Whatcom County

Agenda Bill Master Report

File Number: AB2019-316

File ID:	AB2019-316	**Version:**	1	**Status:**	Adopted
File Created:	05/20/2019	**Entered by:**	CStrong@co.whatcom.wa.us		
Department:	Planning and Development Services Department	**File Type:**	Ordinance		

Assigned to:	Council	**Final Action:**	07/23/2019
Agenda Date:	07/23/2019	**Enactment #:**	ORD 2019-057

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TITLE FOR AGENDA ITEM:

Ordinance amending WCC Chapters 20.51 and 20.71 pertaining to tree removal permit procedures, and Chapter 23.10 updating the referenced Critical Areas Ordinance in the Shoreline Management Program

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed ordinance amending WCC Chapters 20.51 and 20.71 pertaining to tree removal permit procedures, and Chapter 23.10 updating the referenced Critical Areas Ordinance in the Shoreline Management Program

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/18/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council
	Notes: Vote: 5-1, Brenner opposed, Buchanan absent		
07/09/2019	Council	HELD IN COUNCIL	Council
	Notes: Vote: 6-0, Byrd absent		
07/23/2019	Council	ADOPTED	
	Notes: Vote: 5-0-2, Brenner and Donovan abstained, **Ordinance 2019-057**		

Attachments: Memo, Staff Report, Proposed Ordinance, Exhibit A, Amendments

ORDINANCE NO. __2019-057_____

PROPOSED AMENDMENTS TO WHATCOM COUNTY CODE TITLES 20 (CHAPTERS 20.51 AND 20.71) PERTAINING TO TREE REMOVAL PERMIT PROCEDURES AND 23 (CHAPTER 23.10) UPDATING THE REFERENCED CRITICAL AREAS ORDINANCE

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 20 and 23; and,

WHEREAS, Whatcom County Council adopted ORD2019-013 on February 12, 2019 which amended various sections of the Whatcom County Code to improve implementation of the County Code. Included in these amendments were clarifications to tree canopy retention requirements in Lake Whatcom, Lake Samish, and Lake Padden watersheds and creating a single definition of hazard tree in Title 20, Chapter 16.16 (Critical Area Ordinance) and removing a duplicate definition in Title 23; and

WHEREAS, the Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

WHEREAS, the County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application to amend 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.

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.

CONCLUSIONS

1. The amendments to the development regulations are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. The Director of Planning and Development Services will forward the amendment to Chapters 23.10 to the Department of Ecology for review and approval pursuant WAC 173-26-100.
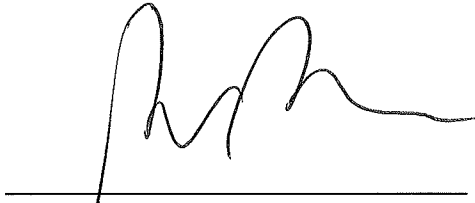
ADOPTED this _____23rd_____ day of _____July_____, 2019.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____
Dana Brown-Davis, Council Clerk

_____
Rud Browne, Council Chair

APPROVED as to form:

_____
Civil Deputy Prosecutor

(X) Approved   ( ) Denied

_____
Jack Louws, Executive

Date: _____

Exhibit A: Tree Canopy Retention Permit Procedures and Shoreline Management Plan CAO Reference Date Change Amendments

Proposed amendments to Whatcom County Code Titles 20 (Chapters 20.51 and 20.71) pertaining to tree retention and 23 (Chapter 23.10) adopting the February 12, 2019 into the Shoreline Master Program by reference

1. Amend Title 20 (Zoning), Chapter 20.51 (Lake Whatcom Watershed Overlay District), as follows:

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 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) Removal of trees located within the shoreline jurisdiction or within a critical area or a critical area buffer may be subject to additional regulations pursuant to WCC Title 23 (Shoreline Master Program) or Chapter 16.16 (Critical Areas Ordinance). 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 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 a notification of activity (WCC 16.16.235).

       (iii) The permit application to remove trees in areas outside of (a) or (b) is a tree removal permit.

   (b) The county 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 director is appealable pursuant to WCC 22.05.160 (Appeals).

(5) Tree Removal Allowances. With an appropriate permit, any property owner may remove up to 35 percent or 5,000 square feet, whichever is greater, and as measured cumulatively, of the existing canopy area of on-site 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 not required to be retained or planted as a condition of previous development activity.

(6) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) of this section 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.

(7) Penalties and Enforcement. Removal of significant trees without obtaining the appropriate permit may be subject to replacement at a ratio of three trees for each tree removed without a valid permit. Failure to replace removed significant trees may be subject to a fine as determined under Chapter 20.94 WCC.

2. Amend Title 20 (Zoning), Chapter 20.71 (Water Resource Protection Overlay District), as follows:

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, 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 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) Removal of trees located within the shoreline jurisdiction or within a critical area or a critical area buffer may be subject to additional regulations pursuant to WCC Title 23 (Shoreline Master

Program) or Chapter 16.16 (Critical Areas Ordinance). 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) Permit Application Procedure and Appeals. Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the 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 a notification of activity (WCC 16.16.235).
    (iii) The permit application to remove trees in areas outside of (a) or (b) is a tree removal permit.
  (b) The county 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.
  (c) The removal shall be completed within one year from the date of permit approval.
  (d) The decision of the director is appealable pursuant to WCC 22.05.160.

(5) Tree Removal Allowances. With the appropriate permit, any property owner may remove up to 35 percent or 5,000 square feet, whichever is greater, and as measured cumulatively, of the existing canopy area of on-site 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 not required to be retained or planted as a condition of previous development activity.

(6) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) of this section 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.

(7) Penalties and Enforcement. Removal of significant trees without obtaining the appropriate permit may be subject to replacement at a ratio of three trees for each tree removed without a valid permit. Failure to replace removed significant trees may be subject to a fine as determined under Chapter 20.94 WCC.

3. Amend the Shoreline Master Program (WCC Title 23) to adopt the February 12, 2019, CAO, as follows:

23.10.060 References to plans, regulations or information sources.
A. The Whatcom County Critical Areas Ordinance, WCC Chapter 16.16 (as most recently amended by Ordinance No. 2019-013, dated February 12, 2019), is hereby adopted in whole as a part of this program, except that the provisions of , WCC 16.16.270 (Reasonable Use Exceptions), 16.16.273 (Variances), 16.16.275 (Nonconforming Uses/Buildings), 16.16.280 (Appeals), and 16.16.285 (Penalties and Enforcement) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16.WCC, are for this specific version.