



## WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive  
Bellingham WA 98226

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### AGENDA February 23, 2023

The Whatcom County Planning Commission will hold a **hybrid** meeting at 6:30 p.m., with the option to attend remotely or in person at 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of: February 9, 2023
- Proposed amendments to WCC Chapter 20.14, Wind Energy Systems, and WCC Chapter 20.97, Definitions.
- Unfinished Business
- Adjournment

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

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

#### Upcoming Meeting Topics

- Lake Whatcom Watershed Seasonal Closure Exemption
- Birch Bay Reasonable Measures

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#### Pending Items Commissioners would like to address

*Code related implications of climate modeling*

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*There are nine members on the Whatcom County Planning Commission. If you will be giving written information to the Commissioners, please give a copy to the Coordinator for our office files.*

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



**RECORD OF PROCEEDINGS OF THE  
WHATCOM COUNTY PLANNING COMMISSION  
February 9, 2023**

Annual Business Meeting

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1

1 **Call to Order**

2 The meeting was called to order by Whatcom County Planning Commission Chair,  
3 Kelvin Barton at 6:31 p.m.

4 **Roll Call**

5 **Present:** Kelvin Barton, Daniel Dahlquist, Atul Deshmane, Jim Hansen, Stephen  
6 Jackson, Kimberley Lund, Dominic Mocerri, Scott Van Dalen

7 **Absent:** Julie Jefferson

8 **Staff Present:** Steve Roberge and Tammy Axlund

9 **Department Update**

10 Steve Roberge, Assistant Director of Planning and Development Services (PDS),  
11 provided an overview and expressed appreciation for the Commission's 2022  
12 accomplishments. He stated that the topic for the next meeting is Wind Energy. We  
13 have a recommendation from the Climate Committee.

14 Commissioner Hansen thanked staff for presenting information in a timely and  
15 coherent fashion so the Commissioners were able to make a lot of decisions.

16 **Open Session Public Comment**

17 There were no attendees for public comment.

18 **Commissioner Comments**

19 Commissioner Barton introduced new Planning Commissioner, Daniel Dahlquist and  
20 invited him to share a little bit about himself.

21 Commissioner Dahlquist provided some background information on himself.

22 Commissioner Deshmane welcomed Commissioner Dahlquist and offered support for  
23 questions that arise as he learns about the Commission.

24 Commissioner Lund welcomed Commissioner Dahlquist and advised she is having  
25 technical difficulties this evening.

26 **Approval of Meeting Minutes**

27 **Timestamp: 08:12**

28 ***Commissioner Van Dalen moved to approve the meeting minutes from January 26,***  
29 ***2023.***

30 **Commissioner Mocerri seconded.**

31 **Roll Call Vote: Ayes-Barton, Dahlquist, Deshmane, Hansen, Jackson,**  
32 **Jefferson, Mocerri, Van Dalen; Abstain-Lund; (Ayes-7; Nays-0; Abstain-1). The**  
33 **motion carried.**

34 **Annual Business Meeting**

35 **Timestamp: 09:21**

36 **Election of Officers**

37 The Chair opened the business meeting with the election of officers.

38 ***Commissioner Deshmane nominated*** Commissioner Barton for Chair

39 **Commissioner Jackson seconded.**



RECORD OF PROCEEDINGS OF THE  
WHATCOM COUNTY PLANNING COMMISSION  
February 9, 2023

Annual Business Meeting

2

1 Commissioner Barton expressed honor at being nominated and shared his appreciation  
2 for how the Commission works together, respects, and listens to each other.

3 **Roll Call Vote: Ayes-Barton, Dahlquist, Deshmane, Hansen, Jackson, Lund,**  
4 **Moceri, Van Dalen; (Ayes-8; Nays-0; Abstain-0). The motion carried.**

5 **Timestamp: 12:47**

6 **Commissioner Barton nominated** Commissioner Lund for Vice Chair.

7 **Commissioner Hanson seconded.**

8 **Roll Call Vote: Ayes-Barton, Dahlquist, Deshmane, Hansen, Jackson, Lund,**  
9 **Moceri, Van Dalen; (Ayes-8; Nays-0; Abstain-0). The motion carried.**

10 Business Rule Amendments

11 **Timestamp: 14:06**

12 The secretary provided an overview of the proposed amendments to the Business  
13 Rules including formatting and typographical edits that didn't make it into the agenda  
14 packet. Commissioners made additional recommendations and agreed to the following  
15 items by consensus:

- 16 • Move items 1.6 through 1.9 to Article II, by inserting them at 2.2 and adjusting  
17 the numbers accordingly.
- 18 • Add "/work sessions" to Article III.3.2.i.
- 19 • Remove the last sentence (This presentation shall be limited to 15 minutes,  
20 which includes rebuttal time.) from Article IV.C.
- 21 • Remove the time limit from the staff presentation in Article IV.E.iv.
- 22 • Add to Article IV.J: "When more than 50 people have signed up, the chair may  
23 at his/her discretion reduce the time limit for each speaker to 2 minutes."
- 24 • Remove "findings of fact" and "and their addresses" from Article V.6.2.B.

25 A draft copy of the Business Rules is attached, showing all changes that were not  
26 included in the initial meeting materials.

27 **Timestamp: 53:51**

28 **Commissioner Lund moved** to accept the Business Rules as amended and discussed  
29 this evening.

30 **Commissioner Jackson seconded.**

31 **Roll Call Vote: Ayes-Barton, Dahlquist, Deshmane, Hansen, Jackson, Lund,**  
32 **Moceri, Van Dalen; (Ayes-8; Nays-0; Abstain-0). The motion carried.**

33 Other Comments or Concerns

34 None

35 **Adjournment**

36 The meeting was adjourned at 7:26 p.m.

37 Minutes prepared by Tammy Axlund.

38 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

39 \_\_\_\_\_  
40 Kelvin Barton, Chair

\_\_\_\_\_   
Tammy Axlund, Secretary

## BUSINESS RULES

### PLANNING COMMISSION OF WHATCOM COUNTY, WASHINGTON

#### Article I. Planning Commission of Whatcom County.

##### 1.1 Creation, Name, and Purpose

- A. The Planning Commission of Whatcom County, Washington, was constituted by resolution of the Board of County Commissioners, adopted February 21, 1961, pursuant to Chapter 36.70, Revised Code of Washington.
- B. The Whatcom County Planning Commission, may be referred to as the "Commission" or the "Planning Commission."
- C. The purpose of the Planning Commission is to provide citizen review and recommendations on planning related matters to the ~~C~~ounty ~~C~~ouncil.
- D. The Planning Commission shall assist the Planning and Development Services Department in carrying out its duties as stated in Whatcom County Coded 2.31.025.

##### 1.2 Regular Meetings.

- A. The Planning Commission meets bi-weekly, except in August, November, and December; and shall provide for additional meetings by motion.
- B. In accordance with the priorities of the Planning Department and the County Council, Planning Department staff shall set agendas for Planning Commission meetings.

##### 1.3 Special Meetings.

Special meetings may be called by order of the Chair, or in his/her absence by the Vice-Chair; or by written request of three members of the Commission.

##### 1.4 Quorum.

- A. Five members shall constitute a quorum, and a quorum is required, for the transaction of business.
- B. At any meeting where there is less than a quorum, the members present shall have authority to establish a date for an adjourned meeting.

##### 1.5 Voting.

- A. The Planning Commission requires a simple majority of those present for approval.
- B. An affirmative five votes is statutorily required on comprehensive plan and official controls
- C. A roll call vote is required on matters which require a public hearing and on matters referred by the County Council, or upon request of any member.
  - i. The preferred roll call procedure is to rotate through the alphabetical list of Commissioners and start each new roll call vote with the next name on the list, carrying the next starting position over to the following meeting.

##### ~~1.6 Conflict of Interest~~

~~In addition to complying with State law, the following guidelines shall be followed:~~

- ~~A. A member experiencing a conflict of interest shall abstain from voting on the matter, keep out of any deliberations on the matter, and leave any chamber in which such deliberations are to take place. He/she shall not discuss~~

~~the matter privately with any fellow officials. The reasons for his/her abstention from voting, for good and sufficient reasons, shall be announced to the Commission upon call of any members.~~

~~B.A. An individual Commission member should use discretion in discussing with the applicant for a specific land use, or others interested in the application, any request before the Commission on which he/she will vote, and should avoid committing to any specific course of action regarding the outcome of the hearing. Answering questions relating to time, place, and Commission procedures and policies is permissible.~~

~~C.A. If a Commission member personally receives written information from a citizen or group regarding an upcoming agenda item, they shall immediately deliver that item, or a complete copy thereof, to the Planning and Development Services Department for inclusion into the record of public testimony.~~

#### 1.7 Vacancies:

~~A member selected to fill a vacancy shall serve for the un-expired term of the predecessor for that position.~~

#### 1.8 Excessive Absences:

~~Four consecutive absences per year may be grounds for recommending removal of a Board Member to the County Council.~~

#### 1.9 Compensation:

~~Members shall not receive any salaries for their services.~~

### **Article II. Members and Officers**

#### 2.1 Number of Members, Tenure, and Qualification.

- A. The Planning Commission shall consist of ~~at least~~ nine members who are residents of the county.
- B. Members shall be appointed and confirmed by a majority of the ~~e~~County ~~e~~Council.
- C. The term of office for the members appointed by the ~~e~~County ~~e~~Council shall be four years; except ~~T~~ terms will be in accordance with WCC 2.03.030 unless no one else applies.
- ~~D.~~ The Commission shall be representative of the county with no more than two members from each council district.

#### 2.21.6 Conflict of Interest

In addition to complying with State law, the following guidelines shall be followed:

A. A member experiencing a conflict of interest shall abstain from voting on the matter, keep out of any deliberations on the matter, and leave any chamber in which such deliberations are to take place. He/she shall not discuss the matter privately with any fellow officials. The reasons for his/her abstention from voting, for good and sufficient reasons, shall be announced to the Commission upon call of any members.

B. An individual Commission member should use discretion in discussing with the applicant for a specific land use, or others interested in the application, any request before the Commission on which he/she will vote, and should avoid committing to any specific course of action regarding the outcome of the hearing. Answering questions relating to time, place, and Commission procedures and policies is permissible.

C. If a Commission member personally receives written information from a citizen or group regarding an upcoming agenda item, they shall immediately deliver that item, or a complete copy thereof, to the Planning and Development Services Department for inclusion into the record of public testimony.

#### 2.31.7 Vacancies:

A member selected to fill a vacancy shall serve for the un-expired term of the predecessor for that position.

2.41.8 Excessive Absences.

Four consecutive absences per year may be grounds for recommending removal of a Board Member to the County Council.

2.51.9 Compensation.

Members shall not receive any salaries for their services.

D.E.

2.62 Officers.

The officers of the Planning Commission are: Chairperson and Vice-chairperson. The Planning and Development Services Coordinator will act as Secretary to the Commission.

2.73 Elections

- A. Officers shall be elected annually by the Planning Commission at its first meeting in February.
- B. In the event of a vacancy in the office of Chair, the Vice-Chair automatically succeeds to the chair.
- C. An acting Chair may be elected by the members present, to serve during the absence of the officers from any meeting.

2.84 Removal.

- A. Any officer may be removed by the Commission whenever in its judgement the best interests of the department would be served. A majority vote of current members shall be required to remove any officer.
- B. A vacancy in the officers automatically occurs upon the third consecutive absence of an officer from the regular monthly meetings without leave from the Commission.

2.95 Chairperson.

- A. The Chair is the chief executive of the Commission, has all the powers and duties usually incidental to such office, and is responsible to appoint committees and to conduct the business of the Commission between regular meetings.
- B. The Chair shall discharge all duties incidental to the office of Chairperson and as prescribed by the County Council or the Planning Commission; the Chairperson shall preside at all meetings of the Commission.

2.106 Vice-Chairperson.

- A. The Vice-chairperson shall assist the Chairperson in the discharge of the Chairperson's duties as the Chairperson may direct and shall perform such other duties as may be assigned by the Chairperson or by the Planning Commission.
- B. The Vice-Chair assumes the responsibilities of the Chair in his/her absence or disability with all the power of, and subject to all restrictions upon, the Chairperson.
- C. A vacancy occurring in the office of Vice-Chair is filled by election of a replacement to serve for the un-expired portion of the term.

2.711 Secretary

The Secretary is responsible to keep a public record of all transactions, findings, and determinations of the Commission; prepare the agenda of each meeting; provide notice of meetings to the members; arrange proper and legal notice of hearings; and attend to the correspondence of the Commission and to such other duties as are normally carried out by a Secretary.

**Article III. Meeting Process**

### 3.1 Notice – Agenda

The Secretary will mail or deliver a copy of the agenda to each Commission member on or before the Thursday preceding the regular meeting day. Notice of the time, place, and agenda for continued or special meetings shall be given as far as possible in advance, provided that notice by telephone shall suffice in the event of an emergency.

### 3.2 Order of Business

The regular order of business is as follows:

- |                                    |   |
|------------------------------------|---|
| a) Call to Order                   | g) Commissioner Comments                  |
| b) Roll Call                       | h) Disposition of Minutes                 |
| c) Determination of Quorum         | i) Public Hearings / <u>Work Sessions</u> |
| d) Flag Salute                     | j) Unfinished Business                    |
| e) Department Update               | k) New Business                           |
| f) Open Session for Public Comment | l) Adjournment                            |

### 3.3 Open Session for Public Comment

- A. The public may speak to the Planning Commission for three minutes on any topic, except items that are scheduled on the agenda for a public hearing that same day.
- B. The time limit of three minutes may be extended to five minutes at the discretion of Chair.

### 3.4 Parliamentary Procedure

- A. Matters of procedure shall be governed by applicable County and State statutes and these Business Rules, or Roberts Rules of Order. The Commission has an obligation to be as clear and simple in its procedure as possible, and therefore, may avoid the finer points of parliamentary rules.
- B. The Commission may by majority vote on a yearly basis elect a parliamentarian to advise the Commission about correct procedure

### **Article IV. Order of Business - Hearing and Work Session Procedure**

All hearings are to be open to the public and shall meet legal requirements as to publication, posting, timing, and number of public notices. Hearing procedures shall be generally as follows:

- A. Chair makes a statement about hearing before the Commission, opening the hearing.
- B. Chair polls Commissioners to determine conflict of interest.
- C. The Planning and Development Services Director or his/her designee shall present a summary introduction (staff report) of the factual background of the subject for the information of the members. ~~This presentation shall be limited to 15 minutes, which includes rebuttal time.~~
- D. After the staff report, the Chair, at his/her discretion, may invite the proponent of a land use application, or their designee, to make a brief presentation regarding their application. This presentation shall be limited to 15 minutes, which includes rebuttal time.
- E. Chair outlines rules for the presentation of public testimony, including:
  - i. At the Chair's discretion, the following shall be requested of each testifier:
    - a) Is testimony fact or opinion?
    - b) Is the testimony in written form which can be provided to the Commission? Can the speaker provide a concise overview of the written version in order to save hearing time?
    - c) If the testimony to be presented has been given by someone else and the speaker agrees with the previous speaker, please so state that agreement and yield the floor to the next speaker.

ii. At the Chair's discretion, or when requested by a majority of the members present, speakers shall be allowed no more than 3 minutes to make their points. Exceptions shall be for the proponents to make a 15 minute initial presentation and the opponents an equal amount of time if there is an organized opposition. The Chair at his/her discretion, may poll the attending public to determine if there is a generally agreed upon "opposition spokesperson". If so, the spokesperson will be allowed 15 minutes to make their presentation. After the attending public who have preregistered or used the sign-up sheet have spoken, the Chair may also, at his/her discretion, poll the remaining public to estimate the number of persons who also wish to speak. This poll may result in a more restrictive time limit for the remaining speakers. Commissioners may pose questions, through the Chair, at the close of each presentation. The Commissioners shall limit their questions to clarification of factual testimony given, while refraining from arguing with the public, expressing Commissioner opinion before the close of the hearing, or asking questions of a personal nature with no explanation as to their relevance to the matters at hand. After all public testimony is received, the Chair will call upon staff, the proponent and finally the opponent to respond or rebut the testimony that was given (rebuttal only, no new testimony). Each of these responses will be limited to 3 minutes if time was reserved for rebuttal.

iii. The Chair will recognize the approach, at any time, of the Commission's legal counsel to comment on legal or procedural issues, without the above limitations.

iv. The ideal Commission hearing will proceed as follows:

Staff Presentation	<del>15 Minutes</del>
Proponent Presentation	15 Minutes
Opposition Spokesperson	15 Minutes (optional)
Public Testimony	3 Minutes (each)
Staff Response/Rebuttal	3 Minutes (if previously reserved)
Proponent Response/Rebuttal	3 Minutes (if previously reserved)
Opposition Spokesperson	3 Minutes (if previously reserved)

The Chair will communicate with Planning Staff at the start of each hearing and announce the assignment of timekeeping duties to a staff member.

v. Members of the public (audience) shall not cat call or intimidate or show group support for any speaker or speaker's position as it could tend to limit valuable input by others. Time limitation is intended to allow all persons an opportunity to be heard and make their points and for the hearing to be completed in a timely manner.

vi. The Chair shall ask speakers to keep to the current subject.

F. The Hearing will then be closed by the Chair who will indicate to the public the procedure to be followed by the Planning Commission. In no case shall a decision be reached by the Commission before a hearing is closed. If for any reason, a hearing cannot be completed at a single session, the adoption of a motion to continue the Hearing to another time shall be deemed sufficient legal notice to all parties who may be affected.

G. Following the close of the Hearing, the Commission may seek to discuss the testimony of the Hearing through work sessions. Such work sessions that do not follow immediately at the close of the Hearing shall have public notice as required by law.

H. During work sessions, input from the public shall only be allowed in response to direct questions from Commission members. New testimony is not to be received. The Chair should ensure that each member has the opportunity to state his/her opinions at least once before the discussion is closed.



- I. A work session is completed with either a vote on a particular motion regarding the matter at hand, or a majority vote for the continuation of the subject to another meeting. A motion for continuation should include a time and date for discussion of the subject.
- J. At the discretion of the Commission, if it is determined that there is high interest in an issue and therefore a hearing is expected to have high attendance, the following alternative may be used instead of a sign-up sheet for speakers:
  - ~~i.~~ When more than 50 people have signed up, the chair may at his/her discretion reduce the time limit for each speaker to 2 minutes.
  - ~~ii.~~ No more than one-half hour before the announced start of the meeting in which the hearing will be held, the Commission shall make available random numbers that may be drawn by members of the public who wish to speak in person at the hearing.
  - ~~iii.~~ The method of random numbers shall be slips of paper numbered 1-100, or similar method.
  - ~~iv.~~ Individuals may only draw one number, but may freely trade or give away their number to someone else.
  - ~~v.~~ The public attending in-person will be called in number order to speak at the hearing. Those attending remotely will be called in the order they raise their hand.
  - ~~vi.~~ For the record, speakers will print their name on a speaker list when they approach the podium to speak.
  - ~~vii.~~ Once all remote speakers with raised hands and those in-person with numbers who wish to speak have spoken, the chair may allow additional people to speak.

## **Article V. Reporting**

### 5.1 Reporting to County Council

The Planning and Development Services Director, or his/her designee, shall report the majority-voted recommendations of the Planning Commission to the County Council or appropriate Council Committee.

### 5.2 Member Representation to County Council

It is assumed that the Planning Commission meeting minutes, as well as the recorded findings of fact, will sufficiently speak for the Commission's recommendations to the County Council. A Planning Commission member may volunteer to represent the Commission in front of the County Council or a Council Committee regarding a particular matter for clarification of the Commission's deliberations; however, the Commission member must first inform the Commission Chair as to his/her intention to be a Commission representative, and the reason they wish to fulfill that role. The Commission Chair may then approve such representation.

### 5.3 Addressing County Council

- A. Any Commission member voting in the minority on an issue may write a "Minority Opinion", labeled as such, to be included in the documentation going to the County Council for their deliberations on the Planning Commission recommendation. The correspondence should be in the form of a letter to the Council, and may be signed by those voting in the minority. This effort may only be expended by individual members without the assistance of the Planning and Development Services staff.
- B. Any Commission member may address the County Council on any issue. The Commission member must state clearly whether he/she is speaking as a citizen or speaking to reflect the majority or minority opinion of the Planning Commission on the issue before Council.

## **Article VI. Other Advisory Board Procedures.**

### 6.1 Amendments to Rules.

These rules may be amended by majority vote during the Business Meeting. They may also be amended at any regular meeting with four days written notice.

6.2 Records.

- A. Actions of the Commission requiring written execution, such as formal resolutions, may be drawn up by the Secretary after the action has been taken; and the signatures of the Chairman and Secretary shall be sufficient to validate such resolutions or document.
- B. Minutes shall contain a complete record of motions, resolutions, ~~findings of fact,~~ and other determinations of the Commission; and shall also contain the usual details of time, place, type of meeting, members and officers present, speakers ~~and their addresses,~~ records ~~or of~~ roll call votes and other information deemed appropriate. Minutes shall be signed by the Secretary when prepared and validated by the signature of the Chair after approval by the Commission.
- C. Maps, reports and other documents constituting an integral part of the minutes may be identified by reference, provided such exhibits are properly numbered and filed for the public record.
- D. The Secretary is responsible for sending each member a copy of the minutes in a timely manner with ensuing agenda.
- E. The Planning Commission shall keep, at the Planning Department, minutes of the proceedings of meetings and a record with the names and addresses of members. All Planning Commission records are subject to the Open Public Records Act (RCW 42.17).

**By majority vote on February 9, 2023, the Planning Commission of Whatcom County, adopted these rules with all amendments consolidated to date**

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Kelvin Barton, Chair

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Tammy Axlund, Secretary

**Whatcom County  
Planning & Development Services  
Staff Report**

**Proposed Amendments to WCC Chapter 20.14, Wind  
Energy Systems**

**I. Background Information**

**File #** PLN2018-00008

**File Name:** Amendments to WCC Chapter 20.14, Wind Energy Systems, and WCC Chapter 20.97, Definitions

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

**Summary of Request:** Proposed amendments to WCC Chapter 20.14, Wind Energy Systems, and WCC Chapter 20.97, Definitions.

**Location:** Countywide.

**Recommendation(s):** The Climate Impact Advisory Committee recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

**II. Background**

Council placed on the 2018 docket Item No. PLN2018-00008: “Review and, if needed, revise WCC 20.14 Wind Energy Systems,” as there was interest in modifying the regulations in order to better promote local wind energy systems.

Developing the amendments was assigned to the Council’s Climate Impact Advisory Committee (CIAC), who formed a subcommittee and enlisted the help of Mia Devine, a Renewable Energy Engineer with Spark Northwest, a clean energy consultancy. The CIAC completed their work in September 2022 and provided their recommendations to Planning and Development Services to process. Their goals were to make County code more consistent with evolving federal regulations and industry best practices, and to remove any barriers to developing wind energy in Whatcom County so as to reduce reliance on carbon-based fuels. *CIAC members and the consultant they worked with have been invited to the Commission’s meeting to answer questions and describe their proposal.*

As the Planning Commission considers the proposed amendments, here are definitions of some of the key terms being discussed.

**Meteorological Towers**

**From WCC 20.97.235, an existing definition:** “Meteorological tower (MET tower)” means a structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for

either instantaneous wind information or to characterize the wind resource at a given location. PDS's understanding is that these are small weather data collecting towers installed for generally one year (but up to two) to gather information to determine whether a site would support a wind energy system. They are removed once adequate data has been collected.

### Small Wind Energy Systems (SWES)

**From WCC 20.97.426, an existing definition:** "Small wind energy system (SWES)" means a wind energy conversion system, with a rated output up to and including 100 kW, consisting of: wind turbine, tower, base and associated control or conversion electronics, as well as all anchors, guy cables and hardware.

PDS's understanding is that these are smaller systems (generally only 1 tower) installed by individual property owners to generate power from their home, farm, or business.



Figure 1. Typical Meteorological Tower



Figure 2. Typical SWES

### Wind Energy Systems (WES)

**From WCC 20.97.455.1, an existing definition:** "Wind energy system (WES)" means a wind energy conversion system, consisting of: wind turbine, tower, base and associated control or conversion electronics, as well as all anchors, guy cables and hardware.

**Proposed new definition:** "Wind energy system (WES)" means one or more wind energy conversion systems with a rated output greater than 100kW consisting of: wind turbine, tower, base, and associated control or conversion electronics, as well as anchors, guy cables, and hardware.

PDS's understanding is that these are the larger systems used for commercial or utility energy production in wind farms, and may range from several to hundreds of towers.



Figure 3, Typical WES

### III. Proposed Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. The 8 primary policy issues are:

#### 1. Changes to §20.14.040, Regulatory Framework:

- a) Currently, Small Wind Energy Systems (SWES) rated 50 kW or less are outright permitted in all zones. The CIAC proposes that the threshold be raised to 100 kW (so as to be consistent with the US Dept. of Energy's definition of small vs. large systems).
- b) Currently, Wind Energy Systems (WES) greater than 50 kW and up to 500 kW requires an Administrative Use Permit and are only allowed in the Heavy Impact Industrial district. The CIAC proposes that the threshold be raised to 100 kW, and allowed in both the Heavy Impact and Light Impact Industrial districts with an Administrative Use Permit, and in the Agriculture, Rural Forestry, and Commercial Forestry districts with a Conditional Use Permit. According to wind energy experts the CIAC worked with, the coastal area around the Cherry Point industrial area and the Foothills region are the only two areas in Whatcom County that have the wind necessary to make Wind Energy Systems economically feasible (under today's market and technology).
- c) Currently neither SWES nor WES are allowed "Within and 1,000 feet beyond the boundaries of the Lake Whatcom Watershed that are recognized and approved by Whatcom County, except that roof-mounted SWES that do not exceed a total height of five feet above the highest roof peak of the building on which they are mounted are allowed." The CIAC proposes to remove this prohibition as they think the allowances and permitting requirements ought to be uniform throughout the County.

#### 2. Changes to §20.14.051, Visual Appearance – Lighting – Power Lines:

- a) The CIAC proposes to delete §20.14.051(2), which requires that "At SWES/WES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the SWES/WES to the natural setting and the existing environment." Their reason is that screening and landscaping to attempt to hide the wind turbine may impede the wind flow and reduce the effectiveness of the WES. Also, "to the extent reasonably possible" is subjective and hard to enforce consistently.

**3. Changes to §20.14.052, Setback Requirements:**

- a) The CIAC proposes to amend the thresholds for when larger setbacks apply, from 50 kW to 100 kW systems; and,
- b) Amend the setback requirements:
  - o For WES: from 1.2 times to 1 times the total structure height
  - o For SWES:
    - from 1,320 feet to 1,000 feet when abutting a district other than HII; and
    - from 1.2 to 1 times the total structure height when abutting another property zoned HII. (§20.14.052(1))
  - o For WES or SWES: from 1.2 to 1 times the total structure height from any the existing above-ground power line or telephone line. (§20.14.053(2)); and,
  - o For WES located within 1,000 feet of existing structures, the CIAC recommends adding a requirement that permit applicants provide an analysis of safety risks, including estimate of range for “ice throw” from spinning blades (§20.14.053(4))

The CIAC’s reason for these amendments is to be consistent with the U.S. Dept. of Energy’s model zoning ordinance. When establishing setback distances, the intended protective effect must be balanced with economic considerations for wind projects so that accommodating a setback does not unduly threaten the feasibility of the project. In the rare event that a tower collapses or sheds ice, experience has shown that falling components land in a small radius around the tower base. ([https://sparknorthwest.org/wp-content/uploads/WindPermitToolkit\\_WA\\_Sept-2015.pdf](https://sparknorthwest.org/wp-content/uploads/WindPermitToolkit_WA_Sept-2015.pdf)).

**4. Changes to §20.14.053, Height Limitations**

- a) The CIAC proposes to remove the 500-foot height limit for WES and the 100-foot height limit for meteorological towers (§20.14.053(1));

The reason provided is that wind turbine rotors must be placed higher than surrounding obstructions in order for the rotor blades to access the smooth, steady wind flow required to function properly. Height limits can constrain the productivity and economic viability of a wind energy facility and discourage wind development. Height restrictions, if any, should only reflect safety concerns.

- b) The CIAC proposes to increase the height threshold from 100 to 200 feet for when a SWES need to obtain an Administrative Use Permit (except in the AG, CF, and HII districts).

The reason provided is that industry best practice is to install the wind turbine on a tall enough tower that the entire rotor is located a minimum of 30 feet higher than any obstacle within 500 feet of the tower. Even in ideal locations with flat, wide open terrain, the minimum recommended tower height is 60 feet. Increasing the SWES height limit above 100 feet would allow for more effective installations at sites with tall trees. Height restrictions, if any, should only reflect safety concerns. The FAA must evaluate and approve of any structure 200 feet or greater above ground level.

**5. Changes to §20.14.060, Sound levels, modeling and measurement**

- a) The CIAC proposes to delete the sound exceedance prohibition of 20/45 dB(a) and replace it with a general requirement that “SWES/WES shall comply with the sound requirements of the zoning district in which it is located,” and that they “shall maintain sound levels at project boundaries that are under the maximum levels for the adjacent receiving properties based on

the receiving properties' environmental designation for noise abatement in accordance with state regulations<sup>1</sup>." (§20.14.061)

The CIAC's stated reason is to treat wind turbines consistently with other sources of sound in a particular zone. Modern wind turbines have been designed with features that minimize the sound they emit. Sound diminishes with the square of the distance from the source, which means that doubling the distance between the source and the listener reduces the sound heard by a factor of four. The CIAC believes the recommended revised setback distances should be sufficient to minimize sound impacts on neighboring property during normal operations.

- b) They also propose to delete additional sound limits on larger WES (greater than 50 kW) (§20.14.062 and §20.14.063), but,
- c) The CIAC also proposes a requirement that "WES proponents shall provide a report by a qualified independent acoustical consultant approved by Whatcom County PDS and in accordance with standard industry best practices, that models the sound transmission of the proposed WES at the project property lines and indicates that the WES, when operated properly, will conform to the sound performance requirements of this chapter." (new §20.14.062)

**6. Changes to §20.14.075, Wildlife Protection for WES.**

- a) The CIAC proposes to require consultation with the US Fish and Wildlife Service during permitting so as to assure WES projects won't have impacts on endangered or threatened species (subsection (1)).
- b) The CIAC also proposes that all WES be monitored for at least a year to estimate bird and bat fatality rates (subsection (2)).

**7. Changes to §20.14.100 Abandonment, Insurance, and Decommissioning for WES.**

- a) The CIAC proposes to simplify the decommissioning requirements for both SWES and WES (§.102(1))
- b) The CIAC proposes to eliminate the insurance requirement for SWES, retaining it only for WES.

The CIAC's reasoning is that SWES are generally small, privately-owned systems generating power for private use on the site on which it's located. The required setbacks should be ample to prevent damage to neighboring properties.

**8. Changes to WCC Chapter20.97, Definitions.**

- a) In an ongoing effort to consolidate definitions, PDS proposes to move the definitions from §20.147.020 and move them to Chapter 20.97 (Definitions). Our goal is to put all definitions in one chapter, rather than individual chapters having their own definitions section, which has led to having multiple—sometimes different—definitions for the same word.

However, in doing so we've found that the current numbering system has gotten unwieldy as words have been added, with some not even being in alphabetical order. Therefore, staff is also proposing to delete the numbering system, and having all words in alphabetical order. As certain cross-references to words in the code cite the words' (current) number, we are also having to delete all these references and refer only to Chapter 20.97. All amendments shown in

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<sup>1</sup>For residential environments, any noise exceeding 70 dB is considered disturbing. Residential limits usually start at 60 or 55 dB (the equivalent noise of a regular vacuum cleaner).

Exhibit A from the bottom of page 10 on are solely to meet this goal. No policy changes are proposed.

## IV. Comprehensive Plan Evaluation

The proposed amendments are consistent with the following Comprehensive Plan Goals and Policies:

**Goal 10D: Strengthen the sustainability of Whatcom County's economy, natural environment, and built communities by responding and adapting to the impacts of climate change.**

Policy 10D-6: Convene a climate impact advisory committee by 2017. The advisory committee should consist of (but not be limited to) experts in energy efficiency and carbon emission reduction, representatives from Whatcom County, and interested community members. The committee will be tasked with:

- Recommend updates to Whatcom County land use policies and development regulations to support renewable energy development goals.

Policy 10D-10: Create updates to Whatcom County land use policies and development regulations to support renewable energy development goals.

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

It is recommended the Planning Commission adopt the following findings of fact and reasons for action:

1. Council placed on the 2018 docket Item No. PLN2018-00008: "Review and, if needed, revise WCC 20.14 Wind Energy Systems," as there was interest in modifying the regulations in order to better promote local wind energy systems.
2. Developing the amendments was assigned to the Council's Climate Impact Advisory Committee, who completed their work in September 2022
3. The Climate Impact Advisory Committee's goals were to make County code more consistent with federal regulations and industry best practices, and to try to remove any barriers to developing wind energy in Whatcom County so as to reduce reliance on carbon-based fuels.
4. The Climate Impact Advisory Committee provided its recommendations to Planning and Development Services to process, which submitted an application to process the proposed amendments to the Whatcom County Code (WCC).
5. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 7, 2023. No comments have been received to date.
6. Notice of the subject amendment was submitted to the Washington State Department of Commerce on February 3, 2023, for their 60-day review. No comments have been received.
7. The Planning Commission held a duly noticed public hearing on the proposed amendments on February 23, 2023.
8. The County Council held a duly noticed public hearing on the proposed amendments on [REDACTED], 2023.
9. The amendments are consistent with Comprehensive Plan Goal 10D and Policies 10D-6 and 10D-10.



## **VI. Proposed Conclusions**

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

## **VII. Recommendations**

The Climate Impact Advisory Committee recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

## **Attachments**

1. Exhibit A – Proposed Code Amendments

# Exhibit A: Proposed Wind Energy Systems Amendments and Organization of WCC 20.97 (Definitions)

## Chapter 20.14 WIND ENERGY SYSTEMS

Sections:

- 20.14.010 Purpose.
- 20.14.020 Definitions.
- 20.14.030 Applicability.
- 20.14.040 Regulatory framework.
- 20.14.050 General requirements for SWES and WES.
- 20.14.060 Sound levels and measurement.
- 20.14.070 Safety.
- ~~20.14.080 Sound modeling and measurements.~~
- ~~20.14.090 Complaint process.~~
- 20.14.100 Abandonment, insurance, and decommissioning for WES.
- 20.14.110 Federal, state and local requirements.

### 20.14.010 Purpose.

The purpose of this chapter is to regulate the installation and operation of wind energy conversion systems in Whatcom County for private landowners, subject to reasonable restrictions.

### ~~20.14.020 Definitions.~~

~~As used in this chapter, the following terms shall have the meanings indicated:~~

- ~~(1) "County" shall mean the Whatcom County government.~~
- ~~(2) "Decibel" means a unit of measure of sound pressure.~~
- ~~(3) "dB(a)" means A-weighted sound pressure scale.~~
- ~~(4) "dB(c)" means C-weighted sound pressure scale.~~
- ~~(5) "FAA" shall mean the Federal Aviation Administration.~~
- ~~(6) "Flicker" or "shadow flicker" means the moving shadow cast by the rotating blades of a SWES/WES, or any intermittent, repetitive, or rhythmic lighting effect that is a direct result of rotating SWES/WES blades.~~
- ~~(7) "Flicker analysis" means a study showing the duration and location of flicker potential.~~
- ~~(8) "Hub height" means the distance from the ground to the center axis of the rotor.~~
- ~~(9) "Qualified independent acoustical consultant" means a private, third party individual with full membership in the Institute of Noise Control Engineers (INCE), or other demonstrated acoustical engineering certification.~~
- ~~(10) "MET tower" or "meteorological tower" means a structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of~~

**Commented [CES1]:** Moved into 20.14.060

**Commented [CES2]:** Definitions moved to 20.97, except those that already exist (including MET & SWES). This is something staff has been slowly doing as we bring amendments forward, with the goal of eventually having all definitions in one place.

- ~~time for either instantaneous wind information or to characterize the wind resource at a given location.~~
- ~~(11) "Rotor" means a system of airfoils designed to provide a reaction force relative to the movement of the surrounding air. The rotor is connected to a hub that rotates around an axis.~~
- ~~(12) "Small wind energy system (SWES)" means a wind energy conversion system, with a rated output up to and including 50 kW, consisting of: wind turbine, tower, base and associated control or conversion electronics, as well as all anchors, guy cables and hardware.~~
- ~~(13) "Total height" means the distance measured from the grade plane (WCC 20.97.162) to the tip of the SWES/WES rotor blade extended to its highest point. The support tower structure may be freestanding, guyed, or a monopole.~~
- ~~(14) "Tower height" means the distance measured from the grade plane (WCC 20.97.162) to the hub height of the wind turbine. This structure may be freestanding, guyed, or a monopole.~~
- ~~(15) "Upwind turbine design" means a SWES/WES that has rotors and towers aligned such that the wind encounters the rotors before the tower. The tower will always be downwind of the rotors.~~
- ~~(16) "Wind turbine" means the parts of the wind energy conversion system including the blades, generator and tail.~~
- ~~(17) "Wind energy system (WES)" means a wind energy conversion system with a rated output greater than 50 kW consisting of: wind turbine, tower, base and associated control or conversion electronics, as well as anchors, guy cables, and hardware.~~

**20.14.030 Applicability.**

- (1) The requirements set forth in this chapter shall govern the siting of wind energy conversion systems used to generate mechanical or electrical energy to perform work, and which may be connected to the utility grid pursuant to Chapter 80.60 RCW, ~~(Net Metering of Electricity)~~, and serve as an independent source of energy, or serve as part of a hybrid system.
- (2) The requirements of this chapter shall apply to all small wind energy systems (SWES) and wind energy systems (WES) proposed after ~~October 10, 2008~~ (the effective date of the ordinance codified in this chapter). Any SWES/WES for which a required permit has been properly issued prior to the effective date of the ordinance codified in this chapter shall not be required to meet the requirements of this chapter; provided, however, that any such pre-existing SWES/WES that is not producing energy for a continuous period of 12 months shall meet the requirements of this chapter prior to recommencing production of energy. No modification that increases the height of the system or increases the system output more than ~~25% percent~~ shall be allowed without full compliance with this chapter.

**Commented [CES3]:** Putting the actual date in so that applicants/staff don't have to look up the ordinance.

**20.14.040 Regulatory framework.**

**.041 Permits and Zoning.**

System Type	Required Permit	Zones
MET tower	Outright permitted <sup>1</sup>	All <del>for up to 24 months</del>
One or multiple SWES with a cumulative rated output up to and including 50 kW	Outright permitted <sup>1</sup>	All

**Commented [MD4]:** Duration being deleted as generally, MET towers are only used for short-term (1-2 years) data collection (except on large wind farms).

One WES with a rated output greater than 50 kW up to and including 500 kW	Administrative permit <sup>2</sup>	HH,
One or multiple WES with a rated output greater than 500kW	Conditional use permit <sup>2</sup>	
Multiple WES per parcel with a cumulative rated output greater than 50 kW	Conditional use permit <sup>2</sup>	HH
SWES/WES	Not permitted	Within and 1,000 feet beyond the boundaries of the Lake Whatcom Watershed that are recognized and approved by Whatcom County, except that roof-mounted SWES that do not exceed a total height of five feet above the highest roof peak of the building on which they are mounted are allowed.
<b>System Type</b>	<b>Zones Allowed In</b>	<b>Required Permit</b>
Meteorological tower	All districts	Permitted
SWES		
<ul style="list-style-type: none"> <li>with a total height of 200 feet or less</li> </ul>	All districts	Permitted
<ul style="list-style-type: none"> <li>with a total height greater than 200 feet</li> </ul>	All districts	Administrative use permit <sup>2</sup>
WES		
	Heavy Impact Industrial, Light Impact Industrial	Administrative use permit <sup>2</sup>
	Agriculture, Rural Forestry, and Commercial Forestry	Conditional use permit <sup>3</sup>

**Commented [M5]:** Permitting shouldn't be any different in the LWW than in other areas.

<sup>1</sup> SWES, WES and ~~Meteorological MET~~ towers are required to be in compliance with ~~but not limited to~~ WCC Title 15, Buildings and Construction, and acquire the necessary building permits.  
<sup>2</sup> Administrative use permit, WCC 22.05.028.  
<sup>3</sup> Conditional use permit, WCC 22.05.026.

**.042 Principal or Accessory Use.** A SWES/WES may be considered either as a principal or accessory use. A different existing use or an existing structure on the same lot shall not preclude the installation of a SWES/WES or a part of such facility on such lot. Any SWES/WES that is constructed and installed in

accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

#### 20.14.050 General requirements for SWES and WES.

##### .051 Visual Appearance – Lighting – Power Lines.

- (1) Wind turbines shall be painted a nonreflective, nonobtrusive color such as the manufacturer's default color option or a color that conforms to the environment and architecture of the community, unless [Federal Aviation Administration \(FAA\)](#) standards require otherwise. The ~~zoning administrator~~Director may require a photo of a SWES/WES, of the same model as that proposed in the landowner's application, adjacent to a building or some other object illustrating scale (e.g., manufacturer's photo).
- ~~(2)~~ At SWES/WES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the SWES/WES to the natural setting and the existing environment.
- ~~(3)~~ (2) No SWES/WES shall be artificially lighted, except to the extent required by the [Federal Aviation Administration \(FAA\)](#) or other applicable authority.
- ~~(4)~~ (3) No SWES/WES shall be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind turbine.
- ~~(5)~~ (4) Electrical controls, control wiring, and power lines shall be wireless or underground, except where SWES/WES wiring is brought together for connection to the transmission or distribution network adjacent to that network, and except that in the Agricultural Zone the minimum installation depth for electrical controls, control wiring, and power lines is 48 inches below finish grade.
- ~~(6)~~ (5) The road access to the proposed site must be rated to carry an axle load sufficient to bear the weight of all materials, vehicles, and equipment delivered to the site.
- ~~(7)~~ (6) The compatibility of the foundation, tower, and generating unit (including rotor and rotor-related equipment) shall be certified in writing by a professional engineer licensed in Washington State. The engineer shall certify compliance with established engineering practices and compliance with all applicable adopted codes and regulations. For all SWES/WES, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation, and tower design of the SWES/WES are compatible and within accepted professional standards, given local design criteria per WCC Title 15.
- ~~(8)~~ (7) The electrical system design shall be certified in writing by an electrical engineer licensed in Washington State unless waived by the ~~building e~~Official. All SWES/WES electrical systems shall comply with requirements per the Washington State Department of Labor and Industries and the current adopted edition of the National Electrical Code when and where applicable.
- ~~(9)~~ (8) All SWES/WES shall meet requirements per the applicable sections of WCC ~~20.80.630, 20.80.634, and 20.80.635, et seq.~~ [\(Stormwater and Drainage\)](#) for erosion control and stormwater management.
- ~~(10)~~ Violation of any part of this chapter of the code shall be subject to the provisions of WCC 15.04.050.

**Commented [MD6]:** Screening and landscaping to attempt to hide the wind turbine may impede the wind flow and reduce the effectiveness of the WES. Also, "to the extent reasonably possible" is subjective and hard to enforce consistently.

##### .052 Setback Requirements.

The following setback requirements shall apply to ~~all~~ SWES/WES and ~~meteorological~~MET towers. All setbacks are measured from the property lines of the property on which the project is located:

- (1) ~~Setbacks Table.~~ Setbacks from property lines shall be as shown in the following table, measured to the outer edge of the base of the SWES/WES structure towers. Guy cables and other accessory support structures may be located within setback areas.

**Commented [CES7]:** Not necessary, as all violations of the building code are subject to 15.04.050, regardless whether it's restated here. Furthermore, they'd be in violation of Title 20 and subject to its code enforcement provisions.

System Size	Setback Requirement
Up to and including 10050 kW WES	1.2 times total height, to a maximum of total height of S/WES structure plus 20 feet. <sup>1</sup>
Greater than 10050 kW SWES	1,000 to 320 feet (one quarter mile) from a property line of any property in a non-other than the HII Zonedistrict. If the neighboring property is in an HII districtZone the setback is 1.2 times the total height from the property line. <sup>1</sup>

<sup>1</sup>Footnote. A reduction in setbacks may be approved if appropriate easements from neighboring property owners or appropriate mitigation acceptable to neighboring property owners is approved by the zoning administrator or hearing examiner and recorded against the applicable deed(s).

- (2) **Setbacks from Communication and Electrical Lines.** Each SWES/WES shall be set back from the nearest above-ground public or private nonparticipating utility a distance no less than 1.2 times its total tower height, up to a maximum of tower height plus 20 feet, determined from any the existing above-ground power line or telephone line.
- (3) ~~Setbacks shall be measured to the outer edge of the base of the SWES/WES structure towers. Guy cables and other accessory support structures may be located within setback areas.~~
- (4)(3) **Setback to from Other WES.** A WES may not be placed such that it substantially disturbs the wind flow into another WES. A new WES may not be placed such that another nonparticipating WES falls within an egg-shaped exclusion zone around the new WES defined by an axis along the primary wind direction. In the upwind direction the exclusion zone shall have a semi-circular shape with a radius three times the rotor diameter of the new WES. In the downwind direction the exclusion zone shall have a semi-elliptical shape extending eight times the rotor diameter of the new WES along the axis downwind and extending three times the rotor diameter of the new WES in a direction perpendicular to the axis. In this way the new WES will be at least three of its rotor diameters behind, three to the side of, and eight in front of a pre-existing WES.
- (4) For WES located within 1,000 feet of existing structures, permit applicants shall provide additional analysis of safety risks, including estimate of range for "ice throw" from spinning blades.

**.053 Height Limitations.**

- (1) ~~The total height of a WES shall not exceed 500 feet. MET towers cannot exceed a maximum height of 100 feet except in the Agricultural, Rural Forestry and Commercial Forestry Zones.~~  
 SWES with a total height taller than ~~200~~100 feet must obtain an administrative use permit, except within the AG, CF and HII Zones. All SWES with a total height greater than 2400 feet must provide in writing that the height requested is the minimum height necessary for the SWES to operate efficiently, and provide approved justification for the proposed height and analysis according to recognized industry standards.

**20.14.060 Sound levels, modeling and measurement.**

- (1) ~~.061 SWES Sound Levels, Performance, and Measurement Standards. Audible sound is not to exceed 20 dB(a) above ambient background noise or 45 dB(a), whichever is greater, at any point beyond the project property line. Detectable infrasound or C-weighted sound pressure is not to exceed 20 dB(c) above ambient background noise or a maximum of 45 dB(c), whichever is greater, except that there is no infrasound or C weighted sound pressure requirement at property lines adjacent to HII Zones. During normal operation, the SWES/WES shall comply with the sound requirements of the zoning district in which it is located. The facility shall maintain sound levels at project boundaries that are under the maximum levels for the adjacent receiving properties based on the receiving~~

**Commented [MD8]:** Changed to be consistent with U.S. Dept of Energy model ordinance. When establishing setback distances, the intended protective effect must be balanced with economic considerations for wind projects so that accommodating a setback does not unduly threaten the feasibility of the project. In the rare event that a tower collapses or sheds ice, experience has shown that falling components land in a small radius around the tower base. (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://spar.knorthwest.org/wp-content/uploads/WindPermitToolkit\_WA\_Sept-2015.pdf).

**Commented [MD9]:** I would recommend reducing this to one times the total height, to be consistent with the above comment.

**Commented [MD10]:** I would recommend reducing this to one times the total height, to be consistent with the above comment.

**Commented [CES11]:** Moved to subsection (1)

**Commented [MD12]:** Wind turbine rotors must be placed higher than surrounding obstructions in order for the rotor blades to access the smooth, steady wind flow required to function properly. Height limits in an ordinance can constrain the productivity and economic viability of a wind energy facility and discourage wind development. Height restrictions, if any, should only reflect safety concerns.

**Commented [MD13]:** Industry best practice is to install the wind turbine on a tall enough tower that the entire rotor is located a minimum of 30 feet higher than any obstacle within 500 feet of the tower. Even in ideal locations with flat, wide open terrain, the minimum recommended tower height is 60 feet. Increasing the SWES height limit above 100 feet would allow for more effective installations at sites with tall trees. Height restrictions, if any, should only reflect safety concerns. The FAA must evaluate and approve of any structure 200 feet or greater above ground level.

properties’ environmental designation for noise abatement in accordance with state regulations. The facility shall at all times comply with applicable noise control regulations adopted by the Washington Department of Ecology or such other state agency with jurisdiction. The maximum sound level may be exceeded during short-term events, such as utility outages and storms.

~~.062 WES with a Cumulative Output Greater Than 50 kW Sound Level, Performance, and Measurement Standards. Audible sound is to not exceed 10 dB(a) above ambient background noise or 45 dB(a), whichever is greater, at any point beyond the project property line. Detectable infrasound or C-weighted sound pressure is not to exceed 20 dB(c) above ambient background noise or a maximum of 45 dB(c), whichever is greater, except that there is no infrasound or C-weighted sound pressure requirement at property lines adjacent to HII zones.~~

~~.063 Upwind design shall be used on all WES greater than 50 kW, unless it can be demonstrated that no detectable infrasound or C-weighted sound pressure is generated above 20 dB(c) and A-weighted sound pressure standard can be met, as required per WCC 20.14.061 and 20.14.062.~~

(2) WES proponents shall provide a report by a qualified independent acoustical consultant approved by Whatcom County PDS and in accordance with standard industry best practices, that models the sound transmission of the proposed WES at the project property lines and indicates that the WES, when operated properly, will conform to the sound performance requirements of this chapter.

(3) Noise Complaints

(a) If two or more complaints from different households are received within a two-week period regarding a particular WES located within one mile of the complainant’s properties, a sound measurement will be conducted by a qualified consultant approved by Whatcom County. The cost of the sound measurement shall be paid initially by the County. Measurements shall be conducted where the complaints were documented. If an evaluation shows that the WES is operating outside of its permitted sound performance standards, the operator will have 30 days to adjust the system(s) or terminate operations, and the owner/operator shall reimburse the county for the expense of sound measurement. If the WES is shown to be in compliance, the complainant shall reimburse the County for the cost of measurement.

(b) At the discretion of Whatcom County PDS, multiple complaints may be compiled for three months at a time and then a sound study conducted at all of the locations. No WES project shall be required to conduct more than two sound measurements at any one adjacent property per year unless the WES project has expanded and/or proven to be in violation of the sound performance standards.

**Commented [MD14]:** The intent of this change is to treat wind turbines consistently with other sources of sound in a particular zone. Modern wind turbines have been designed with features that minimize the sound they emit. Sound diminishes with the square of the distance from the source, which means that doubling the distance between the source and the listener reduces the sound heard by a factor of four. The recommended setback distances included in this ordinance should be sufficient to minimize sound impacts on neighboring property during normal operations.

**Commented [MD15]:** Content moved from 20.14.090

**20.14.070 Safety.**

**.071 General Provisions for SWES/WES.**

- (1) Wind turbine towers shall not provide step bolts or a ladder readily accessible to the public; any access bolts or ladders ~~and~~ shall be a minimum height of 10 feet above ground level.
- (2) All electrical equipment shall be safely and appropriately enclosed from unintentional access by means such as barrier fencing, equipment cabinetry, or similar approved barriers. All access doors to wind turbine towers and electrical equipment shall remain locked except when access is necessary.
- (3) Appropriate warning signage (e.g., electrical hazards) shall be placed on wind turbine towers, electrical equipment, and SWES/WES.
- (4) Any SWES/WES found to be unsafe by the building official shall be repaired by the landowner and/or project owner to meet federal, state, and local safety standards, according to the regulatory authority of the building official and applicable provisions per WCC Title 15.

**.072 Blade Tip Clearance Height.**

- (1) The blade tip of any SWES ~~with a cumulative rated output up to and including 50 kW~~ shall, at its lowest point, have ground clearance of no less than 20 feet, as measured at the lowest point of the arc of the blades.
- (2) WES ~~with a cumulative rated output greater than 50 kW~~ shall, at its lowest point, have ground clearance of no less than 30 feet, as measured at the lowest point of the arc of the blades.

**.073 Over-Speed Controls.** All SWES/WES shall be equipped with over-speed controls to limit rotation of blades to speed below the designed limits of the system. No changes or alterations from the certified design shall be permitted unless accompanied by a licensed professional engineer's statement of certification.

**.074 Flicker Analysis for WES.** A flicker analysis is required for all WES. The analysis shall include the duration and location of flicker potential for all buildings and for roadways within a one-mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sunrise to sunset over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees. Flicker at any building shall not exceed 30 hours per year within the analysis area. Flicker in excess of the limits established in this chapter shall be grounds for the county or his/her designee to order operational adjustments, which may include mitigation measures requiring cessation of operation during periods when flicker affects any building, for all noncompliant WES.

**.075 Wildlife Protection for WES.** Prior to permit approval, ~~Whatcom County PDS shall ensure compliance with WCC Chapter 16.16 (Critical Areas), and may require provide documentation a report from a qualified consultant professional wildlife biologist (as defined in WCC Chapter 16.16 WCC, Article 8, Definitions) verifying the following:~~

- (1) **Endangered or Threatened Species.** Development and operation of a WES shall not have a significant adverse impact on ~~federal or state~~ endangered or threatened fish, wildlife, plant species, their critical habitats, or other significant habitats identified in ~~the Whatcom County Comprehensive Plan and/or other current studies or plans relevant to the region and recognized by the county. WCC Chapter 16.16 (Critical Areas) and must include documented consultation with the U.S. Fish and Wildlife Service (USFWS) to confirm compliance with the Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and the Bald and Golden Eagle Protection Act (BGEP); and documentation of compliance with Washington Department of Fish and Wildlife's "Wind Power Guidelines" for project siting and operation to minimize take of listed species, migratory birds, raptors, and bats.~~
- (2) **Other Species.** ~~The project development and/or operation plan shall be sited, designed, operated, and monitored to prevent WES from having a significant adverse impact on migratory birds, raptors and bats. **Monitoring.**~~
  - a) ~~Prior to permit approval, the applicant shall assess and monitor raptor nests on site, and other documented threatened or endangered species for activity prior to construction and modify construction timing and activities to avoid impacts to these species. At a minimum, one raptor nest survey during breeding season within one mile of the project site should be conducted to determine the location and species of active nests potentially disturbed by construction activities, and to identify active and potentially active nest sites with the highest likelihood of impacts from the operation of the wind plant. A larger survey area (e.g., a two-mile buffer) is recommended if there is some likelihood of the occurrence of nesting state and/or federally threatened and endangered raptor species (e.g., ferruginous hawk, bald eagle, golden eagle), or if empirical data on displacement impacts may be monitored after construction.~~



- b) A minimum of one full season of avian use surveys is recommended following current state-of-the-art protocols to estimate the use of the project area by avian species/groups of interest during the season of most concern (usually spring/early summer). Additional seasonal data (e.g., fall or winter) is recommended in the following cases: (a) use of the site for the avian groups of concern is estimated to be high relative to other projects, (b) there is very little existing data regarding seasonal use of the project site, and/or (c) the project is especially large. This additional avian use data should be collected to refine impact predictions and make decisions on project layout.
- c) Before project construction and after all permit appeal periods have closed, the applicant shall form a technical advisory committee (TAC). Representatives of Whatcom County Planning & Development Services, Washington State Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, landowners, the applicant, Lummi Nation and Nooksack Tribe, and local citizen group(s) with local knowledge of avian use and species shall be invited to participate. The TAC will consider problems and impact mitigation issues and will serve for the life of the project or until TAC members determine that ongoing involvement of the TAC is not meaningful for project operation. The TAC will examine information relevant to assessing project impacts to avian and bat species. The TAC will consider whether further mitigation measures would be appropriate, considering factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings regionally or at a nearby wind power facility. The TAC may recommend additional mitigation measures for the project, which may be required by Whatcom County PDS acting as SEPA authority.
- d) Following project start-up, the applicant shall monitor the project for a minimum of one year to estimate bird and bat fatality rates using standard protocol. The applicant shall report bird fatalities observed for the life of the project to WDFW and USFWS on a quarterly basis. Additional monitoring may be required by the County.
- (2)(3) The County shall require the applicant to identify and remove all carcasses of livestock, big game, etc., that may attract foraging bald eagles or other raptors from within 1 mile of the project site.

20.14.080 Sound modeling and measurements.

~~.081 Sound Modeling.~~ As part of the conditional use permit process, all WES proponents shall provide a report by a qualified independent acoustical consultant approved by Whatcom County PDS and in accordance with standard industry best practices, that models the sound transmission of the proposed WES at the project property lines and indicates that the WES, when operated properly, will conform to the sound performance requirements of this chapter.

Commented [CES16]: Content moved into 20.14.060

20.14.090 Complaint process.

~~If two or more complaints from different households are received within two weeks of each other, and documented at a particular site, a sound measurement will be conducted within 10 business days by a qualified consultant approved by Whatcom County.~~

Commented [CES17]: Content moved into 20.14.060

~~The cost of the sound measurement shall be the responsibility of the WES owner/operator. The operator shall reimburse the county for the expense within 10 days of billing.~~

~~Measurements shall be conducted where the complaints were documented.~~

~~If an evaluation shows that the WES is operating outside of its permitted sound performance standards, the operator will have 30 days to adjust the system(s) or terminate operations.~~

~~To avoid frivolous complaints, any household(s) that registers a complaint against a WES that is proven to be in compliance shall be responsible for the costs of any future complaints originating from the same household(s) for two years unless the WES project has expanded and/or proven to be in violation of the sound performance standards. At the discretion of Whatcom County PDS, if it appears residents are abusing the complaint process, complaints may be compiled for three months at a time and then a sound study conducted at all of the locations. No WES project shall be required to conduct more than two sound measurements at any one adjacent property per year unless the WES project has expanded and/or proven to be in violation of the sound performance standards.~~

~~Complaints originating from properties located farther than one mile from a WES project do not trigger the complaint process.~~

#### **20.14.100 Abandonment, Insurance, and Decommissioning for WES.**

**.101 Abandonment.** Absent notice of a proposed date of decommissioning, WES project shall be considered abandoned when the project fails to operate for more than one year without the written approval of the ~~eDirector or designee~~. The ~~eDirector or designee~~ shall determine in ~~its/his/her~~ decision what proportion of the project is inoperable for the project to be considered abandoned and shall notify the property owner. Within 120 days of receipt of notice of abandonment or within 120 days of providing notice of termination of operations to the ~~eCounty~~, the owner of a wind energy system must comply with the removal requirements in WCC 20.14.102. If the property owner/project owner fails to ~~do so remove the WES in accordance with the requirements of this section within 120 days of notice of abandonment~~, the ~~eCounty~~ shall have the authority to enter the property and physically remove the WES. Financial surety funds shall be used to pay for removal and restoration.

**.102 Removal Requirements.** When a ~~SWES (with a total height that exceeds the height of the underlying zone) or a~~ WES is scheduled to be decommissioned, the project owner/property owner shall notify the ~~eCounty~~ by certified mail of the proposed date of discontinued operations and plans for removal. Within 120 days of receipt of notice of abandonment or within 120 days of providing notice of termination of operations, the owner of a wind energy system must:

~~(1) Decommissioning of a SWES shall include removal of wind turbine, tower, and above-ground cabling and electrical components. Foundations and underground cabling need not be removed. Remove all wind turbines, above-ground improvements, and outdoor storage. Property owners of WES in the HII Zone, and SWES in the AG and CF Zones, may choose to leave foundations in place and intact, partially or in whole, for approved, permitted reuse, except that in the AG Zone foundations left in place must be located such that the distance between SWES foundations and foundations of existing buildings shall not exceed 50 feet.~~

~~(1)(2) Decommissioning of a WES shall include removal of wind turbines, tower, and above-ground cabling and electrical components, removal of all below-ground project elements to a depth of 36 inches, access roads, and any other associated facilities, unless the property owner requests in writing that the access roads or other facilities be retained.~~

~~(2)(3) Remove all hazardous material from the property and dispose of the hazardous material in accordance with federal, state, and local law.~~

~~(2)(4) In addition to removing the wind turbine generator, the owner shall restore the site by planting native or other approved vegetation to minimize erosion.~~

**.103 Insurance.** ~~For WES, P~~proof of continuous liability insurance shall be submitted to Whatcom County indicating coverage for potential damages or injury to landowners, occupants, or other third parties. ~~For WES with a rated output greater than 50 kW, t~~he required insurance is \$2,000,000 aggregate and \$1,000,000 per occurrence. Whatcom County shall be named on the liability policy as additional insured. The insurance carrier shall be instructed to notify all applicable governmental authorities of any

delinquency in payment of premiums. The liability policy shall be endorsed to notify the county of any cancellation 30 days in advance. Failure to provide such insurances shall be considered abandonment and full and sufficient grounds for termination of the permit and disposal of the equipment and appurtenances as stated herein.

**.104 Financial Surety.**

- (1) As a condition of WES permit approval, the applicant shall be required to provide a form of surety (i.e., post a bond, or establish an escrow account or other means) at the amount of ~~150% percent~~ of the estimated full cost of project decommissioning, less the approved, documented salvage value of any applicable project materials and equipment, naming Whatcom County as the beneficiary, with ~~50% percent~~ due prior to final project approval, ~~25% percent~~ due within 12 months of the date of final project approval, and ~~25% percent~~ due within 24 months of the date of final project approval, to cover costs of WES removal in the event the county must remove the facility. Nothing ~~may shall~~ prevent the eCounty from seeking reimbursement from the WES project owner. The project owner is responsible to the eCounty for any costs related to decommissioning that exceed the amount of financial surety.
- (2) As part of the decommissioning plan, the applicant shall submit a fully inclusive estimate of the costs associated with removal, accounting for reasonable salvage value of any applicable project materials and equipment, prepared by a qualified professional. The decommissioning plan shall provide that the decommissioning funds shall be reevaluated every five years from the date of substantial completion of the WES to ensure sufficient funds for decommissioning and, upon mutual agreement by the applicant and the eCounty at that time, the amount of decommissioning funds shall be adjusted accordingly.
- (3) Prior to permit issuance, the applicant shall provide the eCounty with a copy of the financial surety device or another approved mechanism.

**.105 Decommissioning Plan.** As part of the permit approval process, a decommissioning plan shall ~~be provided that outlines~~ the anticipated means and cost of removing WES at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party, such as a professional engineer, a licensed contractor capable of decommissioning, or a person, firm, partnership, corporation, or other entity with suitable expertise or experience with decommissioning, as determined by the ~~building eOfficial or designee~~. The plan shall also identify financial surety to pay for the decommissioning and removal of the WES and accessory facilities. The plan shall also address road maintenance during and after the decommissioning.

**20.14.110 Federal, State and Local Requirements.**

- (1) SWES/WES shall comply with all current adopted Whatcom County codes and ordinances, including but not limited to WCC Titles 15, 16, and 23.
- (2) SWES/WES must comply with regulations of the Federal Aviation Administration (FAA), along with ~~the requirements of within~~ WCC ~~20.80.675~~, (Height Limitations Surrounding Airports). If necessary, an applicant may be required to submit the following information for analysis of airspace obstructions in relation to WCC ~~20.80.675~~: mean sea level (MSL) of adjacent airports; MSL of proposed site; Euclidean distance from adjacent airports to proposed site; total elevation/height of SWES/WES structure.
- (3) All SWES/WES electrical systems shall comply with requirements per the Washington State Department of Labor and Industries and the current adopted edition of the National Electrical Code (NEC) when and where applicable.
- (4) All SWES/WES with the intention to tie to their respective utility provider's grid system shall meet the requirements of Chapter 80.60 RCW, Net Metering of Electricity.

### Chapter 20.97 DEFINITIONS

*Editor's note: These definitions should be placed in alphabetical order within 20.97, and all other numbers identifying definitions should be deleted.*

"Decibel" means a unit of measure of sound pressure.

"dB(a)" means A-weighted sound pressure scale.

"dB(c)" means C-weighted sound pressure scale.

"Flicker" or "shadow flicker" means the moving shadow cast by the rotating blades of a SWES/WES, or any intermittent, repetitive, or rhythmic lighting effect that is a direct result of rotating SWES/WES blades.

"Flicker analysis" means a study showing the duration and location of flicker potential.

20.97.162 Grade plane. As defined and illustrated in the definition of "building height." See WCC 20.97.040 and Figures 20.97.040 A and 20.97.040 B.

"Hub height" means the distance from the ground to the center axis of the rotor.

"Qualified independent acoustical consultant" means a private, third-party individual with full membership in the Institute of Noise Control Engineers (INCE), or other demonstrated acoustical engineering certification.

"Rotor" means a system of airfoils designed to provide a reaction force relative to the movement of the surrounding air. The rotor is connected to a hub that rotates around an axis.

"Total height of S/WES structure" means the distance measured from the grade plane (as defined and illustrated in the definition of "building height," WCC Chapter 20.97) to the tip of the SWES/WES rotor blade extended to its highest point. The support tower structure may be freestanding, guyed, or a monopole.

"Tower height" means the distance measured from the grade plane (as defined and illustrated in the definition of "building height," WCC Chapter 20.97) to the hub height of the wind turbine. This structure may be freestanding, guyed, or a monopole.

"Upwind turbine design" means a SWES/WES that has rotors and towers aligned such that the wind encounters the rotors before the tower. The tower will always be downwind of the rotors.

"Wind energy system (WES)" means one or more wind energy conversion systems with a rated output greater than 10050 kW consisting of: wind turbine, tower, base, and associated control or conversion electronics, as well as anchors, guy cables, and hardware.

*Editor's note: The following amendments make no policy changes. They're only fixing the references to definitions given that definitions will no longer have unique identifying numbers.*

### Chapter 3.46 AFFORDABLE HOUSING INCENTIVE FUND

#### 3.46.030 Definitions.

*Editor's note: The following refers to footnote 1 of "Low-income housing" definition*

<sup>1</sup> See also definition of "low-income housing" as codified in WCC [Chapter 20.97-221](#).

**Commented [CES18]:** Definitions moved from 20.14.020 (except those that already exist). This is something staff has been slowly doing as we bring amendments forward, with the goal of eventually having all definitions in one place.

To do: need to make sure the ordinance itself has a clause in it to delete all the numbering system from 20.97.

**Commented [MD19]:** To be consistent with the Department of Energy's definition of small wind turbine (<https://windexchange.energy.gov/small-wind-guidebook#practical>)

## Chapter 20.17 TEMPORARY HOMELESS FACILITIES

### 20.17.060 Requirements for temporary homeless facilities.

(...)

- (3) A temporary homeless facility shall comply with the applicable regulations of this title, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined ~~by~~ [in](#) WCC [Chapter 20.97.217](#).

## Chapter 20.20 URBAN RESIDENTIAL (UR) DISTRICT

### 20.20.130 Administrative approval uses.

(...)

.135 One private, noncommercial, recreational vehicle or park model trailer and one accessory guest RV per lot within pre-existing recreational subdivisions of the Foothills Subarea, as listed in [the definition of "recreational subdivision" in WCC Chapter 20.97.337](#); provided, that the following minimum requirements and standards are met and/or followed:

(...)

## Chapter 20.32 RESIDENTIAL RURAL (RR) DISTRICT

### 20.32.130 Administrative approval uses.

(...)

.134 One private, noncommercial, recreational vehicle or park model trailer and one accessory guest RV per lot within designated rural communities in the Foothills Subarea, as listed in [the definition of "recreational subdivision" in WCC Chapter 20.97.337](#); provided, that the following minimum requirements and standards are met and/or followed:

(...)

### 20.32.315 Reserve area.

- (3) An easement on the subdivision plat shall establish a reserve area ~~(per its~~ [the definition in WCC Chapter 20.97.344](#)) that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253.

(...)

## Chapter 20.34 RURAL RESIDENTIAL-ISLAND (RR-I) DISTRICT

### 20.34.050 Permitted uses.

(...)

.057 Family day care homes subject to the requirements of ~~WCC 20.97.180~~ [the definition of](#) ~~for~~ home occupations [\(see WCC Chapter 20.97\)](#).

### 20.34.315 Reserve area.

- (3) An easement on the subdivision plat shall establish a reserve area per the definition in WCC [Chapter 20.97.344](#) that is protected in perpetuity so long as it is not within an urban growth area. The

minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253.

(...)

### Chapter 20.36 RURAL (R) DISTRICT

#### 20.36.130 Administrative approval uses.

(...)

.136 In R5A and R10A zoning districts, the processing of agricultural products that originate from the permitted uses in WCC 20.40.050, provided the following criteria are met:

(...)

- (4) The facility does not exceed 10,000 square feet in proposed and existing buildings (as defined ~~by in~~ WCC ~~Chapter 20.97.035~~) devoted to agricultural processing.

#### 20.36.150 Conditional uses.

(...)

.163 In R5A and R10A zoning districts, the processing of agricultural products that originate from the permitted uses in WCC 20.40.050, provided the following criteria are met:

(...)

- (4) The facility exceeds 10,000 square feet in proposed and existing buildings (as defined by WCC 20.97.035) devoted to agricultural processing.

#### 20.36.315 Reserve area.<sup>2</sup>

- (1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC ~~Chapter 20.97.344~~ that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.36.253.

(...)

### Chapter 20.37 POINT ROBERTS TRANSITIONAL ZONE (TZ) DISTRICT

#### 20.37.320 Open space reserve area.

.321 For the purposes of this title, an “open space reserve area” shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of “open space” ~~pursuant to found in~~ WCC ~~Chapter 20.97.275~~.

(...)

### Chapter 20.40 AGRICULTURE (AG) DISTRICT

#### 20.40.130 Administrative approval uses.

(...)

.139 Packinghouses, ~~as identified in WCC 20.97.282.1~~, and slaughterhouses, ~~as identified-defined~~ in WCC ~~Chapter 20.97.423.1~~, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

(...)

(2) The facility is an accessory use, as identified in WCC [Chapter 20.97-005](#), "Accessory use."

(...)

**20.40.150 Conditional uses.**

(...)

**.164** Packinghouses, as identified in WCC 20.97.282.1, and slaughterhouses as identified in WCC [Chapter 20.97-423-1](#), which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

(...)

(3) The facility is an accessory use, as identified in WCC [Chapter 20.97-005](#), "Accessory use."

**Chapter 20.51 LAKE WHATCOM WATERSHED OVERLAY DISTRICT**

**20.51.330 Open space reserve area.**

(1) For purposes of this title, an "open space reserve area" shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of "open space" pursuant to WCC [Chapter 20.97-275](#).

**20.51.410 Seasonal clearing activity limitations.**

(...)

(2) Clearing activity, as defined in WCC [Chapter 20.97-054](#), or forest practices regulated by Whatcom County that will result in land disturbance exceeding 500 square feet shall be prohibited from October 1<sup>st</sup> through May 31<sup>st</sup>; provided, that the director may approve an exemption to this requirement for the following activities:

(...)

**Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT**

**20.68.150 Conditional uses.**

(...)

**.153** Expansion of existing fossil fuel refineries. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that meets any one of the following applicable thresholds:

(...)

(1) Cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer in accordance with [the definition of "maximum transshipment capacity" found in WCC Chapter 20.97-230-1](#); or

(...)

**.154** Expansion of existing fossil fuel transshipment facilities. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day, based upon an evaluation conducted by a licensed

professional engineer in accordance with [the definition of “maximum transshipment capacity” found in WCC Chapter 20.97-230-1.](#)

### **Chapter 20.71 WATER RESOURCE PROTECTION OVERLAY DISTRICT**

#### **20.71.352 Open space reserve area. (Adopted by reference in WCCP Chapter 2.)**

(2) For purposes of this title, an “open space reserve area” shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of “open space” ~~pursuant to in~~ [WCC Chapter 20.97-275.](#)

(...)

### **Chapter 20.76 FOREST PRACTICES**

#### **20.76.110 Conversion option harvest plan (COHP).**

(1) Optional Process. As an alternative to applying for a forest practices permit under WCC 20.76.100, an applicant may choose to submit an application for a conversion option harvest plan (COHP), as defined in WCC [Chapter 20.97-086](#), that, if approved, may preserve the landowner’s option to convert forest land to a noncommercial forest use without subjecting the site to the six-year development moratorium in WCC 20.76.220.

(...)

### **Chapter 20.78 TRANSPORTATION CONCURRENCY MANAGEMENT**

#### **20.78.120 Definitions.**

(...)

(10) “Development permit” means any order, permit or other official action of the ~~e~~County granting, or granting with conditions, an application for development ~~as defined by WCC 20.97-099 which that~~ authorizes the commencement of development activity.

### **Chapter 20.80 SUPPLEMENTARY REQUIREMENTS**

#### **20.80.384 Sign, off-premises advertising.**

*Deleted editorially. (See WCC [Chapter 20.97-384.](#))*

#### **20.80.410 Signs – General provisions – Applicable to all districts.**

(...)

(5) Signs shall not depict or describe “specified sexual activities” or “specified anatomical areas” as defined in WCC [Chapter 20.97-008.](#)

(...)

#### **20.80.580 Parking space requirements.**

For the purpose of this ~~ordinance~~[chapter](#), the following parking space requirements shall apply (See also WCC [Chapter 20.97-140](#)):

(...)



**20.80.680 Unsuitable land.**

Land ~~which that~~ is unsuitable for the development of permitted, accessory, or conditional uses as defined by WCC ~~Chapter 20.97.443~~ shall not be developed unless adequate safeguards are formulated by the developer and approved by the ~~zoning administrator~~ Director. The safeguards shall be based on technical data and/or professional review as deemed necessary by the ~~Director~~ administrator. If no adequate safeguards are available, the unsuitable land area shall be retained for agricultural, forestry or open space purposes.

**20.80.805 Animal units.**

The number of animal units which are permissible in those zone districts that refer to this section shall be consistent with the following standards:

- (1) Animal units shall be computed as set forth in WCC ~~Chapter 20.97.015~~; provided, that ponies and horses under one year, calves under six months, and sheep, goats and pigs under three months shall not be included when computing animal units.

(...)

## Chapter 20.82 PUBLIC UTILITIES

**20.82.030 Conditional uses.**

The following uses shall require a conditional use permit or major project permit and shall be subject to a threshold determination in accordance with ~~the Whatcom County SEPA Ordinance~~ WCC Chapter 16.08:

(...)

- (3) New water lines with a nominal pipe size greater than eight inches except for the following, which are permitted outright:

(...)

- (b) New water lines outside urban growth areas or limited areas of more intensive rural development (LAMIRDs) in conformance with a state approved water comprehensive plan pursuant to RCW 43.20.260 and consistent with the Whatcom County Comprehensive Plan, so long as they are water transmission lines ~~(as defined in~~ WCC Chapter 20.97.452), or provide service at an intensity historically and typically found in rural areas, per RCW 36.70A.030(17), including but not limited to agricultural uses. Water service for uses or densities not permitted in rural or resource areas shall not be extended or expanded outside urban growth areas or limited areas of more intensive rural development (LAMIRDs), except where necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development, per RCW 36.70A.110(4).

## 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 ~~Chapter 20.97.321~~. 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.

(...)

**22.05.020 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, 22.05.160, 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
(...)									
Lot of Record/Lot Consolidation	20.83 and 20.97-220		√					Director	Hearing Examiner
(...)									

DRAFT