

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2008 - 114 A

| CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to: |
|--------------------|--------------------|----------|---------------------------------|-------------|--------------|
| Originator: | | 9/9/2008 | | 9/9/2008 | Introduction |
| Division Head: | | | | 9/23/2008 | Hearing |
| Dept. Head: | <i>(Signature)</i> | 9.9.08 | | | |
| Prosecutor: | | | | | |
| Purchasing/Budget: | | | | | |
| Executive: | | | | | |

TITLE OF DOCUMENT:

Ord. Imposing interim moratorium on new apps within Lake Whatcom Watershed

ATTACHMENTS:

| | |
|---|---|
| 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.)*

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: 9/09/2008: Introduced 9/23/2008? Adopted 5-0, Nelson, Crawford absent |
|--------------------------|--|

| | | |
|-----------------------------------|------------------------------|--|
| Related County Contract #: | Related File Numbers: | Ordinance or Resolution Number: Ordinance Number: 2008-040 |
|-----------------------------------|------------------------------|--|

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 # 2008-040

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 methylization 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 (TTHMs); 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

51 **WHEREAS**, continued development while the TMDL goals are established and while
52 approaches for meeting those goals are developed will increase the size of the reductions
53 and will increase the costs that will be necessary to meet the TMDL goals; and
54

55 **WHEREAS**, Lake Whatcom County Code 20.71 establishes the Lake Whatcom
56 Watershed as a Water Resource Protection Overlay District; and
57

58 **WHEREAS**, Lake Whatcom is the drinking water source for approximately half the
59 residents of Whatcom County; and
60

61 **WHEREAS**, the preservation and protection of drinking water is a high priority for
62 Whatcom County; and
63

64 **WHEREAS**, the Whatcom County Comprehensive Plan, adopted on May 20, 1997,
65 establishes the Lake Whatcom watershed as a Special Study Area; and
66

67 **WHEREAS**, Lake Whatcom is a valuable recreation lake for swimming, boating and
68 fishing, and enhances the property values in the area as long as the lake maintains high
69 water quality; and
70

71 **WHEREAS**, declining oxygen levels poses a risk to the water quality of Lake
72 Whatcom that could harm drinking water quality, recreational opportunities and, lake
73 property values; and
74

75 **WHEREAS**, actions required under the 303(d) listing and TMDL goals as well as
76 declining water quality will cause a hardship to tax payers, local property owners in the
77 watershed and water consumers and those hardships may be limited by effective planning,
78 prevention and remediation programs established prior to the establishment of the TMDL
79 goals; and
80

81 **WHEREAS**, the Whatcom County SEPA Official issued a Determination of Non-
82 significance on January 24, 2005; and
83

84 **WHEREAS**, the Council makes the following findings of fact to justify its actions as
85 required by RCW 36.70.795:
86

- 87 1. This interim moratorium on the acceptance of applications for division of land
88 into lots of smaller than five (5) acres is necessary to avoid future
89 degradation of the Lake Whatcom watershed and the associated threat to the
90 drinking water supply of approximately half of the citizens of Whatcom County
91 as well as recreational and lake property values.
92
- 93 2. Without a moratorium additional development lots may be created within the
94 Lake Whatcom Watershed that will lead to negative hydrologic and storm
95 water impacts that may cause irreversible harm to Lake Whatcom and
96 therefore cause harm to the health and welfare of the public.
97
- 98 3. The Whatcom County Council desires the opportunity to evaluate the impacts
99 of future development in relation to reducing phosphorus loads to Lake
100 Whatcom and meeting the TMDL goal of reversing the declining oxygen trends
101 in Lake Whatcom. This evaluation may include but are not limited to the
102 following:

103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148

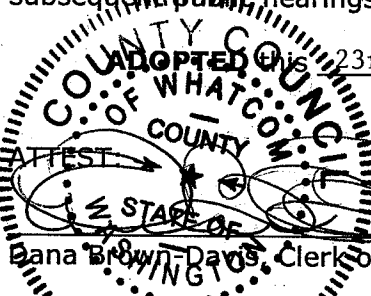
- ~ Storm water management plans, implementation and maintenance.
- ~ Storm water funding in the watershed.
- ~ Review existing zoning densities and development standards within the Bellingham Urban Growth Areas in the Lake Whatcom watershed.
- ~ Review existing zoning densities outside the Bellingham 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 monitoring data further informs our understanding of the relationships between development and other land use activities and Lake Whatcom water quality.

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 23rd day of September, 2008.


 ATTEST
 Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


Carl Weimer, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor


Pete Kremen, Executive

Approved Denied

Date: 9-24-08