

**WHATCOM COUNTY**  
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**Mark Personius, AICP**  
Director

## Memorandum

**TO:** County Council

**FROM:** Cliff Strong, Senior Planner

**THROUGH:** Steve Roberge, Asst. Director  
Mark Personius, Director

**DATE:** February 8, 2024

**SUBJECT:** Discussion on PLN2022-00006: Proposed amendments to WCC Title 20 (Zoning), Chapter 20.51 (Lake Whatcom Watershed Overlay District), to exempt trail maintenance, reconstruction, and construction from the seasonal clearing activity limitations (WCC 20.51.410)

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Planning and Development Services wishes to brief the Council's Committee of the Whole on the Council docketed item related to providing an exemption to seasonal clearing activity closures in the Lake Whatcom Watershed for trail maintenance and limited trail construction under certain circumstances. Though the Planning Commission has not yet held a hearing nor considered this proposed amendment, some Council members have expressed an interest in its status, as several of our water quality partners have expressed opposition to the proposal (Public Works, City of Bellingham, Department of Ecology, and others).

Staff will provide an overview of this project's background, agency positions, and seek Council direction on a path forward.

### Attachments:

- Letter from City of Bellingham Mayor Lund, dated 1/12/24
- Email from Justin Clary, Lake Whatcom Water & Sewer District General Manager, dated 8/30/23
- Email from Hyden McKown, Baker District Recreation Manager, dated 6/22/23



**Office of Mayor Kim Lund  
City of Bellingham**

**DISTRIBUTED  
VIA E-MAIL TO**

**JAN 18 2024**

**ALL COUNCIL MEMBERS  
WHATCOM COUNTY COUNCIL**

January 12, 2024

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

**RE: Lake Whatcom Watershed Protections, PLN2022-00006**

Dear County Councilmembers:

Hello, and welcome to the new year. I'm writing today regarding an issue that arose during the prior City administration, and this letter articulates both my and former Mayor Seth Fleetwood's position, with background provided by City staff.

As you well know, the Lake Whatcom Watershed is the primary source of drinking water for more than 120,000 people. Lake Whatcom has a legally enforceable Total Maximum Daily Load (TMDL) calling for significant reductions in phosphorus runoff from current conditions because it does not meet Washington State water quality standards for dissolved oxygen due to excess phosphorus.

The City of Bellingham is opposed to exempting new trail building from the seasonal limitations that apply to all ground-disturbing activities in the Lake Whatcom Watershed. As docketed by the Whatcom County Council, PLN2022-00006 presents a potential threat to water quality that is not acceptable.

Since 1990 the City of Bellingham, Whatcom County, and Water District 10 (now the Lake Whatcom Water and Sewer District) have partnered to develop a joint management strategy for the Lake Whatcom Watershed. The resulting Lake Whatcom Management Program guides actions to protect Lake Whatcom as a long-term supply of drinking water and to meet federal Clean Water Act requirements. Together we continue to work closely with the Washington State Departments of Ecology and Health to adopt policies, programs, and rules to vigorously restore, protect and even enhance the water quality of Lake Whatcom and agree to prioritize watershed protection over treatment.

These agencies and organizations spent many years and extensive public processes to create effective and equitable measures to protect drinking water. One of these measures, seasonal land disturbance limitations between October 1 and May 31, was one of the earliest protection measures implemented. The City's 2001 Silver Beach Ordinance and Whatcom County's Lake Whatcom Watershed Overlay both went through extensive and robust public processes and were informed by water resource preservation goals, development issues, technical reviews, and scientific literature reviews. The resulting, established land use regulations codified in Whatcom County and City of Bellingham are intended to prevent water quality and quantity impacts from development, redevelopment, and forest practices by preventing excessive phosphorus from entering Lake Whatcom that result from land disturbance - especially during the rainy seasons.

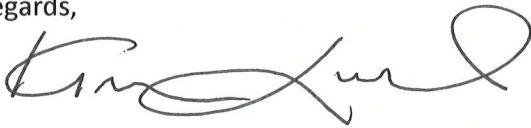
The preservation of water quality through land use regulations restricting ground disturbance activities results in increased costs, planning and scheduling challenges, and other trials to public and private

projects alike. An exception to the rules to make construction activities easier and less expensive for some recreational uses deviates from the equitable approach applied to all user groups over the previous 30 years, while creating risks to water quality and shifting costs and impacts to the greater population. Of significant note is the fact that all capital projects in the Lake Whatcom Watershed must adhere to the existing seasonal disturbance restrictions. This includes stormwater projects that remove phosphorus and have a long-term water quality benefit to the lake. This proposal is not in the best interests of the community.

The City is not opposed to outdoor recreational activities in the watershed and indeed finds that outdoor recreational activities help meet the balanced needs and interests of the community. My staff met with several representatives, organizations and non-profits advocating for the exemptions to better understand the issues posed by the restrictions on land disturbance, and we have offered to support their efforts in obtaining grants and extended timelines to complete trail projects in the watershed.

Consistent with the long-standing practice in the joint management of the watershed implementation, changes in regulation require careful technical review and robust public process. This issue was discussed at the most recent Lake Whatcom Joint Policy Group where the City of Bellingham, Lake Whatcom Water and Sewer District, Department of Ecology, and Whatcom County Public Works all spoke in opposition to this proposal. We ask that the County Council reject the proposal.

Regards,

A handwritten signature in black ink, appearing to read "Kim Lund". The signature is fluid and cursive, with a large loop at the end.

Kim Lund  
Mayor

cc: Justin Clary, Lake Whatcom Water Sewer District General Manager  
Eric Johnston, City of Bellingham Public Works Director  
Nicole Oliver, City of Bellingham Parks & Recreation Director  
Mark Personius, Whatcom County Planning & Development Director  
Satpal Sidhu, Whatcom County Executive  
Gary Stoyka, Whatcom County Public Works Natural Resources Program Manager

**From:** Justin Clary <[justin.clary@lwwsd.org](mailto:justin.clary@lwwsd.org)>  
**Sent:** Wednesday, August 30, 2023 10:26 AM  
**To:** Renee LaCroix <[rlacroix@cob.org](mailto:rlacroix@cob.org)>; Gary Stoyka <[GStoyka@co.whatcom.wa.us](mailto:GStoyka@co.whatcom.wa.us)>  
**Subject:** LWWSO Position - WCC 20.51.410 Programmatic Exemption

Renee and Gary,

As indicated yesterday, the District Board of Commissioners discussed the District's position regarding the WMBC's proposed programmatic exemption from WCC 20.51.410 to allow trail building/maintenance within the Lake Whatcom Watershed exceeding 500 square feet in size between October 1 and May 31 (i.e., outside of the current land disturbance window).

District Position:

- The District opposes allowing such an exemption for one user group, as such an allowance would set precedence for other user groups to petition for similar exemptions.
- District counsel also raised the question regarding the legality of allowing an exemption to an environmental regulation (though he had not researched it).

Additional Board Thoughts/Questions:

- What agency(ies) review/approve WMBC trail construction/improvement plans? Are such plans engineered plan sets that include a TESC plan sheet (temporary erosion and sediment control) like that required of other construction projects?
- If the County Council wishes to better accommodate WMBC's needs, rather than creating a programmatic exemption for one user group, WCC 20.51.410 should be reviewed/reviced to either expand the maximum land disturbance size (i.e., where did the 500 sq. ft. maximum come from and is it the right size?) and/or expand the land disturbance window (e.g., open May 1, close October 31, etc.).

Please let me know if you have any questions.

**Justin L. Clary, PE | General Manager**



**LAKE WHATCOM WATER & SEWER DISTRICT**

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Bellingham, WA 98229

8am – 5pm, Monday – Thursday  
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[www.lwwsd.org](http://www.lwwsd.org)

**From:** [McKown, Hyden \(DNR\)](#)  
**To:** [Cliff Strong](#)  
**Cc:** [Hankey, Chris \(DNR\)](#)  
**Subject:** RE: WMBC's request to exempt trail maintenance from seasonal closure  
**Date:** Thursday, June 08, 2023 3:22:48 PM  
**Attachments:** [image001.png](#)

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Hi Cliff,

I want to elaborate on the DNR's support for a code change to the LFG seasonal clearing limit restrictions in the Lake Whatcom Watershed. As you may know, in 2018 the DNR completed a three year process to develop the Baker to Bellingham Recreation Plan. We received 1,300 public responses in support of developing more recreation opportunities on DNR-managed land throughout Whatcom County. The Tier 1 priority of that plan is to identify appropriate trail routing in compliance with Whatcom County Critical Areas Code, sanction existing trails, and build new trails as needed at our Olsen Creek and Mirror Lake properties, both of which are in the Lake Whatcom Watershed. We are well underway and have hired a contractor to delineate critical areas at the Olsen Creek Forest Block so that we will know where we are able to build trail with least amount of impact to critical areas. We hope to have our LFG permit in hand and to begin work on the first five miles of that trail system this summer.

The current seasonal restrictions on land disturbance in the watershed provide a number of constraints to our ability to produce new trail mileage within a reasonable time frame. The summer is not the best time to build trails in Washington. The dirt is often too dry and will not compact or shape well. Industrial Fire Precaution Levels (IFPL) limit power equipment use; effective tomorrow the IFPL is rising to Level 2 prohibiting saws and power equipment use after 2 pm. The Air Quality Index is often poor due to wildfire smoke as we are seeing right now on the East coast, limiting staff and volunteer time in which we are legally allowed to work outside. For all of these reasons the shoulder seasons in the spring and the fall are better suited for trail building.

Additionally, the DNR operates on a two year funding cycle. That coupled with the seasonal clearing restrictions only provides my staff and I eight months every two years for trail construction, after which my funding which is not consistent, changes. For the Olsen Creek Forest Block we are attempting to build a twenty-two mile trail system. It can often take a few months to build one mile of trail. A seasonal clearing limit code change would help the DNR provide Whatcom County residents with the public service they have requested in the form of more sustainably built trails in the Lake Whatcom Watershed.

There is at least one precedent that I am aware of for a difference in Whatcom County code regarding recreation development based on land zoning type; a 30+ car trailhead may be permitted to be built on Commercial Forest-zoned lands. To build a 30+ car trailhead on Rural Residential 5-zoned lands, the applicant is required to secure a conditional use permit which is subject to a technical review committee. Is it possible for the clearing limit code change to be applied only to CF-zoned lands, and not residential zone lands? This nuance in the code might help Whatcom CO PDS staff say 'No' to those wanting to build a garage on their property outside of the seasonal clearing limits, and say 'Yes' to the DNR and other agencies who are trying to build public infrastructure for which we know there is broad support. A code change of this nature would ensure trail development projects are able to move along as quickly as possible, thereby reducing costs and saving tax payer dollars.

If it would help I am available to meet with you and discuss the DNR's perspective on the proposed

code change. I appreciate your consideration of this matter and I have no doubt that it is a tough one to navigate. Thank you for your time and consideration of this matter. Please don't hesitate to reach out if you have questions.



**Hyden McKown**

Baker District Recreation Manager  
Northwest Region

Washington State Department of Natural Resources (DNR)  
(360) 854-8835 (cell)

[Hyden.McKown@dnr.wa.gov](mailto:Hyden.McKown@dnr.wa.gov)

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