

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

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COUNCILMEMBERS
Barbara Brenner
Rud Browne
Barry Buchanan
Todd Donovan
Ken Mann
Satpal Sidhu
Carl Weimer

WHATCOM COUNTY COUNCIL

AGENDA REVISION NOTICE
FOR OCTOBER 25, 2016
(DISTRIBUTED AT 5:30 P.M. ON OCTOBER 25, 2016)

THE FOLLOWING ITEM HAS BEEN ADDED TO THE EVENING COUNCIL MEETING AGENDA AND WILL BE SCHEDULED FOR PUBLIC HEARING AT A LATER DATE:

Ordinance imposing an emergency moratorium on the acceptance and processing of applications and permits for subdivisions, building permits, and discretionary permits that rely on permit-exempt wells for water supply in closed basins (AB2016-309) **(paperwork attached below)**

<i>CLEARANCES</i>	<i>Initial</i>	<i>Date</i>	<i>Date Received in Council Office</i>	<i>Agenda Date</i>	<i>Assigned to:</i>
<i>Originator:</i>		10/25/2016		10/25/2016	Council
<i>Division Head:</i>					
<i>Dept. Head:</i>		10.25.16			
<i>Prosecutor:</i>					
<i>Purchasing/Budget:</i>					
<i>Executive:</i>					

TITLE OF DOCUMENT:

Moratorium on applications & permits for permit-exempt wells for water supply

ATTACHMENTS:

Ordinance

<i>SEPA review required?</i> () <i>Yes</i> () <i>NO</i>	<i>Should Clerk schedule a hearing?</i> (<input checked="" type="checkbox"/>) <i>Yes</i> () <i>NO</i>
<i>SEPA review completed?</i> () <i>Yes</i> () <i>NO</i>	<i>Requested Date:</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.)

Emergency ordinance imposing a moratorium on the acceptance and processing of applications and permits for subdivisions, building permits, and discretionary permits that rely on permit-exempt wells for water supply in closed basins.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

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.

PROPOSED BY: _____
INTRODUCTION DATE: _____

**ORDINANCE NO. _____
(EMERGENCY ORDINANCE)**

**IMPOSING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING
OF APPLICATIONS AND PERMITS FOR SUBDIVISIONS, BUILDING
PERMITS, AND DISCRETIONARY PERMITS THAT RELY ON PERMIT-
EXEMPT WELLS FOR WATER SUPPLY IN CLOSED BASINS**

WHEREAS, an October 6, 2016 Washington State Supreme Court decision (Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board, No. 91475) has found that Whatcom County's Comprehensive Plan does not comply with the Growth Management Act (GMA) requirements for protecting water resources; and

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan "shall provide for protection of the quality and quantity of groundwater used for public water supplies."; and

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan "shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ... protecting critical areas...and surface water and groundwater resources."; and

WHEREAS, RCW 19.27.097(1) states: "Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply."; and

WHEREAS, RCW 19.27.095(1) states: "A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application."; and

WHEREAS, RCW 58.17.110(2) requires that "A proposed subdivision and dedication shall not be approved unless the...county legislative body makes written findings that...appropriate provisions are made for...potable water supplies..."; and

WHEREAS, RCW 58.17.170(2) states that lots in a long subdivision "shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015," and, "Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007."; and

WHEREAS, Whatcom County adopted Ordinance No. 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating ground water withdrawals; and

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and

WHEREAS, on October 6, 2016, the State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board's decision that the County's Comprehensive Plan does not satisfy the GMA requirements to protect water availability, and stated, "We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability."; and

WHEREAS, the Court stated, "...the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits."; and

WHEREAS, the Court stated, "...The county's policies incorporate WCC provisions that do not allow water to be withdrawn from 'an area where [the Department of Ecology] has determined by rule that water for development does not exist.' ...these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal's impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA..."; and

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies water bodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as "closure," "partial year closure," "low flow," or "minimum flow,"; and

WHEREAS, WCC 20.97.321 defines project permits as "any land use or environmental permit or license required from Whatcom County for a project action including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial project permits, variance, lot consolidation relief, site plan reviews, permits or approvals authorized by a Comprehensive Plan or subarea plan"; and

WHEREAS, an emergency exists in the need to comply with the Supreme Court ruling and to prevent the vesting of permits that could allow the withdrawal of groundwater contrary to the Supreme Court decision; and

WHEREAS, an emergency moratorium would allow Whatcom County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and

WHEREAS, the Whatcom County Charter limits an emergency ordinance not to exceed 60 days from the effective date of adoption; and

WHEREAS, the County Council is required to hold a public hearing within 60 days of passage of this ordinance:

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support

of it action as required by RCW 36.70A.390.

BE IT FURTHER ORDAINED by the Whatcom County Council that an emergency moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new applications for project permits (as defined in WCC 20.97.321) for uses that rely on permit-exempt groundwater withdrawals for water supply on property located within a closed or partially closed basin (as identified in Chapter 173-501 WAC, shown in Exhibit A), except project permit applications in closed or partially closed basins that provide documentation at the time of application submittal that there is an adequate and legal water supply to serve the proposed use in the form of:

- (1) A water right from the Department of Ecology, or
- (2) A letter stating the ability to provide water from a municipal or public water purveyor not dependent on a permit-exempt well, with adequate water rights issued by the Department of Ecology, or
- (3) A rainwater catchment system approved by the Whatcom County Health Department.

ADOPTED this _____ day of _____, 2016.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

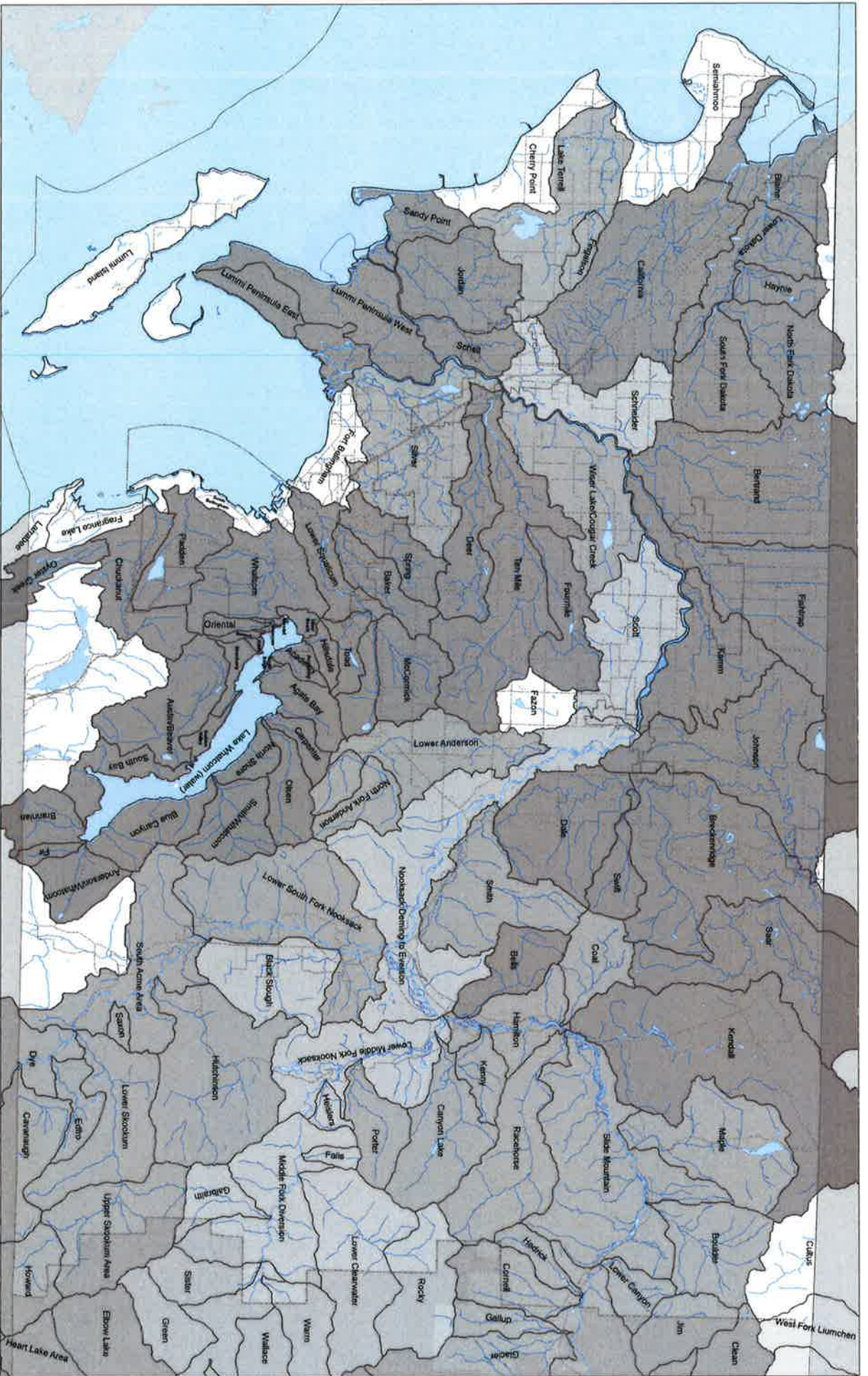
APPROVED as to form:

Civil Deputy Prosecutor

Jack Louws, Executive

() Approved () Denied

Date: _____



-WHATCOM COUNTY-

Unofficial Closure Status of WRIA 1
Surface Waters based on Chapter
173-501 WAC

EXHIBIT A

Legend

CLOSURE TYPE

- Year-Round
- Partial Year
- Low Flow
- Minimum Flow
- Unlisted Areas

Areas outside of WRIA1

SOURCE: 2010 WRIA 1 State of the Watershed Report Management Report, June 30, 2011
Whatcom County

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:
Whatcom County disclaims any warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. The user assumes all liability for any use of the data. The user agrees to hold Whatcom County harmless from and against any damages, loss, or liability arising from any use of the data.

