

MAY 23 2013

From: Peter Gill <pgill@co.whatcom.wa.us>
To: Laurence W Brown <lwbrown_svca@icloud.com>, cesm <cesm@suddenvalley.com>
CC: "Council@co.whatcom.wa.us" <Council@co.whatcom.wa.us>, Jeff Schlaack <gm...>
Date: 5/22/2013 4:33 PM
Subject: RE: Sudden Valley's Suggestion for Tuesday

Larry and Anthony,

Thank you for your May 17th comments on the Lake Whatcom Overlay District. Based on feedback we received at the May 21, Natural Resource Committee meeting, we have included the code language below to be introduced on June 4th.

"20.51.420 Permanent Stormwater Management Systems

(1) Exemptions. This section does not apply to any of the following projects, work, or activities (which does not necessarily exempt them from other stormwater related titles and/or standards that might otherwise apply; see WCC 20.51.040(6), WCC 20.51.040(7) and WCC 20.80.630(3)) within the Lake Whatcom Watershed Overlay District:

(h) For a Single Family Dwelling that meets all of the following:

1. To be located within the platted boundaries of, and in general belonging to, an incorporated homeowners association; and
2. Which association has a stormwater runoff management and phosphorus mitigation plan that provides at least the same level of overall protection from and/or treatment of phosphorus runoff to Lake Whatcom as would the application of WCC 20.51.420(2) to any of the individual parcels therein that may be developed; and
3. Ongoing implementation program, applicable to all newly developed parcels within that association's boundaries, as well as to the association as a whole; and
4. Which plan and program have been agreed to by a memorandum of agreement between Whatcom County and the incorporated homeowners association; and
5. Permanent Best Management Practices shall follow the NPDES standards in WCC 20.80.630."

This language is intended to make the following clarifications:

1. This is an exemption to the phosphorus specific BMPs not the entire chapter, therefore references to 20.71, 20.80.635, etc need not apply.
2. Approval of the stormwater plan and program would be through a memorandum of agreement between Whatcom County and a home owner association.
3. This applies to single family residences only.

Due to the packet deadlines and scheduling this language will be introduced on June 4th. Your feedback and comments are welcome. There is a public hearing tentatively scheduled for June 18th.

Kind regards,

Peter Gill
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From: Laurence W Brown [mailto:lwbrown_svca@icloud.com]
Sent: Friday, May 17, 2013 4:50 PM
To: Council@co.whatcom.wa.us
Cc: CSD - Richard Davis; Scott Wagter; cesm; Jeff Schlaack; Peter Gill
Subject: Fwd: Sudden Valley's Suggestion for Tuesday

To the Whatcom County Council:

I would like to discuss at next week's Natural Resources Committee meeting, the encouraging results of the discussion I and Sudden Valley staff had with County staff responding to your suggestion during the Committee meeting last week.

The basic premise behind the discussion was that Sudden Valley already provides a great deal of phosphorus mitigation given its strategic location within the Lake Whatcom watershed, and could assist the County to achieve even more, to our mutual benefit. As I mentioned at the meeting last week, since all Sudden Valley owners, including the owners of undeveloped lots, are in law owners of all of the land and fixtures within Sudden Valley, it is my belief that they should all receive some tangible recognition of the benefits they already provide, as well as future benefits that Sudden Valley may be able to provide on a community-wide basis.

To that end, and to continue the high level of mutual phosphorus mitigation that Sudden Valley has already worked to provide with the County, the City of Bellingham, and the Water District (such as prohibiting any development on certain platted lots owned by Sudden Valley), I have discussed the following proposal with County staff. I believe it will help achieve both (1) the present and future phosphorus mitigation responsibilities of the County, as well as (2) the Council's desire to protect citizen investment in the property value of smaller undeveloped lots in the County, the great majority of which are located within Sudden Valley. Staff has commented on the following suggestion, and I believe it fully reflects staff input and comments.

- do *not* put a lot-size exemption into Section 20.51.030, because that merely displaces responsibility for phosphorus mitigation onto others, and means that future mitigation likely to be required could be exceedingly onerous;

- rather, leave that section as-is, and instead, put the following clause into a new subsection numbered 20.51.420 (2)(a)(3), right after the off-parcel mitigation section:

For parcels

- (i) located within the platted boundaries of, and in general belonging to, an incorporated homeowners association,
 - (ii) which association has a community-wide stormwater runoff management and mitigation plan, and ongoing implementation program, applicable to all newly developed parcels within that association's boundaries, as well as to the association as a whole, and
 - (iii) which plan and program have been approved by the county as an appropriate mechanism that provides to the entirety of land within the boundaries of said association at least the same level of overall protection from and mitigation of phosphorus contamination to Lake Whatcom by means of stormwater runoff as would the application of the remainder of WCC 20.51 to any of the individual parcels therein that may be developed,
- any proposed project shall follow the applicable NPDES standards in WCC 20.630 and in 20.71 Water Resource Protection Overlay, WCC 20.80.635 Stormwater Special Districts, and WCC 20.80.735 Water Resource Special Management Areas.

Although somewhat wordy, the language demonstrates clearly that the exemption should (a) be very specific by (b) clearly stating the three "layers" of applicable conditions:

- (1) legal incorporation as an HOA under state law,
- (2) requiring both a mitigation plan on paper *plus* an active, effective program, and
- (3) continual county oversight/approval.

Also, this language is intended to make clear that the current mitigation requirements *still apply* to each

individual lot, just as the original exemption proposal would do, but does so *in addition to* the HOA's own program, so that additional and future phosphorus abatement can occur in the HOA on an overall basis, and do so much sooner than might otherwise occur.

If the Council prefers to have a broad small-lot exemption, Sudden Valley would be happy to accept that benefit. However, I recognize that other parties will have to pick up the burden that small lot owners will thereby avoid, and believe that future mitigation needs, such as expensive retrofitting, will only be increased thereby.

While Sudden Valley at this time does not have such a plan as I propose, it has for decades already required engineered mitigation activities on developed lots. Further, Sudden Valley has throughout its existence had extensive vegetated areas, and otherwise has managed its property and holdings in such a way as to dramatically reduce phosphorus loading in rainwater runoff (such as by limiting some, and prohibiting other, potential development). I firmly believe that, once properly and thoroughly evaluated by appropriate experts, Sudden Valley's current activities, plus proper collaboration with the County on already contemplated future road and drainage projects within Sudden Valley, will go quite a long way toward meeting, and perhaps very much exceeding, the mitigation of any phosphorus runoff for which Sudden Valley may be responsible without undue expense or other burden on the community as a whole.

Thank you for your consideration of this suggestion. I look forward to addressing any questions you may have next Tuesday.

Sincerely,
Laurence W. (Larry) Brown,
President, SVCA Board of Directors

Begin forwarded message:

From: "Laurence W. Brown" <lwbrown_svca@icloud.com<mailto:lwbrown_svca@icloud.com>>
Subject: Re: Sudden Valley's Suggestion for Tuesday
Date: 17. May, 2013 1:01:20 AM PDT
To: Peter Gill <pgill@co.whatcom.wa.us<mailto:pgill@co.whatcom.wa.us>>
Cc: Laurence W Brown <lwbrown_svca@icloud.com<mailto:lwbrown_svca@icloud.com>>, cesm <cesm@suddenvalley.com<mailto:cesm@suddenvalley.com>>, Mark Personius <MPersoni@co.whatcom.wa.us<mailto:MPersoni@co.whatcom.wa.us>>, Michael Kershner <mkershne@co.whatcom.wa.us<mailto:mkershne@co.whatcom.wa.us>>

Thanks again, Peter.

I agree the emphasis of any approved HOA plan should be phosphorus, and that's why (1) the reference to the "remainder of 20.51," as well as (2) the requirement that the county approve the plan. But more explicit reference wouldn't hurt a thing.

Looking forward to the discussion Tuesday.

-Larry Brown

Sent from 4Phone...

On 2013-05-16, at 16:14, Peter Gill <pgill@co.whatcom.wa.us<mailto:pgill@co.whatcom.wa.us>> wrote:
Thank you Larry,

We discussed these changes here at PDS and we like the concept, in the long term it may be a more

effective way to meet TMDL targets and reporting requirements than the individual lot approach. We would like to see that the association's stormwater "plan or program" has a phosphorus reduction emphasis, as this is where the individual lots are likely to come up short.

If Council agrees to the concept, we will work with you all and our legal staff on the specific language in anticipation of the code being introduced on June 4th. Please feel free to share our correspondence and your changes with them.

I look forward to more discussion on May 21, at the Natural Resource Committee.

Kind regards,

From: Laurence W Brown [mailto:lwbrown_svca@icloud.com]
Sent: Thursday, May 16, 2013 2:14 AM
To: Peter Gill
Cc: cesm
Subject: Sudden Valley's Suggestion for Tuesday

Peter-

Awesome discussion Wednesday - thanks again.

I would suggest the following:

- do /not/ put a lot-size exemption into 20.51.030 (which just kicks the can down the road until retrofits are required) - rather, leave that section as-is;

- instead, put something like the following clause into a new subsection number 20.51.420 (2)(a)(3), right after the off-parcel mitigation section we discussed:

For parcels

(i) located within the platted boundaries of, and in general belonging to, an incorporated homeowners association,
(ii) which association has a stormwater runoff management and mitigation plan, and an ongoing implementation program, applicable to all newly developed parcels within that association's boundaries, as well as to the association as a whole, and
(iii) which plan and program have been approved by the county ___(office)___ as an appropriate mechanism that provides to the entirety of land within the boundaries of said association at least the same level of overall protection and mitigation as would the application of the remainder of WCC 20.51 to any individual parcels therein,
any proposed project shall follow the applicable NPDES standards in WCC 20.630
[PARDON, but in looking for the correct name to specify here I could not locate any such section "WCC 20.630" - Title 20 only seems to go up to "97"...]
and in 20.71 Water Resource Protection Overlay, WCC 20.80.635 Stormwater Special Districts, and WCC 20.80.735 Water Resource Special Management Areas.

Yes, I realize this is wordy! However, the point is that the exemption should (a) be very specific by (b) clearly stating the 3 layers of applicable conditions: (1) incorporated HOA status, (2) plan *plus* active program, and (3) county oversight/approval. Also, this makes it clear that the "old" mitigation regs still apply to each individual lot, just as the original "exemption" proposal would do, but does so /in addition to/ the HOA's own program, so that additional abatement can occur in the HOA on an overall basis, and do so much sooner.

I was not certain of the appropriate county office to specify, so I hope you can fill that in. (Open space

reserve areas were the model here, which allow for protection mechanisms to be reviewed by the zoning administrator or hearing examiner.)

Thanks for your consideration.

-Larry Brown, SVCA

PS: It seems that pg.14, line 12 shows not enough indentation for the formatting of subparagraph 20.51.420 (2)(a)(1)(iii), as that does not line up visually with (2)(a)(1)(ii) above it...
