of significance and scoping notice with the notice of application.
- 14 (3) Notice shall include:
- 15 (a) The date of application, the date of determination of completeness for the application, and the
16 date of the notice of application;
- 17 (b) A description of the proposed project action and a list of the project permits included in the
18 application, and, if applicable, a list of any studies requested by the County;
- 19 (c) The identification of other permits not included in the application to the extent known by the
20 County;
- 21 (d) The identification of environmental reviews conducted, including notice of existing
22 environmental documents that evaluate the proposed project (including but not limited to
23 reports, delineations, assessments and/or mitigation plans associated with critical area reviews)
24 and, if not otherwise stated on the document providing notice of application, the location where
25 the application and any studies can be reviewed;
- 26 (e) Any other information determined appropriate by the County;
- 27 (f) A statement indicating those development regulations that will be used for project mitigation or
28 a determination of consistency if they have been identified at the time of notice;
- 29 (g) A statement of the minimum public comment period which shall be 14 calendar days for all
30 project permits except for shoreline substantial development, shoreline conditional use,
31 shoreline variance and major project permits for mitigation banks which shall have a minimum
32 comment period of no more than 30 calendar days;
- 33 (h) A statement of the right of any person to comment on the application and receive notice of and
34 participate in any hearings, request a copy of the decision once made and to appeal a decision
35 when allowed by law. The department may accept public comments at any time prior to the
36 close of the open record public hearing, or if there is no public hearing, prior to the decision on
37 the project permit. In addition, the statement shall indicate that any person wishing to receive
38 personal notice of any decisions or hearings must notify the department.
- 39 (4) The department shall issue a notice of application in the following manner:

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (a) The notice shall be published once in the official County newspaper and on the Whatcom
- 2 County website. The applicant shall bear the responsibility of paying for such notice.
- 3 (b) Additional notice shall be given using the following method:
- 4 i. For sites within urban growth areas: Application notice shall be sent to all property owners
- 5 within 300 feet of the external boundaries of the subject property as shown by the records
- 6 of the County assessor;
- 7 ii. For sites outside urban growth areas: Application notice shall be sent to all property owners
- 8 within 1,000 feet of the external boundaries of the subject property as shown by the records
- 9 of the County assessor.
- 10 (5) The County shall send notices of application to neighboring cities and other agencies or tribes that
- 11 will potentially be affected, either directly or indirectly, by the proposed development. Notice shall
- 12 also be given to public utilities, if within 500 feet of the area submitted in the application.
- 13 (6) All public comments received on the notice of application must be received by the department of
- 14 planning and development services by 4:30 p.m. on or before the last day of the comment period.
- 15 (7) Except for a determination of significance, the County shall not issue its SEPA threshold
- 16 determination or issue a decision or recommendation on a permit application until the end of the
- 17 public comment period on the notice of application. If an optional Determination of Nonsignificance
- 18 (DNS) process is used, the notice of application and DNS comment period shall be combined.
- 19 (8) Public notice given for project permit applications, SEPA documents, project hearings, and appeals
- 20 hearings as required by this chapter and other provisions of the County code may be combined
- 21 when practical, where such combined notice will expedite the permit review process, and where
- 22 provisions applicable to each individual notice are met through the combined notice.

22.05.080 Posting of Application.

23 Where posting of public notice is required per WCC [22.05.020](#), the department shall post public notices

24 of the proposal on all road frontages of the subject property and adjacent shorelines on or before the

25 notice of application date and shall be visible to adjacent property owners and to passing motorists. Said

26 notices shall remain in place until three days after the comment period closes.

27

22.05.090 Open Record Public Hearings.

- 28 ~~(1) As shown in~~ Pursuant to WCC [22.05.020](#) (Project Permit Processing Table), Type III and Type IV
- 29 applications and appeals of Type I and Type II applications require an open record public hearing.
- 30 ~~(2) These Open Record Hearing Notice. Public hearings are subject to the~~ shall be noticed as follows:
- 31 ~~(a)~~ a. _____ The Hearing Examiner shall publish a notice of open record hearing once in the official
- 32 County newspaper and on the Whatcom County website at least 14 calendar days prior to the
- 33 hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition,
- 34 personal notice shall be provided to any person who has requested such notice in a timely
- 35 manner, consistent with WCC [22.05.070](#) ~~(3)(a)~~ (Notice of Application).
- 36 ~~(b)~~ b. _____ Within two days of the published notice the applicant shall be responsible for posting
- 37 three copies of the notice in a conspicuous manner on the property upon which the use is
- 38 proposed. Notices shall be provided by the Hearing Examiner.
- 39

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Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 | ~~(c)~~c. _____ An affidavit verifying distribution of the notice must be submitted to the Hearing
2 | Examiner two working days prior to the open record hearing.
- 3 | ~~(d)~~d. _____ The Hearing Examiner shall send notice of an open record hearing to neighboring cities
4 | and other agencies or tribes that will potentially be affected, either directly or indirectly by the
5 | proposed development. The Hearing Examiner shall be responsible for such notification.
- 6 | ~~(e)~~e. _____ The applicant shall pay all costs associated with providing notice.
- 7 | ~~(2)~~(3) **One Open Record Hearing.** A project proposal subject to this chapter shall be provided with no
8 | more than one open record hearing and one closed record hearing pursuant to RCW Chapter [36.70B](#)
9 | RCW. This restriction does not apply to an appeal of a determination of significance as provided in
10 | RCW [43.21C.075](#).
- 11 | ~~(3)~~(4) **Combined County and Agency Hearing.** Unless otherwise requested by an applicant, the County
12 | shall allow an open record hearing to be combined with a hearing that may be necessary by another
13 | local, state, regional, federal or other agency for the same project if the joint hearing can be held
14 | within the time periods specified in Chapter [22.05](#) WCC, or if the applicant agrees to waive such
15 | time periods in the event additional time is needed in order to combine the hearings. The combined
16 | hearing shall be conducted in Whatcom County pursuant to Chapter [36.70B](#) RCW.
- 17 | ~~(4)~~(5) Quasi-judicial actions, including applications listed as Type III and IV applications in
18 | WCC [22.05.020](#), are subject to the appearance of fairness doctrine, Chapter [42.36](#) RCW. The Hearing
19 | Examiner shall administer the open record hearing and issue decisions or recommendations in
20 | accordance with Chapter [42.36](#) RCW.
- 21 | **22.05.100 Application Consistency Review and Recommendations.**
- 22 | (1) During project permit review, the review authority shall determine if the project proposal is
23 | consistent with the County's comprehensive plan, other adopted plans, and existing regulations and
24 | development standards.
- 25 | ~~(1)~~(i) _____ For Type I and II applications, the conclusions of a consistency determination made
26 | under this section shall be documented in the project permit decision.
- 27 | ~~(2)~~(ii) _____ For Type III and IV applications the department shall prepare a staff report on the
28 | proposed development or action. Staff shall file one consolidated report with the Hearing
29 | Examiner at least 10 calendar days prior to the scheduled open record hearing. The staff report
30 | shall:
- 31 | ~~(i)~~ii. _____ Summarize the comments and recommendations of County departments, affected agencies,
32 | special districts and public comments received within the 14-day or 30-day comment period
33 | as established in WCC [22.05.070](#)(6).
- 34 | ~~(ii)~~iii. _____ Provide an evaluation of the project proposal for consistency as indicated in this section.
- 35 | ~~(iii)~~iii. _____ Include recommended findings, conclusions, and actions regarding the proposal.
- 36 | (2) **Additional Requirements.** For all project permit applications, if more information is required to
37 | determine consistency at any time in review of the application, the department may issue a notice
38 | of additional requirements. The applicant notice of additional requirements shall have allow the

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Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 applicant 180 calendar days from the date of issuance of said notice to submit all required
2 information.

3 (3) **Permit Inactivity.** Any application that remains inactive for a period of 180 days shall expire and a
4 new application and repayment of fees shall be required to reactivate the proposal; provided, that
5 the Director or designee may grant a 1-year extension for good cause extend this period for no
6 more than cumulative 24 months upon written request by the applicant, provided the request is
7 submitted before the end of the first 180-day period. A notice of additional requirements is not a
8 final administrative determination.

9 (4) **Burden of Proof.** Permit applicants/proponents have the burden of proving that the proposed
10 development is consistent with all applicable policies and regulations

11 (3)(5) **Permit conditions.** In granting, revising, or extending a permit, the decision maker may attach
12 such conditions, modifications, or restrictions thereto regarding the location, character, and other
13 elements of the proposed development deemed necessary to assure that the development will be
14 consistent with the applicable policies and regulations (including the policies and provisions of the
15 Shoreline Management Act for shoreline permits). In cases involving unusual circumstances or
16 uncertain effects, a condition may be imposed to require monitoring with future review or
17 reevaluation to assure conformance. If the monitoring plan is not implemented, the permittee may
18 be found to be noncompliant and the permit may be revoked in accordance with WCC 22.05.150
19 (Permit Revocation).

20 22.05.110 Final Decisions – Type I, II, and III applications.

- 21 (1) The Director or designee's final decision on all Type I or II applications shall be in the form of a
22 written determination or permit. The determination or permit may be granted subject to conditions,
23 modifications, or restrictions that are necessary to comply with all applicable codes.
- 24 (2) The Hearing Examiner's final decision on all Type III applications per WCC 22.05.020 or appeals per
25 WCC 22.05.160(1) shall either grant or deny the application or appeal.
- 26 (a) The Hearing Examiner may grant Type III applications subject to conditions, modifications or
27 restrictions that the Hearing Examiner finds are necessary to make the application compatible
28 with its environment, carry out the objectives and goals of the comprehensive plan, statutes,
29 ordinances and regulations as well as other official policies and objectives of Whatcom County.
- 30 (b) Requirements:
- 31 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be
32 required to ensure compliance with the conditions, modifications and restrictions.
- 33 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The
34 applicant shall provide insurance or other financial assurance acceptable to the prosecuting
35 attorney consistent with Section 22.05.125.
- 36 (c) The Hearing Examiner shall render a final decision within 14 calendar days following the
37 conclusion of all testimony and hearings. Each final decision of the Hearing Examiner shall be in
38 writing and shall include findings and conclusions based on the record to support the decision.

Comment [CES4]: Combined 23.60.090 (Permit application review) with this section and normalized the extension date to 1-year.

Comment [CES5]: Moved from 23.60.120

Comment [CES6]: Moved from 23.60.140 (Permit Conditions).

Comment [CES7]: This section has been revised since the P/C acted on it to incorporate as existing text Council's Cherry Point amendments (Ord. 2021-046, 7/27/2021).

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (d) No final decision of the Hearing Examiner shall be subject to administrative or quasi-judicial
2 review, except as provided herein.
3 (e) The applicant, any person with standing, or any County department may appeal any final
4 decision of the Hearing Examiner to superior court, except as otherwise specified in
5 WCC 22.05.020.

22.05.120 Recommendations and Final Decisions to County Council – Type IV Applications.

- 6
7 (1) For Type IV applications per WCC [22.05.020](#) the Hearing Examiner's recommendations to the County
8 Council may be to grant, grant with conditions or deny an application. The Hearing Examiner's
9 recommendation may include conditions, modifications or restrictions as may be necessary to make
10 the application compatible with its environment, carry out the objectives and goals of the
11 comprehensive plan, statutes, ordinances and regulations as well as other official policies and
12 objectives of Whatcom County.
13 (2) Each recommended decision of the Hearing Examiner for an application identified as a Type IV
14 application per WCC [22.05.020](#) shall be in writing to the clerk of the County Council and shall include
15 findings and conclusions based upon the record to support the decision. Such findings and
16 conclusions shall also set forth the manner in which the decision carries out and conforms to the
17 County's comprehensive plan and complies with the applicable statutes, ordinances or regulations.
18 (3) The deliberation of the County Council on quasi-judicial actions shall be in accordance with
19 WCC [22.05.090](#)(4) and Chapter [42.36](#) RCW.
20 (4) For planned unit developments and major project permits the following shall apply:
21 (a) The recommendation of the Hearing Examiner regarding planned unit developments and major
22 project permits shall be based upon the criteria set forth in WCC [20.85.335](#) and [20.88.130](#),
23 respectively.
24 (b) The Hearing Examiner shall file the recommendation with the clerk of the County Council within
25 21 calendar days following the conclusion of the open record hearing.
26 (c) The County Council shall conduct the following within the specified time frames, except as
27 provided in subsection (4)(c)(iii) of this section:
28 i. Hold a public meeting, not an open record public hearing, to deliberate on the project
29 application within 28 calendar days after receiving the Hearing Examiner's recommendation.
30 ii. Issue a final written decision within 21 calendar days of the public meeting.
31 iii. The County Council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if
32 the County Council meeting schedule does not accommodate a meeting within the above
33 time frames, or if the County Council makes written findings that a specified amount of
34 additional time is needed to process a specific application or project type, per
35 RCW [36.70B.080](#)(1).
36 (5) The County Council's final written decision may include conditions when the project is approved and
37 shall state the findings of fact upon which the decision is based.
38 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required
39 to ensure compliance with the conditions, modifications and restrictions.

Comment [CES8]: This section has been revised since the P/C acted on it to incorporate as existing text Council's Cherry Point amendments (Ord. 2021-046, 7/27/2021)

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The
2 applicant shall provide insurance or other financial assurance acceptable to the prosecuting
3 attorney consistent with Section 22.05.125.
- 4 (6) Any deliberation or decision of the County Council shall be based solely upon consideration of the
5 record established by the Hearing Examiner, the recommendations of the Hearing Examiner and the
6 criteria set forth in applicable County code, the County Comprehensive Plan if applicable, and the
7 County Shoreline Management Program, including compliance with SEPA, WAC 197-11 (SEPA Rules)
8 as adopted and modified in the County Code, and the County's adopted SEPA policies.

22.05.125 Proof of Insurance for Hazards Created in the County

9 For expansion projects requiring approval under a Conditional Use Permit or Major Project Permit at
10 new or existing facilities per WCC 20.68.153 or WCC 20.68.154, financial assurance for the benefit of
11 Whatcom County shall be required. For such expansion projects, a permittee must demonstrate proof of
12 financial assurance (such as trust funds, letters of credit, insurance, self-insurance, financial tests,
13 corporate guarantees, payment bonds, or performance bonds) sufficient to comply with the financial
14 responsibility requirements set forth in State and Federal law, as applicable, prior to permit approval by
15 a Whatcom County Decision Maker. If the financial assurance is in the form of insurance policies, the
16 policies must name Whatcom County as an additional insured and provide Whatcom County with a
17 certificate of insurance to that effect.
18

19 The permittee must maintain the approved level of financial assurance coverage for new or expanded
20 uses while operating the permitted facility. At the request of the permittee, the Whatcom County
21 Decision Maker may approve new or altered forms of financial assurance to meet the requirements of
22 this section, provided that the new or altered form is consistent with the scope and intent of the original
23 permit condition.

22.05.126 Supplemental Procedures for Fossil Fuel Refinery and Fossil Fuel Transshipment Facility Permitting

- 24 (1) Upon request of the County, Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities shall fill out
25 a supplemental checklist for the purpose of determining whether a project qualifies as a permitted
26 use or requires a conditional use permit as specified in WCC 20.68.153 or WCC 20.68.154. The
27 checklist shall contain supplemental information to include:
28
29 (a) Impact on Maximum Atmospheric Crude Distillation Capacity (MACDC), Maximum
30 Transshipment Capacity, and fossil fuel unit train shipment frequency from the proposed
31 activity;
32 (b) Confirmation of the acceptance of potential permit conditions as outlined in 20.68.068
33 subsection (23);
34 (c) Applicant name, property owner information, and parcel information as appropriate; and
35 (d) An attestation by the applicant regarding the accuracy of the information contained therein,
36 signed by the applicant and certified by a Notary Public.
37
38 (2) Confidential Business Information

Comment [CES9]: This section has been inserted since the P/C acted on it to incorporate as existing text Council's Cherry Point amendments (Ord. 2021-046, 7/27/2021).

Comment [CES10]: This section has been inserted since the P/C acted on it to incorporate as existing text Council's Cherry Point amendments (Ord. 2021-046, 7/27/2021).

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 (a) For the purpose of checklists, permit applications and all other materials submitted by Fossil
2 Fuel Refineries or Fossil Fuel Transshipment Facilities for activities in the Cherry Point Heavy
3 Impact Industrial District, the following shall apply:
4 (i) The applicant shall clearly identify information the applicant considers to be Confidential
5 Business Information, not subject to disclosure under chapter 42.56 RCW (Public Records
6 Act) and/or WCC 1.32.090. If such information is contained in submittal documents, the
7 applicant shall submit two copies of materials for County use as follows:
8 1. A copy with Confidential Business Information clearly identified, with a watermark
9 indicating the document contains such information; and
10 2. A copy with Confidential Business Information redacted, and a watermark added
11 indicating that the document does not contain such information and is suitable for
12 public disclosure.
13 (ii) Confidential Business Information may include:
14 1. Processing equipment technical specifications on internals, sidestream/pumparounds,
15 design specifications, and process controls;
16 2. Process unit design, instrumentation and controls;
17 3. Feedstock, product, or process unit pump capacity and configuration; and
18 4. Contractual agreements and all terms contained therein.
19 (iii) The information listed above is not meant to be all-inclusive. Other information related to
20 the applicant's processing activities, feedstock and product purchase, and/or sale and
21 transportation methods and costs may be Confidential Business Information and, if so, shall
22 be marked as such when submitted.
23 (iv) Calculation and permit material submittals may contain, but are not required to contain any
24 of the above information.
25 (v) Where no increase to MACDC, Maximum Transshipment Capacity, or unit train frequency is
26 proposed, submittal of Confidential Business Information specifically related to the criteria
27 of WCC 20.68.153 and WCC 20.68.154 shall not be required to be submitted with the permit
28 application materials.
29 (3) Where calculations are to be submitted for Maximum Transshipment Capacity of Maximum
30 Atmospheric Crude Distillation Capacity, the applicant shall provide calculations performed and
31 certified by a professional engineer licensed in the state of Washington, clearly indicating the impact
32 on MACDC and Transshipment Capacity. Confidential Business Information shall be clearly identified
33 as required by WCC 22.05.126(2)(a)(i) above.
34 (4) If the County receives a public records request for records containing information the applicant has
35 clearly indicated to be Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i), the
36 County will notify the applicant of the request and provide the applicant with at least 30 days to file
37 for an injunction under RCW 42.56.540 to prevent the disclosure of such information. If the
38 applicant does not file for an injunction within the period of time set by the County, the County will
39 disclose the records containing the information that the applicant has designated as Confidential
40 Business Information pursuant to WCC 22.05.126(2)(a)(i).

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

22.05.130 Permit Review Time Frames.

(1) The County shall issue a notice of final decision for all permit types, including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application within 120 calendar days of the date the department determined the application complete, except as provided below:

- (a) The following time periods shall be excluded from the calculation of the number of days elapsed:
- i. Any period during which the applicant has been required by the County to correct plans, perform required studies, or provide additional, required information through a notice of additional requirements, per WCC [22.05.100\(3\)](#). The period shall be calculated from the date the County issues a notice of additional requirements until the date the County receives all of the requested additional information;
 - ii. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter [43.21C](#) RCW and WCC Title [16](#);
 - iii. The period specified for administrative appeals of project permits as provided in Chapter [2.11](#) WCC;
 - iv. The period specified for administrative appeals of development standards as provided in WCC [12.08.035\(l\)](#);
 - v. Any period in which the applicant has not met public notification requirements;
 - vi. Any period of time mutually agreed upon in writing by the applicant and the County.
- (b) The time limits established by this section shall not apply to a project permit application that:
- i. Requires an amendment to the Whatcom County comprehensive plan or a development regulation in order to obtain approval.
 - ii. Requires approval of a new fully contained community as provided in RCW [36.70A.350](#), a master planned resort as provided in RCW [36.70A.360](#), or the siting of an essential public facility as provided in RCW [36.70A.200](#).
 - iii. Is substantially revised by the applicant, including all redesigns of proposed land divisions, in which case a new time period shall start from the date at which the revised project application is determined to be complete.

- (c) Additionally, for shoreline permits and exemptions, and pursuant to WAC 173-27-125, the following special procedures apply to Washington State Department of Transportation (WSDOT) projects:
- i. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
 - ii. Pursuant to RCW 90.58.140, WSDOT projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

(d) The County may extend notice of final decision on the project if the County can document legitimate reasons for such a delay. In such a case the County shall provide written

Comment [CES11]: Added per Periodic Review Checklist, Item 2015.a, and Scoping Document, Item #2e.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 notice to the applicant at least 14 calendar days prior to the deadline for the original notice of
2 final decision. The notice shall include a statement of reasons why the time limits have not been
3 met and a date of issuance of a notice of final decision.
- 4 (2) If an applicant believes a project permit application has not been acted upon by the County in a
5 timely manner or otherwise consistent with this chapter, the applicant or authorized representative
6 may request a meeting with the Director to resolve the issue. Within 14 calendar days ~~of~~ after the
7 meeting, the Director shall:
- 8 (a) Approve the permit if it is within the Director's authority to do so, provided the approval would
9 not violate state or County regulations; or
10 (b) Deny the permit if it is within the Director's authority to do so; or
11 (c) Respond in writing with the department's position, or a mutually acceptable resolution of the
12 issue, which may include a partial refund of application fees at the Director's discretion.
- 13 (3) Any final order, permit decision or determination issued by Whatcom County shall include a notice
14 to the applicant of his or her appeal rights per WCC [22.05.160](#) (Appeals).
- 15 **22.05.140 Expiration of Project Permits.**
- 16 (1) This section shall apply to non-shoreline project permits and shoreline statements of exemption.
17 Expiration of shoreline permits shall be subject to the rules of WCC 22.07.080 (Expiration of
18 Shoreline Permits).
- 19 ~~(1)(2)~~ Project permit approval status shall expire two years from the date of approval except where a
20 different duration of approval is authorized by Whatcom County Code, or is established by a court
21 decision or state law, or executed by a development agreement. The decision maker may extend
22 this period up to one year from the date of original expiration upon written request by the
23 applicant.
- 24 ~~(2)(3)~~ Any complete project permit application for which no information has been submitted in
25 response to the department's notice of additional requirements per WCC [22.05.100](#)(3) shall expire
26 at the end of the time limit established in 22.05.100(3).
- 27 ~~(3)(4)~~ For projects that have received a SEPA determination of significance per Chapter [16.08](#) WCC, all
28 underlying project permit applications shall expire when one of the following occurs:
- 29 (a) The applicant has not in good faith maintained a contract with a person or firm to complete the
30 environmental impact statement (EIS) as specified in the scoping document. The applicant is
31 responsible for informing the County of the status of such contract. If there is no notice given to
32 the County, all underlying project permit applications shall expire upon the end date of the
33 contract; or
34 (b) The mutually agreed time frame to complete the draft EIS or final EIS has lapsed.
- 35 (4) Project permits which received preliminary approval or a final decision prior to February 22, 2009,
36 that did not include an expiration time frame in the conditions of approval shall expire on June 16,
37 2020.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 | **22.05.150 Permit Revocation Procedure.**

- 2 (1) Upon notification by the Director that a substantial violation of the terms and conditions of any
3 | previously granted zoning conditional use, shoreline substantial development, or shoreline
4 | conditional use permit exists, the Hearing Examiner shall issue a summons as per WCC [2.11.220](#) to
5 | the permit holder requiring said permit holder to appear and show cause why revocation of the
6 | permit should not be ordered. Failure of the permit holder to respond may be deemed good cause
7 | for revocation.
- 8 (2) Upon issuance of a summons as set forth in subsection (1) of this section, the Hearing Examiner shall
9 | schedule an open record hearing to review the alleged violations. The summons shall include notice
10 | of the hearing and shall be sent to the permit holder and the Director of planning and development
11 | services no less than 12 calendar days prior to the date of the hearing. At the hearing the Hearing
12 | Examiner shall receive evidence of the alleged violations and the responses of the permit holder, as
13 | per the business rules of the Hearing Examiner's office. Testimony shall be limited to that of the
14 | division and the permit holder except where additional evidence would be of substantial value in
15 | determining if revocation should be ordered. The land use division's evidence may include the
16 | testimony of witnesses.
- 17 (3) Upon a showing of violation by a preponderance of the evidence as alleged, the Hearing Examiner
18 | may revoke the permit or allow the permit holder a reasonable period of time to cure the violation.
19 | If the violation is not cured within the time set by the Hearing Examiner, the permit shall be
20 | revoked. Where a time to cure the violation has been set out, no further hearing shall be necessary
21 | prior to the revocation. The permit holder shall have the burden of proving that the violation has
22 | been cured within the time limit previously set. Such evidence as is necessary to demonstrate that
23 | the violation has been cured may be submitted to the Hearing Examiner by either the permit holder
24 | or the Director of planning and development services. Any revocation shall be accompanied by
25 | written findings of fact and conclusions of law. The permit holder shall be notified of any revocation
26 | within 14 calendar days of the revocation.

27 | **22.05.160 Appeals.**

- 28 (1) Any person with standing may appeal any order, final permit decision, or final administrative
29 | determination made by the Director or designee in the administration or enforcement of any
30 | chapter to the Hearing Examiner, who has the authority to hear and decide such appeals per
31 | WCC [2.11.210](#).
- 32 (a) To be valid, an appeal shall be filed, on a form provided by the department, with the
33 | department within 14 calendar days of the issuance of a final permit decision and shall be
34 | accompanied by a fee as specified in the Unified Fee Schedule. The written appeal shall include:
- 35 | i. The action or decision being appealed and the date it was issued;
36 | ii. Facts demonstrating that the person is adversely affected by the decision;
37 | iii. A statement identifying each alleged error and the manner in which the decision fails to
38 | satisfy the applicable decision criteria;
39 | iv. The specific relief requested; and

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 v. Any other information reasonably necessary to make a decision on the appeal.
2 (b) The Hearing Examiner shall schedule an open record public hearing on the appeal to be held
3 within 60 calendar days following the department's receipt of the application for appeal unless
4 otherwise agreed upon by the County and the appellant.
5 (c) A party who fails to appeal within 14 calendar days is barred from appeal, per
6 Chapter [2.11](#) WCC.
7 (d) The business rules of the Hearing Examiner shall govern appeal procedures. The Hearing
8 Examiner shall have the authority granted in the business rules, and that authority is
9 incorporated herein by reference. See also WCC [2.11.220](#).

10 ~~(2)~~ For non-shoreline permits, ~~The applicant,~~ any person with standing, or any County department may
11 appeal any final decision of the Hearing Examiner to superior court or other body as specified by
12 WCC [22.05.020](#). The appellant shall file a written notice of appeal within 21 calendar days of the
13 final decision of the Hearing Examiner, as provided in RCW [36.70C.040](#).

14 ~~(2)~~(3) For shoreline permits, after the issuance of the appeal determination, a party with standing
15 may appeal to the Shorelines Hearings Board a decision on a shoreline substantial development
16 permit, shoreline variance, or shoreline conditional use pursuant to RCW 90.58.180 within 21 days
17 of the "date of filing" as defined in this program and RCW 90.58.140(6). The appeal to the Shorelines
18 Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C WAC. Appeals of a
19 decision of the Department of Ecology shall be filed in accordance with the provisions of Chapter
20 [461-08C WAC](#).

Comment [AP12]: Updated per Periodic Review Checklist, Item 2017.d, and Scoping Document Item #2a.

Comment [CES13]: Moved from 23.60.150 (Notice of Decision, Reconsideration, and Appeal)

21 **22.05.170 Annual Report.**

22 Staff shall prepare an annual report on the implementation of this chapter and submit it to the Council.

23 **22.05.180 Interpretation, Conflict and Severability.**

- 24 (1) **Interpret to Protect Public Welfare.** In the event of any discrepancies between the requirements
25 established herein and those contained in any other applicable regulation, code or program, the
26 regulations which are more protective of the public health, safety, environment and welfare shall
27 apply.
28 (2) **Severability.** The provisions of this chapter are severable. If a section, sentence, clause, or phrase of
29 this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect
30 the remaining portions of this chapter.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

Chapter ~~23.60~~ 22.07 Additional Requirements for Shoreline Permits and Exemptions

Comment [CES14]: Though this is a new chapter, the existing language from Title 20 is not shown as new; only changes to that existing language is shown in strikeout/underline.

~~23.60.005~~ 22.07.010 General Requirements.

- A. In addition to the requirements of WCC Chapter 22.05 (Project Permits), shoreline permits shall be subject to the provisions of this chapter.
- B. To be authorized, all shoreline activities, uses, and developments shall be ~~planned and carried out~~ done in a manner ~~that is~~ consistent with this program and ~~the policy of the Shoreline Management Act~~ as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
- C. All final shoreline substantial development, variance, and conditional use permit decisions or recommendations shall be filed with the Department of Ecology pursuant to WCC 22.07.060.
- D. A development or use that is listed as a shoreline conditional use pursuant to this program or is an unlisted use must obtain a shoreline conditional use permit even if the development or use does not require a substantial development permit.
- E. When a development, use, or activity is proposed that does not comply with the bulk, dimensional and/or performance standards of the program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
- F. All permits or statements of exemption issued for development, use, or activity within shoreline jurisdiction shall include written findings prepared by the Director, including compliance with bulk and dimensional standards and policies and regulations of this program. The Director may attach conditions to the approval to project permits as necessary to assure consistency of the project with the Act and the program.
- G. Pursuant to WAC 173-27-044, requirements to obtain a substantial development permit, shoreline conditional use permit, shoreline variance, letter of exemption, or other review conducted by a local government to implement the Shoreline Management Program do not apply to:
1. Remedial Action. Any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the Department of Ecology (Ecology) when it conducts a remedial action under chapter 70.105D RCW. Ecology must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the Ecology-conducted remedial action, through the procedures developed by Ecology pursuant to RCW 70.105D.090;
 2. Boatyard Facilities. Any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit. Ecology must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard stormwater treatment facilities; or

Comment [CES15]: Moved from 22.07.020

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 **3. Washington State Department of Transportation (WSDOT) facility maintenance and safety**
2 **improvements. Any Washington State Department of Transportation (WSDOT) projects or**
3 **activities that meet the conditions of RCW 90.58.356.**
- 4 **A.H. All applications for shoreline substantial development permits or permit revisions shall be**
5 **submitted to the Department of Ecology upon a final decision by local government pursuant to WAC**
6 **173-27-130. "Final decision by local government" shall mean the order of ruling, whether it be an**
7 **approval or denial, that is established after all local administrative appeals related to the permit**
8 **have concluded or the opportunity to initiate such appeals has lapsed.**
- 9 ~~**23.60.22.07.020 Exemptions from Shoreline Substantial Development Permits process.**~~
- 10 **A. ~~23.60.021~~ Application and interpretation.**
- 11 1. An exemption from the substantial development permit process is not an exemption from
12 compliance with the Act, ~~or~~ this program, or from any other regulatory requirements. To be
13 authorized, all uses, ~~and~~ developments, and activities must be consistent with the policies and
14 regulatory provisions of this program and the Act. A statement of exemption shall be obtained
15 for exempt activities consistent with the below provisions ~~of WCC 23.60.020~~.
- 16 2. Exemptions shall be construed narrowly. Only those developments that meet the precise terms
17 of one or more of the listed exemptions may be granted exemptions from the substantial
18 development permit process.
- 19 3. The burden of proof that a development, ~~or~~ use, or activity is exempt is on the
20 applicant/proponent of the exempt development action.
- 21 4. If any part of a proposed development is not eligible for exemption, then a substantial
22 development permit is required for the entire project.
- 23 ~~5. A development or use that is listed as a conditional use pursuant to this program or is an~~
24 ~~unlisted use, must obtain a conditional use permit even if the development or use does not~~
25 ~~require a substantial development permit.~~
- 26 ~~6. When a development or use is proposed that does not comply with the bulk, dimensional~~
27 ~~and/or performance standards of the program, such development or use shall only be~~
28 ~~authorized by approval of a shoreline variance even if the development or use does not require~~
29 ~~a substantial development permit.~~
- 30 ~~7. All permits or statements of exemption issued for development or use within shoreline~~
31 ~~jurisdiction shall include written findings prepared by the administrator, including compliance~~
32 ~~with bulk and dimensional standards and policies and regulations of this program. The~~
33 ~~administrator may attach conditions to the approval of exempt developments and/or uses as~~
34 ~~necessary to assure consistency of the project with the Act and the program.~~
- 35 ~~**B. 23.60.022 Exemptions listed.**~~
- 36 ~~1.B. The following activities shall be considered exempt from the requirement to obtain a shoreline~~
37 ~~substantial development permit. A statement of exemption, as provided for in WCC 23.60.023 of~~
38 ~~this program shall be required for those activities listed in WCC 23.60.023(B) and (C). Certain~~
39 ~~developments, uses, or activities are exempt from the substantial development permit~~

Comment [CES16]: Language from RCW 90.58.355.

Comment [CES17]: Moved to 22.07.010

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Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 requirements of the Act and this program. These developments, uses, or activities are those set
2 forth in WAC 173-27-040 (or as amended), and do not meet the definition of substantial
3 development under RCW 90.58.030(3)(e). A summary of exempt developments is listed below, the
4 application of which shall be guided by WAC 173-27-040 (or as amended).

5 ~~2-1.~~ Any development of which the total cost or fair market value, whichever is higher, does not
6 exceed ~~\$5,7187,047~~, or as amended by the state Office of Financial Management, if such
7 development does not materially interfere with the normal public use of the water or shorelines
8 of the state. For the purposes of determining whether or not a permit is required, the total cost
9 or fair market value shall be based on the value of development that is occurring on shorelines
10 of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the
11 development shall include the fair market value of any donated, contributed or found labor,
12 equipment or materials.

13 ~~3-2.~~ Normal maintenance or repair of existing structures or developments, including damage by
14 accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline,
15 lapse or cessation from a lawfully established condition. Normal repair means to restore a
16 development to a state comparable to its original condition within a reasonable period after
17 decay or partial destruction except where repair causes substantial adverse effects to the
18 shoreline resource or environment. Replacement of a structure or development may be
19 authorized as repair where such replacement is the common method of repair for the type of
20 structure or development and the replacement structure or development is comparable to the
21 original structure or development including but not limited to its size, shape, configuration,
22 location and external appearance and the replacement does not cause substantial adverse
23 effects to shoreline resources or the environment.

24 ~~4-3.~~ Construction of the normal protective bulkhead common to single-family residences. A normal
25 protective bulkhead includes those structural and nonstructural developments installed at or
26 near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing
27 single-family residence and appurtenant structures from loss or damage by erosion. A normal
28 protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a
29 vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard
30 of fill per one foot of wall may be used for backfill. When an existing bulkhead is being repaired
31 by construction of a vertical wall fronting the existing wall, it shall be constructed no further
32 waterward of the existing bulkhead than is necessary for construction of new footings. When a
33 bulkhead has deteriorated such that an ordinary high water mark has been established by the
34 presence and action of water landward of the bulkhead then the replacement bulkhead must be
35 located at or near the actual ordinary high water mark. Beach nourishment and bioengineered
36 erosion control projects may be considered a normal protective bulkhead when any structural
37 elements are consistent with the above requirements and when the project has been approved
38 by the Washington Department of Fish and Wildlife.

39 ~~5-4.~~ Emergency construction necessary to protect property from damage by the elements. An
40 emergency is an unanticipated and imminent threat to public health, safety or the environment

Comment [CES18]: This number gets updated every 5 years by OFM. As of 2017 it was \$7,047. (Though set in code here, PDS updates our permit application, website, and handouts to reflect OFM's newest threshold amount whenever it's published.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 that requires immediate action within a time too short to allow full compliance with this
2 program. Emergency construction does not include development of new permanent protective
3 structures where none previously existed. Where new protective structures are deemed by the
4 ~~administrator~~ Director to be the appropriate means to address the emergency situation, upon
5 abatement of the emergency situation the new structure shall be removed or any permit that
6 would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-
7 27 WAC or this program, shall be obtained. All emergency construction shall be consistent with
8 the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other
9 seasonal events that can be anticipated and may occur but that are not imminent are not an
10 emergency.

11 ~~6-5.~~ Construction and practices normal or necessary for farming, irrigation, and ranching activities,
12 including agricultural service roads and utilities, construction of a barn or similar agricultural
13 structure, and the construction and maintenance of irrigation structures including, but not
14 limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption
15 shall not apply to agricultural activities proposed on land not in agricultural use on December
16 17, 2003; and further provided, that a feedlot of any size, all processing plants, other activities of
17 a commercial nature, or alteration of the contour of the shorelands by leveling or filling other
18 than that which results from normal cultivation shall not be considered normal or necessary
19 farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being
20 used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for
21 growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal
22 livestock wintering operations.

23 ~~7-6.~~ Construction or modification, by or under the authority of the Coast Guard or a designated port
24 management authority, of navigational aids such as channel markers and anchor buoys.

25 ~~8-7.~~ Construction on shorelands by an owner, lessee, or contract purchaser of a single-family
26 residence for their own use or for the use of their family, which residence does not exceed a
27 height of 35 feet above average grade level and that meets all requirements of the state agency
28 or local government having jurisdiction thereof. Single-family residence means a detached
29 dwelling designed for and occupied by one family including those structures and developments
30 within a contiguous ownership which are a normal appurtenance as defined in Chapter 23.60
31 WCC ~~23.110.010~~.

32 ~~9-8.~~ Construction of a dock, including a shared moorage, designed for pleasure craft only, for the
33 private noncommercial use of the owners, lessee, or contract purchaser of a single-family or
34 multifamily residence. A dock is a landing and moorage facility for watercraft and does not
35 include recreational decks, storage facilities or other appurtenances. The private dock
36 exemption applies if either:

37 a. In salt waters, the fair market value of the dock does not exceed \$2,500; or

38 b. In fresh waters the fair market value of the dock does not exceed:

39 i. \$20,000 for docks that are constructed to replace existing docks, are of equal or lesser
40 square footage than the existing dock being replaced

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 ii. \$10,000 for all other docks constructed in fresh waters,
2 ~~but~~ However, if subsequent construction having a fair market value exceeding \$2,500 occurs
3 within five years of the completion of the prior construction, and the combined fair market
4 value of the subsequent and prior construction exceeds the amount specified above, the
5 subsequent construction shall be considered a substantial development for the purpose of this
6 program. For the purpose of this section, saltwater shall include the tidally influenced marine
7 and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait
8 of Georgia, and Puget Sound local marine waters and all associated bays, inlets, and estuaries.
9 ~~10.9.~~ Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or
10 other facilities that now exist or are hereafter created or developed as a part of an irrigation
11 system for the primary purpose of making use of system waters including return flow and
12 artificially stored ground water for the irrigation of lands; provided, that this exemption shall not
13 apply to construction of new irrigation facilities proposed after December 17, 2003.
14 ~~11.10.~~ The marking of property lines or corners on state-owned lands, when such marking does
15 not significantly interfere with normal public use of the surface of the water.
16 ~~12.11.~~ Operation and maintenance of any system of dikes, ditches, drains, or other facilities
17 existing on June 4, 1975, that were created, developed or utilized, primarily as a part of an
18 agricultural drainage or diking system.
19 ~~13.12.~~ Any project with a certification from the governor pursuant to Chapter 80.50 RCW.
20 ~~14.13.~~ Site exploration and investigation activities that are prerequisite to preparation of a
21 development application for authorization under this program, if:
22 i.a. The activity does not interfere with the normal public use of surface waters;
23 ii.b. The activity will have no significant adverse impact on the environment including but not
24 limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;
25 iii.c. The activity does not involve the installation of any structure and, upon completion of the
26 activity, the vegetation and land configuration of the site are restored to conditions existing
27 before the activity;
28 iv.d. A private entity seeking development authorization under this section first posts a
29 performance bond or provides other evidence of financial responsibility to the
30 administrator/Director to ensure that the site is restored to preexisting conditions; and
31 v.e. The activity is not subject to the permit requirements of RCW 90.58.550.
32 ~~15.14.~~ The process of removing or controlling aquatic noxious weeds, as defined in RCW
33 17.26.020, through the use of an herbicide or other treatment methods applicable to weed
34 control that is recommended by a final environmental impact statement published by the
35 Department of Agriculture or the Department of Ecology jointly with other state agencies under
36 Chapter 43.21C RCW.
37 ~~16.15.~~ Watershed restoration projects as defined in Chapter ~~23.60-23.110~~ WCC and WAC 193-
38 ~~27-040(2)(o)~~ by RCW ~~89.08.460~~. The administrator/Director shall review the projects for
39 consistency with the program in an expeditious manner and shall issue its decision along with

Comment [CES19]: Amended to more precisely reflect WAC 173-27-040

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Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

any conditions within 45 days of receiving a complete application form from the applicant/proponent. No fee may be charged for accepting and processing applications for watershed restoration projects as defined in Chapter ~~23.60~~ ~~23.110~~ WCC (Definitions).

~~17.16.~~ A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, including restoring native kelp, eelgrass beds and native oysters, when all of the following apply:

~~i.a.~~ The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;

~~i.b.~~ The project received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and

~~c.~~ The ~~administrator~~ Director has determined that the project is consistent with this program. The ~~administrator~~ Director shall make such determination in a timely manner and provide it by letter to the project proponent.

~~18.17.~~ The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 or to otherwise provide physical access to the structure by individuals with disabilities.

C. ~~23.60.023~~ Statements of Exemption.

~~1.~~ Statements of Exemption are considered Type I applications pursuant to WCC 22.05.020 (Project Permit Processing Table).

~~1-2.~~ The ~~administrator~~ Director is hereby authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit ~~requirement~~ process for developments, uses, or activities and developments within shorelines that are specifically listed in WCC 23.60.022 in subsection (B). Such statements shall be applied for on forms provided by the administrator. The statement shall be in writing and shall indicate the specific exemption of this program that is being applied to the development, and shall provide a summary of the administrator's analysis of the consistency of the project with this program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to WCC 23.60.150.

~~2-3.~~ Exempt activities ~~related to any of the following~~ shall not be conducted until a statement of exemption has been obtained from the ~~administrator~~ Director: ~~dredging, flood control works and instream structures, development within an archaeological or historic site, clearing and ground disturbing activities such as landfill or excavation, dock, shore stabilization, freestanding signs, or any development within an aquatic or natural shoreline designation; provided, that no separate written statement of exemption is required for the construction of a single family residence when a county building permit application has been reviewed and approved by the administrator; provided further, that no statement of exemption is required for emergency~~

Comment [CES20]: Added pursuant to DOE checklist.

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Comment [CES21]: Covered by other sections of code

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 development pursuant to WAC 173-27-040(2)(d) and that other project permits (e.g., building
2 permits), may serve as a statement of exemption when they contain a statement of review and
3 compliance with the Shoreline Management Program.

4 ~~3.4. No statement of exemption shall be required for other uses or developments exempt pursuant
5 to WCC 23.60.022 unless the administrator has cause to believe a substantial question exists as
6 to qualifications of the specific use or development for the exemption or the administrator
7 determines there is a likelihood of adverse impacts to shoreline ecological functions. Whether or
8 not a written statement of exemption is issued, all permits issued within the area of shorelines
9 shall include a record of review actions prepared by the administrator/Director, including
10 compliance with bulk and dimensional standards and policies and regulations of this program.
11 The administrator may attach conditions to the approval of exempted developments and/or
12 uses as necessary to assure consistency of the project with the Act and this program.~~

Comment [CES22]: Covered by the new language in (2)

13 ~~4.5. A notice of decision for shoreline statements of exemption shall be provided to the
14 applicant/proponent and any party of record. Such notices shall also be filed with the
15 Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is
16 subject to one or more of the following federal permitting requirements:
17 a. A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899.
18 (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project
19 occurring on or over navigable waters. Specific applicability information should be obtained
20 from the Corps of Engineers.); or
21 b. A Section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions
22 of Section 404 of the Federal Water Pollution Control Act generally apply to any project that
23 may involve discharge of dredge or fill material to any water or wetland area. Specific
24 applicability information should be obtained from the Corps of Engineers.)~~

Comment [CES23]: Covered by 22.05.100(5)

25 ~~5. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit
26 under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water
27 Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the
28 applicant/proponent and Ecology pursuant to WAC 173-27-050.~~

Comment [CES24]: Covered by (5)

~~22.07.030 23.60.010~~ Shoreline Substantial Development Permits criteria.

29 ~~A. A shoreline substantial development permit shall be required for all proposed uses, development,
30 and activities within the shoreline jurisdiction unless the proposal is specifically exempt pursuant to
31 WCC 22.07.020 (Exemptions).~~

Comment [CES25]: Moved from below.

32 ~~B. All shoreline substantial development permits are considered Type II permits (see WCC
33 22.05.020, Project Permit Processing Table), except those the Director has determined meets the
34 following criteria, in which case it shall be considered a Type III permit:~~

35 ~~A. The administrator shall determine whether an application requires a public hearing pursuant to the
36 criteria below no later than 15 days after the minimum public comment period provided by WCC
37 23.60.080. An open record public hearing shall be required for all of the following:
38~~

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1. The proposal has a cost or market value in excess of ~~\$1,500,000~~, except for single-family residences, agriculture, and commercial forestry, and ecological restoration projects; or
 - ~~2. The proposal would result in development of an area larger than five acres; or~~
 - ~~3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or~~
 - ~~4. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or~~
 - ~~5.2. The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or.~~
 - ~~6.3. The proposal requires a major variance and/or conditional use approval pursuant to this program; or~~
 - ~~7. The use or development requires an open record public hearing for other Whatcom County approvals or permits.~~
- ~~B. A substantial development permit shall be required for all proposed uses, and development, and activities within the of shorelines jurisdiction unless the proposal is specifically exempt pursuant to WCC 23.60.0220.~~
- C. In order to be approved, the decision maker must find that the proposal is consistent with the Shoreline Management Act and the Shoreline Management Program following criteria:
- ~~1. All regulations of this program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under WCC 23.60.030.~~
 - ~~2. All policies of this program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.~~
 - ~~3. For projects located on shorelines of statewide significance, the policies of Chapter 23.40 WCC shall also be adhered to.~~
- D. ~~In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.~~
- 22.07.040 23.60.040 Shoreline Conditional Use Permits criteria.**
- A. The purpose of a shoreline conditional use permit is to allow greater flexibility in administering the use regulations of this program in a manner consistent with the policy of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the county or the Department of Ecology to control any undesirable effects of the proposed use.
 - B. Uses specifically classified or set forth in this program as shoreline conditional uses and unlisted uses may be authorized, provided the applicant/proponent can demonstrate all of the following:

Comment [CES26]: Increased due to inflation. This amount has not been changed since 1986.

Comment [CES27]: Proposed for deletion since developments of 5 acres or more would undoubtedly be valued at more than \$500,000.

Comment [CES28]: Covered by the shoreline use table in conjunction with subsection (c).

Comment [CES29]: Not necessary; already covered by the modified use table in T-23.

Comment [CES30]: Proposed for deletion as there is no criteria for staff to objectively determine when a project might be controversial.

Comment [CES31]: Covered by 22.05.030

Comment [CES32]: Moved to (A)

Comment [CES33]: P/C motion to amend as shown. Carries 7-2

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.
- 2 2. That the proposed use will not interfere with normal public use of public shorelines.
- 3 3. That the proposed use of the site and design of the project will be compatible with other
- 4 permitted uses within the area.
- 5 4. That the proposed use will not cause adverse effects to the shoreline environment in which it is
- 6 to be located.
- 7 5. That the public interest suffers no substantial detrimental effect.
- 8 C. All shoreline conditional use permits are considered Type III permits (see WCC 22.05.020, Project
- 9 Permit Processing Table), except those for single-family residential development, uses, or activities,
- 10 which shall be processed as a Type II permit.
- 11 ~~E.D.~~ Other uses not specifically classified or set forth in this program, including the ~~expansion or~~
- 12 resumption of a nonconforming use pursuant to WCC 23.50.0170 (Nonconforming Uses), may be
- 13 authorized as shoreline conditional uses, provided the applicant/proponent can demonstrate that
- 14 the proposal will satisfy the criteria set forth in subsection (B) of this section, and that the use clearly
- 15 requires a specific site location on the shoreline not provided for under the program, and
- 16 extraordinary circumstances preclude reasonable use of the property in a manner consistent with
- 17 the use regulations of this program. Uses that are prohibited cannot be authorized by a shoreline
- 18 conditional use permit.
- 19 ~~D.E.~~ In the granting of all shoreline conditional use permits, consideration shall be given to the
- 20 cumulative environmental impact of additional requests for like actions in the area. For example, if
- 21 shoreline conditional use permits were granted for other developments in the area where similar
- 22 circumstances exist, the sum of the shoreline conditional uses and their impacts should also remain
- 23 consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to
- 24 the shoreline ecological functions and processes or other users.
- 25 ~~E.~~ ~~Permits and/or variances applied for or approved under county zoning or subdivision code~~
- 26 ~~requirements shall not be construed as shoreline variances under this program.~~
- 27 ~~23.60.03022.07.050 Shoreline Variances permit criteria.~~
- 28 A. The purpose of a shoreline variance is to grant relief to specific bulk or dimensional requirements
- 29 set forth in ~~this the~~ Shoreline Management Program and any associated standards appended to this
- 30 program such as critical areas buffer requirements where there are extraordinary or unique
- 31 circumstances relating to the property such that the strict implementation of this program would
- 32 impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW
- 33 90.58.020. Use restrictions may not be varied.
- 34 B. Shoreline variances are considered Type III applications pursuant to WCC 22.05.020 (Project Permit
- 35 Processing Table).
- 36 ~~B.C.~~ Shoreline variances will be granted in any circumstance where denial would result in a thwarting of
- 37 the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be
- 38 shown and the public interest shall suffer no substantial detrimental effect.

Comment [CES34]: Moved to General Requirements section.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 C. ~~Proposals that would otherwise qualify as a reasonable use pursuant to WCC 16.16.270(A) shall~~
2 ~~require a shoreline variance and shall meet the variance criteria in this section.~~
- 3 D. ~~Shoreline variances for development and/or uses that will be located landward of the ordinary high~~
4 ~~water mark (OHWM) and/or landward of any wetland may be authorized provided the applicant can~~
5 ~~demonstrate all of the following: Variances may be authorized, provided the applicant/proponent can~~
6 ~~demonstrate all of the following:~~
- 7 1. ~~That the strict application of the bulk or dimensional criteria set forth in this program the~~
8 ~~Shoreline Management Program precludes or significantly interferes with reasonable permitted~~
9 ~~use of the property;~~
 - 10 2. ~~That the hardship described in subsection (A1) of this section is specifically related to the~~
11 ~~property, and is the result of unique conditions such as irregular lot shape, size, or natural~~
12 ~~features and the application of this program, and not, for example, from deed restrictions or the~~
13 ~~applicant's/proponent's own actions;~~
 - 14 3. ~~That the design of the project will be~~ compatible with other ~~permitted~~ authorized uses
15 activities within the area and with uses planned for the area under the comprehensive plan and
16 shoreline master program and will not cause adverse effects on adjacent properties or impacts
17 to the shoreline environment;
 - 18 4. ~~That the variance authorized does not constitute a grant of special privilege not enjoyed by the~~
19 ~~other properties in the area, and will be the minimum necessary to afford relief;~~
 - 20 5. ~~That the public interest will suffer no substantial detrimental effect;~~
 - 21 6. ~~That the public rights of navigation and use of the shorelines will not be materially interfered~~
22 ~~with by the granting of the variance; and~~
 - 23 7. ~~Mitigation is provided to offset unavoidable adverse impacts caused by the proposed~~
24 ~~development or use.~~
- 25 E. ~~Shoreline variances permits~~ for development and/or uses that will be located waterward of the
26 ordinary high water mark (OHWM), ~~as defined herein, or within any wetland as defined herein,~~ may
27 be authorized, provided the applicant can demonstrate all of the following:
- 28 1. ~~That the strict application of the bulk, dimensional or performance standards set forth in this~~
29 ~~program precludes all reasonable use of the property; and~~
 - 30 2. ~~1.~~ That the proposal is consistent with the criteria established under subsections (D) ~~(1) through~~
31 ~~(7)~~ of this section; and
 - 32 3. ~~2.~~ That the public rights of navigation and use of the shorelines will not be adversely affected.
- 33 ~~Other factors that may be considered in the review of variance requests include the conservation of~~
34 ~~valuable natural resources and the protection of views from nearby roads, surrounding properties~~
35 ~~and public areas; provided, the criteria of subsection D of this section are first met. In addition,~~
36 ~~variance requests based on the applicant's/proponent's desire to enhance the view from the subject~~
37 ~~development may be granted;~~
38 ~~where there are no likely detrimental effects to existing or future users, other features, or shoreline~~
39 ~~ecological functions and/or processes; and~~
40 ~~where reasonable alternatives of equal or greater consistency with this program are not available.~~

Comment [CES35]: This section's text amended to mimic WAC 173-27-170(3)

Comment [CES36]: Already addressed in subsection (D).

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

1 ~~4. In platted residential areas, variances shall not be granted that allow a greater height or lesser~~
2 ~~shore setback than what is typical for the immediate block or area.~~

Comment [AP37]: Revised per Scoping Document, Item #3a and staff comment #28

3 F. In the granting of all ~~shoreline~~ variances, consideration shall be given to the cumulative
4 environmental impact of additional requests for like actions in the area. For example, if ~~shoreline~~
5 variances were granted to other developments in the area where similar circumstances exist, the
6 total of the variances should also remain consistent with the policy of RCW 90.58.020 and should
7 not produce significant adverse effects to the shoreline ecological functions and processes or other
8 users.

Comment [CES38]: This is covered by the Variance Criteria for protection of public interest.

Comment [CES39]: Moved to General Requirements section.

9 ~~G. Permits and/or variances applied for or approved under other county codes such as WCC Title 20 or~~
10 ~~21 shall not be construed as shoreline permits under this program.~~

Comment [CES40]: General provision moved to appropriate section.

23.60.050 Minimum application requirements.

11 ~~Where other approvals or permits are required for a use or development that does not require an open~~
12 ~~record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is~~
13 ~~granted. All shoreline approvals and permits shall include written findings prepared by the administrator~~
14 ~~documenting compliance with bulk and dimensional standards and other policies and regulations of this~~
15 ~~program.~~

Comment [RCE41]: Don't need, as permit review consolidation is required

17 ~~A complete application for a substantial development, conditional use, or variance permit shall contain~~
18 ~~all materials required in the Department's administrative manual; provided, that the administrator may~~
19 ~~vary or waive these requirements as provided in the manual and may vary or waive these requirements~~
20 ~~on a case by case basis. The administrator may require additional specific information depending on the~~
21 ~~nature of the proposal and the presence of sensitive ecological features or issues related to compliance~~
22 ~~with other county requirements.~~

Comment [CES42]: Moved to 22.05.050

23.60.060 Pre-application conference.

23 ~~Prior to filing a permit application for a shoreline substantial development permit, variance or~~
24 ~~conditional use permit decision.~~

Comment [CES43]: Covered by 22.05.040

26 ~~The applicant shall contact the County to schedule a pre-application conference, which shall be held~~
27 ~~prior to filing the application; provided, that such meetings shall not be required for development~~
28 ~~activities associated with shoreline restoration projects, agriculture, commercial forestry, or the~~
29 ~~construction of a single family residence.~~

23.60.070 Fees.

Comment [CES44]: Covered by 22.05.050(1)

31 ~~A. Required fees for all shoreline substantial development permits, shoreline conditional use permits,~~
32 ~~shoreline variances, statements of exemption, appeals, pre-application conferences and other~~
33 ~~required reviews and/or approvals shall be paid to the county at the time of application in~~
34 ~~accordance with the Whatcom County Unified Fee Schedule in effect at that time and Chapter 22.05~~
35 ~~WCC.~~

36 ~~B. When any given project requires more than one of the following permits or applications, the total~~
37 ~~amount of fees shall be reduced pursuant to WCC 22.25.030:~~

38 ~~1. Preliminary plat application.~~

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 2. ~~Rezone application.~~
- 2 3. ~~Major development permit.~~
- 3 4. ~~Planned unit development.~~
- 4 5. ~~Binding site plan.~~
- 5 C. ~~When any project requires a shoreline conditional use permit or shoreline variance in addition to a~~
- 6 ~~shoreline substantial development permit, the fees for the conditional use or variance shall be~~
- 7 ~~reduced by half.~~
- 8 D. ~~In the event that actions of an applicant result in the repetition of the review, inspections and other~~
- 9 ~~steps in the approval process, those items or steps repeated shall be charged to and paid by the~~
- 10 ~~applicant prior to any further processing of the application by the county. The cost shall be in~~
- 11 ~~accordance with the adopted fee schedule.~~
- 12 E. ~~If an application is withdrawn within 30 days of submittal, and no work has commenced at the site~~
- 13 ~~of the proposal for which the application was made, a refund of not more than 50 percent of the~~
- 14 ~~shoreline fees paid may be granted by the administrator. This amount may be reduced where staff~~
- 15 ~~time, public notice and other costs exceed 50 percent of the fees paid.~~

~~23.60.080 Notice of application.~~

- 16 A. ~~Upon receipt of a completed shoreline substantial development permit, shoreline variance, or~~
- 17 ~~shoreline conditional use permit application the County shall issue a notice of application for a~~
- 18 ~~proposed land use action in the manner set forth in WCC 22.05.070.~~
- 19 (9) ~~The rights of treaty tribes to resources within their usual and accustomed areas shall be~~
- 20 ~~accommodated through the notification and comment provisions of the permit review process.~~
- 21 ~~Tribal treaty rights may be addressed through specific permit conditions. Direct coordination~~
- 22 ~~between tribes and the applicant/proponent is encouraged.~~
- 23

Comment [MD45]: Covered by 22.05.070. Draft revision per Scoping Document, Item #4a (staff comment #31).

Comment [RCE46]: Moved to 23.05.040(F)(3)

~~23.60.090 Permit application review.~~

- 24 A. ~~All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions~~
- 25 ~~of this program that are in effect at the time of application.~~
- 26 B. ~~To facilitate review of an application the decision maker shall consider any or all of the following:~~
- 27 1. ~~The application and attached information;~~
- 28 2. ~~The SEPA checklist, threshold determination, environmental impact statement, or other~~
- 29 ~~environmental studies and/or documentation;~~
- 30 3. ~~Written comments from interested persons;~~
- 31 4. ~~Information and recommendations from any public agency and from the administrator/rector in~~
- 32 ~~cases where the administrator/rector is not the decision maker;~~
- 33 5. ~~Information or comment presented at a public hearing, if held, on the application; and~~
- 34 6. ~~The policy and provisions of the Act and this program including the criteria enumerated in WCC~~
- 35 ~~23.60.010, 23.60.030 and 23.60.040, as applicable.~~
- 36 C. ~~The decision maker shall process project permit applications for shoreline substantial development~~
- 37 ~~permits, shoreline variance, and shoreline conditional use permits in compliance with the provisions~~
- 38 ~~of Chapter 22.05-WCC.~~
- 39

Comment [CES47]: Covered by 22.05.060 (Vesting)

Comment [CES48]: Moved to 22.05.100 Consistency Review and Recommendations

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 ~~D. The decision maker shall process project permit applications for shoreline statements of exemption~~
2 ~~in accordance with the provisions of Chapter 22.05 WCC and WCC 23.60.023(A).~~
- 3 ~~E. Any application for a shoreline permit or approval that remains inactive for a period of 180 days~~
4 ~~shall expire and a new application and repayment of fees shall be required to reactivate the~~
5 ~~proposal; provided, that the administrator may grant a single 90-day extension for good cause.~~
6 ~~Delays such as those caused by public notice requirements, State Environmental Policy Act review,~~
7 ~~litigation directly related to the proposal, or changes in government regulations shall not be~~
8 ~~considered as part of the inactive period.~~
9 ~~— If a shoreline permit is denied, no reapplication for the same or essentially similar development may~~
10 ~~be made until one year from the date of denial.~~
- 11 **~~23.60.100 Consolidated Permit Review.~~**
- 12 ~~A. Whenever an application for a project permit under the program requires a project permit or~~
13 ~~approval under another County authority, such as zoning or subdivision, the shoreline~~
14 ~~project permit application, time requirements, and notice provisions for processing the shoreline~~
15 ~~permit shall apply, in addition to those of other regulatory programs.~~
16 ~~— provisions of Chapter 22.05 WCC shall apply to the consolidated application, review, and approval of~~
17 ~~applications that require an open record hearing.~~
- 18 ~~B. Any shoreline use or development that is subject to other approvals or permits that requires an~~
19 ~~open record hearing under another permit authority, such as zoning or subdivision, shall be subject~~
20 ~~to consolidated review and the decision maker designated for the open record hearing shall be the~~
21 ~~decision maker for the consolidated review.~~
- 22 **~~23.60.110 State Environmental Policy Act (SEPA) compliance.~~**
- 23 ~~A. Whenever an application for shoreline substantial development permit, shoreline variance,~~
24 ~~shoreline conditional use permit, or statement of exemption is subject to the rules and regulations~~
25 ~~of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall~~
26 ~~apply, where applicable.~~
- 27 ~~B. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA~~
28 ~~shall be subject to environmental review by the responsible official of Whatcom County pursuant to~~
29 ~~the State Environmental Policy Act (Chapter 197-11 WAC).~~
- 30 ~~C. As part of SEPA review, the Responsible Official may require additional information regarding the~~
31 ~~proposed development in accordance with Chapter 197-11 WAC.~~
- 32 ~~D. Failure of the applicant/proponent to submit sufficient information for a threshold determination to~~
33 ~~be made shall be grounds for the Responsible Official to determine the application incomplete.~~
- 34 **~~23.60.120 Burden of proof.~~**
- 35 ~~Permit applicants/proponents have the burden of proving that the proposed development is consistent~~
36 ~~with the criteria set forth in the Act and this program.~~

Comment [CES49]: No longer needed as permit procedures have been combined.

Comment [CES50]: Moved to 22.05.050 Application and Determination of Completeness

Comment [CES51]: Don't need this; covered by 22.05.030

Comment [RCE52]: Deleted, as this is covered in permit application and permit types.

Comment [CES53]: Moved to 22.05.100 Permit Consistency Review and Recommendations

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

22.60.130 Public Hearings.

A. ~~An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of Chapter 22.05 WCC, unless a continuance is granted pursuant to the rules and procedures of the Hearing Examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.~~

B. ~~Repealed by Ord. 2018-032.~~

C. ~~Repealed by Ord. 2018-032.~~

D. ~~Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.~~

Comment [CES54]: Pertinent sections moved to 22.05.090 Open Record Public Hearings

22.60.140 Permit conditions.

~~In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.~~

Comment [CES55]: Moved to 22.05.100 Permit Consistency Review and Recommendations

22.07.060 Filing Shoreline Permits with the Department of Ecology

A. After all local permit administrative appeals or reconsideration periods are complete, the County will deliver the final permit using return receipt requested mail or email to the Department of Ecology regional office and the attorney general.

B. Proposals that require both shoreline conditional use permits and/or shoreline variances shall be delivered simultaneously with any shoreline permit for the project.

C. The permit and documentation of final local decision will be delivered together the following information:

1. A copy of the complete application;

2. Findings and conclusions that establish the basis for the decision, including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations, and the consistency of the project with appropriate review criteria for the type of permit(s);

3. The final decision of the local government;

4. A completed permit data sheet (WAC 173-27-990, Appendix A); and

5. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.

6. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.

F. Development pursuant to a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall not begin and shall not be authorized until 21 days after the

Comment [AP56]: Updated per Periodic Review Checklist, Item 2017.d, and Scoping Document Items #2a and 5c.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 "date of filing," as defined in this program Title 23 (Shoreline Management Program) and RCW
2 90.58.140(6), or until all review proceedings before the Shorelines Hearings Board have terminated.
3 G. Upon approval of a permit revision, the decision maker shall file a copy of the revised site plan and a
4 detailed description of the authorized changes to the original permit with the Department of
5 Ecology together with a final ruling and findings supporting the decision based on the requirements
6 of this section. In addition, the decision maker shall notify parties of record of the action.
- 7 **~~23.60.150 Notice of Decision, Reconsideration and Appeal.~~**
8 ~~A notice of decision for action on a shoreline substantial development permit, shoreline variance, or~~
9 ~~shoreline conditional use permit shall be provided to the applicant/proponent and any party of~~
10 ~~record in accordance with the review procedures of Chapter 22.05 WCC, and at least 10 days prior to~~
11 ~~filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed~~
12 ~~with the Department of Ecology shall contain the following information:~~
13 ~~After all local permit administrative appeals or reconsideration periods are complete and the permit~~
14 ~~documents are amended to incorporate any resulting changes, the County will mail or hand deliver~~
15 ~~the permit using return receipt requested mail to the Department of Ecology regional office and the~~
16 ~~Office of the Attorney General.~~
17 ~~Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously~~
18 ~~with any Substantial Development Permits shoreline permit for the project.~~
19 ~~The permit and documentation of final local decision will be mailed together the following~~
20 ~~information:~~
21 a. ~~A copy of the complete application;~~
22 b. ~~Findings and conclusions that establish the basis for the decision including but not limited to~~
23 ~~identification of shoreline environment designation(s), applicable program policies and~~
24 ~~regulations and the consistency of the project with appropriate review criteria for the type of~~
25 ~~permit(s);~~
26 c. ~~The final decision of the local government;~~
27 d. ~~A completed permit data sheet (see Appendix A of this title); and~~
28 e. ~~Where applicable, local government shall also file the applicable documents required by SEPA,~~
29 ~~or in lieu thereof, a statement summarizing the actions and dates of such actions taken under~~
30 ~~Chapter 43.21C RCW.~~
31 f. ~~When the project has been modified in the course of the local review process, plans or text shall~~
32 ~~be provided that clearly indicate the final approved plan.~~
33 A. Notice of decision for shoreline statements of exemption shall comply with WCC 22.05.110(1) and
34 23.60.023(E).
35 ~~Any person with standing may appeal any order, final permit decision, or final administrative~~
36 ~~determination made by the irector or designee in the administration of this program.~~
37 ~~Administrative Appeal Procedures.~~
38 ~~Administrative appeals are processed in accordance with WCC 22.05.160.~~

Comment [AP57]: Updated per Periodic Review Checklist, Item 2017.d, and Scoping Document Item #2a.

Comment [CES58]: Moved from 23.60.160 Initiation of development

Comment [CES59]: Covered by 22.05.110

Comment [CES60]: Moved to 22.07.070

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Comment [CES61]: Covered by 22.05.110(1)

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

- 1 — After the issuance of the appeal determination, a party with standing may appeal to the
2 Shorelines Hearings Board of a decision on a shoreline substantial development permit,
3 shoreline variance, or shoreline conditional use pursuant to RCW 90.58.180 within 21 days of
4 the "date of filing," as defined in this program and RCW 90.58.140(6). The appeal to the
5 Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C
6 WAC.
- 7 B. This program shall only establish standing for parties of record for shoreline substantial
8 development permits, shoreline variances, or shoreline conditional use permits. Standing as a party
9 of record is not established by this program for exempt actions pursuant to WCC 23.60.022;
10 provided, that in such cases standing may be established through an associated permit process that
11 provides for public notice and provisions for parties of record.
- 12 ———
- 13 F. The applicant/proponent or any party of record may request reconsideration of any final
14 action by the decision maker within 10 days of notice of the decision. Such requests shall be
15 filed on forms supplied by the county. Grounds for reconsideration must be based upon the
16 content of the written decision. The decision maker is not required to provide a written
17 response or modify his/her original decision. He/she may initiate such action as he/she deems
18 appropriate. The procedure of reconsideration shall not preempt or extend the appeal period
19 for a permit or affect the date of filing with the Department of Ecology, unless the
20 applicant/proponent requests the abeyance of said permit appeal period in writing within 10
21 days of a final action.
- 22 G. Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial
23 development permit, shoreline variance or shoreline conditional use permit may be filed by the
24 applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing
25 the final decision by Whatcom County with the Department of Ecology.
- 26 C. Whatcom County shall consider an appeal of a decision on a shoreline substantial development
27 permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives
28 his/her right to a single appeal to the Shorelines Hearings Board. Such waivers shall be filed with the
29 county in writing concurrent with a notice of appeal within 10 days of a final action. When an
30 applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in
31 accordance with the appeal procedures of subsection H of this section and shall be an open record
32 hearing before the hearing examiner.
- 33 H. With the exception of a shoreline substantial development permit, any order, requirement or
34 administrative permit decision, or determination by the administrator based on a provision of this
35 program, including the issuance of a statement of exemption or denial, except a shoreline
36 substantial development permit, may be the subject of an appeal to the office of the hearing
37 examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal
38 procedures of subsection H of this section and shall be an open record hearing before the hearing
39 examiner.
- 40 I. Appeal Procedures:

Comment [CES62]: Moved to 22.05.160 (Appeals)

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Comment [AP63]: Removed per Scoping Document, Item #5c.

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Comment [MD64]: Draft revision per Scoping Document, Items #4a and 5c (staff comment #34).

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

1. Appeals shall be filed on forms supplied by the county within 10 calendar days of the issuance of a substantial development permit, shoreline variance or shoreline conditional use permit and within 20 calendar days of any other action of the administrator being appealed.
2. A public hearing on the appeal shall be held within 45 working days following receipt of the application for appeal.
3. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties of record, the Washington Department of Ecology, and the administrator at least 15 days prior to the hearing.
4. A decision by the hearing examiner shall be mailed within 10 working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.
5. Any party of record may request a closed record review of the hearing examiner's decision issued under subsection (H)(4) of this section by the county council. Such an appeal shall be filed with the county council on forms supplied by the county within 10 calendar days of the written decision. If appeal is made to the county council, notice of appeal shall be provided to all parties of record at least 15 days prior to consideration by the county council. The council shall meet to review the hearing examiner's decision within 21 days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner.
6. The time period for appeal to the Shorelines Hearings Board shall begin after the decision maker has filed the final county decision with the Department of Ecology.

~~22.60.160~~ Initiation of development.

~~Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the "date of filing" or until all review proceedings before the Shorelines Hearings Board have terminated.~~

A. Date of Filing.

1. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.
2. The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.

Comment [CES65]: Moved to 22.07.060 (Filing Shoreline Permits with the Department of Ecology)

Comment [AP66]: Updated per Periodic Review Checklist, Item 2017.d, and Scoping Document Item #2a.

Comment [CES67]: Moved to permit application review section.

Comment [AP68]: Definition for "date of filing" added to definitions section.

~~22.60.170~~ Revisions to Shoreline Permits.

- A. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program, or the Act. ~~Changes that are not substantive in effect do not require a revision.~~
- B. An application for a revision to a shoreline permit shall be submitted to the ~~administrator~~ Director. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 proposed changes are within the scope and intent of the original approval, and are consistent with
2 this program and the Act.
- 3 C. “Within the scope and intent of the original approval” means all of the following:
- 4 1. No additional over-water construction is involved except that a pier, dock, or floating structure
5 may be increased by 500 square feet or 10 percent from the provisions of the original permit,
6 whichever is less over that approved under the original approval;
- 7 2. Ground area coverage and/or height may be increased a maximum of 10 percent over that
8 approved under the original approval; ~~provided, that the revised approval does not authorize~~
9 ~~development to exceed the height, impervious surface, setbacks, or any other requirements of~~
10 ~~this program except as authorized under a variance granted for the original development;~~
- 11 3. The revised permit does not authorize development to exceed height, lot coverage, setback, or
12 any other requirements of the applicable master program except as authorized under a variance
13 granted as the original permit or a part thereof;
- 14 ~~3-4. Additional or revised mitigation and/or landscaping is consistent with any conditions attached to~~
15 ~~the original approval and with this program;~~
- 16 ~~4-5. The use authorized pursuant to the original approval is not changed; and~~
- 17 ~~5-6. The revision will not cause adverse environmental impacts beyond those originally authorized in~~
18 ~~the approval.~~
- 19 ~~D. Revisions to shoreline permits and statements of exemption may be authorized after the original~~
20 ~~authorization has expired pursuant to WCC 22.07.080 (Expiration of Shoreline Permits). Revisions~~
21 ~~made after the expiration of the original approval shall be limited to changes that are meet the~~
22 ~~definition of a shoreline exemption and are consistent with this program, and that would not~~
23 ~~require a permit under this program. If the proposed change is a substantial development as defined~~
24 ~~by this program, then a new permit is required.~~
- 25 ~~D-E. The provisions of this subsection shall not be used to extend the time requirements or to authorize~~
26 ~~substantial development beyond the time limits or scope of the original approval; provided the~~
27 ~~revision approval shall expire within 1 year from the date of approval, tolling of expiration does not~~
28 ~~apply to revision approvals.~~
- 29 ~~E-F. A new permit shall be required if the proposed revision and any previously approved revisions in~~
30 ~~combination would constitute development beyond the scope and intent of the original approval as~~
31 ~~set forth in subsection (C) of this section.~~
- 32 G. The revision approval, including the revised site plans and text consistent with the provisions of
33 WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on
34 consistency with this section shall be filed with the Department of Ecology pursuant to WCC
35 22.07.060 (Filing Shoreline Permits with the Department of Ecology). In addition, the County shall
36 notify parties of record of their action.
- 37 ~~F. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a~~
38 ~~detailed description of the authorized changes to the original permit with the Department of~~
39 ~~Ecology together with a final ruling and findings supporting the decision based on the requirements~~
40 ~~of this section. In addition, the decision maker shall notify parties of record of the action.~~

Comment [RCE69]: Changes made to match WAC 173-27-100

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

H. If the proposed revision is to a development for which a shoreline conditional use or shoreline variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection.

I. Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.

~~G.A. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

23.60.180 Rescission and modification.

A. Any shoreline permit granted pursuant to this program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of noncompliance.

~~B. The Administrator shall initiate rescission or modification proceedings by issuing written notice of noncompliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.~~

~~C. The Hearing Examiner shall hold a public hearing no sooner than 15 days following such issuance of notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for shoreline permits.~~

~~D. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.~~

22.07.08023.60.190 Expiration of Shoreline Permits.

~~A. Expiration of shoreline statements of exemptions shall be in accordance with WCC 22.05.140 (Expiration of Project Permits).~~

~~A.B. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a shoreline variance, or shoreline conditional use permit, or statement of exemption:~~

1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced, within two years of the effective date of a shoreline permit or exemption or the permit shall expire; provided, that the Hearing Examiner or ~~Administrator~~ Director, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with Planning and Development

Comment [CES70]: Covered under 22.05.150 Permit Revocation

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 ~~Services with the hearing examiner or administrator as appropriate~~ before the expiration date of
2 the shoreline permit ~~or exemption~~, and ~~The Director shall provide~~ notice of the proposed
3 extension ~~is given~~ to parties of record and the Department of Ecology.
- 4 2. Authorization to conduct development activities shall terminate five years after the effective
5 date of a shoreline permit ~~or exemption~~; provided, that the Hearing Examiner or
6 ~~Administrator~~ Director, as appropriate, may authorize a single extension for a period of not more
7 than one year based on a showing of good cause, if a request for extension has been filed with
8 Planning and Development Services with the hearing examiner or administrator, as appropriate,
9 before the expiration date of the shoreline permit ~~or exemption~~ and ~~The Director shall provide~~
10 notice of the proposed extension ~~is given~~ to parties of record and the Department of Ecology.
- 11 3. ~~The effective date of a shoreline permit or exemption shall be the date of~~ filling as provided in
12 RCW 90.58.140(6).
- 13 ~~—~~ Tolling. The effective date does not include the time during which a development, use, or
14 activity was not actually pursued due to the need to obtain other government permits and
15 approvals for which the issued shoreline permit authorizes, including the pendency of all
16 reasonably related administrative appeals or legal actions on any such permits or approval. ~~Last~~
17 action required on the shoreline permit or exemption and all other government permits and
18 approvals that authorize the development to proceed, including administrative and legal actions
19 on any such permit or approval.
- 20 4. The applicant/ proponent shall be responsible for informing the County ~~of the~~ of such pendency,
21 ~~of other permit applications filed with agencies other than the County and of any related~~
22 ~~administrative and legal actions on any permit or approval.~~
- 23 ~~3. If no notice of the pendency of other permits or approvals is given to the County prior to the~~
24 ~~date of the last action by the County to grant County permits and approvals necessary to~~
25 ~~authorize the development to proceed, including administrative and legal actions of the county,~~
26 ~~and actions under other County development regulations, the date of the last action by the~~
27 ~~County shall be the effective date.~~
- 28 ~~B.C.~~ Notwithstanding the time limits established in subsections ~~(AB)(1) and (2)~~ of this section, upon a
29 finding of good cause based on the requirements and circumstances of the proposed project and
30 consistent with the policies and provisions of this program and the Act, the Hearing Examiner or
31 ~~Administrator~~ Director, as appropriate, may set different time limits for a particular substantial
32 development permit or exemption as part of the action to approve the permit or exemption. The
33 Hearing Examiner may also set different time limits on specific shoreline conditional use permits or
34 shoreline variances with the approval of the Department of Ecology. The different time limits may
35 be longer or shorter than those established in subsections ~~(A)(1) and (2)~~ of this section but shall be
36 appropriate to the shoreline development or use under review. “Good cause based on the
37 requirements and circumstances of the proposed project” shall mean that the time limits
38 established for the project are reasonably related to the time actually necessary to perform the
39 development on the ground and complete the project that is being permitted, and/or are necessary
40 for the protection of shoreline resources.

Planning Commission Approved Draft (Updated w/ Council's Cherry Point Amendments)

SMP Update – Title 22 Amendments

October 29, 2021

- 1 | ~~C.D.~~ When permit approval includes conditions, such conditions shall be satisfied prior to occupancy
2 | or use of a structure or prior to the commencement of a nonstructural activity; provided, that
3 | different time limits for compliance may be specified in the conditions of approval as appropriate.
- 4 | ~~E.~~ The Hearing Examiner or ~~Administrator~~ Director, as appropriate, shall notify the Department of
5 | Ecology in writing of any change to the effective date of a permit, ~~authorized by subsections A~~
6 | ~~through C of this section~~, with an explanation of the basis for approval of the change. Any change to
7 | the time limits of a permit other than those authorized by the sections of this program previously
8 | listed shall require a new permit application.
- 9 | ~~D.F.~~ All shoreline permits shall expire 8 years from the date of filing unless a different time period is
10 | granted by the outcome of an administrative appeal or legal action.

Comment [CES71]: Proposed to deal with permits that span multiple versions of the SMP.