

# Whatcom County Planning & Development Services Staff Report

## Tree Canopy Permit Procedure and SMP CAO Reference Update Amendments

### I. File Information

**File #** PLN2019-00012

**File Name:** Tree Canopy Permit Procedure and Shoreline Master Program Critical Areas Ordinance Reference Update Amendments

**Applicants:** Whatcom County Planning and Development Services (PDS)

**Summary of Request:** Proposed amendments to Whatcom County Code Titles 20 (Chapters 20.51 and 20.71) pertaining to tree removal permit procedures and 23 (Chapter 23.110) updating the referenced Critical Areas Ordinance (CAO)

**Location:** Countywide.

### II. Recommendation

The Planning Commission recommends that the County Council adopt the proposed amendments, as does Planning and Development Services. The amendments are necessary to add clarity to existing regulations pertaining to tree canopy retention within Lake Whatcom, Lake Samish, and Lake Padden watersheds and implementing the hazard tree definition approved through ORD2019-013 within the shoreline jurisdiction.

### III. Background

#### Tree Retention

On October 12, 2016, Council adopted ordinance 2016-045, which adopted the Department of Ecology stormwater manual (with modified applicability thresholds) to better manage stormwater, promote the use of Low Impact Development, and comply with our NPDES Phase II permit. The ordinance also amended the tree protection regulations for our sensitive watersheds (Lakes Whatcom, Padden, and Samish) in an effort to better manage stormwater runoff (retaining trees helps retain and infiltrate stormwater).

Staff has recently identified that those regulations for tree canopy management are not as clear as they could be on how an applicant applies for tree removal within the regulated watersheds. Specifically, subsection (1) of both WCC 20.51.430 and 20.71.354 read:

- (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, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in

this section, unless the activity is exempted below; *provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer*: [emphasis added]

- (a) Removal of any hazard trees considered an emergency 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.

The clause, “provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer,” was intended to mean that trees located in these areas must apply for permits as specified in WCC Title 23 (Shoreline Master Program) or Chapter 16.16 (Critical Areas Ordinance). However, we recognize that it could be read to mean that trees located in those areas are exempt from regulation. Staff would therefore like to correct and clarify this and proposes the amendments shown in Exhibit A, Items 1 & 2.

### **A Tale of Two CAOs**

As you know, any amendments of the SMP regulations must be sent to and approved by the Department of Ecology (Ecology) before they can take effect. After the 2017 CAO update, staff forwarded Council’s adoption of it to Ecology for review and approval. During that time, from December 5, 2017 to May 2, 2019, Whatcom County has had two CAOs: the 2017 version for use outside of the shoreline jurisdiction and the 2005 version for use inside the shoreline jurisdiction.

On April 19, 2019, Whatcom County received notification from Ecology approving the date change for the referenced CAO from the 2005 CAO to the 2017 CAO, which will become effective on May 3, 2019. As of that date we will revert to having only one CAO to be applicable countywide. Recognize, however, that every time we amend the CAO we may again have two versions until the amendments are approved by Ecology and the reference date in the SMP is again updated.

This is the case with the hazard tree definition. In the recent 2018 Code Scrub (ORD 2019-013, adopted 2/12/2019), Council deleted the four different definitions of “hazard tree” from various chapters of the code and replaced it with one. In part, the duplicative definition that was found in both the CAO and the SMP was removed from the SMP, and the one in the CAO replaced with the new one. Ecology has confirmed that, given that the same definition is in the CAO, the deletion from the SMP of the duplicative definition is an administrative change and does not require Ecology approval. However, to have the new one apply (via the CAO) within the shoreline jurisdiction, Ecology must again approve an SMP amendment to reference the CAO amended on 2/12/2019. Until that time we will have one CAO, but within it two definitions of hazard tree: the newer one for use outside the shoreline jurisdiction and the older one for use within the shoreline jurisdiction. Thus, staff proposes the amendment shown in Exhibit A, Item 3, which would adopt the 2/12/2019 CAO into the SMP.

## **IV. Code Amendments**

The proposed code amendments are shown in Exhibit A. Please refer to that attachment.

## **V. Comprehensive Plan Evaluation**

The proposed amendments are consistent with the Comprehensive Plan’s following goal and policies regarding stormwater management:

**Goal 10H: Protect water resources and natural drainage systems by controlling the quality and quantity of stormwater runoff.**

- Policy 10H-1: Manage stormwater runoff to minimize surface water quality and quantity impacts and downstream impacts on channel morphology, property owners, and aquatic species and habitats.
- Policy 10H-2: Maintain or enhance, when appropriate, natural drainage systems and natural water storage sites in order to better protect water quality, moderate water quantity, minimize environmental degradation, and reduce public costs.
- Policy 10H-3: Limit the alteration of natural drainage systems and natural water storage sites without mitigating measures. Such measures should not degrade water quality or fish and wildlife habitat and should not increase hazards to the community.
- Policy 10H-5: Evaluate the role of watersheds in the maintenance of water quality and quantity and determine what cumulative impacts development activity may have on watershed hydrology.
- Policy 10H-6: Develop specific stormwater management programs for each drainage basin within the county's jurisdiction that may be impacted by urban levels of development. Recognize the Lake Whatcom Watershed, Lake Samish, and Drayton Harbor as high priorities in this effort. Coordinate efforts with the Lake Whatcom Policy Group, the various shellfish protection districts, and other watershed management entities.
- Policy 10H-8: Strongly incentivize the use of low impact development strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed, street swales and rain gardens instead of curbs and gutters. Where feasible, encourage alternate surfacing options and other techniques associated with low impact development (see Glossary).
- Policy 10H-9: Develop and administer stormwater management standards as required by the NPDES Phase II Permit.
- Policy 10H-11: Place a high priority on integrating impervious surface reduction incentives into policies, regulations, and standards.
- Policy 10H-12: Develop and implement comprehensive stormwater management programs and strategies designed to address runoff from all private and public developments and facilities within regulated and sensitive watersheds.
1. Implement the Western Washington Phase II Municipal Stormwater Permit as part of the National Pollutant Discharge Elimination System (NPDES) Program. Incorporate watershed considerations into the development of a comprehensive stormwater management strategy for designated areas.
  2. Review Stormwater Special Districts Standards, Watershed Protection Districts, and other related codes that address runoff treatment from potentially polluting surfaces for their applicability to other sensitive watersheds with the Technical Advisory Committee and other appropriate agencies. Coordinate efforts for ongoing monitoring and evaluation within the sensitive watersheds and NPDES areas.
  3. Amend subdivision, zoning, and other land use regulations and design standards to encourage that land use activities minimize the amount of impervious surface.
  5. Focus on the Lake Whatcom watershed as a high priority in developing a stormwater management program. Develop a stormwater management plan that

achieves a uniform level of protection throughout the Lake Whatcom watershed. Ensure coordination and communication with the public and affected jurisdictions, such as the Lake Whatcom Water and Sewer District, the Sudden Valley Community Association, and the City of Bellingham.

6. Ensure existing stormwater standards are adequately enforced within Stormwater Special Districts, Watershed Protection Districts, and the NPDES areas.

## **VI. Proposed Findings of Fact and Reasons for Action**

Staff recommends the following findings of fact and reasons for action be adopted:

1. Whatcom County Planning and Development Services has submitted an application to amend Whatcom County Code Titles 20 (Chapters 20.51 and 20.71), 16 (Chapter 16.16), and 23 (Chapter 23.110) pertaining to hazard trees.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 2, 2019, 2018.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 29, 2019.
4. The Planning Commission held a public hearing on the proposed amendments on May 9, 2019, notice of which was published in the Bellingham Herald.
5. The Planning Commission recommended approval of the amendments.
6. The County Council held a public hearing on the proposed amendments on June 18, 2019, notice of which was published in the Bellingham Herald.
7. The proposed amendments are consistent with the Comprehensive Plan's goal 10H and its policies regarding stormwater management.
8. The proposed amendments are necessary to implement the Council's intent to protect significant trees and tree canopy within our Watershed Resource Protection Overlay districts (Lakes Whatcom, Padden, and Samish) as part of the County's stormwater management strategy and comply with the County's NPDES Phase II permit.

## **VII. Proposed Conclusions**

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

## **VIII. Attachments**

1. Draft Ordinance
2. Exhibit A – Proposed Code Amendments