

Exhibit A-Proposed Chapter 20.51 Lake Whatcom Watershed Overlay District

Chapter 20.51 LAKE WHATCOM WATERSHED OVERLAY DISTRICT

20.51.010 Purpose.

The Lake Whatcom Watershed Overlay District is intended to manage and treat stormwater runoff and establish more stringent standards on clearing activities in order to preserve and protect a unique and important water resource, Lake Whatcom. This district is designed to protect the long-term viability of Lake Whatcom as a drinking water source, and to comply with the requirements set forth by the Washington State Department of Ecology through the pending Lake Whatcom Total Maximum Daily Load (TMDL) by limiting phosphorus loading into Lake Whatcom that results from land disturbing or conversion projects, work or activities to that of native vegetation (as defined by the Washington State Department of Ecology Stormwater Management Manual for Western Washington (WSDOE SWMMWW)).

20.51.030 Area and Applicability.

(1) The Lake Whatcom Watershed Overlay District is an overlay zone that covers the entire geographic area of the Lake Whatcom watershed within Whatcom County's jurisdiction, and applies to all land disturbing or conversion projects, work or activities within the overlay zone.

(2) In the event that the provisions of this chapter conflict with the provisions of the Shoreline Management Program (WCC Title [23](#)), Chapter [16.16](#) WCC, Critical Areas, the Whatcom County Development Standards, the provisions of the underlying zoning district or other applicable county policies or regulations, then the most restrictive shall apply; provided, that the minimum setback provisions established in WCC [20.51.340](#) shall prevail. (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).

20.51.040 Conformance.

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

- (1) 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.

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).

20.51.060 Accessory uses.

All accessory uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter. (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 [20.51.095](#), 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 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.

(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:

(1) Moderate risk waste facilities; and

(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).

20.51.080 Prohibited Uses.

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

.081 Dry cleaning establishments.

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

.083 Sod farming.

.084 Aquaculture and mariculture projects.

.085 Operation of fur farms.

.086 Confinement feeding operations.

.087 Asphalt and concrete batch plants.

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

.089 Utilization of sewage sludge on land.

.090 On-site treatment facilities for hazardous wastes.

.091 Type I solid waste handling facilities, except those specified in WCC [20.51.073](#).

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

.093 Golf courses.

.094 Cemeteries.

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

.096 Surface mining outside of designated Mineral Resource Lands (MRL) Special Districts; provided, that surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter [76.09](#) RCW) are permitted.

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.097 Major passenger intermodal terminals.

.098 Freight railroad switching yards and terminals.

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

.100 Animal hospitals and accessory kennels and stables.

.101 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).

20.51.300 Open space.

.301 Open space requirements shall be as follows:

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

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

(3) Open space areas shall be maintained in natural vegetation or landscaped per WCC [20.80.325](#).

(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 waterward of the ordinary high water mark shall not be used in open space calculations.

20.51.310 Cluster subdivisions.

The purpose of cluster subdivision is to provide a method of creating building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure efficiency. Clustering is also intended to help preserve open space and the character of areas, reduce total impervious 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).

20.51.320 Cluster design standards.

The creation of new building lots within the Lake Whatcom Watershed Overlay 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.
- (2) A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC [20.51.330](#).
- (3) The minimum cluster lot size requirements of the underlying zone district shall apply.
- (4) The maximum number of building lots in a lot cluster shall be 10.
- (5) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least 80 feet.
- (6) Clustered building lots may only be created through the subdivision, short subdivision or binding site plan process pursuant to WCC Title [21](#).
- (7) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas or known archaeological sites, as well as physical constraints of the site.
- (8) Building lots shall be arranged in a cluster/concentrated pattern.
- (9) A cluster subdivision shall have no more than two common encroachments on existing county roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid development forms commonly known as linear, straight line or highway strip patterns.
- (10) As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots; provided, that the required permanent open space reserve area, pursuant to WCC [20.51.330](#), shall not be further subdivided. (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).

20.51.330 Open space reserve area.

- (1) For purposes of this title, an "open space reserve area" shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of "open space" pursuant to WCC [20.97.275](#).
- (2) The open space reserve area shall be subject to the following provisions:
 - (a) The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.
 - (b) A permanent open space reserve area shall be protected using one of the following mechanisms:

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

(ii) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required cluster reserve area specified in the underlying zone district; or

(iii) 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.

(c) The boundaries of the open space portion of the reserve area may be altered only if the county finds that in dedicating adjacent reserve areas it would further the objectives listed in WCC [20.51.310](#) by altering the reserve area and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.

(d) The purpose of the open space reserve area as defined in subsection (1) of this section shall be recorded on the face of the final plat or short plat.

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

(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.

(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; 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.

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.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.

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

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

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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).

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).

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).

20.51.410 Seasonal Clearing Activity Limitations

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

(1) County review and approval shall be required for all clearing activities associated with a fill and grade permit, building permit or other development proposal.

(2) Clearing activity, as defined in WCC [20.97.054](#), 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:

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

(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;

(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.

(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

(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

(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.

(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.

(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:

(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.

(b) Phased Clearing. Construction activities and clearing activities shall be phased to limit the amount of exposed soil that occurs at any one time, if determined to be appropriate by the technical administrator, 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.

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

(1) For permanent stormwater management purposes, within the Lake Whatcom Watershed Overlay District, Whatcom County review and approval shall be required for any project, work, or activity that:

- (a) 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
- (b) Creates or adds more than 200 square feet of new, replaced, or new plus replaced (as defined by the WSDOE SWMMWW):
 - 1. Impervious surface area, or
 - 2. Pervious or porous pavement or paver area,
- (c) Creates a subdivision or short subdivision.

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Any proposed project, work or activity that meets or exceeds the thresholds listed in 20.51.420 (1)(a)-(c), all land disturbed as a result of the project, work, or activity; and/or , all new, replaced, or new plus replaced development; and/or each subdivision or short subdivision shall incorporate either:

- (d) 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 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 WSDOE SWMMWW equivalent), or
 - 2. Full dispersion per Volume V, Chapter 5, BMP T5.30 (or then-current WSDOE SWMMWW equivalent), or
 - 3. Full dispersion per Volume III, Appendix C, paragraph 7.2.1 (or then-current WSDOE SWMMWW 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)(d)(1) or 20.51.420(1)(e), or
 - 4. Full dispersion per Volume III, Appendix C, paragraph 7.2.2 (or then-current WSDOE SWMMWW equivalent), or
 - 5. For road projects, full dispersion per Volume III, Appendix C, paragraph 7.2.4 (or then-current WSDOE SWMMWW equivalent), or
- (e) 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:
 - 1. Satisfy Minimum Requirement numbers 3 – 8, and 10 (or then-current WSDOE SWMMWW equivalents) from the current Manual, ignoring any Minimum Requirement applicability thresholds therein, and
 - 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 project, work or activity proponent's chosen stormwater management approach from 20.51.420(1)(d) and 20.51.420(1)(e) choices, the developer, or the project, work, or activity proponent or the project, work, or activity proponent'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:

- (a) Design drawings for the proposed permanent stormwater management system(s), feature(s), device(s), or facility(s), and
- (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 then-current Manual, applying the applicability thresholds therein.

(3) 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:

- 1. Projects that utilize Full Dispersion according to WCC 20.51.420(1)(d) 2, 3, or 4.
- 2. Projects that utilize an engineered system according to WCC 20.51.420(1)(e) where dispersion is incorporated into the design.

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

- 1. The Protected Native Growth Area shall include native plant species including, but not limited to, those on approved lists provided by Whatcom County common to this region.
- 2. The 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.
- 3. The PNGA may include onsite critical areas; allowable uses shall be limited to those specified in WCC 16.16.
- 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 hazardous and diseased trees. Hazard trees, as defined in Chapter [20.97](#) WCC, are

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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.

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 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.

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

(c) 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

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required covenants must be recorded prior to permit issuance for the proposed project.

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:
 - 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.
 - 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 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 .This includes a diagram (if applicable) of each flow control BMP device or feature and written maintenance and operation instructions.
 - 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 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:

- (1) Fire prevention methods when supported by the county fire marshal;
- (2) Hazard trees, as defined in Chapter [20.97](#) WCC, are identified (an evaluation and determination by a licensed arborist may be required);
- (3) Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or
- (4) Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system.