


**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2016 -- 309

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

**TITLE OF DOCUMENT:**

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

**ATTACHMENTS:**

Ordinance

SEPA review required? ( ) Yes ( ) NO  
 SEPA review completed? ( ) Yes ( ) NO

Should Clerk schedule a hearing ? ( X ) Yes ( ) NO  
 Requested Date:

**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:**

10/25/2016: Adopted 6-1, Brenner opposed,  
 Ord. 2016-048. Public hearing to be held  
 at a later date

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:** Ord.2016-048

**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](http://www.co.whatcom.wa.us/council).**

10-24-2016

PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

**ORDINANCE NO. 2016-048**  
**(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.


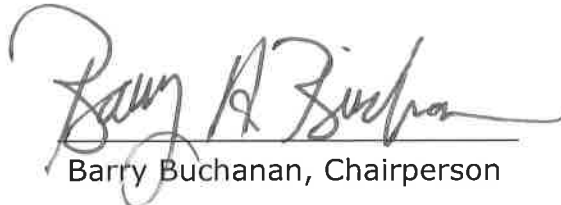
**BE IT FURTHER ORDAINED** by the Whatcom County Council that an emergency moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new applications for project permits (as defined in WCC 20.97.321) for uses that rely on permit-exempt groundwater withdrawals for water supply 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.


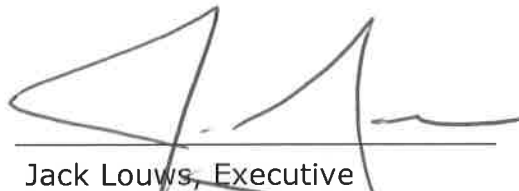
ADOPTED this 25th day of October, 2016.

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: 10-26-16

7:47 A.M.

41



# -WHATCOM COUNTY-

## Unofficial Closure Status of WRJA 1

### Surface Waters based on Chapter 173-501 WAC

#### EXHIBIT A

#### Legend

- CLOSURE TYPE**
- Year-Round
  - Partial Year
  - Low Flow
  - Minimum Flow
  - Areas outside of WRJA 1

SOURCE: 2010 WRJA (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 STATEMENTS:

Whatcom County disclaims any liability or responsibility for accuracy of the data and the user for any potential errors, omissions, or delays in the data. The user assumes all responsibility for any use of the data. Whatcom County disclaims any liability or responsibility for any use of the data. Whatcom County disclaims any liability or responsibility for any use of the data.

