### WHATCOM COUNTY COUNCIL AGENDA BILL

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### TITLE OF DOCUMENT:
Interim ordinance seasonal restriction land clearing Lake Whatcom Watershed

### ATTACHMENTS:

#### SEPA review required?
- ( ) Yes
- ( ) NO

#### SEPA review completed?
- ( ) Yes
- ( ) NO

Should Clerk schedule a hearing?
- (X) Yes
- ( ) NO

Requested Date: 3/15/2005

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.

Interim ordinance amending Whatcom County Code, Title 20, Section 20.80.735 to implement a seasonal restriction on land clearing activities within the Lake Whatcom Watershed Water Resource Special Management Area between September 1 and April 30.

### COMMITTEE ACTION:
3/1/2005: Discussed in special work session

### COUNCIL ACTION:
2/22/2005: Introduced - will be discussed at special 3/1/2005 work session


### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:
Ord. #2005-032

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
AN INTERIM ORDINANCE AMENDING WCC, TITLE 20, SECTION 20.80.735 TO IMPLEMENT A SEASONAL RESTRICTION ON LAND CLEARING ACTIVITIES WITHIN THE LAKE WHATCOM WATERSHED WATER RESOURCE SPECIAL MANAGEMENT AREA BETWEEN SEPTEMBER 1 AND APRIL 30

WHEREAS, Lake Whatcom is the drinking water source for approximately half of the residents of Whatcom County; and

WHEREAS, the preservation and protection of drinking water is a top priority of the Whatcom County Council; and

WHEREAS, erosion, sedimentation, phosphorous and other pollutants associated with increased land clearing and development within the Lake Whatcom watershed are of concern for a number of reasons including their potential impacts on water quality and beneficial uses such as drinking water and fish habitat; and

WHEREAS, priority actions to protect the Lake Whatcom drinking water supply should include strategies to address potential water quality impacts resulting from existing and future development; and

WHEREAS, the Washington State Department of Ecology has listed Lake Whatcom as an impaired water body and placed Lake Whatcom on the federal Clean Water Act 303(d) list due to low dissolved oxygen levels; and

WHEREAS, the 303(d) listing requires the establishment of a Total Maximum Daily Load (TMDL) that designates loading capacity of the lake such that there will be no measurable change in oxygen levels from natural lake conditions; and

WHEREAS, the State Department of Ecology has also recommended that Lake Whatcom be placed on the 303(d) list for impairments resulting from the toxic pollutants PCB-1254, PCB-1260 and mercury, and that the Austin Creek, Park Place Drain, and Cable Street drainages be placed on the 303(d) list as impaired for not attaining water quality criteria for bacteria; and

WHEREAS, the Whatcom County Comprehensive Plan, adopted on May 20, 1997, establishes the Lake Whatcom watershed as a Special Study Area; and

WHEREAS, Whatcom County Code, Section 20.80.735 establishes the Lake Whatcom watershed as a Water Resource Special Management Area; and

WHEREAS, on February 8, 2005, the Whatcom County Council adopted an ordinance imposing an interim moratorium on the acceptance of new applications for subdivisions and new
building permits within the Lake Whatcom watershed [ORD #2005-027]; and

WHEREAS, the Whatcom County SEPA Official has determined that the proposed text amendments are substantively the same as those reviewed under SEP02-00089. A threshold Determination of Non-Significance was issued on June 3, 2002 for SEP02-00089 and that DNS meets the requirements of SEPA for the proposed interim amendments; and

WHEREAS, RCW 36.70.790 and RCW 36.70.795 permits adoption of interim official controls so long as a public hearing is held within 60 days of adoption; and

WHEREAS, RCW 36.70.795 requires the adoption of findings of fact which justify Council action; therefore, the Council makes the following findings of fact:

1. On October 7, 2003, the County Council adopted amendments to WCC, Section 20.80.735 that implemented seasonal land clearing limitations during the wet season within the Lake Whatcom Water Resource Special Management Area [ORD #2003-049].

2. The “wet season” has been defined as the period between September 1st and April 30th of each year.

3. The provisions of WCC 20.80.735(2)(e) require administrative evaluation of seasonal clearing activities and specify use of a “seasonal clearing site evaluation worksheet” to conduct threshold review of proposed land clearing activities within designated Water Resource Special Management Areas.

4. The seasonal clearing site evaluation worksheet establishes a point system for rating proposed clearing activities based on site- and project- specific characteristics, including hydrologic soil group, slope, clearing activity size, time of year, and proximity to wetland or water body.

5. If a proposed clearing activity exceeds the maximum point threshold for clearing activities during the wet season, the proposed clearing activity must be wait until the dry season. Proposed clearing activities that do not exceed the maximum threshold may be conducted during the wet season.

6. The Whatcom County Council desires the opportunity to review existing land clearing regulations under WCC 20.80.735 – Water Resource Special Management Areas as they apply within the defined wet season.

7. The Whatcom County Council desires the opportunity to review the merits and effectiveness of the land clearing point system used to administer the seasonal clearing limitation provisions within the Lake Whatcom watershed.

8. An interim seasonal restriction on land clearing activities within the Lake Whatcom watershed during the defined wet season (September 1 to April 30) is necessary to allow evaluation and discussion of options, as well as consideration of scientific and other data, addressing newly revealed seasonal land clearing issues.

9. The Whatcom County Council finds that an interim restriction on seasonal land clearing activities is necessary for the protection of the public health and safety.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that WCC Title 20, Section 20.80.735 be amended as shown in Exhibit A.

BE IT FURTHER ORDAINED by the Whatcom County Council, pursuant to RCW 36.70.795, that this amendment shall be effective for not longer than six months following the effective date of this ordinance, which may be renewed for one or more six-month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

ADOPTED this 15 day of March, 2005.

ATTEST:

Dana Brown-Davis
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

[Signature]
Laurie Caskey-Schreiber, Council Chair

APPROVED as to form

[Signature]
Civil Deputy Prosecutor

[Signature]
Pete Kremen, County Executive

( ) Approved  ( ) Denied

Date: 3-23-05
WCC Title 20, Chapter 20.80 – Supplementary Requirements
Water Resource Special Management Areas

20.80.735 Water resource special management areas.

...(e) Seasonal Clearing Activity Limitations.

(i) In the Lake Whatcom watershed, clearing activity as defined in WCC 20.97.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from September 1st through April 30th. The technical administrator may approve an exemption to this requirement if the action is deemed to be an emergency based upon an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time frame too short to allow full compliance with this section. The technical administrator shall have the authority to condition an emergency exemption to ensure that temporary sediment and erosion control measures will be implemented. 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.

and (ii) In the Lake Samish watersheds, during the wet season, from October 1st through April 30th, clearing activities shall not be permitted within the Lake Whatcom and Lake Samish watersheds unless the technical administrator determines that erosion control measures will control erosion and prevent silt-laden runoff from leaving the construction site.

(Ai) Seasonal Clearing Activity Review. The technical administrator shall evaluate clearing activities based on thresholds established in the seasonal clearing site evaluation worksheet. The technical administrator shall use this worksheet to evaluate the following criteria on a site-by-site basis: existing slope, soil type, proximity to wetlands, streams, shorelines and other receiving waters (surface waters of the state), average rainfall/saturation of the proposed month(s) of activity, and size of the area to be cleared or graded.

(A) If the proposed clearing activity does not exceed the minimum threshold established for seasonal clearing limitations, the proposed activity shall be exempt from this section and shall be subject to the provisions of WCC 20.80.735(2)(a) through (d) and (2)(f) as applicable.

(B) If the proposed clearing activity meets the established thresholds for seasonal clearing limitations, the proposed activity shall be subject to further review and compliance under subsections (2)(e)(i)(B)(1) through (2)(e)(i)(B)(8) of this section as applicable:

1. a. Proposed activities meeting the criteria for seasonal clearing limitations shall be further evaluated for site-specific conditions, including, but not limited to, percent of vegetation to remain on-site, percent of impervious surfaces on-site, and adjacent and/or potentially affected land uses.

2. b. Clearing and grading activities during the wet season will be allowed only if a winter erosion and sediment control plan, which defines limits on clearing and grading, timing and duration of clearing activity, specific erosion and sediment control measures, and monitoring, is approved by the administrator.

3. c. An approved winter erosion and sediment control plan shall be implemented and monitored by a certified erosion control operator. A certified erosion control operator shall be an individual who has successfully completed formal training in erosion and sediment control during construction by a recognized organization acceptable to the director. A certification of successful completion of such erosion and sediment control training shall be submitted at the time of application.
4. **d.** The applicant shall also provide a 24-hour contact number for emergency erosion and sediment control response during periods of clearing activities and site stabilization.

5. **e.** The county may require a bond, assignment of savings or other form of financial assurance in the amount of 125 percent of the estimated costs of the projected maintenance of temporary sediment and erosion control facilities and the repair of degraded site conditions related to the clearing activity. The performance assurance is to guarantee site stabilization.

6. **f.** If, during the course of construction, silt-laden runoff leaves the construction site, or if clearing activity limits or erosion and sediment control measures shown in the approved plan are not maintained, a correction notice to implement adequate erosion and sediment control measures shall be issued by the administrator. The developer shall implement corrective measures, at the direction of the technical administrator, to address the problem within 24 hours of issuance of the correction notice.

7. **g.** If the erosion and sediment control problem defined in the correction notice is not adequately addressed within 24 hours of issuance, then a stop work order may be issued.

8. **h.** Issuance of a stop work order may also require the developer to discontinue any further clearing activities, except for erosion and sediment control maintenance and repair, until the end of the wet season.

(C) 3. If the proposed clearing activity exceeds the maximum established threshold for seasonal clearing limitations, the technical administrator shall deny approval of the proposed activity during the wet season.

(iii) (B) Based upon the review criteria and thresholds under subsection (2)(e)(i) of this section, the technical administrator shall set forth in writing the basis for approval or denial of clearing activities during the wet season. If the applicant does not agree with the determination made by the designated technical administrator, a request for an administrative appeal may be submitted to the director within five working days. The director shall issue a final decision within five working days of receipt of the appeal. The director's final decision may be appealed to the Whatcom County hearing examiner pursuant to Chapter 20.84 WCC.

(iii) (C) Exemptions. In addition to the clearing activities exempted under WCC 20.80.733, the following activities are exempt from the seasonal clearing limitations of this section:

(A) 1. Activities exempted pursuant to subsection (2)(e)(i)(A) of this section;
(B) 2. Forestry activities related to an approved conversion option harvest plan (COHP);
(C) 3. Routine maintenance and necessary repair of erosion and sediment control facilities;
(D) 4. Routine maintenance of public facilities or existing utility lines;
(E) 5. Revegetation and hardscaping activities required to stabilize a disturbed site;
(F) 6. Clearing activities disturbing an area less than 500 square feet; and
(G) 7. Public or private response to emergencies that present an unanticipated and imminent threat to public health, safety or the environment which requires immediate action within a time frame 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.

An exemption from the seasonal land clearing requirements of this section does not grant authorization for any work to be done in a manner which does not comply with other provisions of this chapter or other applicable development regulations...