

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator:				8/15/95	County Council
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive:					

SUBJECT: Resolution Directing the Technical Advisory Committee regarding Land Clearing Regulations.

ATTACHMENTS:

SUMMARY STATEMENT: *Please complete sections of box as appropriate & explain the item below.*

Related County contract #:	Should Clerk schedule a hearing? NO / / YES / / Requested date:
Amount budgeted for this item/project:	Is it (or will it be) within budget? YES / / NO / / (Please explain below)
Budget line item number(s):	

ORIGINATOR'S RECOMMENDED ACTION:

COUNCIL ACTION TAKEN:

8/15/95: Approved 7-0

Related File Numbers:

Ordinance or Resolution Number (this item only): Res 95-049

SPONSORED BY: Consent

PROPOSED BY: Council

INTRODUCTION DATE: 8/15/95

RESOLUTION NO. 95-049

A RESOLUTION DIRECTING THE TECHNICAL ADVISORY COMMITTEE TO REVIEW PROPOSED LAND CLEARING REGULATIONS AND CREATE RELATED DEVELOPMENT STANDARDS FOR SUBMISSION TO THE COUNTY COUNCIL

WHEREAS, a request has been made to replace Ordinances #89-129 (six-year moratorium), #90-24 (Forested Land Clearing), and #90-58 (Erosion and Sedimentation Control in Critical Watersheds) with an amendment to Title 20, Chapter 20.80.640 that creates regulatory language establishing conditions under which clearing activity can take place in Whatcom County; and

WHEREAS, the County Council directed staff to prepare uniform and comprehensive management practices for clearing activity; and

WHEREAS, pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald on Thursday, March 30, 1995; and

WHEREAS, a Determination of Non-Significance had been issued on April 12, 1995, by the responsible Deputy SEPA Official; and

WHEREAS, the Planning Commission held a public hearing on April 12, 1995; and

WHEREAS, the Planning Commission held a work session on June 22, 1995, and after due consideration of public testimony, made amendments to the proposal, and unanimously recommended Council approval; and

WHEREAS, the Council held a public meeting on July 18, 1995, to consider this matter and to review the Planning Commission recommendation; and

WHEREAS, Council held a work session on August 1, 1995 and after due consideration, Council acknowledged that the regulatory language (Attachment A) is an improvement to the fragmented and conflicting clearing regulations that currently exist and also provides the necessary regulatory authority for the development of a clearing chapter as the second installment of a complete revision and update of the 1984 Development Standards; and

WHEREAS, Council agreed to staff's proposal outlining a five step approval process for both regulations and corresponding development standards; and

WHEREAS, Council further directed staff to prepare a resolution requesting the Technical Advisory Committee to proceed with its review of land clearing regulations (Attachment A) and to create corresponding development standards for Council review.

1 **NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Council that:

- 2
3 1. The Technical Advisory Committee shall review the proposed land clearing
4 regulations (Attachment A) and based upon the general direction established in the
5 land clearing regulations, recommend improvements to the 1984 Development
6 Standards.
7
8 2. The Technical Advisory Committee shall submit its recommendations to the County
9 Council for its review prior to submitting proposed clearing standards to the County
10 Executive for administrative approval.
11
12 3. With both the clearing regulations and development standards before them, the
13 Council will, then, review and approve the clearing regulations in their final form.
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15 4. If the Council finds that the proposed development standards are not consistent
16 with the adopted regulations, they shall refer those standards back to staff and the
17 Technical Advisory Committee for further action.
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21 ADOPTED this 15 day of August, 1995.
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26 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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29
30 *Marna McAllister*

31 for Dana Brown-Davis, Council Clerk
32

Robert A. Imhof
Robert A. Imhof, Chairperson

33
34
35 APPROVED as to form & content:

() Approved () Denied

36
37 *Karen Frakes*
38 Karen Frakes, Civil Deputy Prosecutor
39

Resolutions are not signed by the Executive
Shirley Van Zanten, Executive

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41 Date: _____
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ATTACHMENT A

I. LANGUAGE TO INCLUDE IN ORDINANCE

The County Council hereby repeals Ordinances #89-129, #90-24, and #90-58.

II. LANGUAGE TO DELETE FROM DEVELOPMENT STANDARDS

Delete the language relating to land alteration that is presently contained in Division 3 of the 1984 Development Standards.

III. AMENDMENTS AND ADDITIONS TO TITLE 20, THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE

Add the following To 20.80.600, OTHER DEVELOPMENT STANDARDS:

Chapter 20.80.640 Land Clearing

Purpose: Clearing of land includes the destruction and/or removal of vegetation by manual, mechanical, or chemical methods. These activities can, under some circumstances, lead to hazardous conditions that result in damage to adjacent and down stream properties. More often, poor clearing practices pollute water resources through off-site erosion and sedimentation that results in degraded natural systems. The purpose of this ordinance is to insure that clearing activity is done in a responsible manner by providing a reasonable standard for land clearing in Whatcom County. It is also the purpose of this ordinance to establish a County review process for larger clearing projects to ensure that these standards are met.

.640 Applicability: All land clearing shall be subject to the provisions of this section unless specifically exempted. No land clearing approval shall be issued by the County prior to meeting the submittal requirements contained herein and only when in compliance with federal, state and local regulations, including the Critical Areas Ordinance and the Shorelines Management Program. All land clearing shall be subject to the Whatcom County Development Standards.

.641 Exemptions: Any land clearing that is exclusively related to agriculture as defined in this ordinance, and forest practices, other than a Class IV General, regulated under RCW 79.09, shall be exempt from these regulations.

.642 County Review Thresholds: The County shall require County review and approval of a land clearing activity when any of the following land clearing thresholds have been reached. If land clearing activity does not meet the threshold criteria, County review of the land clearing is not required. However, the owner must comply with the temporary erosion and sedimentation control requirements established in this chapter and in the Whatcom County Development Standards.

1. 5,000 Square Feet Threshold on 20% Slopes: The County will review all land clearing activities where an accumulative area of land clearing on slopes greater than 20% is 5,000 square feet or more.
2. One Acre Threshold in Urban and Suburban Zoning Districts: The County shall

review all land clearing affecting land areas one acre or greater when the activity is located in an area zoned for urban and suburban levels of density and the slope is under 20% in gradient.

3. Two Acre Threshold in Rural Zoning Districts: The County shall review land clearing affecting land areas two acres or greater when the activity is located on rural density zoned land and the slope is less than 20% in gradient.

.643 Approval Process: When County approval is required to clear land, the County shall establish conditions for approval through one of the following permits:

1. Development Permit: When land clearing is proposed as a part of a development proposal, a clearing plan must be submitted by the owner and approved by the County as part of a development permit application prior to any clearing activity. Under this condition, a clearing permit shall not be required.
2. Clearing Permit: A clearing permit shall be required when land clearing is the only activity taking place, when the land clearing exceeds the thresholds established in Section .642, and when no other development permit is required by the County for the proposal. Under this condition, a clearing plan must be submitted with the permit application.

.644 Land Clearing Requirements:

1. **Site Containment:** Erosion, sediment, and other forms of pollutants resulting from any land clearing activity shall be contained on the site and may require temporary erosion/sedimentation control measures during and immediately following clearing. All clearing activity requiring an approval must comply with the temporary erosion and sedimentation control requirements of this chapter and those of the Whatcom County Development Standards.
2. **Hazards:** Land clearing shall not result in off-site damage nor pose a danger or a hazard to life or property either 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 additional temporary erosion and sedimentation control and/or the mitigation of hazardous or potentially hazardous site conditions.

.645 Forest Practices and Development Restrictions:

1. **Six Year Moratorium:** Any property that has been cleared under a Class I, II, III, and IV Special Forest Practices Permit shall not be eligible for any development permit for a period of six (6) years from the issuing date of the Forest Practices Permit. Provisions shall be made by the County to record such a condition on the property title.
2. **Waiver of Six Year Moratorium:** There are two conditions under which a moratorium waiver may be granted, as follows:

- A. A waiver may be granted by the County when a Conversion Option Harvest Plan is signed by both the applicant and the County and approved by the Department of Natural Resources;
- B. A waiver may be granted by the County Executive when the owner agrees to bring the site into full compliance with Whatcom County codes to the satisfaction of the County, and when the Executive is satisfied that the clearing activity did not result in environmental hazards or degrade environmentally sensitive areas, or create significant increases of off-site erosion or sedimentation.

.646 Conversion Option Harvest Plan:

1. A Conversion Option Harvest Plan shall conform to the submission requirements of the Department of Natural Resources and Whatcom County.
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 for the review of a Conversion Options Harvest Plan.

.647 Posting Authorization: Land clearing authorization must be posted and clearly visible at the access to the site.

.648 Winter Clearing: From October 1 through April 30, additional requirements may be established by the County. Weather and site conditions may be used to assist the County in establishing these requirements.

.649 Bonding and Securities: The County may require financial assurance for the proper performance and for the repair of site conditions; including but not limited to, temporary erosion and sedimentation control facilities, vegetation restoration, and damage repair.

.650 Penalties: Violation of these requirements is punishable, pursuant to 20.94.200 of the Whatcom County Zoning Ordinance, Title 20.

.651 Review Fees: Review fees will be assessed as established by the Whatcom County Unified Fee Schedule.

.652 Special Districts:

Purpose: The purpose of a Special District in this chapter is to establish a more stringent standard for clearing activity in: highly valued water resource areas; environmentally sensitive areas that exhibit clear evidence of degradation correlated to development; or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions..

1. **Special District Designation:** Whatcom County shall establish the following geographic areas as Special Districts:
 - A. Lake Whatcom Watershed

B. Drayton Harbor Watershed

2. Special District Requirements:

A. **Additional Review Requirements:** All proposed land clearing activities in an established Special District that effects 5,000 square feet or more shall be required to obtain County approval (see Section .645) prior to any land clearing activity unless exempted under this chapter.

B. **Clearing activity must conform to the following conditions:**

- 1) County approval of the proposal shall be contingent upon receipt of a clearing and temporary erosion and sediment control plan from the owner and approved by the County (see Chapter 2 of the Whatcom County Development Standards).
- 2) The clearing activity shall be limited to only that which is necessary for the installation of the development. A vegetation plan indicating undisturbed areas, areas to be re-vegetated, planting schedules, etc., must accompany the permit and be approved by the County.

Amend 20.94.010 to read:

20.94.010 GENERAL ENFORCEMENT AND PENALTIES

Add the following to 20.94:

20.94.200 LAND DISTURBANCE

.210 Any person who engages in a land disturbance activity, and

- (1) Fails to obtain a development permit or authorization when required pursuant to this ordinance; or
- (2) Fails to comply with any permit condition required pursuant to this ordinance; or
- (3) Fails to comply with the regulatory requirements of this ordinance

shall be guilty of a civil offense and shall be fined a sum not to exceed one thousand dollars (\$1,000.00) for each offense. Each day of site work in conjunction with any of the above violations shall constitute a separate offense.

.220 The penalty provided in the above section shall be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service to the person, incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity in ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring

- necessary corrective action to be taken within a specific and reasonable time.
- .230 Within thirty (30) days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revision shall be reviewed by the Hearing Examiner if the aggrieved party files a written appeal pursuant to WCC 20.84.240.
- .240 The Prosecuting Attorney may enforce compliance with this ordinance by such injunctive, declaratory, or other actions as deemed necessary to insure that violations are prevented, ceased, or abated.
- .250 If the land disturbance activity has occurred on a site in violation of this ordinance, prompt restoration of the site will be required.
- .260 In the event any person violates any of the provisions of this ordinance, the County shall issue a notice of violation to be delivered to the owner or operator, or to be conspicuously posted at the site, and order all work to cease until authorized to proceed. Failure to comply with the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine of five hundred dollars (\$500.00) up to a maximum fine of one thousand dollars (\$1,000.00) or one (1) year in jail, or both. Under no circumstance, may the court defer or suspend any portion of the minimum five hundred dollar (\$500.00) fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense.

ADD THE FOLLOWING DEFINITIONS TO TITLE 20:

Definitions:

Agriculture or Agricultural Activity: A condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to marketed produce on roadside stands or farm markets; noise, odors; dust; fumes; operation of machinery and irrigation pumps; movement including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; employment and use of labor; roadway movement of equipment and livestock, prevention of damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features; and maintenance of streambanks and water-courses; and conversion from one agricultural activity to another. (New def to replace .010 of 20.97)

Agricultural Land - land devoted primarily to the production, for commercial purposes, of livestock, or other farm products. (New def)

Farm - the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of **farm products**. (New def)

Farm Product - those plants and animals useful to humans and includes, but is not limited to forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grass, trees or other nursery stock, apiaries, equine and other similar products, or any other products that incorporate the use of food, feed, fiber, or fur. (New def)

Clearing: The destruction and/or removal of vegetation by manual, mechanical, or chemical methods.

Conversion Option Harvest Plan: 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 Development 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.

Development: Any activity that requires Federal, State, or local approval for the use or modification of land or its resource. These activities include; but are not limited to, subdivision and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval. (New def)

Forest Practice: Any activity conducted on or directly pertaining to forest land and related to growing, harvesting or processing timber (222-16 WAC); including , but limited to: (1) road and trail construction; (2) fertilization; (3) prevention and suppression of diseases and insects; or other activities which qualify as a use or development subject to the Forest Practices Act. (From SMP def)

Land Disturbance Activity: Any activity that results in a change in the existing soil cover and/or the existing soil topography. Land disturbance activities include, but are not limited to, clearing, grading, filling and excavation. (New def)

Rural Zoning Districts: Zoning districts that allow rural, agricultural, recreation and forestry activities and do not require sewer and/or water prior to development. These zoning districts include; R2A, R5A, R10A, ROS, Agriculture, and Forestry.

Urban and Suburban Zoning Districts: Zoning districts that allow industrial and commercial activities, and high and medium density residential densities. These zoning districts include: UR, URM, RR, RR-1, NC, GC, TC, RC, GI, LII, GM, HII, and AO.

Renumber from 20.80.640 to end of chapter.
Correct all cross references throughout Title 20.