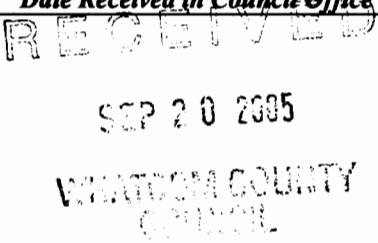


WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2005-125B

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Amy d. Pederson	<i>[Signature]</i>	9/8/05		9/27/05	Introduction
Division Head:				10/11/05	Public Hearing
Dept. Head: Hal H. Hart	<i>HHH</i>	9/9/05			
Prosecutor: Royce Buckingham	<i>[Signature]</i>	9/14/05			
Purchasing/Budget:	<i>[Signature]</i>	9/11			
Executive: Pete Kremen	<i>PK</i>	9-20-05			

TITLE OF DOCUMENT:
 Ordinance amending WCC Title 20, Section 20.80.735 to impose a seasonal clearing activity restriction within the Lake Whatcom and Lake Samish Water Resource Special Management Areas between September 1 and April 30

- ATTACHMENTS:**
- (1) Proposed Ordinance
 - (2) Staff Report and Exhibits
 - (3) Planning Commission Public Hearing Minutes

SEPA review required?	(X) Yes	() NO	Should Clerk schedule a hearing?	(X) Yes	() NO
SEPA review completed?	(X) Yes	() NO	Requested Date: October 11, 2005		
<i>The Council must hold a hearing if they want to change the Planning Commission's recommendation (WCC 20.90.051).</i>					

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.)*

An ordinance adopting permanent amendments to the official Whatcom County Code, Title 20, Section 20.80.735(2)(e) – *Seasonal Clearing Activity Limitations* to impose a seasonal restriction on clearing activities that will result in exposed soils exceeding 500 square feet within the Lake Whatcom and Lake Samish Water Resource Special Management Areas between September 1 and April 30 and replacing the interim zoning text amendments adopted under Ordinance No. 2005-061.

COMMITTEE ACTION:

COUNCIL ACTION:

9/27/05: Introduced

10/11/2005: Adopted 5-2, Nelson, Crawford opposed, Ord. #2005-074

Related County Contract #:	Related File Numbers: File #ZON2005-00007	Ordinance or Resolution Number: Ord. #2005-074
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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.

SPONSORED BY: Consent
PROPOSED BY: Planning
INTRODUCTION DATE: 9/27/2005

ORDINANCE NO. 2005-074

AN ORDINANCE AMENDING WCC, TITLE 20, SECTION 20.80.735(2)(e) TO IMPLEMENT A SEASONAL RESTRICTION ON CLEARING ACTIVITIES THAT WILL RESULT IN EXPOSED SOILS EXCEEDING 500 SQUARE FEET WITHIN THE LAKE WHATCOM AND LAKE SAMISH WATER RESOURCE SPECIAL MANAGEMENT AREAS BETWEEN SEPTEMBER 1 AND APRIL 30

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

WHEREAS, Ordinance 2005-027 further stated the Council's desire to evaluate necessary actions to meet the TMDL goal of reversing the declining oxygen trends in Lake Whatcom, including but not limited to development codes, regulations and standards; and

WHEREAS, the Whatcom County Council reviewed and discussed multiple moratorium response options at Council Water Resources Work Sessions and Council Moratorium Response Committee work sessions on February 15, February 22, March 1, and March 15, 2005; and

WHEREAS, the Whatcom County Council adopted Interim Ordinance 2005-032 on March 15, 2005 imposing a seasonal restriction on land clearing activities within the Lake Whatcom watershed water resource special management area between September 1 and April 30; and

WHEREAS, the Whatcom County Council adopted Ordinance 2005-042 on April 6, 2005 extending the interim moratorium on the acceptance of new applications for subdivisions within the Lake Whatcom watershed; and

WHEREAS, the Whatcom County Council held additional work sessions to review and discuss moratorium response options on March 29, April 5, April 19, April 26, May 3, and May 10, 2005; and

WHEREAS, the Whatcom County Council adopted Interim Ordinance 2005-061 on July 26, 2005 extending the interim seasonal restriction on land clearing activities within the Lake Whatcom watershed water resource special management area between September 1 and April 30; and

WHEREAS, Interim Ordinance 2005-061 will expire in February 2006; and

WHEREAS, the Whatcom County SEPA Official issued a Determination of Non-significance (DNS) on August 1, 2005; and

WHEREAS, pursuant to RCW 36.70.590, legal notice was published in the Bellingham Herald on August 1, 2005; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendments on August 11, 2005, and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission forwarded the proposed text amendments to the County Council without a recommendation due to lack of a majority vote of the Commission; and

WHEREAS, the Whatcom County Council finds the amendments to be within the interest of the public health, safety and welfare; and

WHEREAS, the Whatcom County Council has adopted the following Findings of Fact and Conclusions:

1. Legal notice for a public hearing was published in the Bellingham Herald on August 1, 2005.
2. A Determination of Non-Significance (DNS) was issued under the State Environmental Policy Act (SEPA) on the proposed zoning text amendments on August 1, 2005.
3. A public hearing was held by the Whatcom County Planning Commission on August 11, 2005 and all testimony was considered.
4. Lake Whatcom is the drinking water source for approximately half the residents of Whatcom County.
5. Lake Samish is the source of potable water for approximately 90 percent of the residents in the Lake Samish watershed.
6. Field research indicates that sediment removal rates of many erosion and sediment control (ESC) practices may vary between 50 and 85% removal of total suspended solids (TSS). However, effectiveness of ESC measures can vary depending on the specific ESC measure employed, proper installation, and maintenance. The concentration of sediment leaving a site, even with good controls, will be significantly higher than undeveloped conditions.
7. The 2005 CTED *Technical Guidance Document for Clearing and Grading in Western Washington* notes that "many of the impacts of construction stormwater runoff can be minimized or avoided by planning appropriate seasonal construction activity."
8. The April 2001 URS Corporation evaluation report on Whatcom County policies, regulations, and programs in relation to Endangered Species Act (ESA) compliance includes specific recommendations to revise County standards to address seasonal work limitations, as well as "provide for banning grading during certain time periods in highly erodible or otherwise sensitive areas."
9. The 2005 Whatcom County Comprehensive Plan designates the Lake Whatcom watershed as a Special Study Area.
10. *Whatcom County Comprehensive Plan* Goal 11G is to: Protect water resources and natural drainage systems by controlling the quality and quantity of stormwater runoff.

11. **Comprehensive Plan Policy 11F-5 states: Pursue the adoption and implementation of ground and/or surface water management plans and integrate the plans into local comprehensive plans. Designate the Lake Whatcom and Lake Samish Watersheds as a high priority in this effort.**
12. **County-Wide Planning Policy N.2. states that "the Cities and the County in cooperation with other municipal corporations and tribal governments, shall adopt zoning regulations and development standards to protect water resources."**
13. **Growth Management Act Planning Goal (10) Environment is to: Protect the environment and enhance the state's high quality of life, including air and water quality and the availability of water.**
14. **Whatcom County Code Section 20.80.735 designates the Lake Whatcom and Lake Samish watersheds as Water Resource Special Management Areas.**
15. **The City of Bellingham, Whatcom County Water District No. 10 and Whatcom County have recognized that water quality issues cross jurisdictional boundaries and have adopted a joint resolution to establish goals for the Lake Whatcom watershed and an interlocal agreement to establish a work program to address water quality issues.**
16. **In 2001, the City of Bellingham adopted a seasonal restriction on clearing and earthwork that will result in exposed soils greater than 500 square feet within the Silver Beach Neighborhood between October 1 and April 30 [Ord. 2001-01-001].**
17. **The Washington State Department of Ecology (DOE) has listed portions of Lake Whatcom as an "impaired water body" on the 303(d) list under the Clean Water Act, of waterbodies not attaining water quality criterion for dissolved oxygen.**
18. **It has been recommended by DOE that Lake Whatcom also be placed on the 303(d) list for impairments resulting from the toxic pollutants PCB-1254, PCB-1260 and mercury and that Austin Creek, Park Place Drain, and Cable Street drainage for 303(d) listing as impaired for not attaining water quality criteria for bacteria.**
19. **In February 2005, the Whatcom County Council adopted Interim Ordinance 2005-027 imposing a moratorium on the acceptance of new building and subdivision applications within the Lake Whatcom watershed to facilitate further review and evaluation of potential management measures "to meet the TMDL goal of reversing the declining oxygen trends in Lake Whatcom".**
20. **Ordinance 2005-027 expresses the Councils desire to evaluate necessary actions to meet the loading goals established in the TMDL process through such measures as development codes and regulations.**
21. **In March 2005, County Council adopted Ordinance 2005-032 imposing interim text amendments to WCC 20.80.735(2)(e) implementing a seasonal restriction on land clearing activities within the Lake Whatcom watershed between September 1 and April 30.**
22. **In April 2005, County Council adopted Interim Ordinance 2005-042 extending the moratorium on acceptance of applications for new subdivisions within the Lake Whatcom watershed.**

23. County Council extended the interim restriction on seasonal land clearing activities by Ordinance 2005-061 in July 2005. The interim ordinance will expire in February 2006.
24. Erosion, sedimentation, phosphorus and other pollutants associated with increased land clearing and development are of concern for a number of reasons including their impacts on water quality and beneficial uses such as fish, shellfish and drinking water.
25. Existing and potential sources of contamination associated with development within the Lake Whatcom and Lake Samish watersheds could significantly impact the availability of safe, adequate supplies of drinking water.
26. Additional standards for land clearing activities are necessary to reduce potential water quality impacts from new development in sensitive drinking water watersheds.
27. Amendment of WCC, Title 20, Section 20.80.735(2)(e) is necessary to avoid future degradation of the Lake Whatcom and Lake Samish watersheds and any associated harm to the health and welfare of the public.
28. The proposed text amendments are consistent with the Growth Management Act planning goals, as well as the goals and policies of the Whatcom County Comprehensive Plan and the County-Wide Planning Policies.
29. The proposed text amendments to WCC 20.80.735(2)(e), attached hereto as Exhibit 1, are intended to implement a permanent seasonal clearing restriction within the Lake Whatcom and Lake Samish Water Resource Special Management Areas from September 1 to April 30 and replace the interim zoning text amendments adopted under Ordinance 2005-061.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

- Section 1:** Whatcom County Code, Title 20, Section 20.80.735(2)(e) be amended as shown in Exhibit 1.
- Section 2:** The Lake Whatcom and Lake Samish watersheds are defined as shown in Appendix B and C to the PDS staff report respectively.
- Section 3:** Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

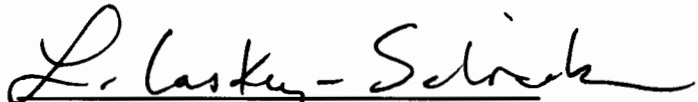
ADOPTED this 11 day of October, 2005.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



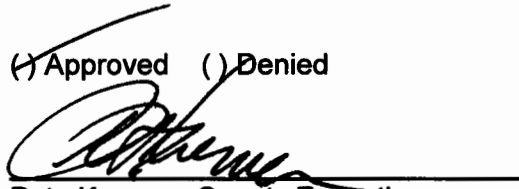
Dana Brown-Davis,
Clerk of the Council



Laurie Caskey-Schreiber, Council Chair



Approved Denied



Pete Kremen, County Executive

Date: 10-18-05

WCC Title 20, Chapter 20.80 – *Supplementary Requirements* Water Resource Special Management Areas

20.80.735(2) Water resource special management areas.

(e) Seasonal Clearing Activity Limitations.

In the Lake Whatcom and Lake Samish 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 September 1st through April 30th; provided that:

(i) In addition to the clearing activities exempted under WCC 20.80.733, the zoning administrator 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 WCC Title 23 and/or Chapter 16.16 WCC) conditions of approval requiring commencement of clearing activity during the wet season, as defined above, 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 prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the zoning administrator as soon as the emergency is addressed and no later than two (2) business days following such action. Emergency construction does not include development of new permanent protective structures where none previously existed.

(ii) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The zoning administrator shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.

(iii) 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.

~~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(e) of activity, and size of the area to be cleared or graded.~~

~~(A) 1. 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) 2.~~ 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.

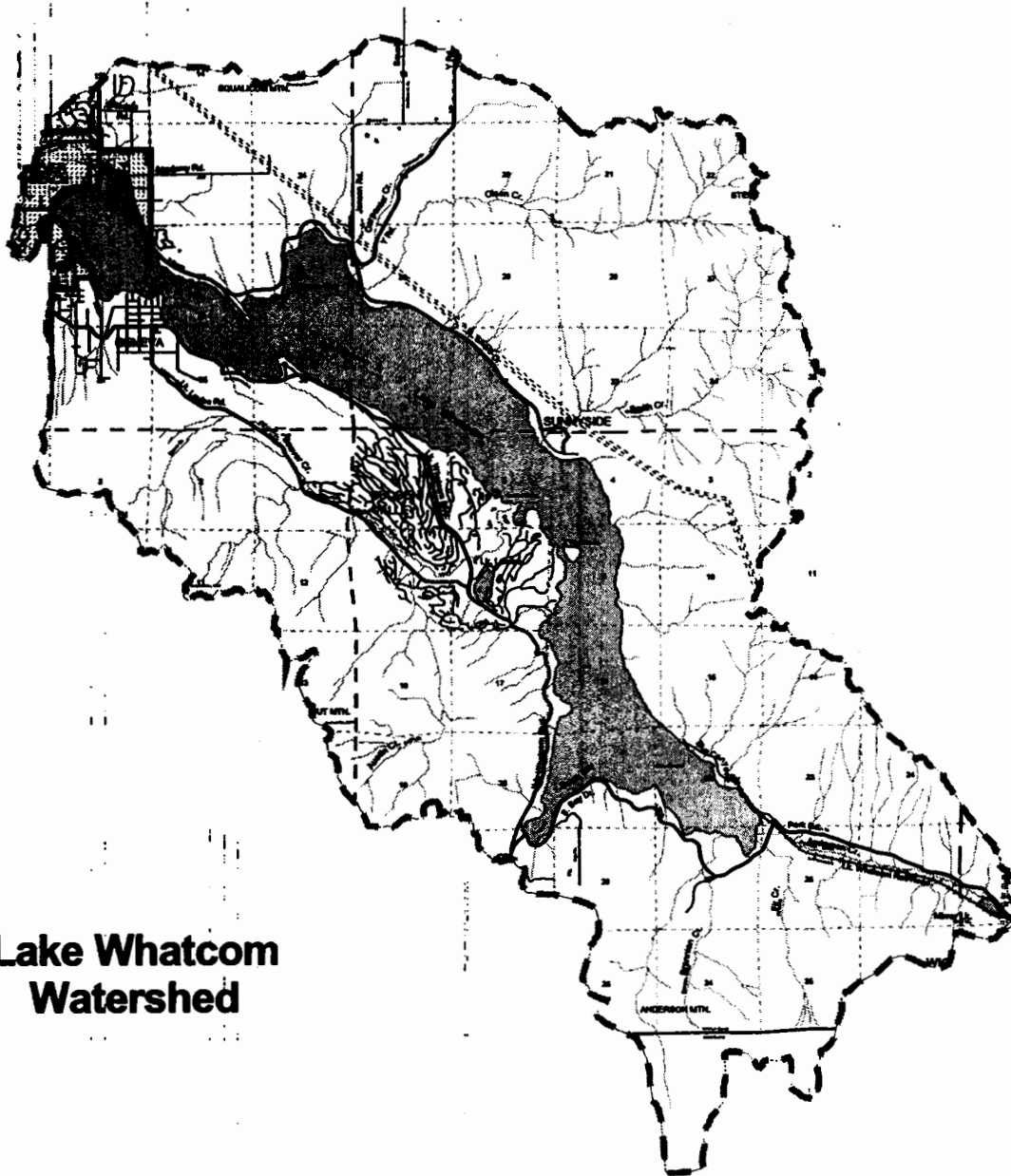
(ii) ~~(B)~~ Based upon the review criteria and thresholds under subsection (2)(e)(i) of this section, the technical administrator shall set forth in writing the basis for approval or denial of clearing activities during the wet season. If the applicant does not agree with the determination made by the 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.~~

Lake Whatcom Watershed

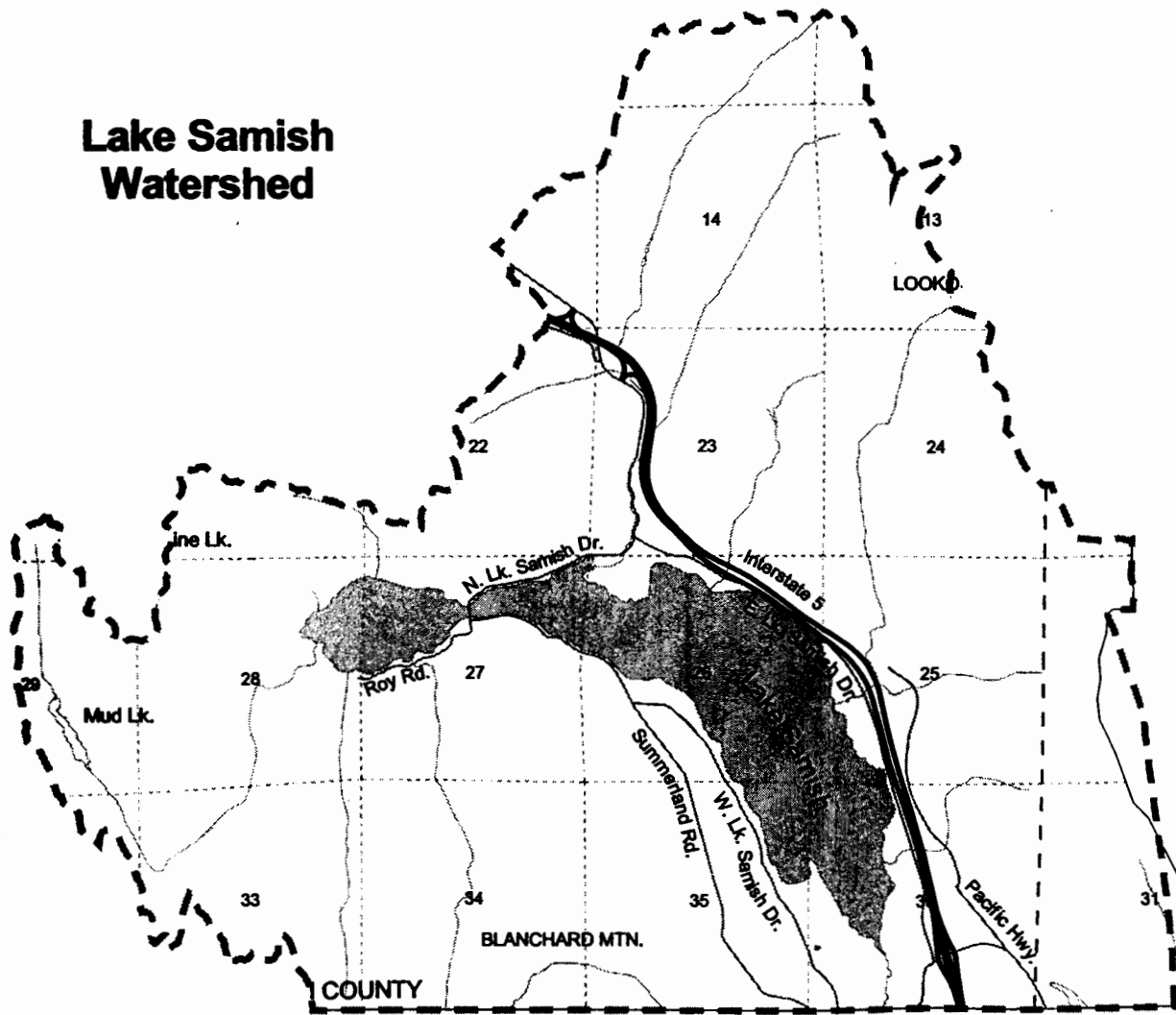


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APPENDIX B
File ZON2005-00007



Lake Samish Watershed



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APPENDIX C
File ZON2005-00007

