



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham WA 98226

AGENDA

July 8, 2021

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

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Meeting Minutes for June 10th and June 24th
- PLN2021-00001 - Proposed amendments to Whatcom County Title 20 (Zoning) to allow Battery Energy Storage Systems in several zoning designations.
 - Work Session & Public Hearing
- PLN2020-00004 - Proposed amendment to Comprehensive Plan Map and Whatcom County Title 20 (Zoning) code for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest.
 - Work Session & Public Hearing
- PLN2019-00005 - Proposed amendments to Whatcom County Title 20 (Zoning) to modify the Density Credits Chapter.
 - Work Session & Public Hearing
- Unfinished Business
- Adjournment

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

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

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

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

Upcoming Meeting Topics

- Site-Specific Zoning Code Text and Map Amendments
- Temporary Homeless Facilities Code Amendments
- Cannabis Code Amendments

Pending Items Commissioners would like to address

- Code related implications of climate modeling

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



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 10, 2021**

Public Hearing and Work Session

1

Call to Order

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

Roll Call

Present: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Stephen Jackson, Kimberley Lund, Dominic Mocerì, Natalie McClendon

Absent: Jon Maberry

Staff Present: Josh Fleischmann, Mark Personius, and Tammy Axlund

Department Update

Mark Personius, Director of Planning and Development Services (PDS), gave an overview of the schedule of agenda items for the next few meetings, and detailed potential plans for re-opening as the Governor lifts restrictions from the COVID-19 pandemic. PDS plans to re-open for appointments only, on July 1st. The Director noted that the Planning Commission will continue to hold remote meetings at least until fall.

Open Session Public Comment

Kyler Danielson and Mark Ambler provided public comment.

Commissioner Comments

Commissioner McClendon provided an update on the Public Participation Ad Hoc Committee questionnaire that was distributed to County staff. The deadline for staff to respond is Friday, June 11th.

Approval of Meeting Minutes

Timestamp: 12:22

Commissioner Bartel moved to approve the meeting minutes from May 27, 2021.

Commissioner Lund seconded.

Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Jackson, Lund, McClendon, Mocerì; Abstain-Hansen; (Ayes-7; Nays-0; Abstain-1). The motion carried.

PLN2019-00010 - Surface Mining and Pipeline Buffer

Josh Fleischmann, of Planning and Development Services (PDS), shared a brief PowerPoint to provide an overview of PLN2019-00010 - Surface Mining and Pipeline Buffer, and responded to Commissioners' questions.

Timestamp: 20:10

a) Public Hearing Regarding Surface Mining and Pipeline Buffer

Carl Weimer and Wendy Harris provided public comment. Carl Weimer and staff responded to Commissioners' questions.



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 10, 2021**

Public Hearing and Work Session

2

b) Work Session

In addition to the language proposed by the Surface Mining Advisory Committee, and contained in the staff memo for WCC20.73.153(9), commissioners reviewed and discussed a recommendation brought forth during the public hearing with regards to adding "surface mining" to WCC 20.81.030.A.2 Development notice when adjacent to transmission pipeline.

Timestamp: 1:11:06

Commissioner Mocerì moved to approve the language provided by staff for WCC 20.73.150, and add "Surface Mining" to WCC 20.81.130A to read: "Land Divisions, High-Consequence Land Uses, Essential Public Facilities and Surface Mining"

Commissioner McClendon seconded.

Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Hansen, Jackson, Lund, McClendon, Mocerì; (Ayes-8; Nays-0; Abstain-0). The motion carried.

By consensus, the Commission decided to include and approve the findings of fact proposed in the staff report.

Timestamp: 1:14:17

PLN2019-00011 - Surface Mining of Dry Meander Zones

Josh Fleischmann, presented this agenda item and responded to commissioners' questions.

Timestamp: 1:17:18

a) Public Hearing Regarding Surface Mining of Dry Meander Zones

Wendy Harris provided public comment.

b) Work Session

Staff indicated that no action is needed because this was considered and adopted as part of the recent Shoreline Management Program update. There will be a finding in the record that a separate hearing was held as part of the Mineral Resource Land Amendment discussions, and no further action was taken.

Timestamp: 1:23:49

PLN2017-00004 - Countywide review of Designated Mineral Resource Lands (MRL)

Josh Fleischmann provided background on this item and read the draft motion which was prepared in response to the Commission's request during the May 27th meeting. Staff then responded to commissioners' questions.

Timestamp: 1:35:28

Commissioner McClendon moved to add the word "considering" after "recommends" in the last sentence of the motion proposed by staff.

Commissioner Hansen seconded.

Commissioners discussed the motion.



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 10, 2021**

Public Hearing and Work Session

3

Roll Call Vote: Ayes-Bartel, Deshmane, Hansen, Jackson, Lund, McClendon, Moceri; Nays- Barton (Ayes-7; Nays-1; Abstain-0). The motion carried.

Timestamp: 1:45:39

Commissioner McClendon moved to approve the motion recommended by staff, as amended.

Commissioner Lund seconded.

The amended motion reads: "After holding 2 work sessions and accepting public comment as part of the work sessions on the countywide review of Designated Mineral Resource Lands, the Planning Commission recommends the County Council request Planning and Development Services to continue processing PLN2017-00004, limiting the scope of review to the Surface Mining Advisory Committee recommendation within 1/2 mile of existing Designated MRLs. Further, the Planning Commission recommends considering allowing for landowners to opt out of MRL Designation process proposed through PLN2017-00004."

Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Hansen, Jackson, Lund, McClendon, Moceri; (Ayes-8; Nays-0; Abstain-0). The motion carried.

Adjournment

The meeting was adjourned at 8:19 p.m.

Minutes prepared by Tammy Axlund.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Kelvin Barton, Chair

Tammy Axlund, Secretary



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 24, 2021**

Public Hearing and Work Session

1

Call to Order

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

Roll Call

Present: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Kimberley Lund, Jon Maberry, Dominic Mocer, Natalie McClendon

Absent: Stephen Jackson

Staff Present: Amy Keenan, Cliff Strong, Mark Personius, and Tammy Axlund

Department Update

Mark Personius, Director of Planning and Development Services (PDS), announced that next Tuesday, the latest draft of the Cherry Point amendments for both the development regulations and the Comprehensive Plan will be brought forward to County Council Committee of the Whole. If Council approves this version of the amendments, we will set a date for Public Hearing in July and for final adoption.

The Planning Commission's recommended amendments to Mineral Resource Lands will be introduced in the Natural Resources Committee on Tuesday morning.

We have not yet been informed by the Prosecuting Attorney as to when we will be able to reinstate in-person Planning Commission meetings. County Council recently discussed this, but did not move forward on making any changes. It is unlikely we'll know more until July 1st, when the Governor is expected to issue a new order easing restrictions.

Open Session Public Comment

There was no public comment.

Commissioner Comments

Commissioner McClendon updated the group on the continuing progress of the Public Participation Ad Hoc Committee. They received approximately 150 staff responses to the survey they sent out. The next step is to reword the survey questions and send the questionnaire to board and commission members in July.

Commissioner Hansen advised that he had another commitment and would need to leave the meeting around 7:30 p.m.

Affordable Housing Code Amendments

Timestamp: 10:35

Staff Report

Cliff Strong, PDS Senior Planner, introduced the topic and advised that Amy Keenan, PDS Senior Planner had also joined the meeting and would be available for questions. He then provided background information as to why PDS is asking the Planning



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 24, 2021**

Public Hearing and Work Session

2

Commission to consider regulations for tiny homes, and whether to allow duplexes in urban growth areas when developed through a planned unit development. Mr. Strong described the four types of tiny homes and where they are currently allowed, then provided a proposal based on the types of tiny homes corresponding with the home types to which they are analogous. He described recommended changes to the Whatcom County Code.

Work Session

Commissioners discussed the proposed code amendments, and staff responded to their questions.

Timestamp: 42:30

Public Hearing

The following provided public comment

Todd McKellips
Gwyn Howat

R. Perry Eskridge
Zack Giffin

Jesse Rasmussen

Timestamp 1:05:18

Deliberation and Decision

Commissioners continued discussion.

Timestamp: 1:27:21

Commissioner Lund moved to accept the code amendments and finding of fact, with the understanding that staff may be working with some additional outside information before they bring this forth to the County Council

Commissioner Mocerì seconded.

Roll Call Vote: Ayes-Bartel, Barton, Deshmane, Lund, Maberry, McClendon, Mocerì; (Ayes-7; Nays-0; Abstain-0). The motion carried.

Adjournment

The meeting was adjourned at 8:00 p.m.

Minutes prepared by Tammy Axlund.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Kelvin Barton, Chair

Tammy Axlund, Secretary

Whatcom County Planning & Development Services Staff Report

Battery Energy Storage Systems Zoning Amendment

I. FILE INFORMATION

File #: PLN2021-00001

File Name: Title 20 Zoning Code Amendments – Battery Energy Storage Systems

Applicants: NextEra Resources Development, LLC, attn: Keleigh Wright

Summary of Request: Amend Whatcom County Code (WCC) Title 20 to allow Battery Energy Storage Systems (BESS).

Location: Countywide.

II. BACKGROUND

Battery energy storage systems (BESS) are rechargeable battery systems that store energy from the electrical grid and then sell energy back to the energy provider when needed or provide energy directly to a home or business. Excess energy from the grid is stored in the BESS during times of low usage and is discharged from the system at times of high usage. BESS can also increase the resiliency of the energy grid in the nearby communities by providing backup power during outages. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

As this is a new technology not anticipated when our code was written, Battery Energy Storage Systems are not a specified use in Title 20. Since the WCC is structured such that any use not identified as permissible is prohibited¹, a code amendment is necessary in order to allow the use in Whatcom County.

III. CODE AMENDMENTS

NextEra Resources Development, LLC, requests that WCC Title 20 (Zoning) be amended to allow Battery Energy Storage Systems (BESS) as a conditional use in the Rural zone (see Attachment C).

However, after consideration, and in order to accommodate future anticipated BESS facilities, PDS has expanded on NextEra's request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses. Because BESS is a new technology that staff believes will become more and more prevalent, we propose that:

- BESS of any storage capacity be a permitted use in the Light Impact Industrial (LII) and Heavy Impact Industrial (HII) districts.

¹ Each district has a "Prohibited Uses" section reading "All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited" (e.g., WCC 20.36.200).

- BESS of less than 5 MWs of storage capacity be allowed with an Administrative Approval Use Permit in the Residential Rural (RR), Residential Rural Island (RRI), and Rural (R) zoning districts, with setback, screening, lighting, and noise standards.
- BESS of 5 MW or more of storage capacity and within one (1) mile of an existing electrical substation be allowed in the Rural (R) district as a Conditional Use, with setback, screening, lighting, and noise standards. Proposed BESS of 5 MW or more storage capacity that are more than one (1) mile of an existing electrical substation will be prohibited.
- A definition of BESS be added in WCC 20.97 to clarify the use.

Please note that any project that requires an administrative use permit approval is required to send a notice of application to surrounding property owners within 300 (if within a UGA) or 1,000 feet (outside of a UGA) so that they may comment on the project. Similarly, any project that requires a conditional use permit is required to send notice to surrounding property owners within the same distances, and must also have a public hearing before the Hearing Examiner. Such projects must also meet the approval criteria for Conditional Use Permits found in WCC 22.05.026(3). Under either process an application could be approved subject to conditions or denied.

Also note that the lot coverage limit in the Rural zone (WCC 20.36.450) is 5,000 square feet or 20% of the total lot area, whichever is greater, not to exceed 25,000 square feet (unless specified otherwise). Staff proposes that the maximum lot coverage for BESS with more than 5 MW of storage capacity be up to 40% of the total lot area, with no limit on structure (or combination of structures) size. Amending the lot coverage limit in the Rural zone for BESS will allow larger facilities near existing substations in the Rural zone with conditional use permit approval. BESS of 5 MW or less of storage capacity are smaller in size and should not exceed the existing lot coverage limit in any of the zones where it would be allowed with administrative use permit approval.

NextEra has reviewed staff's alternative proposal and is in agreement with this approach.

IV. COMPREHENSIVE PLAN EVALUATION

The Comprehensive Plan contains four policies that support the development and use of new utility and information technologies.

Policy 5B-1: Facilitate the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.

Policy 5B-2: Support development and use of new technologies.

Policy 5F-1: Periodically review existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

Policy 7C-3: Work with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

Staff found no policies with which the proposed amendments would be inconsistent.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 2, 2021, for their 60-day review.
4. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
5. The County Council held a duly noticed public hearing on the proposed amendments on **TBD**, 2021.
6. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
7. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
8. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.
9. The amendments are consistent with Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

VI. PROPOSED CONCLUSIONS

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

VII. RECOMMENDATION

Planning and Development Services recommends that the Planning Commission forwards to the County Council the proposed amendments as shown in Exhibit A with a recommendation of approval, based on the Findings of Fact and Conclusions provided in this staff report.

ATTACHMENTS

- A. Draft Code Amendments
- B. Draft Ordinance
- C. Code Amendment Application

EXHIBIT A

Proposed Battery Energy Storage Systems (BESS)

Amendments to the Whatcom County Code

WCC Title 20 Zoning

Chapter 20.32 RESIDENTIAL RURAL (RR) DISTRICT

.....

20.32.130 Administrative approval uses.

.....

.136 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and the public roads.
- (4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

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Chapter 20.34 RESIDENTIAL RURAL-ISLAND (RRI) DISTRICT

.....

20.34.130 Administrative approval uses.

.....

.135 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and public roads.

(4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

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**Chapter 20.36
RURAL (R) DISTRICT**

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20.36.130 Administrative approval uses.

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.139 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and public roads.
- (4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

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20.36.150 Conditional Uses.

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.198 Battery energy storage systems with more than 5 MW of storage capacity, provided:

- (1) The facility is located within one mile of an existing electrical substation.
- (2) The facility shall be no closer than 25 feet from any property line.
- (3) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (4) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and the public roads.
- (5) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

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20.36.450 Lot coverage (Adopted by reference in WCCP Chapter 2.)

~~Except as follows, no~~ structure or combination of structures shall occupy or cover more than 5,000 square feet or 20% of the total lot area, whichever is greater, ~~of the total lot area~~, not to exceed 25,000 square feet, except as follows:-

1. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35% of a lot, with no limitation on structure (or combination of structures) size.
2. Battery energy storage systems with more than 5 MW of storage capacity approved pursuant to WCC 20.36.198 shall occupy or cover no more than 40% of the total lot area, with no limitation on structure (or combination of structures) size.
- ~~1-3.~~ Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

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Chapter 20.66
LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

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20.66.050 Permitted uses.

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.095 Battery energy storage systems of any storage capacity.

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Chapter 20.68
HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

.....

20.68.050 Permitted uses.

.....

.109 Battery energy storage systems of any storage capacity.

.....

Chapter 20.82
PUBLIC UTILITIES

20.82.040 Other applicable regulations

- (1) Solid waste facilities and large scale electrical generating plants are not conditional uses under the name “public utilities” but are restricted to where they have been named as uses.
- (2) The provisions of this chapter shall not apply to wireless communications services and facilities which are regulated under Chapter 20.13 WCC.
- (3) The provisions of this chapter shall not apply to Battery Energy Storage Systems (BESS), which are regulated under the applicable zoning district.

Chapter 20.97
DEFINITIONS

.....

20.97.026 Battery Energy Storage System (BESS).

“Battery energy storage system” (BESS) means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, on-site switchyard, inverters, associated interconnection transmission line, and supervisory control and data acquisition system.

PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING TO ALLOW AND REGULATE
BATTERY ENERGY STORAGE SYSTEMS**

WHEREAS, NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems (BESS).

WHEREAS, as BESS is a new technology not anticipated when our code was written, BESS are not a specified use in Title 20 and thus prohibited and a code amendment is necessary to allow such use; and,

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

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

FINDINGS OF FACT

1. NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems as a conditional use in the Rural district.
2. After consideration of the application, and in order to accommodate future anticipated BESS facilities, PDS, has expanded on NextEra's request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses, to which the applicant agrees.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 2, 2021, for their 60-day review.
5. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
6. The County Council held a duly noticed public hearing on the proposed amendments on _____, 2021.
7. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
8. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
9. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

10. The amendments are consistent with Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

CONCLUSIONS

1. The amendments to the zoning code are the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

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

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this _____ day of _____, 2021.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED as to form:

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Our **Energy Storage** Business



A Promising Future For Energy Storage

Technology offers flexibility, value in today's energy market

Meeting today's energy challenges is complicated. The power infrastructure must be able to balance supply and demand instantaneously while taking into account the impacts of intermittent renewable energy. Consumers are also looking for energy services and products that provide flexibility and value in the areas of renewable energy, grid reliability and peaking power.

NextEra Energy Resources is helping meet these needs through battery energy storage technology, which is providing a promising way to store electrical energy so it can be available to meet demand whenever needed. While there are many energy storage technologies, NextEra Energy Resources has focused on the use of batteries as costs have declined, but is continuing to evaluate other storage technologies.

“(Our) company expects to invest more than \$1 billion in storage in 2021, which would be the largest-ever annual battery storage investment by any power company in history.”

*Jim Robo, Chairman and CEO, NextEra Energy,
April 22, 2020*

Energy storage delivers advantages to the power grid and our customers

What makes energy storage attractive is that it allows energy to be delivered instantly, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, integrating renewable resources and helping investment decisions.

- » **Grid enhancement.** Energy storage can balance load on the power system grid by moving energy when demands are low to times when demands are high. The technology also allows for a seamless switch between power sources and protects equipment by controlling voltage and frequency.
- » **Renewable resources.** Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.
- » **Electrical system investments.** By reducing the load on congested transmission and distribution systems, energy storage may defer expensive upgrades. In some cases, storage may also reduce new investment in conventional resources, such as adding generating plants to meet systemwide peak load.



In 2018, NextEra Energy Resources' 20-megawatt (MW) Pinal Central Solar Energy Center in Arizona became the company's first project to pair solar energy with an on-site, state-of-the-art 10-MW battery storage system (shown in cover photo, lower right, February 2020). More than 50% of the company's new solar projects in 2019 also included a storage component. Renewable energy projects, coupled with battery storage, provide power to customers long after the sun goes down and demand for electricity goes up.



NextEra Energy Resources employees at the 16.2-MW Casco Bay Energy Storage Facility in Maine (April 2017). The company is developing additional energy storage facilities across North America.

Projects require little land, provide many benefits

Energy storage projects do not require a large area for development, are scalable in size and can be located in many places. NextEra Energy Resources generally seeks to site a project as close as possible to existing electrical transmission or distribution infrastructure and often, close to an existing renewable project.

Other benefits of energy storage include no greenhouse gases or other air pollutants, no use of water to generate electricity, and a renewable supply of energy.

Interest in energy storage is growing

The growing interest in energy storage is being driven by a number of factors, including:

- » Reductions in technology costs.
- » The rapid development of intermittent renewable energy resources.
- » The evaluation of new policy initiatives by states.
- » Regulatory changes.

For example, the Federal Energy Regulatory Commission has mandated policy changes in the frequency regulation market that have helped spur the use of energy storage for this purpose. Certain markets are now encouraging utilities to use energy storage to manage the intermittent energy that flows into the grid and to supply the grid with energy during times of peak use.

Costs are expected to decline

While emerging technology costs tend to be higher and therefore less competitive during the early evolution phase, technological efficiencies, improved manufacturing productivity and economies of scale help lower cost over time. As batteries gain wider industry adoption, prices are expected to decrease further.

Energy storage is safe, reliable

Safety is always a top priority in NextEra Energy Resources' operations, and energy storage systems are no exception.

Our energy storage systems are safe and reliable. Overall, energy storage has been a part of the U.S. electric system since the 1930s. Today, it makes up approximately 2% of the nation's generation capacity, according to the Energy Storage Association. The safety record of the industry is similar to or better than other forms of power generation or distribution.

NextEra Energy Resources is experienced in energy storage

Our team of specialists has spent years researching energy storage technologies, applications and use cases, leading to two demonstration projects in 2012 and 2013.

Today, NextEra Energy Resources has more than 145 MW of operational energy storage, including the Lee DeKalb Energy Storage Facility in Illinois and the Blue Summit Energy Storage Facility in Texas. These facilities are being used for frequency regulation. Traditionally, fossil and hydroelectric power plants have been used for frequency regulation. Now, batteries can also accomplish this task more efficiently.

In addition to the growth of operational facilities, the company has a robust pipeline of development projects across the U.S. and Canada.



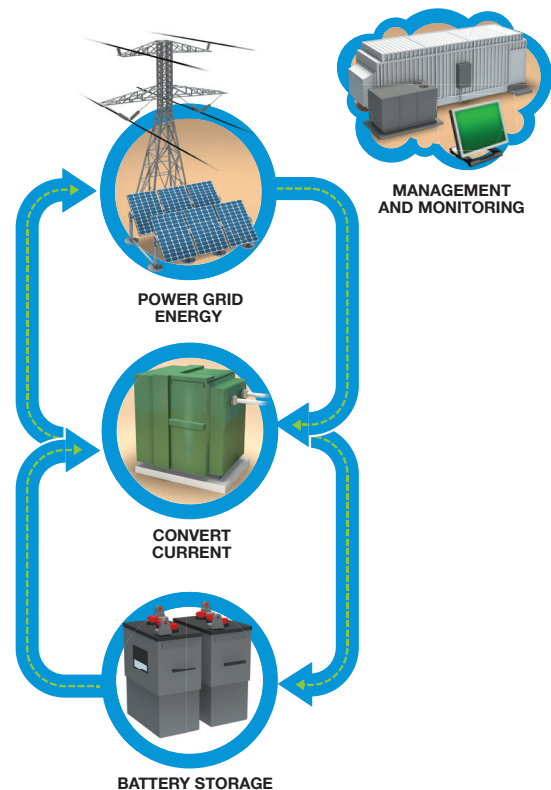
Batteries are placed into removable racks similar to a computer server. There are also monitoring, control and power conversion systems, as well as cooling and fire suppression systems.



NextEra Energy Resources' Minuteman Energy Storage Facility in Massachusetts went into service in 2019. It provides 5 MW of energy storage.

How energy storage systems work

- » A battery management system monitors the individual cells and controls the voltage, temperature and current for safe, reliable transfer of energy. The system automatically shuts off if the batteries are operating outside of predefined parameters.
- » A computerized monitoring system provides up-to-date weather forecasts, power prices, historical electrical use, the amount of charge remaining in the batteries and when to use the energy storage system.
- » Energy from the power grid or from renewable energy sources is delivered via a bidirectional inverter, which converts the energy from alternating current (AC) into direct current (DC). Today's batteries can only store DC. This energy goes into an array of batteries that is typically housed within a battery container or a building structure.
- » When the energy is needed on the power system, the inverters are then used again, but this time to convert the DC from the batteries into AC. Once the power has been transformed, it is stepped up in voltage and subsequently sent to an on-site substation or directly to a distribution or transmission line.
- » The electricity is then distributed to homes, schools, businesses and other consumers.



NextEra Energy Resources has a proven reputation for excellence

As the world's largest generator of renewable energy from the wind and the sun, NextEra Energy Resources has earned a reputation for excellence. Our scale, size and scope of services allow us to offer innovative energy solutions to customers, and energy storage is a natural extension of our development business.

By working with NextEra Energy Resources, customers can realize the monetary benefits of energy storage while mitigating technology complexity and vendor risk. With our significant purchasing power, we can buy energy storage equipment at the lowest possible costs. With our best-in-class development skills, we can also build customized storage solutions to meet customers' unique requirements.

Energy storage has the potential to be a game changer for the energy industry, and NextEra Energy Resources is a leader in the market.

NextEraEnergyResources.com

NextEra Energy Resources, LLC | 700 Universe Boulevard | Juno Beach, Florida 33408





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2020 SW 4th Avenue
Suite 300
Portland, OR 97201
T +1.503.235.5000
www.jacobs.com

December 28, 2020

Mr. Mark Personius
Director, Planning and Development Services
Whatcom County
5280 Northwest Drive
Bellingham, WA 98226

Subject: **NextEra Resources Development, LLC
Development Regulation Amendment Application
Battery Energy Storage Systems**

Mr. Personius:

On behalf of NextEra Resources Development, LLC, we respectfully submit the attached Development Regulation Amendment Application to request the County consider text amendments to the Whatcom County Code Title 20 (Zoning) including the Rural Zoning District WCC Chapter 20.36 for the creation of a land use permitting pathway for battery energy storage systems. The proposed text amendments are described in the attached materials, along with a demonstration of compliance with the Countywide Planning Policies and Comprehensive Plan.

We look forward to working with you and the Whatcom County Planning and Development Services on this text amendment request. If you have any initial questions, please do not hesitate to contact me at 503.200.0005 or Paul.Seilo@Jacobs.com.

Sincerely,

A handwritten signature in black ink that reads "Paul T. Seilo".

Paul Seilo, AICP
Senior Project Manager

Cc: Chris Powers/NextEra
Keleigh Wright/NextEra
Tim McMahan/NextEra
David Lawlor/NextEra
Erika Sawyer/Jacobs

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
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PDS@whatcomcounty.us



Mark Personius, AICP
Director

**Comprehensive Plan and/or
Development Regulation
Amendment Application**

Whatcom County Planning and Development Services	
Received	
Received by:	nsmith
12/29/2020	

REVISED
01/26/2021

Date Received: 12/29/2020 File #: PLN2021-00001

Please check one or more of the following amendment types:

- ☐ Comprehensive Plan Map
- ☐ Comprehensive Plan Text
- ☐ Development Regulation Map
- ☐ Development Regulation Text

This form should be used for proposed amendments to the following development regulations in the Whatcom County Code:

- Title 16 - Environment,
- Title 20 - Zoning,
- Title 21 - Land Division Regulations, and
- Title 23 - Shoreline Management Program.

Topic of Proposed Amendment:

A. General Information – All applicants must complete this section.

Applicant Name _____

Mailing Address: _____ City _____

State _____ Zip Code _____ Phone # () _____

Email _____

Agent/Contact Name: _____

Mailing Address: _____ City _____

State _____ Zip Code _____ Phone # () _____

Email _____

Please complete the questions below. Attach additional pages as needed

B. For Map Amendments

Parcel Information

Tax Parcel Number(s) (APN) _____

Total Acreage - Gross _____ Net: _____

Site Address _____

Township: _____ Range: _____ Section: _____ ¼ Section: _____

Owner Name _____

Mailing Address: _____ City _____

State _____ Zip Code _____ Phone # () _____

Email _____

1. Existing Comprehensive Plan Designation: _____

2. Existing Zoning Designation: _____

3. Proposed Comprehensive Plan Designation: _____

4. Proposed Zoning Designation: _____

5. The Present Use of the Property is:

6. The Intended Future Use of the Property is:

7. Surrounding Land Use:

8. Services:

Please provide the following information regarding the availability of services:

The site is currently served by: ☐ Sewer ☐ Septic

If sewer the purveyor is: _____

The site is currently served by: ☐ Public Water System ☐ Well

If public water the purveyor is: _____

The site is located on a: ☐ Public Road ☐ Private Road

Name of Road: _____

Fire District #: _____ Name: _____

School District #: _____ Name: _____

9. Transfer of Development Rights (TDRs):

Are TDRs required under section 20.89.050 of the Whatcom County Code?

☐ Yes ☐ No

If so, please explain how your proposal complies with the TDR requirements and/or how you qualify for modification/exceptions from the TDR requirements

C. For Text Amendments:

Identify the sections of the Comprehensive Plan and/or development regulation that you are proposing to change and provide the proposed wording.

D. For All Amendments:

1. Why is the amendment needed and being proposed?
2. How does the proposed amendment conform to the requirements of the Growth Management Act?
3. How is the proposed amendment consistent with the County-Wide Planning Policies for Whatcom County?

4. How is the proposed amendment consistent with the Whatcom County Comprehensive Plan?
5. If within an Urban Growth Area, how is the proposed amendment consistent with interlocal agreements between the County and the City?
6. What changed conditions or further studies indicate a need for the amendment?
7. How will the public interest be served by the amendment? Please address the factors identified below.
 - The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.
 - The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

- Anticipated impact upon designated agricultural, forest and mineral resource lands.

8. Does the amendment include or facilitate illegal spot zoning? ☐ Yes ☐ No
Please explain.

E. Supporting Information – Attach the Following:

- A. A vicinity map showing property lines, roads, existing and proposed Comprehensive Plan and Zoning designations. (This information is required for map amendments only).
- B. Mailing labels with names and mailing addresses of the owners of all property included within the area proposed for re-designation and:
 - For a map amendment within an existing urban growth area, mailing labels with the typed address of each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor.
 - For a map amendment outside existing urban growth areas, mailing

labels with the typed address of each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

- For map amendments that involve rezoning property to an Airport Operations District, mailing labels with the typed address of each property owner within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor.
- For map amendments that involve rezoning property to a Mineral Resource Land (MRL) designation, mailing labels with the typed address of each property owner within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

C. State Environmental Policy Act (SEPA) Checklist

- D. For Comprehensive Plan map amendments that propose to re-designate property to a MRL designation, a Comprehensive Plan MRL Application Supplement form is required.

F. Fees

Applicants pay a docketing fee when submitting an application and additional amendment application fees if the County Council decides to docket the application. The Whatcom County Code 22.10.020(3)(b) states that, when docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.

- A. Are you requesting that the County Council waive the application fees?
☐ Yes ☐ No

If so, please describe how the proposed amendment clearly benefits the community as a whole.

E. Authorization:

Signature of Applicant(s) or Agent:

Keleigh Wright Date: January 21, 2021

_____ Date: _____

_____ Date: _____

Attachment 1. Whatcom County Development Regulation Amendment Application Battery Energy Storage System

Parts A, E, F and G of the application are included on the preceding Whatcom County Development Regulation Amendment Application form. Part B does not apply as it is only applicable when a Map Amendment is proposed. This document includes information for Parts C and D of the application.

Part C. For Text Amendments:

Identify the sections of the Comprehensive Plan and/or development regulation that you are proposing to change and provide the proposed wording.

The proposal seeks to amend the Whatcom County Code (WCC) Definitions Chapter 20.97 by adding a definition for Battery Energy Storage System (BESS) and modifying the existing definition of a Public Utility; to amend the Rural (R) District zoning district (WCC Chapter 20.36) to add BESS as a conditional use and to increase the lot coverage allowance in the R district for BESS; and to add BESS as a conditional use in WCC Chapter 20.82 Public Utilities.

The underlined statements below indicate a proposed amendment to the WCC section to include this verbiage.

Chapter 20.97 Definitions

20.97.025 Battery Energy Storage System (BESS)

"Battery energy storage system" (BESS) means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, on-site switchyard, inverters, associated interconnection transmission line, and supervisory control and data acquisition system.

20.97.329.1 Public utility.

"Public utility" means a use owned or operated by a public or publicly licensed or franchised agency including energy uses proposed by an independent energy facility developer which provides vital public services such as telephone exchanges, electric generation and storage,

energy substations, radio and television stations, wireless communications services, gas and water regulation stations and other facilities of this nature. (Ord. 2004-014 § 2, 2004; Ord. 2000-006 § 2, 2000).

Chapter 20.36 Rural (R) District

20.36.150 Conditional uses.

.166 Battery energy storage systems.

20.36.450 Lot coverage (Adopted by reference in WCCP Chapter 2.)

Except as follows, no structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total lot area, not to exceed 25,000 square feet. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35 percent of a lot, with no limitation on structure (or combination of structures) size. **Battery energy storage system shall occupy or cover no more than 40 percent of a lot, with no limitation on structure (or combination of structures) size.** Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement. (Ord. 2019-033 Exh. A, 2019; Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 88-29, 1988).

Chapter 20.82 Public Utilities

20.82.030 Conditional uses.

(11) Battery energy storage systems operating at voltages greater than 55 kV (55,000 volts).

Part D. For All Amendments

1. Why is the amendment needed and being proposed?

Response: The text amendments are proposed to:

- (1) To promote the siting of battery energy storage systems (BESS) in a manner that is compatible with existing zoning districts, land uses, character of the surrounding area, and where BESS can be located adjacent to existing energy and utility infrastructure;
- (2) To increase the resiliency of the energy grid in the nearby communities of Bellingham, Ferndale, and the greater Whatcom County area; and
- (3) To provide alternatives to store and deploy energy in an efficient manner.

A Promising Future For Battery Energy Storage Systems

Technology offers flexibility and value in today's energy market. Meeting today's energy challenges is complicated. Energy infrastructure must be able to balance supply and demand instantaneously while taking into account the impacts of intermittent renewable energy. Consumers are also looking for energy services and products that provide flexibility and value in the areas of renewable energy, grid reliability and peaking power. Battery energy storage system technology is providing a promising way to store electrical energy so it can be available to meet demand whenever needed.

Energy storage delivers advantages to the power grid. What makes energy storage attractive is that it allows energy to be delivered instantly, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, integrating renewable resources and helping investment decisions.

- Grid enhancement. Energy storage can balance load on the power system grid by moving energy when demands are low to times when demands are high. The technology also allows for a seamless switch between power sources and protects equipment by controlling voltage and frequency.
- Renewable resources. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

- Electrical system investments. By reducing the load on congested transmission and distribution systems, energy storage may defer expensive upgrades. In some cases, storage may also reduce new investment in conventional resources, such as adding generating plants to meet systemwide peak load.

Projects require little land, provide many benefits. Energy storage projects do not require a large area for development, are scalable in size and can be located in many places. The optimum BESS siting is as close as possible to existing electrical transmission or distribution infrastructure and often, close to an existing renewable project. Other benefits of energy storage include no greenhouse gases or other air pollutants, no use of water to generate electricity, and a renewable supply of energy.

Interest in energy storage is growing. The growing interest in energy storage is being driven by a number of factors, including:

- Reductions in technology costs.
- The rapid development of intermittent renewable energy resources.
- The evaluation of new policy initiatives by states.
- Regulatory changes.

For example, the Federal Energy Regulatory Commission has mandated policy changes in the frequency regulation market that have helped spur the use of energy storage for this purpose. Certain markets are now encouraging utilities to use energy storage to manage the intermittent energy that flows into the grid and to supply the grid with energy during times of peak use.

Costs are expected to decline. While emerging technology costs tend to be higher and therefore less competitive during the early evolution phase, technological efficiencies, improved manufacturing productivity and economies of scale help lower cost over time. As batteries gain wider industry adoption, prices are expected to decrease further.

Energy storage is safe, reliable. Overall, energy storage has been a part of the U.S. electric system since the 1930s. Today, it makes up approximately 2% of the nation's generation capacity, according to the Energy Storage Association. The safety record of the industry is similar to or better than other forms of power generation or distribution.

2. How does the proposed amendment conform to the requirements of the Growth Management Act?

The proposed text amendments will help Whatcom County comply with Goal 12 of the Growth Management Act which is as follows under Revised Code of Washington (RCW) 36.70A.020:

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Response: Battery energy storage systems allow energy to be delivered instantly to the grid, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, so it remains adequate to support development. Battery energy storage systems balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high. Battery storage also reduces the load on congested transmission and distribution systems, and energy storage may defer expensive upgrades.

3. How is the proposed amendment consistent with the County-Wide Planning Policies for Whatcom County?

Response: The proposed text amendments to provide a land use permitting pathway for battery energy storage systems are consistent with the following Whatcom County Countywide Planning Policies (Whatcom County, 2016):

B. Urban Versus Rural Distinctions

3. Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial, industrial and intensive residential development greater than a rural development density. These areas should be clearly delineated, and not expanded beyond logical outer boundaries in accordance with RCW 36.70.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.

Response: The proposed text amendments are consistent with the Countywide Planning Policy B.3 for Urban Versus Rural Distinctions as infill battery energy storage systems in the rural zoning district may allow for the clustering of public utilities in manner that enhances energy efficiency and electrical grid stability, while still maintaining a rural character in surrounding areas.

I. Economic Development and Employment

8. Economic development should be encouraged that:

a. Does not adversely impact the environment;

b. Is consistent with community values stated in local comprehensive plans;

- c. Encourages development that provides jobs to county residents;*
- d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;*
- e. Promotes reinvestment in the local economy;*
- f. Supports retention and expansion of existing businesses.***

Response: The proposed text amendments are consistent with several of these economic development-related policies [8(a)(b) and (f)]. Battery energy storage systems provide energy efficiency and electrical grid stability on a relatively small footprint. Furthermore, battery energy storage systems do not generate greenhouse gases or other air pollutants, nor use water to generate electricity. The proposed amendments are consistent with the community values, to support electric energy supply for future economic growth within the County that is resilient to the impacts of climate change. Battery energy storage systems are a new technology for the County to store energy in a safe and reliable method that increases the resiliency of the energy grid. The emergence of battery energy storage systems supports the County's efforts to increase its energy options which supports current businesses and could be considered important for locational decisions by industries seeking to relocate or expand in the County.

11. Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the international border.

Response: The text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The clustering of energy generation facilities creates an orderly use of the land, establishes the infrastructure needed to support similar uses, and minimizes the potential for development in greenfield or environmentally sensitive areas that may be suitable for the preservation of land or other uses.

K. Siting of Public Facilities

1. As part of the comprehensive planning process, the county and the cities shall identify appropriate land for public facilities which meets the needs of the community, such as schools, recreation, transportation and utility corridors, human service facilities, and airport and other port facilities. In order to reduce land use conflicts, policies related to a design component shall be incorporated in the comprehensive plans.

Response: The Comprehensive Plan supports the identification of suitable lands within zoning designations that may support public facilities and utilities. The text amendments will allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. This is an efficient use of land as these clusters may create more orderly development and minimize environmental impacts by not clustering these uses. Energy efficiency and reliability are important considerations for locational decisions by industries seeking to relocate or expand in the County, thus supporting future growth and employment opportunities for the County.

5. Sharing of corridors for major utilities, trails and other transportation rights-of-way is encouraged when not in conflict with goals to protect wildlife, public health and safety.

Response: The text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The sharing of corridors for public utilities leads to uniform development and decreases the potential for land use conflicts. The text amendments allow for flexibility in siting battery energy storage systems in a manner that avoids and may preserve critical areas and protects wildlife. Battery energy storage systems have minimal conflict with public health as the technology does not release greenhouse gases or other air pollutants, and no water is required.

4. How is the proposed amendment consistent with the Whatcom County Comprehensive Plan?

Response: The proposed text amendments are consistent with the following Whatcom County Comprehensive Plan provisions:

Comprehensive Plan, Chapter Five. Utilities

Goal 5B: Support the Development and use of new utility and information technologies.

Response: Battery energy storage systems are consistent with this policy as the new and evolving technology fills in the energy generation gaps resulting from intermittent resources like wind and solar generation and can balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high.

Goal 5F: Identify and remove impediments to effective siting of necessary utility facilities.

Response: The proposed text amendments provide a land use permitting pathway for siting battery energy storage systems. The proposed text amendments provide a definition for this type of use and establish a process under which it can be approved as a conditional use. The proposed text amendments will provide for the orderly, safe and efficient siting of battery energy storage systems in Whatcom County.

Comprehensive Plan, Chapter Seven. Economics

Goal 7C: Ensure adequate infrastructure to support existing and future business development and evolving technology.

Response: Adequate infrastructure is a basic necessity for the reliable operation and expansion of existing and future businesses and the movement of goods and services. The emergence of battery energy storage systems supports the County's efforts to increase its energy options, and the use of battery storage technology will increase the resiliency of the local grid. This enhancement and reliability of the County's infrastructure is considered important for locational decisions by industries seeking to relocate or expand in the County, thereby supporting both existing and future business development.

5. If within an Urban Growth Area, how is the proposed amendment consistent with interlocal agreements between the County and the City?

Response: No specific project location is proposed.

6. What changed conditions or further studies indicate a need for the amendment?

Response: None.

7. How will the public interest be served by the amendment? Please address the factors identified below.

- *The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.*

Response: The proposed text amendments will not have a direct impact on population growth, although battery energy storage systems may indirectly lead to population, employment, and economic growth by enhancing the electrical grid, a basic necessity for the reliable operation and expansion of existing and future businesses. The emergence of battery energy storage systems supports the County's efforts to increase its energy options, and the use of battery storage technology will increase the resiliency of the local grid. The proposed text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The sharing of corridors for public utilities leads to uniform development and decreases the potential for land use conflicts. The text amendments allow for flexibility in siting battery energy storage systems in a manner that avoids and may preserve critical areas and protects wildlife.

- *The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.*

Response: The proposed text amendments will not affect the ability of service providers to provide adequate services and public facilities. Battery energy storage systems will actually enhance local energy efficiency and electrical grid. Battery energy storage systems allow energy to be delivered instantly to the grid, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, so it remains adequate to support development. Battery energy storage systems balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high. Battery storage also reduces the load on congested transmission and distribution systems, and energy storage may defer expensive upgrades.

- *Anticipated impact upon designated agricultural, forest and mineral resource lands.*

Response: The proposed text amendments will have minimal direct impacts on designated agricultural, forest or mineral resource lands. The text amendments will allow for siting battery

energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. This is an efficient use of land as these clusters may create more orderly development and minimize environmental impacts by not clustering these uses.

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

Memorandum

TO: Whatcom County Planning Commission

THROUGH: Mark Personius

FROM: Joshua Fleischmann

DATE: June 28, 2021

SUBJECT: PLN2020-00004 - Nooksack Falls Comp Plan Map/Zoning Code Amendments

This memo is intended to provide background on a docketed citizen initiated application to amend the Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest. The proposal affects approximately 66 acres of privately held lands on/near Wells Creek Road, off of State Route 542 (Mt. Baker Hwy).

The map amendment will amend the Mineral Resource Lands Comprehensive Plan Designation to Rural Forestry, to match the zoning district.

The zoning code amendment will include the Nooksack Falls exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone.

I look forward to discussing the merits of this application with you.

WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES STAFF REPORT

I. OVERVIEW

File # PLN2020-00004

File Name: RF - Nooksack Falls.

Applicant: Ali Taysi/ AVT Consulting

Owner: Excelsior Properties LLC & Excelsior Properties II LLC

Summary of Request: Remove the Nooksack Falls Area Exclave properties (3 tax parcels) from their current Mineral Resource Land (MRL) Comprehensive Plan designation, retaining the underlying Rural Forestry (RF) zoning designation. Add language to WCC 20.42.155 (RF conditional uses) to include the Nooksack Falls Area Exclave

Location: The site is located on Wells Creek Road, off Mt Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. Assessor's Parcel #'s 400831580150, 400831450200, 390806550550

Use of Subject Site: Presently used for recreation activities, including visiting Nooksack Falls, hiking, picnicking, wildlife viewing, etc. The property is also developed with a power generation facility, associated outbuildings and infrastructure, and a single-family residence.

Use of Surrounding Properties: Rural Forestry and Mount Baker-Snoqualmie National Forest

II. BACKGROUND

The subject property exists as an exclave within the M. Baker-Snoqualmie National Forest. Pursuant to the Planning Enabling Act (RCW 36.70.790) Whatcom County adopted an Interim Zoning Ordinance in July 1972 which included this exclave, as well as other fee lands within the National Forest, Wilderness and Recreation areas. The Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these fee lands within the Mt. Baker Snoqualmie National Forest. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and an underlying Rural Forestry (RF) zoning designation.

In the early 1900's, mining and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan and Zoning Code text amendments are in response to these changed circumstances.

III. ANALYSIS OF THE PROPOSED COMPREHENSIVE PLAN AMENDMENT

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that all of the following criteria are satisfied in order to approve the proposed Comprehensive Plan amendments.

- A. That the amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.**

Growth Management Act

The Growth Management Act (GMA) includes a planning goal to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)). Additionally, the GMA required counties to designate mineral resource lands that have long-term significance for extraction of minerals and adopt regulations to assure conservation of these mineral resource lands (RCW 36.70A.170 and 36.70A.060).

Staff Comment: Consistent with WAC 365-190-070, Mineral Resource Land designation criteria were adopted as part of the Whatcom County Comprehensive Plan. As detailed below through review for consistency with the Whatcom County Comprehensive Plan, the subject site does not meet the designation criteria necessary for designation as mineral resource lands of long-term commercial significance.

Furthermore, WAC 365-190-040(5)(e) states: "Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development , and to minimize the costs of production and transport. It is expected that Mineral Resource Lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is complete." Mining on the site has not occurred within the past 50 years, as it is not economically feasible. Consistent with WAC 365-190-040(5)(e), a change of designation from Mineral Resource Lands to Rural Forestry is appropriate.

Whatcom County Comprehensive Plan

The Comprehensive Plan contains twenty specific criteria for designating MRLs (17 applicable to non-metallic mineral deposits and 3 applicable to metallic and industrial mineral deposits). These designation criteria, along with other applicable goals and policies, are set forth in italics and addressed below.

This application is a request to de-designate Mineral Resource Lands. While Whatcom County has designation criteria, there are not de-designation criteria. Without de-designation criteria, the County took the position that just as a proposal must meet all the criteria for designation as mineral resource lands of long-term commercial significance, if the proposal does not meet all the criteria, it is appropriate for de-designation.

1. *Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation.*

Staff Comment: It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material. The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that ~ 15 acres (over multiple mining areas) might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of ~40-45 feet with shear vertical walls in order to meet this volume threshold. Staff does not believe this designation criteria could feasibly be met given the known and unknown constraints.

2. *Minimum MRL Designation size is twenty acres.*

Staff Comment: The present MRL is greater than 20 acres. Therefore, staff finds that this designation criterion has been met.

3. *Expansion of an existing MRL does not need to meet criteria 1 or 2.*

Staff Comment: The proposal is not for expansion of an existing MRL. This criterion is not applicable.

4. *MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.*

Staff Comment: The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.

5. *All pre-existing legal permitted sites meeting the above criteria will be designated.*

Staff Comment: The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

6. *The site shall have a proven resource that meets the following criteria:*

- *Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.*
- *Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).*

Staff Comment: The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

7. *MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.*

Staff Comment: The subject site is zoned Rural Forestry and is surrounded by Mt. Baker-Snoqualmie Nation Forest. Therefore, staff finds that this designation criterion has been met.

8. *MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.*

Staff Comment: The subject site is not located within a designated wellhead protection area

of any public water system. Therefore, staff finds that this designation criterion has been met.

9. *MRL Designation should not enclose by more than 50% non-designated parcels.*

Staff Comment: There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

10. *Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.*

Staff Comment: Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.

11. *MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.*

Staff Comment: Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.

12. *Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations.*

Staff Comment: The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.

13. *Criterion 13 is specific to designated urban and rural areas, and therefore not applicable.*

The Comprehensive Plan contains an additional criterion for designated forestry areas.

14. *Must demonstrate higher value as mineral resource than forestry resource based upon:*
- *soil conditions*
 - *quality of mineral resource*
 - *sustainable productivity of forest resource*

Staff Comment: It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

- 15 *Criterion 15 is specific to designated agricultural areas, and therefore does not apply.*
- 16 *Criterion 16 is specific to river and stream gravel, and therefore does not apply.*
- 17 *Criterion 17 is specific to river and stream gravel, and therefore does not apply.*
18. *For metallic and rare minerals, mineral designation status extends to all patented mining claims.*

Staff Comment: The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.

19. *Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance.*

Staff Comment: The site does not contain industrial minerals. This criterion is not applicable.

20. *All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 15, as applicable.*

Staff Comment: The site was designated MRL as a result of patented mining claims. This criterion is not applicable.

In addition to the designation criteria, there are Comprehensive Plan policies and goals within Chapter 8 – Natural Resources that apply to the subject application:

Policy 8G-2: Provide appropriate land use regulation for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Staff Report: Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the Comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

Policy 8R-6: Consider removal of land from Mineral Resource Designation after mining and subsequent reclamation is completed.

Staff Comment: Mining has not occurred on the site in more than 50 years, as it is no longer feasible due to economic, environmental, topographic and other factors. Mining predates adoption of the Washington State Surface Mining Act, therefore reclamation of the site is not

required and is likely infeasible to require beyond what may have been required through the Federal regulatory process. Consideration of removal of the MRL designation appears to be supported by this policy.

County-Wide Planning Policies

Staff Comment: Staff did not identify County-Wide Planning Policies that would be applicable to a change in Comprehensive Plan Designation from MRL to RF.

Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the subject site.

B. That further studies made or accepted by the department of planning and development services indicate changed conditions that show the need for the amendment.

The subject site was identified for designation as Mineral Resource Lands through a 1972 Interim Zoning Ordinance due to historic mining operations. This Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established the Comprehensive Plan Designations and Title 20 Zoning of the site. Today, mining is no longer feasible within the designated Nooksack Falls Mineral Resource Land Exclave due to economic, environmental, topographic and other factors. This proposed amendment is in response to these changed conditions.

C. That the public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

1. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

Staff Comment: If approved, there would be no effect upon the rate or distribution of population growth beyond what is presently allowed. If approved, the zoning code would provide the opportunity for future uses such as an educational center, cafe, lodging structures, and other improvements related to access and safety to Nooksack Falls

2. The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

Staff Comment: The subject site is an exclave within the Mt. Baker-Snoqualmie National Forest. There is no anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water purveyors, sewer purveyors, fire districts, and

others as applicable, to provide adequate services and public facilities including transportation facilities.

3. Anticipated impact upon designated agricultural, forest and mineral resource lands.

Staff Comment: There is no anticipated impact upon designated forestlands or mineral resource lands as a result of the change in designation from MRL to RF. The site is presently, and would continue to be, regulated through the Rural Forestry section of the Whatcom County Zoning Code. The site is presently designated as Mineral Resource Lands of long-term commercial significance, however due to site constraints, the site does not appear to have proven and extractable mineral resources of long-term commercial significance.

D. That the amendment does not include nor facilitate illegal spot zoning.

According to the Official Whatcom County Zoning Ordinance:

“Illegal spot zoning” means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).

In 1997, the Washington Supreme Court, in the case of *Citizens for Mount Vernon v. The City of Mount Vernon* (133 Wn.2d 861) indicated “. . . Spot zoning is a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan . . .”

Staff Comment: The proposal does not appear to include nor facilitate illegal spot zoning. Rather than singling out a smaller area from a larger area for designation that is different from, and inconsistent with, the classification of surrounding land, the proposal appears to correct a previous designation that was inconsistent with surrounding land uses. The result of the proposal would be a Rural Forestry designation that is surrounded by the Mount Baker Snoqualmie National Forest (MBSNF), rather than the present Mineral Resource Land designation surrounded by the MBSNF.

IV. ANALYSIS OF THE PROPOSED ZONING CODE AMENDMENT

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that the amendment is consistent with the Comprehensive Plan in order to approve the proposed amendment to the development regulations

Policy 8G-8: Review Title 20.42 (Rural Forestry) and 20.43 (Commercial Forestry) for

opportunities to provide compatible non-forest uses that encourage forest landowners to keep their land in productive forest uses.

Staff Comment: The proposed amendment to Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone.

Policy 2L-4: Support the rural economic base by permitting natural resource based industries, cottage industries, forestry, fishing and agriculture in rural areas, as well as commercial and industrial activity contained within designated Rural Communities.

Staff Comment: The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone. These facilities would add to the economic base of eastern Whatcom County, through initial development and ongoing operations.

Policy 2FF-4: Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

Staff Comment: The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for an educational center, cafe, lodging structures and other improvement related to access and safety of a popular tourist attraction.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.

6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
8. On May 25, 2011 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Whatcom County Comprehensive Plan does not contain specific criteria for designating Mineral Resource Lands.
10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been demonstrated that this designation criterion has been met.
13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites

meeting the above criteria (criteria 1-4) will be designated.” The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

17. Mineral resource designation criterion #6 states “The site shall have a proven resource that meets the following criteria:
- Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).”

The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

18. Mineral resource designation criterion #7 states “MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.” The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.

19. Mineral resource designation criterion #8 states “MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor.” The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

20. Mineral resource designation criterion #9 states “MRL Designation should not enclose by more than 50% non-designated parcels.” There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resourceIt has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.
26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims." The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion

has been met.

30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

VI. PROPOSED CONCLUSION

The subject amendment is consistent with the approval criteria of WCC 22.10.060.

VII. RECOMMENDATION

Staff recommends approval of the proposed comprehensive plan map amendment and zoning text amendment.

ATTACHMENTS:

- Draft Ordinance
- Exhibit A - Proposed Comprehensive Plan Map Amendment
- Exhibit B - Proposed Zoning Code Amendment
- Exhibit C - Determination of Non-Significance (DNS) issued April 23, 2021 and Distribution List

SPONSORED BY: _____

PROPOSED BY: _____

INTRODUCTION DATE: _____

ORDINANCE # _____

AN AMENDMENT TO THE OFFICIAL COMPREHENSIVE PLAN MAP FOR THE APPROXIMATELY 66-ACRE NOOKSACK FALLS EXCLAVE WITHIN THE MOUNT BAKER SNOQUALMIE NATIONAL FOREST, AND AMENDMENT TO THE RURAL FORESTRY ZONING CODE TO INCLUDE THE NOOKSACK FALLS EXCLAVE AS AN AREA WHERE CERTAIN CONDITIONAL USE PERMIT APPLICATIONS MAY BE SUBMITTED.

WHEREAS, an application has been submitted by AVT Consulting to amend the Comprehensive Plan Map to change the Mineral Resource Land (MRL) designation to Rural Forestry for the approximately 66-acre Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest, and to amend the Rural Forestry zoning code to include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone.

WHEREAS, the site is located on Wells Creek Road, off Mt. Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. The proposal is situated within portions of Section 31, T40N, R8E and Section 6, T39N R8E W.M. Assessor's Parcel #'s 400831580150, 400831450200, and 390806550550; and

WHEREAS, the proposed amendment has been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, the proposed amendment meets the approval criteria for comprehensive plan amendments, as required by Whatcom County Code (WCC) 22.10.060; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald, mailed and posted; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony, and recommended approval; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the County Council held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the County Council has adopted the following findings of fact and conclusions:

FINDINGS

1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.
6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
8. On May 25, 2011 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Whatcom County Comprehensive Plan does not contain specific criteria for de-designating Mineral Resource Lands.
10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic

yards of proven and extractable material, therefore it has not been demonstrated that this designation criterion has been met.

13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.
17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.
18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more

precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.
21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon."
 - soil conditions
 - quality of mineral resource

- sustainable productivity of forest resource

It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
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30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

CONCLUSIONS

1. The proposed amendment is consistent with the approval criteria of WCC

22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan map is hereby amended from Mineral Resource Lands (MRL) to Rural Forestry as shown in Exhibit A.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit B.

BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this _____ day of _____, 2021

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Royce Buckingham
Executive Civil Deputy Prosecutor

Satpal Sidhu, County

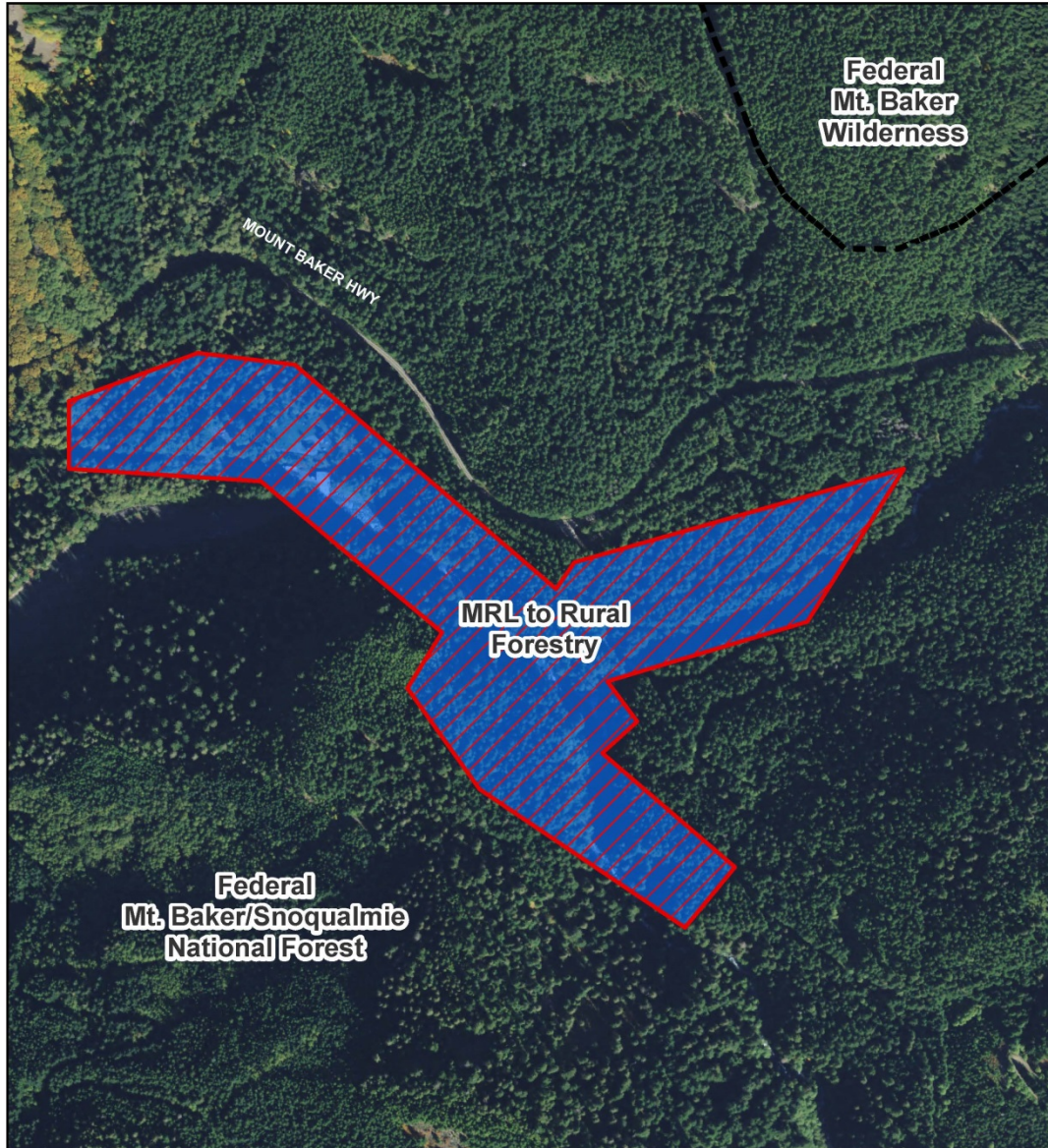
() Approved () Denied

Date Signed: _____

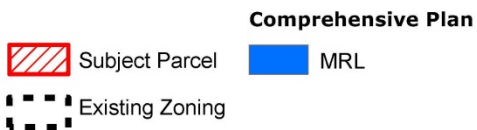
Exhibit A

Comprehensive Plan Map Amendment

Comprehensive Plan/Zoning



PLN2020-00004 - Rural Forestry Designation and Text Amendment
Comprehensive Plan Designation - Mineral Resource Lands (MRL)
to Rural Forestry for approximately 66 acres in the Nooksack Falls
exclave



USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

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Exhibit B

Title 20 Zoning Amendments

Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

20.42.150 Conditional Uses

.155 The operation of facilities intended to provide education related to forestry, natural resource and wildlife and the purpose of this district, including but not limited to demonstration forests and conservation laboratories, educational meeting facilities and related uses including rental cabins or other lodging structures, cooking and dining facilities, retail sales or meeting supplies and gifts, in the Foothills Subarea, South Fork Valley, the Newhalem Exclave, ~~and~~ the Baker Lake Exclave, and the Nooksack Falls Exclave, provided the following standards are met:

- (1) Density shall not exceed one sleeping unit per one gross acre or a maximum for 50 beds for the entire development.
- (2) Each cabin shall have a maximum of three sleeping units.
- (3) Must be located with vehicular access fronting on paved county roads or private roads improved to county standards.
- (4) Front yard setback shall be 75 feet, with 100-foot side and rear yard setbacks to adjacent properties.
- (5) Lot coverage for all facilities, including the rental cabins, shall not exceed 20 percent, clustered on no more than 50 percent of the property.

Exhibit C

SEPA Threshold Determination
SEPA Distribution List

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

SEPA Determination of Nonsignificance (DNS)

File: SEP2021-00038

Project Description: Amend Whatcom County Comprehensive Plan Map designation from Mineral Resource Land to Rural Forestry, to match the zoning district. Amend Whatcom County Code WCC 20.42.155 to include the Nooksack Falls Area Exclave.

Proponent: Excelsior Properties LLC & Excelsior Properties II LLC

Address and Parcel #: 12251 Mt Baker Highway / 400831580150, 400831450200 & 390806550550

Lead Agency: Whatcom County Planning & Development Services

Zoning: RF

Comp Plan: MRL

Shoreline Jurisdiction: Conservation

The lead agency for this proposal has determined that no significant adverse environmental impacts are likely. This proposal will also be reviewed for compliance with all applicable Whatcom County Codes (WCC) which regulates development activities, including but not limited to: WCC 15 – Buildings and Construction, WCC 16.16 – Critical Areas, WCC 17 – Flood Damage Prevention, WCC 20 – Zoning, WCC 21 – Land Division Regulations, WCC 23 – Shoreline Management Program, the Whatcom County Development Standards and/or the Washington State Stormwater Manual. Mitigation may be a requirement of Whatcom County Code. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☒ Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on May 7, 2021 and should be sent to: Josh Fleischmann via email at JFleisch@co.whatcom.wa.us

Responsible Official: Mark Personius, mpersoni@co.whatcom.wa.us

Title: Director

Telephone: 360-778-5937

Address: 5280 Northwest Drive
Bellingham, WA 98226

Date of Issuance: April 23, 2021

Signature:  _____

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding May 17, 2021.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.



SEPA Distribution List
SEP2021-00038
Date of Issuance: April 23, 2021

Please review this determination. If you have further comments or questions, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

WA State Department of Archaeology and Historic Preservation via email
Stephanie Jolivet, stephanie.jolivet@dahp.wa.gov
SEPA@dahp.wa.gov

SEPA Unit, WA State Department of Ecology, Olympia via email
sepaunit@ecy.wa.gov

WA State Department of Fish and Wildlife
Wendy D. Cole via email wendy.cole@dfw.wa.gov

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SEPA Unit, WA State Department of Transportation, Burlington via email
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Lummi Nation Natural Resources
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Nooksack Indian Tribe
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Trevor Delgado via email - tdelgado@nooksack-nsn.gov

Skagit River System Cooperative
Nora Kammer via email - nkammer@skagitcoop.org

WCFD #19 - Glacier
Fire Chief Ben Thompson via email - ben@morewoohoo.org

Applicant
Ali Taysi via email - ali@avtplanning.com
Arch@westford.co

Other and/or Parties of Record
National Forest Service, Mt. Baker Snoqualmie National Forest c/o Greta Smith via
email - gretchen.v.smith@usda.gov

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
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Mark Personius
Director

Memorandum

June 30, 2021

To: The Whatcom County Planning Commission

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Density Credit / Lot Size Zoning Code Amendments (PLN2019-00005)

The Whatcom County Council adopted Comprehensive Plan Policy 2A-14 in 2016. This policy included convening a multi-stakeholder work group to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.

The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group [Final Report](#)* was issued on October 3, 2018. This report included a number of recommendations, including expanding the density credit program to the Urban Residential 4 dwellings/acre (UR4) zone in Birch Bay Urban Growth Area and accessory dwelling units.

Density credits allow development incentives, such as increased density or more floor area, in exchange for a voluntary contribution towards preserving resource lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Whatcom County Conservation Easement Program, formerly known as the Purchase of Development Rights Program, in order to access incentives specifically set forth in the zoning code.

The subject amendments would implement the Work Group's density credit recommendations. They would also modify the minimum lot size, width, depth and other requirements in the Urban Residential zone to provide greater flexibility for development.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

**WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES**

**Density Credit / Lot Size
Zoning Code Amendments**

PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal consists of the following amendments to the Official Whatcom County Zoning Ordinance (Title 20):
 - a. Amending the Density Credits Chapter;
 - b. Amending the Urban Residential 4 dwellings/acre (UR4) zone in the Birch Bay UGA to allow increased density if density credits are purchased;
 - c. Amending the minimum lot size, width, depth and other requirements in the Urban Residential zone; and
 - d. Amending the accessory dwelling unit regulations to allow larger unit size if density credits are purchased.
2. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 28, 2021.
3. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 25, 2021.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 25, 2021.
5. Notice of the Planning Commission hearing was sent to the County's e-mail list on June 25, 2021.
6. The Planning Commission held a public hearing on the subject amendments on July 8, 2021.
7. In order to approve an amendment to the development regulations, the County must find that the amendment is consistent with the comprehensive plan (WCC 22.10.060(2)).

8. The Whatcom County Council adopted Policy 2A-14 in the Comprehensive Plan in the 2016 update which included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.
9. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017.
10. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* was issued on October 3, 2018. This report included a number of recommendations, including expanding the density credit program to the UR4 zone in Birch Bay Urban Growth Area and accessory dwelling units.

Urban Growth

11. The Growth Management Act states “Each county . . . shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. . .” (RCW 36.70A.110(1)).
12. The Growth Management Act states “A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights” (RCW 36.70A.090). The Whatcom County Comprehensive Plan is in the process of being amended to include density credit language.
13. Density credits allow development incentives, such as increased density or more floor area, in exchange for a voluntary contribution towards preserving resource lands and open space. This is accomplished through a voluntary payment of funds to the County for use in the Whatcom County Conservation Easement Program (WCC 3.25A), which was formerly known as the Purchase of Development Rights Program, in order to access incentives specifically set forth in the zoning code.
14. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) indicated:

. . . In November 2017, the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA and should consider expanding this program to other areas in the UGA. Specifically, the lower density Urban Residential four dwellings/acre . . . zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program. . . (p. 33).

15. The subject amendments include density bonus provisions in the UR4 zone within the Birch Bay urban growth area (UGA) if density credits are purchased.
16. The subject amendments also modify the minimum lot size, width, depth and other requirements in the Urban Residential zone
17. Whatcom County Comprehensive Plan policies relating to urban growth include:
 - Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
 - Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.
 - Policy 3G-4: Allow development of smaller lots and creative options.
18. The State Department of Commerce *Housing Memorandum: Issues Affecting Housing Availability and Affordability* (June 2019) identifies “Reasonable Measures as Tools for Increasing Housing Availability and Affordability” including:
 - Allow or require small lots (5,000 square feet or less) for single-family neighborhoods within UGAs. Small lots limit sprawl, contribute to the more efficient use of land, and promote densities that can support transit. Small lots also provide expanded housing ownership opportunities to broader income ranges and provide additional variety to available housing types (p. 116).
19. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by concentrating urban levels of growth in UGAs, allowing increased density, allowing smaller lots, and providing creative options for developers in a UGA.

Accessory Dwelling Units (ADU)

20. Accessory dwelling units are allowed in a number of zoning districts, both within UGAs and outside UGAs.
21. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) recommended accessory dwelling unit incentives if density credits are acquired. Specifically, the Final Report stated:

. . . Accessory dwelling units are currently limited to 1,248 square feet. . . The TDR/PDR Work Group recommends increasing the size

limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be \$8/square foot up to the 500 square foot maximum. The Work Group recommends that this rural incentive should be available anywhere that accessory dwelling units are allowed in the County. . . (p. 34).

22. Whatcom County Comprehensive Plan goals and policies relating to development in rural and agricultural areas include:

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Goal 8A: Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

. . . Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

23. The Whatcom County Comprehensive Plan seeks to retain rural character and conserve agricultural lands. These goals and policies are primarily implemented through the Whatcom County Zoning Code, which restricts the uses and densities allowed in rural and agricultural areas. However, the County also adopted the Whatcom County Conservation Easement Program (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural, forestry, and ecological conservation easement program for Whatcom County which will enhance the protection of the county's farmland, forestland, and important ecosystem areas, enhance the long-term viability of the agricultural and forestry enterprises within the county and provide public benefit by retaining properties in permanent resource use, in addition to the protection of ecosystem functions and values (WCC 3.25A.020).

24. The rural zones already allow accessory dwelling units and the subject amendments allow increased size of these units. However, the subject amendments compensate for this increased size by requiring a contribution to the Whatcom County Conservation Easement Program.

25. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing developer incentives to voluntarily contribute funds that would be utilized in the Whatcom County Conservation Easement Program, thereby preserving rural character and agricultural lands.

Incentives

26. Whatcom County Comprehensive Plan policies relating to incentives include:

Policy 2F-3: Revise regulations to include incentive programs.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas, purchase of development rights, transfer of development rights, and tax deferrals.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase or transfer of development rights, density bonuses within UGAs, cluster development, and acquisition of easements.

Policy 2UU-5: Augment land use regulations by engaging in a proactive program of public investment, landowner incentives, and other actions aimed at preserving open space.

27. The subject amendments provide density bonus provisions, which are entirely optional. A land owner may choose to develop property as currently allowed by the zoning code. Alternatively, a land owner may choose to utilize the density bonus provisions by purchasing density credits.
28. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a voluntary incentive that would allow increased density in the Birch Bay UGA and flexibility in the accessory dwelling unit provisions while contributing to preservation of rural and agricultural lands.

PROPOSED CONCLUSION

The subject zoning amendments are consistent with the Whatcom County Comprehensive Plan.

RECOMMENDATION

Based upon the above findings and conclusions, staff recommends approval of the following amendments to the Whatcom County Zoning Code:

Exhibit A, Density Credits Chapter (WCC 20.91).

Exhibit B, Urban Residential District Chapter (WCC 20.20).

Exhibit C, accessory dwelling unit regulations (WCC 20).

Exhibit A

Whatcom County Zoning Code Amendments

Density Credits Chapter

Amend the Density Credits Chapter (WCC 20.91) as follows:

Chapter 20.91

DENSITY CREDITS

Sections:

20.91.010 Purpose.

20.91.020 Developer incentives.

20.91.030 Density credit price and timing.

20.91.010 Purpose.

The overall purposes of this chapter are to incentivize increased land use intensity in urban growth areas, allow greater flexibility for accessory dwelling units, and decrease residential density in agricultural, forestry, and rural areas by authorizing density credits. Density credits allow increased density or flexibility in zoning regulations in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the ~~agricultural purchase of development rights program~~ Whatcom County Conservation Easement Program (Chapter 3.25A WCC) in order to allow a higher density or greater flexibility as specifically set forth in the Whatcom County Zoning Code. (Ord. 2017-062 § 3 Exh. C).

Rationale: The subject proposal would, among other things, allow an increase in size of the accessory dwellings if density credits are purchased. This should be acknowledged in the Density Credits chapter purpose statement.

Additionally, WCC 3.25A has been expanded to include forestry and ecologically valuable lands and renamed as the “Whatcom County Conservation Easement Program” (Ordinances 2018-065 and 2021-037).

20.91.020 Developer incentives.

Density credits may be used to gain the following benefits:

- (1) Resort Commercial Zone in the Birch Bay Urban Growth Area. Each density credit purchased allows one additional single-family residential dwelling in the Resort Commercial zone up to the limit on total dwelling units set by WCC 20.85.108.
- (2) Urban Residential Zone in the Birch Bay Urban Growth Area. Each density credit purchased allows one additional dwelling in the UR4 zone up to the maximum gross density limit on total dwelling units set by WCC 20.20.252.
- (3) Accessory Dwelling Units. Each density credit purchased allows increased accessory dwelling unit size as set forth in the accessory dwelling unit regulations of the applicable zoning district. (Ord. 2017-062 § 3 Exh. C).

Rationale: The subject proposal would allow an increase in density in the Urban Residential zone in the Birch Bay UGA and an increase in size of accessory dwellings, if density credits are purchased.

20.91.030 Density credit price and timing.

The price per density credit is set by the county council in the Unified Fee Schedule.

- (1) Planned Unit Developments. If a developer using density credits is granted initial PUD approval pursuant to WCC 22.05.120, the required number of density credits shall be purchased from Whatcom County prior to final PUD approval under WCC 20.85.365.
- (2) Subdivisions. If a developer using density credits is granted preliminary long subdivision approval pursuant to WCC 21.05, the required number of density credits shall be purchased from Whatcom County prior to final long subdivision approval under WCC 21.06.
- (3) Short Subdivisions. If a developer using density credits is granted preliminary short subdivision approval pursuant to WCC 21.04.034, the required number of density credits shall be purchased from Whatcom County prior to final short subdivision approval under WCC 21.04.035.
- (4) Accessory Dwelling Units. The required density credits for increasing the size of an accessory dwelling unit shall be purchased from Whatcom County prior to issuance of the building permit. (Ord. 2017-062 § 3 Exh. C).

Rationale: The existing density credit rules allow an increase in density from 7 to 14 units per acre in the Resort Commercial Zone in the Birch Bay UGA through the planned unit development (PUD) process, which allows flexibility in zoning standards. The subject proposal would allow an increase in density in the Urban Residential zone in the Birch Bay UGA from 4 to 5 units/acre through the standard land division process without the need for a PUD. The fee would be paid at the final plat stage, which actually creates the lots. Accessory dwelling units require an administrative approval use permit, but the density credit fee could be paid at the building permit stage.

Exhibit B

Whatcom County Zoning Code Amendments

Urban Residential (UR) District

Amend the Urban Residential District text (WCC 20.20) as follows:

20.20.050 Permitted Uses

.052 Single-family attached dwellings; provided, that public sewer, water and, ~~where identified by the appropriate subarea Comprehensive Plan policies,~~ stormwater ~~management~~ collection and detention facilities serve the site, not more than four units are attached, and the number of dwelling units conforms to the density requirements of the district.

20.20.251 Minimum lot size.

For the purpose of creating new building lots within the Urban Residential District, several land use densities are herein provided. The minimum lot size requirements for new construction vary according to the method of subdivision, as well as whether or not public sewer, water, and, where required by regulation, stormwater ~~management~~ collection and detention facilities serve the project site. Where the lot cluster land division method is used, the minimum lot size is based on consideration of the zoning district's setback requirements and the Whatcom County health code regulations for sewage systems and drinking water, but shall not be less than that shown below. Where a maximum lot size is imposed, clustered lots shall be as small as allowed by the health department. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2007-048 § 2 Exh. B, 2007).

20.20.252 Maximum density, minimum lot size and maximum lot size.

District	Maximum Gross Density	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR: all densities without public sewer and water**	Maximum gross density: 1 dwelling unit/10 acres	N/A*	8,000 sq. ft.	22,000 sq. ft.	80%
UR: in Lake Whatcom Watershed with public sewer and water, and stormwater <u>management</u> collection and detention facilities	Maximum density: 1 dwelling unit/5 acres	5 acres	N/A	N/A	N/A
UR: all densities with public sewer or water**	Maximum gross density: 1 dwelling unit/10 acres	N/A*	8,000 sq. ft.	22,000 sq. ft.	80%
UR-3: with public sewer and water, and stormwater <u>management</u> collection and detention facilities	Maximum gross density: 3 dwelling units/1 acre	12,000 sq. ft.	8,000 sq. ft.	N/A	25%
UR-4: with public sewer and water, and stormwater <u>management</u> collection and detention facilities	Maximum gross density: 4 dwelling units/1 acre Minimum net density: 4 dwelling units/1 acre**	<u>5,000 sq. ft.</u> 8,000 sq. ft.	<u>4,000 sq. ft.</u> 6,000 sq. ft.	N/A	20%
<u>UR4: in the Birch Bay Urban Growth Area with public sewer and water, and stormwater management facilities, when density credits are purchased pursuant to WCC 20.91.020(2)</u>	<u>Maximum gross density: 5 dwelling units/1 acre</u> <u>Minimum net density: 5 dwelling units/1 acre**</u>	<u>4,500 sq. ft.</u>	<u>3,500 sq. ft.</u>	<u>N/A</u>	<u>20%</u>

District	Maximum Gross Density	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR-6: with public sewer and water, and stormwater management-collection-and-detention facilities	Maximum gross density: 6 dwelling units/1 acre Minimum net density: 6 dwelling units/1 acre**	<u>4,000 sq. ft.</u> 5,500 sq. ft.	<u>3,000 sq. ft.</u> 4,000 sq. ft.	N/A	20%

* For the purpose of administering the lot consolidation provisions of WCC [20.83.070](#), the conventional minimum lot size shall be 10 acres.

** Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical area regulations and infrastructure requirements. (Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2009-024 § 1 (Exh. A), 2009; Ord. 2008-036 Exh. A, 2008; Ord. 2007-050 § 1 Exh. A, 2007; Ord. 2007-048 § 2 Exh. B, 2007).

Rationale:

- UR: all densities without public sewer and water – Delete double asterisk because there are no minimum densities for development in this zone when public water and sewer are not available.
- “Stormwater management” facilities – is more current terminology (e.g. the Zoning Code references the “*Washington State Department of Ecology Stormwater Management Manual for Western Washington*”).
- UR: all densities with public sewer or water – Having only public sewer or water is the same as being without public sewer and water, which is already addressed in the table. Therefore, this text is redundant and should be deleted.
- UR4 Zone – The State Department of Commerce’s *Housing Memorandum: Issues Affecting Housing Availability and Affordability* (June 2019) identified the following as one of the Reasonable Measures as Tools for Increasing Housing Availability and Affordability: “Allow or require small lots (5,000 square feet or less) for single-family neighborhoods within UGAs. Small lots limit sprawl, contribute to the more efficient use of land, and promote densities that can support transit. Small lots also provide expanded housing ownership opportunities to broader income ranges and provide additional variety to available housing types” (p. 116). The proposed amendment would reduce the minimum lot size in the UR4 zone, when density credits are not used, to 5,000 square feet (4,000 square feet if clustered).
- UR4 in the Birch Bay UGA – Allow 5 dwellings/acre in UR4 zones in the Birch Bay Urban Growth Area, if density credits are purchased. Establish minimum lot size and minimum reserve area for this new density category in the Urban Residential Zone.
- UR-6 zone – The UR-6 zone only exists in the Bellingham UGA. Bellingham typically does not extend public water and sewer, so the density is one dwelling/10 acres. However, if the city ever made an exception and extended water and sewer, it would be reasonable to allow smaller lots size in order to densify the UGA (e.g. if a developer had difficulty achieving full buildout on a site because of wetlands).

~~20.20.253 Minimum lot size outside an urban growth area.~~

~~Reserved by Ord. 2011-013. (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 98-083 Exh. A § 11, 1998; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 82-58, 1982. Formerly 20.20.251).~~

~~20.20.254 Maximum density and minimum lot size outside an urban growth area.~~

~~Reserved by Ord. 2011-013. (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 98-083 Exh. A § 12, 1998; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 84-38, 1984; Ord. 82-58, 1982. Formerly 20.20.252).~~

Rationale:

The above code language was deleted in 2011 (Ordinance 2011-013). Keeping historical references, which no longer apply, clutters up the code. A person can look at old ordinance in order to obtain historical information.

20.20.255 Minimum lot width and depth.

District	Width at Street Line		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
UR: all districts without public sewer and water	300'	70'*	80'	100'
UR: with public sewer and water, and stormwater <u>management</u> collection and detention facilities:				
3 units per acre	30'	30'	70'	80'
4 units per acre	30'	30'	60'	70'
<u>5 units per acre (with purchase of density credits)</u>	<u>25'</u>	<u>25'</u>	<u>40'</u>	<u>60'</u>
<u>6 units per acre</u>	<u>25'</u>	<u>25'</u>	<u>40'</u>	<u>50'</u>
*30' on a cul-de-sac only				

(Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2007-048 § 2 Exh. B, 2007; Ord. 98-083 Exh. A § 13, 1998; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 84-38, 1984; Ord. 82-58, 1982. Formerly 20.20.253).

Rationale:

- 5 units per acre – Establish width at street line, width at building line, and minimum mean depth for this new density classification (that may be used if density credits are obtained).
- 6 units per acre – Establish width at street line, width at building line, and minimum mean depth for this existing density classification. It appears that it may have been an oversight to leave these requirements out of the code.

20.20.305 Lot clustering.

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, open space or possible future development.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

(3) Lot clustering is required for residential land divisions when:

~~(a) The property is located within a short-term planning area and~~ public water and sewer are not available; ~~or~~

~~(b) The property is located within a long-term planning area.~~ (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 90-45, 1990).

Rationale:

Short term and long term planning areas were zoning designations used in the past to distinguish between parts of the UGA that could be developed at urban densities and/or annexed in the immediate future and other parts of the UGA where urban development was anticipated later in the planning period. However, short term and long term planning area designations were deleted in 2016 UGA (see Ordinances 2016-034 and 2016-035).

Requiring clustering in a UGA developed at a density of one dwelling/ten acres (because it does not yet have public water and sewer) would allow the reserve tract to be developed more efficiently at urban densities later on when public water and sewer become available.

20.20.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following design standards:

- (1) Clustered building lots may be created only through the subdivision or short subdivision process.
- (2) Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.
- (3) ~~Within short-term planning areas w~~Where public water and sewer are not available ~~and within long-term planning areas~~, all clustered building lots shall be grouped together in a single cluster. In all other cases, where practical, the majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the reserve tract to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- (4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the reserve tract for the purpose of future approved development. (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 90-45, 1990; Ord. 87-12, 1987; Ord. 87-11, 1987).

Exhibit C

Whatcom County Zoning Code Amendments

Urban Residential (UR) District

Amend the UR District (WCC 20.20) as follows:

20.20.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed ~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;

Rationale: *The Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) states:

...The Whatcom County Zoning Code currently allows accessory dwelling units, subject to a variety of conditions, in the following zones:

- Urban Residential (WCC 20.20.132);
- Urban Residential Medium Density (WCC 20.22.132);
- Urban Residential Mixed (WCC 20.24.133);
- Residential Rural (WCC 20.32.132);
- Rural Residential – Island, which is applicable to Lummi Island (WCC 20.34.132);
- Rural (WCC 20.36.132);
- Point Roberts Transitional District (WCC 20.37.132);
- Small Town Commercial (WCC 20.61.153); and
- Resort Commercial (WCC 20.64.132).

... Accessory dwelling units are currently limited to 1,248 square feet in these zoning districts. The TDR/PDR Work Group recommends increasing the size limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be \$8/square foot up to the 500 square foot maximum. . . (p. 34)

The County Council considered the recommendations of the Work Group and docketed this amendment for further review (Resolutions 2019-015 and 2021-007).

(7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:

- (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
- (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
- (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

~~(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres;~~

Rationale: There are no Urban Residential zones located outside of urban growth areas anymore.
--

~~(1011)~~ Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

~~(1112)~~ Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter 20.80 WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

~~(1213)~~ All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Urban Residential Medium Density (URM) District

Amend the URM District (WCC 20.22) as follows:

20.22.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~The maximum size of an accessory apartment or detached dwelling unit shall not exceed~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

~~(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres;~~

Rationale for Change: There are no Urban Residential Medium density zones located outside of UGAs.

~~(11) Accessory apartments and detached accessory dwelling units to single family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:~~

~~(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and~~

~~(b) All of the above approval requirements shall be met for so long as the accessory unit remains;~~

Rationale for Change: There are no Urban Residential Medium density zones located in the Lake Whatcom Watershed.

~~(1012)~~ Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

~~(1113)~~ All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Urban Residential Mixed (UR-MX) District

Amend the UR-MX District (WCC 20.24) as follows:

20.24.130 Administrative approval uses.

.133 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(11) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(12) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Residential Rural (RR) District

Amend the RR District (WCC 20.32) as follows:

20.32.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Rural Residential-Island (RR-I) District

Amend the RR-I District (WCC 20.34) as follows:

20.34.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) ~~Outside of an urban growth area, the~~ minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

Rationale for Change: There are no urban growth areas on Lummi Island.
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(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed on Lummi Island, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Rural (R) District

Amend the R District (WCC 20.36) as follows:

20.36.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Point Roberts Transitional (TZ) District

Amend the TZ District (WCC 20.37) as follows:

20.37.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case~~ The maximum size of shall an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) The minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

(11) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(12) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Small Town Commercial (STC) District

Amend the STC District (WCC 20.61) as follows:

20.61.150 Administrative approval uses.

.153 Residential type uses.

(1) Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

(a) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;

(b) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;

(c) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;

(d) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;

(e) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;

(f) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;

(g) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:

(i) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;

(ii) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;

- (iii) All reserve tracts within long plats and short plats created by the cluster subdivision method;
- (h) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;
- (i) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:
 - (i) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and
 - (ii) One of the dwellings must be the primary domicile of the owner. (Ord. 2016-043 § 1 Exh. A, 2016; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2010-016 § 1 (Exh. A), 2010; Ord. 99-012 § 1(2), 1999).

Resort Commercial (RC) District

Amend the RC District (WCC 20.64) as follows:

20.64.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

~~(11) Accessory apartments and detached accessory dwelling units to single family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:~~

~~(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and~~

~~(b) All of the above approval requirements shall be met for so long as the accessory unit remains;~~

Rationale for Change: There are no Resort Commercial zones located in the Lake Whatcom Watershed.

~~(11)~~ (12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

~~(12)~~ (13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC). (Ord. 2016-043 § 1 Exh. A, 2016; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2010-016 § 1 (Exh. A), 2010; Ord. 2006-061 § 1 (Att. A)(7), 2006; Ord. 98-018 § 1, 1998; Ord. 95-031, 1995; Ord. 87-12, 1987; Ord. 87-11, 1987).