

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

SEPA Determination of Nonsignificance (DNS)

File: SEP2011-00088

Project Description: A non-project action to amend the Whatcom County Code Title 20-Zoning to address stormwater and land use regulations for new development within the Lake Whatcom watershed to comply with the Department of Ecology's Total Maximum Daily Load criteria.

Proponent: Whatcom County Planning & Development Services

Address and Parcel #: Applicable to the Lake Whatcom Watershed

Lead Agency: Whatcom County Planning & Development Services

Zoning: N/A **Comp Plan:** N/A

The lead agency for this proposal has determined that with proper mitigation, no significant adverse environmental impacts are likely. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS.

Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by November 16, 2011 and should be sent to: **Cathy Craver**.

Responsible Official: Tyler Schroeder

Title: Current Planning Supervisor

Telephone: 360-676-6907

Address: 5280 Northwest Drive
Bellingham, WA 98226

Date of Issuance: October 31, 2011

Signature: _____

A handwritten signature in black ink, appearing to be "Tyler Schroeder", is written over a horizontal line.

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding November 28, 2011.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

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SEPA Distribution List
SEP2011-00088
Date of Issuance: 10-31-2011

Please review this determination. If you have further comments, questions or would like a copy of the SEPA checklist, phone the responsible official at (360) 676-6907. Please submit your response by the comment date noted on the attached notice of determination.

SEPA Unit, WA State Department of Ecology, Olympia via email
sepaunit@ecy.wa.gov

WA State Department of Archaeological and Historic Preservation

WA State Department of Fish and Wildlife

WA State Department of Natural Resources

WA State Department of Transportation, SEPA Unit
Mr. Roland Storme

Lummi Nation
Attn: Natural Resources Department
Attn: Cultural Resources Department

Nooksack Indian Tribe
Attn: Natural Resources Department
Attn: Cultural Resources Department

City of Bellingham
Kurt Nabbefeld
Brent Baldwin
Clare Fogelsong

Applicant:

Other:

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SEPA Environmental Checklist

Purpose of Checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of Checklist for Non-Project Proposals:

Complete this checklist for non-project proposals, even though questions may be answered "does not apply." in addition, complete the supplemental sheet for non-project actions (part C).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A Background

- 1 Name of proposed project, if applicable:
Amendments to Title 20 regarding Lake Whatcom land use and stormwater
- 2 Name of applicant: Whatcom County
Applicant phone number: 360-676-6907
Applicant address: 5280 Northwest Drive, Bellingham, WA 98226
- 3 Contact name: Cathy Craver
Contact phone number: 360-676-6907
Contact address: 5280 Northwest Drive
- 4 Date checklist prepared: October ^{27th} ~~6~~, 2011
- 5 Agency requesting checklist: Whatcom County PDS
- 6 Proposed timing or schedule (including phasing, if applicable):
Planning Commission October 2011, County Council December 2011
- 7 Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? Yes No
If yes, explain:

- 8 List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal:
Background information from the Lake Whatcom Management Program on land use and stormwater management.

- 9 Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal?
Yes No
If yes, explain.

- 10 List any government approvals or permits that will be needed for your proposal, if known.
Adoption of ordinance to amend Whatcom County Code Title 20

- 11 Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

Amend Whatcom County Code Title 20 to modify land use and stormwater management requirements for new residential development in the Lake Whatcom watershed to achieve compliance with the Lake Whatcom Total Maximum Daily Load as outlined by the Washington State Department of Ecology.

- 12 Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

Amended regulations would apply to new residential development applications within the Lake Whatcom watershed.

B Environmental Elements

1 Earth

- a. General description of the site:

- Flat
- Rolling
- Hilly
- Steep Slopes
- Mountainous
- Other all of the above

- b. What is the steepest slope on the site (approximate percent slope)?

All slopes existing in the Lake Whatcom watershed.

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

All soils existing in the Lake Whatcom watershed.

- d. Are there surface indications or history of unstable soils in the immediate vicinity? Yes No

If so, describe.

N/A - non project action

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed.

N/A - non project action

Indicate source of fill.

N/A - non project action

- f. Could erosion occur as a result of clearing, construction, or use?
Yes No

If so, generally describe.

Current Whatcom County Code addresses clearing, construction, and use.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

N/A - non project action

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

Current Whatcom County Code addresses erosion and other impacts to the earth.

2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, or industrial wood smoke) during construction and when the project is completed?

If any, generally describe and give approximate quantities if known.

N/A - non project action

- b. Are there any off-site sources of emissions or odor that may affect your proposal? Yes No

If so, generally describe.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

N/A - non project action

3. Water

a. Surface:

- (1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? Yes No

If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

Amendments will apply to new residential development within the Lake Whatcom watershed and may affect it's associated water bodies.

- (2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? Yes No

If yes, please describe and attach available plans.

Amendments will apply to new residential development within the Lake Whatcom watershed.

- (3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected.

Indicate the source of fill material.

- (4) Will the proposal require surface water withdrawals or diversions? Yes No

Give general description, purpose, and approximate quantities if known.

N/A non project action

Does the proposal lie within a 100-year floodplain?

Yes No

If so, note location on the site plan.

N/A non project action

(5) Does the proposal involve any discharges of waste materials to surface waters?

Yes No

If so, describe the type of waste and anticipated volume of discharge

N/A non project action

b. Ground

Will ground water be withdrawn, or will water be discharged to ground water? Yes No

Give general description, purpose, and approximate quantities if known.

N/A non project action

(1) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals.....; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

N/A non project action

c. Water runoff (including stormwater):

(1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known).

Amendments to address stormwater runoff from new residential development.

Where will this water flow? Stormwater treatment is on-site

Will this water flow into other waters? Yes No

If so, describe.

Potentially, treated stormwater could reach Lake Whatcom or tributaries.

(2) Could waste materials enter ground or surface waters?

Yes No

If so, generally describe.

N/A non project action

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

Amendments proposed to reduce and treat stormwater runoff through criteria proposed by the Department of Ecology to utilize natural or engineered solutions to treat phosphorus-laden runoff to levels equalling a natural, forested condition.

4 Plants

a. Check types of vegetation found on the site:

- Deciduous tree: alder, maple, aspen, other
- Evergreen tree: fir, cedar, pine, other
- Shrubs
- Grass
- Pasture
- Crop or grain
- Wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

N/A non project action

c. List threatened or endangered species known to be on or near the site.

N/A non project action

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Amendments include options regarding landscaping, use of native plants; and other measures to preserve or enhance vegetation on parcels applying for new residential development in the Lake Whatcom watershed.

5. Animals

- a. Check any birds and animals, which have been observed on or near the site or are known to be on or near the site:

Birds:

- Hawk,
 Eagle,
 Other:

- Heron,
 Songbirds;

Mammals:

- Deer,
 Elk,
 Other:

- Bear,
 Beaver;

Fish:

- Bass,
 Trout,
 Shellfish;

- Salmon,
 Herring,
 Other:

- b. List any threatened or endangered species known to be on or near the site.

N/A non project action

- c. Is the site part of a migration route? Yes No

If so, explain.

N/A non project action

- d. Proposed measures to preserve or enhance wildlife, if any:
N/A non project action

6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

N/A non project action

- b. Would your project affect the potential use of solar energy by adjacent properties? Yes No

If so, generally describe.

N/A non project action

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

N/A non project action

7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? Yes No

If so, describe.

N/A non project action

- (1) Describe special emergency services that might be required.

N/A non project action

- (2) Proposed measures to reduce or control environmental health hazards, if any:

N/A non project action

b. Noise

- (1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

N/A non project action

- (2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

N/A non project action

- (3) Proposed measures to reduce or control noise impacts, if any:

N/A non project action

8 Land and Shoreline Use

- a. What is the current use of the site and adjacent properties?

N/A non project action

- b. Has the site been used for agriculture? Yes No
If so, describe.

N/A non project action

- c. Describe any structures on the site.

N/A non project action

- d. Will any structures be demolished? Yes No
If so, what?

N/A non project action

- e. What is the current zoning classification of the site?

Urban Residential, Rural, and Rural Residential.

- f. What is the current comprehensive plan designation of the site?

Urban Growth Area, Rural, and Rural Forestry.

- g. If applicable, what is the current shoreline master program designation of the site?

All shorelines applicable.

- h. Has any part of the site been classified as an "environmentally sensitive" area? Yes No

If so, specify.

Lake Whatcom has been listed on the 303(d) list for impaired waters of the State.

- i. Approximately how many people would reside or work in the completed project?

N/A non project action

- j. Approximately how many people would the completed project displace?

N/A non project action

- k. Proposed measures to avoid or reduce displacement impacts, if any:

N/A non project action

- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

N/A non project action

9 Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

N/A non project action

- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

N/A non project action

- High
 Middle
 Low-income

- c. Proposed measures to reduce or control housing impacts, if any:
N/A non project action

10 Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
N/A non project action
- b. What views in the immediate vicinity would be altered or obstructed?
N/A non project action
- c. Proposed measures to reduce or control aesthetic impacts, if any:
N/A non project action

11 Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
N/A non project action
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
N/A non project action
- c. What existing off-site sources of light or glare may affect your proposal?
N/A non project action
- d. Proposed measures to reduce or control light and glare impacts, if any:
N/A non project action

12 Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?
N/A non project action

- b. Would the proposed project displace any existing recreational uses? If so, describe.

N/A non project action

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

N/A non project action

13 Historic and Cultural Preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

N/A non project action

- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

N/A non project action

- c. Proposed measures to reduce or control impacts, if any:

N/A non project action

14 Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

N/A non project action

- b. Is site currently served by public transit? Yes No
If not, what is the approximate distance to the nearest transit stop?

N/A non project action

- c. How many parking spaces would the completed project have? How many would the project eliminate?

N/A non project action

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? Yes No
If so, generally describe (indicate whether public or private).

N/A non project action

- e. Will the project use (or occur in the immediate vicinity of)

- Water,
 Rail, or
 Air transportation?

If so, generally describe.

N/A non project action

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

N/A non project action

- g. Proposed measures to reduce or control transportation impacts, if any:

N/A non project action

15 Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)?

Yes No

If so, generally describe.

N/A non project action

- b. Proposed measures to reduce or control direct impacts on public services, if any.

N/A non project action

16 Utilities

- a. Check utilities currently available at the site:

- | | |
|---|--|
| <input type="checkbox"/> Electricity, | <input type="checkbox"/> Natural gas, |
| <input type="checkbox"/> Water, | <input type="checkbox"/> Refuse service, |
| <input type="checkbox"/> Telephone, | <input type="checkbox"/> Sanitary sewer, |
| <input type="checkbox"/> Septic system, | <input type="checkbox"/> Other. |

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

N/A non project action

SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:  _____

Date Submitted: 10-27-11

C Supplemental Sheet for Non-project Actions

(Do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent the proposal or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

- 1 How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposal will likely decrease discharge of water from sites within the Lake Whatcom watershed.

Proposed measures to avoid or reduce such increases are:

Inclusion of measures from the most current edition of the Stormwater Management Manual for Western Washington Manual.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

N/A non project action

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

Proposal was developed to ensure consistency with local, State, and Federal laws regarding water quality protection.

3. How would the proposal be likely to deplete energy or natural resources?

N/A non project action

Proposed measures to protect or conserve energy and natural resources are:

N/A non project action

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Proposal was developed to ensure adequate water quality protection through measures implemented through land use and stormwater management techniques.

Proposed measures to protect such resources or to avoid or reduce impacts are:

N/A non project action

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposal will provide for consistent protection of shoreline use.

Proposed measures to avoid or reduce shoreline and land use impacts are:

Proposal will work consistently with Whatcom County's Shoreline Management Program.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

N/A non project action

Proposed measures to reduce or respond to such demand(s) are:

N/A non project action

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

Proposal was developed to ensure consistency with local, State, and Federal laws regarding water quality protection.

Chapter 20.51
LAKE WHATCOM WATERSHED OVERLAY DISTRICT

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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 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 Lake Whatcom Total Maximum Daily Load (TMDL) by limiting phosphorus contributions into Lake Whatcom to that of a natural, forested condition resulting from new development.

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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.

(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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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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:

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(1) Whatcom County Code, Title 20, Zoning, except as modified by this chapter;

(2) The International Building and Fire Codes;

(3) Whatcom County Critical Area Ordinance 16.16;

(4) Flood Damage Prevention, Title 17;

(5) Subdivision, Title 21, except as modified by this chapter;

(6) Whatcom County Development Standards - Stormwater, Chapter 2, except as modified by this chapter;

(7) Whatcom County Development Standards, Stormwater Special Districts, Chapter 2-Section 221, except as modified by this chapter;

(8) Whatcom County Code, Title 23, Shoreline Management Program;

(9) Whatcom County Code, Title 24 Health Code; and

All other applicable official controls

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20.51.050 Permitted Uses.

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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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.571.060 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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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 ~~20.571.095215~~, subject to the most current siting criteria under Chapter ~~173-303~~ WAC within the Rural, Rural Forestry, Commercial Forestry, Neighborhood Commercial and 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, ~~Lake Samish, Lake Padden~~ or streams subject to the Shoreline Management Program; 200 feet from fish-bearing streams; or 150 feet from other streams and their tributaries that flow into Lake Whatcom, ~~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 phosphorous or other compound containing phosphorous, such as phosphate; provided, that such fertilizers may be used for establishment of new vegetation in the first growing season.

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.073 Type I solid waste handling facilities, except:

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(1) Moderate risk waste facilities; and

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(2) Facilities in the Recreation and Open Space District. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-014 § 2, 2004; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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20.51.080 Prohibited Uses.

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

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.081 Dry cleaning establishments.

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.082 Gas stations, service stations, combustion engine repair garages and automotive wrecking yards.

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.083 Sod farming.

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.084 Aquaculture and mariculture projects.

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.085 Operation of fur farms.

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.086 Confinement feeding operations.

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.087 Asphalt and concrete batch plants.

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.088 Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.

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.089 Utilization of sewage sludge on land.

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.090 On-site treatment facilities for hazardous wastes.

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.091 Type I solid waste handling facilities, except those specified in WCC ~~20.7+51.185073~~.

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.092 Type II, ~~and~~ Type III, and Type IV solid waste handling facilities.

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.093 Golf courses.

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.094 Cemeteries.

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.095 Cottage industries that would require on-site hazardous waste storage facilities.

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~~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.

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~~097~~ Major passenger intermodal terminals.

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~~098~~ Freight railroad switching yards and terminals.

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~~099~~ Agriculture, including animal husbandry, horticulture, viticulture, floriculture, and the cultivation of crops.

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~~100~~ Animal hospitals and accessory kennels and stables.

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~~101~~ Commercial kennels and stables. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-014 § 2, 2004; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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~~20.51.300~~ ~~Open space and impervious surfaces.~~

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

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~~(1)~~ For uses in the TC and NC Zones, at least 25 percent of the parcel shall be reserved as open space.

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~~(2)~~ For uses in the RC Zone, at least 40 percent of the parcel shall be reserved as open space.

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~~(3)~~ Open space areas shall be maintained in natural vegetation or landscaped per WCC

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~~20.80.325.~~

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~~(4)~~ 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 seaward of the ordinary high water mark shall not be used in open space calculations.

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~~302~~ Impervious surface requirements shall be as follows:

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~~(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 surfaces.

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~~(2)~~ For uses in the R Zone District, at least 90 percent of the lot or parcel shall be kept free of structures and impervious surfaces.

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~~(3)~~ Where subsection (1) or (2) of this section does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

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~~(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

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~~impervious surface. 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 surface shall be allowed.~~

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~~(5) Preexisting nonconforming impervious surfaces may be routinely maintained/repared or redeveloped; provided, that if 50 percent or greater of the preexisting nonconforming impervious area is to be redeveloped, then the applicable impervious 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 impervious surfaces shall be prohibited.~~

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~~(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 impervious surfaces beyond the new mobile home footprint.~~

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~~(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 impervious/pervious surface calculations.~~

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~~(8) Any portion of a roof overhang or other overhanging architectural feature which projects further than three feet from the footprint of a structure shall be calculated as impervious surface.~~

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~~(9) Alternative surface methods described in WCC 20.71.603, may be used. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-079 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-063 § 1, 2001; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).~~

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20.51.310 Cluster subdivisions.

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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 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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-048 Exh. A, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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20.51.320 Cluster design standards.

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The creation of new building lots within ~~Water Resource Protection~~ the Lake Whatcom
Watershed Overlay ~~Districts~~ shall be subject to the following design standards:

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(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.

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(2) A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC ~~20.7151.352330,~~

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(3) The minimum cluster lot size requirements of the underlying zone district shall apply.

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(4) The maximum number of building lots in a lot cluster shall be 10.

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(5) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least 80 feet.

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(6) Clustered building lots may only be created through the subdivision, short subdivision or binding site plan process pursuant to WCC Title 21.

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(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.

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(8) Building lots shall be arranged in a cluster/concentrated pattern.

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(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.

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(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 ~~20.7151.35230,~~ shall not be further subdivided. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-048 Exh. A, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).

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20.51.330 Open space reserve area.

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(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.

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(2) The open space reserve area shall be subject to the following provisions:

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(a) The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.

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(b) A permanent open space reserve area shall be protected using one of the following mechanisms:

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(i) Placement in a separate nonbuilding tract owned in common by all lots within the subdivision; or

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(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

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(iii) Preserved through an appropriate 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.

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(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 ~~20.571.3510~~, by altering the reserve area and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.

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(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.

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(e) The remaining unused development density and/or 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.

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(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 consistency and compliance with the official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance, and the Whatcom County Comprehensive Plan.

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(g) 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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-048 Exh. A, 2005;

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Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).

20.51.340 Building setback/buffer areas.

341 Setbacks for all properties within the overlay district shall be as follows: Class I and Class II roads shall have a minimum setback of 30 feet; and Class III, IV and V roads 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.

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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-062 § 1, 2001; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.51.350 Development criteria.

(Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001).

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](#). (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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 county 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.

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(b) Mixed use developments with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.

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(2) A 20 percent reduction may be approved if an establishment is located within 1,000 feet of any regularly scheduled bus stop.

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(3) The zoning administrator determines that a reduced requirement will reduce overall impervious surfaces while maintaining consistency with this title. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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~~20.51.380 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 county ADA coordinator for compliance with other applicable regulations and development standards. Surfaces shall be considered impervious surfaces under WCC 20.71.300 unless the following conditions are met:~~

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~~(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, 24 hour storm event.~~

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~~(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 an underdrain system. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-049 § 1, 2001; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).~~

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~~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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).~~

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20.51.400 Roads, curbs, gutters and sidewalks.

The intent of this section is to reduce impervious surfaces and stormwater runoff.

Innovative street sections, which 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 public works 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. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

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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.

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(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.

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(2) Clearing activity, as defined in WCC 20.97.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1st through May 31st; provided, that:

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(3) The zoning administrator may approve an exemption to this requirement for the following activities:

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(a) Routine maintenance and repair of erosion and sediment control measures;

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(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 1st and May 31st for purposes of minimizing surface water disturbance and site inundation by high water or wave action;

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(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 prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the zoning administrator 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.

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(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 title; or

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(e) The proposed activity consists of nonconversion forest practices, other than Class IV-General forest practices on platted land, and other than those with an approved COHP regulated under Chapter 76.09 RCW; or

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(4) To ensure compliance with subsection (2) of this section, Whatcom County planning and development services 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.

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(5) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The zoning administrator shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.

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(6) 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.

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(7) Within the Lake Whatcom Watershed Overlay District, clearing activity must conform to the following conditions:

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(a) Temporary erosion and sediment control shall be installed and inspected prior to any clearing activity. The technical administrator 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.

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(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

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appropriate by the technical administrator, 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 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 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.

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20.51.420 Permanent On-site Stormwater Management Systems and Best Management Practices (BMP)

(1) Permanent Stormwater Management Systems Best Management Practice (BMP) selection. For permanent stormwater management purposes, for the portion of any development within the geographical area of the Lake Whatcom Watershed Lake Whatcom Watershed Overlay District, Whatcom County shall require any necessary permits for any project, work, or activity that:

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(a) ~~Disturbs or clears more~~Is a land disturbing activity (per the Washington State Department of Ecology Stormwater Management Manual for Western Washington definition), of more than 5000 square feet of land, and/or

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(b) Creates ~~or~~, adds, expands, reduces, alters, and/or replaces more than 120-200 square feet of new, replaced, or new plus replaced:

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~~1.1.~~ Impervious surface area, or

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~~2.2.~~ Pervious or porous pavement or paver area,

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For any development which meets or exceeds the thresholds listed in 20.51.420 (1), ~~the~~ new, replaced, or new plus replaced development, or more than 5000 square feet of land disturbing activity, shall incorporate either:

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(c) From the Washington State Department of Ecology Stormwater Management Manual for Western Washington (WSDOE SWMMWW) edition that is in effect on the date that the County receives a complete application for the development (hereinafter "current Manual"), one of the following five BMPs, which might require Washington State

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licensed professional engineer design as noted at 2005 WSDOE SWMMWW, Volume I, Chapter 3, page 3-1 (or then-current equivalent):

1. Full infiltration per Volume III, Chapter III, Section 3.3.9(A) (or then-current equivalent), or

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2. Full dispersion per Volume V, Chapter 5, BMP T5.30 (or then-current equivalent), or

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3. Full dispersion per Volume III, Appendix C, paragraph 7.2.1 (or then-current equivalent), except where impervious areas exceed 10% of the site, said excess impervious areas shall not drain to the native vegetation area, and said excess impervious areas are subject to the treatment and flow control requirements of 20.51.420(1)(c)(1) or 20.51.420(1)(d), or

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4. Full dispersion per Volume III, Appendix C, paragraph 7.2.2 (or then-current equivalent), or

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5. For road projects, full dispersion per Volume III, Appendix C, paragraph 7.2.4 (or then-current equivalent), or

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(d) A Washington State licensed professional engineer-designed system that, once constructed or installed, and presuming that system preservation activities transpire as prescribed by the engineer, will:

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1.1. Satisfy Minimum Requirement ~~nos-numbers~~ 3 – 8, and 10 (or then-current equivalents) from the current Manual, ignoring any Minimum Requirement applicability thresholds therein, and

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2.2. Not increase the phosphorus loading profile from the development from the portion of the development that occurs within the geographical area of the Lake Whatcom Watershed beyond the pre-development natural condition phosphorus loading profile for the portion of the development that occurs within the geographical area of the Lake Whatcom Watershed based on a monthly mass balance supported by a Washington State Department of Ecology-approved continuous runoff model.

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(2) Stormwater Management Systems Design Documentation. Regardless of the developer's chosen stormwater management approach from paragraph no (1)(c) and (1)(d) above choices, the developer, or the developer's authorized representative, shall, as a prerequisite to constructing or installing any stormwater management system, feature, device, or facility, submit to Whatcom County Planning and Services Department for review and approval:

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(a) Design drawings for the proposed permanent stormwater management system(s), feature(s), device(s), or facility(s), and

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~~(b) A Stormwater Site Plan (SSP) per Volume I of the current Manual, ignoring any applicability thresholds therein, and~~

~~(c) An adequate Construction Stormwater Pollution Prevention Plan (Construction SWPPP) per Volume II of the current Manual, applying the applicability thresholds therein.~~

~~(63) Constructed/Installed Stormwater Management Systems Preservation. In general, Whatcom County Development Standards, Chapter 2, Section 220 applies in addition to the preceding requirements.~~

~~(a) A Protected Native Growth Area (PNGA) Document shall be required for the following projects:~~

~~(a)~~

~~1. Projects that utilize Full Dispersion according to WCC 20.51.420(1)(c), 2, 3, or 4.~~

~~2. Projects that utilize an engineered system according to WCC 20.51.420(1)(d) where dispersion is incorporated into the design.~~

~~(b) A Protected Native Growth Area shall be subject to the following criteria and conditions:~~

~~(b)~~

~~1. The Protected Native Growth Area shall include areas on the site containing native plant species including, but not limited to, those listed on approved lists Whatcom County's Approved Native Plant List provided by Whatcom County common to this region. Those portions of the site that are currently cleared (not in violation of Whatcom County Code) may be excluded from the Protected Native Growth Area requirements. However, no additional clearing may be performed on the site that will result in the maximum clearing allowance being exceeded, except as approved by Whatcom County in conjunction with a revegetation plan for an equivalent area of existing clearing. Projects that propose to clear in excess of this threshold will be subject to Full Stormwater Review.~~

~~2. The native growth retention area-PNGA must be protected through a recorded Protected Native Growth Site Plan and covenant on individual lots, shown on the small site drainage plan, and described in the recorded documents as "a Protected Native Growth Area established for the purposes of dispersing and treating stormwater flows."~~

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~~3. Established by recorded site plan and covenant on individual lots, the PNGA must be shown on the small site drainage plan and described in recorded documents as "a Protected Native Growth Area established for purposes of dispersing and treating stormwater flows."~~

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~~4. The principle restriction on PNGA is removal of vegetation and trees. If feasible, the open space should be located down slope from the building sites, since flow control and water quality is enhanced by flow dispersion through duff, undisturbed soils and native vegetation.~~

~~3. The PNGA may include onsite critical areas; allowable uses shall be limited to those specified in WCC 16.16.~~

~~5.~~

4. All vegetation and trees within the PNGA at the time of permit application shall be retained aside from approved timber harvest activities and the removal of ~~dangerous-hazardous~~ and diseased trees. Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by an ISA licensed arborist may be required).

a.) In the event of eliminating hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:

(i) Be of the same, or similar, native species as those trees removed from site;

(ii) Be planted to re-establish tree clusters where they previously existed, or to enhance protected tree clusters;

(iii) Be planted in locations appropriate to the species' growth habitat and horticultural requirements; and

(iv) Be located away from areas where damage is likely.

b.) If any vegetation or trees within a PNGA is damaged, destroyed, or cleared through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.

~~6-c.)~~ The county may require a bond or other security in an amount not to exceed 125 percent of the merchantable timber to guarantee retention of existing trees within designated canopy areas during construction. In the event of a dispute between the landowner and the county over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the county and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party. In the event any trees designated to be retained are removed, the county

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shall require that sufficient trees be re-planted to replace those previously in existence. In the event that replanting does not occur, the county may enforce upon any bond posted. Each tree removed or destroyed shall constitute a separate violation. ~~If the site is located within an area of mandatory clearing limits and has been illegally cleared; a restoration plan may be required.~~

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5. The PNGA shall be shown on all property maps and shall be clearly marked during clearing and construction on the lots.

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~~8. The PNGA may contain utilities and utility easements, including flow control BMP's.~~

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~~9. At the discretion of Whatcom County review staff, PNGA restriction may be removed to accommodate future development provided drainage review evaluates the requirements for stormwater facilities (flow control and water quality) according to regulations in effect at the time of future application.~~

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(c) ~~e~~ Stormwater BMP's protection and maintenance - A declaration of covenant must be recorded for each site/lot that contains stormwater BMPs. 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 construction approval~~ permit issuance for the proposed project.

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(1) ~~1~~. The Stormwater Facility Location covenant in Whatcom County Development Standards, Chapter 2, Section 221, or similar, can be used providing it contains the following:

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~~(a.)~~ Notice to future owners of the presence of stormwater BMPs on the lot and the responsibility of the owner to retain, uphold, and protect the devices, features, pathways, limits, and restrictions.

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~~(b.)~~ Include as an attachment, a recordable version of the following information:

(i) a site plan showing all developed surfaces, impervious and pervious, and the location and dimensions of flow control BMP devices, features, flowpaths (if applicable), and limits of ~~native growth retention areas~~ PNGA's (if applicable). This plan(s) must be of a common engineering scale and include site topography.

(ii) The stormwater BMP design and maintenance details for each BMP per the most current version of the WSDOE SWMMWW Low Impact Development Technical Guidance Manual for Puget Sound. This includes a diagram (if applicable) of each flow control BMP device or feature and written maintenance and operation instructions.

~~(e)c.~~ Require that each flow control BMP be operated and maintained at the owner's expense.

20.51.430 Forest Area Preservation.

For the intent and purpose of this chapter, the term "Forested Area" shall refer to the tree canopy and any native vegetation (as defined by the ~~2005 most current version of the~~ Washington State Department of Ecology Stormwater Management Manual for Western Washington) that occurs within the boundaries of the tree canopy.

(1) When a permit is not required by ~~20.51.420(1)~~ tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:

~~(1a)~~ Fire prevention methods when supported by the county fire marshal;

~~(2b)~~ Hazard trees, as defined in Chapter ~~20.97~~ WCC, are identified (an evaluation and determination by a licensed arborist may be required);

~~(3e)~~ Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or

~~(4d)~~ Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system.

~~When tree removal is allowed under this section, all applicable requirements of 20.80.637(4) still apply.~~

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WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

**SEPA Determination of Nonsignificance (DNS)
Legal Notice**

To be published one time only on: **Wednesday, November 2, 2011**

CHARGE TO: Whatcom County Planning & Development Services
5280 Northwest Drive
Bellingham, Washington 98226
Acct #048867

**WHATCOM COUNTY GIVES PUBLIC NOTICE THAT THE FOLLOWING SEPA
THRESHOLD DETERMINATION OF NON-SIGNIFICANCE (DNS) HAS BEEN
ISSUED TODAY SUBJECT TO THE 14 DAY COMMENT PERIOD
CONCLUDING ON November 16, 2011.**

File: SEP2011-00088

Project Description:

A non-project action to amend the Whatcom County Code Title 20-Zoning to address stormwater and land use regulations for new development within the Lake Whatcom watershed to comply with the Department of Ecology's Total Maximum Daily Load criteria.

Proponent: Whatcom County Planning & Development Services

Address and Parcel #: Applicable to the Lake Whatcom Watershed

Lead Agency: Whatcom County Planning & Development Services

Zoning: N/A **Comp Plan:** N/A

ANY PERSON OR AGENCY MAY APPEAL THE COUNTY'S COMPLIANCE WITH WAC 197-11 BY FILING AN APPEAL WITH THE WHATCOM COUNTY CURRENT PLANNING DIVISION LOCATED AT 5280 NORTHWEST DRIVE, BELLINGHAM, WA 98226. APPEALS MUST BE MADE WITHIN 10 DAYS AFTER THE END OF THE COMMENT PERIOD.