## TITLE FOR AGENDA ITEM:

Ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations), and 22 (Land Use and Development Procedures), making corrections, updates, and clarifications.

## SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None.

## HISTORY OF LEGISLATIVE FILE

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## Attachments:

- Memo (2) to Council P&D Comm, 2019-01-22, for January 29 Agenda, PLN2018-00014 Staff Report to Council, Ordinance, PC approved 2018-12-13, Exhibit A (PC approved, staff revised, with Council edits, 2018-01-22) for January 29 Agenda, Substitute Exhibit A.
ORDINANCE NO. 2019-013

ADOPTING VARIOUS MINOR AMENDMENTS TO WHATCOM COUNTY CODE TITLES 20 (ZONING), 21 (LAND DIVISION REGULATIONS), AND 22 (LAND USE AND DEVELOPMENT PROCEDURES) MAKING CORRECTIONS, UPDATES, AND CLARIFICATIONS

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 20, 21, and 22; and,

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on October 19, 2018, 2018.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 15, 2018.

4. The Planning Commission held a public hearing on the proposed amendments on December 13, 2018, notice of which was published in the Bellingham Herald on October 26 and November 30, 2018.

5. Comprehensive Plan Policy Goal 2D is to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”

6. WCC 0.38.060(7) provides increased setbacks for cluster subdivisions when adjacent to agricultural properties so as to minimize nuisance complaints. However, it is confusing in its current state. The amendment would clarify its intent.

7. WCC 20.40.254(5)(a) & (b) is inconsistent with the minimum parcel sizes listed in Table 20.40.251. Table 20.40.251 lists the minimum parcel sizes as 40 and 10 acres, whereas the text of 20.40.254(5)(a) & (b) says “larger/greater than” 40 and 10 acres. The amendments would rectify this inconsistency.

8. WCC Chapter 20.40 is the only zone chapter that doesn’t explicitly specify what the maximum density is in that zone. Though a maximum density of a dwelling unit/acre is implied by the 40 ac minimum parcel size, it’s not explicitly stated. The amendment would rectify this.

9. Both WCC 20.51.430 (Lake Whatcom Watershed Overlay District) and 20.71.354 (Water Resource Protection Overlay District) exempt hazard tree removal from having to obtain a tree removal permit provided they meet the requirements of subsection (5) of their
respective sections. However, each of the subsection (5)s specifically state that a tree removal permit is required. The amendments would rectify this inconsistency.

10. The text of WCC 20.62.300 describes a maximum density, not a minimum as the heading implies. The amendment would rectify this inconsistency.

11. WCC 20.66.550 (Light Impact Industrial (LII) District) includes increased setbacks from certain adjacent zones, as well as from “principal arterials.” However, Whatcom County has no such roadway classification. The amendment would rectify this inconsistency.

12. WCC 20.68.552(5) contains increased setbacks and buffers in the LII District under certain circumstances. It also conformance to Policy 1.05 of the Cherry Point/Ferndale Subarea Plan. However, the intent and specifics of this policy are already included in the regulations. Furthermore, the Cherry Point/Ferndale Subarea Plan is slated for repeal. Therefore this reference isn’t required. The amendment would rectify this.

13. WCC 20.80.220, subsection (a) specifies what appurtenances are allowed in setback areas. However, decks and utilities, which are common uses in front and side yard setbacks, are not specified allowances, and neighbors have been trying to use this section to protest development. The amendments would also update an old reference to the Uniform Fire Code to the International Fire Code, which Whatcom County has adopted. Additionally, the amendment would delete the repetitious language regarding vision clearance, already found in the referenced section.

14. WCC 20.83.050 allows someone to rebuild a damaged or destroyed nonconforming structure exactly where it was. However, as it stands, owners have argued that they can rebuild over property lines. The amendment would rectify this.

15. WCC 20.80.230(2) allows property owners on constrained lots in the shoreline jurisdiction to consider their front yard (that next to road) their rear yard, and their rear yard (that next to the water) their front yard, effectively reducing their setback next to the road to down to 20 feet. The amendments would effectively do the same; though also allow the same consideration for other critical areas.

16. WCC 20.80.545 contains rules for parking areas. However, the rule in the first sentence is already covered by WCC 20.80.350 (Parking Areas). And the second sentence requires that a driveway be at least 30 feet long (20' for the parking spot, plus the 10' setback), which is greater than the typical their yard setback (20-25'). Driveways on typical suburban development are 20 feet long. The existing language basically makes it illegal to park in a typical driveway and is not enforced. The deletion of this section would rectify this.

17. WCC 20.80.650 refers to the Northwest Air Pollution Control Agency, which was renamed the Northwest Clean Air Agency many years ago. The amendment would rectify this.

18. WCC 20.80.670 contains dock requirements. However, these are also addressed in the Shoreline Management Program (Title 23) and the Critical Areas Ordinance (Chapter 16.16), so these are duplicative. The deletion of this section would rectify this.

19. WCC 20.85.101 contains an old reference to the Uniform Building Code, whereas Whatcom County has adopted the International Building Code. The amendment would rectify this.
20. The Critical Areas Ordinance (WCC 16.16.260(E)) allows someone doing a Planned Unit Development to develop alternative mitigation plans. The amendment would add a section to Chapter 20.85 (Planned Unit Developments) pointing readers to that possibility.

21. WCC 20.88.275 exempt applicants for a Planned Unit Development from having to obtain a Master Project Permit, as it goes before Council for a decision anyways. The amendment would provide the same exemption for development agreement applicants, as they, too, go before Council.

22. WCC 20.97.293 contains an outdated definition of “party of record,” and WCC 20.97 contains no definition of “standing.” The amendments would rectify this by amending the definition of “party of record” and adding a definition of “standing” consistent with RCW 36.70C.060 (Judicial Review of Land Use Decisions). Additionally, various sections of the code pertaining to appeals are amended to specify that in order to appeal, one must have standing.

23. WCC 20.86.051 defines receiving areas for Whatcom County’s Transfer of Development Rights program. However, the County’s Prosecuting Attorney has advised against requiring TDRs for UGA expansions or rezones under RCW 82.02.020. The amendments would delete these two requirements.

24. WCC Chapter 20 (Zoning) contains no definition of “Director.” The amendment would add such a definition to WCC 20.97.

25. WCC Chapter 22 (Project Permit Procedures) does not have a definitions section. The amendment would rectify this, by referring to the definitions found in WCC 20.97.

26. WCC 22.05.160 contains rules for processing appeals. The amendments would clarify that appeals need to be filed on a department-provided form and the application would need to meet the rules contain in subsection (a) to be valid. The amendments would also clarify that the Hearing Examiner would hold an open record public hearing on administrative appeals and that one has to have standing to appeal.

27. When charging stations for electric cars were relatively new and no one knew what they would look like or how they would operate, Whatcom County adopted regulations for where they can be located, making them accessory to conditionally approved automobile service stations, and differentiating between rapid and standard charging stations. However, given how they are actually used (users typically charge their cars for 45-60 minutes while shopping or eating), and what they actually look like, it makes more sense to allow them accessory to any permitted use in commercial or industrial zones. Nor do rapid and standard charging stations look different. The amendments would merge the two existing definitions into one, and allow charging stations accessory to any permitted use in certain commercial and industrial zones.

28. The language of the various “Drainage” sections varies between zones, even though it’s intended to mean the same thing. The amendments would standardize the language in all the zoning district chapters.

29. Various sections allow a temporary second dwelling unit in various zones in the form of a manufactured home, a fully serviced travel trailer, or motor home. The amendments would allow park model trailers, which aren’t much different from those allowed, to be used as such as well.
30. WCC 20.80.210(b) lists the various setbacks from roads or other properties. However, it lists some setbacks from some roadway classifications that Whatcom County Public Works no longer use in their transportation planning. Additionally, the table contains 67 footnotes that repeat sections of the code that modify the standard setbacks. Not only is the language of the footnotes different from the actual code, but the inclusion of the inaccurate language makes the table 14 pages long. The amendment rectifies this by removing the non-used road classifications and reformatting the table, with notes only referring to the modifying sections, also allowing the table to fit on two pages.

31. WCC 20.68.554 contains additional setback requirements in the Heavy Industrial District. However, it contains a faulty cross-reference (subsection (b)), a policy contained in the Cherry Point/Ferndale Subarea Plan which is slated for repeal and the intent of which is already addressed by another section of the code (subsection (c)), and another faulty reference to a process that does not exist. The amendment rectifies this.

32. WCC 20.97.436.2 is a definition for "Tree, hazard." However, there is a different definition for "Hazard tree" in 20.97.171, which itself reads the same as that in 16.16.900 (Critical Areas Ordinance) and 23.110.080 (Shoreline Management Program). The amendment would eliminate this discrepancy.

33. WCC 22.25.040 contains the policy for refunds of fees for permit and docket applications. However, the deadline thresholds for docket application refunds are set at 14 and 90 days, where in reality the docket applications may take a year or more to process, during which varying amounts of work may or may not have commenced. The amendment would set the thresholds for docket application refunds to coincide more closely to how much staff time has been expended.

CONCLUSIONS

1. The amendments to the development regulations are the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

ADOPTED this 12th day of February, 2019.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

APPROVED as to form:

[Signature]

Civil Deputy Prosecutor

Rud Browne, Council Chair

( ) Approved  ( ) Denied

Jack Louws, Executive

Date: 2/1/19
Chapter 20.38 Agriculture Protection Overlay

1. Clarify 20.38.060(7), as the language is confusing. The intent is to have greater setbacks for cluster subdivisions when adjacent to agricultural land so as to minimize nuisance complaints.

20.38.060 Development and use standards checklist.

(7) Any inhabitable structure within the cluster subdivision shall be set back a minimum of 100 feet, and any accessory or other non-inhabitable structures shall be set back at least 30 feet, from the property line of any parcel or portion thereof which is an APO reserve tract or designated or used-taxed for agricultural purposes. No structures shall be constructed within 30 feet of exterior, side and rear property lines, and no structure shall be constructed within 30 feet of an agricultural use; and

Chapter 20.40 Agriculture (AG) District

2. Revise 20.40.254(5)(a) & (b) to correspond to the minimum parcel sizes listed in Table 20.40.251. Pursuant to the table, one has to maintain a minimum lot size of “X acres,” but the text inconsistently says “greater than X acres.”

20.40.250 Division or modification of parcels.

.254 Separation of the Farmstead Parcel Criteria.

(5) Division or Boundary Line Adjustment for Agricultural Purposes Only. Lots smaller than the minimum lot size of WCC 20.40.251 may be created through land division or rearranged through a boundary line adjustment provided the following:

(a) The parent parcel does not contain an existing residence, or said existing residence will remain on a parcel larger than 40 acres or larger in size; and

(b) The parcel created is greater than 10 acres or larger or is appended to another parcel; and
3. Add maximum density language to Chapter 20.40 similar to other zones. All other zoning chapters specify what the maximum density for that zone is. Though a maximum density of a dwelling unit/acre is implied by the 40 ac minimum parcel size, it's not explicitly stated.

20.40.550 Maximum Density.
The maximum density in the Agricultural District shall be 1 dwelling unit per 40 acres.

Chapter 20.97 Definitions

4. Currently there are four definitions of hazard trees in various sections of the code. Staff had proposed to replace the definition of “Hazard Tree” with one recommended by our Prosecuting Attorney and delete the others so that they are all consistent.

The Planning Commission, though, found that definition was wanting in terms of grammar and clarity and amended it to try to fix it (see below).

However, upon further reflection, staff still found it ambiguous, especially in conjunction with the amendments proposed in Issue 5, below. Staff now proposes a new definition.

16.16.900 Definitions.
“Hazard tree” means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

20.97.426.2 Tree, hazard.
“Hazard tree” means a tree, either live or dead, having an incurable disease, infestation, defects or stress, singly or combined, in the roots, trunk or primary limbs, which predispose the tree to mechanical failure in whole or in part, and which is located in such a manner that failure may result in property damage or personal injury.

20.97.171.2 Hazard tree.
“Hazard tree” means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

23.110.080 H definitions.
2. “Hazard tree” means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

20.97.171.2 and 16.16.900 Hazard Tree
Original staff proposal: “Hazard Tree” means a tree which poses an imminent failure, poses a likelihood of striking the target, and has a significant consequence of tree failure as determined through a tree risk evaluation form provided by Whatcom. A tree which constitutes an airport hazard is considered a
hazard tree.” “Imminent” in this case means failure has started or is most likely to occur in the near future, even if there is not significant wind or increased load. This is a rare occurrence to encounter, and it may require immediate action to protect people from harm.

Planning Commission rewrite: “Hazard Tree” means a tree that poses an imminent failure and poses a likelihood of causing damage to persons or property, has a significant consequence of tree failure (as determined through a tree risk assessment form provided by Whatcom County). A tree that constitutes an airport hazard is considered a hazard tree.” “Imminent” in this case means failure has started or is most likely to occur in the near future, even if there is no significant wind or increased load.

Final staff proposal: “Hazard Tree” means a tree whose risk evaluation, as determined through a Whatcom County approved tree risk assessment method, is high. Risk evaluation is the combined measurement of: tree failure identification, probability of failure, potential damage to permanent physical improvements to property causing personal injury, and consequences. A tree that constitutes an airport hazard is considered a hazard tree. A hazard tree whose failure is imminent and consequences of damage to permanent physical improvements to property causing personal injury is significant is considered an emergency. “Imminent” in this instance means failure has started or is most likely to occur in the near future, even if there is no significant wind or increased load. Imminent may be determined by a qualified consultant (defined in WCC 16.16.900) or when mutually agreed upon by a land owner and Whatcom County.

5. Amend the hazard tree exemption in 20.51.430(1)(a) and 20.71.354(1)(a). Though they both say the removal of hazard trees is exempt from obtaining a tree removal permit, they also say you have to meet the requirements of (5), which require obtaining a tree removal permit.

Staff had originally proposed, and the Planning Commission recommended approval of (with a few amendments for clarity’s sake), the first versions in the following sections. However, upon further reflection, staff still found it ambiguous, especially in conjunction with the amendments proposed in Issue 4, above. Staff now proposed additional amendments, show in the second versions in the following sections.

Chapter 20.51 Lake Whatcom Watershed Overlay District

Original staff proposal, as amended and approved by the Planning Commission:

20.51.430 Tree removal not associated with development activity.
(1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Whatcom watershed, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless the activity is exempted below:
20.51.430 Tree removal not associated with development activity.
(1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Whatcom watershed, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless the activity is exempted below: provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer:
(a) Removal of any hazard trees or as necessary to remedy an immediate threat to person or property, pursuant to the requirements in subsection (5) of this section; considered an emergency within the definition of hazard tree in WCC 20.97. Within 30 days after the emergency is abated the land owner shall submit photo documentation with a form provided by Whatcom County.
(b) Pruning and maintenance of trees of up to 25 percent of the foliage.

(5) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided, that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter 16.16 WCC; that are a hazard shall first obtain approval of a tree removal permit and meet the requirements of this subsection:
(a) Tree Risk Assessment. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required.
Chapter 20.71 Water Resource Protection Overlay District

20.71.354 Tree removal not associated with development activity.
(1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Padden and Lake Samish watersheds, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless the activity is exempted below:

(a) **When Whatcom County has approved an ISA Basic Tree Risk Assessment Form**, removal of any hazard tree(s)-or as necessary to remedy an immediate threat to person or property-as necessary to remedy an imminent threat to person or property, pursuant to the requirements in subsection (5) of this section;

(b) Pruning and maintenance of trees of up to 25 percent of the foliage.

(5) **Removal of Hazard Trees Removal**. Any property owner seeking to remove any number of significant trees that are a hazard shall first obtain approval of an ISA Basic Tree Risk Assessment Form or a tree removal permit and meet the requirements of this subsection.

(a) **Tree Risk Assessment Evaluation Form**. **When the hazard is obvious**, submit only the ISA Basic Tree Risk Assessment Form.

(a) **Tree Risk Assessment**. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required. **Removal of hazard trees does not count toward the tree removal limit if the hazard is supported by such a report and approved by the county.**

(b) Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or their buffers, tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.

Final staff proposal:

20.71.354 Tree removal not associated with development activity.
(1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Padden and Lake Samish watersheds, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless
the activity is exempted below, provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer:

(a) Removal of any hazard trees considered an emergency within the definition of hazard tree in WCC 20.97. Within 30 days after the emergency is abated the land owner shall submit photo documentation with a form provided by Whatcom County, or as necessary to remedy an immediate threat to person or property, pursuant to the requirements in subsection (5) of this section;

(b) Pruning and maintenance of trees of up to 25 percent of the foliage.

...  

(5) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) above must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter 16.16 WCC that are a hazard shall first obtain approval of a tree removal permit and meet the requirements of this subsection.

(a) Tree Risk Assessment. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required. Removal of hazard trees does not count toward the tree removal limit if the hazard is supported by such a report and approved by the county.

(b) Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or their buffers, tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.

Chapter 20.62 General Commercial (GC) District

6. Amend the heading of 20.62.300, as the text describes a maximum, not a minimum, density.

20.62.300 Maximum Minimum density.
.301 Hotels and motels shall not exceed a floor area ratio of .60.

Chapter 20.66 Light Impact Industrial (LII) District

7. Amend 20.66.550 to remove the increased setback from “principal arterials.” Whatcom County doesn’t have a “principal arterial” classification.

20.66.550 Buffer area.
.551 When a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Urban Residential-Mixed, Rural, or Residential Rural District, or county or state roads designated as or proposed for improvements to principal arterial status, setbacks shall be increased to 50 feet. A minimum of 25 feet shall be landscaped consistent with the requirements of WCC 20.80.345.
8. In 20.68.552(5), delete the reference to the Cherry Point/Ferndale Subarea Plan, as it is slated for repeal. The intent of this policy is already included within the regulation of .552.

"Policy 1.05: To attain compatibility with surrounding nonindustrial land use designations and to minimize heavy industrial off-site impacts, it is the policy of Whatcom County to require industrial users to provide a buffer which is located within the designated HEAVY IMPACT INDUSTRIAL area and which adjoins said nonindustrial land use designations.

As a means of protecting the existing and planned residential uses in the Point Whitehorn area from detrimental environmental and visual impacts generated from the Heavy Impact Industrial area, a 660-foot buffer strip shall be established. Said buffer shall be situated adjacent to and south of Grandview Road between Jackson Road and Koehn Road; adjacent to and east of Koehn Road between Grandview Road and Brown Road; and adjacent to the east of the eastern property line of tax lots 2.27 and 2.28 between Brown Road and the shoreline. This buffer strip may be utilized for security or protective uses, parking, or the open space requirements of the Heavy Impact Industrial zone district. Land within the buffer strip which is not required for the above uses and is currently covered with natural vegetative species shall not be cleared, logged, or altered in any manner which would reduce the natural screening characteristics of said buffer."

Chapter 20.68 Heavy Impact Industrial (HII) District

20.68.550 Buffer area.

.552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory structures shall be established consistent with the following options:

(1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security roads, parking, or open space.

(2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the setback(s) may be used for security roads, parking, or open space.

(3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.

(4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

(5) In no case shall the setback from the northern and western boundaries of the Cherry Point Heavy Industrial area not contiguous to another industrial zone be less than 660 feet, nor the
natural vegetation removed except for parking and security or protective uses in accordance with Heavy Impact Industrial Policy 1.05 of the Cherry Point Ferndale Subarea Comprehensive Plan.

Chapter 20.80 Supplementary Requirements

9. In 20.80.220(1)(a), clarify the “use of setback areas” language and add “uncovered decks” and “utilities,” as these are typically allowed in a front yard setback.

In 20.80.220(1)(a)(i)(A), updated the name of the adopted fire code.

In 20.80.220(1)(c), clarify that higher appurtenances (up to 6 feet) are allowed in rural areas. We distinguish that these are allowed in rural areas, but not urban areas, since in urban areas lots are smaller and typically built as suburban neighborhoods where 6-foot fences and hedges in front yards lessen safety (both sight distance and policing).

Additionally in 20.80.220(1)(c), delete the vision clearance requirements, as this is just a repeat of what’s found in WCC 20.80.210(3).

20.80.220 Use of setback areas
All setback measurements are minimum requirements. All front yard and rear yard setback areas shall be open from side-to-side of the lot except as otherwise provided by the following:

1) Front Yards.

(a) Appurtenances, including but not limited to: Uncovered patios, and decks less than 30 inches in height; driveways, and walkways, vegetation, pools, and other recreation equipment; utilities, septic systems, and propane tanks with fuel capacities up to 500 gallons; and and fences, and walls, and vegetative hedges up to four feet in height, and propane tanks with fuel capacities up to 500 gallons may be placed in this front yard setback area subject to the limitations of WCC 20.80.210(3) regarding vision clearance; and provided, that the following applies:

(i) The location of propane tanks with fuel capacities up to 500 gallons is restricted to the rear 50 percent of front yard setbacks. All such propane tanks shall be:

(A) Inspected and approved by the Whatcom County fire marshal for compliance with Article 82 of the most currently adopted Uniform International Fire Code and, when required by the Fire Marshal, isolated from other uses by a noncombustible wall or fence; and

(B) Encouraged screening by a fence or with shrub vegetation planted to a minimum height of six inches above the top surface of the propane tank is encouraged; and

(C) Located so as not to interfere or obstruct sight distances for vehicular traffic.

(c) Outside of Urban Growth Areas fences, walls, and vegetative hedges greater than four feet in height up to a maximum of six feet in height may be located within the front yard setback
area subject to the limitations of WCC 20.80.210(3) [Vision Clearance], regarding vision clearance and provided both of the following apply:

ii. The additional height does not obstruct or impair visual corridors of surrounding properties and sight distances of vehicular traffic;

iii. The additional height is determined by the administrator to be necessary in order to provide security and/or privacy to the particular use activity by reason of one or more of the following:
   A. The property’s immediate location next to public access areas; or
   B. A determination by the administrator that the property and/or its facilities and amenities are both attractive to the general public, and intended for the exclusive use of its residents and/or patrons; or
   C. A determination by the administrator that the additional height is needed to protect the public health, safety and general welfare.

(3) Side yards must be kept open; provided, that uncovered patios, and decks less than 30 inches in height; driveways, walkways, and parking areas; vegetation, pools and other recreational equipment; parking areas, recreational equipment; and fences, walls, and vegetative hedges up to seven feet in height may be placed in the side yard.

10. In 20.83.050, clarify that nonconforming structures, while they can be rebuilt, must be rebuilt on one’s own property and cannot cross onto someone else’s property (even if it’s been there awhile).

20.83.050 Damage or destruction – Rebuilding permitted.
If a nonconforming use or structure physical feature of a building or group of buildings on one site is damaged or destroyed by any means, that use or structure shall may be permitted to be rebuilt equal to the same square footage of damaged or destroyed buildingstructure(s), and for the same use and location on the site; except, no portions of said rebuilt structure may extend onto property not belonging to the owner.

11. Amend 20.80.230(2) so that reduced front yard setbacks can be applied wherever necessary to protect critical areas, not just shorelines.

20.80.230 Measurement of setbacks.
(2) Shoreline Areas. In situations where the shoreline setback(s) imposed by the Shoreline Management Program exceed the standard rear and/or side yard setbacks imposed by this chapter, the front yard setback(s) shall apply to the waterfront side(s) of the lot or tract and the rear yard setback shall apply to the street side of the lot or tract; provided, however, the zoning administrator may waive the setback reversal requirement of this section upon request of the property owner if he finds that the public interest will not be harmed; provided further, that the minimum setback on the street side of parcels abutting collector and arterial roadways shall be 20 feet.
(2) Reduction of setbacks. In situations where a property is so encumbered by shoreline setbacks, critical areas, and/or their buffers that a typical structure for that zone cannot be built due to dimensional requirements, the Zoning Administrator or Hearing Examiner, whichever is the decision maker on the permit, may reduce the standard front yard setback to 20 feet.

12. Delete 20.80.545. The limitations of the first sentence are already covered by WCC 20.80.350 (Parking Areas). The second sentence requires that a driveway be at least 30 feet long (20' for the parking spot, plus the 10' setback), which is greater than the typical front yard setback (20-25'). Driveways on typical suburban development are 20 feet long. The existing language basically makes it illegal to park in a typical driveway.

20.80.545 Minimum distance and setbacks.
No part of any parking area for more than 10 vehicles shall be closer than 20 feet to any dwelling unit, school, hospital, or other institution for human care located on an adjoining lot, unless separated by an acceptably designed screen. Parking areas for one-family and two-family dwellings if located within the required front yard setback areas shall have a setback of at least 10 feet from the road right-of-way. In no case shall any part of a parking area be closer than four feet to any established street or alley right-of-way.

13. In 20.80.650, update the name of agency responsible for establishing minimum permissible emission levels (it was renamed many years ago).

20.80.650 Air quality.
No development, including traffic generated directly by it, should generate air pollution exceeding the minimum permissible emission levels established by the Northwest Clean Air Pollution Control Agency (NW/CAPA) or the Environmental Protection Agency.

14. Delete WCC 20.80.670, as it is covered in the Shoreline Management Program (WCC 23.100.090). This is already covered by WCC 16.16.720.

20.80.670 Docks.
All dock development shall conform to the following requirements:
(1) The dock development shall conform to all applicable local, state and federal requirements including the Whatcom County Shoreline Management Program. In particular, dock design and construction shall comply with the requirements of WCC 23.100.090.
(2) For all fresh water areas, all new posts or pilings shall be untreated in order to avoid adverse impact on water quality.
(3) The dock shall be painted, marked with reflectors, or otherwise identified so as to prevent unnecessary hazardous conditions for water surface uses during day or night.
(4) Docks for noncommercial use or any watercraft moored thereto shall not be used for a residence.

(5) Storage on a dock is prohibited. However, the requirement does not apply where a specific design or structure has been approved by the zoning administrator after demonstrating that adequate preventions are utilized to maintain safety and water quality.

(6) Any exterior lighting shall be directed or shielded so as not to cause annoying glare to neighboring properties, or to road or water traffic.

(7) Docks shall only be constructed within the property owned by the applicant or where the applicant has obtained the appropriate lease arrangements for the state of Washington or where appropriate.

Chapter 20.85 Planned Unit Developments (PUD)

15. Amend 20.85.101 to reference the correct building and fire codes.

20.85.100 Design and development standards.

20.85.101 Conformance.
All uses and development shall conform to all relevant requirements and standards of:

(2) The Uniform-International Building and Fire Codes;

16. Add a new section 20.85.119 to Chapter 20.85. WCC 16.16.260(E) already has this allowance, but this insertion will help point readers to it.

The Hearing Examiner may recommend and the County Council may approve alternative mitigation plans for planned unit developments in accordance with WCC 16.16.261, which may be used to satisfy the requirements of WCC Chapter 16.16 and relief from the specific standards and requirements thereof.

Chapter 20.88 Major Project Permits

17. Amend 20.88.275. If someone applies for a Planned Unit Development, we do not make them obtain a Master Project Permit. The same should be true of applying for a developer’s agreement, as they, too, go before the Council.

20.88.200 Procedure
.275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that project shall be exempt from the requirement to obtain a major project permit.
18. In 20.97, amend the definition of “party of record” and add a definition of “standing.” In other sections of the code, amend so that one must be a person with “standing” in order to file an appeal.

According to the Prosecuting Attorney, our current definition of “Party of Record” is a broad, somewhat confusing status for people who are in the record or contribute to the record. This status should only mean that you get notice of hearings. This does not mean that you automatically have standing. A person could be a Party of Record and have standing, but they don’t have standing just because they are a party of record. “Standing” should be the operative term that allows people to appeal. The proposed definition of “standing” is that found in RCW 36.70C.060 (Judicial Review of Land Use Decisions)

Chapter 20.97 Definitions

20.97.293 Party of record.

“Party of record” means any person, agency or entity entitled to receive notice of application or decision under this title, or any person, agency or entity providing written comments on any application received under this title or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail or email of the following:

1. The applicant and any appellant;
2. The property owner as identified by Whatcom County Assessor’s records;
3. Any person, County department, and/or public agency who individually submitted written comments or testified at the open record hearing on the merits of the case (excluding persons who have only signed petitions or mechanically produced form letters); and;
4. Any person, County department, and/or public agency who specifically request notice of decision by entering their name and mailing address on a register provided for such purpose at the open record hearing.

A party of record does not include a person who has only signed a petition or mechanically produced form letters. A party of record to an application/appeal shall remain such through subsequent county proceedings involving the same application/appeal. The county may cease mailing material to any party of record whose mail is returned by the postal service as undeliverable.

A Party of Record does not have standing unless they meet the standing criteria. Persons who do not qualify as a party of record may still receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner with a request for such notice.

20.97.429.05 Standing.

“Standing” is the status required for a person, agency, or other entity to bring an action before the Hearing Examiner. A person has standing per RCW 36.70C.060 if they are:

1. The applicant and the owner of property to which the land use decision is directed; or
2. Another person, County department, and/or public agency aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or
modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
(a) The land use decision has prejudiced or is likely to prejudice that person;
(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
(d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

Chapter 21.02 Variances, Appeals and Amendments

21.02.030 Appeals.
(1) Any person with standing 1, party of record may appeal any order, final permit decision, final administrative determination including pre-approval or preliminary approval in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160.

Chapter 22.05 Project Permit Procedures

22.05.110 Final decisions.
(1) The director or designee's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.
(2) The hearing examiner's final decision on all Type III applications per WCC 22.05.020 or appeals per WCC 22.05.160(1) shall either grant or deny the application or appeal.
(a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.
(b) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.
(c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions based on the record to support the decision.
(d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein.
(e) The applicant, any party of record, person with standing, or any county department may appeal any final decision of the hearing examiner to superior court, except as otherwise specified in WCC 22.05.020.

1 Editor's Note: See proposed definition of “standing,” in the preceding section.
Chapter 22.20 Land Use and Development Code Interpretation Procedures

22.20.060 Appeals.
Any person with standing party of record may file an appeal of a formal code interpretation. The appeal shall follow all rules and procedures for appeals to the Hearing Examiner as set forth in WCC 22.05.160.

Chapter 20.89 Density Transfer Procedure

19. Delete 20.86.051(2) and (3), which require Transfer of Development Rights (TDRs) for certain rezones and UGA expansions. Similar provisions in WCC 2.160.080 and WCC 20.90.064 were repealed when Title 22 was adopted in June 2018 (Ordinance 2018-032). Additionally, the Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report (October 3, 2018) states:

“A Civil Deputy from the County Prosecuting Attorney’s Office stated that, in his opinion, the County cannot require TDRs for UGA expansions or rezones under RCW 82.02.020.

The TDR/PDR Work Group recommends that the County consider deleting WCC 20.89.051(2) and (3), which state that certain rezone requests and UGA expansions are required to transfer development rights from designated TDR sending areas” (pp. 55, see also pp. 50 and 51).

Therefore, deleting these code provisions should be considered.

20.89.050 Receiving areas.
.051 Designation of Receiving Areas. In addition to those areas which qualify as receiving areas according to the official Whatcom County zoning map, the county council may approve additional areas as receiving areas.

(1) Designated Receiving Areas. Such additional areas may be approved through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 22.10 WCC, Amendments.

(2) Rezones.
(a) Rezone requests for an area or parcel located within a designated urban growth area, that have been submitted pursuant to Chapter 22.10 WCC, shall be required to transfer development from a designated TDR sending area to obtain the requested density as a condition of approval. In order to obtain the requested density, one development right shall be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development within the rezone area. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
(b) Exceptions from requiring TDRs: rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts,
zoning revisions that are intended to make a nonconforming use a conforming use or rezone where the public interest is served.

e) Rezones initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

3) Expansion of Urban Growth Areas and Associated Rezones. Comprehensive Plan amendment requests, submitted pursuant to Chapter 20.10 WCC (Comprehensive Plan Amendments), that propose the expansion of an urban growth area boundary shall be required to transfer development rights from a designated TDR sending area.

a) In order to obtain the requested urban growth area expansion, one development right shall be transferred for every five acres included into UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

b) Exceptions from requiring TDRs: urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.

c) Urban growth area expansions initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

4)(2) Cities. In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter. Under the above provisions, the designation of additional TDR receiving areas shall be based upon findings that the area/site is appropriate for higher residential densities, is not limited by significant critical areas, and neighboring areas would not be significantly adversely impacted. If such areas are determined to be appropriate for designation as TDR receiving areas/sites, prior to development, parcel owners shall be required to purchase TDRs to attain the maximum gross density requested under the proposed zoning. The purchase of TDRs shall not be required until such time that the requirements of WCC 20.89.060 have been met.

5)(3) Water Resource Protection Overlay District. Development rights may be transferred within the Water Resource Protection Overlay District for an increase in impervious surface pursuant to Chapter 20.71 WCC.

Chapter 20.97 Definitions

20. In 20.97, add a definition of "director."

20.97.099.4 Director.
"Director" means the Director of Planning and Development Services or his/her designee.
Chapter 22.05 Project Permit Procedures

21. In 22.05.010, add a section that says all definitions are found in 20.97, as there is no definitions section of Title 22.

22.05.010 Purpose and applicability.
(3) The meaning of words used in this chapter shall be as defined in WCC 20.97.

22. In 22.05.160(1):
- Clarify that an appeal application is only valid if it meets the listed requirements and that it must be filed with an application form developed by PDS.
- Clarify that appeal hearings before the Hearing Examiner are “open record public hearings.”
- Change “party of record” to “person with standing” for the reasons provided in Issue 18, above.

22.05.160 Appeals.
(1) Any person with standing party of record may appeal any order, final permit decision, or final administrative determination made by the director or designee in the administration or enforcement of any chapter to the hearing examiner, who has the authority to hear and decide such appeals per WCC 2.11.210.
(a) To be valid, an appeal shall be filed, on a form provided by the Department, with the Department within 14 calendar days of the issuance of a final permit decision and shall be accompanied by a fee as specified in the Unified Fee Schedule. The written appeal shall include:
   i. The action or decision being appealed and the date it was issued;
   ii. Facts demonstrating that the person is adversely affected by the decision;
   iii. A statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;
   iv. The specific relief requested; and
   v. Any other information reasonably necessary to make a decision on the appeal.
(b) The hearing examiner shall schedule an open record public hearing on the appeal to be held within 60 calendar days following the department’s receipt of the application for appeal unless otherwise agreed upon by the county and the appellant.
(c) A party who fails to appeal within 14 calendar days is barred from appeal, per Chapter 2.11 WCC.
(d) The business rules of the hearing examiner shall govern appeal procedures. (i) The hearing examiner shall have the authority granted in the business rules, and that authority is incorporated herein by reference. See also WCC 2.11.220.
(2) The applicant, any person with standing party of record, or any county department may appeal any final decision of the hearing examiner to superior court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.
23. Amend the definitions (20.97) of “electric vehicle charging station” and “electric vehicle rapid charging station” merging the two into one definition. We can merge the two definitions since the code doesn’t even address “electric vehicle charging stations,” and there isn’t much difference between the two other than how fast it can charge.

Additionally, wherever “electric vehicle rapid charging stations” are allowed as accessory uses, delete the word “rapid” and “accessory to conditionally approved service stations” (or the variants on that clause).

These rules were adopted when electric vehicles were relatively new and no one knew what charging stations would look like or how they would operate. Today, electric vehicle charging stations generally occupy a small number of parking spaces already existing in strip malls or other commercial centers, where people can stop and eat, shop, or run other errands while their car is changing, typically for 30-60 minutes. The equipment is relatively small, about the size of a traditional U.S. Postal drop box.
Chapter 20.97 Definitions

20.97.113 Electric vehicle charging station.
"Electric vehicle charging station" means a private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (no more than 220 volts, by conductive or inductive means) to a battery or other energy storage device in an electric vehicle and that meets or exceeds any standards, codes, and regulations set forth by RCW Chapter 19.28 and consistent with rules adopted under RCW 19.27.540. An electric vehicle charging station is allowed accessory to any principal use and meets or exceeds any standards, codes, and regulations set forth by Chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

20.97.115 Electric vehicle rapid charging station.
"Electric vehicle rapid charging station" means a type of electric vehicle charging station that allows for a faster recharging of electric vehicle batteries through higher power levels (typically 480 volts) and that meets or exceeds any standards, codes, and regulations set forth by Chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

Chapter 20.59 Rural General Commercial (RGC) District

20.59.100 Accessory uses.
.107 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to conditionally approved service stations.

Chapter 20.60 Neighborhood Commercial Center (NC) District

20.60.100 Accessory uses.
.105 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to conditionally approved service stations.
Chapter 20.61 Small Town Commercial (STC) District

20.61.100 Accessory uses.
.109 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to automobile service-stations.

Chapter 20.62 General Commercial (GC) District

20.62.100 Accessory uses.
.105 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to automobile service-stations.

Chapter 20.63 Tourist Commercial (TC) District

20.63.100 Accessory uses.
.105 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to automobile service-stations.

Chapter 20.65 Gateway Industrial (GI) District

20.65.100 Accessory uses.
.108 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to service-stations.

Chapter 20.67 General Manufacturing (GM) District

20.67.100 Accessory uses.
.109 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to gas-stations.

Chapter 20.69 Rural Industrial and Manufacturing (RIM) District

20.69.100 Accessory uses.
.111 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to conditionally approved service-stations.

Chapter 20.70 Airport Operations (AO) District

20.70.100 Accessory uses.
.107 Electric vehicle rapid-charging stations and battery exchange facilities, accessory to gas-stations.

24. The language of the “Drainage” sections varies between zones and should be standardized. Staff proposes to have them all say:

“All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.”
The clause “within Whatcom County” can be deleted because our code only applies in Whatcom County, and the clause “unless specifically exempted” can be deleted because such exemptions are listed in WCC 20.80.631, one of the referenced sections.

In addition, delete 20.22.655(1) (URM District). This is old code inserted at a time when we thought Whatcom County was going to adopt the City of Bellingham’s code to apply within its UGA. However, the City of Bellingham never provided the County with the code to adopt, and since then both Bellingham and Whatcom County have adopted the Department of Ecology Stormwater Manual; therefore, this section isn’t needed.

Chapter 20.20 Urban Residential (UR) District

20.20.656 Drainage.
All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635 the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting the requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

Chapter 20.22 Urban Residential – Medium Density (URM) District

20.22.655 Drainage.
(1) In the Bellingham Urban Growth Area, the City of Bellingham’s design and development standards and guidelines shall apply (see WCC 20.22.665).
(2) All development activities within Whatcom County shall be subject to the stormwater management provisions of the WCC 20.80.630 through 20.80.635 Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting those requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

Chapter 20.24 Urban Residential Mixed (UR-MX) District

20.24.656 Drainage.
All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Chapter 20.32 Residential Rural (RR) District

20.32.656 Drainage.
All development activities within Whatcom County shall be subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635 unless specifically exempted.