

# Exhibit A

**EXHIBIT A: PROPOSED AMENDMENTS TO THE WHATCOM COUNTY CODE TO TRANSFER REGULATORY JURISDICTION OF CERTAIN FOREST PRACTICES FROM THE DEPARTMENT OF NATURAL RESOURCES TO WHATCOM COUNTY**

**Title 20 ZONING**

**Chapter 20.76 Forest Practices**

Sections:

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<u>20.76.220</u>	<u>Six-year development moratorium</u>

**20.76.010 Authority and purpose**

This chapter is established pursuant to the Forest Practices Act, chapter 76.09 RCW, which provides for the County's regulation and enforcement of certain forest practices on lands intended for conversion to non-forestry uses within the County's jurisdictional boundaries. This chapter also sets forth procedures and criteria for the Department of Planning and Development Services (Department) review of Conversion Option Harvest Plans (COHPs) and the Department's imposition of the six-year development moratorium and subsequent development requirements described in WCC 20.76.220.

**20.76.020 Definitions**

The definitions contained in RCW 76.09.020 of the Forest Practices Act and in WAC 222-16-010 and 222-16-050 of the Forest Practice Act's implementing regulations shall apply to all terms used in this chapter, provided that the definitions contained in Whatcom County Code shall be applicable where not in conflict with the Forest Practices Act and its implementing regulations.

**20.76.030 Applicability**

This chapter shall take effect on August 1, 2022. This chapter applies to the following:

(1) The following forest practices on lands within the County's jurisdiction:

- (a) Forest practices classified by WAC 222-16-050 as Class I, II, III, IV-General, and IV-Special that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forestland equal to or greater than 20 acres where the applicant provides to the Department and the Washington State Department of Natural Resources (DNR)

- a written statement of intent, signed by the forest landowner(s), not to convert to a use other than growing commercial timber for 10 years. This statement must be accompanied by either:
- (i) A written forest management plan acceptable to the Department; or
  - (ii) Documentation that the land is enrolled as forestland of long-term commercial significance under the provisions of RCW 84.33;
- (b) Forest practices classified by WAC 222-16-050 as Class IV-General, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both, on:
- (i) Forestlands that are being converted to another use; or
  - (ii) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.
- (2) Review of conversion option harvest plans described in WCC 20.76.110
- (3) Imposition of the six-year development moratorium and subsequent development requirements described in WCC 20.76.220.

**20.76.040 Exempt activities**

- (1) The provisions of this chapter shall not apply to the following Class I Forest Practices.
- (a) Culture and harvest of Christmas trees and seedlings.
  - (b) Road maintenance, including placement of new gravel, within the roadway. Roadway is defined by the Whatcom County Public Works Development Standards, Chapter 5 - Road Standards.
  - (c) Native tree planting and seeding.
  - (d) Loading and hauling timber from landings or decks.
  - (e) Emergency fire control and suppression.
  - (f) Forestry research studies and evaluation tests by an established research organization.

**20.76.050 Relationship to other regulatory requirements**

- (1) Compliance with federal and state regulations. Applications filed pursuant to this chapter shall comply with all applicable federal and state regulations, including but not limited to RCW 76.09 and WAC 222. Where other agencies or entities have concurrent jurisdiction over the proposed forest practice or development, and the Director determines that the permit conditions imposed by such agencies or entities satisfy the requirements of this chapter, then those permit conditions may be relied upon for the purpose of determining compliance with the requirements of this chapter.
- (2) Compliance with other provisions of the Whatcom County Code. Applications and plans filed pursuant to this chapter shall comply with all applicable provisions of the Whatcom County Code.

**20.76.060 Administration and enforcement**

- (1) Permit, recording, and review fees associated with this chapter shall be in accordance with the current Whatcom County Council's adopted Unified Fee Schedule.
- (2) The enforcement of this chapter shall be under WCC 20.94.

**20.76.070 Right of entry**

By submitting an application under this chapter, the applicant consents to entry upon the subject site by the Director during regular business hours for the purposes of making reasonable inspections, to verify

information provided by the applicant, and to verify that work is being performed in accordance with the approved plans and permits and the requirements of this chapter.

**20.76.080 Notification to the Washington State Department of Revenue**

The Director shall notify the Washington State Department of Revenue (DOR) within 60 days of approving a forest practices permit issued under chapter 20.80. Such notification shall include the following information:

- (1) Landowner's legal name, address, and telephone number;
- (2) Decision date of permit; and
- (3) Parcel number and legal description (section, township, and range) of the subject site.

**20.76.100 Forest Practices - Permit Required.**

- (1) An approved forest practices permit shall be obtained from the Department prior to conducting any forest practices described in WCC 20.76.030(1).
- (2) The Department shall process a forest practices permit application according to the procedures for a Type 1 administrative decision under WCC 22.05 unless submitted concurrently with a Type 2 application under WCC 22.05, in which case the forest practices permit application shall be consolidated and processed as a Type 2 permit application. Applications for a forest practices permit shall be submitted and reviewed in compliance with the requirements in WCC 22.05 and may be processed concurrently with other development applications.
- (3) The Department shall not issue a forest practices permit if the subject site has been subject to a notice of conversion to nonforestry use under RCW 76.09.060 during the six-year period prior to the submission of the permit application.

**20.76.110 Conversion Option Harvest Plan (COHP)**

- (1) Optional process. As an alternative to applying for a forest practices permit under WCC 20.76.100, an applicant may choose to submit an application for a conversion option harvest plan (COHP), as defined in WCC 20.97.086, that, if approved, may preserve the landowner's option to convert forest land to a non-commercial forest use without subjecting the site to the six-year development moratorium in WCC 20.76.220.
- (2) General requirements for a COHP approval to the Department.
  - (a) An application for a COHP approval shall be submitted in compliance with the submittal requirements in WCC 22.05.
  - (b) An application for COHP approval shall be submitted prior to submittal of an application for development, and prior to conducting forest practices on the subject site.
  - (c) The Department shall review applications for COHP approvals for consistency with applicable County regulations and policies, and may inspect the subject site prior to rendering a decision.
- (3) COHP Review and Approval Process
  - (a) The Department shall review applications for COHP approvals for consistency with applicable County regulations and policies, and may inspect the subject site prior to rendering a decision.
  - (b) The applicant has the burden of proving that the application for COHP approval complies with all applicable laws.

- (c) The Department may approve, approve with conditions, or deny an application for a COHP approval.
- (d) The Department's approval of a COHP shall not release the applicant from the requirement to reforest a site under chapter 222-34 WAC.
- (e) An appeal of the Department's decision on an application for COHP approval must state the basis for the appeal and be submitted in writing to the Director within 30 days of the Department's decision date. The Director shall issue a written decision on the appeal to the landowner and to the appellant within 30 calendar days of receipt of the appeal.
- (4) Recording obligation. After the Department has approved the COHP, the applicant shall record it with the County Auditor. The COHP shall be binding upon the landowner and the landowner's successors in interest.
- (5) Duration of a COHP approved by the Department. The Department-approved COHP shall be valid for a period of two years from its approval date.

**20.76.220 Six-year development moratorium**

- (1) Applicability. The Department shall impose a six-year development moratorium on a site when any of the following occurs:
  - (a) The Department receives a notice of conversion to nonforestry uses under RCW 76.09.060 from DNR.
  - (b) The Department discovers a violation of a forest practices permit.
  - (c) The Department becomes aware that a landowner converted their land to a nonforestry use without the proper permits or approvals that are required under this chapter.
  - (d) The Department discovers that any condition of an approved conversion option harvest plan (COHP) has been violated.
    - (i) For the purposes of this subsection, a violation of a COHP means exceeding the conditions of the COHP such as, but not limited to:
      - (A) Enlarging the area approved to be harvested, or increasing the volume of timber approved to be harvested; or
      - (B) Engaging in forest practices within a critical area or a critical area buffer as defined in WCC 16.16.
    - (ii) If the Department discovers that any condition of a COHP is violated, denial of applications for permits or approvals shall be recorded from the date the associated forest practice approval became effective.
- (2) Duration of the six-year development moratorium. The Department must deny all applications for permits or approvals:
  - (a) For a period of six years from the approval date of the applicable forest practices application/notification or the date that the Department was made aware of the harvest activities; or
  - (b) Until the following activities are completed for the land that is the subject of the notice of conversion:
    - (i) Full compliance with the State Environmental Policy Act (RCW 43.21C), if applicable;
    - (ii) The DNR has notified the Department that any outstanding final orders or decisions it has issued concerning the site have been resolved.

- (iii) The Department determines that the subject site is in full compliance with the Whatcom County Code. If full compliance is not found, the landowner must submit to the Department a mitigation plan to address the violations. Required mitigation plans must be prepared by the landowner and approved by the Department. Once approved, the mitigation plan must be implemented by the landowner.
- (3) Notification to the landowner of imposition of the six-year development moratorium.
- (a) The Department shall notify the landowner when the following occurs:
- (i) The Department receives a notice of conversion to a nonforestry use from the DNR for the subject site; or
- (ii) The Department has identified a violation of this chapter as described in subsection (1) of this section.
- (b) The notification shall contain the following:
- (i) Name of landowner and tax parcel number;
- (ii) Basis for the moratorium;
- (iii) The effective date of the moratorium; and
- (iv) Description of the appeal process.
- (4) Extent of application of the six-year development moratorium. The six-year development moratorium imposed by the Department shall apply to an entire site, unless the applicant can demonstrate that the area subject to forest practices activities complies with all provisions of the Whatcom County Code. Where such compliance is demonstrated, the moratorium shall only apply to those portions of the site that were subject to the actions described in subsection (1) of this section.
- (5) Appeals.
- (a) Appeals of a notice of conversion to a nonforestry use issued by the DNR can be appealed to the Washington State Pollution Control Hearings Board under- RCW 43.21B.
- (b) Appeals of the Department's imposition of the six-year development moratorium resulting from actions described in subsections (1)(b), (c), (d) of this section can be appealed under the procedures in WCC 22.05.
- (6) Recording of the six-year development moratorium. The Department shall record the six-year development moratorium with the County Auditor after the appeal deadline to challenge the moratorium has expired, or after all appeals have been resolved if any appeals have been filed.

## **Chapter 20.20 Urban Residential (UR) District**

### **20.20.200 Prohibited uses.**

...

**20.20.207** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.20.208** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.22 Urban Residential - Medium Density (URM) District**

### **20.22.200 Prohibited uses.**

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20.22.207 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.22.208 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.24 Urban Residential - Mixed (UR-MX) District**

### **20.24.200 Prohibited uses.**

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20.24.207 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.24.208 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.32 Residential Rural (RR) District**

### **20.32.200 Prohibited uses.**

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20.32.207 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.32.208 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.36 Rural (R) District**

### **20.36.200 Prohibited uses.**

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20.36.203 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.36.204 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.40 Agriculture (AG) District**

### **20.40.200 Prohibited uses.**

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**20.40.203** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.40.204** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.42 Rural Forestry (RF) District**

### **20.42.200 Prohibited uses.**

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**20.42.203** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.42.204** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.44 Recreation and Open Space (ROS) District**

### **20.44.200 Prohibited uses.**

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**20.44.203** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.44.204** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.59 Rural General Commercial (RGC) District**

### **20.59.250 Prohibited uses.**

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**20.59.253** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.



20.59.254 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.60 Neighborhood Commercial Center (NC) District**

**20.60.200 Prohibited uses.**

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20.60.203 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.60.204 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.61 Small Town Commercial (STC) District**

**20.61.200 Prohibited uses.**

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20.61.207 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.61.208 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.62 General Commercial (GC) District**

**20.62.200 Prohibited uses.**

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20.62.203 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.62.204 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.63 Tourist Commercial (TC) District**

**20.63.200 Prohibited uses.**

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**20.63.203** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.63.204** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.64 Resort Commercial (RC) District**

**20.64.200 Prohibited uses.**

...

**20.64.207** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.64.208** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.66 Light Impact Industrial (LII) District**

**20.66.200 Prohibited uses.**

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**20.66.204** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.66.205** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.67 General Manufacturing (GM) District**

**20.67.200 Prohibited uses.**

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**20.67.203** Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

**20.67.204** Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.68 Heavy Impact Industrial (HI) District**

### **20.68.200 Prohibited uses.**

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20.68.204 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.68.205 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.69 Rural Industrial and Manufacturing (RIM) District**

### **20.69.200 Prohibited uses.**

...

20.69.203 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.69.204 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.70 Airport Operations (AO) District**

### **20.70.200 Prohibited uses.**

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20.70.210 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV - Special Forest Practices, when located within an Urban Growth Area.

20.70.211 Slash burning, when located within an Urban Growth Area.

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## **Chapter 20.80 Supplementary Requirements**

**20.80.730 Land clearing.**

**20.80.731 Purpose.**

The purpose of this section is to avoid or minimize impacts of clearing activity to adjacent and downstream public or private property and to protect receiving water bodies. The regulations contained in this section implement this goal by providing a reasonable standard for clearing land in Whatcom

County. It is also the purpose of this section to establish a eCounty review process for larger clearing projects to ensure these regulations are met. ~~It is also the purpose of this section to provide procedures and review criteria for clearing activity in connection with conversion option harvest plans and implementing, exempting and removing development moratoria.~~

**20.80.732 Applicability.**

All clearing activities including clearing of forest land, ~~Class IV General forest practices applications, nonconversion forest practice applications with approved conversion option harvest plans (COHPs), and associated development moratoria~~ shall be subject to the provisions of the land clearing section unless specifically exempted in WCC 20.80.733. No clearing activity approval shall be issued by the eCounty prior to meeting the requirements set forth in ~~the Whatcom County Development Standards~~ this chapter and only when in compliance with federal, state and local regulations, including, but not limited to WCC Chapter 16.16, ~~the (Critical Areas) Ordinance~~, WCC Chapter 16.08 ~~(the Whatcom County SEPA Ordinance)~~, Washington State Forest Practices pursuant to WAC Title 222, forest practices pursuant to WCC 20.76, and WCC Title 23 ~~the (Shoreline Management Program)~~. Administrative provisions and technical standards for implementing these regulations shall be contained in WCC 22.05 ~~the Whatcom County Development Standards, Chapter 3, Land Clearing~~.

**20.80.733 Exemptions.**

Any clearing activity that meets the following criteria shall be exempt from the clearing requirements of this chapter:

- (1) The proposed activity does not involve the conversion of forest land, is outside critical areas and associated buffers, and is exclusively related to agriculture as defined in this ~~€~~Title; or
- (2) The proposed activity consists of nonconversion forest practices regulated by the DNR, ~~other than Class IV General forest practices on platted land, and other than those with an approved COHP regulated under Chapter 76.09 RCW; or~~
- (3) The proposed activity is surface mining regulated under Chapter 78.44 RCW.

**20.80.734 General Review Thresholds.**

County review and approval shall be required prior to a clearing activity when any of the following land clearing thresholds have been reached. If the clearing activity does not meet the threshold criteria, eCounty review is not required. However, the owner is still subject to, and must comply with, the minimum requirements established in this chapter ~~and in the Whatcom County Development Standards~~. Review thresholds and additional requirements for water resource special management areas are located in WCC 20.80.735.

- (1) Five Thousand Square Foot Threshold on ~~30% Percent~~ Slopes. The eCounty shall review all proposed clearing activities when a cumulative area of 5,000 square feet or greater of clearing activity is proposed to take place on slopes ~~30% percent~~ or greater in gradient.
- (2) One-Acre Threshold in ~~Urban Residential, Commercial, Rural Residential Zoning Districts and Rural and Industrial Zoning Districts within the NPDES Phase II Area Boundary~~ certain areas. The eCounty shall review all proposed clearing activities ~~which that~~ are one acre or greater, including projects less than one acre that are part of a larger common plan of the development, in the following zoning districts where the slope is less than ~~30% percent~~ in gradient:

- Urban Residential.
  - Commercial.
  - Rural Residential.
  - Rural within the NPDES Phase II area boundaries, as delineated at the time that the eCounty determines that the development application is complete.
  - Industrial within the NPDES Phase II area boundaries, as delineated at the time that the eCounty determines that the development application is complete.
- (3) Two-Acre Threshold in Rural Zoning Districts outside NPDES Phase II Area Boundaries. The county shall review all proposed clearing activities which are two acres or greater when the activities are proposed to take place in Rural Zoning Districts outside NPDES Phase II area boundaries and the slope is less than 30 percent in gradient.
- (4) Critical Areas and Associated Areas. The county shall review all clearing activities within a critical area or critical area buffer, and all clearing activity greater than 500 square feet within 200 feet of a waterbody regulated under WCC Title 23, or within 200 feet of a wetland habitat conservation area (HCA), frequently flooded area, or geological hazard regulated under WCC ~~Title~~ Chapter 16.16.
- ~~(5) Conversion from Forest Use. The county shall review all clearing activities that meet the definition of a conversion from a forest use to another land use pursuant to WCC 20.97.085.~~

#### **20.80.735 Water Resource Special Management Areas.**

The purpose of a water resource special management area is to establish a more stringent standard for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions. Implementation of best management practices, including phased clearing, tree retention and seasonal clearing limitations, is intended to limit the amount of exposed soils on site that are susceptible to erosion at any one time, thereby improving site stability during development and reducing potential for transport of dissolved pollutants and sediments off site. Preservation of existing trees on site also reduces the quantity and maintains the quality of stormwater leaving a site during and after development activities by encouraging interception, infiltration, and evapotranspiration of rainfall and surface runoff.

Whatcom County shall establish the following geographic areas as water resource special management areas:

- Drayton Harbor watershed;
  - Lake Padden watershed;
  - Lake Samish watershed; and
  - Birch Bay watershed.
- (1) Water Resource Special Management Area Review Thresholds. County review and approval shall be required for clearing activities which exceed the following thresholds. If the clearing activity does not meet the threshold criteria, eCounty review is not required. However, the owner is still subject to, and must comply with, the minimum requirements established in this chapter and ~~in the~~ Whatcom County Development Standards the Source Control BMPs established in the most current version of the Department of Ecology Stormwater Management Manual for Western Washington.

- (a) Lake Samish and Lake Padden Watersheds. County review and approval shall be required for all clearing activities associated with a fill and grade permit, building permit, or other development proposal. Clearing activities which are not associated with a development permit shall require County review if they are:
- (i) Five thousand square feet or greater during the dry season, June 1<sup>st</sup> through September 30<sup>th</sup>; or
  - (ii) Five hundred square feet or greater during the wet season, October 1<sup>st</sup> through May 31<sup>st</sup>.
- (2) Within water resource special management areas, clearing activity must conform to the following conditions:
- (a) Temporary erosion and sediment control shall be installed and inspected prior to any clearing activity. The ~~technical administrator~~ Director shall conduct periodic inspections to ensure the integrity of temporary erosion and sediment controls. Temporary erosion and sediment control measures include, but are not limited to, installation of silt fencing, installation of check dams, covering of excavation piles, and mulching of exposed soils, as specified in the ~~Whatcom County Development Standards~~ most current version of the Department of Ecology Stormwater Management Manual for Western Washington.
  - (b) **Phased Clearing.** Construction activities and clearing activities shall be phased to limit the amount of exposed soil that occurs at any one time, if determined to be appropriate by the ~~technical administrator~~ Director, based on site characteristics or constraints including, but not limited to, slopes, proximity to shorelines and wetlands. A phased clearing plan may be required, ~~and if so. A phased clearing plan, if required,~~ shall be submitted for review and approval by the ~~technical administrator~~ Director prior to any clearing activity and shall contain a detailed construction schedule or timeline.
  - (c) **Soil Stabilization.** All disturbed areas shall be provided with soil stabilization within two days of the time of disturbance. The ~~technical administrator~~ Director may approve an exemption to this requirement when a tree canopy area retention plan includes a soil stabilization plan. This plan component must specifically detail erosion and sediment control and stormwater runoff measures that provide runoff control equal to or greater than the protection provided by the standard two-day soil stabilization requirements of this section.
  - (d) **Seasonal Clearing Activity Limitations.** In the Lake Samish and Lake Padden watersheds, clearing activity, as defined in WCC 20.97.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1<sup>st</sup> through May 31<sup>st</sup>; provided, that:
    - (i) In addition to the clearing activities exempted under WCC 20.80.733, the ~~zoning administrator~~ Director may approve an exemption to this requirement for the following activities:
      - (A) Routine maintenance and repair of erosion and sediment control measures;
      - (B) Activities located at or waterward of the ordinary high water mark subject to state, federal, and/or local (per Chapter 16.16 WCC and/or WCC Title 23) ~~conditions of approval~~ requirements, requiring including commencement of clearing activity during the wet season, as defined in subsection (1)(a)(ii) of this section, for purposes of minimizing surface water disturbance and site inundation by high water or wave action;

- (C) Activities necessary to address an emergency that presents an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with this section. Upon abatement of the emergency situation, the clearing activity shall be reviewed for consistency with this chapter and may be subject to additional permit requirements; provided, that the applicant shall make a reasonable attempt to contact the ~~zoning administrator~~ Director prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the Director ~~zoning administrator~~ as soon as the emergency is addressed and no later than two business days following such action. Emergency construction does not include development of new permanent protective structures where none previously existed.
- (ii) To ensure compliance with subsection (2)(e) of this section, ~~Whatcom County planning and development services~~ the Director shall not issue development permits requiring more than 500 square feet of land disturbance located within the Lake Samish or Lake Padden watersheds within two weeks prior to the watershed seasonal closure on October 1st.
- (iii) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The Director ~~zoning administrator~~ shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.
- (iv) An exemption from the seasonal land clearing requirements of this section does not grant authorization for any work to be done in a manner that does not comply with other provisions of this chapter or other applicable development regulations.
- (e) **One Hundred Fifty Percent Violation Fines.** When a violation occurs in an area designated as a water resource special management area, the total fine assessment shall be increased to 150 percent of the standard penalty as provided for in Chapter 20.94 WCC, Enforcement and Penalties.

**20.80.736 Permit approval and inspection process.**

~~If~~ When ~~County~~ review and approval is required to clear land, the ~~County~~ shall establish conditions for approval through one of the following permits:

- (1) **Project Permit.** When clearing activity is proposed as a part of a development proposal, the submittal requirements contained in WCC 22.05 ~~the Whatcom County Development Standards~~, including temporary and permanent erosion control measures, must be submitted by the permit applicant and approved by the ~~County~~ as part of a project permit application prior to any clearing activity. Under this condition, a separate clearing permit shall not be required. Erosion control inspections shall be required as a condition of the building permit at the time of footing inspection sign off. If the site is subject to WCC 20.80.735, the provisions of WCC 20.80.735(2)(a) shall apply.
- (2) **Clearing Permit.** A clearing permit shall be required when a clearing activity meets the established threshold(s) and is the only activity taking place and when no other project permit is required by the ~~County~~ for the proposal. Under this condition, submittal requirements contained in ~~the WCC 22.05 Whatcom County Development Standards, Chapter 3~~, must be submitted with the clearing permit application. Clearing activities ~~which that~~ qualify as conversions require additional review pursuant to subsections (3)(a) through (c) of this section.

(3) ~~Forest Practices Conversion Land Clearing Permit consistent with WCC 20.76.~~

- ~~(a) A forest conversion land clearing permit is required by Whatcom County when a conversion as defined by WCC 20.97.085 is desired. This permit in no way exempts the applicant from any DNR permit requirements.~~
- ~~(b) All applications shall comply with the requirements of Whatcom County Development Standards, Chapter 3 – Land Clearing, Section 304 – Review and Approval Requirements (E)(1) through (3), Submittal Requirements, and DNR Forest Practice Rules.~~
- ~~(c) A signed memorandum of agreement shall be submitted by the landowner which shall state if development activity is planned to take place within 36 months of the date of application. The information contained in the application will provide the administrator with additional basis for conditioning the clearing activity or determining if harvesting of the site would be more appropriate after preliminary or final development approval.~~
  - ~~(i) If the applicant declares that no development activity is anticipated within 36 months of the date of application, in addition to all other conditions as included in Whatcom County Development Standards, Chapter 3 – Land Clearing, Section 304 – Review and Approval Requirements (E)(1) through (3), and DNR Forest Practice Rules, the following conditions will apply:
    - ~~(A) Replanting according to Chapter 222-34 WAC or stabilization of the site is required within the first growing season;~~
    - ~~(B) No site grubbing will be allowed other than minimal grubbing to accommodate any temporary roads or landings required for timber harvest;~~
    - ~~(C) No development permits will be issued for a period of 18 months from the date of the clearing application other than those for one approved single-family residence per lot of record.~~~~

**20.80.737 Land clearing requirements.**

- (1) **Site Containment.** Significant amounts of erosion, sediment, and other impacts resulting from any clearing activity shall be contained on the site and may require temporary erosion/sedimentation control measures before, during, and immediately following clearing. All clearing activity requiring an approval must comply with the requirements of this chapter ~~and those of the Whatcom County Development Standards, Chapter 3.~~
- (2) **Hazards.** Clearing activities shall not result in off-site physical damage nor pose a danger or hazard to life or property on- or off-site.
- (3) **Site-Specific Requirements.** Additional site-specific requirements may be established after a site visit by the County. These requirements shall be based on specific site conditions and are limited to timing limitations, additional temporary erosion and sedimentation control, and/or the mitigation of hazardous or potentially hazardous conditions that pose a physical or environmental threat on- or off-site.
- ~~(4) **Slash Removal in Urban Zoning Districts.** In urban zoning districts slash shall be either removed from the site, or chipped and spread across the site within one year of project completion, or burned in compliance with the requirements of the Northwest Clean Air Agency Pollution Authority. Note: Burning of slash within urban growth areas may be subject to the provisions of RCW 70.94.743.~~



~~(5)~~(4) **Maintaining Established Buffers.** Buffers as identified in the clearing permit, WCC 20.80.736(1) or (2) or Forest Practices permit, WCC 20.76.110~~20.80.739~~, shall be left undisturbed unless express permission for clearing activity or tree removal is provided by the eCounty ~~and the DNR where an application is required by the DNR~~. When approved by the eCounty ~~and/or the DNR~~, tree removal from buffers should be kept to a minimum. Unauthorized tree removal from established buffers will result in an assessed penalty at a rate of twice the value of the merchantable timber. In the event of a dispute between the landowner and the eCounty over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the eCounty and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party.

~~(6)~~(5) A clearing activity will be considered to be complete once the site has been revegetated and stabilized.

**~~20.80.738 — Development moratoria — Implementation, removal, and exceptions.~~**

~~(1) Development Moratorium.~~ The purpose of this section is to provide the criteria for imposing a development moratorium. It also provides standards for the hearing examiner to remove a six-year development moratorium, and for the director of the planning and development services department to authorize the construction of one single family dwelling unit on a site that is subject to a six year development moratorium.

~~(a) Actions That Result in a Development Moratorium.~~ The following actions shall result in a six-year development moratorium being imposed by the director of the planning and development services department or his/her designee:

~~(i) Conversion of any land covered by a DNR forest practices application or notification where a conversion is not declared;~~

~~(ii) Any property that has been harvested under a DNR forest practice application or notification without an associated COHP approval;~~

~~(iii) Timber harvesting on a parcel or parcels without a forest practices application or notification;~~

~~(iv) The violation of a COHP or a county forest conversion land clearing permit where the following situations exist:~~

~~(A) The violation results in moderate on- or off-site impacts that require mitigation, but are not reasonably addressed by the violator within the time allotted by the technical administrator; or~~

~~(B) The violation results in severe on- or off-site impacts of such magnitude or type that the technical administrator determines that professional assistance is necessary to mitigate the impacts.~~

~~(b) Consequences of a Development Moratorium.~~

~~(i) Whatcom County shall suspend review of any application for development of land which is, or becomes, subject to a six-year development moratorium. The suspension of application review does not constitute a stay of performance timelines as included in any ordinances or permit conditions associated with the site that is subject to a six-year moratorium.~~

~~(ii) Whatcom County shall not accept applications for any development of land which is subject to a six-year moratorium.~~

- ~~(iii) A development moratorium imposed by Whatcom County shall extend to the harvest area including the roads indicated in the forest conversion or forest practices application or COHP. If no forest practices permit or COHP was issued, the moratorium shall apply to the entire parcel.~~
- ~~(iv) Prior to any development permit application, the property owner shall be required to submit a forest conversion land clearing permit application on land that was cleared without a forest practices application or notification, without an approved COHP, or in violation of a DNR issued forest practices permit.~~
- ~~(v) Whatcom County shall notify the appropriate state agency if the county becomes aware of forest practices that have been initiated on a parcel without an approved forest practices application or notification.~~
- ~~(c) Effective Date of Moratorium:~~
  - ~~(i) The six-year development moratorium shall be imposed from the effective date of the applicable forest practices application; or~~
  - ~~(ii) If forest practices occur on a site without the appropriate permit, a six-year development moratorium shall be imposed from the date the unpermitted forest practices were documented by Whatcom County or the DNR; or~~
  - ~~(iii) If a condition of a COHP approval is substantively violated, in the opinion of the technical administrator, a six-year development moratorium shall be imposed from the date the violation was documented by the county.~~
- ~~(2) Request for Removal of Development Moratorium. A development moratorium may be considered for removal by the hearing examiner when all of the following requirements are met:~~
  - ~~(a) Public Hearing Required:~~
    - ~~(i) The county shall set a date for public hearing before the examiner pursuant to Chapter 22.05 WCC after all the requests for additional information or plan corrections have been satisfied and the necessary components have been received as required for a complete application.~~
    - ~~(ii) The public hearing shall follow the procedures set forth in Chapter 22.05 WCC.~~
  - ~~(b) Review Criteria. The examiner shall consider the removal of a development moratorium when the following criteria are met:~~
    - ~~(i) The forest practices conducted on the site comply with requirements of Chapter 222-24 WAC, Road Construction and Maintenance, Chapter 222-30 WAC, Timber Harvesting, and any applicable county codes or regulations. When more than one rule, regulation, or code can be applied to a harvest, then the more stringent requirements shall be adhered to.~~
    - ~~(ii) Any required mitigation plan has been completed or the performance thereof has been adequately bonded.~~
    - ~~(iii) Any bonding required as part of a mitigation requirement has been established to county satisfaction.~~
    - ~~(iv) The site, when required by WCC 20.80.736(3)(c)(i)(A) or 20.80.739, shall have been reforested in accordance with the requirements set forth in Chapter 222-34 WAC.~~

- ~~(v) Payment has been made of all other fees, penalties, liens, or taxes owed to the county which have been assigned to the subject parcel including reimbursement of any county expenses incurred relating to enforcement and/or preparation for the waiver hearing.~~
- ~~(vi) All permit conditions have been addressed.~~
- ~~(vii) Neither the applicant nor any person who acted in privity with the applicant:
  - ~~(A) Intended to circumvent any requirement of this section or the Forest Practice Act or regulations by taking the actions for which the moratorium was imposed; or~~
  - ~~(B) Has engaged in a pattern or practice of violations of any applicable regulations.~~~~
- ~~(c) Approval.
  - ~~(i) The hearing examiner shall review all requests for the removal of a development moratorium, any comments received, and applicable county regulations or policies and may inspect the property prior to rendering a decision.~~
  - ~~(ii) The hearing examiner may approve an application for a request to remove a development moratorium, approve the application with conditions, require modifications of the proposal to comply with specified requirements of local conditions, or deny the application if it fails to comply with requirements of this section.~~~~
- ~~(d) Required Written Findings and Determinations. Removal of a development moratorium may be approved by the examiner if the following findings can be made regarding the proposal and are supported by the record:
  - ~~(i) The removal of the six-year development moratorium will not be detrimental to the public health, safety, and general welfare.~~
  - ~~(ii) The removal of the six-year development moratorium will not be injurious to the property or improvements adjacent to and in the vicinity of the proposal.~~
  - ~~(iii) The removal of the six-year development moratorium will not result in significant adverse environmental impacts.~~
  - ~~(iv) The removal of the six-year development moratorium is consistent with the review criteria established in subsections (2)(b)(i) through (vii) of this section.~~
  - ~~(v) The removal of the six-year development moratorium is consistent and compatible with the goals, objectives, and policies of the Comprehensive Plan, appropriate community plans or subarea plans, and the provisions of this section.~~~~
- ~~(3) Request for Single-Family Dwelling Exception. The director of the planning and development services department may administratively grant an exception to the mandatory six-year development moratorium to allow the construction of one single-family dwelling unit and associated accessory structures pursuant to the following standards:
  - ~~(a) General Requirements.
    - ~~(i) The area that is permitted to be developed pursuant to this administrative exception shall not exceed one acre in size unless site and/or well and septic constraints require a larger area, in which case the area developed is not to exceed two acres. Access roads shall not be included in the total area permitted to be developed.~~
    - ~~(ii) A right to forestry disclosure statement as provided for in WCC 14.04.030(B) will be signed by the owner and subsequent purchasers, and recorded as per WCC 14.04.030(A)(1). This disclosure statement is not required in urban growth areas (UGAs) unless the forest practice~~~~~~

- ~~occurs on a parcel adjacent to lands designated as forest lands of long-term commercial significance under Chapter 36.70A RCW.~~
- ~~(iii) Upon approval of a single-family dwelling unit exception, a memorandum of agreement (MOA) shall be recorded with the Whatcom County auditor by the landowner which includes a site plan depicting the area of the parcel to be dedicated for the single-family dwelling, yard area, permitted accessory structures, and access road. The MOA shall identify the action to be taken by the landowner to correct any violations of county ordinances or regulations.~~
- ~~(iv) The development moratorium shall remain in effect for the remainder of the site.~~
- ~~(b) Review Criteria. One single-family dwelling, permitted accessory structures, lawns and landscaped area, and access road may be constructed together with site development activities necessary to construct the dwelling on land subject to a development moratorium; provided, that:~~
- ~~(i) The construction of the single-family dwelling, lawn and landscaping area, accessory structures, and access road are in compliance with all applicable county regulations;~~
- ~~(ii) The landowner corrects any violations of critical area and resource land requirements if any have occurred on the parcel;~~
- ~~(iii) Reforestation of the site has occurred, if required, pursuant to Chapter 222-34 WAC.~~
- ~~(c) Required Written Findings and Determinations. A single-family dwelling unit exception may be approved by the director on a site that is subject to a six-year development moratorium only if all of the following findings can be made regarding the proposal and are supported by the record:~~
- ~~(i) The single-family exception to the six-year development moratorium will not be detrimental to the public health, safety, and general welfare.~~
- ~~(ii) The single-family exception to the six-year development moratorium will not be injurious to the property or improvements adjacent to and in the vicinity of the proposal.~~
- ~~(iii) The single-family exception to the six-year development moratorium will not result in significant adverse environmental impacts.~~
- ~~(iv) The granting of the single-family exception to the six-year development moratorium is consistent with the review criteria in subsection (3)(b) of this section.~~
- ~~(v) The single-family exception to the six-year development moratorium is consistent and compatible with the goals, objectives, and policies of the Comprehensive Plan, appropriate community plan or subarea plan, and the provisions of this section.~~
- ~~(d) Six-year moratoriums will be administratively removed by the director of the planning and development services department or his/her designee when it is determined that the moratorium has been attached to incorrect parcel numbers and where no activity on the incorrect parcel would warrant a moratorium, or when forest practice applications or notifications are withdrawn prior to any logging or clearing activities. (Ord. 2018-032 § 1 (Exh. D), 2018; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).~~

~~**20.80.739 Conversion option harvest plan (COHP).**~~

- ~~(1) A conversion option harvest plan shall conform to the submission requirements of the Department of Natural Resources.~~
- ~~(2) A conversion option harvest plan must be reviewed and approved by the county prior to submittal to the Department of Natural Resources in order for a moratorium waiver on development to be granted by the county.~~
- ~~(3) A fee shall be established in accordance with the Whatcom County unified fee schedule for the review of a conversion option harvest plan.~~
- ~~(4) The conversion option harvest plan shall remain in effect until a project permit has been approved by the county. (Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).~~

## **Chapter 20.97 Definitions**

**20.97.053 Clearing.**

“Clearing” means destruction of vegetation by manual, mechanical, or chemical methods resulting in exposed soils.

**20.97.054 Clearing activity.**

“Clearing activity” means clearing taking place on a single parcel of record or as part of a single project. Fill and grade activities regulated by the eCounty are considered a clearing activity.

**20.97.085 Conversion.**

“Conversion to a use other than commercial timber operation” means a bona fide conversion to an active use which is incompatible with timber growing (WAC 222-16-010). ~~The following forest practices qualify as forest conversions (RCW 76.09.050):~~

- ~~(1) Forest practices that occur on lands platted after January 1, 1960, as provided in Chapter 58.17 RCW.~~
- ~~(2) Forest practices on lands that have or are being converted to another use. (Ord. 2001-003 § 2, 2001).~~

**20.97.086 Conversion option harvest plan (COHP).**

“Conversion option harvest plan (COHP)” means a voluntary plan developed by the landowner and approved by the eCounty prior to submittal to the Department of Natural Resources, indicating the limits of harvest areas, road locations, critical area buffers, and open space. The plan provides the landowner with the opportunity to log under a DNR Class II, III, or IV special permit without a eCounty project permit while maintaining the option to convert the land at a later date. ~~Under this condition, the imposition of a six-year moratorium on future development will not apply.~~

**20.97.157 Forest land.**

“Forest land” means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

**20.97.158 Forest practice.**

“Forest practice” means any activity conducted on or directly pertaining to forest land and related to growing, harvesting, or processing timber (~~Chapter 222-16 WAC~~) including, but not limited to: (1) road and trail construction; (2) fertilization; (3) prevention and suppression of diseases and insects; or other activities ~~which~~ that qualify as a use or development subject to the Forest Practices Act.

**20.97.160.1 Forested area.**

“Forested area” means the area encompassed by the tree canopy and any native vegetation that occurs within the boundaries of the tree canopy.

**20.97.194.1 Land disturbing activity.**

“Land disturbing activity” means activity that results in a movement of earth or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include but are not limited to clearing, grading, filling, ~~and excavation, and C~~ compaction that is associated with stabilization of structures and road construction ~~shall also be considered a land-disturbing activity~~. Vegetation maintenance practices are not considered a land-disturbing activity. Stormwater facility maintenance is not considered a land disturbing activity if conducted according to established standards and procedures.

**20.97.271 Nonconversion.**

“Nonconversion” means the continued use of land for forest production. The ~~two~~ three following situations qualify as nonconversions of forested land:

- (1) A standard forest practice where the Department of Natural Resources is in charge of all aspects of the forest practices including applications, notifications, permits, harvesting, replanting, etc. ~~The six year moratorium on development is applied when a standard forest practice occurs. (Chapter 76.09 RCW and WAC Title 222)~~
- (2) A conversion option harvest plan (COHP), as provided for in WCC 20.80.730(8) ~~76.110~~, approved by the local government and submitted to the Department of Natural Resources as part of the forest practices application allows a forest landowner who is unsure about their future plans for their property to harvest their timber and also maintain the option to convert their land at a later date without the imposition of the six-year moratorium.

**20.97.436.1 Tree canopy.**

“Tree canopy” means the total area of the tree(s) where the leaves and outermost branches extend, ~~;~~ also known as the dripline.

**20.97.436.3 Tree height.**

- (1) “Small tree” generally indicates a height of less than 25 feet at maturity;
- (2) “Medium tree” generally indicates a height of more than 25 feet and less than 40 feet at maturity;
- (3) “Large tree” generally indicates a height of more than 40 feet at maturity.

**20.97.436.4 Tree, significant.**

Any evergreen tree, 12 inches or greater in diameter at breast height (DBH) or deciduous tree, eight inches or greater DBH. Diameter at breast height shall be measured four and one-half feet above

| existing grade. The ~~Director of planning and development services~~ may authorize the exclusion of any tree, which for reasons of health or age is not desirable to retain, from this definition.

## Title 22 – LAND USE AND DEVELOPMENT

### Chapter 22.05 – Project Permit Procedures

**22.05.020 Project Permit Processing Table.**

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Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see <a href="#">22.05.040</a> )	Determination of Completeness Required (see <a href="#">22.05.050</a> )	Notice of Application Required (see <a href="#">22.05.070</a> )	Site Posting Required (see <a href="#">22.05.080</a> )	Notice of Open Record Hearing Required (see <a href="#">22.05.090</a> )	Open Record Hearing Held By: (see <a href="#">22.05.090</a> )	County Decision Maker (see <a href="#">2.11.210</a> , <a href="#">22.05.120</a> )	Appeal Body (see <a href="#">2.11.210</a> , <a href="#">22.05.160</a> , <a href="#">23.60.150(H)</a> )
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
...									
Natural Resource Assessment Site Plan Review/Notification of Activity)	Title <a href="#">16</a>		✓					Director	Hearing Examiner
...									

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