

# Exhibit A: Proposed Amendments to the Lake Whatcom and Watershed Resource Protection Overlay Districts and the Stormwater Regulations

P/C Recommended Version, July 14, 2022

## Chapter 20.51 Lake Whatcom Overlay District

### 20.51.010 Purpose.

The Lake Whatcom Watershed Overlay District is intended to manage and treat stormwater runoff and establish more stringent standards on clearing activities and reduce the phosphorus loading into Lake Whatcom, in order to preserve and protect a unique and important water resource, Lake Whatcom. This district is designed to protect the long-term viability of Lake Whatcom as a drinking water source, and to comply with the requirements set forth by the Washington State Department of Ecology through the pending Lake Whatcom total maximum daily load (TMDL) by limiting the phosphorus loading into Lake Whatcom that results from land disturbing or conversion projects and work, and reduces phosphorus loading from existing sources.

### 20.51.030 Area and Applicability.

- (1) The Lake Whatcom Watershed Overlay District is an overlay zone that covers the entire geographic area of the Lake Whatcom watershed within Whatcom County's jurisdiction, and applies to all land disturbing or conversion projects, work, or activities within the overlay zone.
- (2) In the event that the provisions of this chapter conflict with the provisions of the Shoreline Management Program (WCC Title 23), Chapter 16.16 WCC, Critical Areas, the Whatcom County Development Standards, the provisions of the underlying zoning district, or other applicable county policies or regulations, then the most restrictive shall apply; provided, that the minimum setback provisions established in WCC 20.51.340 shall prevail.

### 20.51.040 Conformance.

The provisions of this chapter overlay other permit and approval requirements of the Whatcom County Code. All use and development shall conform to all relevant requirements and standards of:

- (1) WCC Title 20, Zoning, except as modified by this chapter;
- (2) The International Building and Fire Codes;
- (3) Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC;
- (4) Flood damage prevention, WCC Title 17;
- (5) Subdivision, WCC Title 21, except as modified by this chapter;
- (6) ~~2012 The current Washington State Department of Ecology Stormwater Management Manual for Western Washington~~, as amended and modified by this chapter;
- (7) WCC Title 23, Shoreline Management Program;
- (8) WCC Title 24, Health Code; and
- (9) All other applicable official controls.

Commented [CES1]: POLICY ISSUE #4 (in staff report): Public Works has requested that all references to "the current stormwater manual," and that the County Engineer need approve a new manual prior to its use so as to give time for training on it.

### 20.51.050 Permitted Uses.

All permitted uses in the underlying zone districts are permitted except as expressly prohibited, made conditional, or further conditioned by this chapter.

- .051 Private noncommercial greenhouses less than 250 square feet.

**20.51.060 Accessory Uses.**

All accessory uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter.

**20.51.070 Conditional Uses.**

All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited, made conditional, or further conditioned by this chapter. In addition, the following uses shall only be conditionally permitted:

- .071 On-site storage facilities for hazardous wastes associated with ~~outright~~ permitted uses or ~~approved~~ conditional uses, other than cottage industries as defined in WCC 20.51.095, subject to the most current siting criteria under Chapter 173-303 WAC within the Rural, Rural Forestry, Commercial Forestry, Neighborhood Commercial, ~~and-or~~ Resort Commercial Zone Districts only.
- .072 Retail or wholesale plant nurseries or greenhouses for storage, propagation, and culture of plants, provided:
  - (1) Greenhouses shall not be larger than 1,000 square feet.
  - (2) Greenhouses and cultivated ground shall not be located within 250 feet of Lake Whatcom or streams subject to the Shoreline Management Program; ~~or~~ 200 feet from fish-bearing streams; or 150 feet from ~~non-fish-bearing other~~ streams and their tributaries that flow into Lake Whatcom.
  - (3) A monitoring program has been established to ensure that chemical and pesticide quantities in stormwater runoff do not exceed state water quality standards. Complete control of drainage from the operation shall be in effect. Such runoff will be tested for pollutants bimonthly by a licensed water quality testing agency. All requirements will be met at the owner's expense.
  - (4) No person shall apply a commercial fertilizer, either liquid or granular, that is labeled as containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate; provided, that such fertilizers may be used for establishment of new vegetation in the first growing season.
- .073 Type I solid waste handling facilities, except:
  - (1) Moderate risk waste facilities; and
  - (2) Facilities in the Recreation and Open Space District.

**20.51.080 Prohibited Uses.**

In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited, except as per Chapter 20.83 WCC:

- .081 Dry cleaning establishments.
- .082 Gas stations, service stations, combustion engine repair garages, and automotive wrecking yards.
- .083 Sod farming.
- .084 Aquaculture and mariculture projects.
- .085 ~~Operation of f~~ Fur farms.
- .086 Confinement feeding operations.
- .087 Asphalt and concrete batch plants.
- .088 Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.
- .089 ~~Application Utilization~~ of sewage sludge on land.
- .090 On-site treatment facilities for hazardous wastes.
- .091 Type I solid waste handling facilities, except those specified in WCC 20.51.073.
- .092 Type II, Type III, and Type IV solid waste handling facilities.

- .093 Golf courses.
- .094 Cemeteries.
- .095 Cottage industries that would require on-site hazardous waste storage facilities.
- .096 Surface mining outside of designated Mineral Resource Lands (MRL) Special Districts; provided, that surface mining, rock crushing, washing, and sorting subject to the Forest Practices Act (Chapter 76.09 RCW) are permitted.
- .097 Major passenger intermodal terminals.
- .098 Freight railroad switching yards and terminals.
- .099 Agriculture, including animal husbandry, horticulture, viticulture, floriculture, and the cultivation of crops.
- .100 Animal hospitals and accessory kennels and stables.
- .101 Kennels and stables.
- .102 Marijuana production or processing facilities.

**20.51.300 Open Space.**

~~.301~~—Open space requirements shall be as follows:

- (1) Open space areas shall be maintained in natural vegetation or landscaped per WCC 20.80.325.
- (2) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations.

**20.51.310 Cluster Subdivisions.**

The purpose of cluster subdivision is to provide a method of creating building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure efficiency. Clustering is also intended to help preserve open space and the character of areas, reduce total ~~impervious-hard~~ surface area, and minimize development effects on critical areas and associated buffers, as defined in Chapter 16.16 WCC, and resource lands. Preservation of open space is thereby intended to reduce potential stormwater runoff and associated impacts while assuring protection of viable, undeveloped, and naturally vegetated corridors for wildlife habitat, protection of watersheds, preservation of critical areas, preservation of aesthetic values including view corridors, and preservation of trail and/or recreation areas.

**20.51.320 Cluster Design Standards.**

The creation of new building lots within the Lake Whatcom Watershed Overlay District shall be subject to the following design standards:

- (1) Cluster subdivisions shall be required for all land divisions resulting in lots less than five acres in size, with the exception of boundary line adjustments.
- (2) A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC 20.51.330.
- (3) The minimum cluster lot size requirements of the underlying zone district shall apply.
- (4) The maximum number of building lots in a lot cluster shall be 10.
- (5) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least 80 feet.
- (6) Clustered building lots may only be created through the subdivision, short subdivision or binding site plan process pursuant to WCC Title 21.
- (7) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas or known archaeological sites, as well as physical constraints of the site.
- (8) Building lots shall be arranged in a cluster/concentrated pattern.

- (9) A cluster subdivision shall have no more than two common encroachments on existing ~~County~~ roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid development forms commonly known as linear, straight-line or highway strip patterns.
- (10) As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots; provided, that the required permanent open space reserve area, pursuant to WCC 20.51.330, shall not be further subdivided.

**20.51.330 Open Space Reserve Area.**

- (1) For purposes of this title, an “open space reserve area” shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of “open space” pursuant to WCC 20.97.275.
- (2) The open space reserve area shall be subject to the following provisions:
  - (a) The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.
  - (b) A permanent open space reserve area shall be protected using one of the following mechanisms:
    - (i) Placement in a separate non-building tract owned in common by all lots within the subdivision; or
    - (ii) Covered by a protective easement ~~or public or private land trust dedication which protects at least the minimum required cluster reserve area specified in the underlying zone district;~~ or
    - (iii) ~~Otherwise preserved through an appropriate County-approved permanent protective mechanism that provides the same level of permanent protection as subsection (2)(b)(i) of this section as determined by the county zoning administrator or hearing examiner, which applies to at least the minimum required cluster reserve area specified in the underlying zone district.~~
  - (c) The boundaries of the open space ~~portion of the~~ reserve area may be altered ~~only~~ if the ~~County~~ finds that in dedicating adjacent reserve areas it would further the objectives listed in WCC ~~20.51.310~~ by altering the reserve area and by increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.
  - (d) The purpose of the open space reserve area as defined in subsection (1) of this section shall be recorded on the face of the final plat or short plat.
  - (e) The remaining unused development density and/or ~~impervious-hard~~ surface allowances remaining on the parcel containing the open space reserve area, based on the gross density of the parent parcel, may be assigned to that portion of the reserve tract not subject to the minimum area requirements of subsection (2)(b) of this section. The density shall be recorded on the face of the final plat or short plat. The development rights assigned to the reserve tract in accordance with this subsection may not be transferred if the area associated with the reserve tract has been transferred to the other building lots within the subdivision.
  - (f) The requirements stated in subsections (2)(c) and (d) of this section shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute an agreement between Whatcom County and the current/future owner(s) of record that shall run with the land. Said restriction(s) may be amended by mutual agreement between said parties after review for

Commented [CES2]: Consistency. This language is in the WRPOD; just copying it here to make them consistent.

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consistency and compliance with the ~~official WCC Titles 20 Whatcom County (Zoning) and 21 (Land Division Regulations) Ordinance, the Whatcom County Subdivision Ordinance, and the~~ Whatcom County Comprehensive Plan.

**20.51.340 Building Setback/Buffer Areas.**

- (1) ~~.341~~—Setbacks for all properties within the overlay district shall be as follows: roads classified as state highways, principal arterials, minor arterials, and collector arterials or major collectors shall have a minimum setback of 30 feet; and roads classified as minor collectors, local access streets, neighborhood collector or minor access streets shall have a minimum setback of 20 feet; provided, that the road right-of-way meets the minimum standard for road rights-of-way pursuant to the Whatcom County Development Standards.
- (2) ~~.342~~—Roof overhangs or other overhanging architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend three feet into the front yard setback; however, in no case shall they extend more than one-half the depth of the front yard setback.

**20.51.350 Development Criteria.**

**20.51.360 Parking Space Dimensions.**

A standard parking space shall have the rectangular dimensions of 10 feet in width and 20 feet in length; provided, that for any parking area of six or more spaces, 50% ~~percent~~ of all spaces may have the rectangular dimensions of eight feet in width and 15 feet in length; and further provided, that these spaces are marked for use by compact automobiles. Except in single-family residential areas, all dimensions shall be exclusive of driveways, aisles and other circulation areas required under WCC [20.80.560](#) and [20.80.570](#).

**20.51.370 Parking Requirements.**

Parking shall conform to the requirements of WCC [20.80.500](#) through [20.80.590](#) unless otherwise specified in this section. Minimum parking requirements may be reduced through any of the following methods:

- (1) A shared parking agreement has been filed with the ~~e~~County ~~a~~Auditor establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.
  - (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.
  - (b) Mixed use developments with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.
- (2) A 20% ~~percent~~ reduction may be approved if an establishment is located within 1,000 feet of any regularly scheduled bus stop.
- (3) The ~~zoning administrator~~Director determines that a reduced requirement will reduce overall ~~impervious hard~~ surfaces while maintaining consistency with this title.

**20.51.390 Vehicular Access.**

Driveways and curb cuts shall be minimized along all arterial and collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads with limited access to arterial or collector roads.

**20.51.400 Roads, Curbs, Gutters, and Sidewalks.**

The intent of this section is to reduce impervious hard surfaces and stormwater runoff. Innovative street sections, ~~which that~~ do not compromise public safety, shall be encouraged in the watershed. Narrow streets and reduced sidewalk standards that satisfy pedestrian and vehicular circulation requirements may be implemented with the approval of the Whatcom County ~~P~~Public ~~W~~orks ~~D~~epartment. Unless specifically required, roads shall not be wider than the minimum applicable standard. A rural road standard may be approved ~~by the Whatcom County public works department~~ for urban density residential areas where the developer provides adequate off-street parking and pedestrian walkways.

**20.51.410 Seasonal Clearing Activity Limitations.**

The intent of seasonal clearing activity limitations is to establish a more stringent standard for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions. Implementation of best management practices, including phased clearing, tree retention and seasonal clearing limitations, is intended to limit the amount of exposed soils on site that are susceptible to erosion at any one time, thereby improving site stability during development and reducing potential for transport of dissolved pollutants and sediments off site. Preservation of existing trees on site also reduces the quantity and maintains the quality of stormwater leaving a site during and after development activities by encouraging interception, infiltration and evapotranspiration of rainfall and surface runoff.

- (1) County review and approval shall be required for all clearing activities associated with a fill and grade permit, building permit, or other development proposal.
- (2) Clearing activity, as defined in WCC [20.97.054](#), or forest practices regulated by Whatcom County that will result in exposed soils and disturbance exceeding 500 square feet shall ~~not be permitted prohibited~~ from October 1<sup>st</sup> through May 31<sup>st</sup>; provided, that ~~(a)~~ the ~~zoning administrator~~ Director may approve an exemption to this requirement for the following activities:
  - ~~(b)~~(a) Routine maintenance and repair of erosion and sediment control measures;
  - ~~(c)~~(b) Activities located at or waterward of the ordinary high water mark subject to state, federal, and/or local (per Chapter 16.16 WCC and/or WCC Title 23) conditions of approval requiring commencement of clearing activity between October 1<sup>st</sup> and May 31<sup>st</sup> for purposes of minimizing surface water disturbance and site inundation by high water or wave action;
  - ~~(d)~~(c) Activities necessary to address an emergency that presents an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this section. Upon abatement of the emergency situation, the clearing activity shall be reviewed for consistency with this chapter and may be subject to additional permit requirements; provided, that the applicant shall make a reasonable attempt to contact the ~~zoning administrator~~ Director prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the ~~zoning administrator~~ Director as soon as the emergency is addressed and no later than two business days following such action. Emergency construction does not include development of new permanent protective structures where none previously existed;
  - ~~(e)~~(d) The proposed activity does not involve the conversion of forest land, is outside critical areas and associated buffers, and is exclusively related to agriculture as defined in this ~~T~~ Title; or
  - ~~(f)~~(e) The proposed activity consists of non-conversion forest practices regulated by the Department of Natural Resources, other than Class IV General forest practices on platted land, and other than those with an approved COHP regulated under Chapter 76.09 RCW.

**Commented [CESS]:** To be consistent with amendments to Forest Practices rules amended by Ord. 2022-035

- (3) To ensure compliance with subsection (2) of this section, ~~Whatcom County planning and development services~~ the Director 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 from September 15<sup>th</sup> through May 31<sup>st</sup>.~~
- (4) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The ~~zoning administrator~~ Director shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.
- (5) An exemption from the seasonal land clearing requirements of this section does not grant authorization for any work to be done in a manner that does not comply with other provisions of this chapter or other applicable development regulations.
- (6) Within the Lake Whatcom Watershed Overlay District, clearing activity must conform to the following conditions:
  - (a) Temporary erosion and sediment control shall be installed and inspected prior to any clearing activity. The ~~technical administrator~~ Director shall conduct periodic inspections to ensure the integrity of temporary erosion and sediment controls. Temporary erosion and sediment control measures include, but are not limited to, installation of silt fencing, installation of check dams, covering of excavation piles, and mulching of exposed soils, as specified in the Whatcom County Development Standards.
  - (b) Phased Clearing. Construction activities and clearing activities shall be phased to limit the amount of exposed soil that occurs at any one time, if determined to be appropriate by the ~~technical administrator~~ Director, based on site characteristics or constraints including, but not limited to, slopes, proximity to shorelines and wetlands. A phased clearing plan may be required. A phased clearing plan, if required, shall be submitted for review and approval by the ~~technical administrator~~ Director prior to any clearing activity and shall contain a detailed construction schedule or timeline.
  - (c) Soil Stabilization. All disturbed areas shall be provided with soil stabilization within two days of the time of disturbance. The ~~technical administrator~~ Director may approve an exemption to this requirement when a tree canopy area retention plan includes a soil stabilization plan. This plan component must specifically detail erosion and sediment control and stormwater runoff measures that provide runoff control equal to or greater than the protection provided by the standard two-day soil stabilization requirements of this section.

#### 20.51.420 Permanent Stormwater Management Systems.

- (1) **Exemptions.** This section does not apply to any of the following projects, work, or activities, ~~which does not necessarily exempt them from though~~ other stormwater related ~~titles regulations~~ and/or standards might ~~still~~ apply, ~~however, projects that exceed these thresholds must obtain an applicable development permit even when the application thresholds for that permit are not met, see WCC 20.51.040(6) and (7) and 20.80.630(3) within the Lake Whatcom Watershed Overlay District:~~
  - (a) Installations ~~of, and/or repairs to, and/or replacements of,~~ any of the following facilities:
    - ~~(i)~~ Below grade ~~:~~
    - ~~(ii)~~ ~~P~~ipe,
    - ~~(iii)~~ ~~C~~onduit,
    - ~~(iv)~~ ~~D~~uctwork, ~~or~~
    - ~~(v)~~ ~~(i)~~ ~~C~~abbling and wiring (direct burial or conduit encased);
    - ~~(vi)~~ Above grade ~~:~~
    - ~~(vii)~~ ~~U~~tility or light poles, ~~or~~

Commented [MK6]: Clarification. We want to be able to require people to get permits when these thresholds are exceeded. Currently these numbers are under the thresholds for most permits (i.e. LDP).

~~(viii)(ii)~~ ~~C~~ommunication and/or data transmission systems pedestals;  
~~(ix)(iii)~~ Below ~~grade~~, at ~~grade~~, and/or above grade appurtenances to any of the above respective facilities.

~~(b)~~ Roof replacements and/or conversions at the same, or less, surface area. Conversions to metal roofs require coatings with inert non-leachable materials.

~~(c)~~ Deck, porch, and/or other raised surface area replacements at the same, or less, surface area.

~~(d)~~(b) Land disturbing activities (per Chapter 20.97 WCC definition) of less than 5,000 square feet in total area, excluding any ~~impervious-hard~~ surface area work within the land area disturbed.

~~(e)~~(c) Projects, work, or activities that will create less than:

(i) ~~Two hundred one (201) Five hundred one~~ square feet of previously nonexistent ~~impervious hard surface area and/or replaced hard surface area and/or permeable pavement area~~ (per Chapter 20.97 WCC definitions); ~~and/or~~

~~(ii) One thousand five hundred one square feet of replaced impervious surface area and/or replaced permeable pavement area (per Chapter 20.97 WCC definitions).~~

~~(f)~~ Maintenance (e.g., debris, moss, and/or mildew removal) of existing ~~impervious surface areas and/or permeable pavement areas. Pre-existing nonconforming impervious surfaces may be routinely maintained/repared.~~

~~(g)~~(d) If a legal nonconforming structure is ~~unintentionally~~ destroyed (e.g., from fire, wind, falling trees or limbs, flooding), the nonconforming ~~use structure~~ may be reconstructed using the ~~pre-existing~~ footprint. Damage repairs (e.g., from fire, wind, falling trees or limbs, flooding) to existing ~~impervious-hard~~ surface areas and/or permeable pavement areas within their same respective existing footprints ~~are allowed~~. Expansion of nonconforming ~~impervious-hard~~ surfaces shall be subject to this chapter.

~~(h)~~(e) For a single-family dwelling that meets all of the following:

(i) To be located within the platted boundaries of, and in general belonging to, an incorporated homeowners' association; and

(ii) Which association has a stormwater runoff management and phosphorus mitigation plan that provides at least the same level of overall protection from and/or treatment of phosphorus runoff to Lake Whatcom as would the application of subsection (2) of this section to any of the individual parcels therein that may be developed; and

(iii) Which plan is in effect through an ongoing implementation program, applicable to all newly developed parcels within that association's boundaries, as well as to the association as a whole; and

(iv) Which plan and program have been agreed to by a memorandum of agreement between Whatcom County and the incorporated homeowners' association; and

(v) Permanent best management practices shall follow the NPDES standards in WCC 20.80.630.

~~(f)~~ ~~Public stormwater improvement projects intended to implement Total Maximum Daily Load (TMDL) requirements.~~

**(2) Best Management Practices (BMPs).**

(a) Unless otherwise exempt per subsection (1) of this section, ~~or unless a standard land use vesting determination concludes otherwise,~~ all projects, work, or activities, including subdivisions,

binding site plans, and nonexempt new short subdivision parcels, proposed to occur within the Lake Whatcom Watershed Overlay District shall incorporate presumptive BMPs and/or demonstrative BMPs, per subsection (2)(c) and/or (2)(d) of this section, respectively, to:

(i) All projects, work, or activity affected:

(A) Land disturbing activities; and/or

Commented [MK7]: Unnecessary.

Commented [MK8]: Extraneous. Already captured under replaced hard surfaces.

Commented [CES9]: POLICY ISSUE #1 (in staff report): Re Sources suggests that we lower the exemption threshold for hard surface creation from 501 sf to 120 sf. If Council does reduce this, staff suggests it be 201 sf, as the County's building permit exemption is 200 sf.

Commented [MK10]: Unnecessary. Of course people can remove mildew and moss without a permit. If the surface is removed (i.e. replaced) then it would be considered in a stormwater design, which is already required under (c).

Commented [CES11]: Clarification. We have had people argue that demolishing an old house means the structure was "destroyed." This language would avoid that.

Commented [CES112]: POLICY ISSUE #3 (in staff report): 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 Permanent Stormwater Management Systems regulations, since that's exactly what they're doing.

Commented [CES13]: Unnecessary. This goes without saying; all projects are vested to the code version applicable upon submittal of a complete application.



- (B) New and replaced hard surfaces.
  - (ii) Existing off-parcel phosphorus-unmitigated areas and/or on-parcel phosphorus-unmitigated areas within the entire Lake Whatcom watershed at a 2:1 ratio of phosphorus-unmitigated area to the corresponding project, work, or activity affected area(s) that subsections (2)(a)(i)(A) and (B) of this section outline.
  - (iii) The developable areas and infrastructure as required for long and short subdivision approval. A stormwater management plan for developable areas and required infrastructure, consistent with the ~~2012 current~~ Stormwater Management Manual ~~for Western Washington~~, is required prior to preliminary plat approval. Installation of required BMPs for infrastructure is required prior to final plat approval.
- (b) The development stormwater runoff (per Chapter 20.97 WCC definition) phosphorus loading profile from each phosphorus-mitigated area noted in subsections (2)(a)(i) and (ii) shall not exceed the corresponding natural stormwater runoff (per Chapter ~~20.97~~ WCC definition) phosphorus loading profile from each respective phosphorus-mitigated area.
- (c) Presumptive BMPs (per Chapter 20.97 WCC Definition). Presumptive BMPs, which are combinable with each other and with demonstrative BMPs, follow:
- (i) ~~Full Infiltration and Downspout Full Infiltration~~. See the ~~2012 current~~ Stormwater Management Manual ~~for Western Washington~~ BMP T5.10A, ~~Volume III, Section 3.1.1 and Volume III, Chapter III, Section 3.3.9(A)~~. Use of these BMPs may require an engineered design ~~(per Chapter 20.97 WCC definition)~~.
  - (ii) Full Dispersion. See ~~the~~ current Stormwater Management Manual ~~for Western Washington~~, ~~Volume V, Chapter 5~~, BMP T5.30. This BMP ~~may might, but does not necessarily~~, require an engineered design. ~~See the 2012 Stormwater Management Manual for Western Washington, Volume V, Chapter 5, pages 5-30 through 5-38, for further design requirements and infeasibility criteria. Where this BMP refers to native vegetation retention, such requirements shall be consistent with WCC 20.51.440 (Tree retention associated with development activity).~~
- (d) **Demonstrative BMPs** (per Chapter ~~20.97~~ WCC Definition). Demonstrative BMPs, which are combinable with each other and with presumptive BMPs, use engineered designs that, once constructed or installed, and presuming that system preservation activities occur as prescribed by the design engineer, will satisfy the ~~current 2012~~ Stormwater Management Manual ~~for Western Washington~~ Minimum Requirements ~~numbers~~ 3 through 9, disregarding any Minimum Requirement applicability thresholds therein, while also conforming to at least one of the following:
- (i) The engineered design limits the estimated phosphorus loading in development stormwater runoff to less than 0.1875 lb<sub>2</sub> of P/acre/year. Engineered designs shall cite and use only WSDOE-approved references for estimated phosphorus loading information and criteria.
  - (ii) The monthly development stormwater runoff volume does not exceed the monthly natural stormwater runoff volume of the project, work, or activity affected areas, as determined by a WSDOE-approved continuous runoff model.
  - (iii) Development stormwater runoff does not occur.
- (3) **System Recording, Protection, and Maintenance**. A declaration of covenant shall be recorded for each property where permanent stormwater BMPs exist. The covenant is used to protect the stormwater management facilities from cover by ~~structures or impervious material~~ ~~hard surfaces~~, soil compaction, and damage by soil removal and grade alteration, and ensure required maintenance occurs according to the schedule in subsection (3)(c) of this section. A draft of the

proposed covenant must be reviewed and approved by Whatcom County prior to recording. All required covenants must be recorded prior to final permit issuance for the proposed project.

- (a) **Notice on Title.** For all permanent stormwater facilities, the type of stormwater system and location shall be recorded with the ~~e~~County ~~a~~Auditor real estate records. The recording document provides notice to future owners of the presence of stormwater system on the lot, and shall contain:
- (i) A site plan to scale, showing the location and descriptions of stormwater facilities, treatment BMPs, terrain features, protective native growth areas, and stormwater flowpaths.
  - (ii) Notice of the property owner's responsibility to retain, uphold, and protect the devices, features, pathways, protective native growth areas, and operate and maintain BMPs at the owner's expense.
- (b) **Protected Native Growth Area (PNGA).** For projects that utilize dispersion for their stormwater system, a protected native growth area covenant shall be required to:
- (i) Include native plant species including, but not limited to, those on approved lists provided by Whatcom County common to this region.
  - (ii) Be described in the recorded documents as "a Protected Native Growth Area established for the purposes of dispersing and treating stormwater flows."
  - (iii) Retain all vegetation and trees within the PNGA at the time of permit application aside from approved timber harvest activities and the removal of hazardous and diseased trees (as defined in Chapter 20.97 WCC), an evaluation and determination by an ISA licensed arborist may be required.
  - (iv) The PNGA can include on-site critical areas and its buffer.
  - (v) Limit uses in the PNGA to those specified in Chapter 16.16 WCC.
  - (vi) Provide a notice of activity, consistent with WCC 16.16.235, to remove trees within a PNGA when a permit is not required by subsection (1) of this section, under the following circumstances:
    - (A) Fire prevention methods when supported by the ~~e~~County ~~f~~ire ~~m~~arshal;
    - (B) Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist may be required);
    - (C) Encroachments where the trunk, branches, or roots would be or are in contact with main or accessory structures; or
    - (D) Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system.
- (c) **Inspections and Maintenance.**
- (i) Inspections shall occur on at least an annual basis for all stormwater treatment and flow control BMPs and facilities that were permitted in accordance with requirements adopted pursuant to the 2013-2018 Ecology municipal stormwater permits, or later.
  - (ii) Inspections of all permanent stormwater treatment and flow control BMPs/facilities and catch basins in new residential developments shall occur every six months until ~~90%-percent~~ of the lots are constructed.
  - (iii) For every deficiency identified by inspection, said deficiency shall be addressed:
    - (A) Within one year for typical maintenance of facilities, except catch basins.
    - (B) Within six months for catch basins.
    - (C) Within two years for maintenance that requires capital construction of less than \$25,000.

**20.51.430 Tree removal not associated with development activity.**

- (1) **Permit Required for Removal of Trees.** No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Whatcom watershed, ~~or any tree(s) in the public right of way,~~ without first obtaining the appropriate permit as provided in this section, unless the activity is exempted below:
  - (a) Removal of any hazard trees considered an emergency ~~within-pursuant to~~ the definition of “hazard tree” in Chapter 20.97 WCC. Within 30 days after the emergency is abated the landowner shall submit photo documentation with a form provided by Whatcom County.
  - (b) Pruning and maintenance of trees of up to ~~25% percent~~ of the foliage.
- (2) ~~R~~The removal of trees located within the shoreline jurisdiction or within ~~a~~-critical areas or ~~their~~a critical-area buffers ~~may be~~ subject to additional regulations pursuant to WCC Title 23 (Shoreline Management Program) ~~or and~~ Chapter 16.16 (Critical Areas). Where additional regulations conflict the more stringent regulation shall apply.
- (3) **Permit Application.** At a minimum the following shall be submitted by the applicant:
  - (a) A complete permit application.
  - (b) A sketch for this purpose may be prepared by the homeowner or other lay person and shall depict:
    - (i) The approximate location of significant trees, indicating those to be removed;
    - (ii) The species and canopy area (as determined pursuant to WCC 20.51.440(4));
    - (iii) The location of structures, driveways, access ways, and known easements.
  - (c) Canopy calculations (existing and proposed).
  - (d) For required replacement trees, a planting plan showing location, species, and 20-year canopy area of the new trees in accordance to standards set forth in WCC 20.51.440(4) for calculating 20-year canopy coverage.
  - (e) Other information as required by the applicable permit application.
- (4) **Tree Removal Permit Application Procedure and Appeals.** Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the ~~e~~CCounty.
  - (a) Applicable Permit.
    - (i) The permit application to remove trees within the shoreline jurisdiction is a shoreline permit (WCC Title ~~23~~).
    - (ii) The permit application to remove trees within a critical area or a critical area buffer is ~~an~~ Activity Allowed with ~~a~~Notification of activity (WCC 16.16.235).
    - (iii) The permit application to remove trees in ~~other~~ areas ~~outside of subsection (4)(a)(i) or (ii) of this section~~ is a tree removal permit.
  - (b) The ~~county~~Director shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application, or request additional information.
  - (c) The removal shall be completed within one year from the date of permit approval.
  - (d) The decision of the ~~d~~Director is appealable pursuant to WCC ~~22.05.160~~ (Appeals).
- (5) **Tree Removal Allowances.** With ~~an~~the appropriate permit, any property owner may remove up to ~~3520% percent or 5,000 square feet, but not to exceed 14,000 square feet whichever is greater,~~ and as measured cumulatively ~~from January 1, 2017,~~ of the existing canopy area, ~~as defined by the~~ dripline of ~~on-site~~the significant trees on their property; provided, that:
  - (a) There is no active application for development activity for the site;
  - (b) No other Whatcom County regulation is more restrictive; and
  - (c) The tree(s) ~~were~~are not required to be retained or planted as a condition of previous development activity.

Commented [CES14]: POLICY ISSUE #5 (in staff report): Unnecessary. Staff is proposing to delete references to trees in rights-of-way throughout as they were intended to protect street trees, which don't exist in rural areas (unlike cities).

Commented [CS15]: POLICY ISSUE #2 (in staff report)

At the Director's discretion, and on a case-by-case basis, additional canopy may be removed for:

(d) Firewise Management. When prescribed by a Firewise professional (e.g. Whatcom Conservation District, Washington Department of Natural Resources, local fire districts, etc.), property owners may remove more canopy than that specified above if done near existing or proposed structures and it's the minimum necessary to reduce fire risk.

(e) Pest and Disease Outbreaks. Additional tree canopy may be removed when prescribed by an ISA-certified arborist to control pest and disease outbreaks.

(6) Removal of Hazard Trees Exceeding the Standard Tree Removal Allowance. Any property owner seeking to remove any number of ~~significant hazard~~ trees not considered an emergency pursuant to subsection (1) of this section and exceeding the standard tree removal allowance of subsection (5) must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided, that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter 16.16 WCC. Said trees shall be replaced with native species at a ratio of three trees for each tree removed.

(7) Penalties and Enforcement. Any significant trees damaged or removed without a permit shall be replaced at a rate of three trees for each one damaged or removed. ~~Failure to replace damaged or removed significant trees and~~ shall be subject to ~~a fines pursuant to as determined under~~ Chapter 20.94 WCC (Enforcement and Penalties). Said replacement trees shall meet the following standards:

(a) Replacement coniferous trees shall be at least eight feet in height;

(b) Replacement deciduous trees shall be at least two and one-half inches in diameter (DBH);

(c) Replacement trees shall be species native to western Washington in order to restore and enhance a site as nearly as practicable to its pre-removal character and function;

(d) The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;

(e) Financial sureties for replacement trees may be required;

~~(f)~~ Installation, maintenance, and care of required replacement trees shall be in accordance with the International Society of Arboriculture's best management practices for arboriculture including, but not limited to, soil assessment, sampling, amendments and conservation, and spacing, which ensure the tree's long-term health and survival. Replacement trees shall not be topped or otherwise be prohibited from their natural growth;

(g) The Director may consider smaller-sized replacement trees if the applicant can demonstrate that smaller trees are more suited to the species, the site conditions, and the purposes of this section, and that such trees will be planted in sufficient quantities to meet the intent of this section.

Commented [CES16]: Added for P/C discussion. If they agree, need to add to 20.71.354 as well.

#### 20.51.440 Tree retention associated with development activity.

##### (1) Tree Canopy Retention.

(a) Tree canopy retention shall be required for all development applications and building permits within the Lake Whatcom watershed, unless the activity is exempted below:

(i) Removal of any hazard trees, ~~and as necessary to remedy an immediate threat to person or property, pursuant to the requirements of this subsection pursuant to 20.51.430(1)(a).~~

(A) Tree Risk Assessment. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required. Removal of hazard trees does not count toward the tree removal limit if the hazard is supported by such a report and approved by the ~~e~~County.

- (B) Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or critical area buffers, tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.
  - (ii) Construction or maintenance of public or private roads and public or private utilities including utility easements not related to development. Protection of trees shall be a major factor in the location, design, construction, and maintenance of streets and utilities. These improvements are subject to the purpose and intent of this section.
  - (iii) Pruning and maintenance of trees of up to ~~25% percent~~ of the foliage.
- (2) **Tree Retention Plan Required.**
- (a) An applicant for a development permit must submit a tree retention plan that complies with this section. A qualified professional may be required to prepare certain components of a tree retention plan at the applicant's expense. The tree retention plan shall contain the following information:
    - (i) A site plan with the following components:
      - (A) North arrow;
      - (B) Property boundaries;
      - (C) Existing structures;
      - (D) Site access;
      - (E) Tree canopy areas to be removed;
      - (F) The outer dripline of tree canopy areas to be retained;
      - (G) Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;
      - (H) Protection measures to be used for the critical root zone of retained trees~~areas that will be undisturbed~~; and
      - (I) Areas to be replanted pursuant to subsection (4) of this section;
    - (ii) For required replacement trees, a planting plan showing location, species, and 20-year canopy area of the new trees and calculations of 20-year canopy coverage in accordance with the standards set forth in subsection (4) of this section;
    - (iii) Provisions for maintenance and monitoring.
- (3) **Minimum Tree Canopy Retention.** Development subject to the requirements of this section may only remove up to ~~35-a certain~~ percentage (as shown in Table 20.51.440(3)) or 5,000 square feet, whichever is greater, and as measured cumulatively from January 1, 2017, of the existing tree canopy areas, as defined by the dripline of the significant tree(s) on their property~~, for the purposes of a building site, driveways, parking areas, and areas to be landscaped. Existing tree canopy areas shall be prioritized for retention as provided in subsection (5) of this section.~~ In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, new on-site plantings of native species shall be required to attain the removed tree canopy coverage, calculated according to projected growth at 20 years maturity consistent with Table 20.51.440(4).
- (a) Tree canopy areas shall include all trees, excluding invasive species or noxious weeds, within the gross site area.
  - (b) Existing or planted tree canopy ~~may include street trees and~~ may be located within buffer landscaping, site landscaping, critical areas and their buffers, open space reserve areas, reserve areas, reserve tracts or easements where permanent restrictions are recorded on the face of the plat ensuring their retention in perpetuity.

**Table 20.51.440(3). Tree Canopy Removal Allowances when Associated with Development**

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

(4) **Measuring Tree Canopy.** Site tree canopy shall be measured according to Table 20.51.440(4). Calculation of existing and new tree canopy shall be submitted in writing by a qualified landscape designer or a licensed land surveyor.

**Table 20.51.440(4). Measuring Tree Canopy**

Existing Canopy		New Canopy
Option 1 Tree Survey	Option 2 Aerial Estimation	20-Year Canopy Calculation
<ul style="list-style-type: none"> <li>Measure average canopy radius (r) for each tree to be retained</li> <li>Calculate existing canopy area using the formula: Canopy Area (CA) = <math>\pi r^2</math></li> <li>Total the sum of tree canopy areas and divide by gross site area to obtain canopy coverage percentage</li> </ul>	<ul style="list-style-type: none"> <li>Obtain aerial imagery of site</li> <li>Measure site boundaries</li> <li>Measure canopies of individual trees or stand area using leading edges as the forest boundary</li> <li>Divide total canopy measurement by the gross site area to obtain canopy coverage percentage</li> </ul>	<ul style="list-style-type: none"> <li>For each proposed species:                             <ul style="list-style-type: none"> <li>Calculate radius (r) of canopy at 20 years maturity</li> <li>Calculate canopy coverage using the formula: CA = <math>\pi r^2</math></li> <li>Multiply by the proposed quantity to be planted to obtain total species canopy area</li> </ul> </li> <li>Total the sum of species canopy area for all proposed species and divide by gross site area to obtain 20-year canopy coverage percentage</li> </ul>

~~(5) **Tree Canopy Credits.** To assist in the preservation and retention of significant trees and existing tree canopy outside of critical area protection areas and required buffers and buffer landscaping, the applicant may use the following credits:~~

- ~~(a) Individual significant trees retained on site shall be counted at 125 percent of their actual canopy area.~~
- ~~(b) For clusters or stands of five or more trees, each tree shall be counted at 150 percent of its actual canopy area.~~
- ~~(c) For clusters or stands of five or more significant trees, each tree shall be counted at 200% percent of its actual canopy area.~~
- ~~(d) The minimum required lot size in subdivisions or short subdivisions may be reduced by 20% percent when at least 20 percent of the site, not including any open space reserve areas, reserve areas, reserve tracts, or critical areas or their buffers, is put into a separate tract or tracts that have at least 20 significant trees per acre and where at least 60 percent of the significant trees within the tract or tracts are retained. This does not change the tree canopy requirements.~~

**Commented [MK17]: POLICY ISSUE #5** (in staff report): Unnecessary. This section is never used and could lead to confusion regarding consistency between permits and longer permit review times.

~~(6) **Tree Replacement Requirements.** In addition to the requirements of WCC 20.80.320 through 20.80.345, trees planted to meet tree canopy requirements in subsection (3) of this section shall meet the following criteria:~~

- ~~(a) Sites must be planted or replanted with a minimum of 50 percent evergreen species, except:~~

**Commented [CES18]: POLICY ISSUE #5** (in staff report): Unnecessary. Subsection 3 already says you have 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.

- ~~(i) The evergreen portion of the required planting mix may be reduced by 25 percent when the deciduous mix contains exclusively indigenous species to the Puget Sound region, not including alder; and~~
- ~~(ii) Sites obtaining tree canopy requirements solely through street trees are exempt from the requirement to include evergreen species in the planting mix;~~
- ~~(b) Sites requiring replanting of tree canopy must plant no more than 30 percent of trees from the same species and no more than 60 percent of trees from the same taxonomic family;~~
- ~~(c) Replacement trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements;~~
- ~~(d) When preparing the landscaping plan, applicants are encouraged to meet the requirements of subsection (3) of this section by conserving existing tree canopy, including significant trees and other vegetation located on the site, and by placing new plantings in protected areas, such as street trees, buffer landscaping, open spaces, and critical areas and their buffers at healthy spacing densities before placing trees within individual lots or yards; and~~
- ~~(e) Replacement trees shall be located in such a manner to minimize damage to trees or structures on the project site and on properties adjoining the project site.~~

~~(7)(5)~~ **Tree Protection Measures.** The following tree protection measures shall be taken during clearing or construction:

- ~~(a) During construction~~ Tree protective fencing shall be installed ~~and maintained~~ along the outer edge of the drip line surrounding the trees retained in order to protect the trees during any land disturbance activities. ~~and Said~~ fencing shall not be moved to facilitate grading or other construction activity within the protected area;
- ~~(b) Tree protective fencing shall be a minimum height of three feet, visible, and of durable construction; orange polyethylene laminar fencing is acceptable; and~~
- ~~(c) Signs must be posted on the fence reading "Tree Protection Area."~~

~~(8)~~ **Tree Canopy Retention Modifications.** ~~An applicant may reduce the tree canopy requirements of subsection (3) of this section by no more than five percent through a tree canopy retention modification when all of the following criteria and those in this section are met:~~

- ~~(a) The applicant demonstrates in writing that they have made a good faith effort to comply with the tree canopy requirements within the physical constraints of the site by:
  - ~~(i) Retaining as much of the tree canopy as possible on site consistent with best management practices for maintaining the health of trees; or~~
  - ~~(ii) Replanting as much of the tree canopy as possible on site consistent with best management practices for maintaining the health of trees;~~~~
- ~~(b) The applicant proposes to plant additional understory vegetation or ground cover area, excluding lawn cover, invasive species or noxious weeds, to fulfill the remaining canopy requirement in Table 20.51.440(4) not met by retention or replanting of tree canopy; and~~
- ~~(c) When critical areas and their buffers exist on site and those buffers are not highly functioning, the applicant proposes to enhance the buffers by removing invasive species and noxious weeds and/or planting vegetation indigenous to the Pacific Northwest, spaced for maximum survivability.~~

~~(9)~~ **Street Trees.** ~~The county engineer may modify required frontage improvements to retain significant trees as street trees.~~

~~(10)(6)~~ **Retained Significant Trees Retained as a Condition of Development Approval.** Retained significant trees, trees planted as replacements for significant trees, and trees planted to meet requirements in subsection (3) of this section may not be removed except when determined in writing by a certified arborist to constitute a hazard. Any replacement or significant trees removed

Commented [MK19]: POLICY ISSUE #5 (in staff report): Unnecessary. This section is never used. It appears as though it is directed more at large scale development, such as subdivisions or PUDs, which we don't have in LW.

Commented [MK20]: POLICY ISSUE #5 (in staff report): Unnecessary. There are no street trees in the LWWOD.

without proper documentation from a certified arborist shall be subject to a fine as determined under Chapter 20.94 WCC.

- (7) Penalties and Enforcement.** Any significant trees identified in a landscape plan to be retained, and subsequently damaged or removed during site development shall be replaced at a rate of three trees for each one damaged or removed. ~~Failure to replace damaged or removed significant trees and shall be subject to a fine pursuant to as determined under~~ Chapter 20.94 WCC ~~(Enforcement and Penalties)~~. Said replacement trees shall meet the following standards:
- (a) Replacement coniferous trees shall be at least eight feet in height;
  - (b) Replacement deciduous trees shall be at least two and one-half inches in diameter (DBH);
  - (c) Replacement trees shall be species native to western Washington in order to restore and enhance a site as nearly as practicable to its pre-removal character and function;
  - (d) The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;
  - (e) Financial sureties for replacement trees may be required;
  - (f) Installation, maintenance, and care of required replacement trees shall be in accordance with the International Society of Arboriculture's best management practices for arboriculture including, but not limited to, soil assessment, sampling, amendments and conservation, and spacing, which ensure the tree's long-term health and survival. Replacement trees shall not be topped or otherwise be prohibited from their natural growth;
  - (g) The Director may consider smaller-sized replacement trees if the applicant can demonstrate that smaller trees are more suited to the species, the site conditions, and the purposes of this section, and that such trees will be planted in sufficient quantities to meet the intent of this section.

## Chapter 20.71 Water Resource Protection Overlay District

### 20.71.010 Purpose.

The Lake Samish and Lake Padden Water Resource Protection Overlay District is an overlay zone that is intended to impose additional controls to preserve and protect unique and important water resources within Whatcom County. This district is designed to protect the long-term viability of the Lake Samish and Lake Padden watersheds while creating a regulatory framework to address the needs of these watersheds that are not otherwise provided for in the underlying zone districts.

### 20.71.020 Application.

#### 20.71.021 Area and applicability.

- (1) The Water Resource Protection Overlay District is an overlay zone that covers the entire geographic area of the Lake Samish and Lake Padden watersheds within Whatcom County's jurisdiction. For purposes of this title, the Lake Samish watershed shall consist of that portion of the Friday Creek subbasin of the Samish River watershed that lies within Whatcom County.
- (2) This district may be expanded to include other areas through the annual zoning text amendment process.
- (3) The Lake Samish and Lake Padden watersheds are also designated as stormwater special districts pursuant to WCC 20.80.635 and water resource special management areas pursuant to WCC 20.80.735.
- (4) In the event that the provisions of this chapter conflict with the provisions of the Shoreline Management Program (WCC Title 23), Chapter 16.16 WCC, ~~(Critical Areas)~~, the Whatcom County



Development Standards, the provisions of the underlying zoning district, or other applicable eCounty policies or regulations, then the most restrictive shall apply; provided, that the minimum setback provisions established in WCC 20.71.401 shall prevail.

**20.71.050 Permitted uses.**

All permitted uses in the underlying zone districts are permitted except as expressly prohibited, made conditional, or further conditioned by this chapter.

.051 Private noncommercial greenhouses less than 250 square feet.

**20.71.100 Accessory uses.**

All accessory uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter.

**20.71.150 Conditional uses.**

All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited, made conditional, or further conditioned by this chapter. In addition, the following uses shall only be conditionally permitted:

- .151 On-site storage facilities for hazardous wastes associated with ~~outright~~ permitted ~~uses or approved~~ conditional uses, other than cottage industries as defined in WCC 20.71.215, subject to the most current siting criteria under Chapter 173-303 WAC within the Rural, Rural Forestry, Commercial Forestry, Neighborhood Commercial, ~~and or~~ Resort Commercial Zone Districts only.
- .152 Retail or wholesale plant nurseries or greenhouses for storage, propagation, and culture of plants, provided:
  - (1) Greenhouses shall not be larger than 1,000 square feet.
  - (2) Greenhouses and cultivated ground shall not be located within 250 feet of Lake Samish, Lake Padden, or streams subject to the Shoreline Management Program; or 200 feet from fish-bearing streams; or 150 feet from ~~non-fish-bearing other~~ streams and their tributaries that flow into Lake Samish or Lake Padden.
  - (3) A monitoring program has been established to ensure that chemical and pesticide quantities in stormwater runoff do not exceed state water quality standards. Complete control of drainage from the operation shall be in effect. Such runoff will be tested for pollutants bimonthly by a licensed water quality testing agency. All requirements will be met at the owner's expense.
  - (4) No person shall apply a commercial fertilizer, either liquid or granular, that is labeled as containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate; provided, that such fertilizers may be used for establishment of new vegetation in the first growing season.
- .185 Type I solid waste handling facilities, except:
  - (1) Moderate risk waste facilities; and
  - (2) Facilities in the Recreation and Open Space District.

**20.71.200 Prohibited uses.**

In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited, except as per Chapter 20.83 WCC ([Nonconforming Uses and Parcels](#)):

- .201 Dry cleaning establishments.
- .202 Gas stations, service stations, combustion engine repair garages, and automotive wrecking yards.
- .203 Sod farming.
- .204 Aquaculture and mariculture projects.

- .205 ~~Operation of fur~~ farms.
- .206 Confinement feeding operations.
- .207 Asphalt and concrete batch plants.
- .208 Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.
- .209 ~~Utilization-Application~~ of sewage sludge on land.
- .210 On-site treatment facilities for hazardous wastes.
- .211 Type I solid waste handling facilities, except those specified in WCC 20.71.185.
- .212 Type II and Type III solid waste handling facilities.
- .213 Golf courses.
- .214 Cemeteries.
- .215 Cottage industries that would require on-site hazardous waste storage facilities.
- .216 Surface mining outside of designated Mineral Resource Lands (MRL) Special Districts; provided, that surface mining, rock crushing, washing, and sorting subject to the Forest Practices Act (Chapter 76.09 RCW) are permitted.
- .217 Major passenger intermodal terminals.
- .218 Freight railroad switching yards and terminals.
- .219 Agriculture, including animal husbandry, horticulture, viticulture, floriculture, and the cultivation of crops.
- .220 Animal hospitals and accessory kennels and stables.
- .221 Kennels and stables.
- .222 Marijuana production facilities.

**20.71.300 Open space and ~~impervious-Hard S~~urfaces.**

- .301 Open space requirements shall be as follows:
  - (1) ~~For uses in the RC and NC Zones,~~ at least 25% ~~percent~~ of the parcel shall be reserved as open space.
  - (2) ~~For uses in the RC Zone, at least 40 percent of the parcel shall be reserved as open space.~~
  - (3)(2) Open space areas shall be maintained in natural vegetation or landscaped per WCC 20.80.325.
  - (4)(3) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations.
- .302 ~~Impervious-Hard~~ surface ~~requirements-limitations~~ shall be as follows:
  - (1) For uses in the UR, URM and RR Zone Districts, at least 80% ~~percent~~ of the lot or parcel shall be kept free of ~~structures and impervious-hard~~ surfaces.
  - (2) For uses in the R Zone District, at least 90% ~~percent~~ of the lot or parcel shall be kept free of ~~structures and impervioushard~~ surfaces.
  - (3) Where subsection (1) or (2) of this section does not allow 2,500 square feet of total ~~impervious-hard~~ surface area, 2,500 square feet shall be allowed.
  - (4) Two or more lots of record consolidated pursuant to the provisions of WCC 20.83.070 shall be treated as one undivided parcel for the purpose of calculating total allowable ~~impervious-hard~~ surface ~~area~~. Where two or more lots or parcels are consolidated; are not subject to the provisions of WCC 20.83.070; and are not subject to a permanent restrictive covenant that precludes development of buildings, structures, or other improvements not otherwise identified by said covenant, 4,000 square feet of ~~impervious-hard~~ surface shall be allowed.

Commented [CES21]: This zone no longer exists in the Water Resource Protection Overlay District

Commented [CES22]: This zone no longer exists in the Water Resource Protection Overlay District

- (5) Preexisting nonconforming ~~impervious-hard~~ surfaces may be routinely maintained/repared or redeveloped; provided, that if ~~50% percent~~ or greater of the preexisting nonconforming ~~impervious-hard surface~~ area is to be redeveloped, then the applicable ~~impervious-hard~~ surface limitations of subsections (1), (2), and (3) of this section shall apply. However, if a legal nonconforming structure is destroyed, the nonconforming use may be reconstructed using the pre-existing footprint. Expansion of nonconforming ~~hard impervious~~ surfaces shall be prohibited.
- (6) A mobile home within an existing mobile home park may be replaced with a larger mobile home (not to exceed a maximum of 1,500 square feet), provided there is not an increase in the overall number of mobile homes in the park or any increase in other ~~hard impervious~~ surfaces beyond the new mobile home footprint.
- (7) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in ~~hard impervious~~/pervious surface calculations.
- (8) Any portion of a roof overhang or other overhanging architectural feature ~~which that~~ projects further than three feet from the footprint of a structure shall be calculated as ~~hard impervious~~ surface.
- (9) Alternative surface methods described in WCC 20.71.603 may be used.

**20.71.350 Cluster subdivisions. (Adopted by reference in WCCP Chapter 2.)**

The purpose of cluster subdivision is to provide a method of creating building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure efficiency. Clustering is also intended to help preserve open space and the character of areas, reduce total ~~hard impervious~~ surface area, and minimize development effects on critical areas and associated buffers, as defined in Chapter 16.16 WCC, and resource lands. Preservation of open space is thereby intended to reduce potential stormwater runoff and associated impacts while assuring protection of viable, undeveloped, and naturally vegetated corridors for wildlife habitat, protection of watersheds, preservation of critical areas, preservation of aesthetic values including view corridors, and preservation of trail and/or recreation areas.

**20.71.351 Cluster design standards. (Adopted by reference in WCCP Chapter 2)**

The creation of new building lots within the ~~Lake Samish and Lake Padden~~ Water Resource Protection Overlay District shall be subject to the following design standards:

- (1) Cluster subdivisions shall be required for all land divisions resulting in lots less than ~~five-5~~ acres in size, with the exception of boundary line adjustments.
- (2) A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC 20.71.352.
- (3) The minimum cluster lot size requirements of the underlying zone district shall apply.
- (4) The maximum number of building lots in a lot cluster shall be 10.
- (5) Clusters containing two or more lots of less than ~~one-1~~ acre within a proposed development shall be separated by at least 80 feet.
- (6) Clustered building lots may only be created through the subdivision, short subdivision, or binding site plan process pursuant to WCC Title 21.
- (7) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas or other valuable or unique natural resources or known archaeological sites, as well as physical constraints of the site.

- (8) Building lots shall be arranged in a cluster/concentrated pattern.
- (9) A cluster subdivision shall have no more than two common encroachments on existing ~~e~~County roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid development forms commonly known as linear, straight-line, or highway strip patterns.
- (10) As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots; provided, that the required permanent open space reserve area, pursuant to WCC 20.71.352, shall not be further subdivided.

**20.71.352 Open Space Reserve Area. (Adopted by reference in WCCP Chapter 2)**

- (1) For purposes of this title, an “open space reserve area” shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of “open space” pursuant to WCC 20.97.275.
- (2) The open space reserve area shall be subject to the following provisions:
  - ~~(b)~~(h) \_\_\_\_\_ The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.
  - ~~(c)~~(i) \_\_\_\_\_ A permanent open space reserve area shall be protected using one of the following mechanisms:
    - (i) Placement in a separate non-building tract owned in common by all lots within the subdivision; or
    - (ii) Covered by a protective easement or public or private land trust dedication ~~which protects at least the minimum required cluster reserve area specified in the underlying zone district;~~
    - or
    - (iii) ~~Otherwise preserved through an appropriate County-approved permanent protective mechanism that provides the same level of permanent protection as subsection (2)(b)(i) of this section as determined by the county zoning administrator or hearing examiner which applies to at least the minimum required cluster reserve area specified in the underlying zone district.~~
  - ~~(d)~~(j) \_\_\_\_\_ The boundaries of the open space ~~portion of the~~ reserve area may be altered ~~only~~ if the ~~e~~County finds that in dedicating adjacent reserve areas it would further the objectives listed in WCC 20.71.350 ~~by altering the reserve area and by~~ increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.
  - ~~(e)~~(k) \_\_\_\_\_ The purpose of the open space reserve area as defined in subsection (1) of this section shall be recorded on the face of the final plat or short plat.
  - ~~(f)~~(l) \_\_\_\_\_ The remaining unused development density and/or ~~hard impervious~~ surface allowances remaining on the parcel containing the open space reserve area, based on the gross density of the parent parcel, may be assigned to that portion of the reserve tract not subject to the minimum area requirements of subsection (2)(b) of this section. The density shall be recorded on the face of the final plat or short plat. The development rights assigned to the reserve tract in accordance with this subsection may not be transferred if the pervious surface area associated with the reserve tract has been transferred to the other building lots within the subdivision.
  - ~~(g)~~(m) \_\_\_\_\_ The requirements stated in subsections (2)(c) and (d) of this section shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute an agreement

Commented [CES23]: Extraneous. This is already stated in (a)

Commented [CES24]: Extraneous. This is already stated in (a)

between Whatcom County and the current/future owner(s) of record that shall run with the land. Said restriction(s) may be amended by mutual agreement between said parties after review for consistency and compliance with ~~WCC Titles 20 (the official Whatcom County Zoning Ordinance), 21 (Land Division Regulations) the Whatcom County Subdivision Ordinance~~, and the Whatcom County Comprehensive Plan.

~~(h)(n)~~ For cluster subdivisions approved after December 7, 1999, that portion of the reserve tract ~~which is~~ kept in pervious open space may be counted toward pervious surface area requirements for the building lots in the subdivision on a prorated basis.

**20.71.354 Tree removal not associated with development activity.**

- (1) **Permit Required for Removal of Trees.** No person, directly or indirectly, shall remove any significant tree(s) on any property within the ~~Lake Padden and Lake Samish watersheds~~ Water Resource Protection Overlay District, ~~or any tree(s) in the public right-of-way~~, without first obtaining the appropriate permit as provided in this section, unless the activity is exempted below:
  - (a) Removal of any hazard trees considered an emergency ~~pursuant to within~~ the definition of "hazard tree" in Chapter 20.97 WCC. Within 30 days after the emergency is abated the landowner shall submit photo documentation with a form provided by Whatcom County.
  - (b) Pruning and maintenance of trees of up to ~~25% percent~~ of the foliage.
- (2) ~~The~~ removal of trees located within the shoreline jurisdiction or within ~~a~~ critical areas ~~or a critical area~~ their buffers may be subject to additional regulations pursuant to WCC Title 23 (Shoreline Management Program) ~~or and~~ Chapter 16.16 WCC (Critical Areas). Where additional regulations conflict the more stringent regulation shall apply.
- (3) **Permit Application.** At a minimum the following shall be submitted by the applicant:
  - (a) A complete permit application.
  - (b) A sketch for this purpose may be prepared by the homeowner or other lay person and shall depict:
    - (i) The approximate location of significant trees, indicating those to be removed;
    - (ii) The species and canopy area (as determined pursuant to WCC 20.51.440(4));
    - (iii) The location of structures, driveways, access ways, and known easements.
  - (c) Canopy calculations (existing and proposed).
  - (d) For required replacement trees, a planting plan showing location, species, and 20-year canopy area of the new trees in accordance to standards set forth in WCC 20.71.356(4) for calculating 20-year canopy coverage.
  - (e) Other information as required by the applicable permit application.
- (4) **Tree Removal Permit Application Procedure and Appeals.** Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the ~~e~~County.
  - (a) Applicable Permit.
    - (i) The permit application to remove trees within the shoreline jurisdiction is a shoreline permit (WCC Title 23).
    - (ii) The permit application to remove trees within a critical area or a critical area buffer is an notification of a activity Allowed with Notification (WCC 16.16.235).
    - (iii) The permit application to remove trees in other areas ~~outside of subsection (4)(a)(i) or (ii) of this section~~ is a tree removal permit.
  - (b) The ~~county~~ Director shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application, or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.

Commented [CES25]: POLICY ISSUE #5 (in staff report): Unnecessary. Staff is proposing to delete references to trees in rights-of-way throughout.

- (c) The removal shall be completed within one year from the date of permit approval.
- (d) The decision of the ~~d~~Director is appealable pursuant to WCC 22.05.160.

(5) **Tree Removal Allowances.** With the appropriate permit, any property owner may remove up to ~~3520% percent or 5,000 square feet, whichever is greater~~ but not to exceed to 14,000 square feet, and as measured cumulatively from January 1, 2017, of the existing canopy area, as defined by the dripline of on-site the significant trees on their property; provided, that:

- (a) There is no active application for development activity for the site; and
- (b) No other Whatcom County regulation is more restrictive; and
- (c) The tree(s) ~~were~~ are not required to be retained or planted as a condition of previous development activity.

At the Director's discretion, and on a case-by-case basis, additional canopy may be removed for:

(d) Firewise Management. When prescribed by a Firewise professional (e.g. Whatcom Conservation District, Washington Department of Natural Resources, local fire districts, etc.), property owners may remove more canopy than that specified above if done near existing or proposed structures and it's the minimum necessary to reduce fire risk.

(e) Pest and Disease Outbreaks. Additional tree canopy may be removed when prescribed by an ISA-certified arborist to control pest and disease outbreaks.

(6) **Removal of Hazard Trees Exceeding the Standard Tree Removal Allowance.** Any property owner seeking to remove any number of ~~significant hazard~~ trees not considered an emergency pursuant to subsection (1) of this section and exceeding the standard tree removal allowance of subsection (5) must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided, that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter 16.16 WCC. Said trees shall be replaced with native species at a ratio of three trees for each tree removed.

(7) **Penalties and Enforcement.** Any significant trees damaged or removed without a permit shall be replaced at a ratio of three trees for each one damaged or removed. ~~Failure to replace damaged or removed significant trees and~~ shall be subject to ~~a fines~~ pursuant to as determined under Chapter 20.94 WCC (Enforcement and Penalties). Said replacement trees shall meet the following standards:

- (a) Replacement coniferous trees shall be at least eight feet in height;
- (b) Replacement deciduous trees shall be at least two and one-half inches in diameter (DBH);
- (c) Replacement trees shall be species native to western Washington in order to restore and enhance a site as nearly as practicable to its pre-removal character and function;
- (d) The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;
- (e) Financial sureties for replacement trees may be required;
- (f) Installation, maintenance, and care of required replacement trees shall be in accordance with the International Society of Arboriculture's best management practices for arboriculture including, but not limited to, soil assessment, sampling, amendments and conservation, and spacing, which ensure the tree's long-term health and survival. Replacement trees shall not be topped or otherwise be prohibited from their natural growth;
- (g) The Director may consider smaller-sized replacement trees if the applicant can demonstrate that smaller trees are more suited to the species, the site conditions, and the purposes of this section, and that such trees will be planted in sufficient quantities to meet the intent of this section.

Commented [CS26]: POLICY ISSUE #2 (in staff report)

**20.71.356 Tree retention associated with development activity.**

**(1) Tree Canopy Retention.**

- (a) Tree canopy retention shall be required for all development applications and building permits within the Lake Padden and Lake Samish watersheds, unless the activity is exempted below:
  - (i) Removal of any hazard trees, ~~and as necessary to remedy an immediate threat to person or property, pursuant to the requirements of this subsection, pursuant to 20.71.354(1)(a).~~
    - (A) Tree Risk Assessment. If the hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a hazard tree is required. Removal of hazard trees does not count toward the tree removal limit if the hazard is supported by such a report and approved by the eCounty.
    - (B) Trees in Critical Areas or Critical Area Buffers. For hazard trees in critical areas or critical area buffers tree removal shall be in accordance with the requirements of Chapter 16.16 WCC.
  - (ii) Construction or maintenance of public or private roads and public or private utilities including utility easements not related to development. Protection of trees shall be a major factor in the location, design, construction, and maintenance of streets and utilities. These improvements are subject to the purpose and intent of this section.
- (b) Pruning and maintenance of trees of up to ~~25% percent~~ of the foliage.

**(2) Tree Retention Plan Required.**

- (a) An applicant for a development permit must submit a tree retention plan that complies with this section. A qualified professional may be required to prepare certain components of a tree retention plan at the applicant's expense. The tree retention plan shall contain the following information:
  - (i) A site plan with the following components:
    - (A) North arrow;
    - (B) Property boundaries;
    - (C) Existing structures;
    - (D) Site access;
    - (E) Tree canopy areas to be removed;
    - (F) The outer dripline of tree canopy areas to be retained;
    - (G) Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;
    - (H) Protection measures to be used for areas that will be undisturbed; and
    - (I) Areas to be replanted pursuant to subsection (4) of this section;
  - (ii) For required replacement trees, a planting plan showing location, species, and 20-year canopy area of the new trees and calculations of 20-year canopy coverage in accordance with the standards set forth in subsection (4) of this section;
  - (iii) Provisions for maintenance and monitoring.

- (3) **Minimum Tree Canopy Retention.** Development subject to the requirements of this section may only remove up to ~~35% a certain~~ percent age (as shown in Table 20.71.356(3)) or 5,000 square feet, whichever is greater, and as measured cumulatively from January 1, 2017, of the existing tree canopy areas, as defined by the dripline of the significant tree(s) on their property. ~~for the purposes of a building site, driveways, parking areas, and areas to be landscaped. Existing tree canopy areas shall be prioritized for retention as provided in subsection (5) of this section.~~ In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, new on-site plantings of native species shall

be required to attain the removed tree canopy coverage, calculated according to projected growth at 20 years maturity consistent with Table 20.71.356(4).

- (a) Tree canopy areas shall include all trees, excluding invasive species or noxious weeds, within the gross site area.
- (b) Existing or planted tree canopy ~~may include street trees and~~ may be located within buffer landscaping, site landscaping, critical areas and their buffers, open space reserve areas, reserve areas, reserve tracts, or easements where permanent restrictions are recorded on the face of the plat ensuring their retention in perpetuity.

**Table 20.71.356(3). Tree Canopy Removal Allowances when Associated with Development**

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

- (4) **Measuring Tree Canopy.** Site tree canopy shall be measured according to Table 20.71.356(4). Calculation of existing and new tree canopy shall be submitted in writing by a qualified landscape designer or a licensed land surveyor.

**Table 20.71.356(4). Measuring Tree Canopy**

Existing Canopy		New Canopy
Option 1 Tree Survey	Option 2 Aerial Estimation	20-Year Canopy Calculation
<ul style="list-style-type: none"> <li>• Measure average canopy radius (r) for each tree to be retained</li> <li>• Calculate existing canopy area using the formula: Canopy Area (CA) = <math>\pi r^2</math></li> <li>• Total the sum of tree canopy areas and divide by gross site area to obtain canopy coverage percentage</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain aerial imagery of site</li> <li>• Measure site boundaries</li> <li>• Measure canopies of individual trees or stand area using leading edges as the forest boundary</li> <li>• Divide total canopy measurement by the gross site area to obtain canopy coverage percentage</li> </ul>	<ul style="list-style-type: none"> <li>For each proposed species:                             <ul style="list-style-type: none"> <li>• Calculate radius (r) of canopy at 20 years maturity</li> <li>• Calculate canopy coverage using the formula: <math>CA = \pi r^2</math></li> <li>• Multiply by the proposed quantity to be planted to obtain total species canopy area</li> <li>• Total the sum of species canopy area for all proposed species and divide by gross site area to obtain 20-year canopy coverage percentage</li> </ul> </li> </ul>

- (5) ~~**Tree Canopy Credits.** To assist in the preservation and retention of significant trees and existing tree canopy outside of critical area protection areas and required buffers and buffer landscaping, the applicant may use the following credits:~~
  - ~~(a) Individual significant trees retained on site shall be counted at 125 percent of their actual canopy area.~~
  - ~~(b) For clusters or stands of five or more trees, each tree shall be counted at 150 percent of its actual canopy area.~~
  - ~~(c) For clusters or stands of five or more significant trees, each tree shall be counted at 200 percent of its actual canopy area.~~

**Commented [CES27]: POLICY ISSUE #5** (in staff report): Unnecessary. This section is never used. This could lead to confusion regarding consistency between permits and longer permit review times. Staff proposes to remove it.



- ~~(d) The minimum required lot size in subdivisions or short subdivisions may be reduced by 20 percent when at least 20 percent of the site, not including any open space reserve areas, reserve areas, reserve tracts, or critical areas or their buffers, is put into a separate tract or tracts that have at least 20 significant trees per acre and where at least 60 percent of the significant trees within the tract or tracts are retained. This does not change the tree canopy requirements.~~
- ~~(6) **Tree Replacement Requirements.** In addition to the requirements of WCC 20.80.320 through 20.80.345, trees planted to meet tree canopy requirements in subsection (3) of this section shall meet the following criteria:~~
- ~~(a) Sites must be planted or replanted with a minimum of 50 percent evergreen species, except:
    - ~~(i) The evergreen portion of the required planting mix may be reduced by 25 percent when the deciduous mix contains exclusively indigenous species to the Puget Sound region, not including alder; and~~
    - ~~(ii) Sites obtaining tree canopy requirements solely through street trees are exempt from the requirement to include evergreen species in the planting mix;~~~~
  - ~~(b) Sites requiring replanting of tree canopy must plant no more than 30 percent of trees from the same species and no more than 60 percent of trees from the same taxonomic family.~~
  - ~~(c) Replacement trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements;~~
  - ~~(d) When preparing the landscaping plan, applicants are encouraged to meet the requirements of subsection (3) of this section by conserving existing tree canopy, including significant trees and other vegetation located on the site, and by placing new plantings in protected areas, such as street trees, buffer landscaping, open spaces, and critical areas and their buffers at healthy spacing densities before placing trees within individual lots or yards; and~~
  - ~~(e) Replacement trees shall be located in such a manner to minimize damage to trees or structures on the project site and on properties adjoining the project site.~~
- ~~(7)(5) **Tree Protection Measures.** The following tree protection measures shall be taken during clearing or construction:~~
- ~~(a) During construction Tree protective fencing shall be installed and maintained along the outer edge of the drip line surrounding the trees retained in order to protect the trees during any land disturbance activities. Said ~~and~~ fencing shall not be moved to facilitate grading or other construction activity within the protected area;~~
  - ~~(b) Tree protective fencing shall be a minimum height of three feet, visible, and of durable construction; orange polyethylene laminar fencing is acceptable; and~~
  - ~~(c) Signs must be posted on the fence reading "Tree Protection Area."~~
- ~~(8) **Tree Canopy Retention Modifications.** An applicant may reduce the tree canopy requirements of subsection (3) of this section by no more than five percent through a tree canopy retention modification when all of the following criteria and those in this section are met:~~
- ~~(a) The applicant demonstrates in writing that they have made a good faith effort to comply with the tree canopy requirements within the physical constraints of the site by:
    - ~~(i) Retaining as much of the tree canopy as possible on site consistent with best management practices for maintaining the health of trees; or~~
    - ~~(ii) Replanting as much of the tree canopy as possible on site consistent with best management practices for maintaining the health of trees;~~~~
  - ~~(b) The applicant proposes to plant additional understory vegetation or ground cover area, excluding lawn cover, invasive species or noxious weeds, to fulfill the remaining canopy requirement in Table 20.71.356(4) not met by retention or replanting of tree canopy; and~~

**Commented [CES28]: POLICY ISSUE #5** (in staff report): Unnecessary. Subsection 3 already says you have 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.

**Commented [CES29]: POLICY ISSUE #5** (in staff report): Unnecessary. This section is never used. It appears as though it is directed more at large scale development, such as subdivisions or PUD's, which we don't have in LW.

~~(c) When critical areas and their buffers exist on site and those buffers are not highly functioning, the applicant proposes to enhance the buffers by removing invasive species and noxious weeds and/or planting vegetation indigenous to the Pacific Northwest, spaced for maximum survivability.~~

~~(9) **Street Trees.** The county engineer may modify required frontage improvements to retain significant trees as street trees.~~

Commented [CES30]: POLICY ISSUE #5 (in staff report): Unnecessary. There are no street trees in the WRPOD.

~~(10)(6)~~ **Retained Significant Trees Retained as a Condition of Development Approval.** Retained significant trees, trees planted as replacements for significant trees, and trees planted to meet requirements in subsection (3) of this section may not be removed except when determined in writing by a certified arborist to constitute a hazard. Any replacement or significant trees removed without proper documentation from a certified arborist shall be subject to a fine as determined under Chapter 20.94 WCC.

**(7) Penalties and Enforcement.** Any significant trees identified in a landscape plan to be retained, and subsequently damaged or removed during site development shall be replaced at a rate of three trees for each one damaged or removed. ~~Failure to replace damaged or removed significant trees and shall be subject to a fine pursuant to as determined under Chapter 20.94 WCC (Enforcement and Penalties).~~ Said replacement trees shall meet the following standards:

~~(o) Replacement coniferous trees shall be at least eight feet in height;~~

~~(p) Replacement deciduous trees shall be at least two and one-half inches in diameter (DBH);~~

~~(q) Replacement trees shall be species native to western Washington in order to restore and enhance a site as nearly as practicable to its pre-removal character and function;~~

~~(r) The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;~~

~~(s) Financial sureties for replacement trees may be required;~~

~~(t) Installation, maintenance, and care of required replacement trees shall be in accordance with the International Society of Arboriculture's best management practices for arboriculture including, but not limited to, soil assessment, sampling, amendments and conservation, and spacing, which ensure the tree's long-term health and survival. Replacement trees shall not be topped or otherwise be prohibited from their natural growth;~~

~~(u) The Director may consider smaller-sized replacement trees if the applicant can demonstrate that smaller trees are more suited to the species, the site conditions, and the purposes of this section, and that such trees will be planted in sufficient quantities to meet the intent of this section.~~

**20.71.360 Seasonal Clearing Activity Limitations.**

Land disturbing activities shall be limited seasonally pursuant to WCC 20.80.735(2)(d) (Water Resource Special Management Areas).

Commented [CES31]: Though this already applies, staff proposes to insert this to provide applicants a cross-ref. to applicable code.

**20.71.400 Building setback/buffer areas.**

**.401** Setbacks for all properties within the overlay district shall be as follows: roads classified as state highways, principal arterials, minor arterials, and collector arterials or major collectors shall have a minimum setback of 30 feet; and roads classified as minor collectors, local access streets, neighborhood collector or minor access streets shall have a minimum setback of 20 feet; provided, that the road right-of-way meets the minimum standard for road rights-of-way pursuant to the Whatcom County Development Standards.

.402 Roof overhangs or other overhanging architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend three feet into the front yard setback; however, in no case shall they extend more than one-half the depth of the front yard setback.

**20.71.600 Development criteria.**

**20.71.601 Parking space dimensions.**

A standard parking space shall have the rectangular dimensions of 10 feet in width and 20 feet in length; provided, that for any parking area of six or more spaces, ~~50% percent~~ of all spaces may have the rectangular dimensions of eight feet in width and 15 feet in length; and further provided, that these spaces are marked for use by compact automobiles. Except in single-family residential areas, all dimensions shall be exclusive of driveways, aisles and other circulation areas required under WCC 20.80.560 and 20.80.570.

**20.71.602 Parking requirements.**

Parking shall conform to the requirements of WCC 20.80.500 through 20.80.590 unless otherwise specified in this section. Minimum parking requirements may be reduced through any of the following methods:

- (1) A shared parking agreement has been filed with the ~~eCounty a~~Auditor establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.
  - (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.
  - (b) Mixed use developments with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.
- (2) A ~~20% percent~~ reduction may be approved if an establishment is located within 1,000 feet of any regularly scheduled bus stop.
- (3) The ~~zoning administrator~~Director determines that a reduced requirement will reduce overall ~~hard~~impervious surfaces while maintaining consistency with this title.

**20.71.603 Alternative surfacing methods.**

Alternative surfaces including, but not limited to, bark or wood mulch, washed gravel, grid/lattice systems, permeable interlocking pavers, pervious concrete, porous asphalt, and other similar approved materials are encouraged. Alternative surfacing methods may be approved for fringe or overflow parking areas; emergency parking areas, private roads, fire lanes, road shoulders, bike paths, walkways, patios, driveways, and easement service roads in residential or commercial zones unless site constraints make use of such materials detrimental to water quality. Utilization of alternative surfacing methods shall be subject to review and approval by the Whatcom County public works department, the fire marshal and/or the ~~eCounty~~ Americans with Disabilities Act (ADA) coordinator for compliance with other applicable regulations and development standards. Surfaces shall be considered ~~hard~~impervious surfaces under WCC 20.71.300 unless the following conditions are met:

- (1) Bark, wood mulch, and washed gravel shall be designed and installed so that all rain water falling upon the alternative surface will be infiltrated directly beneath the alternative surface without generating surface runoff based on the one-year-~~7~~24-hour storm event.
- (2) Other alternative surface methods shall be designed and installed in accordance with the guidelines in the 2005 Low Impact Development Technical Guidance Manual for Puget Sound or subsequent version, prepared by the Puget Sound Action Team (Publication No. PSAT 0503), as

applicable. No pervious surface credit shall be given for projects ~~utilizing~~ using an underdrain system.

**20.71.604 Vehicular access.**

Driveways and curb cuts shall be minimized along all arterial and collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads with limited access to arterial or collector roads.

**20.71.700 Roads, curbs, gutters and sidewalks.**

The intent of this section is to reduce ~~hard~~ impervious surfaces and stormwater runoff. Innovative street sections, ~~which that~~ do not compromise public safety, shall be encouraged in the watershed. Narrow streets and reduced sidewalk standards that satisfy pedestrian and vehicular circulation requirements may be implemented with the approval of the Whatcom County ~~p~~Public ~~w~~Works ~~d~~Department. Unless specifically required, roads shall not be wider than the minimum applicable standard. A rural road standard may be approved ~~by the Whatcom County public works department~~ for urban density residential areas where the developer provides adequate off-street parking and pedestrian walkways.

## 20.80 Supplementary Requirements

**20.80.630 Stormwater and drainage.**

- (1) Unless exempted in WCC 20.80.631 (stormwater and drainage, exemptions), all development activity on lands within Whatcom County shall be subject to stormwater management requirements as follows:
  - (a) NPDES Phase II Permit Area. Except in the Lake Whatcom Watershed Overlay District, development activity inside the NPDES Phase II permit area shall comply with:
    - (i) The ~~2012-current Washington State Department of Ecology Stormwater Management Manual for Western Washington (Stormwater Manual), as amended;~~
    - (ii) Appendix 1, Minimum Technical Requirements, of the Western Washington Phase II Municipal Stormwater Permit; and
    - (iii) Appendix 7, “Determining Construction Site Damage Transport Potential,” of the Western Washington Phase II Municipal Stormwater Permit.
  - (b) **Lake Whatcom Watershed Overlay District.** All development activity inside the Lake Whatcom Watershed Overlay District shall comply with Chapter 20.51 WCC, Lake Whatcom Watershed Overlay District, which satisfies all 2013 Western Washington Municipal Stormwater Permit development and redevelopment requirements.
  - (c) **Stormwater Special Districts.** Except for areas within or that overlap with the NPDES Phase II permit area (see subsection (1)(a) of this section), development activity inside stormwater special districts (as defined by WCC 20.80.635) shall comply with the ~~current~~ Stormwater Manual, using the following modified minimum requirements in the table below, and using the ~~current~~ Stormwater Manual’s definitions of terms for “stormwater site plan,” “impervious surface,” “hard surface,” “land disturbing activity,” “project,” “site,” and “replaced hard surface”:

... (Editor’s Note: The *Modified Thresholds for Stormwater Management Table Within Special Stormwater Districts* not shown as it’s not being proposed to be amended)

- (d) **Outside (i) the NPDES Phase II Permit Area, (ii) the Lake Whatcom Watershed Overlay District, and (iii) the Stormwater Special Districts.** Development activity outside the NPDES Phase II

permit area, Lake Whatcom Watershed Overlay District, and stormwater special districts (as defined by WCC 20.80.635) shall comply with the current Stormwater Manual, using the following modified minimum requirements in the table below, the definitions for land use intensity in subsection (e) of this section, and using the current Stormwater Manual's definitions of terms for "stormwater site plan," "impervious surface," "hard surface," "land disturbing activity," "project," "site," and "replaced hard surface":

... (Editor's Note: The *Modified Thresholds for Stormwater Management Table Outside the NPDES Phase II Permit Area, the Lake Whatcom Watershed Overlay District* not shown as it's not being proposed to be amended)

... (Editor's Note: Subsection (e) not shown as it's not being proposed to be amended)

- (2) No project permit shall be issued prior to meeting the stormwater requirements of this section and/or the ~~2012 Washington State Department of Ecology~~current Stormwater ~~Management Manual for Western Washington, as amended~~. Advisory Note: Certain stormwater discharges to natural receiving waters are subject to state water quality standards and the requirements of the National Pollutant Discharge Elimination System (NPDES). Hydraulic project approval (HPA) may also be required if stormwater is discharged to a water body or stream that provides, or could provide, habitat for fish.

**20.80.631 Exemptions.**

- ...
- (2) Commercial agriculture practices (as defined in the ~~2012 Washington State Department of Ecology~~current Stormwater ~~Management Manual for Western Washington, as amended~~) involving working the land for production are generally exempt. However, the conversion from timberland to agriculture and the construction of impervious surfaces are not exempt.

...

**20.80.634 Stormwater conformance.**

All development shall conform to the following requirements:

- (1) General.
- (a) Stormwater discharges must be controlled and treated as required by law.
  - (b) Best management practices (BMPs) shall be used to comply with the regulations in this chapter. If appropriate BMPs are not referenced in the ~~2012 Washington State Department of Ecology~~current Stormwater ~~Management Manual for Western Washington, as amended (Stormwater Manual)~~, experimental BMPs may be considered. However, experimental BMPs must be approved by the County ~~technical administrator~~ prior to implementation.

...

- (2) Erosion and Sediment Control.
- (a) All proposed projects that will clear, grade, or otherwise disturb the site shall provide erosion and sediment control (ESC) that prevents the transport of sediment from the site to drainage facilities, water resources and adjacent properties.
  - (b) Erosion and sediment controls shall be selected and applied in accordance with the current Stormwater Manual.

## Chapter 20.97 Definitions

### 20.97.091.1 Current Stormwater Manual.

“Current Stormwater Manual” means the County Engineer approved Washington State Department of Ecology (WSDOE) Stormwater Management Manual for Western Washington edition that is in effect on the date that the cCounty receives a complete application for the project, work, or activity.

**Commented [CES132]: POLICY ISSUE #4** (in staff report): Public Works has requested that all references to “the current stormwater manual,” and that the County Engineer need approve a new manual prior to its use so as to give time for training on it.

### 20.97.419 Significant tree.

See WCC 20.97.436.4, Tree, significant. Any evergreen tree 12 inches or greater in diameter at breast height (DBH) or deciduous tree eight inches or greater DBH. Diameter at breast height shall be measured four and one-half feet above existing grade. The Director may authorize the exclusion of any tree, which for reasons of health or age is not desirable to retain, from this definition.

### 20.97.436.4 Tree, significant.

Any evergreen tree, 12 inches or greater in diameter at breast height (DBH) or deciduous tree, eight inches or greater DBH. Diameter at breast height shall be measured four and one-half feet above existing grade. The director of planning and development services may authorize the exclusion of any tree, which for reasons of health or age is not desirable to retain, from this definition.

**Commented [CS33]:** Moving definition to “significant tree.”