



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2022-206

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File Created:	03/25/2022	Entered by:	JFleisch@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:	04/26/2022		
Agenda Date:	04/26/2022	Enactment #:	ORD 2022-035		

Primary Contact Email: jfleisch@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance relating to the Growth Management Act, adopting regulations for forest practices, adding a new Whatcom County Code Chapter 20.76, and amending Chapter 20.80

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed zoning code amendments necessary to receive sole regulatory jurisdiction from DNR over Class I, II, III, and IV Forest Practices in Urban Growth Areas and Class IV - General Forest Practices countywide

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
04/12/2022	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner	
		Nay: 0	
		Absent: 0	
04/26/2022	Council	ADOPTED	
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner	
		Nay: 0	
		Absent: 0	

Attachments: Staff Memo, Proposed Ordinance, Exhibit A - Proposed Zoning Code Amendments, Staff Report to Planning Commission, Classes of Forest Practices, SEPA Threshold Determination Packet

ORDINANCE NO. 2022- 035
RELATING TO THE GROWTH MANAGEMENT ACT; ADOPTING REGULATIONS FOR FOREST PRACTICES; ADDING A NEW CHAPTER 20.76 WHATCOM COUNTY CODE (WCC); AND AMENDING CHAPTER 20.80.

WHEREAS, the Growth Management Act, chapter 36.70A RCW (GMA), requires Whatcom County (the "County") to regulate land use and development within the County's jurisdiction; and

WHEREAS, RCW 76.09.240 of the Forest Practices Act requires those counties planning under GMA with certain population and forest practices permitting thresholds to adopt and enforce regulations over the forest practices in RCW 76.09.240(1)(a)(i) and (ii); and

WHEREAS, the County meets the population and permitting thresholds in RCW 76.09.240(1)(a) of the Forest Practices Act, and therefore must adopt and enforce regulations for forest practices as described in RCW 76.09.240; and

WHEREAS, RCW 76.09.240(2) of the Forest Practices Act requires a written notification to the Department of Natural Resources and Department of Ecology sixty days prior to adoption of the development regulations; and

WHEREAS, those forest practices described in RCW 76.09.240(1)(a)(i) and (ii) of the Forest Practices Act occur on lands with a high likelihood to convert to a nonforestry use, including lands both inside and outside of urban growth areas (UGAs) as designated under RCW 36.70A.110; and

WHEREAS, RCW 76.09.460 of the Forest Practices Act requires the County to deny all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to a Washington State Department of Natural Resources' notice of conversion to a nonforestry use for a period of six years or until the actions listed in RCW 76.09.460(2) are satisfied; and

WHEREAS, RCW 76.09.470 of the Forest Practices act requires the County, upon being contacted by a landowner about that landowner's intent to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under the Forest Practices Act, to take specific actions that include coordinating with the Washington State Department of Natural Resources and landowner to resolve any outstanding final order or decisions issued by the Washington State Department of Natural Resources, requiring the landowner to comply with chapter 43.21C RCW, if applicable, and assessing if the

condition of the land is in full compliance with the Whatcom County Code; and

WHEREAS, RCW 36.70A.570 of the GMA requires the County to adopt development regulations that protect public resources, are consistent with or supplement the County's critical areas regulations, require appropriate approvals for all phases of the conversion of forest lands, including clearing and grading, and are guided by the planning goals of the GMA and by the purposes and policies of the Forest Practices act when the County assumes regulation of forest practices as described in RCW 76.09.240; and

WHEREAS, on March 15, 2022, the Whatcom County Forestry Advisory Committee reviewed the proposed amendment; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald on March 11, 2022; and

WHEREAS, the Whatcom County Planning Commission held a work session on the proposed amendment; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony on March 24, 2022; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the Whatcom County Council has reviewed the Planning Commission recommendation; and

WHEREAS, the Whatcom County Council held a work session in the Climate Action and Natural Resources Committee on 4/12/2022; and

WHEREAS, the Whatcom County Council held a public hearing on the proposed amendment and considered all testimony on 4/26/2022; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

FINDINGS

1. An application for zoning code amendments was received by Whatcom County on October 19, 2021
2. The proposed amendments were docketed by the Whatcom County Council on March 8, 2022
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 14, 2022. The associated

comment period ended February 28, 2022, and the appeal period concluded March 10, 2022.

4. The Whatcom County Forestry Advisory Committee reviewed and recommended for approval the draft code, as amended, on March 15, 2022.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on March 24, 2022.
6. Notice of the proposed amendment was sent to the Department of Commerce on February 10, 2022.
7. On February 10, 2022, the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
8. The proposed amendment will have an effective date of August 1, 2022.
9. The Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
10. Goal 2D: Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.

Policy 2D-3: Streamline development regulations to eliminate unnecessary time delays.

Currently, Class IV - General Forest Practice permits are processed by both Whatcom County (through a Land Disturbance Permit) and DNR (Class IV - General). DNR will not process the Class IV - General permit until a Land Disturbance Permit is issued by Whatcom County. The DNR permit process takes a minimum of 15 days. Upon transfer of jurisdiction, a DNR permit will not be required, saving applicants a minimum of 15 days of permit processing time.

11. Goal 2D: Refine the regulatory System to ensure accomplishment of desired land use goals in a fair and equitable manner.

Policy 2D-4: Coordinate permitting requirements among jurisdictions to minimize duplication and delays.

Upon adoption of the proposed code amendments, DNR will no longer review Class IV - General Forest Practices, as Whatcom County will have sole regulatory jurisdiction. The DNR permit process takes a minimum of 15 days. Eliminating the requirement for a DNR permit will save applicants a minimum of 15 days of permit processing time

12. Goal 3A: Minimize the time required for processing housing-related development and construction permits in the interest of overall cost reduction.

Policy 3A-1: Streamline and simplify existing and proposed permitting processes.

Currently, Class IV – General Forest Practice permits are processed by both Whatcom County (through a Land Disturbance Permit) and DNR (Class IV – General). Adoption of the proposed code amendments will streamline the permitting process, as DNR will no longer review these activities.

13. Goal 7D: Consistent with other goals of the county, strive for balanced, clear and predictable overall policies, practices and regulations which do not unnecessarily or inadvertently prevent, confuse, delay, or create costly hurdles restricting effective and desirable economic development.

Policy 7D-1: Work with state and federal agencies to coordinate and streamline environmental review.

As part of accepting regulatory jurisdiction, Whatcom County has coordinated with the Department of Natural Resources, providing documentation that demonstrates that Whatcom County Code meets the requirements for accepting jurisdiction over these forest practices. DNR will review this documentation, in coordination with the Department of Ecology, and provide Whatcom County with a memorandum acknowledging Whatcom County has met the requirements for receiving jurisdiction. Upon completion of this process, Class IV - General Forest Practice permits will no longer be processed by DNR and these activities will be reviewed solely by Whatcom County, eliminating permit delays and additional costs presently experienced by applicants.

14. Goal 7D: Consistent with other goals of the county, strive for balanced, clear and predictable overall policies, practices and regulations which do not unnecessarily or inadvertently prevent, confuse, delay, or create costly hurdles restricting effective and desirable economic development.

Policy 7D-6: Streamline and coordinate the permit process and sustain a supportive customer service approach towards permitting.

Currently, Class IV - General Forest Practice permits are processed by both Whatcom County (through a Land Disturbance Permit) and DNR (Class IV - General). Adoption of the proposed code amendments will streamline the permitting process, as DNR will no longer review these activities.

15. Goal 8H: Support increasing the viability of Whatcom County's forest products industry.

Policy 8H-1: Support improving the efficiency and flexibility of state and local environmental regulations affecting the forest products industry, in order to assure environmental protection and improve predictability for the forest products industry while minimizing the regulatory costs to forest landowners.

Currently, Class IV - General Forest Practice permits are processed by both Whatcom County (through a Land Disturbance Permit) and DNR (Class IV - General). Adoption of the proposed code amendments will result in more efficient permit issuance, as DNR will no longer review these activities. The DNR Class IV - General permit process takes a minimum of 15 days and costs \$1,500. Upon transfer of jurisdiction, a DNR permit will no longer be required, saving applicants a minimum of 15 days of permit processing time as well as permitting fees.

CONCLUSIONS


1. The subject zoning text amendments are consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code shall be amended as shown in Exhibit A, effective on August 1, 2022.

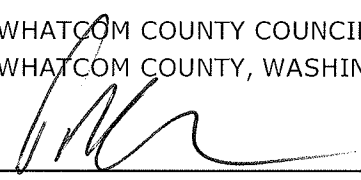
BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this 26th day of April, 2022

ATTEST


Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

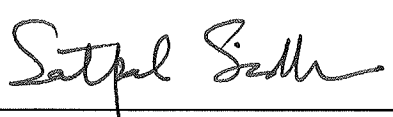

Todd Donovan, Council Chair

APPROVED AS TO FORM:

/s/ Royce Buckingham (approved via e-mail) / JL

Royce Buckingham
Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON


Satpal Sidhu, County Executive

) Approved () Denied

Date Signed: April 28, 2022

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:

20.76.010	Authority and purpose
20.76.020	Definitions
20.76.030	Applicability
20.76.040	Exemptions
20.76.050	Relationship to other regulatory requirements
20.76.060	Administration and enforcement
20.76.070	Right of entry
20.76.080	Notification to the Washington State Department of Revenue.
20.76.100	Forest practices - permit required.
20.76.110	Conversion option harvest plan (COHP)
20.76.220	Six-year development moratorium

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.

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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.

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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 County review process for larger clearing projects to ensure these regulations are met.

20.80.732 Applicability.

All clearing activities including clearing of forest land 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 County prior to meeting the requirements set forth in this chapter and only when in compliance with federal, state and local regulations, including, but not limited to WCC Chapter 16.16 (Critical Areas), WCC Chapter 16.08 (SEPA), Washington State Forest Practices pursuant to WAC Title 222, forest practices pursuant to WCC 20.76, and WCC Title 23 (Shoreline Management Program). Administrative provisions and technical standards for implementing these regulations shall be contained in WCC 22.05.

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; 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, County review is not required. However, the owner is still subject to and must comply with the minimum requirements established in this chapter. 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% Slopes. The County 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% or greater in gradient.
- (2) One-Acre Threshold in certain areas. The County shall review all proposed clearing activities 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% in gradient:
 - Urban Residential.
 - Commercial.
 - Rural Residential.
 - Rural within the NPDES Phase II area boundaries, as delineated at the time that the County determines that the development application is complete.
 - Industrial within the NPDES Phase II area boundaries, as delineated at the time that the County 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 Chapter 16.16.

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, County review is not required. However, the owner is still subject to, and must comply with, the minimum requirements established in this chapter and 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 1st through September 30th; or
 - (ii) Five hundred square feet or greater during the wet season, October 1st through May 31st.

- (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 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 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 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, shall be submitted for review and approval by the 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 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 1st through May 31st; provided, that:
 - (i) In addition to the clearing activities exempted under WCC 20.80.733, the 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) requirements, 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 Director prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the Director 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, 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 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.

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, 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 WCC 22.05, must be submitted with the clearing permit application. Clearing activities that qualify as conversions require additional review pursuant to subsections (3)(a) through (c) of this section.
- (3) Forest Practices Permit consistent with WCC 20.76.

20.80.737 Land clearing requirements.

- (1) **Site Containment.** 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.
- (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 removed from the site, or chipped and spread across the site within one year of project completion

- (5) **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, shall be left undisturbed unless express permission for clearing activity or tree removal is provided by the County. When approved by the County, 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 County 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 County and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party.
- (6) A clearing activity will be considered to be complete once the site has been revegetated and stabilized.

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 County 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).

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 County 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 County project permit while maintaining the option to convert the land at a later date.

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 including, but not limited to: (1) road and trail construction; (2) fertilization; (3) prevention and suppression of diseases and insects; or other activities 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, excavation, and compaction associated with stabilization of structures and road construction. 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 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.
- (2) A conversion option harvest plan (COHP), as provided for in WCC 20.76.110, 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 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 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210 , 22.05.120)	Appeal Body (see 2.11.210 , 22.05.160 , 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
...									
Site Plan Review/ <u>Notification of Activity</u>)	Title 16		✓					Director	Hearing Examiner
...									

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