

**ORDINANCE NO. 2009-06-040**

**AN ORDINANCE RELATING TO LAND USE CONTROLS WITHIN THE LAKE WHATCOM WATERSHED AND ADOPTING LIMITS ON PERMITTED USES, IMPERVIOUS AND PARTIALLY PERVIOUS AREAS, LAND DISTURBING ACTIVITIES AND RELATED WATER QUALITY PROTECTION MEASURES.**

**Whereas**, Lake Whatcom is the City of Bellingham's drinking water reservoir. The City provides water from the lake to more than 75,000 people (as of 2009); and

**Whereas**, in addition to the City of Bellingham water customers, approximately 25,000 other Whatcom County residents obtain their drinking water from Lake Whatcom (as of 2009); and

**Whereas**, in 1998, State Department of Ecology (DOE) listed Lake Whatcom as an impaired water body under section 303(d) of the Federal Clean Water Act for low levels of dissolved oxygen, and in 2004, DOE listed Lake Whatcom as also impaired for total phosphorus, dieldrin, mercury, and total PCBs; and

**Whereas**, for each water body on the list, the DOE must determine how much of those pollutants the water body can process and still meet the state water quality standards. The amount of allowable pollutants is called the total maximum daily load, or TMDL; and

**Whereas**, data shows that Lake Whatcom's water quality has been deteriorating since 1988; and

**Whereas**, continued deterioration in Lake Whatcom's water quality harms the health, safety, and welfare of the public; and

**Whereas**, the increase in phosphorus levels in Lake Whatcom is caused by a variety of factors, including , but not limited to, exposed sediment from construction, lawn fertilizers, automobile exhaust and car washing, failing septic systems, pet and wildlife droppings, and phosphorus-based soaps and detergents; and

**Whereas**, phosphorus is a nutrient that feeds plant and algae growth in Lake Whatcom. When the plants and algae die, bacteria feeding on the dead plants and algae consume oxygen that is dissolved in the lake, leaving less oxygen available for aquatic life and also causing the release of additional phosphorus from lake sediments; and

**Whereas**, researchers have determined that phosphorus levels that exceed state standards in Lake Whatcom are the main cause of declining dissolved oxygen levels in the lake; and

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**Whereas**, the increased phosphorus levels, decreased dissolved oxygen, and other deterioration in the lake's water quality directly impact the City's ability to meet city, state, and federal drinking water standards; and

**Whereas**, increased development in the Lake Whatcom Watershed has contributed to the high levels of phosphorus and low levels of dissolved oxygen in Lake Whatcom; and

**Whereas**, the City has dedicated significant resources toward preventing further deterioration in Lake Whatcom's water quality; and

**Whereas**, many of the City's efforts have focused on reducing development potential in the Lake Whatcom Watershed, as increased development is correlated to increased phosphorus levels in Lake Whatcom; and

**Whereas**, the Lake Whatcom Monitoring 2006/2007 Final Report produced by the Huxley Institute for Watershed Studies and released on April 2, 2008 documents the continued decline in dissolved oxygen levels and increase in algae levels in Lake Whatcom; and

**Whereas**, the DOE Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Loads Water Quality Study Findings (TMDL Study) dated November 2008, quantifies how much phosphorus the lake can process naturally and still supply enough oxygen to meet state water quality standards; and

**Whereas**, the TMDL Study shows that phosphorus-laden stormwater runoff into Lake Whatcom must be decreased and emulate natural forested conditions; and

**Whereas**, the City is legally required to develop an implementation plan showing how it will comply with the Final TMDL Study; and

**Whereas**, an interim emergency ordinance establishing a moratorium on the filing acceptance and processing for divisions of land, building permits and land disturbance activities within the City's portion of the Lake Whatcom Watershed was adopted to limit further deterioration in the Lake Whatcom's water quality while the City evaluated what actions it must take to meet the targets for reducing phosphorus established by the TMDL Study; and

**Whereas**, the City has adopted goals and policies to protect Lake Whatcom, with a primary emphasis of prevention of pollution impacts over treatment strategies; and

**Whereas**, water quality impacts from urban development have been detected in streams, storm drains and near shore areas of Lake Whatcom; and

**Whereas**, development impacts may be reduced by prohibiting certain non-compatible land uses, limiting impervious area, placing seasonal limits on earthwork, minimizing the use of harmful materials and other best management practices; and

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**Whereas**, the current and potential adverse impacts to the public health, safety, and welfare of a further deterioration in Lake Whatcom's water quality justify restrictions in the Lake Whatcom Watershed,

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

Bellingham Municipal Code, Chapter 16.80 is hereby amended to read as follows:

**Section 1.**

**16.80.010 TITLE (no change)**

A new chapter is added to the Bellingham Municipal Code, Chapter 16.80 to read as follows:

This Chapter shall be known as the Lake Whatcom Reservoir Regulatory Chapter.

**16.80.020 AUTHORITY (no change)**

This Chapter is adopted pursuant to the provisions of Article 11 of the Washington State Constitution.

**16.80.030 PURPOSE**

The purposes of this Chapter are to:

- A. Ensure a long-term, sustainable drinking water supply in order to protect public health, safety, and welfare.
- B. Protect and restore the water quality of the Lake Whatcom Reservoir and its tributaries.
- C. Implement management actions that emphasize prevention of water quality impacts over treatment strategies.
- D. Specify development standards that will reduce phosphorus inputs to the lake as a part of the Total Maximum Daily Load (TMDL) Response Plan required by the Washington State Department of Ecology (DOE).
- E. Implement appropriate strategies for both public and private properties to significantly reduce phosphorus inputs.
- F. Provide for a fair, predictable and consistent application of land use regulation that will also recognize the rights of private property owners and Lake Whatcom watershed residents.

**16.80.040 APPLICABILITY**

The Lake Whatcom Reservoir Regulatory Chapter shall apply to all lands, development actions and land use activities within the City limits that drain to Basin One of Lake Whatcom as

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indicated on the attached map (EXHIBIT A). This Chapter does not apply to areas within the watershed that drain to Whatcom Creek (not Basin One).

This Chapter is intended to apply to all lands and development activities subject to City of Bellingham inter-local agreements with Whatcom County and/or utility service contract/extension to lands within the Lake Whatcom watershed.

This Chapter is intended to apply in an advisory capacity to all other existing and new development within the watershed outside City limits to promote, encourage and guide efforts to mitigate, reduce, or eliminate existing conditions and practices which have been determined to be deleterious to the water quality of the Lake Whatcom Reservoir.

If the provisions of this chapter conflict with any other provision in the Bellingham Municipal Code Title 18, or Title 20, the provisions of this chapter shall apply.

#### **16.80.050 DEFINITIONS**

##### **B.**

**1. BMC-** Bellingham Municipal Code

**2. Best Management Practice (BMP)-** Those physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, and have been approved by the State Department of Ecology (DOE) or the City. BMPs are listed and described in the DOE Manual, current edition.

**3. Building Foot Print-** The exterior perimeter of the outermost vertical faces of a building foundation or exterior wall where it meets the ground.

##### **C.**

**1. Clearing-** The removal or destruction, by any means, of vegetation, including trees, shrubs, and/or ground cover, which may include root removal or damage to critical root zones, and disruption/compaction of soil.

**2. Common Ownership-** Property that is held in common by an owner or group of owners. For purposes of this chapter underlying ownership by a common party, parties or related individuals may be construed by the City as a Common Ownership. Proof of separate and unrelated property ownership is the duty of the owner or applicant.

**3. Critical Root Zone—**The area occupied by the root system of a tree and considered a zone of high sensitivity to disturbance such that damage from excavation, soil compaction or other means will likely lead to declining health and/or stability of the tree. The critical root zone is measured as seven times the root flare diameter.

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**D.**

1. **Director** – Means the Director of the Planning and Community Development Department.
2. **Disturbed Soil**- Native soil which is subjected to activity which reduces the inherent soil structure and density, results in compaction, or which re-locates soil through excavation or transport.
3. **DOE Manual**- The Department of Ecology 2005 Stormwater Management Manual for Western Washington, or as modified by the Department of Ecology.

**E.**

1. **Exempt Gardening** - Those gardening and landscape practices that are contained within one or more areas of a property. The total square footage of all areas together shall not exceed 5% of the property or 500 sf whichever is the greater. Exempt gardens shall be maintained and located to prevent runoff resultant from direct precipitation, runoff and irrigation. Exempt Garden areas are not exempt from the prohibition on the use of phosphorus containing products including fertilizers, pesticides or other deleterious materials. Landscape or gardening areas beyond the limit provided herein are considered to be partially pervious surfaces and subject to the limitations and requirements of 16.80 and 15.42 regarding those areas. Exempt Gardens that are not in active use for gardening or landscaping purposes for more than 30 days shall provide for the stabilization of the Exempt Garden by the use of a Type I mulch or other approved method.

**G.**

1. **Grading** – The movement of soil and other earth materials in the form of excavation and / or placement of fill.
2. **Gross Lot Area**- All of the land area within the surveyed perimeter of an individual lot or parcel, including any pipe-stem or joint-access easement area. No portion of any abutting right-of-way may be included, unless vacated by City ordinance to the abutting property. No portion of any lot that has been previously constrained by a conservation easement or deed restriction for the purpose of earning and/or transferring impervious credits as described in BMC 16.80.100 may be included in the gross lot area calculation. For properties within the jurisdiction of the Shoreline Management Program (BMC Title 16.40), 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 impervious/pervious surface calculations.

**H.**

1. **Healthy Soils**—Soils that have all of the following qualities: good structure to absorb water and nutrients and favorable for root development; active microorganisms to break down organic matter and thereby provide good structure for drainage and

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water retention; adequate organic matter to feed the microorganisms that maintain the soil structure; and adequate decomposition of organic matter by the microorganisms.

**I.**

**1. Impervious Area Credit-** Additional impervious area allocated to a lot or parcel as provided in Ord. 2001-01-001.

**2. Impervious Surface-** A hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed gravel surfaces, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

Impervious areas also include:

- Shelters including free standing fabric covered frames such as those intended for garden, tool, vehicle, boat or RV storage.

Impervious surface for the purpose of this specific code does not include:

- Partially pervious surfaces as defined herein.
- Roof eave overhangs of two feet or less;
- Cantilever wall overhangs of one foot or less;
- The open, uncovered use of gravel having an aggregate size of  $\frac{3}{4}$ " or greater;
- Existing natural soil, rock outcrops and geologic strata that have not been filled or compacted and whose ground cover consists of native vegetation.

**3. ISA-Certified Arborist**—An arborist who has a current certification with the International Society of Arboriculture (ISA).

**L.**

**1. Lake Whatcom Watershed Basin One** – Those lands within the Lake Whatcom Watershed that drain into Basin One of Lake Whatcom via natural topography or through manmade conveyance systems. The boundaries of Basin One are shown on the map in EXHIBIT A. Where in conflict, the definition of the watershed boundaries provided herein shall supersede the map.

**2. Lake Whatcom Watershed Reservoir-** All areas which, due to topography, hydrologically drain directly or indirectly into Lake Whatcom, as determined by the City.

**3. Land Disturbing Activity-** Any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to

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clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices or gardening are not generally considered land-disturbing activity with the noted exception of the placement of phosphorous containing materials within the Lake Whatcom Watershed.

**4. Low Impact Development (LID)** - A group of BMPs and land use practices that are aimed at lessening the hydrologic and water quality impacts to the environment from development. LID practices include but are not limited to, reduction in impervious surfaces, infiltration of flow, dispersion of flow, soil remediation and cluster development.

**N.**

**1. Native Vegetation-** Plant species that originated in the lowlands ecoregion of Whatcom and Skagit Counties, and were not introduced, either intentionally or unintentionally, by humans.

**2. Native Vegetation Protection Area (NVPA)** - That area on a site that is in a natural forested condition, with a forest canopy and a multiple understory of plants, all comprised of native vegetation, or that same area restored to the natural forested condition.

**3. Natural Forested Condition**—A vegetated condition mimicking well-established forests and supporting soils found in the lowlands of Whatcom County prior to European settlement. The pre-European-settlement condition is characterized by an extensive canopy cover dominated by native coniferous trees, a significant duff layer, and all distinct plant layers present (tree, shrub, ground cover). The natural forested condition shall function and perform as the "forested condition" in the Department of Ecology Stormwater Manual, current edition.

**4. Natural Grade-** The existing ground, level prior to development, on all sides of a building footprint, at and within the exterior perimeter foundation.

**P.**

**1. Partially Pervious Surfaces-** Non exempt surfaces per BMC 15.42 that cause an increase in stormwater runoff from a natural forested condition but that are not clearly a defined impervious surface. Common surfaces in this category are lawns, landscaping areas, gardens, areas that have been cleared of native vegetation, and non-engineered pervious driveways that have not been proven through engineering analysis as being capable of fully infiltrating the water from a 10 year developed condition storm.

**2. Pervious Surface-** Those areas or surfaces that are not impervious or partially pervious, as defined herein. Forested land is pervious along with other soil areas that

either naturally or through application or best management practices can infiltrate water to avoid downstream impacts.

**3. Pervious System-** A constructed surface or system that allows or causes water to infiltrate into the underlying soil as would occur in a naturally forested condition. Approval of pervious system designs shall be as provided for in BMC 15.42. and shall be approved by the Public Works Department.

**4. Phosphorus-** A nutrient required by all organisms for the basic processes of life, and as a natural element, is found in rocks, soils, and organic material.

**5. Pollution-generating Pervious Surfaces (PGPS)-** Any non-impervious surface subject to the use of pesticides and fertilizers or loss of soil. Typical PGPS include, by way of example, lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

**6. Public Land-** Land owned by the City of Bellingham, Whatcom County or other public entity.

**Q.**

**1. Qualified Professional:** A person with expertise in the pertinent scientific discipline. The qualified professional shall have a minimum of a B.S. or B. A., or equivalent certification, and a minimum of five years of directly related work experience.

**R.**

**1. Redevelopment -** On a site that is already developed (which means 10% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities. For Basin One of the Lake Whatcom Watershed redevelopment also means the creation of or expansion of Partially Pervious Surfaces.

**S.**

**1. SEPA-** State Environmental Policy Act as adopted by the City of Bellingham.

**T.**

**1. Total Maximum Daily Load (TMDL) –** As identified in Section 303(d) of the Federal Clean Water Act are the types and amounts of pollutant loading that a given water body (river, marine water, wetland, stream, or lake) can receive and still meet water quality standards.

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**U.**

1. **Undisturbed Grade-** Natural grade which remains in pre-development configuration during and after development.
2. **Undisturbed Soil-** Native soil which remains in pre-development condition.

**16.80.060 PERMITTED USES**

**A. RESIDENTIAL SINGLE PERMITTED USES**

**Uses Permitted Outright.** No building or land shall be used within an area designated residential single, except as follows:

1. Single Family Dwelling Unit with less than 5,500 square feet of total floor area.
2. Publicly Owned Parks, Trails and Playgrounds.
3. Private Recreation Facilities and/or Common Open Space (when approved by Council as part of a subdivision).
4. Mixed Use (where such a use is specifically listed in a neighborhood land use plan, which has been designated with a "mixed" use qualifier).
5. Public Utilities (when located within a public right of way).
6. Detached Accessory Dwelling Units existing prior to January 1, 1995 (consistent with procedures and requirements outlined in BMC 20.10.035).
7. Confidential Shelters subject to the provisions of BMC 20.10.047.
8. Wireless Communication Facilities, subject to the provisions of BMC 20.13.
9. Co-housing developments subject to the requirements of BMC 20.10.048.
10. No residential single lot or parcel may be partially or entirely cleared of vegetation or used as a soil/earth/rock material fill site without having first obtained a valid building permit subject to this regulatory chapter. Written exemptions may be issued by the Director for minor clearing for land surveying, hazard tree removal, or abatement of noxious weeds. Hazard tree determinations shall be made by an ISA certified arborist; replacement trees shall be required.
11. Animal husbandry including the breeding, rearing or keeping of livestock such as, but not limited to, cattle, bison, horses, mules, ponies, donkeys, llamas, alpacas,

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sheep, goats, pigs or poultry shall not be permitted. Except, properties at which animal husbandry is currently being conducted as of the effective date of this Lake Whatcom Reservoir Regulatory Chapter may be permitted to continue at existing sites, provided the existing use shall not be expanded, enlarged or increased in intensity by any means nor shall animals be replaced due to death of an animal. It shall be the property owner's responsibility to obtain a Certificate of Nonconforming Use and provide evidence that such use was established, including the specific type and quantity of animal(s) as of the effective date of this chapter. The Certificate of Nonconforming Use shall not be transferable to another person or entity.

**B. RESIDENTIAL SINGLE CONDITIONAL USES.** The following may be allowed if approval can be obtained based upon standards and requirements for conditional uses as specified in BMC 20.16. Additionally, all conditional use of property shall be designed to prevent phosphorous or fecal coliform loading to Lake Whatcom as prescribed within a city-adopted Lake Whatcom TMDL Action Plan.

1. School
2. Church
3. Neighborhood Club/Activity Center
4. Nonconforming Use; Signage
5. Public Utilities; other than those described in BMC 16.80.060 A (5).
6. Community Public Facilities, with the exception of publicly owned parks, trails and playgrounds; subject to the provisions of Section 20.16.020 P. (4).
7. Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**C. RESIDENTIAL MULTI PERMITTED USES**

**Uses Permitted Outright.** No building or land shall be used within areas designated RM or RM-Planned except as enumerated below:

1. Single Family Dwelling Unit with less than 5,500 square feet of total floor area.
2. Duplex and/or multiple attached dwelling units such as apartments or townhouses.
3. Publicly Owned Parks, trails and Playgrounds.
4. Private Recreational Facilities, when approved as part of a subdivision.

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5. Public Utilities (when located within a public right of way).
6. Confidential Shelters subject to the provisions of BMC 20.10.047.
7. Wireless Communication Facilities, subject to the provisions of BMC 20.13.
8. Co-housing Developments, subject to the requirements of BMC 20.10.048.

**D. RESIDENTIAL MULTI CONDITIONAL USES.** The following uses may be allowed if approval can be obtained, based upon standards and requirements for conditional uses as specified in BMC 20.16. Additionally, all conditional use of property shall be designed to prevent phosphorous or fecal coliform loading to Lake Whatcom as prescribed within a city-adopted Lake Whatcom TMDL Action Plan.

1. School
2. Church
3. Neighborhood Club/Activity Center
4. Nonconforming Use; Signage
5. Public Utilities, other than those described in BMC 16.80.060 C (5).
6. Day Care
7. Service Care
8. Day Treatment Center
9. Wireless Communication Facilities, subject to the provisions of BMC 20.13.
10. Community Public Facilities, with the exception of publicly owned parks, trails and playgrounds; subject to the provisions of Section 20.16.020 P. (4).

**E. COMMERCIAL USES.** Commercial uses shall be as permitted and specified in the Neighborhood Plan and Zoning Table.

#### **16.80.070 MINIMUM SITE AREA FOR RESIDENTIAL SINGLE DEVELOPMENT**

- A. The minimum site area required for residential single development shall be as stated in the Silver Beach Neighborhood Plan land use classification system under "density", except in the following instances:
1. Development upon legal lots of record recorded prior to February 5, 1973. In which case, the minimum site area shall encompass all adjacent and contiguous lots of record held under common ownership as of the effective date of this Lake Whatcom Reservoir Regulatory Chapter.
  2. Development upon lots of record approved under Title 18, Subdivisions, of the City of Bellingham.
- B. There shall be no exceptions to the requirements of BMC 16.80.070 A.1 and A.2.

#### **16.80.080 DEVELOPMENT STANDARDS FOR RESIDENTIAL SINGLE DEVELOPMENT**

Development standards for residential single development shall be as required under BMC Title 20 except as modified by this regulatory chapter and as stated below.

- A. **Front Yard Setback.** The front yard setback of the main structure for residential single development shall be a minimum of 15' from the front property line of any non-arterial street. The front setback for any portion of a garage facing the street shall be the greater of 15' from the property line or 20' from the back (non-street) side of any sidewalk.
- B. **Parking.** Tandem parking, one vehicle behind the other, shall be permitted to satisfy the requirement for two on site parking spaces.
- C. **Residential Single development** on individual lots shall be required to provide best management practice for stormwater quality treatment in accordance with the DOE Manual in effect at the time of permitting. Residential Single lots that are part of an approved subdivision that has already met this requirement may be exempt, as determined by the Public Works Director.
- D. **Septic systems** are prohibited in the Lake Whatcom Watershed.
- E. **Native Vegetation Protection Area (NVPA) Requirements.**  
The purpose of retaining a NVPA (BMC 16.80.050) is to prevent phosphorus inputs to Lake Whatcom by the interruption, infiltration, and evapotranspiration that forest cover provides. Areas in a natural forested condition (BMC 16.80.050) are generally

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considered the optimum natural condition for minimizing stormwater runoff, including strategies to control the phosphorus leaving the site.

1. NVPA Minimum Area

a. Fully Engineered Method

1) At least 30% of the total site area shall meet the natural forested condition (BMC 16.80.050) and retained as the NVPA.

2) See full requirements in BMC 15.42.060.A.3.

or

b. Forested Method

1) At least 75% of the total site area shall meet the prerequisites for natural forested condition (BMC 16.80.050) and be retained as NVPA.

2) See full requirements in BMC 15.42.060.A.3.b.

2. NVPA Standards

a. A site analysis shall be conducted by an ISA-certified arborist, in conjunction with the stormwater engineer and other professionals prior to site design and building permit application submittal. At a minimum, the analysis shall be done to determine the extent to which the NVPA meets the definition of natural forested condition (BMC 16.80.050).

b. The following criteria shall be included in the site analysis report submitted to the City.

1) The site analysis shall assess the soils for their capacity to support the NVPA and their ability to provide stormwater attenuation.

2) The site analysis shall evaluate the health and long-term viability of the trees within the NVPA, considering potential changes to adjacent properties and the surrounding vicinity that could impact the NVPA.

3) The site analysis shall include recommendations on tree preservation, tree removal to avoid hazards, and tree replacements to promote long-term forest canopy viability based on factors taken into account by the ISA-certified arborist.

4) The site analysis shall include identification and protection of the critical root zone of trees to be saved using the methodology adopted in the City's Parks and Trails Design Standards, # 02950.06 and 02950.07.

5) A site visit prior to activities authorized to occur in the NVPA, such as, but not limited to hazard tree removal, shall be supervised by an ISA-certified

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arborist. The soil profile, including the organic duff layer, within the NVPA shall not be disturbed unless authorized by the City and in accordance with the ISA-certified arborist recommendations. Subgrade soils may not be placed within the NVPA.

- 6) If the site analysis results in a determination that the NVPA does not meet the natural forested condition, a full restoration plan to re-establish the site to a natural forested condition is required for approval prior to building permit submittal. The restoration plan shall include the following:
  - a) The restoration plan shall include all components and specifications necessary to achieve a timely re-establishment of the NVPA to a natural forested condition. The minimum monitoring period shall be five years.
  - b) The restoration plan shall be developed and implemented by an ISA-certified arborist or a professional ecological restoration specialist with at least five years of experience in designing and implementing ecological restoration projects or qualified professional as determined by the Director.
  - c) The restoration plan shall include cost estimates for fully implementing the restoration plan on which a surety can be based.
  - d) A financial surety for all required restoration work shall be submitted and approved prior to building permit issuance.

3. NVPA Permanent Protection. The NVPA shall be protected during construction and in perpetuity by covenants or conservation easements, granted to the City of Bellingham prior to building permit issuance.

#### **16.80.090 IMPERVIOUS AND PARTIALLY PERVIOUS SURFACE LIMITS**

**A. Residential Single Development** – One of two development “methods” can be selected, as described below and further detailed in BMC15.42.060.

**1. Fully Engineered Method**

- a. See full requirements in BMC 15.42.060.A.3. and BMC 15.42.060.B.3.

**or**

**2. Forested Method**

- a. Impervious surface limits not to exceed 2,000 square feet or 20% of the gross lot area, whichever is lesser.
- b. Partially pervious surface limits not to exceed 1,000 square feet or 10% of the gross lot area, whichever is the lesser.

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- c. Together, the total impervious surface and partially pervious surfaces shall not exceed 25% of the gross lot area nor exceed 2,500 square feet.
- d. See full requirements in BMC 15.42.060.A.3.b and BMC 15.42.060.B.3.b.

**B. Re-development of an existing non-conforming lot with regard to impervious and partially pervious surface area limits.** When an owner of a lot that exceeds the impervious limits expressed in BMC 16.80.090 A. desires to remodel or add on to an existing building or impervious area or partially pervious surface, they shall comply with BMC 15.42.060. B.3. or may :

- 1. Add an additional story to any existing portion of the residential building that will not change the footprint, subject to height limitations in BMC Title 20.

**C. Reconstruction of a building that is non-conforming with regard to impervious area limits** is allowed on a like-for-like basis when damaged by earthquake, fire, vehicular collision or similar accidental causes. Owners of non-conforming lots with regard to impervious area may not re-build buildings that have been abandoned or are more than 50% destroyed by reason of neglect unless they conform to impervious limits in BMC 16.80.090 A.

**D. Impervious Limits for Residential Multi and Commercial Development.** The maximum impervious limit for residential multi and commercial development shall be determined during the SEPA review process. The SEPA process shall consider stormwater impacts, ambient water quality, contaminant and nutrient loading and the adopted goals and policies for the Lake Whatcom Watershed in effect at the time of application. All residential multi and commercial development review shall emphasize best management practice prevention efforts over treatment strategies for the minimization of water quality impacts and a finding of fact must be made that no increase in phosphorus or fecal coliform loading will result from the approval of the development

#### **16.80.100 RESTRICTION ON SUBDIVISIONS**

**A.** In addition to the provisions of BMC Title 18, Subdivisions:

- 1. Each newly created lot shall include sufficient gross area to support any existing impervious areas within the lot as required by BMC 16.80.090. Subdivision proposals that are unable to meet this requirement shall be denied.
- 2. No part of any lot or parcel that has been previously approved as an impervious credit as recorded in a Conservation Easement prior to 2009 may be included in the gross area required in BMC 16.80.110A.

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#### **16.80.120 SEASONAL RESTRICTIONS ON LAND DISTURBING ACTIVITIES**

- A.** No land disturbing activity, including but not limited to clearing of vegetation, grading, filling, excavating or trenching of soil or earth materials shall be permitted from October 1<sup>st</sup> through May 31<sup>st</sup>, with the exception of restoration work described in BMC 16.80.080 E. and approved in writing by the Planning and Public Works Directors.
- B.** All bare soil and earth areas in excess of 500 sq. ft. shall be required to be covered during the above listed months with any of the following: 1) Well established grass, sod or a vegetated surface sufficient to prevent the erosion or transport of soil, sediment and silt laden water. No soil or earth may be visible. 2) A minimum of 3" cover of shredded wood chip/fiber, vegetative mulch, hay or straw. 3) Crushed rock or gravel, not less than ¾" in aggregate size and 4" deep. 4) Or other approved coverage method approved in writing by the Planning and Public Works Directors.
- C.** The City may approve emergency exemptions to the seasonal restrictions as may be necessary to protect public health, safety, welfare, the environment and private or public property. Exemptions shall be construed narrowly and may be granted by the Planning and Public Works Directors.

#### **16.80.130 VARIANCES**

Variances from this Chapter shall be considered in accordance with the standards and procedures found in BMC 20.18 - Variance Procedure. In addition to these standards and procedures, all variance applications shall include a finding, prepared by a qualified professional, that no increase in phosphorus or fecal coliform loading will result from the approval of said variance.

#### **16.80.140 APPEALS (no change)**

Appeals of administrative decisions made under this Chapter shall be considered in accordance with the procedures provided in BMC 2.56.

#### **16.80.150 ENFORCEMENT AND PENALTY**

##### **A. Rights of Entry**

- 1. For Permitting or Inspection of Work Conducted Under Permit. Whenever a person applies for a permit or approval under any section of this Chapter, the Director's designee shall have a limited right of entry during the City's normal business hours to conduct studies necessary to determine whether to approve the proposal or to inspect work being conducted under the permit or approval. The property owner's failure to grant permission for the designee to enter the

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property shall be grounds for denial of the permit or issuance of a stop work order.

2. To Investigate Violations and Corrections. The Director's designee is authorized to enter upon property to determine whether the provisions of this Chapter are being obeyed and to make any examinations, surveys, and studies as may be necessary in the performance of his or her duties. The designee shall obtain the property owner's permission prior to entry. If the property owner declines to give permission or cannot be located, the designee shall enter upon the property only in a manner consistent with the constitutions and laws of the United States and the State of Washington. If so required by the constitutions and laws of the United States and the State of Washington, the designee shall apply to a court of competent jurisdiction for a search warrant authorizing access to such property for such purpose.
3. Search Warrants. Both Bellingham Municipal Court and Whatcom County Superior Court are authorized to issue search warrants under this Chapter.

#### **B. Civil Violations and Penalties**

1. Any person who violates any provision of this Chapter shall be subject to a civil infraction not to exceed \$1,500 for each violation. The minimum civil penalty shall be \$100.
2. Each violation of this Chapter shall be a separate offense, and in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct violation.
3. Civil infractions under this Chapter shall be issued and processed in accordance with RCW Chapter 7.80.
4. All civil infractions under this Chapter shall be heard by Municipal Court.

#### **C. Stop Work Orders**

1. Whenever any work or development is being done or use is being conducted contrary to the provisions of this Chapter, the Director's designee may issue a stop work order requiring that all work on the project be stopped or that the use be discontinued.
2. Issuance of a stop work order shall not bar the imposition of a civil or criminal penalty under this chapter or the use of any other provision of this Chapter.

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3. It is unlawful for any person with actual or constructive knowledge of the issuance of a stop work order pursuant to this Chapter to do work or an activity prohibited by the order until the Director's designee has removed or lifted the order and issued written authorization for the work or activity to be continued. Violation of a stop work order shall be a gross misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 and/or imprisonment for not more than one year. Each day or part thereof during which any violation is committed shall constitute a separate offense.
4. The Director's designee may immediately seek issuance of a criminal citation through the Bellingham Police Department where there is a violation of a stop work order. Any violator of a stop work order may be subject to arrest if the violation is committed in the presence of an officer per RCW 10.31.100.

**D. Native Vegetation Protection Area Restoration**

1. In the event of a violation of this Chapter, the Director's designee shall have the authority to order Native Vegetation Protection Area restoration and creation measures for the damaged or destroyed area by the person and/or property owner responsible for the violation. If the responsible person does not complete such measures within a reasonable time following the order, the City may restore the affected Native Vegetation Protection Area to its prior condition for the purpose of offsetting losses sustained as a result of the violation.
2. This restoration requirement is not a penalty, but rather it is a method of undoing the harm done.
3. The person responsible for the violation shall be liable to the City for all costs incurred by the City under this section.

**E. Recovery of Enforcement and Other Costs**

1. In addition to other remedies available under this Chapter, the City may charge any property owner who violates any provision of this Chapter with the costs of enforcement, restoration, abatement, and bringing the violations into compliance.
2. The City may collect these costs by turning the debt over to a collection agency, filing a civil lawsuit, filing a lien against the property, or any other legal means.

**16. 80.160 SEVERABILITY (no change)**

Should any section, clause, designation or provision of this chapter be declared by the Courts to be invalid, the same shall not effect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

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Passed by the Council this 29th day of June 2009.

  
Council President

Approved by me this 1st day of July 2009.

  
Mayor

ATTEST:   
Finance Director

APPROVED AS TO FORM:

  
Office of the City Attorney

Published July 3, 2009

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# EXHIBIT A

