



Department of Commerce

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Notice of Proposed Amendment Request for Expedited Review

Pursuant to RCW 36.70A.106(3)(b), the following jurisdiction provides notice of a proposed development regulation amendment and requests expedited state agency review under the Growth Management Act.

*****Under statute, proposed amendments to comprehensive plans are not eligible for expedited review. The expedited review period is 10 business days (14 calendar days).***

(If needed, you may expand this form and the fields below, but please try to keep the entire form under two pages in length.)

Jurisdiction:	Whatcom County
Mailing Address:	5280 Northwest Drive Bellingham, WA 98226
Date:	October 6, 2011

Contact Name:	Cathy Craver
Title/Position:	Planner II
Phone Number:	360-676-6907
E-mail Address:	ccraver@co.whatcom.wa.us

Brief Description of the Proposed/Draft Development Regulations Amendment: <i>(40 words or less)</i>	Amending regulations regarding stormwater management and clearing in the Lake Whatcom watershed to comply with the Lake Whatcom TMDL.
Public Hearing Date:	October 27, 2011

Proposed Adoption Date:	November-December 2011: depending on County Council schedule and legislative process
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REQUIRED: Attach or include a copy the proposed amendment text.



Request for Expedited Review of Development Regulations

Pursuant to RCW 36.70A.106, the following hereby provides notice of intent to adopt and requests expedited state agency review of the following development regulation or amendments.

Jurisdiction Name:	Whatcom County
Address:	5280 Northwest Drive Bellingham, WA 98226
Date:	October 6, 2011

Contact Name for Ordinance:	Cathy Craver
Phone Number:	360-676-6907
Fax Number:	360-738-2493
E-Mail Address:	ccraver@co.whatcom.wa.us

Brief Description of the Proposed Development Regulation or Amendment:	Amending regulations regarding stormwater management and clearing in the Lake Whatcom watershed
Planned Public Hearing Date:	October 27, 2011 for Planning Commission; TBD for County Council
Planned Date of Adoption:	November – December 2011
Please Attach a Draft of the Proposed Amendment. (Attachment Required)	

20.80.630 Stormwater and drainage.

~~(1) Unless specifically exempted per WCC 20.80.631:~~

~~(1) All development activity within the unincorporated areas of~~ Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards or the provisions addressed ~~herein in this title~~, as applicable, ~~unless specifically exempted~~.

~~(2) No project development~~ permit shall be issued prior to meeting the stormwater requirements of this ~~chapter title~~ and/or Chapter 2 of the Whatcom County Development Standards. Advisory Note: Certain stormwater discharges to natural receiving waters are subject to state water quality standards and the requirements of the National Pollutant Discharge Elimination System (NPDES). Hydraulic Project Approval (HPA) may also be required if stormwater is discharged to a water body or stream that provides, or could provide, habitat for fish.

(3) Unless other county stormwater management provisions are more restrictive, all development activity within NPDES Phase II geographical area boundaries, as delineated ~~at the time on the date that the developer submits a complete that the county determines that the~~ development application ~~is complete~~, shall comply with the most current editions of:

- The Washington State Department of Ecology (WSDOE) Stormwater Management Manual for Western Washington (SWMMWW); and
- Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit; and
- Appendix 7, "Determining Construction Site Sediment Damage Potential," of the Western Washington Phase II Municipal Stormwater Permit.

(Ord. 2010-003 Exh. A, 2010; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 96-056 Att. A §§ A2, S9, 1996; Ord. 94-022, 1994).

20.80.631 Exemptions.

The following development types are exempt from the provisions of WCC 20.80.630, and WCCs 20.80.632 – 20.80.637:

(1) Agricultural activities ~~as defined in this title that occur outside the geographical areas of the Lake Whatcom Watershed~~, and forest practices regulated under WAC Title 222, except for Class IV General forest practices and nonconversion forest practices with approved conversion option harvest plans.

(2) Development undertaken by the Washington State Department of Transportation (WSDOT) within state highway right-of-way when regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.

(Ord. 2010-003 Exh. A, 2010; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 94-022, 1994).

20.80.632 Small development requirements.

The following development activities are considered small developments:

(1) New individual detached single-family residences, duplexes, and accessory development, none of which ~~creates less than~~ 10,000 square feet or more of new cumulative impervious surfaces.

Exhibit A

Whatcom County Code Title 20

(2) All other non-exempt development resulting in the creation or addition of less than 5,000 square feet of impervious surface area.

Small development ~~activities~~ shall be required to employ best management practices (BMPs), to control erosion and sediment during construction, to permanently stabilize soil exposed during construction, to protect adjacent properties and water bodies from stormwater effects caused by development. Small developments within the geographic area of the Lake Whatcom Watershed are subject to WCC 20.80.737. Small developments outside the geographic area of the Lake Whatcom Watershed are subject to, and shall be subject to any other requirements specified under Chapter 2 of the Whatcom County Development Standards, or as specified for stormwater special districts identified in WCC 20.80.635.

(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. 2000-066 § 1, 2000; Ord. 99-086, 1999; Ord. 94-022, 1994).

20.80.633 Large development requirements.

Large developments are those non-exempt developments that do not qualify as small developments per WCC 20.80.632. AA preliminary stormwater proposal must be submitted to the county engineer for large developments unless otherwise exempted under WCC 20.80.631. The county engineer may require impose such modifications and improvements as he/she ~~deem~~ see necessary to protect county drainage facilities, neighboring properties, and water quality from stormwater effects caused by the development. No building permit shall be issued until a preliminary stormwater proposal, and, if required, an engineered stormwater design report is approved by the county engineer. Preliminary stormwater proposals and engineered stormwater design reports shall be prepared in accordance with the requirements of the Whatcom County Development Standards, Chapter 2.

(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. 2000-066 § 1, 2000; Ord. 99-086, 1999; Ord. 94-022, 1994).

20.80.634 Stormwater conformance.

Unless explicitly exempted per WCC 20.80.631, or unless the development location is within the geographical area of the Lake Whatcom Watershed, a All developments shall conform to the following requirements:

(1) General.

(a) Stormwater discharges must be controlled and treated as required by law.

(b) Best management practices (BMPs) shall be used to comply with the regulations in this ~~chapter~~ title. If appropriate BMPs are not referenced in the Whatcom County Development Standards, experimental BMPs may be considered. However, experimental BMPs must be approved by the county technical administrator prior to implementation.

(c) Developments shall minimize impervious surface areas while maintaining project function and viability. Protection of ground water and aquifer recharge are important objectives which shall be incorporated in required surface water management facilities consistent with established BMPs.

(d) Stormwater systems shall not be constructed in such a manner that they materially degrade natural systems such as streams and their banks, wetlands, ponds, or lakes.

(e) Natural drainage patterns shall be maintained and discharges from the site shall occur at the natural location, unless it can be shown that relocation will have no significant adverse impact to either built or natural systems as a result of the relocation.

(f) The design of stormwater systems shall be an integral part of the overall development design and, in addition to the primary storage and conveyance function, should incorporate multiple use provisions to enhance the project, such as the following:

- (i) Recreation;
- (ii) Public safety;
- (iii) Economical maintenance;
- (iv) Aesthetic integration into the landscape and project design;
- (v) Wildlife habitat;
- (vi) Education;
- (vii) Open space.

(2) Erosion and Sedimentation Control.

(a) All ~~proposed projects-developments~~ that will clear, grade, or otherwise disturb ~~the siteland~~ shall provide erosion and sedimentation control (ESC) ~~measures~~ that prevents the transport of sediment from the ~~development~~ site to drainage facilities, water resources, and adjacent properties.

(b) ~~Projects-Developments~~ exceeding the small development thresholds in WCC 20.80.632 shall submit a preliminary temporary erosion and sedimentation control (TESC) plan and, if required, a large development temporary erosion and sediment control plan, for approval by the county engineer.

(c) Erosion and sedimentation controls shall be applied in accordance with Whatcom County Development Standards, Chapter 2 – Stormwater Management.

(3) Runoff Control.

(a) ~~Proposed large developments-projects~~, except as noted ~~in paragraph (b)~~ below, shall provide runoff controls to limit the developed conditions' peak rates of runoff to the predevelopment peak rates for the following storm events:

- (i) ~~The~~ one-year, 24-hour, storm event when stormwater is discharged to a stream or to a drainage basin within 1,000 feet of a stream, or when the ~~development project~~ is located in a stormwater special district;
- (ii) ~~The~~ two-year, 24-hour, storm event;
- (iii) ~~The~~ 10-year, 24-hour, storm event;
- (iv) ~~The~~ 25-year, 24-hour, storm event;
- (v) ~~The~~ 100-year, 24-hour, storm event.

Exhibit A

Whatcom County Code Title 20

(b) Exceptions. ~~Direct discharge to a regional stormwater facilities, marine water bodies, rivers, streams, or lakes when demonstrated there is no probable significant adverse impact to the conveyance system and the receiving waters.~~

(4) Conveyance. ~~All engineered conveyance system elements for proposed projects~~ shall be analyzed, designed and constructed to prevent overtopping, flooding, erosion, and structural failure as specified by the conveyance requirements for new and existing systems and conveyance implementation requirements described in the Whatcom County Development Standards, Chapter 2 – Stormwater Management.

(5) Water Quality. ~~Proposed large development project~~ shall provide appropriate water quality treatment facilities to treat runoff from pollution-generating impervious surfaces.

(6) Maintenance. All stormwater facilities shall be maintained in accordance with the stormwater system maintenance requirements of the Whatcom County Development Standards, Chapter 2 – Stormwater Management. Maintenance plans, responsibilities, and the method of financing said maintenance shall be established by the ~~applicant-developer~~ or property owner prior to final approval of any development ~~activity~~ directly associated with the development proposal.

(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. 2000-066 § 1, 2000; Ord. 99-086, 1999; Ord. 99-071, 1999; Ord. 96-056 Att. A § S10, 1996; Ord. 94-022, 1994. Formerly 20.80.635).

20.80.635 Stormwater special districts.

(1) Whatcom County ~~shall~~ establishes the following geographical areas as stormwater special districts:

(a) Drayton Harbor watershed.

~~(b) Lake Whatcom watershed.~~

~~(eb)~~ Lake Samish watershed.

~~(dc)~~ Birch Bay watershed.

~~(ed)~~ Lake Padden watershed.

(2) Requirements for these areas are contained in WCC [20.80.636](#) and in the Whatcom County Development Standards, Chapter 2.

(Ord. 2009-009 Exh. B, 2009; Ord. 2008-035 Exh. A, 2008; Ord. 2005-030 § 1 Exh. A, 2005; Ord. 2004-051 Exh. A, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).

20.80.636 Stormwater special district requirements.

In areas designated as stormwater special districts ~~(per WCC 20.80.635)~~, permanent on-site stormwater quality and quantity facilities shall be required on all existing lots less than five acres in size for single family residential and duplex construction development projects that meet either of the following criteria:

(1) New construction or remodels that increase impervious surfaces by more than 500 square feet; or

(2) Renovation projects where the estimated cost of the work exceeds 50 percent of the assessed value of the existing structure. Interior remodels, nonpolluting roof replacements, house maintenance and energy upgrades shall be exempt from this requirement.

Exhibit A
Whatcom County Code Title 20

If stormwater quality and quantity facilities are required based on either of the ~~above~~ criteria, the provisions of the Whatcom County Development Standards, Chapter 2, Section 221, shall apply to the entire property, unless it can be demonstrated that off-site facilities would provide better treatment, or unless common detention and water quality facilities meeting the standards of the ~~1996-2004~~ Whatcom County Development Standards or the 1992 Washington State Department of Ecology Stormwater Management Manual for the Puget Sound Basin (or ~~the then-more~~ current versions in effect on the date that the developer submits a complete development applications) have been approved as part of a comprehensive stormwater management plan for that subdivision, binding site plan, short subdivision, or major development approval.

(Ord. 2009-009 Exh. B, 2009; Ord. 2005-030 § 1 Exh. A, 2005; 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. 2000-066 § 1, 2000).

DRAFT

Chapter XX.XX
Lake Whatcom Watershed Stormwater Management and Land Clearing Requirements

XX.XX.XXX Purpose.

(1) Precedence. If any provision elsewhere in Whatcom County Code (WCC) or in Whatcom County Development Standards (WCDS) conflicts with the provisions of this section, the provisions of this section shall take precedence.

XX.XX.XXX Application

XX.XX.XXX Area and Applicability

(2) Applicability. This section applies to the stormwater management aspects of any development that occurs, totally or partially, within the geographical area of the Lake Whatcom Watershed after <ordinance effective date>, and until such date that a United States Environmental Protection Agency (USEPA)-approved Lake Whatcom Watershed Total Maximum Daily Load (TMDL) Plan exists, whereupon the TMDL Plan shall then supersede this section and apply accordingly, unless, however, other stormwater management regulations or rules apply to the development per paragraph no (3) below.

(3) Development Vesting. County processing of all development applications shall be consistent with State vesting laws, and with State Supreme Court and State Courts of Appeals decisions.

XX.XX.XXX

(4) 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 where said portion:

- (a) Disturbs or clears more than 500 square feet of land, and/or
- (b) Removes more than trees, including stumps, and/or
- (c) Creates, adds, expands, reduces, alters, and/or replaces more than 120 square feet of:
 - 1. Impervious surface area, or
 - 2. Pervious or porous pavement or paver area,

the development 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 equivalent), or

Comment [SP1]: Should this match the lowest threshold for a "development" permit (Bldg Permit) here?

2. Full dispersion per Volume V, Chapter 5, BMP T5.30 (or then-current equivalent), or
3. Full dispersion per Volume III, Appendix C, paragraph 7.2.1 (or then-current equivalent), or
4. Full dispersion per Volume III, Appendix C, paragraph 7.2.2 (or then-current equivalent), or
5. For road projects, full dispersion per Volume III, Appendix C, paragraph 7.2.4 (or then-current 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 nos 3 – 8, and 10 (or then-current 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.

(5) Stormwater Management Systems Design Documentation. Regardless of the developer's chosen stormwater management approach from paragraph no (4)(d) and (4)(e) 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:

- (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 current Manual, applying the applicability thresholds therein.

(6) Constructed/Installed Stormwater Management Systems Preservation. WCCS Chapter 2 Section 220 applies.

- a.) A Protected Native Growth Area (PNGA) Document shall be required for the following projects:
 1. Projects that utilize Full Dispersion according to WCC 20.80.637(4)(d)(2), (3), or (4).
 2. Projects that utilize an engineered system according to WCC 20.80.637(4)(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 areas on the site containing plant species including but not limited to those listed on Whatcom County's Approved Native Plant List. 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 must be protected through a recorded Protected Native Growth Site Plan and covenant on individual lots.
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."
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.
5. The PNGA may include onsite critical areas; allowable uses shall be limited to those specified in WCC 16.16
6. All vegetation within the PNGA at the time of permit application shall be retained aside from approved timber harvest activities and the removal of dangerous and diseased trees. If the site is located within an area of mandatory clearing limits and has been illegally cleared; a restoration plan may be required.
7. The PNGA shall be shown on all property maps and shall be clearly marked during clearing and construction on the lots.
8. The PNGA may contain utilities and utility easements, including flow control BMP's.
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.

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 required covenants must be recorded prior to final construction approval 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 native growth retention areas (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 Birch Bay Low Impact Development Manual. 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.

(7) Forest Area Preservation

For the intent and purpose of this chapter, the term "Forest Area" shall refer to the tree canopy and any native vegetation (as defined by the 2005 Department of Ecology Stormwater

Management Manual for Western Washington) that occurs within the boundaries of the tree canopy.

(a.) When a permit is not required by 20.80.637(4) tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:

Comment [MJK2]: Is this a de-facto threshold?

- (i) Fire prevention methods when supported by the county fire marshal;
- (ii) Hazard trees, as defined in Chapter [20.97](#) WCC, are identified (an evaluation and determination by a licensed arborist may be required);
- (iii) Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or
- (iv) 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.

DRAFT

From: Catherine Craver
To: reviewteam@cted.wa.gov
Date: 10/6/2011 4:16 PM
Subject: Expedited Request for zoning text amendment
Attachments: CTEDPublications.doc; Draft Ordinance Exhibit A_CTED .docx; Draft ordinance Exhibit B_CTED.docx

Please see attached request for expedited review. Amendments address enhancing current regulations regarding stormwater management and clearing in the Lake Whatcom watershed, and were developed in coordination with recommendations from the Department of Ecology to comply with the Lake Whatcom TMDL.

Please let me know if you need further information.

Regards,

Cathy Craver, Planner II
Whatcom County Planning & Development Services
Natural Resources Division
322 N. Commercial, Suite 110
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From: Catherine Craver
To: reviewteam@cted.wa.gov
Date: 10/25/2011 2:45 PM
Subject: Supplemental documents for Item 17443
Attachments: Working DRAFT_Public Workshop.pdf

Attached is a supplemental document for the zoning text amendment submittal from Whatcom County #17443.

Clarification:

Sections 20.51.010 - 20.51.410 are currently adopted in Whatcom County Code (20.71 Water Resource Protection Overlay and 20.80.735 Water Resource Special Management Area) and were brought over to the new chapter to have all applicable regulations for Lake Whatcom adopted within the new chapter.

Sections 20.51.420 - 20.51.430 are consistent with the original submittal with changes to the numbering system.

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