



Planning and Community Development Department
MEMORANDUM

TO: Planning Commissioners
FROM: Steven Sundin, Senior Planner
DATE: April 8, 2024
SUBJECT: Work Session for Silver Beach Rezone and Amendments to BMC 16.80

On March 21, 2024, the Planning Commission held a public hearing and took testimony from interested citizens and City staff on two City initiated items:

1. A proposed rezone (downzone) of 3 multi-family subareas in the Silver Beach Neighborhood (Areas 8, 9, 13) from the current high-density range down to the medium density range; and
2. Proposed revisions to BMC 16.80 that requires certain stormwater management measures be employed on multi-family properties when either new or redevelopment occurs. Redevelopment is when an existing multi-family property proposes to replace or add more than 300 square feet of impervious surfaces. In these instances, the entire site is required to come into compliance with phosphorus reduction measures. This is similar to the phosphorus reduction measures that are in place for single-family properties for new development and redevelopment. Any new development exceeding 300 square feet in size is treated similarly.

At the conclusion of the public testimony the oral comment period was closed but the written comment period was kept open. As of the date of this memo, one comment letter was submitted and that has been provided to the commissioners. It has also been posted on the project webpage located here:

<https://cob.org/project/silver-beach-neighborhood-rezone>

Testimony was followed by a lengthy discussion between City staff and the Planning Commissioners. At the conclusion of the hearing, they made a recommendation to keep the written comment period open and also directed staff to respond to three general themes that emerged from testimony and discussion.

These themes are: 1. Demonstrate why a mandate cannot be instituted on Lake Whatcom watershed properties to provide phosphorus reduction measures – absent any type of development application. 2. Identify other options that might be explored or implemented by the City to address phosphorus reductions – absent any type of development application. 3. Explain why a workforce and/or affordable housing requirement cannot be included into the proposed rezone and rule amendment.

The “Staff Response” is intended to address these themes and will be discussed further at the upcoming work session scheduled for April 11, 2024 at 7 PM in the City Council chambers.

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1. **MANDATE:** The proposed amendments to the regulations in BMC 16.80 would affect three multi-family zones in the Silver Beach Neighborhood; areas 8, 9 and 13. Development and redevelopment that includes more than 300 square feet of new or replaced impervious surfacing would be required to install stormwater treatment mechanisms that would be as protective as those in single family zones including requiring retrofitting of an entire multi-family site.

Cost analysis if stormwater management facilities were to be mandated by the City Council:

This cost analysis includes estimates for mandating single family properties to either install new or retrofit existing stormwater management facilities absent an actual development application. There are 818 single family properties, 18 multifamily properties (multiple properties may make up one multifamily development), and 3 commercial properties in the City of Bellingham's (City) portion of the Lake Whatcom watershed. 41 single family properties have installed phosphorus controls filtering and reducing phosphorus from the entire property. 143 properties have installed voluntary phosphorus limiting projects through the City's Homeowner Incentive Program (HIP). HIP projects typically only reduce phosphorus from portions of properties. 798 properties do not have phosphorus controls.

Depending on lot coverage and site layout, stormwater retrofits (filter installation) for single family residential can range from approximately \$15,000 to approximately \$50,000. Multifamily stormwater retrofits can range from approximately \$100,000 to \$1 million depending on property size and site layout. (These estimates are based on HIP projects and associated expenditures and may not reflect actual costs.)

Part of the Lake Whatcom legally required Total Maximum Daily Load (TMDL) strategy is land preservation to reduce phosphorus sources and stormwater treatment reducing the amount of phosphorus through filtering stormwater. This is referred to as the 'forested method.' This is provided in the City's existing Lake Whatcom development and redevelopment regulations which requires:

- A licensed arborist to design a planting plan that mimics a pacific northwest lowland forest; Installation of the plants (trees, shrubs and groundcover);
- Secure a 5-year financial surety to cover the replacement cost of plants that die;
- Five years of inspections and inspection reports submitted to the City for review; and
- The planted area must be a minimum of 30% of a property and is protected in perpetuity by placing it into a conservation easement.

This 30% forested area has been termed the Native Vegetation Protection Area (NVPA).

Any areas outside of the NVPA would require phosphorus stormwater filtering. Most properties in the City's portion of the Lake Whatcom watershed were developed prior to the City adopting extra ordinary development regulations for the Lake Whatcom watershed and many do not have the minimum 30% of open space that could be converted to a NVPA. A mandate would require the demolition and removal of improvements to facilitate the 30% NVPA. This would be an additional cost above the estimated \$15,000 to \$50,000 for stormwater filtering. Also, these properties were not required to consider phosphorus and stormwater management as part of their original site design. This makes the collection and

transport of stormwater to a filtering system onsite difficult without the support of costly pumps that require significant energy usage and require ongoing maintenance.

New and re-development projects benefit from the ability to have the site, not the improvements, direct the stormwater management strategies.

EXAMPLE: A new lawn can be designed and located so that runoff can easily be collected and treated, or an engineered stormwater filter can be designed and constructed so that it can easily collect and treat stormwater without pumps and additional plumbing.

Having property owners install phosphorus management on their property, at their cost, is a strategy to have private property owners in the Lake Whatcom watershed pay for the impacts from their property and not have stormwater utility rate payers pay the full financial burden of the TMDL which is estimated to cost the City \$50 million over 50 years. This cost estimate is from 2016 and is now substantially higher due to inflationary factors and increased labor costs. Current cost estimates have not been determined.

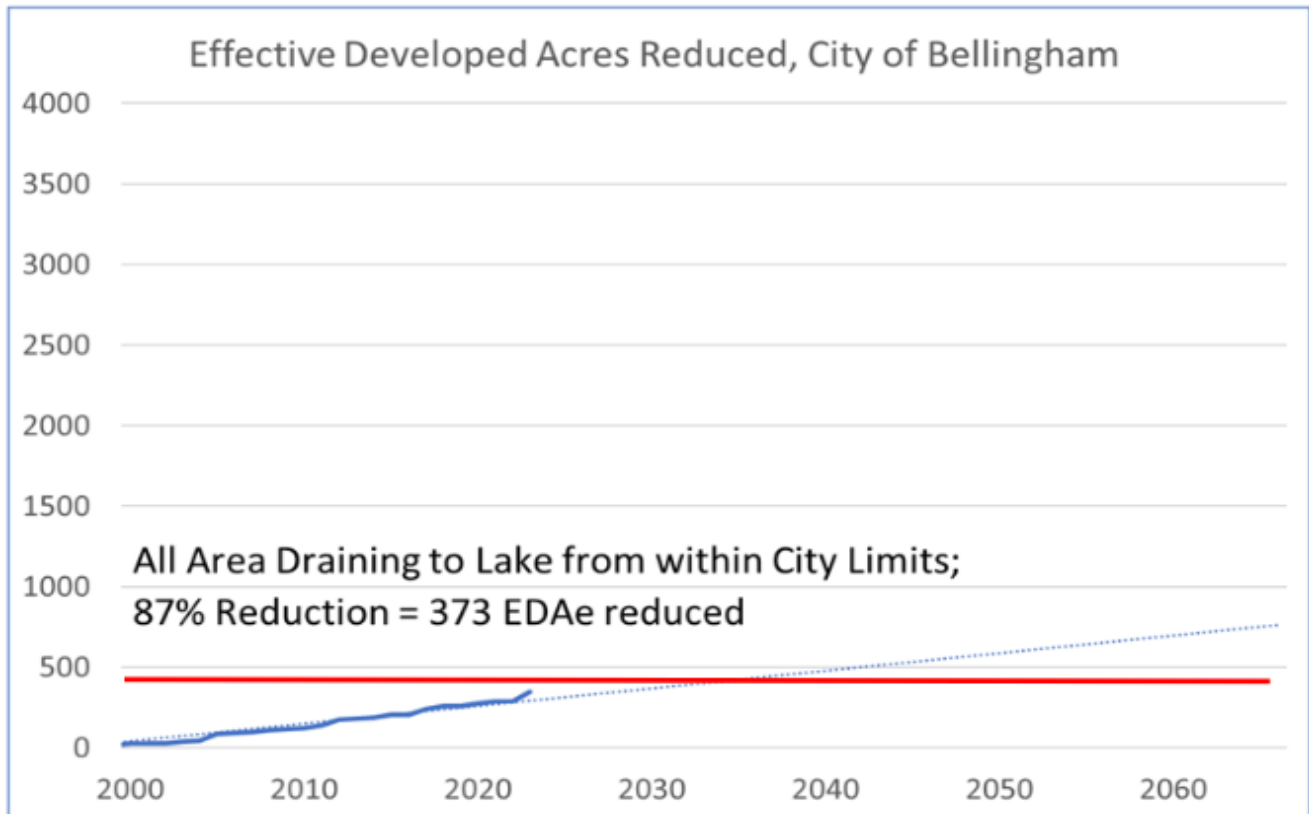
EXAMPLE: The Old Mill Village site is approximately 35.41 acres with approximately 19.75 acres of existing forested area and approximately 15.7 acres of developed area. Reforesting the lawn areas and providing stormwater treatment for phosphorus removal from the developed acres (per the proposed amendments) could result in effectively removing approximately 13 developed acres. Following these improvements the property would then act like only 2.7 developed acres, instead of 15.7 developed acres, and the rest of the site would meet the natural forested condition. The estimated *minimum* cost to install these improvements would be approximately \$1,043,000 - \$1,600,000. The cost range comes from the uncertainty of the exact work needed to collect and rout stormwater to a filter. Due to the flat topography of the site, it's likely that multiple stormwater filtering facilities may be needed as moving stormwater around the site before discharge may be challenging.

The City of Bellingham spends approximately \$5 million per year on the Lake Whatcom Management Program. The Lake Whatcom Cooperative Management group, consisting of the City of Bellingham, Whatcom County, and the Lake Whatcom Water and Sewer District spend approximately \$10 million per year on implementing the various elements in Lake Whatcom Management Program. If the City paid for the NVPA and stormwater filtering, City stormwater utility rate payers would have to cover the approximate minimum of \$1.6 million or a 32% program cost increase for the year. This cost increase does not include inspections and maintenance of the private stormwater facilities.

EXAMPLE: All properties within Area 8 are fully developed and together they comprise approximately 3.5 acres of developed area.

If the proposed stormwater requirements were adopted and redevelopment occurred, (more than 300 square feet of impervious surface replaced or added) approximately 2.8 effective developed acres would be added to the total of effective developed acres removed in the watershed.

On individual multi-family private properties, the cost to the City could range anywhere from a minimum of approximately \$50,000 up towards \$150,000. This significant range is due to the fact that treatment facilities would be difficult to place amongst the existing buildings and other structures and would require new piping to connect the multiple lots or, would require multiple facilities. With design fees and life-cycle maintenance, we would expect the total investment to be at least \$12,000 per year, in perpetuity. This does NOT include the additional considerations for shoreline permitting and construction of such facilities that may occur in steeper areas with high groundwater tables.



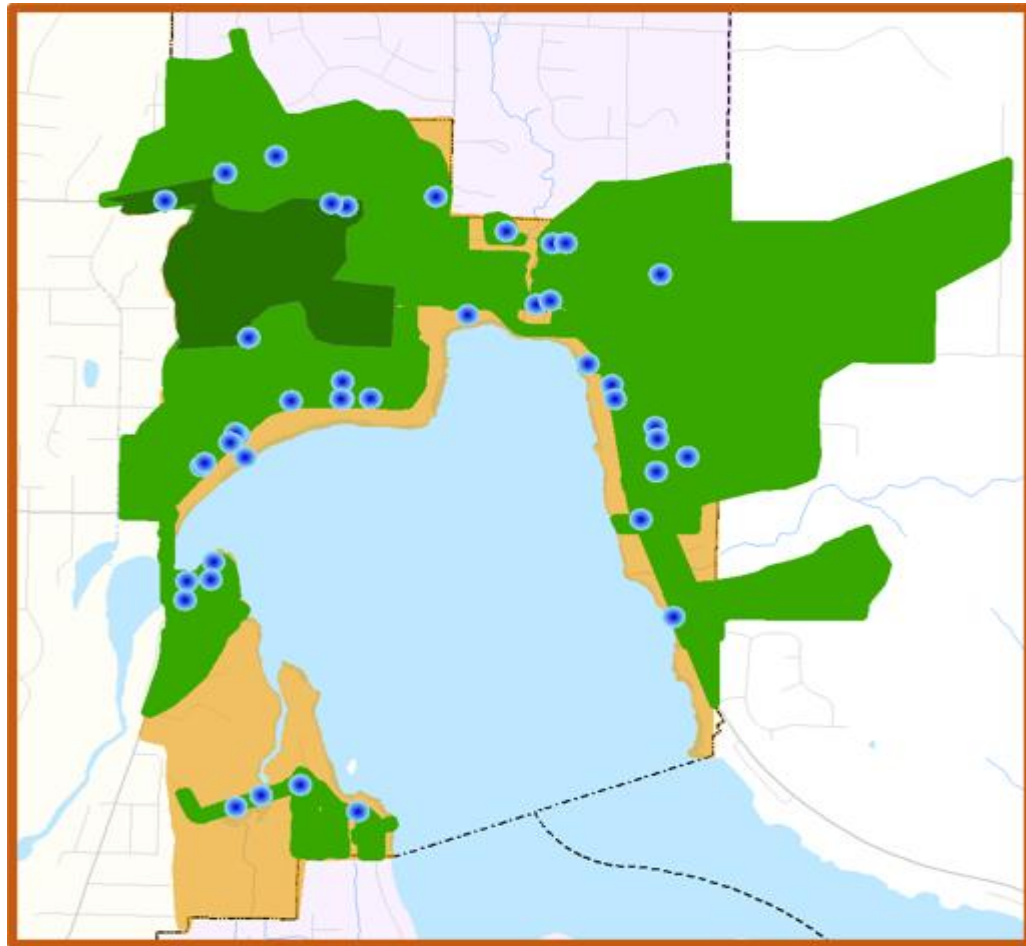
The City is currently reforesting land and treating stormwater in order to eliminate the impact of 373 developed acres. (Blue line on the graph above.) The TMDL requires the City to eliminate approximately 430 developed acres – within the City limits - in total. (Red line on the graph above.) These acres currently drain to the Lake through City owned properties or City stormwater infrastructure.

If the removal of 13 developed acres at Old Mill Village were combined with nearly 3 acres in Area 8 the total effective development acres removed approaches 390. This represents a 3% increase in development acres removed which moves the City closer to our target of 430 effective development acres removed – as established in the TMDL.

The lighter green areas drain to City owned treatment facilities, which are represented by blue dots on the map below. The lighter green areas include public areas; the rights-of-way/roadways, and private properties that may contribute to it. (Private treatment systems are not shown on the map.) The dark green area is forest that also drains to City treatment facilities. Over 90% of runoff to City stormwater facilities is treated.

Shoreline properties are privately owned with the exception of Bloedel Donovan Park, a small DNR property where Silver Beach Creek enters the Lake near Britton Road and a small

City owned property at the foot of Donald Avenue. These majority of shoreline properties, shown in brown are privately owned properties. These private properties, between North Shore Drive and Lake Whatcom are the most difficult to address. Please note that areas 8 and 13 are both in brown shaded areas.



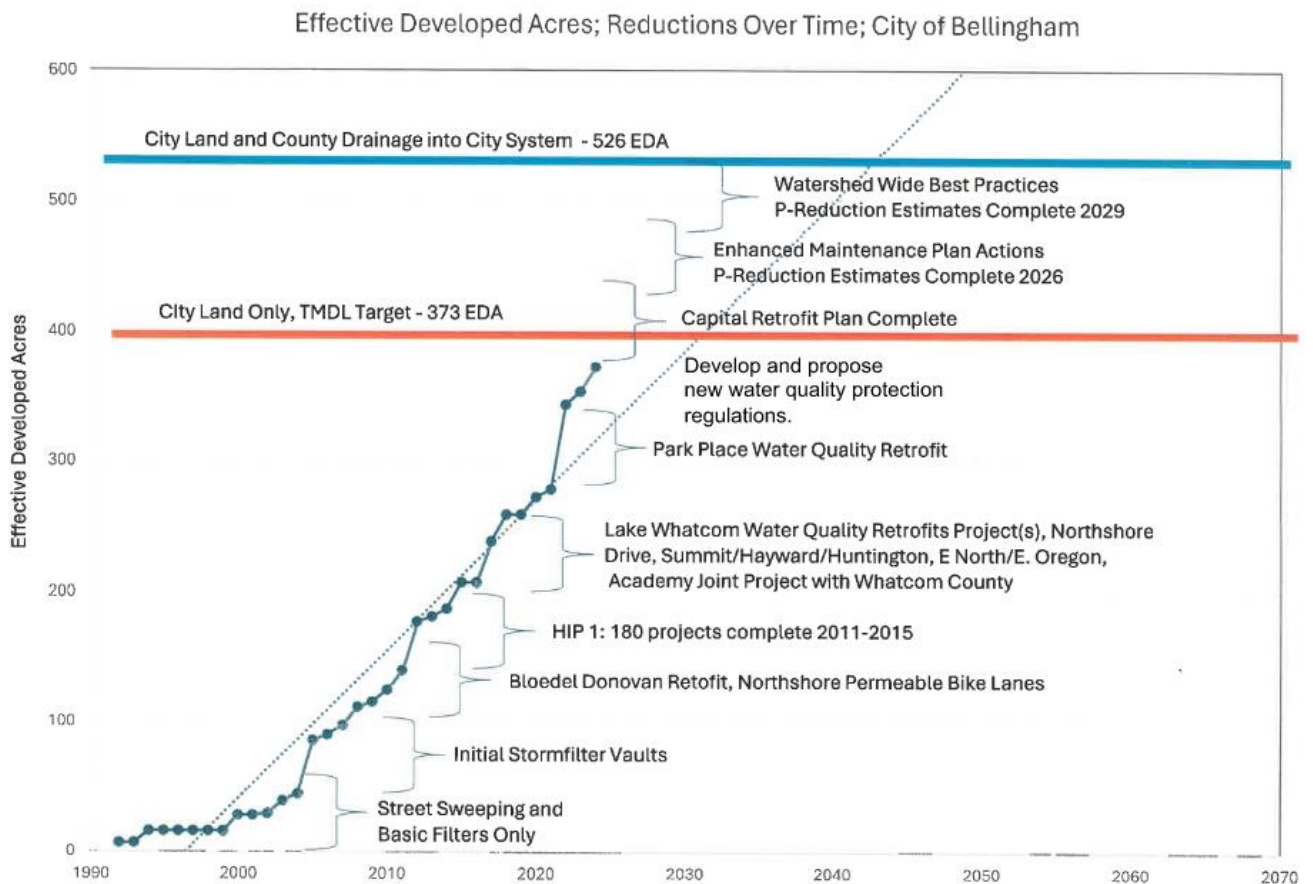
2. **OPTIONS:** First, according to our requirements for phosphorus reduction in the 2016 TMDL, approximately 430 acres of land within the City’s portion of the Lake Whatcom watershed need to be “removed” to reach our target. These are called “Effective Developed Acres.”

In order to accomplish this, the City (and the County) continue to exercise their available options by continuing to implement the programs that have been established in the Lake Whatcom Management Program. The Lake Whatcom Management Program (LWMP) includes 10 program areas. Five of which were highlighted at the Joint City and County presentation on March 27, 2024, in the City Council chambers. These five program areas are: land preservation, stormwater, land use, aquatic invasive species and education and engagement. Objectives within these program areas include:

- a. Continuing the land acquisition program for purchasing and preserving undeveloped properties;
- b. Proposing regulations that limit the amount of impervious surface on individual multi-family properties;
- c. Proposing regulations that require phosphorus reducing stormwater management mechanisms on individual multi-family properties;
- d. Proposing that individual multi-family properties retrofit existing stormwater facilities if more than 300 square feet of new or replaced impervious surface is installed

- e. Continue our robust maintenance program of City facilities and street sweeping our right-of-ways;
- f. Constructing additional capital facilities in the right-of-way or on City owned properties.
- g. Continue to operate the Aquatic Invasive Species inspection stations; and
- h. Continue to promote the homeowner incentive program (HIP) in which the City assists in the design and a certain percentage of funding for private property owners in the Lake Whatcom watershed who desire to establish a Puget Sound lowland forest on their property; and

Items b-d, above, are included in the proposed amendments to BMC 16.80. This means that private development would finance phosphorus reducing stormwater management mechanisms on private property should development or redevelopment occur. Items a and e-h are ongoing efforts within the multi-pronged approach that is laid out in the LWMP which was developed to protect and improve water quality in Lake Whatcom. The City continues to analyze future siting of capital facilities aimed at phosphorus reductions. However, City capital facilities have become harder to site because one, the City has already installed such facilities in most of the public areas available to perform this function and two, the areas that are available have minimal / negligible effect on improving water quality. Here is a graph showing how City actions over time have removed effective development acres (and phosphorous) from the Lake Whatcom:



Please recall that at the November 20, 2023, City Council meeting, the Council unanimously approved to extend the moratorium to July 10, 2024, to allow for additional staff analysis. The Council also directed staff to analyze the medium and low-density ranges for the multi-family zones in the Silver Beach Neighborhood. The Council did not direct staff to analyze or draft a mandate that would require the installation of stormwater treatment mechanisms, hence, that is not included in the proposed rezone or amendments to BMC 16.80.

3. WORKFORCE HOUSING AND AFFORDABILITY:

The City is currently partnering with Whatcom Housing Alliance on the evaluation of the Multi-Family Tax Exemption (MFTE) program. Since its initial implementation in 1999, and its expansion in 2010, the City provided both an 8-year and 12-year option. The 8-year option provides property tax exemption for owners that agree to build multi-family units within targeted geographic areas. (Downtown and within four other Urban Villages, Samish Way, Fountain District, Fairhaven and Barkley Village) The 12-year tax exemption option is available if 20 percent of the units are made available to residents that make 60 percent of area median income or below. Of note, only the 12-year option is currently offered in the Fairhaven and Barkley urban villages.

To date, property owners with qualifying projects have only pursued the 8-year option. No property owners have pursued the 12-year option (the first project has been proposed, but yet to be approved). Consequently, the City's evaluation of the MFTE program is looking what factors are contributing to this set of circumstances and how can the program be modified to get broader utilization. While evaluation of the targeted geographic areas is one component of the analysis being performed, it should be noted that the existing program does not include the Silver Beach neighborhood.

Once the evaluation of the MFTE program is complete the City will be issuing a request for proposals to analyze inclusionary zoning. Inclusionary Zoning (IZ) is a regulatory tool that can be used to help with the production of Affordable Housing units. While IZ programs can vary in complexity there are generally several key considerations that must be determined before an ordinance can be adopted. Included in those key considerations are whether the program should be voluntary or mandatory. Voluntary programs often utilize incentives to off-set the cost of providing Affordable units, such as additional density, building height, floor area ratios, or they offer relaxation in other regulations such as parking, permitting fees, taxes, review timelines, etc.

Mandatory programs require developers to factor Affordable units into the scope of their project by either constructing units within the proposed building, constructing units in another building, donating land, or paying an in-lieu fee.

Regardless of whether a voluntary or mandatory option is chosen the IZ program must be calibrated to the local economic market-place in order to be effective. Another key consideration that often must be considered before implementing an IZ program is whether the program should be applied to all areas of the city or to targeted geographic areas (such as the MFTE program). If identified and balanced correctly IZ programs can and often do result in the production of Affordable Housing units. If an IZ program is not appropriately calibrated to the market, or the market's economic conditions change, then IZ programs can limit development and be a hinderance to housing production.

4. OVERALL PROCESS:

If the proposed amendments are adopted by the City Council and a land use development application is filed with the City's Planning and Community Development Department, here is the process generally, that would take place:

- A. A pre-application meeting with City staff from the Planning, Building Services, Parks, Public Works and Fire Departments would be held. At the conclusion of the meeting the applicant would be provided with a “Final Comment Letter” that specifies the various development regulations that would be applicable to the proposal.
- B. A pre-application neighborhood neighborhood meeting would be held. This is the applicant’s meeting. They are required to send out notice to property owner within 500-feet of the subject property. At this meeting, they introduce the project and answer questions from the general public. A representative from the City Planning Department is also in attendance to answer questions about the process and about the project, generally. After the meeting concludes, the applicant may make adjustments to the proposal and gather all the materials that are required to submit a formal land use application.
- C. An applicant would submit a land use application including all of the supporting materials necessary to review and analyze a project. Within the Lake Whatcom watershed these include but may not be limited to; site layout and building design, preliminary stormwater report and stormwater management site plan, a critical area report and mitigation plan, an arborist report and planting plan for a Native Vegetation Growth Protection Area, a cultural resource report and a SEPA checklist – depending on the overall scope of the project.
- D. City staff would make an initial determination as to whether or not the required information has been provided by the applicant or, if not, request the additional information needed to continue review.
- E. Once determined that the required information is included in the application, the PCDD sends out a notice of complete application that includes a 14-day comment period. (30-days if there is work proposed within the shoreline jurisdiction of Lake Whatcom.
- F. Once the comment period closes, City staff continue to review the proposal and then issue a SEPA determination. A SEPA determination is provided along with, for larger projects, an additional 14-day comment period. The SEPA determination is provided to those who commented initially and other state and federal agencies that have may have permitting authority over a specific proposal.
- G. Once the SEPA process has concluded City staff draft, review and issue a land use decision with conditions. Parties of record are provided with a notice of decision on the proposal. The land use decision including the opportunity for appeal is specified.
- H. If no appeal is filed then a project proponent would submit the necessary development permit applications, such as building permits which would be similarly reviewed by the City, approve and issued.
- I The proposal can now be implemented subject to all the conditions established in said permits and would additionally be subject to only conducting site-work in the Lake Whatcom watershed during the seasonal restriction period; June 1 to October 1.