WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td></td>
<td>6/27/2012</td>
<td></td>
<td>7/10/2012</td>
<td>Introduction</td>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td>7/24/2012 Hearing</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
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TITLE OF DOCUMENT:
Ordinance imposing an interim moratorium on apps. in the Lk. Whatcom Watershed

ATTACHMENTS:

SEPA review required? ( ) Yes ( ) NO  Should Clerk schedule a hearing? (x) Yes ( ) NO
SEPA review completed? (x) Yes ( ) NO  Requested Date: 7/24/2012

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.)
Ordinance imposing an interim moratorium on the acceptance of new applications for divisions of land resulting in lots smaller than five acres within the Lake Whatcom Watershed

COMMITTEE ACTION:

COUNCIL ACTION:
7/10/2012: Introduced
7/19/2012: Discussed in Surface Water Work Session
7/24/2012: Council Adopted 6-1, Crawford opposed Ord. 2012-029

Related County Contract #: Related File Numbers: Ordinance or Resolution Number: Ord. 2012-029

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.
ORDINANCE # 2012-029

IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE OF NEW APPLICATIONS FOR DIVISIONS OF LAND RESULTING IN lots SMALLER THAN FIVE ACRES WITHIN THE LAKE WHATCOM WATERSHED

WHEREAS, oxygen levels in Lake Whatcom are declining to lower levels and declining faster than in the past; and

WHEREAS, lower oxygen levels and more rapid decline in oxygen in Lake Whatcom are related to increased rates of sediment and phosphorus loading into the lake; and

WHEREAS, increased availability of phosphorus has limited the nitrogen availability in the lake, making the lake more susceptible to blue-green algae blooms; and

WHEREAS, longer durations of very low oxygen levels increase the rate of methylation of mercury and other anaerobic compounds; and

WHEREAS, increased productivity in the upper waters of the lake lead to increased disinfection byproducts such as total trihalomethanes (THMs); and

WHEREAS, longer durations of very low oxygen levels release phosphorus bound in the lake sediments resulting in increased availability of phosphorus and further increasing biological production in the lake;

WHEREAS, 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 because of low 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, a TMDL requires meeting Water Quality Standards and, for lakes, the dissolved oxygen criterion requires no decline from natural conditions;

WHEREAS, other pollutants identified and monitored within the Lake Whatcom watershed have the highest concentrations in the most developed areas of the watershed; and

WHEREAS, meeting the TMDL goals and improving oxygen levels in Lake Whatcom will require variety of comprehensive planning, pollution prevention, pollution reduction and technical approaches; and

WHEREAS, continued development while the TMDL goals are established and while approaches for meeting those goals are developed will increase the size of the reductions and will increase the costs that will be necessary to meet the TMDL goals; and
WHEREAS, Lake Whatcom County Code 20.71 establishes the Lake Whatcom Watershed as a Water Resource Protection Overlay District; and

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

WHEREAS, the preservation and protection of drinking water is a high priority for Whatcom County; and

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

WHEREAS, Lake Whatcom is a valuable recreation lake for swimming, boating and fishing, and enhances the property values in the area as long as the lake maintains high water quality; and

WHEREAS, declining oxygen levels poses a risk to the water quality of Lake Whatcom that could harm drinking water quality, recreational opportunities, and lake property values; and

WHEREAS, actions required under the 303(d) listing and TMDL goals as well as declining water quality will cause a hardship to tax payers, local property owners in the watershed and water consumers and those hardships may be limited by effective planning, prevention and remediation programs established prior to the establishment of the TMDL goals; and

WHEREAS, the Whatcom County SEPA Official issued a Determination of Non-significance on January 24, 2005; and

WHEREAS, the Council makes the following findings of fact to justify its actions as required by RCW 36.70.795:

1. This interim moratorium on the acceptance of applications for division of land into lots of smaller than five (5) acres is necessary to avoid future degradation of the Lake Whatcom watershed and the associated threat to the drinking water supply of approximately half of the citizens of Whatcom County as well as recreational and lake property values.

2. Without a moratorium additional development lots may be created within the Lake Whatcom Watershed that could lead to negative hydrologic and storm water impacts that may cause irreversible harm to Lake Whatcom and therefore cause harm to the health and welfare of the public.

3. The Whatcom County Council desires the opportunity to evaluate the impacts of future development in relation to reducing phosphorus loads to Lake Whatcom and meeting the TMDL goal of reversing the declining oxygen trends in Lake Whatcom. This evaluation may include but are not limited to the following:
   - Storm water management plans, implementation and maintenance.
   - Storm water funding in the watershed.
   - Review existing zoning densities outside the Bellingham Urban Growth Areas within county jurisdiction.
Storm water management in areas that cross City of Bellingham and Whatcom County jurisdictions.

Transfer of development rights programs.

Land acquisition.

Reviewing the proposed TMDL from the Department of Ecology and its implications for additional county land use regulations.

Reviewing the ongoing monitoring studies on the Lake and its tributaries to understand the extent to which new data further informs our understanding of the relationships between development and other land use activities and Lake Whatcom water quality.

4. All of the parcels remaining subject to this moratorium are also under review in the rural element update/LAMIRD designation currently underway that may affect potential future development on those parcels. Completion of that review is expected before this ordinance would expire and the outcome of that review will inform the Council’s future decisions relating to future zoning densities within the rural areas of the watershed.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a moratorium is hereby imposed on the acceptance of new applications for divisions of land into lots smaller than five (5) acres in the Lake Whatcom watershed, as identified on the map attached as Exhibit A.

BE IT FURTHER ORDAINED that divisions resulting in lots all of which are five (5) acres or larger shall be exempt from this division moratorium.

BE IT FINALLY ORDAINED by the Whatcom County Council that, pursuant to RCW 36.70.795, this moratorium 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 24th day of July, 2012.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Kathy Kershner, Council Chair

Jack Louws, Executive

Date: 7/25/12
Lake Whatcom Watershed