



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham, WA 98226

AGENDA June 9, 2022

The Whatcom County Planning Commission will hold a public meeting at 6:30 p.m. Anyone may attend the meeting remotely via Zoom, or in person in the Northwest Annex Conference Room, 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of May 26, 2022
- Public Health Advisory Board (PHAB) Opportunity for Connection and Participation – *Steve Bennett, PHAB Chair*
- Updates to the Open Public Meetings Act and Proposed Amendments to Planning Commission Business Rules
- Unfinished Business – Work Session
 - Proposed Amendments to the Lake Whatcom Watershed Overlay District (WCC 20.51), Water Resource Protection Overlay District (WCC 20.71), and the code-referenced stormwater manual throughout WCC Title 20 (Zoning).
- Adjournment

NOTE: For information on how to watch and participate in the meeting in real time, please visit the following web page: [Participate in Virtual Planning Commission Meeting](#)

Individuals who require special assistance to participate in the meetings are asked to contact "PDS_Planning_Commission@co.whatcom.wa.us" at least 96 hours in advance.

Upcoming Meeting Topics

- Wireless Code Amendments
- Buildable Lands

Pending Items Commissioners would like to address

Code related implications of climate modeling

For more information please contact

**Tammy Axlund at (360)778-5935 or
PDS_Planning_Commission@co.whatcom.wa.us
5280 Northwest Drive, Bellingham WA 98226**



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
May 26, 2022**

Work Session

1

1 **Call to Order**

2 The virtual meeting was called to order by Whatcom County Planning Commission
3 Chair, Kelvin Barton at 6:31 p.m.

4 **Roll Call**

5 **Present:** Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Julie Jefferson,
6 Kimberley Lund, Dominic Mocerri, Scott Van Dalen

7 **Absent:** Stephen Jackson

8 **Staff Present:** Cliff Strong, Mike Kershner, Steve Roberge, and Tammy Axlund

9 **Department Update**

10 Steve Roberge, Assistant Director of Planning and Development Services (PDS),
11 announced that the June 9th Planning Commission meeting will be held in a hybrid
12 format. Planning Commissioners and the public will have the option to meet in person,
13 or remotely. At that meeting, we will have a short presentation by the Public Health
14 Advisory Board, as well as any unfinished business from tonight. We will then move on
15 to Wireless Code Amendments.

16 **Open Session Public Comment**

17 **Timestamp: 03:50**

18 No one offered public comment.

19 **Commissioner Comments**

20 Commissioner Lund disclosed that she had conversation with Michael Feerer from the
21 Whatcom Million Trees Project between our last meeting and this one.

22 **Approval of Meeting Minutes**

23 **Timestamp: 05:55**

24 **Commissioner Bartel moved** to accept the meeting minutes from May 12, 2022.

25 **Commissioner Mocerri seconded.**

26 **Roll Call Vote: Ayes-Bartel, Barton, Hansen, Jefferson, Lund, Mocerri, Van**
27 **Dalen; (Ayes-7; Nays-0; Abstain-0). The motion carried.** (Commissioner
28 Deshmane arrived after the vote was taken.)

29 **Proposed Amendments to the Lake Whatcom Watershed Overlay District**
30 **(WCC 20.51), Water Resource Protection Overlay District (WCC 20.71), and**
31 **the code-referenced stormwater manual throughout WCC Title 20 (Zoning).**

32 **Timestamp: 07:52**

33 **a) Work Session**

34 Cliff Strong, PDS Senior Planner, acknowledged that a public hearing was held on May
35 12, 2022, regarding this agenda item. He noted that additional comments were
36 received, and he walked the group through the proposed amendments and comments.



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
May 26, 2022**

Work Session

2

- 1 He and Mike Kershner, PDS Natural Resources Planner, responded to Commissioners'
2 questions.
- 3 Commissioners who provided comments were given the opportunity to discuss their
4 proposals. With regard to tree cover, Commissioners Lund and Hansen deferred to the
5 options provided by Whatcom Million Trees Project in conjunction with RE Sources.
- 6 Michael Feerer, Executive Director of Whatcom Million Trees Project and Alexander
7 Harris, Land and Water Policy Manager, RE Sources, explained their proposal for
8 20.51.430 (pg 11) and discussed their objective for the cap at 14,000 square feet. Mr.
9 Feerer noted that there is an error on their tables and anything under 1 acre would
10 retain current regulations.
- 11 Commissioners expressed preference for Option 2 (tree removal not associated with
12 development) of the Million Trees/RE Sources proposal, with the language for
13 exemptions cleaned up. At least one Commissioner stated a preference that smaller
14 lots should not be able to remove more tree canopy than larger lots.
- 15 For 20.71.356 Penalties and Enforcement for Unauthorized Removal of Significant
16 Trees, several Commissioners felt that when trees are removed they should be
17 replaced with medium to large trees, not saplings. There was some favor toward
18 stronger penalties, as well as encouragement to define planting more broadly as a tree
19 "establishment" process, and to develop a maintenance and monitoring component of
20 the penalty, which might be paid for by fine and/or fees.

21 **Adjournment**

- 22 The meeting was adjourned at 8:09 p.m.
23 Minutes prepared by Tammy Axlund.

24 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

25 _____
26 Kelvin Barton, Chair

Tammy Axlund, Secretary



Memorandum

TO: Planning Commission
FROM: Tammy Axlund, Planning Commission Secretary
DATE: May 31, 2022
SUBJECT: Proposed Business Rule Amendments

Effective June 1, 2022, the Governor [rescinded](#) the proclamation that instituted emergency Open Public Meeting Act (OPMA) rules. In addition, OPMA was amended during the 2022 Legislative Session (ESHB 1329) and will require modification to the Planning Commission Business Rules, discussed below the highlights. Highlights of the OPMA rescinded emergency rules and legislative changes are as follows:

- Meetings subject to the Open Public Meetings Act (OPMA) are no longer required to be held remotely.
- Though it is encouraged, telephonic or video access to public meetings is no longer required once the proclamation expires.
- If the agency allows verbal public comment during a regular meeting, the agency is required — “when feasible” — to provide an option for verbal public comment to be submitted by telephonic or videoconferencing means during the meeting to:
...any individual who will have difficulty attending a meeting of the governing body of a public agency by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult...
- If a public agency determines that it cannot hold an in-person public meeting with “reasonable safety” due to a local, state, or federally declared emergency, the agency may conduct a fully remote meeting or hold a meeting at which the physical attendance by some or all members of the public is limited.
- Even if there is no declared emergency, members of the governing body may attend any/all public meetings remotely.
- Except in an emergency situation, the governing body shall provide an opportunity for public comment at or before every regular meeting at which final action is taken.
 - The public comment required under this section may be taken orally at a public meeting, or by providing an opportunity for written testimony to be submitted before or at the meeting.
 - If the governing body accepts written testimony, this testimony must be distributed to the governing body.
 - The governing body may set a reasonable deadline for the submission of written testimony before the meeting.

Proposed changes to the Planning Commission Business Rules:

We recommend that the Planning Commission consider amending the portion of Rule 9. OPEN SESSION FOR PUBLIC COMMENT, as follows:

“The Open Session for Public Comment provides an opportunity for any member of the public to speak to the Planning Commission for three minutes on any topic, except:

- Items that are scheduled on the agenda for a public hearing that same day.
- ~~Items that have had a public hearing and are still under deliberation by the Planning Commission.”~~

If you would like more information, please click the following links: [MRSC article](#), [ESHB 1329](#)



Memorandum

TO: Planning Commission
FROM: Cliff Strong, Senior Planner
THROUGH: Steve Roberge, Assistant Director
DATE: June 1, 2022
SUBJECT: Proposed Watershed Overlay District Amendments

On 5/12/22 the Planning Commission held a public hearing on PLN2021-00008, proposed amendments to the Lake Whatcom Watershed Overlay District (WCC 20.51), Water Resource Protection Overlay District (WCC Chapter 20.71), and various WCC code provisions addressing how the stormwater manual is referenced and approved for County use. Discussion of the proposed amendments was held on 5/26/22. At the conclusion of the discussion there were three outstanding issues identified:

1. **What should be the amount of tree canopy that can be removed *when not associated with development activity* (in both WODs)?**
2. **What should be the amount of tree canopy that can be removed *when associated with development activity* (in both WODs)?**
3. **Should the replacement penalty for removing significant trees without a permit be increased?**

Before we address these specific issues, a brief summary of approaches and terminology is provided below. There are several ways of looking and calculating allowed alterations. These distinctions are made to ensure discussions are with a mutual understanding of terminology. We see three different approaches that could be taken in regulating tree canopy. We do this because there have been several proposals, each with different approaches, and we need to agree on an approach so that we're talking apples to apples.

Calculating Removal Allowance by Percent of Existing Canopy: Currently we regulate how much canopy can be removed based on the area of the existing canopy¹, and that removal allowance is up to 35% or 5,000 sq. ft., whichever is greater. Thus, how much canopy can be removed varies depending on how much is already there. Lot size plays no part in the calculations.

Calculating Removal Allowance by Percent of Lot Size: Some of the suggestions the Commission discussed base how much canopy can be removed on the size of the lot (with an upper end cap). Though it is a different approach than we now use, basing it on lot size could simplify calculations if the formula were simple. Unfortunately, the varying formula provided by ReSources/Million Tree Project (ReS/MTP) is quite complicated, as discussed more below. In other words, the lot size would determine the amount of removal allowed from existing canopy.

Regulating How Much Canopy Must be Retained: A completely different approach would be to have rules stating how much canopy any lot must retain, for instance, "All properties within the [LWOD and/or WRPOD] shall maintain a tree canopy covering a minimum of X% (*to be determined*) of the lot..."

¹ Existing on 1/1/2017, when our tree rules were first adopted. How much canopy existed on 1/1/2017 is determined based on aerial photos from that time, plus a review of any previous permits wherein trees were removed.

This might be even easier to manage, as the calculation would be based on the size of the canopy existing *now* and not some date in the past. We could even get rid of the distinction between *tree removal not associated with development* and that *associated with development* and just allow a further reduction of the canopy to accommodate development², firewise management, hazard trees, and pest and disease outbreaks.

As you can see from these distinctions, we think it's important that everyone's interpreting the proposed/suggested rules in the same way.

1. What should be the amount of tree canopy that can be removed when not associated with development activity (in both WODs)?

At your meeting, four alternative proposals were discussed, but the Commission seemed to be leaning towards ReS/MTP's Option #2. This option is based on lot size and allows the removal of the following amounts of significant tree canopy³:

Lot Size	Tree Canopy Removal Allowance (or Required Retention?) (percentages are of lot size)
≤ 0.5	20%
0.5 – 0.99 ac	15%
1.0 – 2.99 ac	6,534 sf ⁴ + 1,000 sf for each 0.5 acre above 1
3 - 9.99 ac	6,534 sf ⁴ + 1,000 sf for each acre above 1
10 ac or more	14,000 sf

Their approach decreases the removal allowance in steps, but in a fairly complicated way. Staff reads their table as allowing a certain amount of tree canopy removal as calculated from *lot size* regardless of how much canopy is actually there. But when a lot already has less canopy than the limit they've suggested, can the owner remove all the rest of the trees? Or is their "Maximum Tree Canopy Removal" meant to indicate what must remain? This approach switches from our current approach of tree canopy removal allowances being measured an amount of canopy to a percentage of the lot size. Staff believes this approach is fairly complicated for property owners to figure out, in particular the 1.0 – 9.99 ac ranges.

In an email to staff dated 5/27/22, Mr. Feerer responded to some (anticipated) questions:

- Lot square footage is easier for everyone to visualize and understand. Canopy areas in contrast are diverse in size, can overlap, vary somewhat by season, and are difficult to estimate accurately.
- For the occasional situation of a lot "just below or above a size threshold" perhaps the Assessor's Parcel map lot size figure could be the standard used rather than staff using GIS polygons to estimate. Note that in Option 2, such math "jumps" only occur to lots 1 acre or smaller and are relatively minor. For larger lots, there are no jumps. *(Note: Staff has eliminated this issue by extending the ranges in the above table to include the intermediate sizes not accounted for in their table. Nonetheless, we do use the Assessor's data to determine lot size.)*
- For small lots, such as in Sudden Valley, our values still allow several large conifers to be removed, simplifying the cases mentioned of many people just wanting to cut, say, 1-3 trees.

A simpler approach might be to just allow *all* lots to remove up to 5,000 sq. ft⁵. of existing canopy⁶. Such a rule is much simpler and would allow more flexibility for smaller lots while greatly reducing the

² As we do in the Shoreline Management Program and critical areas regulations

³ Simplified from their table with lot size gaps filled in.

⁴ 15% of 1 acre, which is what we assume their proposed percentage is measured from.

⁵ Roughly 70.7 x 70.7 sq. ft.

⁶ And remember, this doesn't apply to trees or canopy in critical areas or their buffers, including the SMP shoreline buffer; those cannot be removed except in limited circumstances.

amount of canopy that can be removed on large lots, which are the ones folks seemed to be most concerned about. Exceptions could also be made for firewise management and pest and disease outbreaks as suggested.

2. What should be the amount of tree canopy that can be removed when associated with development activity (in both WODs)?

The current rules are set up to allow removal of more tree canopy if the action is associated with development so that folks can clear enough to accommodate allowed development (primarily single-family residential and associated development). Currently one can remove up to 35% percent or 5,000 square feet, whichever is greater, and as measured cumulatively, of the existing tree canopy area.

Though the Planning Commission didn't discuss this issue as much, they did seem to want to reduce the removal allowance, especially on larger lots. ReSources/Million Tree Project suggested another tiered approach based on lot size, though this one a bit simpler⁷:

Lot Size	Significant Tree Canopy Removal Allowance (as a percentage of lot size)
0 – 0.99 ac	35%
1 – 1.49 ac	30%
1.5 – 2.49 ac	25%
2.5 – 4.99 ac	20%
≥ 5 ac	15%

It is unclear whether the percentages are what can be removed from the existing tree canopy or total amount that can be removed from the lot. Hence requiring retention of the converse portion of the lot. For example, if the removal allowance is 35%, is 65% required to be tree canopy? This would need clarification.

3. Should the replacement penalty for removing significant trees without a permit be increased?

The Commission seemed to agree that the penalty for removing significant trees without a permit should be increased, but there didn't seem to be a consensus on what it should be. The current penalty is replacing those trees at a 3:1 ratio (3 trees planted for each one removed) and potentially levying a fine. Suggestions included:

- A replacement ratio of 10:1.
- A replacement ratio of 50% of the tree basal area for each tree removed. For this alternative we'd have to define "tree basal area," which simply put is the area of a trunk at diameter at breast height (dbh).
- Requiring that they be replaced by larger native trees and not just saplings or smaller. For this alternative we'd have to define what "larger trees" means, such as a certain diameter at breast height (e.g., 2" dbh or larger). There are companies that can do this (your Chair provided a link to <https://bigtreesupply.com/>), but there are logistical constraints to planting specimen trees and they may not be able to install them just anywhere.
- Increase/codify monetary fines specific to tree removal. Currently under our general enforcement and penalties chapter (WCC Ch. 20.94) violators may be fined \$1,000 for each offense, where each day during which such violation is continued or committed shall constitute a separate offense. However, in our experience this doesn't occur very often, nor is the amount seen as much of a deterrent. This amount could be increased so something more deterrable.

⁷ Again, a simplified version of the table they presented, with lot size gaps eliminated.

- There was also a suggestion that we require that replacement trees (whatever their size or number) be monitored for a certain time period (though this time period was not specified) and again replaced if they didn't survive the monitoring period.

Other ideas that have been raised since the Commission's discussion include:

- *City of Sammamish* – Requires replacement trees of a minimum of 2" dbh for every 1" of removed significant tree, at a mix of at least 70% coniferous trees, with a reduction of the replacement ratio by 50% for every deciduous tree replaced by a coniferous tree.
- *Res/MTP* – Levy a fine of \$120⁸ per removed tree at the 10:1 suggested multiplier into a County tree or reforestation fund. That fund could enable Whatcom County to cost-effectively hire a local non-profit to implement a planting program on public lands within the watershed.

⁸ This per-tree cost includes site preparation, planting a 2-year old native conifer seedling, blue tube protection from gnawing rodents, and periodic monitoring/care for its first few years thereafter. Note that a \$120/removed tree fee pales compared to the timber value a landowner may get for a substantial conifer... \$500 to \$1500/tree depending on size.