

**WHATCOM COUNTY**  
Planning & Development Services  
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**Mark Personius, AICP**  
Director

March 15, 2019

Dave Morse  
2201 Humboldt Street  
Bellingham, WA 98225

**RE: Lake Whatcom Watershed Seasonal Clearing Activity Limitation Code Interpretation**

Dear Mr. Morse:

On February 19, 2019, you submitted a specific code interpretation request pursuant to WCC 22.05.20 and WCC 20.51.410. The director has the authority to issue code interpretations and pursuant to WCC 22.20.040 (1-4) the director shall consider the following:

1. The applicable provisions of the code including their purpose and context;
2. The impact of the interpretation on other provisions of the code;
3. The implications of the interpretation for development within the county as a whole; and
4. The applicable provisions of the comprehensive plan and other relevant codes and policies. (Ord. 2018-032 § 1 (Exh. A)).

Interpretation of the following has been requested:

*"Provide an interpretation of Whatcom County Code section 20.51.410 and clarify whether or not Whatcom County Staff have the authority to delay the issuance of permits as described above. In formulating your interpretation, please keep in mind the statutory permit issuance timing requirements of RCW 36.70B, WAC 365-196-845, WCC Title 22."*

**Relevant Code (emphasis added):**

**RCW 36.70A.020(7) GMA Planning Goals**

Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

**RCW 36.70B.030(5) Project review – Required elements - Limitations**

Nothing in this section limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations adopted under chapter 36.70A RCW and in its policies adopted under RCW 43.21C.060. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, transportation demand management, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

**RCW 36.70B.080(1) Development regulations-Requirements-Report on implementation costs.**

Development regulations adopted pursuant to RCW 36.70A.040 must establish and implement time periods for local government actions for each type of project permit application and provide timely and predictable procedures to determine whether a completed project permit application meets the requirements of those development regulations. The time periods for local government actions for each type of complete project permit application or project type should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

**RCW 36.70B.080(2)(a) Development regulations-Requirements-Report on implementation costs.**

Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least twenty thousand must, for each type of permit application, identify the total number of project permit applications for which decisions are issued according to the provisions of this chapter. For each type of project permit application identified, these counties and cities must establish and implement a deadline for issuing a notice of final decision as required by subsection (1) of this section and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by subsection (1) of this section.

**RCW 36.70B.0140(2) Project Permits that may be excluded from review.**

A local government by ordinance or resolution also may exclude the following project permits from the provisions of RCW 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other project permits.

**WAC 365-196-845(1) Local project review and development agreements.**

The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

**WAC 365-196-845(10) Local project review and development agreements.**

Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

**WCC 15.04.016 Project permits review procedure.**

All applications for project permits shall be reviewed and processed in accordance with Chapter 22.05 WCC, except as otherwise stated within this title.

**WCC 22.05.100 Consistency review and recommendations.**

During project permit review, the review authority shall determine if the project proposal is consistent with the county's comprehensive plan, other adopted plans, existing regulations and development standards.

**WCC 22.05.100(1) Consistency review and recommendations.**

For Type I and II applications, the conclusions of a consistency determination made under this section shall be documented in the project permit decision.

**WCC 22.05.110(1) Final decisions.**

The director or designee's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.

**WCC 22.05.130 Permit review time frames.**

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

**WCC 20.51.410(2) Seasonal clearing activity limitations.**

Clearing activity, as defined in WCC 20.97.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1st through May 31st;

**WCC 20.51.410(3) Seasonal clearing activity limitations.**

To ensure compliance with subsection (2) of this section, Whatcom County planning and development services shall not issue development permits requiring more than 500 square feet of land disturbance located within the Lake Whatcom watershed within two weeks prior to the watershed seasonal closure on October 1st.

**Interpretation:**

Whatcom County has implemented the state requirements in RCW 36.70B Local Project Review through adoption of Whatcom County Code Title 22. As a general rule, pursuant to WCC 22.05.130, Whatcom County must issue a notice of final decision for all permit types within 120 days from the date of complete application (with exceptions noted in WCC 22.05.130(2)(a)). The final decision shall be provided in the form of a written

determination or permit and it "*may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.*" WCC 22.05.110(1); RCW 36.70B.030(5)

In order to protect water quality, the Lake Whatcom Watershed Overlay District contains provisions that restrict the time period for which development greater than 500 square feet may commence. WCC 20.51.410(2). Therefore, as required by WCC 22.05.110(1), project permits in the Lake Whatcom Watershed Overlay District are subject to a condition of approval to meet the seasonal clearing activity limitation prohibiting clearing activity greater than 500 square feet from October 1 through May 31<sup>st</sup>. In addition, WCC 20.51.410(3) prohibits the issuance of development permits exceeding the maximum threshold during the seasonal clearing activity closure period within two weeks prior to the closure date of October 1<sup>st</sup>.

To comply with project review time frame requirements (120 days) and all other applicable codes for project permits located within the Lake Whatcom Watershed Overlay, Whatcom County Planning and Development Services issues a written final determination on applications within the requisite 120 day timeframe, but provides that they are approved subject to the conditions required by WCC 20.51.410. In essence, the 120 day time period applies to the permit *decision*. RCW 36.70B does not require that the permit be *issued* within that time frame. PDS complies with the 120 day statutory time frame by noticing the applicant of the permit approval (decision) and the timeframe (WCC 20.51.410(2)) of when the permit can be issued.

If you have any other questions or concerns regarding this issue please let me know.

This formal code interpretation decision may be appealed to the Hearing Examiner within 14 calendar days subject to the rules and procedures set forth in WCC 22.05.160.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Personius', with a long horizontal stroke extending to the right.

Mark Personius, AICP  
Director