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**WHATCOM COUNTY  
PLANNING & DEVELOPMENT SERVICES  
STAFF REPORT**

**I. OVERVIEW**

**File #** PLN2011-00015

**File Name:** Lake Whatcom Watershed Overlay District

**Applicant:** Whatcom County Planning & Development Services

**Requested Action:**

Amend Whatcom County Comprehensive Plan Land Use Chapter policies relating to water quality and stormwater management in the Lake Whatcom Watershed.

**Reason for Request:**

The Washington State Growth Management Hearings Board, in its January 4, 2013 Compliance Order (GMHB No. 11-2-0010c), found that Whatcom County lacked measures to adequately protect the water quality in Lake Whatcom. A new chapter of the Zoning code, (proposed) WCC 20.51, includes water quality measures aimed at reducing nutrients and pathogens from entering Lake Whatcom.

The Land Use Chapter of the Whatcom County Comprehensive Plan includes development regulations by reference. When development regulations that effect "rural character and lifestyle" change (policy 2DD), the Comprehensive Plan must be amended.

**Recommendation:**

Staff recommends approval of the requested Comprehensive Plan text amendment as shown in Exhibit D for the reasons stated in Section III of this report.

**II. BACKGROUND**

In March 2011, Whatcom County Planning and Development Services and Public Works Departments were tasked to respond to a request made by the Washington State Department of Ecology to accelerate the timeline for the development and implementation of regulations addressing phosphorus loading resulting from new development in the Lake Whatcom watershed. The proposed zoning text amendments address the development and implementation of those regulations.

In August of 2012, Whatcom County Ordinance 2012-023 added County development regulations by reference to the rural element section of the Whatcom County Comprehensive Plan. Changes to stormwater management development regulations in Lake Whatcom now require a Comprehensive Plan change.

### **Intent of Proposed Code Changes**

This adds a reference to WCC 20.51 to Comprehensive Plan policy 2DD-2C to "Protect critical areas and surface and groundwater resources."

### **III. ANALYSIS OF THE PROPOSED AMENDMENT**

Pursuant to WCC 2.160.080, the County must find that the following criteria, shown in bold below, are satisfied in order to approve the proposed comprehensive plan amendment.

- A. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.**

#### GMA Goals

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

**Discussion:** Lake Whatcom is the drinking water source for over half of Whatcom County. It had also been listed on the State's 303(d) list for an impaired waterbody. The proposed amendments address land use and stormwater controls for development to address contributions of phosphorus going into the lake and protect water quality.

#### County-Wide Planning Policies

- N. Water Quality and Quantity. Jurisdictions involved in the development of ground and/or surface water management plans shall pursue the adoption and implementation of the plans, as well as coordination and integration of the plans into local comprehensive plans as appropriate. Examples of such plans include the Lake Whatcom Management Plan, WRIA 1 Watershed Management Plan, Shellfish Protection District Plans and drinking water source protection plans.

**Discussion:** Zoning changes reflected in this Comprehensive Plan change are a result of the Lake Whatcom Management Plan, Five Year Work Plan. They are intended to improve the water quality that runs off of developed surfaces prior to entering Lake Whatcom.

- P. Private Property Rights. As required in the Growth Management Act, private property shall not be taken for public use without just compensation having been made. It is not the purpose of this paragraph to expand or reduce the scope of private property already provided in local, state and federal law.

**Discussion:** The referenced development regulations added to the Comprehensive Plan lift certain impervious surface and tree retention restrictions that currently exist for property owners in the watershed. The new requirements lift development restrictions as long as landowners can adequately mitigate the impact.

**B. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.**

Lake Whatcom has been placed on the Federal Clean Water Act 303(d) list for low dissolved oxygen and fecal coliform. The 2013 Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Loads (TMDL) provides estimates of phosphorus loads into the lake, and through modeling, determined development scenarios to meet water quality standards. Low dissolved oxygen levels has been connected to phosphorus loading resulting in sediments entering into Lake Whatcom through land disturbance activities such as development. To comply with the Federal Clean Water Act, Whatcom County must develop a response to address development through the local regulatory process.

**C. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:**

- **The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.**

The proposal will not alter the rate or distribution of growth.

- **The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.**

The proposal will not adversely affect the ability of service providers to supply adequate services.

- **Anticipated impact upon designated agricultural, forest and mineral resource lands.**

The proposal will not adversely impact designated resource lands.

**D. The amendment does not include or facilitate spot zoning.**

The proposal does not involve rezoning.

**E. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.**

The proposal does not involve expanding an urban growth area.

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#### **IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

- 1) This Comprehensive Plan text amendment meets the criteria for approval set out in WCC 2.160.080.
- 2) As required by WCC 2.160.070 environmental review through the State Environmental Policy Act was required. The Whatcom County SEPA official issued a SEPA determination of non-significance (DNS) for this non-project action on November 2, 2011, addendum issued on May 21, 2013.
- 3) The Whatcom County Planning Commission held a public hearing on June 13, 2013 on the proposed Comprehensive Plan text amendment, legal notice published on May 31, 2013.
- 4) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and
- 5) Amendments to the Whatcom County Comprehensive Plan are proposed pursuant to WCC 2.160.010(D), in response to the Washington State Growth Management Hearings Board's January 4, 2013 Compliance Order (GMHB No. 11-2-0010c).
- 6) Whatcom County Comprehensive Plan policy 2DD – 2.C contains the required measures to protect critical areas and surface and groundwater resources. These measures reference Whatcom County code provisions on critical areas and water resources. The proposed amendments to Policy 2DD – 2.C reflect the new stormwater regulations within the Lake Whatcom Watershed by adding reference to WCC 20.51.
- 7) The new chapter protects water resources by requiring new development in the watershed to meet NPDES stormwater requirements and implement permanent best management practices that prevent and/or treat phosphorus to match the natural vegetated condition.
- 8) This amendment is necessary to maintain consistency between the Comprehensive Plan and implementing development regulations.

#### **V. STAFF RECOMMENDATION**

Based on the analysis described above, staff recommends that the planning commission recommend to the County Council approval of the proposed amendment.

#### **Attachments included in this amendment:**

**Exhibit D – Comprehensive Plan Amendments to Policy 2DD – 2**

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## Exhibit D

### **Whatcom County Comprehensive Plan, Chapter 2: Amendments to reflect the addition of the Lake Whatcom Watershed Overlay District. Changes are shown as underlines and strike outs.**

Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

A. ... [not amended]

B. ...

C. Measures to protect critical areas and surface and groundwater resources:

1. ...

2. ...

3. Preserve and protect unique and important water resources through development standards in WCC 20.71 Water Resource Protection Overlay District and WCC 20. 51 Lake Whatcom Watershed Overlay District adopted herein by reference. ÷

4. Protect surface and ground water resources through stormwater management standards established in the County's Development Standards per WCC 20.80.630, WCC 20. 51, ~~and~~ 12.08.035 and referenced in the following Zoning Code provisions, adopted herein by reference:

a. 20.32.656 Drainage, Residential Rural District;

b. 20.34.659 Drainage, Rural Residential-Island District;

c. 20.36.656 Drainage, Rural District;

d. 20.37.655 Drainage, Point Roberts Transitional District;

e. 20.44.652 Drainage, Recreation and Open Space District;

f. 20.59.704 Drainage, Rural General Commercial District;

g. 20.60.655 Drainage, Neighborhood Commercial District;

h. 20.61.704 Drainage, Small Town Commercial District;

i. 20.63.654 Drainage, Tourist Commercial District;

j. 20.64.655 Drainage, Resort Commercial District;

k. 20.67.653 Drainage, General Manufacturing District;

l. 20.69.655 Drainage, Rural Industrial and Manufacturing District.

5. ...

6. ...

7. ...

8. Limit phosphorus entering Lake Whatcom through WCC 20. 51 Lake Whatcom Watershed Overlay District and Lake Whatcom and Lake Samish due to the application of commercial fertilizers to residential lawns and public properties through WCC 16.32, adopted herein by reference.