

**WHATCOM COUNTY COUNCIL
SURFACE WATER
WORK SESSION**

May 14, 2019

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

JON HUTCHINGS
Director



NATURAL RESOURCES

322 N. Commercial Street, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive, and
Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director

FROM: Gary S. Stoyka, Natural Resources Program Manager

DATE: May 6, 2019

RE: May 14, 2019 Council Surface Water Work Session

Please refer to the proposed agenda below for the next Surface Water Work Session. Additional supporting documents may be distributed at or before the meeting.

AGENDA

Date:	Tuesday, May 14, 2019		
Time:	10:30 a.m. to 12:00 p.m.		
Place:	Civic Center Garden Level Conference Room		
Time	Topic	Council Action Requested	Background Information Attached
10:30 AM – 11:45 AM	Overview of Draft Resolution and Ordinance for Implementation of Fees for the Lake Whatcom Stormwater Utility Rate	Discussion	LWSU Fee Implementation Report, Draft Ordinance, Minority Report
11:45 AM – 12:00 PM	Watershed Planning Update	Discussion	None

If you have questions, please feel free to call me at (360) 778-6218.

cc: Mike McFarlane Joe Rutan Paula Harris John Wolpers Mike Donahue
Beth Bushaw Jeff Hegedus John Thompson Kraig Olason Erika Douglas
Tyler Schroeder Josh Fleischmann Karen Frakes Jennifer Schneider Jill Nixon
Sue Blake Roland Middleton Dana Brown-Davis Atina Casas Cathy Craver
George Boggs Ryan Ericson Lonni Cummings Kristi Felbinger Mark Personius

Whatcom County

Lake Whatcom Stormwater Utility



LWSU Fee Implementation Report

DRAFT

May 2019

Washington

7525 166th Avenue NE, Ste. D215
Redmond, WA 98052
425.867.1802

Oregon

4000 Kruse Way Pl., Bldg. 1, Ste 220
Lake Oswego, OR 97035
503.841.6543

Colorado

1320 Pearl St, Ste 120
Boulder, CO 80302
719.284.9168

www.fcsgroup.com

This entire report is made of readily recyclable materials, including the bronze wire binding and the front and back cover, which are made from post-consumer recycled plastic bottles.



FCS GROUP
Solutions-Oriented Consulting

TABLE OF CONTENTS

Section I.	Introduction	1
Section II.	Fee Methodology	3
Section III.	Capital Facilities Charge	10

LIST OF EXHIBITS

Exhibit 1.	County's LWMP Cost and Funding Sources.....	2
Exhibit 2.	LWSU Fee Methodology	3
Exhibit 3.	Estimated Annual Financial Obligations.....	4
Exhibit 4.	ESUs by Customer Type.....	4
Exhibit 5.	Annual Fee per ESU	4
Exhibit 6.	Fee Schedule Forecast	5
Exhibit 7.	Single Family Parcels: Impervious Thresholds.....	6
Exhibit 8.	Single Family Sample Bills in 2021 (Year 2)	7
Exhibit 9.	Non-Single Family Sample Bills in 2021 (Year 2).....	8
Exhibit 10.	General CFC Calculation Methodology.....	10
Exhibit 11.	CFC Calculation	10

Section I. INTRODUCTION

Lake Whatcom Management Program

The Lake Whatcom watershed is in Whatcom County in the northwest corner of Washington State. The Watershed is a major source of drinking water for residents and provides a place to live for a variety of animals, fish and humans alike.

Lake Whatcom's water quality has deteriorated as a result of excessive phosphorus entering the lake from residential development, logging, airborne deposition, and natural processes. This phosphorus loading has contributed to algae blooms and dissolved oxygen deficits, causing problems for the water supply system, aquatic biota, and recreational users of the lake.

The City of Bellingham, Whatcom County, and the Lake Whatcom Water and Sewer District came together in 1998 to formalize, by interlocal agreement, the Lake Whatcom Management Program (LWMP). The goal of this program is to improve lake water quality by jointly implementing programs affecting the Lake Whatcom watershed. These programs include land preservation, stormwater management, land use management, hazardous material response, education and engagement, and many more.

The City of Bellingham's stormwater utility and Lake Whatcom Watershed Land Acquisition and Preservation Program contributes resources towards this program. County funding for their portion of the LWMP comes from a variety of sources, including Flood Control Zone District Tax (FCZD or Flood Tax), Real Estate Excise Tax (REET), County Road Tax, and grants when available.

TMDL Requirements Create Additional Funding Need

In April of 2016, the U.S. Environmental Protection Agency (EPA) and Washington State Department of Ecology (DOE) approved a water quality improvement plan for the Lake Whatcom watershed, which intends to limit the total phosphorus and bacteria TMDL (total maximum daily load) entering the lake in compliance with the federal Clean Water Act.

To quote the adopted plan, "During development of this TMDL, Ecology (DOE) found that if runoff is reduced to match forested conditions in 87% of the current developed area, the remaining 13% of that developed area can continue to discharge stormwater as it does now. This does not mean that 87% of the developed area must be converted to forest. Rather, it means that the runoff from that land must be managed so that the effect on the lake is the same as if the runoff came from a forest."

In response to this new requirement, the City of Bellingham and Whatcom County submitted a letter to the DOE (dated October 20, 2016), proposing a 50-year implementation timeline with an associated \$100 million budget (2016 dollars; assumed to be \$50 million per jurisdiction).

The City's stormwater utility and Lake Whatcom Watershed Land Acquisition and Preservation Program is responsible for generating resources to implement the City's portion of this plan. However, the County's share of the implementation cost cannot be covered by the existing funding sources previously mentioned (FCZD / Flood Tax, REET, County Road Tax, and or grants).

Lake Whatcom Stormwater Utility Formation & Service Area

Formation & Purpose

In December 2017, the Whatcom County Council established the Lake Whatcom Stormwater Utility Service Area (LWSU), via Ordinance 2017-076, under the authority of RCW 36.89.

The purpose of the new stormwater utility is to provide additional funding for efforts to clean up and protect Lake Whatcom water quality. As previously stated, existing funding sources are not enough to meet current and future Lake Whatcom program needs, in order to comply with state-mandated reductions in phosphorus. **Exhibit 1** shows the County’s total estimated LWMP cost per year, the amount already funded from existing sources, and the amount needed from the Lake Whatcom Stormwater Utility fee (\$817,600).

Exhibit 1. County’s LWMP Cost and Funding Sources

Description	Total LWMP Program Cost	Funded by FZCD, REET, Road Tax, Grants	Needs to be Funded by Lake Whatcom Stormwater Fee
Capital Construction	\$ 1,000,000	\$ 750,000	\$ 250,000
Capital Maintenance	180,300	-	180,300
Stormwater Program	1,269,930	1,127,630	142,300
NPDES Program	273,750	273,750	-
NPDES O&M	187,076	187,076	-
Aquatic Invasive Species	132,000	132,000	-
Homeowners Incentive Program	300,000	100,000	200,000
Monitoring	45,000	-	45,000
Total	\$ 3,388,056	\$ 2,570,456	\$ 817,600

Funding Study

Whatcom County Public Works and FCS GROUP conducted a funding study to evaluate stormwater fee structure options for the new stormwater utility service area from June 2018 to March 2019. Stakeholder input and recommendations were provided through a citizen advisory committee. Interested members of the public attended advisory committee meetings and provided comments to the committee for consideration.

Advisory Committee

The aforementioned citizen advisory committee was selected by the Whatcom County Council on May 8, 2018. The purpose of the committee was to represent rate payers in the Lake Whatcom Stormwater Utility Service Area and advise Whatcom County Public Works staff and the Whatcom County Council on a recommended stormwater fee structure. The committee provided their final recommendations on March 20, 2019.

Service Area

The LWSU service area includes the entire unincorporated Lake Whatcom watershed (outside city limits), as shown in the map in the appendix to this report.

Section II. FEE METHODOLOGY

Rational Nexus Between Service Cost / Benefit and Fee

A fee may be found legally valid if the services that it funds generally benefit those who pay it – a property-specific link between fees paid and level of service received is generally not required. Case law in Washington, notably *Teter v. Clark County*, has supported the stance that an indirect linkage is adequate justification for a fee. Throughout the United States, impervious surface area is a widely accepted measure of runoff contribution, providing the basis for fees in most stormwater utilities. In support of this methodology, the 2016 TMDL report noted that, “The simplest way to meet the phosphorus reduction goal [for the Lake Whatcom Watershed] is through full infiltration of runoff.”

An impervious surface area-based fee structure was recommended by FCS GROUP and County staff, and ultimately was the committee recommended structure as well.

General Fee Methodology

The proposed LWSU stormwater fee would be assessed annually, therefore the fee itself will be expressed as an annual fee. Two key pieces of information are needed in order to calculate the annual fee, as shown in **Exhibit 2: Annual Operating & Capital Costs and Chargeable Equivalent Service Units (ESUs)**. ESUs are used to equitably scale up the fee for non-single family parcels and are based on impervious surface area.

Exhibit 2. LWSU Fee Methodology

$$\text{Annual Fee per ESU} = \frac{\text{Annual Operating \& Capital Costs}}{\text{Chargeable Equivalent Service Units (ESUs)}}$$

Annual Operating & Capital Costs

The annual operating and capital costs for the LWSU are initially estimated to be \$817,600. This number was provided by County staff, based on the program elements shown in **Exhibit 3**. Activities to be funded include capital construction and maintenance, outreach and education, the Homeowner’s Incentive Program (HIP), monitoring, and administrative costs.

In addition to these program elements, an additional \$79,000 per year is necessary in order to fund the County’s share of the LWMP’s operating reserve, over a ten-year period.

The combined operating, capital, and reserve components total \$896,600 per year. It is expected that these cost components will increase over time, due to anticipated operating and construction cost escalation.

Exhibit 3. Estimated Annual Financial Obligations

Program Element	Annual Cost to be Funded from LWSU Fee
Capital Construction (Supplemental funding)	\$ 250,000
Capital Maintenance	180,300
Enhanced Outreach & Education	68,000
Homeowners Incentive Program (HIP)	200,000
Monitoring	45,000
Administrative Costs	74,300
Total Operating and Capital Costs	\$ 817,600
Plus: Reserve Component	79,000
Total Annual Financial Obligations for the LWSU	\$ 896,600

Chargeable Equivalent Service Units (ESUs)

Based on an analysis of single family and all other developed (non-single family) parcels, it is estimated that there are 5,784 chargeable ESUs in the utility service area, as shown in the table in **Exhibit 4**.

Exhibit 4. ESUs by Customer Type

Customer Type	ESUs
Single Family Parcels	5,171
Non-Single Family Parcels	613
Total	5,784

Annual Fee per ESU

Based on the annual cost estimate of \$896,600 and a customer base of 5,784, the annual fee per ESU would be \$155.01. This result does not consider a phase-in period, nor does it consider anticipated annual cost escalation. These items are addressed in subsequent sections.

Exhibit 5. Annual Fee per ESU

$$\begin{array}{c}
 \text{\$151.01 per} \\
 \text{ESU per Year} \\
 = \\
 \text{\$896,600} \\
 \div \\
 \text{5,784 ESUs}
 \end{array}$$

Forecasting the Fee Schedule

The impact of the phase-in period would result in an annual ESU fee of \$77.51 in 2020 and \$155.01 in 2021 as shown in **Exhibit 6**.

Phase-in Period

While we would not generally recommend phasing up to fees at these projected levels, concerns expressed for (1) non-single family customers and (2) the ability of the County to meet proposed service levels in Year 1, lead us to recommend a 2-year phase-in of the proposed fees. The resulting fees would be 50% for 2020 and 100% 2021.

Annual Fee Escalation

We recommended incorporating an annual fee escalation clause, in order to allow the fee to increase at roughly the same pace as costs increase. The committee recommended that this escalation be based on the ‘cost of living adjustment’ each year. The national Cost of Living Adjustment (COLA) index generated by the Social Security Administration of the United States bases its index, in part, on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

There is not a readily accessible, regional COLA index that we are aware of, but there is a Seattle Tacoma Bellevue CPI-W index that we recommend for the annual escalation adjustment. Based on the recent regional CPI-W index, we estimate that an increase of 2% per year would be adequate for planning purposes. Actual adjustments should be based on the reported CPI-W each year.

We assume that both the reserve component and the operating and capital component would escalate each year. Since the reserve component is based on a portion of operating costs (~33%), it would follow that it should increase as operating costs increase.

Exhibit 6. Fee Schedule Forecast

Fee Schedule		Year 1	Year 2	Year 3*	Year 4*	Year 5*
Five-Year Forecast		2020	2021	2022	2023	2024
<u>Fee per ESU with CPI-W</u>						
Annual CPI-W Estimate				2.0%	2.0%	2.0%
Reserve Funding		\$13.66	\$13.66	\$13.93	\$14.21	\$14.49
Operating & Capital		\$141.35	\$141.35	\$144.18	\$147.06	\$150.01
Fee per ESU		<u>\$155.01</u>	<u>\$155.01</u>	<u>\$158.11</u>	<u>\$161.27</u>	<u>\$164.50</u>
<u>Fee per ESU with Phase-in Strategy</u>						
Phase-in		50%	100%	100%	100%	100%
Reserve Funding		\$6.83	\$13.66	\$13.93	\$14.21	\$14.49
Operating & Capital		\$70.68	\$141.35	\$144.18	\$147.06	\$150.01
Fee per ESU		<u>\$77.51</u>	<u>\$155.01</u>	<u>\$158.11</u>	<u>\$161.27</u>	<u>\$164.50</u>
<u>Single Family Fee Schedule</u>						
	<u>ESU</u>					
Small Footprint	0.75	\$58.13	\$116.26	\$118.58	\$120.96	\$123.37
Medium Footprint	1.00	\$77.51	\$155.01	\$158.11	\$161.27	\$164.50
Large Footprint	2.00	\$155.01	\$310.02	\$316.22	\$322.55	\$329.00

*CPI-W adjustments should be based on actual results.

Single Family Parcels

Most regional stormwater utilities charge single family parcels uniformly. The LWSU advisory committee was interested in adding some additional resolution to the traditional approach in large parts due to the residential character of the watershed and the variety of the residential development patterns. The following single family fee tiers are recommended: Small impervious footprint, Medium impervious footprint, and Large impervious footprint.

Initial Parcel Grouping for Single Family

Because it was not feasible to measure impervious area on all single family parcels (tree canopy obstruction, too numerous and costly to field check), single family parcels are initially assigned one of two fees correlated with parcel size:

- Parcels less than or equal to two acres are initially charged the Medium impervious footprint fee;
- Parcels greater than two acres are initially charged the Large impervious footprint fee.

Based on impervious measurements from approximately 150 randomly selected single family parcels from each group (approximately 300 in total), the average Large lot had significantly more impervious area than the average Medium lot. This is the primary justification for assessing a higher fee for Large lots. The fee assigned to the Small tier is meant to recognize the assumed reduced impact these parcels have on the stormwater system, while further acknowledging that most program costs are fixed.

Annual Fees

Depending on the estimated impervious area for a given parcel, there are three potential annual fees:

- Small footprint parcels are assigned 0.75 ESU: \$58.13 in 2020 and \$116.26 in 2021;
- Medium footprint parcels are assigned 1.00 ESU: \$77.51 in 2020 and \$155.01 in 2021; or
- Large footprint parcels are assigned 2.00 ESUs: \$155.01 in 2020 and \$310.02 in 2021.

Single Family Parcel Placement When Impervious Data is Available

When actual impervious area is available, whether from additional measuring by the County or because of the appeals process, we recommend the following impervious thresholds for parcels.

Exhibit 7. Single Family Parcels: Impervious Thresholds

Impervious Tier Threshold	Notes
Small footprint: <2,500 impervious square feet	Any parcel owner that can demonstrate an impervious footprint of less than 2,500 square feet would warrant this reduced rate.
Medium footprint: 2,500 to 8,400 impervious square feet	Any developed single family parcels <=2 acres are initially charged the medium footprint rate. *
Large footprint: > 8,400 impervious square feet	Any developed single family parcels >2 acres are initially charged the large footprint rate. *

* If a parcel's footprint designation (small, medium, large) is in error, based on the actual measured impervious footprint, as demonstrated to the satisfaction of County staff, a parcel may be allowed to move to a different category. For example, if a parcel owner is initially placed in the large footprint category and can demonstrate that they actually have a medium footprint, they would be placed in the medium footprint category.

Non-Single Family Parcels

Annual Fees

Every 4,200 square feet of impervious area for non-single family parcels is equal to one 1.00 ESU and would be charged \$77.51 in 2020 and \$155.01 in 2021 (per ESU).

Defining the Equivalent Service Unit through Impervious Measurements

Given the diversity that exists among non-single family properties, all non-single family parcels in the service area are to be charged based on measured impervious surface area, initially based on a 2016 aerial photograph of each parcel.

Based on sampling data specific to the LWSU service area, the average single family parcel has approximately 4,200 impervious square feet. Therefore, every 4,200 square feet of impervious area for non-single family parcels is equal to one (1) equivalent service unit.

Calculating the ESU for Individual Customers

We recommend the following policies when calculating fees for individual non-single family parcels:

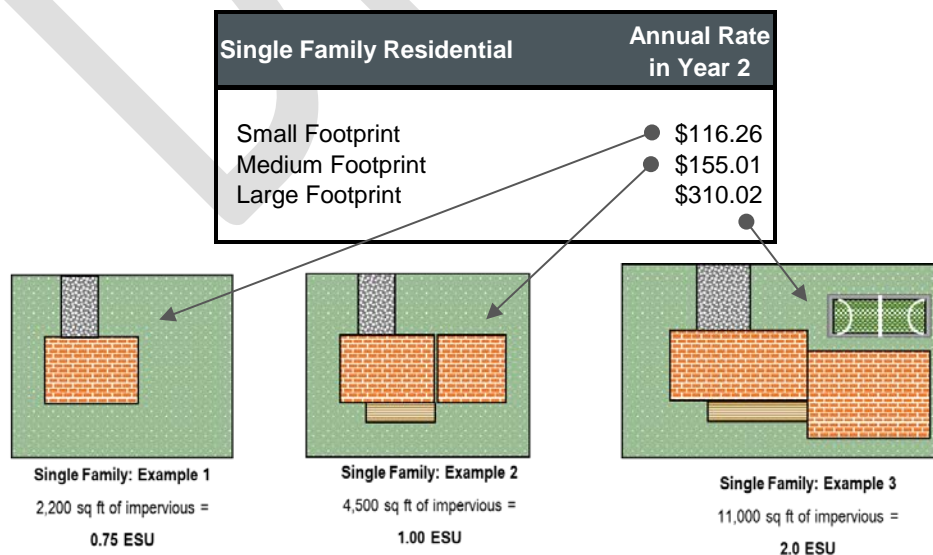
- **Minimum of 1.00 ESU:** We recommend charging each developed non-single family parcel 1.00 ESU, even if the resulting calculation is less than 1.00 ESU.
- **Round to the nearest whole ESU:** ESU calculations should be rounded to the nearest whole ESU. One reason to round to the nearest ESU is because impervious area is a fairly inexact measure of contribution of runoff, unlike a water meter for a water utility, for example.

Sample Bills

Single Family Residential

Depending on which tier a single family parcel would fall within, the parcel would be charged one of three fees, summarized in **Exhibit 8**. Some hypothetical visual examples are also provided below.

Exhibit 8. Single Family Sample Bills in 2021 (Year 2)



Non-Single Family

As described previously, bills for all other developed (non-single family) parcels would be variable, based on the measured impervious area per parcel.

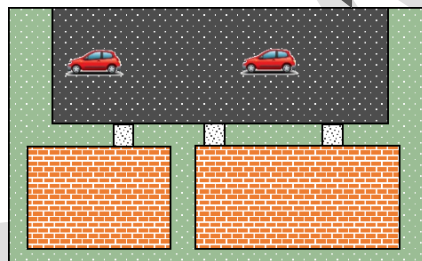
The minimum charge would be one ESU (non-SFR would not qualify for the Small footprint tier), and calculations would be rounded to the nearest whole ESU. Based on various amounts of impervious area, **Exhibit 9** shows the resulting fees for a number of hypothetical parcels.

Exhibit 9 also shows an example parcel with 25,000 impervious square feet. To calculate the fee, the impervious area is divided by the ESU value of 4,200 impervious square feet, resulting in 5.95 ESUs. That is then rounded to the nearest whole ESU — 6 ESUs. With an ESU rate of \$155.01 in 2021 (Year 2 of the program), that parcel’s annual fee would be \$930.07.

Exhibit 9. Non-Single Family Sample Bills in 2021 (Year 2)

Impervious Square Feet	ESUs	Annual Rate	Impervious Square Feet	ESUs	Annual Rate
2,500	1.0	\$155.01	50,000	12.0	\$1,860.12
5,000	1.0	\$155.01	100,000	24.0	\$3,720.24
10,000	2.0	\$310.02	200,000	48.0	\$7,440.48
25,000	6.0	\$930.06	250,000	60.0	\$9,300.60

*Assumes \$155.01 per ESU



Non-Single Family
25,000 sq ft of impervious ÷ 4,200 per ESU
5.95 ESUs → 6.00 ESUs

Fee Exemptions & Reductions

Exemptions

There are several proposed fee exemptions, including the following:

- Forestland or timberland as defined by RCW 36.89.080: (3) – Required by State law.
 - » Rates and charges authorized under this section may not be imposed on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW.
- Senior or Disabled low-income parcel owners – Not required but allowed by State law.
 - » The senior/disabled exemption is recommended to be consistent with County policy and other impervious surface-based fees within the County (i.e., BBWARM).
- Private and public roads.
 - » The EPA defines stormwater systems to include public streets, which are used to convey runoff. Private streets are subject to similar development standards in the Watershed. In addition, the County Road Fund directly pays into the Stormwater Fund to address county road impacts on stormwater.

Parcels and / or impervious area related to any of these categories have been excluded from the chargeable ESU customer total in **Exhibit 4**.

Fee Reduction for Commercial Rainwater Harvesting Systems

Under RCW 35.67.020 (3), State law requires that stormwater fees be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

We do not recommend a reduction of greater than ten percent.

Fee Appeals Process

Many authorizing ordinances contain language providing for fee appeals. Most contain the following or similar terms. If the property owner or person responsible for paying for the stormwater fee believes that an assigned fee is incorrect, such a person may request in writing that the fee be recomputed. However, filing of such a request does not extend the period for payment of the charge. Such requests shall be made within a specified time period, such as thirty days of the mailing of the billing in question. The property owner would have the burden of proving that the service charge adjustment should be granted.

Decisions on requests for fee adjustment would be made by the Public Works Director or his/her designee on information submitted by the applicant and by the Public Works Department within a specified time period, such as sixty days of the adjustment request, except when additional information is needed. The applicant would be notified in writing of the manager's decision. If the applicant's request is denied by the director, the customer would be able to submit an appeal of the denial of the first appeal in writing to the Hearing Examiner. The Hearing Examiner would review appeals and base his/her decision on information provided by the customer and by Public Works staff or may review the property directly, in person. The Hearing Examiner's decision would be final.

If an adjustment is granted which reduces the service charge for the current year, the applicant would be refunded the amount overpaid in the current year. If the Public Works Director finds that a service charge bill has been undercharged, then either an amended bill would be issued which reflects the increase in service charge or the undercharged amount would be added to the next year's bill.

Section III. CAPITAL FACILITIES CHARGE

Introduction

Capital facilities charges (CFCs) are one-time fees, paid at the time of development, intended to recover a share of the cost of system capacity needed to serve growth. They serve two primary purposes: to provide equity between existing and new customers; and to provide a source of capital (equity) funding in support of system costs. The charge is an upfront charge imposed on system growth and is primarily a charge on new development, although also applicable to expansion or densification of development when such actions increase requirements for utility system capacity.

Methodology

The basic approach to the CFC computation is a simple division of costs by customer base, as shown in **Exhibit 10**.

Exhibit 10. General CFC Calculation Methodology

$$\begin{array}{c}
 \text{Capital} \\
 \text{Facilities} \\
 \text{Charge}
 \end{array}
 =
 \frac{\text{Applicable Capital Cost}}{\text{Applicable Customer Base}}$$

- The numerator in the charge includes planned system facilities, and the charge is intended to represent a fair share of the cost of those system facilities that will serve future users, or growth.
 - » The County has committed \$50 million in capital costs over 50 years to comply with the TMDL. At this time, approximately 75% of this capital cost is assumed to be funded through REET receipts, which results in 25% of the capital cost to be funded through LWSU fees.
- The denominator includes projected system capacity in the service area.
 - » The Lake Whatcom Watershed Annual Build-out Analysis Report for 2018 indicates that there are 5,445 existing dwelling units in the unincorporated Lake Whatcom Watershed, and capacity for 1,493 more dwelling units in that area, totaling 6,938 dwelling units. For the purposes of this analysis, a dwelling unit is assumed to be equivalent to an ESU (their 2018 values are nearly identical—5,445 vs. 5,784).

Exhibit 11. CFC Calculation

Description	Value	Notes
Capital Costs	\$ 48,000,000	48 Years at \$1 million per year
Adjustment: REET Funding	\$ (36,000,000)	Assumes 75% REET funded; 25% rate funded:
	\$ 12,000,000	based on \$750,000 REET / \$250,000 Rate funding plan.
Total Developed / Developable Dwelling Units	6,938	2018 Lake Whatcom Watershed Buildout Analysis
Capital Facilities Charge per ESU	\$1,730	

*\$48 million excludes \$2 million assumed to have been spent in 2017, 2018 to be conservative; instead of \$50 million.

Implementation

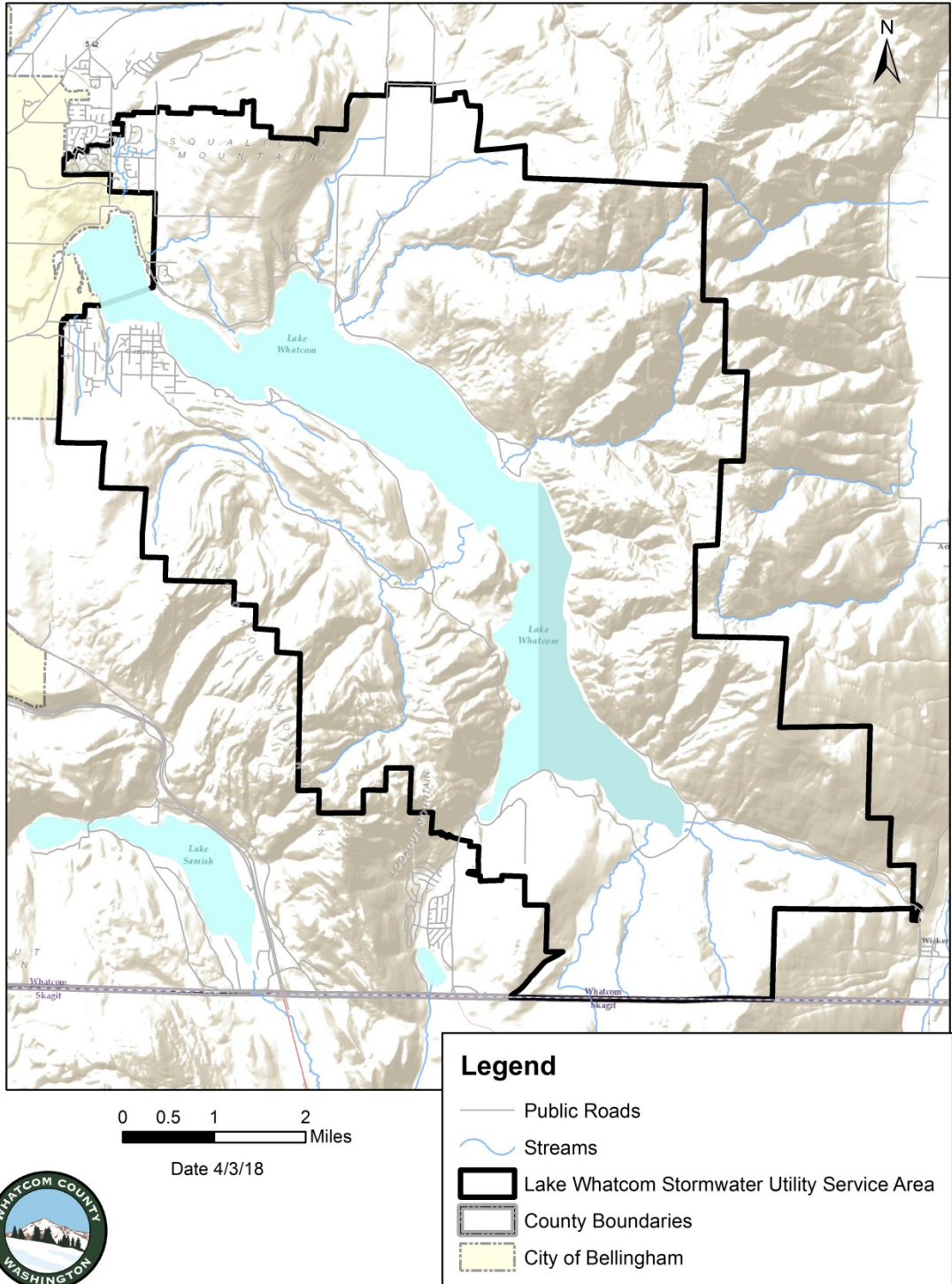
The calculated charge of \$1,730 is the maximum allowable charge. County Council can choose to adopt a CFC that is less than this amount.

- Single family parcels that are being developed would pay a flat fee of \$1,730.
- Non-single family parcels would pay \$1,730 for every 4,200 square feet of impervious area that the development would add to the system.

DRAFT

APPENDIX A: MAP OF THE LWSU SERVICE AREA

Lake Whatcom Stormwater Utility Service Area



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

PROPOSED BY: _____
INTRODUCTION DATE: __6/4/19__

ORDINANCE NO. 2019-

AN ORDINANCE AUTHORIZING A CHARGE FOR THE FURNISHING OF SERVICE TO THOSE WHO ARE RECEIVING OR WILL RECEIVE BENEFITS FROM STORMWATER CONTROL FACILITIES OR PROGRAMS AND WHO ARE CONTRIBUTING TO AN INCREASE IN SURFACE WATER RUNOFF IN THE LAKE WHATCOM STORMWATER UTILITY SERVICE AREA

WHEREAS, RCW 36.89.080 authorizes a charge for the furnishing of service to those who are receiving or will receive benefits from stormwater control facilities and programs and who are contributing to an increase in surface water runoff; and,

WHEREAS, the Lake Whatcom Stormwater Utility Service Area was adopted with Ordinance 2017-076 to include the entire unincorporated Lake Whatcom Watershed; and,

WHEREAS, the Lake Whatcom Stormwater Utility’s purpose is to recover applicable costs of compliance with state-mandated reductions in phosphorus and meet federal Clean Water Act requirements; and,

WHEREAS, A citizen advisory committee was selected by Whatcom County Council on May 8, 2018. The purpose of the committee was to represent rate payers in the Lake Whatcom Stormwater Utility Service Area and advise Whatcom County Public Works staff and the Whatcom County Council on a recommended stormwater rate structure; and,

WHEREAS a citizen advisory committee was selected by Whatcom County Council on May 8, 2018 to represent rate payers in the Lake Whatcom Stormwater Utility Service Area and advise Whatcom County Public Works and the Whatcom County Council on a recommended stormwater rate structure; and,

1 **WHEREAS**, Whatcom County Public Works conducted a funding study to
2 evaluate stormwater rate structure options for the Lake Whatcom Stormwater Utility
3 Service Area beginning in June 2018, and,
4

5 **WHEREAS**, stakeholder input and recommendations during the funding
6 study were provided through the citizen advisory committee and interested public
7 attended advisory committee meetings and provided comments to the committee for
8 their consideration.
9

10 **NOW, THEREFORE, BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL THAT:**
11
12

13
14 Section 1. A new sub-chapter be added to Whatcom County Code entitled "Lake
15 Whatcom Stormwater Utility." Complete text is included in **Exhibit A** of this ordinance.
16

17 Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of
18 this ordinance shall not affect or impair the validity of the ordinance as a whole or any
19 part thereof other than the part so declared to be invalid.
20

21
22 Section 3. This ordinance shall become effective January 1, 2020.
23

24
25 **ADOPTED** this ____ day of _____, 20____.
26

27
28
29 ATTEST:
30

31
32 _____
33 Dana Brown-Davis, Clerk of the Council
34

35 WHATCOM COUNTY EXECUTIVE
36 APPROVED AS TO FORM:
37

38 _____
39
40 Christopher Quinn, Civil Deputy
41 Prosecutor
42

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

31
32 _____
33 Rud Browne, Council Chair
34

35
36 _____
37 WHATCOM COUNTY, WASHINGTON
38

39
40 _____
41 Jack Louws, County Executive
42

43 () Approved () Denied
44

45 Date Signed: _____

1 EXHIBIT A

2
3 **Section 1.0 Title**

4 This ordinance shall be titled "Lake Whatcom Stormwater Utility Funding Mechanism".

5
6
7 **Section 2.0 Purpose**

8
9 The purpose of this chapter is to provide revenue for the Lake Whatcom Stormwater Utility
10 (LWSU) to plan, manage, design, construct, establish, acquire, develop, maintain, use, finance, operate,
11 control or improve storm and surface water control facilities, and to carry out activities related thereto.
12 This chapter provides these revenues by fixing rates and charges pursuant to RCW 36.89 for the
13 furnishing of service to those served or receiving benefits or to be served or to receive benefits from any
14 stormwater control facility or contributing to an increase of surface water runoff in the LWSU Service
15 Area. This authority is being invoked in order to minimize property damage; promote and protect public
16 health, safety and welfare; minimize water quality degradation by preventing siltation, contamination and
17 erosion of the waterways; protect aquifers, ensure the safety of County roads and rights-of-way; increase
18 educational and recreational opportunities; encourage the retention of open space; and foster other
19 beneficial public uses within the LWSU Service Area.

20
21 **Section 3.0 Applicability**

22 The requirements of this ordinance shall apply to all parcels of real property in the LWSU Service
23 Area, including public and private property.

24
25
26 **Section 4.0 Definitions**

27 For the purposes of this Chapter, the words or phrases below shall have the following meanings:

- 28
29
30 (1) "County" means Whatcom County, or as indicated by the context, may mean the
31 Department of Public Works, Public Works Director, County Engineer, or other employee
32 or agent representing the County in the discharge of his or her duties.
- 33 (2) "County Council" means the Whatcom County Council, which is the legislative branch of
34 Whatcom County government.
- 35 (3) "County roads" means public rights-of-way, excluding State roads, in the unincorporated
36 areas served by the LWSU.
- 37 (4) "Developed parcel" means a parcel of real property which has been altered by impervious
38 surface coverage.
- 39 (5) "Enterprise fund" means a fund established to account for operations that are financed
40 and operated in a manner similar to private business enterprises where the intent of the
41 governing body is that the costs (expenses, including depreciation) of providing goods or
42 services to the general public on a continuing basis be financed or recovered primarily
43 through user charges. As such, enterprise funds must report actual financial position and
44 results of operations, such as actual assets, liabilities, fund equity balances, revenues,
45 expenditures, and expenses.
- 46 (6) "Equivalent service unit" (ESU) means a configuration of impervious surface estimated to
47 contribute an amount of runoff to the County's stormwater management system which is

1 approximately equal to that created by the average single-family residential developed
2 parcel in the service area.

- 3 (7) "Forestland or Timberland" means forestland or timberland parcels on lands taxed as
4 forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW.
- 5 (8) "Impervious surface" means hard surfaced areas which prevent or retard the entry of
6 water into the soil mantle and/or cause water to run off the surface in greater quantities or
7 at an increased rate of flow than under natural conditions. Common impervious surfaces
8 include, but are not limited to: rooftops, concrete or asphalt roads, sidewalks and paving,
9 walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed
10 dirt, oiled or other surfaces which similarly impede the natural infiltration of surface water
11 or runoff patterns existent prior to development.
- 12 (9) "Manager" means the County Engineer or his/her designee.
- 13 (10) "Other Developed Parcel" means a parcel that contains impervious surface area and is
14 not a single family residence, including but not limited to, commercial, industrial, multi-
15 family apartment, and public property.
- 16 (11) "Parcel" means the smallest separately segregated unit or plot of land having an
17 identified owner, boundaries and surface area which is documented for real property
18 purposes and a tax account number assigned by the Whatcom County Assessor-
19 Treasurer.
- 20 (12) "Private roads" means a road which is on private property and is maintained with private
21 funds and requires a name per W.C.C. 12.60.050. .
- 22 (13) "Service charge" means the fee in an amount to be determined by applying the
23 appropriate rate to a particular parcel of real property based upon factors established by
24 this Chapter.
- 25 (14) "Single-family residence" means a residential structure designed exclusively for
26 occupancy by one family, including but not limited to mobile homes, cabins and duplex
27 units, as defined by the Whatcom County Land Use and Development Code.
 - 28 i. "Small single-family residential footprint" means a parcel containing a single
29 family residence that has less than or equal to 2,500 impervious square feet.
 - 30 ii. "Medium single-family residential footprint" means a parcel containing a single
31 family residence with 2,500 to 8,400 impervious square feet.
 - 32 iii. "Large single-family residential footprint" means a parcel containing a single
33 family residence with more than 8,400 impervious square feet.
- 34 (15) "Undeveloped parcel" means any parcel of real property which has not been altered by
35 construction of any structure or other impervious surface area. Private roads providing
36 access between or among undeveloped sites shall be defined as undeveloped property.
- 37 (16) "Unit rate" means the dollar amount charged per ESU.

38
39 **Section 5.0 Rate Structure**

40
41 A. Service charges for the LWSU are hereby authorized and imposed, in amounts and on
42 terms consistent with this Chapter.
43

1 B. The rates and service charges shall be based on the service provided and the relative
2 contribution of stormwater runoff from a given parcel. The estimated or measured impervious surface
3 area will be used to determine the relative contribution of stormwater runoff from the parcel.
4

5 C. The County Council shall establish from time to time, by resolution, the value of one ESU
6 in impervious surface area, as measured in square feet.
7

8 D. The County Council shall establish from time to time, by resolution, the unit rate per ESU.
9

10 Service charges shall be determined as follows:

- 11 1. Undeveloped Parcels – Undeveloped parcels shall not be charged.
- 12 2. County and Private Roads – County and Private roads shall not be charged.
- 13 3. Forestland and Timberland – Forestland or timberland parcels shall not be charged.
- 14 4. Small Single-Family Residential Footprint – The service charge for each small single
15 family parcel shall be the unit rate times 0.75 ESU.
- 16 5. Medium Single-Family Residential Footprint – The service charge for each medium single
17 family parcel shall be the unit rate times 1.00 ESU.
- 18 6. Large Single-Family Residential Footprint – The service charge for each large single
19 family parcel shall be the unit rate times 2.00 ESUs.
- 20 7. Other Developed Parcels – The service charge for all other developed parcels, including
21 publicly-owned properties, shall be computed by multiplying the unit rate times the
22 number of ESUs on the parcel minus any approved rate adjustment for the parcel as
23 determined under Section 7.0. There shall be a minimum service charge for all other
24 developed parcels equal to the unit rate.
25
26

27 For the purpose of computation of service charges for Other Developed Parcels, the
28 number of equivalent service units shall be rounded to the nearest whole number.
29
30
31

32 **Section 6.0 Billing**

33 A. Property Tax Statements. Rates and charges as authorized by this Chapter shall be
34 added to and included in Whatcom County's annual tax statements. Properties which do not receive a
35 property tax statement will receive a separate billing statement for these rates and charges.
36

37 B. Payment Date. The total amount of the stormwater charge shall be due and payable on
38 or before the 30th day of April and shall be delinquent after that date; however, if one-half of such rate
39 and charge is paid on or before the said 30th day of April, the remainder shall be due and payable on or
40 before the 31st day of October and shall be delinquent after that date.
41

42 C. Payment Application. If a payment is received in conjunction with a combined property
43 tax and LWSU service charge, and the payment is less than the amount due, the payment shall be
44 applied first to the annual property tax of the parcel and any remaining amount to the service charge.
45
46
47

1 **Section 7.0 Service Charge Adjustments and Appeals**

2
3 A. Any person billed for service charges may file a "Request for Service Charge Adjustment"
4 with the Public Works Department – Stormwater Division within thirty (30) days of the date of the bill.
5 However, submittal of such a request does not extend the period of payment for the charge.

6
7 B. A request for service charge adjustment may be granted or approved by the Manager
8 only when one or more of the following conditions exist:

- 9
10 1. The single family residential footprint designation (small, medium, large) is in
11 error, based on the measured impervious footprint, as demonstrated to the
12 satisfaction of County staff; or
13
14 2. The amount charged to Other Developed Parcels is in error; however, no
15 adjustment will be made unless the calculation of the impervious surface area on
16 the parcel is shown to be in error by at least ten percent (10%), as demonstrated
17 to the satisfaction of County staff; or
18
19 3. The parcel exists in its natural unimproved condition and will remain in its natural
20 unimproved condition with no allowable human activities or manmade
21 improvements that adversely affect water quantity or quality; or
22
23 4. The parcel contains a new or remodeled commercial building that utilizes a
24 permissive rainwater harvesting system that is properly sized to utilize the
25 available roof surface of the building; or
26
27 (i) For qualifying permissive rainwater harvesting systems as provided for
28 under RCW 36.89.080 and eligible under section 7.0(B)(3) of this chapter
29 the formula is expressed mathematically as follows:

30
31
$$A = F \times 10\%$$

32
33 Where:

34 A = The credit amount to be subtracted from the annual
35 fee; and

36 F = The total fee without credit.

- 37
38 5. The parcels are determined by the Manager to be contiguous. For contiguous
39 lots to qualify for a rate adjustment, the appellant must demonstrate that parcels:
40
41 (i) Are contiguous; and
42 (ii) Are owned by the same entity; and
43 (iii) Are single family residential.
44

1 Lots determined to be contiguous by the Manager will be considered as a single
2 lot for the purposes of fee calculations;
3 Fees will be recalculated to reflect any such change from the date of the change
4 and applied to the individual parcels pursuant to the rate schedule in effect at the
5 time of the change.
6

7 C. Service charge adjustments will only apply to the bill then due and payable, and bills
8 subsequently issued. The property owner shall have the burden of proving that the service charge
9 adjustment should be granted.

10
11 D. Decisions on service charge adjustment requests shall be made by the Manager based
12 on information submitted by the applicant and by the County within sixty (60) days of the adjustment
13 request, except when additional information is needed. The applicant shall be notified in writing of the
14 Manager's decision.
15

16 E. Decisions of the Manager on requests for service charge adjustments shall be final
17 unless appealed within thirty (30) days of the date the decision. The Whatcom County Hearing Examiner
18 shall establish an appeal review body to hear appeals of the Manager's decision.
19

20 **Section 8.0 Exemption**

21
22 Property that is owned by, and is the personal residence of, a person or persons approved by the
23 County Assessor for a senior citizen or disabled persons property tax exemption under RCW 84.36.381
24 shall be exempt from the service charge.
25

26 **Section 9.0 Use of Funds**

27
28 Service charges collected under this ordinance shall be deposited into a special fund or funds to
29 be used only for the purpose of paying all or any part of the cost and expense of maintaining and
30 operating stormwater control facilities, all or any part of the cost and expense of planning, designing,
31 establishing, acquiring, developing, constructing, maintaining and improving the program and facilities of
32 the Lake Whatcom Stormwater Utility.
33

34 **Section 10.0 Lien for Delinquent Charges**

35
36 A. Liens. Pursuant to RCW 36.94.150, Whatcom County shall have a lien for delinquent service
37 charges, including interest thereon, against any property against which they were levied, which lien shall
38 be superior to all other liens and encumbrances except general taxes and local and special assessments.
39 Such liens shall be effective and shall be enforced and foreclosed as provided in RCW 36.94.150.
40 Therefore, the County may commence to foreclose such liens sixty (60) days after the attachment of the
41 lien.
42

43 B. Interest. Delinquent service charges shall bear interest as provided in RCW 36.94.150 at the rate
44 of eight percent (8%) per annum, or such rate as may hereafter be authorized by law, computed on a
45 monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at
46 the time of payment of the charges regardless of when the charges were first delinquent.
47

1 C. Penalties. Penalties of not more than ten percent of the amount due may be imposed in case of
2 failure to pay the charges at times fixed by resolution, as provided in RCW 36.94.150.

3
4 **Section 11.0 Capital Facilities Charge**

5
6 The County Council shall establish from time to time, by resolution, the unit rate per ESU for a one-time,
7 capital facilities charge (CFC) applicable to new development, expansion, or densification of existing
8 development.

9
10 Single-family Residential Parcels that are being developed would pay the CFC equal to one ESU.

11
12 Other Developed Parcels would pay the CFC rate times the number of ESUs on the parcel.

13
14 **Section 12.0 Cost-of-Living Adjustment**

15
16 Notwithstanding any fee increase provisions to the contrary or absence thereof, user fees for the LWSU
17 shall be increased annually on January 1st of each year beginning January 1, 2022.

18
19 The cost-of-living increase noted herein shall be based on the U.S. Bureau of Labor and Statistics,
20 Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) publication. The
21 adjustment factor will be based on the August value of the current year divided by the August value of the
22 previous year. That factor is multiplied by the fee(s) in the current year to arrive at the updated fee(s) in
23 the subsequent year.

24
25 The formula is expressed mathematically as follows:

26
27
$$F * A = U$$

28
29 Where

30
31 F = current year fee;
32 A = adjustment factor;
33 U = updated fee;

34
35 For example, if the adjustment were to be calculated for 2019, the August CPI-W value in
36 2018 (267.757) would be divided by the August value in 2017 (259.528), resulting in an
37 adjustment factor of 1.0317. If the LWSU fee was \$100 in 2018, the cost adjusted fee for
38 2019 would be \$103.17.

39
40 If the cost-of-living adjustment results in a decrease, no cost-of-living adjustment shall be made that year.
41 Other changes to the fee(s) may supersede this clause, such as changes to the fee(s) resulting from
42 programmatic changes or regulatory requirements.

43
44 If the CPI-W index is unavailable at the time of the adjustment calculation, a similar index may be used,
45 such as CPI-All Urban Consumers.

1 **Section 13.0 Severability.**

2
3
4
5
6
7

If any section, clause or provision of this Chapter be declared by the courts to be invalid, the same shall not affect the validity of the Chapter as a whole or any part thereof, other than the part so declared to be invalid.

DRAFT

Lake Whatcom Stormwater Utility Service Area Advisory Committee Minority Report



*Hertz Trail 2013
Photo by F. Miller*

Nancy Alyanak

May 14, 2019
Page 1 of 3

Why Combination Gross Parcel Area *and* Impervious Surface Fee ?

Preferred Format for Rural Service Areas

- National Association of Flood and Stormwater Management Agencies (NAFSMA) recommends a combination fee especially if extensive rural areas are included. (*Guidance for Municipal Stormwater Funding, 2006*)
 - LWSUSA is extensively rural: 54% undeveloped 31% timber harvest 15% developed

Strong Nexus

- Between gross parcel area, stormwater runoff and phosphorus:
Biggest source of phosphorus is surface soil erosion and transport from steep, forested slopes like those in LWSUSA. Slope determines soil erosion rate and phosphorus load, not development or impervious surface. (see page 3)
- Between gross parcel area and TMDL phosphorus allocation:
By law timber harvest properties are not responsible for their own phosphorus. Ecology chose to allocate the entire timber harvest phosphorus load to developed property. A gross area fee allows undeveloped property to pay a portion of the timber harvest exemption rather than forcing developed, mostly residential property to pay the entire amount.

Strong Legal Basis

- County attorney support :
 - The parcels to be charged within the Service Area either 1) will receive a service benefit or 2) contribute to the surface water runoff in the Service Area, regardless of whether the parcel is developed.
 - Parcel area fee can be used for all Service Area expenses.

Easily Administered

- Data is available: Gross parcel area is tracked in the county assessor database.

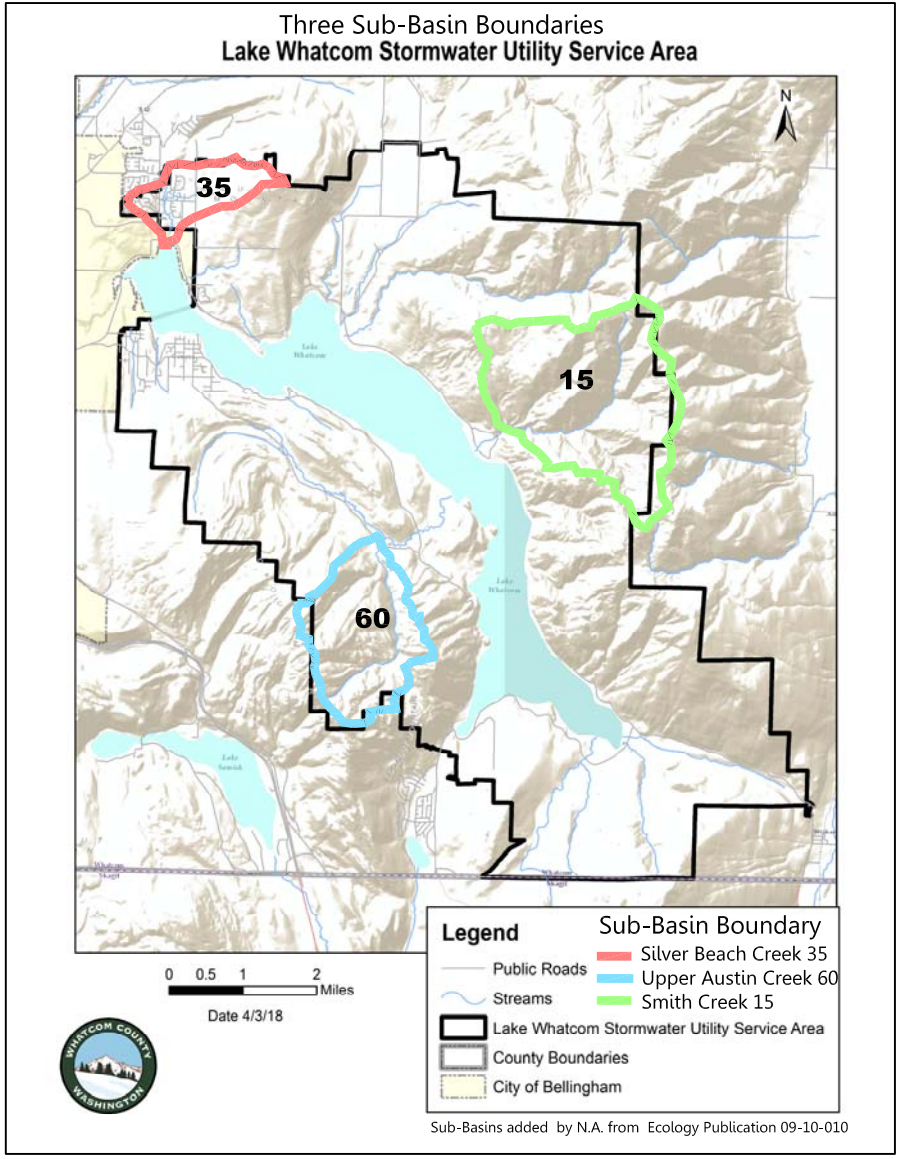
Practical consideration

- The fee base is larger in a combination fee. Because the Financial Reserve is funded entirely by Service Area fees, current cost sharing with the county may be temporary. If county funding ends, Service Area fees will triple.

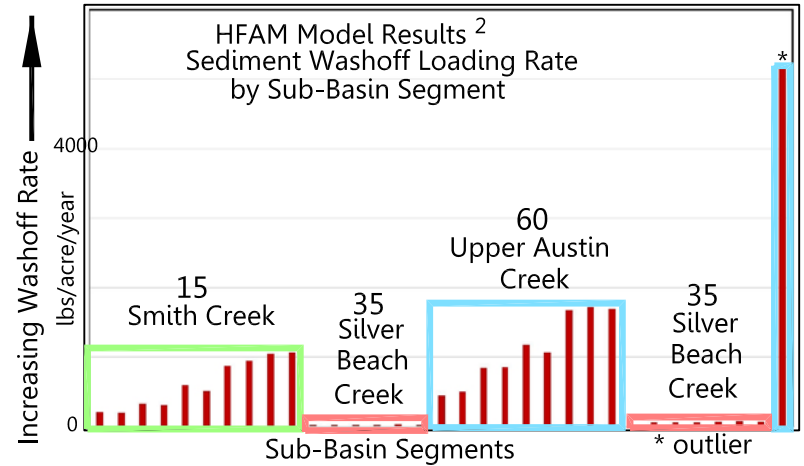
The biggest source of phosphorus in the watershed is surface erosion and surface transport¹

MORE Soil erosion is from steep, forested slopes like Upper Austin Creek or Smith Creek
 LESS soil erosion is from highly developed, impervious surface areas like Silver Beach Creek

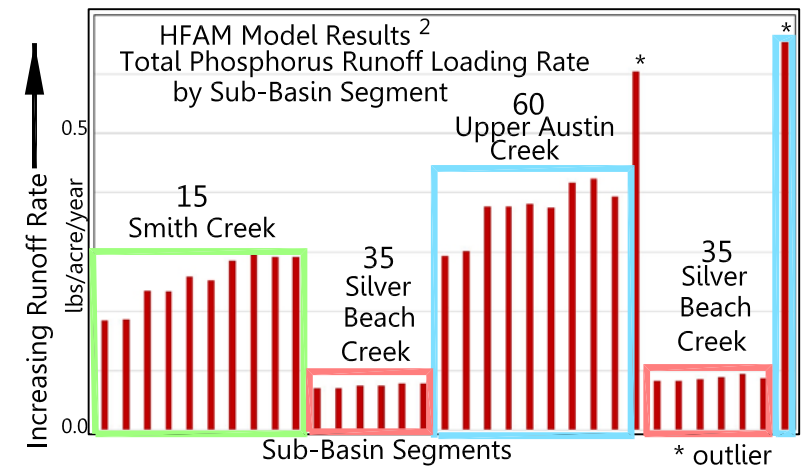
Silver Beach Creek low slopes Upper Austin Creek steep slopes Smith Creek steep slopes



Slope determines sediment washoff rate



Slope determines phosphorus runoff rate



1) LWPG meeting 3/27/2019 2) Lake Whatcom Hydrologic Model Review, 7/2018