



MEMORANDUM

TO: Whatcom County Executive and Planning and Development Services
FROM: Councilmembers Galloway and Donovan
DATE: October 21, 2025
RE: Legislative intent for resolution docketing Lake Whatcom code update

Purpose

The purpose of this memo is to accompany a resolution amending resolution 2025-013 to docket an additional Comprehensive Plan and zoning amendment related to Whatcom County Code 20.51 to strengthen protection of the Lake Whatcom Watershed (AB2025-706). This docket item aims to update County phosphorus neutral development code in the Lake Whatcom Watershed, with a goal of meeting or exceeding the standards set by the corresponding City of Bellingham policies. Included below are the priority areas for staff review in addressing code discrepancies between the two jurisdictions.

Background

Lake Whatcom provides drinking water for over 100,000 people, approximately half of Whatcom County residents. In 1998, the Washington Department of Ecology placed Lake Whatcom on a list of polluted water bodies due to low levels of dissolved oxygen largely caused by excess phosphorus carried into the lake by stormwater runoff. In response, Whatcom County, the City of Bellingham, and the Lake Whatcom Water and Sewer District established the Lake Whatcom Management Program ([Interlocal Agreement No. 980913](#)) to work towards the shared goal of lake protection. In 2016, the United States Environmental Protection Agency (EPA) approved the Lake Whatcom Total Maximum Daily Load (TMDL), giving Whatcom County and the City of Bellingham 50 years to implement the TMDL and meet water quality standards. A TMDL is a calculation of the maximum amount of a pollutant allowed to enter a waterbody to meet water quality standards and is required by the Clean Water Act for all impaired waterbodies.

Due to the presence of naturally-occurring phosphorus in the soil, special attention is needed to mitigate the water quality impacts of soil-disturbing activities. The most significant disturbances are associated with development, as shown by the [2021 Lake Whatcom Tributary Monitoring Program Phase 3 Report](#), which found that the highest average total phosphorus concentrations were observed in the more developed areas of the watershed. The Lake Whatcom Management Program (LWMP) has identified two goals related to pollution from development:

1. Protect and restore water quality by using best practices to collect, treat, and manage stormwater runoff from developed areas throughout the watershed.
2. Use development regulations to minimize water quality impacts from development.

The County governs the vast majority of the remaining developable land in the Lake Whatcom watershed and therefore its land use and development policies have an outsized impact on the

success of the County's individual and joint efforts to meet targets. In addition to purchasing land for conservation, or establishing conservation easements, the County's best return on investment in addressing phosphorus pollution will continue to be through mitigation of development-related water quality impacts. If phosphorus-neutral development code is to be considered Whatcom County's frontline mitigation strategy for meeting TMDL goals, then the County should adopt a level of stringency in these standards that is equal to or exceeding those adopted by the City of Bellingham.

Coordinating Whatcom County and City of Bellingham Code

While the City of Bellingham and Whatcom County each have established land use regulations intended to limit phosphorus impacts from development, [staff analysis has highlighted](#) that these policies are not aligned in a number of key areas. The 2025-2029 Lake Whatcom Management Program work plan calls for the reconciliation of these discrepancies.

County staff presented on this topic at the June 4 Lake Whatcom Policy Group Joint Councils meeting, identifying discrepancies between comparable County and City codes in four key areas:

1. Land disturbing restrictions

Both jurisdictions maintain the same seasonal window, limiting soil-disturbing activities within the watershed from May to October each year. However, County code includes an exemption for projects under 200 square feet.

Desired outcome of code updates: assess the minimum square footage exemption and consider reducing or removing the exemption. Determine impacts to activities within the watershed versus estimated phosphorus reductions relative to targets and goals set by management plan. If a particular use case is justified for exemption, staff could explore the feasibility of a more nuanced definition of exempted uses.

2. Surface types

Both jurisdictions maintain similar square footage thresholds triggering mitigation for hard surfaces and pervious pavement, however the County's land disturbance threshold for partially pervious surfaces, such as lawns, non-native vegetated areas, and non-engineered pervious patios, is significantly larger with a minimum of 5,000 square feet of disturbance triggering mitigation requirements compared with the City's 120 square feet threshold.

Desired outcome of code updates: evaluate the discrepancies between the two jurisdictions for each surface type as well as the rationale for any discrepancies between the County's approach to each surface type, with special attention paid to the partially pervious surface type. If appropriate, the threshold for partially pervious surfaces should be amended to be more aligned with those of the other surface types.

3. Phosphorous loading limitations

The City uses a more stringent level of phosphorus loading limitations for engineered stormwater systems at 0.15 pounds of phosphorus per acre per year. This standard is equivalent to the phosphorus loading rate of a forested condition, meaning that this is the estimated amount of phosphorus runoff that would be expected from forested land. The County uses a loading limitation baseline at 0.1875 pounds per acre per year, 25% above forested condition.

The City also holds new and redeveloped sites to current standards for private stormwater mitigation, while the County holds new development and only the limited footprint of redeveloped area of a site to current standards.

Desired outcome of code updates: Consider amending the loading limitation level for Whatcom County to match the phosphorus loading expected of a "forested condition" (0.15 pounds per acre per year). Staff should also evaluate the impacts and feasibility of adopting a

retrofit trigger clause similar to the City's, requiring whole-site compliance with current stormwater regulations upon redevelopment.

4. Post construction requirements

While both jurisdictions have historically used an "observation and complaints"-based approach to address failing private stormwater systems, the City has indicated that a resource-dependent inspection program will be enabled for the 2025-2029 LWMP Work Plan period in order to better monitor and quantify the impacts of the jurisdiction's phosphorous-neutral development rules for private stormwater.

Since 2016, every new development in the County part of the watershed is required to install some type of stormwater facility or system to reduce runoff from the site. After installation, County staff inspect the facility to ensure it meets existing criteria and record a declaration of covenant per [WCC 20.51.420\(3\)](#). A declaration of covenant requires property owners to maintain their stormwater facilities, provides authority for the County to periodically inspect the facilities, and describes procedures to follow if an inspection determines that maintenance or repair of stormwater systems is needed. However, the County does not perform regular inspections to ensure these systems – which are critical for keeping phosphorus out of the lake – continue to function as designed and permitted over time.

The County's current approach for ensuring that private stormwater facilities are functioning as designed is to provide technical assistance and inspection reports when homeowners voluntarily request them.

Desired outcome of code updates: identify the total number of parcels within the Lake Whatcom Watershed in the County's jurisdiction that are required to comply with current stormwater regulations and develop a plan to implement a private stormwater inspection program. If needed, changes to code language should be made to authorize implementation of an inspection program.

Staff should also explore potential funding sources that could support an inspection program long term, including use of the Lake Whatcom Stormwater Utility or similar existing fee structures.

In the absence of regular inspections, the impact of the stormwater-related development code on water quality goals may not be fully understood, tracked, and monitored. The concern is that the County may be overestimating how effective current policies are in actually cleaning up the lake, or underestimating the number of private systems out of compliance impacting the accuracy of the phosphorus mitigation estimates guiding management decisions. An empirical monitoring program could help more accurately measure progress towards meeting the goals identified by the LWMP in its latest five-year work plan.

In addition to an enforcement program, staff should work to increase education and engagement efforts designed to inform homeowners about their systems and the importance of maintaining them. This could include mailers, social media posts, and in-person events. These efforts should be in coordination and collaboration with the City of Bellingham and the Lake Whatcom Water and Sewer District.

Conclusion

This memo is intended to provide background information, help guide council discussion, and establish our legislative interest and intent as we work collectively with the Executive's Office, Planning and Development Services, and Public Works to update the Comprehensive Plan and modernize Lake Whatcom code.