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Planning & Development Services
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Mark Personius, AICP
Director

Memorandum

TO: Planning Commission
FROM: Cliff Strong, Senior Planner
DATE: July 13, 2018
SUBJECT: Proposed Whatcom County Comprehensive Plan and Health Code Amendments

Earlier this year, the Council adopted amendments to the Comprehensive Plan and development regulations to enact the Streamflow Restoration Act (ESSB 6091), which amended the state water and watershed management regulations and provided a resolution to the Washington Supreme Court's Hirst Decision.

On June 28, 2018, Hirst, *et al.* and Futurewise, petitioners in Case No. 12-2-0013, filed a *Concurrence in Part and Objection in Part to a Finding of Compliance on Water Quantity* with the Growth Management Hearings Board. In it, they concurred that our newly adopted policies and regulations for WRIA 1 (except for Point Roberts, Eliza Island, and Lummi Island) now comply with the GMA. But they objected to us exempting Point Roberts, Eliza Island, and Lummi Island, arguing that ESSB 6091 applies to *all* of WRIA 1. They also objected to us not including the Whatcom County portion of WRIA 4 (Upper Skagit) in the requirements for showing legal availability of water (even though doing so would have no actual effect on development, as all of it is National Forest land). The Prosecuting Attorney's Office agrees with their arguments and requested that we bring forth an amendment to remedy this.

Staff recommends that the Planning Commission review and discuss the attached staff report and Exhibit A showing the proposed amendments to the Whatcom County Comprehensive Plan and development regulations, hold a public hearing, and recommend that the County Council adopt these provisions consistent with ESSB 6091.

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Mark Personius, AICP
Director

Staff Report to the Planning Commission

Whatcom County Comprehensive Plan and Health Code Amendments

Date: July 17, 2018

File # PLN2016-00013

File Name: Whatcom County Comprehensive Plan and Health Code Amendments

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: An ordinance amending the Comprehensive Plan and WCC 24.11.060 (Water availability required), amending the requirements for evidence of legal availability for permit exempt groundwater withdrawals in WRIs 1 (Nooksack), 3 (Lower Skagit), and 4 (Upper Skagit) to be consistent with the Washington State Streamflow Restoration Act (ESSB 6091). The ordinance would remove the compliance exemption for islands and other coastal areas that are not in hydraulic continuity with the Nooksack River as well as subject properties in WRIA 4 (Whatcom County portion of the Upper Skagit) to the requirements of the Act, similar to the rest of WRIA 1 and 3 (Whatcom County portion). (See Figure 1 for boundaries)

Location: Countywide.

Staff Recommendation: Staff recommends that the Planning Commission review the proposed ordinance, hold a public hearing, and recommend adoption of these provisions to the County Council.

I. BACKGROUND

The State Legislature passed, and the Governor signed into law, ESSB 6091, which amends the state water and watershed management regulations, providing a resolution to the Washington Supreme Court's Hirst Decision. Whatcom County amended its Comprehensive Plan and regulations earlier this year to incorporate the new state law into our code so as to be consistent with it and our Comprehensive Plan.

ESSB 6091 requires the Department of Ecology to work with the initiating governments and the planning unit, including the Tribes, to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health. We must then update the watershed plan to include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. That work is underway.

Until the watershed plan is updated, ESSB 6091 does allow jurisdictions to rely on Ecology rules regarding new permit-exempt wells to comply with GMA requirements for protecting surface and ground water resources, as long as certain conditions are met. These conditions include:

- Withdrawals can be for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.
- Applicants must pay a fee of \$500 dollars (\$350 of which the County must forward to the Department of Ecology).

- Applicants must record any relevant restrictions or limitations associated with water supply with their property’s title.

Whatcom County is required by state law to document that every building and land use permit necessitating potable water has an “adequate water supply” prior to approval. Adequate water supply as defined by WCC 20.97.451 includes a three-part requirement: 1) water quantity (i.e., the water source has enough physical water to meet state Department of Health minimum requirements to supply a proposed use); 2) water quality (i.e., the proposed withdrawal of water meets state safe drinking water quality standards); and 3) legal availability (i.e., the applicant has legal authority to access and use the water source).

In Whatcom County the ways of showing the legal water availability for development purposes (where Whatcom County has to issue a permit for a use requiring water) are listed in WCC 24.11.060(B). This was one of the sections of code that Council amended earlier this year so as to comply with ESSB 6091.

Reason for Proposed Amendments

In crafting the previous ordinance, staff relied on previous determinations by the Department of Ecology that certain areas of Whatcom County—areas not in hydraulic continuity with the Nooksack River—would be exempt from complying with the conditions imposed by ESSB 6091. Thus, the ordinance specifically exempted properties in Point Roberts, Eliza Island, or Lummi Island from the three conditions. The ordinance also acknowledged that certain coastal areas might also not be in hydraulic continuity with the Nooksack River, and allowed property owners in those areas to perform a study to determine whether they were, and if not, then also not be subject to the three conditions.

Additionally, the ordinance did not address the portion of WRIA 4 (Upper Skagit) that lies within Whatcom County, as there are no private properties in that area (it all being National Forest land).

On June 28, 2018, Hirst, *et al.* and Futurewise, petitioners in Case No. 12-2-0013, filed a *Concurrence in Part and Objection in Part to a Finding of Compliance on Water Quantity* with the Growth Management Hearings Board. In it, they concurred that our newly adopted policies and regulations for WRIA 1 (except for Point Roberts, Eliza Island, and Lummi Island) now comply with the GMA. But they objected to us exempting Point Roberts, Eliza Island, and Lummi Island, arguing that ESSB 6091 applies to *all* of WRIA 1. They also objected to us not including the Whatcom County portion of WRIA 4 (Upper Skagit) in the requirements for showing legal availability of water (even though doing so would have no actual effect on development).

The Prosecuting Attorney’s Office agrees with their arguments and requested that we bring forth an amendment to remedy this.

II. PROPOSED AMENDMENTS

A. Proposed Code Amendments

This ordinance would amend the health regulations (WCC 24.11.060, Water availability required) as shown in Exhibit A (attached) (and tabularized for explanation in Table 1, below). The amendments would eliminate the compliance exemption for Point Roberts, Eliza Island, Lummi Island, and coastal areas not in hydraulic continuity with the Nooksack River, and subject properties in WRIA 4 (Whatcom County portion of Upper Skagit) to the requirements of WAC Chapter 173-503.

Table 1. Conditions Under Which Water is Considered Legally Available for Purposes of Development in Whatcom County Pursuant to WCC 24.11.060

Ways of Showing Legal Availability of Water	Location			Limit/Conditions
	WRIA 1 (Nooksack)	WRIA 3 (Lower Skagit-Samish)	WRIA 4 (Upper Skagit)	
1. A water right permit from the Department of Ecology	✓	✓	✓	Up to whatever amount for which the DOE approves the water right
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water	✓	✓	✓	Up to whatever amount for which the purveyor has adequate water rights (as approved by the DOE) and is willing to sell, plus whatever service conditions/costs they impose
3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018	✓	✓	✓	Up to 5,000 gallons per day
4. Water supplied by a rainwater catchment system	✓	✓	✓	No limit, but system must be approved by the Whatcom County Health Department, per Dept. of Ecology Policy 1017
5. For new permit-exempt groundwater withdrawals for domestic use per RCW 90.44.050	✓			<ul style="list-style-type: none"> • Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection, • The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and, • The applicant shall pay any applicable fees for each project permit.
6. Evidence that water for domestic use will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050		✓		Up to 5,000 gallons per day
7. Evidence that the requirements of WAC Chapter 173-503 have been met			✓	Limitations and requirements of WAC Chapter 173-503

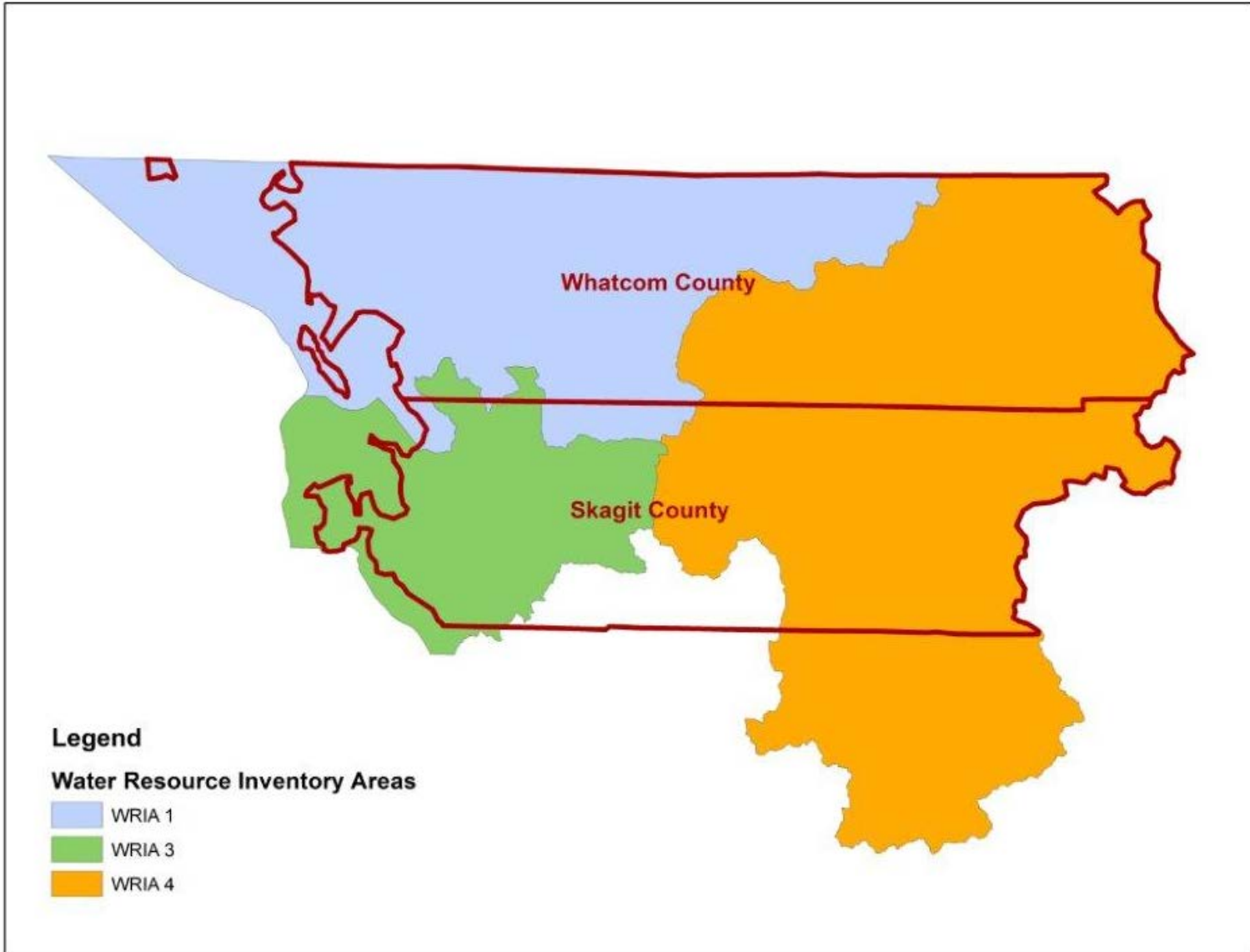


Figure 1. Boundaries of Whatcom and Skagit Counties, and WRIA 1, 2, and 3

B. Proposed Comprehensive Plan Amendments

Due to a previous Growth Management Hearings Board decision regarding the lack of measures in our Comprehensive Plan to protect rural character, the County adopted into it by reference specific sections of the Whatcom County Code, found in Policy 2DD-2. Germaine to the matter at hand, Policy 2DD-2.C.8 adopts by reference WCC 24.11.060.

Because of this, each time we amend any of these referenced code sections we are also amending the Comprehensive Plan, and have to advertise as such. No further action is required on this portion.

III. COMPREHENSIVE PLAN EVALUATION

Below are listed all the pertinent Comprehensive Plan goals and policies regarding domestic water supply, protection of instream flows, water quantity, and watershed planning:

Chapter 2, Land Use

Goal 2A: Ensure designation of sufficient land and densities, with consideration of water availability, to accommodate the growth needs of Whatcom County and protect the local economy, rural lifestyle, habitat, fish, and wildlife, which are the cornerstone qualities that make the county a desirable place to live.

Policy 2A-15: Strive to improve predictability to property owners regarding the connection between legal water use, and land use and development by:

- Supporting completion of groundwater studies that provide a better understanding of water quantities available and the connection between groundwater use and instream flow levels.
- Supporting the efforts of water purveyors to develop new legal water sources and the infrastructure and systems necessary to transport that water to existing water users that lack safe potable water or sufficient water rights.
- Encouraging a negotiated water rights quantification and settlement between the Lummi Nation, Nooksack Indian Tribe and other water users in the Nooksack River basin.
- Encouraging the Department of Ecology to protect instream flows, particularly in times of extremely low summer flows.
- Coordinating with the Department of Ecology to find solutions to provide adequate water for out-of-stream users while protecting instream flows. Potential solutions may include consideration of recycling, conservation, water banking, public water system inerties, stream recharge augmentation, change in place of use, desalinization and other alternative water supply measures.
- Requesting the Department of Ecology to create a water management plan for exempt wells in closed water basins that better aligns instream flows with current water rights and legal decisions on hydraulic continuity.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

...

C. Measures to protect critical areas and surface and groundwater resources:

...

6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
 - a. WCC 21.04.090 Water supply, Short Subdivisions.
 - b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions.
7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology water right requirements per WCC 24.11.050, adopted herein by reference.
8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.
9. Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

...

Goal 2M: Protect and encourage restoration of habitat for fish and wildlife populations including adequate instream flows.

Policy 2M-7 Engage in efforts to better define groundwater resources and connection to surface water, current water usage, water rights, adequate instream flows, and policy barriers that create conflicts between these things.

Chapter 5, Utilities

Goal 5R: Ensure that potable water supplies required to serve development are available at the time the development is available for occupancy and use.

Policy 5R-1: Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

Chapter 10, Environment

Goal 10F: Protect and enhance water quantity and quality and promote sustainable and efficient use of water resources.

Policy 10F-3: Work cooperatively with Federal, State, and local jurisdictions, Tribal governments, municipal corporations, and the public to implement the goals and policies of the Comprehensive Plan as well as state water resources and water quality laws.

Policy 10F-4: Participate in the coordination of all local water and land management efforts, plans, and data to ensure adequate oversight of water quantity and quality issues.

Policy 10F-5: Manage water resources for multiple instream and out-of-stream beneficial uses, including instream flows set by the State Department of Ecology.

Policy 10F-9: In conjunction with all jurisdictions, develop and adopt programs to protect water quality and quantity within watersheds, aquifers, and marine waterbodies that cross jurisdictional boundaries.

Goal 10G: Protect and enhance Whatcom County's surface water and groundwater quality and quantity for current and future generations.

Policy 10G-3: In conjunction with the public and appropriate local, state, Tribal, and federal jurisdictions, define, identify, and develop management strategies for watershed basins and subbasins that may require special protection. These areas may include aquifers, critical aquifer recharge areas as defined under the Growth Management Act, Groundwater Management Areas, wellhead protection areas, and high priority watersheds such as those specified under WAC 400 (Local Planning and Management of Non-point Source Pollution), WRIA Watershed Management Planning, and under legislative policy direction (e.g. Nooksack Basin, Lake Whatcom, Lake Samish and Drayton Harbor).

Policy 10G-4: Management efforts should consider both water quality and quantity. Water quality efforts should help reduce the likelihood that potential contaminant sources will pollute water supplies. Water quantity efforts should include consideration and protection of recharge areas and potential effects on stream flow.

Policy 10G-5: Support the implementation of local and state Watershed Management Plans, the Lower Nooksack Strategy, the Lake Whatcom Management Program, NPDES Phase II Permitting, and the WRIA Watershed Management Projects.

Policy 10G-6: Pursue the adoption and implementation of ground and/or surface water management plans and their integration into local comprehensive plans. Designate the Lake Whatcom and Lake Samish Watersheds as high priorities in this effort.

Goal 10-I: Support water conservation, reclamation, reuse measures, and education as a means to ensure sufficient water supplies in the future.

Policy 10I-2: Support efforts to establish and protect sustainable water supplies to meet existing and future demands for water in the county.

Policy 10I-3: Develop and implement plans to comply with the Department of Ecology's instream flow and water management rules and water resources management programs.

Policy 10I-4: Coordinate local water and land management efforts, plans, and data to ensure adequate oversight of water quality and quantity issues.

Conclusion: The proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County's intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act's requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the above listed Comprehensive Plan goals and policies.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the County Council adopt the following findings of fact and reasons for action:

1. 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,
2. 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,

3. RCW 19.27.097(1) requires that applicants for building permits of buildings necessitating potable water provide evidence of an adequate water supply for the intended use of the building; and,
4. 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,
5. WCC Chapter 24.11 contains requirements for potable water; and,
6. To protect rural character and regulate groundwater withdrawals, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations, adding Policy 2DD-2.C.6 which adopts by reference WCC 21.04.090 and 21.05.080, Policy 2DD-2.C.7 which adopts by reference WCC 24.11.050, Policy 2DD-2.C.8 which adopts by reference WCC 24.11.060, and Policy 2DD-2.C.9 which adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,
7. 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,
8. On October 6, 2016, the Washington 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,
9. 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,
10. 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,
11. Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies waterbodies 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,
12. On January 18, 2018, the Washington State Legislature adopted ESSB 6091, which requires the Department of Ecology to work with the initiating governments and the planning unit in WRIA I to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health. Until rules are adopted that specify otherwise, Section 202(5), which effectively reverses the Court’s decision in *Hirst*, allows new domestic water uses in WRIA 1 that rely on groundwater withdrawals exempt from permitting under RCW 90.44.050, provided that applicants pay a fee of five hundred dollars to the permitting authority and limit their maximum annual average

withdrawal of three thousand gallons per day, per connection, and record this limitation on the property title; and,

13. ESSB 6091, Section 101(5), also provides that “[a]ny permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section”; and,
14. The amendments proposed by this ordinance are consistent with the aforementioned requirements of ESSB 6091 and are therefore consistent with the GMA, as specifically addressed in Section 102 of ESSB 6091; and,
15. Adoption of this ordinance is necessary to complete the GMA compliance proceedings before the Western Washington Growth Management Hearings Board (GMHB Case No. 12-2-0013); and,
16. A determination of non-significance (DNS) (SEPA 2018-00063) was issued under the State Environmental Policy Act (SEPA) on July 19, 2018; and,
17. ESSB 6091 was signed by Governor Inslee on January 19, 2018, and, pursuant to the emergency clause in Section 307, it became effective immediately as the Legislature declared that it was “necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions...”; and,
18. In accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed amendments contained herein on July 17, 2018, and no comments were received from state agencies; and,
19. The Planning Commission held a duly noticed public hearing on this ordinance on July 26, 2018;
20. The County Council held a duly noticed public hearing on this ordinance on September 25, 2018.

V. PROPOSED CONCLUSIONS

1. The proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the Comprehensive Plan goals and policies listed in Section III of this staff report.
2. The amendments are in the public interest.
3. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. STAFF RECOMMENDATION

Staff recommends that the Planning Commission review the proposed amendments, hold a public hearing, and recommend adoption of these provisions to the County Council.

VII. ATTACHMENTS

- 1) Draft Ordinance 2018-_____
- 2) Exhibit A, showing the proposed amendment to the Whatcom County Comprehensive Plan and development regulations

EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 24 HEALTH CODE

CHAPTER 24.11 DRINKING WATER

24.11.060 Water availability required.

- A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director the Whatcom County Health Department. The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.
- B. The applicant must provide evidence of legal availability in the form of:
 - 1. A water right permit from the Department of Ecology; or,
 - 2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,
 - 3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,
 - 4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,
 - 5. If the well site is located in WRIA 3 (Lower Skagit-Samish) ~~or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060~~, evidence that water for domestic use will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050.
 - 5-6. If the well site is located in WRIA 4 (Upper Skagit), evidence that the requirements of chapter 173-503 WAC have been met.
 - ~~6. If the well site is located in those Limited Coastal Areas (that may or may not be in hydraulic continuity with regulated surface waterbodies) as shown on Figure 24.11.060, documentation that water for domestic use will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and:
 - ~~a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the County either through consultation with the Department of Ecology, or a qualified technical review team appointed by the County. The County may require a third party review by an~~~~

- ~~independent qualified hydrogeologist if the County determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,~~
- ~~b.—A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:~~
 - ~~i.—Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the County either through consultation with the Department of Ecology, or a qualified technical review team appointed by the County. The County may require a third party review by an independent qualified hydrogeologist if the County determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.~~
 - ~~ii.—A monitoring and reporting plan, including a quality assurance/quality control plan.~~
 - ~~iii.—Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.~~
- 7. ~~Except in Point Roberts, Eliza Island, or Lummi Island, f~~For new permit-exempt groundwater withdrawals for domestic use per RCW 90.44.050 within WRIA 1 (Nooksack) ~~or within those Limited Coastal Areas where the applicant chooses not to use subsection (B)(6),~~ the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:
 - a. Water for domestic uses shall be subject to a maximum annual average withdrawal of 3,000 gallons per day per connection.
 - b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and
 - c. The applicant shall pay to the permitting authority any applicable fees for each project permit.
- C. A water availability notification is not required for:
 - 1. A project permit that does not require potable water.
 - 2. A project permit relying on either a permit-exempt groundwater withdrawal per RCW 90.44.050 or a surface water withdrawal for potable water for (a) a remodel of an existing building or (b) replacement of a demolished or removed building but not proposing a change of use, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of current water quality and quantity, approved by the director.

Figure 24.11.060

