

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

**Various Amendments to WCC Title 20 (Zoning), Chapters
20.51 (Lake Whatcom Watershed Overlay District) and
20.71 (Water Resource Protection Overlay District), and
Other References to the Department of Ecology
Stormwater Manual**

I. File Information

File #: PLN2021-00008

File Name: Amendments to the Watershed Protection Overlay Districts

Applicant: Whatcom County Planning and Development Services (PDS)

Project Summary: Proposed amendments to the Lake Whatcom Watershed Overlay District (WCC 20.51), Water Resource Protection Overlay District (WCC Chapter 20.71), and various WCC code provisions addressing how the stormwater manual is referenced and approved for County use.

Location: Countywide, though primarily in the Watershed Protection Overlay Districts (Lakes Whatcom, Padden, and Samish)

Staff Recommendation: Planning and Development Services recommends that the Council approve the proposed amendments.

Attachments: Exhibit A (proposed amendments)

II. Background/Overview

Whatcom County has three geographic areas whose zoning is overlain by Watershed Overlay Districts:

- The Lake Whatcom Watershed Overlay District (WCC Chapter 20.51) covers the Lake Whatcom watershed; and,
- The Water Resource Protection Overlay District (WCC Chapter 20.71) covers the Lakes Samish and Padden watersheds.

These overlay districts modify the underlying zoning by further restricting certain types of uses, adding additional development and stormwater regulations and standards, and regulating the removal of trees and tree canopy, all of which are designed to further protect our lakes' water quality and, in Lake Whatcom's case, the primary source of the City of Bellingham's drinking water.

In 2021, and sponsored by Councilmember Donovan, Council placed on the docket item PLN2021-00008, directing staff to:

Amend the Lake Whatcom Watershed Overlay District (WCC 20.51) and the definition of significant tree (WCC 20.97.436.4) to improve compliance with the Total Maximum Daily Load

by further reducing phosphorus loading impacts from development and improve tree protection measures.

To better understand the intent of the docket item, staff spoke with CM Donovan and staff at Re Sources, with whom CM Donovan worked in developing docket item PLN2021-00008. Three specific issues were identified:

- Lower the threshold of how much new hard surface area is exempt from installing a permanent stormwater management system (see WCC 20.51.420(1)(c));
- Lower the amount of tree canopy that can be removed on lots greater than 3 acres when not associated with development (see WCC 20.51.430(5) & 20.71.354(5); and,
- Reduce the size of what's defined as a significant tree (see WCC 20.97.419).

The code was reviewed for these possible amendments (discussed further below). In doing so, other issues, such as grammar, code construction, unused code, and outdated titles were identified. Most of the proposed amendments shown in Exhibit A are to fix those types of issues. Four additional policy issues were identified and are discussed below.

Some of the language of the Lake Whatcom Watershed Overlay District is also found in the Watershed Protection Overlay District, and if amendments are made in one, they should also be mimicked in the other to ensure consistency of regulations. A review of the Watershed Protection Overlay District was completed and amendments are proposed to both so that the language remains consistent.

And lastly, at Public Works' request, staff proposes to amend the definition of "current stormwater manual," also discussed below.

The Planning Commission held a public hearing on May 12, 2022, followed by discussions at three subsequent meetings.

III. Amendments

Please refer to Exhibit A to review the proposed amendments, most of which are to fix grammar, code construction, unused code, outdated titles, etc., and are explained therein. The following are the rationale for the potential policy amendments identified.

Policy Issues

1. In the Lake Whatcom Watershed Overlay district, lowering the threshold of how much new hard surface area is exempt from installing a permanent stormwater management system

In the Lake Whatcom Watershed Overlay District most activities are subject to permanent stormwater management system requirements, though there are a handful of activities exempt from this requirement (WCC 20.51.420(1)). One of these is "projects, work, or activities that will create less than 501 sq. ft. of previously nonexistent hard surface area" (see Exhibit A, 20.51.420(1)(c)(i).) Re Sources initially suggested this be reduced to 120 square feet so as to be consistent with the City of Bellingham's threshold¹. Note, however, that Bellingham's 120 sq. ft. is based on their building code's exemption for

¹ BMC 15.42.060(A)(1): The following new development shall comply with Minimum Requirements No. 1 through No. 5 within subsection (F) of this section: (e) Developments within the Lake Whatcom watershed that create or add 120 square feet or greater, of new, replaced or new plus replaced hard surface area.

structures 120 sq. ft. or less; Whatcom County’s exemption is for structures 200 sq. ft. or less. The Planning Commission recommended lowering this threshold to 200 sq. ft., as shown in Exhibit A.

2. Reduce the amount of tree canopy that can be removed, both when and when not associated with development activity

In both the Lake Whatcom Watershed Overlay District and the Water Resource Protection Overlay District significant tree canopy removal, either associated with or not associated with development activity is limited to 35%² or 5,000 square feet, whichever is *greater*³ (See Exhibit A, §20.51.430(5), §20.51.440(3), §20.71.354(5)), §20.71.356(3)). However, there has been concern that not enough tree canopy is being retained.

The Planning Commission discussed this issue in detail and considered several different ways of addressing tree removal allowances, including:

- Calculating removal allowance by percent of existing canopy (existing method)
- Calculating removal allowance by percent of lot size (would be a new method)
- Regulating how much canopy must be retained (would be a new method)

In the end, they decided on a combination method, calculating removal allowance by percent of existing canopy and lot size, but lowering the removal allowance, especially on larger lots. For tree removal *not associated with development activity* they propose a removal allowance of 20%, though not to exceed 14,000 square feet, of the existing canopy. This would slightly lower what can be removed for smaller lots, but limit removal to 14,000 square feet, which would significantly reduce tree removal on larger (3+ acres) lots. For tree removal *associated with development activity* they propose to allow removal up to a certain percentage of existing canopy or 5,000 square feet, whichever is greater. The percentage would decrease as lot size increases, as follows:

Tree Canopy Removal Allowances when Associated with Development

Lot Size (acres)	Canopy Removal Allowance (percentage of existing canopy)
Less than 1	35%
1 to less than 3	30%
3 to less than 10	20%
10 or greater	15%

This would allow property owners of smaller lots to obtain a building area of 14,000 square feet while greatly reducing the amount of canopy that can be removed from larger lots.

The tree canopy removal allowances only apply outside of shoreline jurisdiction. Within 200’ of the ordinary high water mark, WCC Title 23 (Shoreline Management Program) has its own vegetation management and view protection regulations, which are generally stricter than those of the watershed overlay districts.

² This 35% allowance was originally chosen as it comes from the Department of Ecology’s Stormwater Manual, which assumes that one can remove 35% of the tree canopy without increasing stormwater runoff quantity or decreasing runoff quality.

³ Note that this does not apply to nonconversion forest practices, which are regulated by the Department of Natural Resources.

3. Reduce the size of what's defined as a significant tree

Some thought that we should reduce the size of what's considered a significant tree (see WCC 20.97.419), thinking that this may protect more tree canopy. However, upon further discussion it was understood that doing so wouldn't make much of a difference since measured canopy already includes trees of all sizes. Though tree canopy is currently measured based on the larger trees, smaller trees generally grow interspersed amongst the larger trees. Including smaller trees wouldn't really add to the overall measurement of area. The Planning Commission agreed. Therefore, this amendment is not proposed.

4. Should the penalties for removing trees without a permit be increased?

The Commission was concerned that the penalty for removing trees without a permit is not enough of a deterrent. Currently the penalty is to replant trees (unspecified types or size) at a 3:1 ratio, with a *possible* fine (up to \$1,000/day per violation). However, they were concerned that having to replant three seedlings wouldn't deter someone who removed more significant trees than the code allows. Thus, they have developed some standards for tree size and planting methods and recommend that fines be mandatory (not left up to the PDS Director) and that financial sureties be posted to help ensure that the trees survive. These proposed new standards can be found in §20.51.430(7), 20.51.440(7), 20.71.354(7), and 20.71.356(7).

5. Should public stormwater improvement projects be exempt from installing permanent stormwater management systems in the Lake Whatcom Watershed Overlay district?

There are a handful of activities exempt from having to install permanent stormwater management systems (WCC 20.51.420(1)). It's been suggested that when Public Works installs a stormwater improvement project, the project shouldn't have to be reviewed by PDS for compliance with these regulations (as they currently are), since that's exactly what they're doing: installing permanent stormwater management systems. So, for Council's consideration staff is proposing to add these types of projects to the exempt list as WCC 20.51.420(1)(f).

6. Definition of Stormwater Manual

Throughout the code, and in particular the stormwater code (WCC 20.80.630, *et seq.*), it refers to the "2012 Washington State Department of Ecology Stormwater Management Manual for Western Washington, as amended" as the controlling manual, with "as amended" included so that as new manuals were published they would automatically be the controlling manual.

However, Public Works has raised the issue that there is a lag time between when an updated DOE manual is published and when their staff gets trained on its use. Therefore, they would like: (1) to amend the definition of "current stormwater manual" (§20.97.091.1) to indicate that the version we use is the "County Engineer approved" manual; and (2) to change all references throughout the code to "the current stormwater manual."

This would mean that once DOE publishes a new manual, rather than it automatically be the controlling manual, the County Engineer would need to approve its use for Whatcom County, which presumably would occur shortly after it's published and after staff is trained on its use.

Also note that throughout the code, it is proposed to replace "impervious surface" with "hard surface," as that is the term used in the DOE Stormwater Manual now.

7. Deletion of unused sections

There are several sections of code that are never used and are proposed to be removed. These include:

- 20.51.440(5) & 20.71.356(5) (Tree Canopy Credits) – Never used.
- 20.51.440(6) & 20.71.356(6) (Tree Replacement Requirements) – Never used. Subsection (3) already says one has to retain 65% of the canopy, but doesn't require replacement for that amount. This would only come into play if we were to allow them to exceed the 35%, which we don't want to do, and is already covered by the enforcement section.
- 20.51.440(8) & 20.71.356(8) (Tree Canopy Retention Modifications) – Never used. This section is directed more at large scale developments such as subdivisions or Planned Unit Developments (which are not allowed in the Lake Whatcom watershed).
- 20.51.440(9) & 20.71.356(9) and throughout (Street Trees) – None of the street tree rules are ever used as there are no street trees in the county outside of Urban Growth Areas.

IV. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan's:

- Goal 2D: "Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner."
- Goal 10-J: Prioritize the Lake Whatcom watershed as an area in which to minimize development, repair existing stormwater problems (specifically for phosphorus), and ensure forestry practices do not negatively impact water quality. Provide sufficient funding and support to be successful.
- Policy 10J-8: Continue to develop and refine structural and non-structural best management practices (BMPs), both voluntary and required, to minimize development impacts within the Lake Whatcom watershed.
- Policy 10J-12: Review and modify (as needed) the current development review process for projects in the Lake Whatcom Watershed to ensure coordination with other jurisdictions to streamline regulations that improve and protect water quality.
- Goal 10F: Protect and enhance water quantity and quality and promote sustainable and efficient use of water resources.
- Policy 10F-1: Maintain as a high priority the protection of water quality and quantity.
- Policy 10F-2: Actively participate in and support efforts to coordinate local, federal, tribal, and state agencies to achieve integration and/or consistency between the various levels of environmental regulations relating to the County.
- Policy 10F-3: Work cooperatively with Federal, State, and local jurisdictions, Tribal governments, municipal corporations, and the public to implement the goals and policies of the Comprehensive Plan as well as state water resources and water quality laws.
- Policy 10F-7: Pursue the most effective methods for protecting water quantity and quality, through both regulatory (e.g. zoning, enforcement, fines) and non-regulatory approaches (education, incentives, and technical/financial assistance). Emphasis shall be placed on non-regulatory approaches where possible and effective.
- Policy 10F-9: In conjunction with all jurisdictions, develop and adopt programs to protect water quality and quantity within watersheds, aquifers, and marine waterbodies that cross jurisdictional boundaries.

- Goal 10G: Protect and enhance Whatcom County's surface water and groundwater quality and quantity for current and future generations.
- Policy 10G-1: Manage surface water systems on a watershed basis.
- Policy 10G-6: Pursue the adoption and implementation of ground and/or surface water management plans and their integration into local comprehensive plans. Designate the Lake Whatcom and Lake Samish Watersheds as high priorities in this effort.
- Goal 10H: Protect water resources and natural drainage systems by controlling the quality and quantity of stormwater runoff.
- Policy 10H-9: Develop and administer stormwater management standards as required by the NPDES Phase II Permit.
- Policy 10H-11: Place a high priority on integrating impervious surface reduction incentives into policies, regulations, and standards.

V. Draft Findings of Fact and Reasons for Action

Staff recommends the Council adopts the following findings of fact and reasons for action:

1. The Whatcom County Council placed on the annual docket item PLN2021-00008, directing staff to “amend the Lake Whatcom Watershed Overlay District (WCC 20.51) and the definition of significant tree (WCC 20.97.436.4) to improve compliance with the Total Maximum Daily Load by further reducing phosphorus loading impacts from development and improve tree protection measures.”
2. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to consider such amendments.
3. As some of the language of the Lake Whatcom Watershed Overlay District is also found in the Watershed Protection Overlay District, for consistency’s sake amendments to language in one watershed overlay district are also being made in the other so as to remain consistent.
4. In considering such amendments, Council reviewed the Lake Whatcom Watershed Overlay District and Water Resource Protection Overlay District codes for other issues, such as grammar, code construction, unused code, outdated titles, etc. Most of the proposed amendments shown in Exhibit A are to fix those types of issues.
5. Regarding Policy Issue #1: Reducing the threshold of how much new hard surface area is exempt from installing a permanent stormwater management system in the Lake Whatcom Watershed Overlay district from 501 to 201 sq. ft. would cause more stormwater to be treated through a stormwater system, thus reducing the amount of contaminants reaching Lake Whatcom.
6. Regarding Policy Issue #2: In all the watershed overlay districts, reducing the amount of tree canopy that can be removed on larger lots would preclude multiple acres of trees being cleared when not associated with development activity. This would reduce stormwater impacts on the lakes.
7. Regarding Policy Issue #3: In the Lake Whatcom Watershed Overlay District it is duplicative and therefore unnecessary for PDS to review and ensure permanent stormwater facilities are installed for public stormwater improvement projects.

8. Regarding Policy Issue #4: Public Works has requested that Council amend the definition of “current stormwater manual” and to reference it throughout the code, so that when the Department of Ecology publishes a new stormwater manual the County Engineer must first approve its use in Whatcom County, as this would give staff time to train on its use.
9. Regarding Policy Issue #5: In all the watershed overlay districts, there are several sections that are never used and therefore unnecessary.
10. Regarding Policy Issue #6: Reducing the size of what’s defined as a significant tree is found to be unnecessary, as the canopy of smaller trees interspersed with the larger ones would not significantly increase (and therefore retain more) canopy.
11. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 27, 2022. No comments were received.
12. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 20, 2022, for their 60-day review. No comments have been received.
13. The Planning Commission held a duly noticed public hearing on the proposed amendments on May 12, 2022.
14. The County Council held a duly noticed public hearing on the proposed amendments on _____, 2022.
15. The amendments are consistent with Comprehensive Plan goals and policies listed under section IV, Comprehensive Plan Evaluation.
16. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, Chapter 314-55 WAC, and other applicable requirements.
17. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals, and welfare.

VI. Proposed Conclusions

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

VII. Recommendation

The Planning Commission and Planning and Development Services recommends that the County Council approve the proposed amendments as shown in Exhibit A.