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SPONSORED BY: Consent
PROPOSED BY: Council
INTRODUCTION DATE: August 4, 2009

ORDINANCE # 2009-065

**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 (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

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

52
53 **WHEREAS**, Lake Whatcom County Code 20.71 establishes the Lake Whatcom
54 Watershed as a Water Resource Protection Overlay District; and

55
56 **WHEREAS**, Lake Whatcom is the drinking water source for approximately half the
57 residents of Whatcom County; and

58
59 **WHEREAS**, the preservation and protection of drinking water is a high priority for
60 Whatcom County; and

61
62 **WHEREAS**, the Whatcom County Comprehensive Plan, adopted on May 20, 1997,
63 establishes the Lake Whatcom watershed as a Special Study Area; and

64
65 **WHEREAS**, Lake Whatcom is a valuable recreation lake for swimming, boating and
66 fishing, and enhances the property values in the area as long as the lake maintains high
67 water quality; and

68
69 **WHEREAS**, declining oxygen levels poses a risk to the water quality of Lake
70 Whatcom that could harm drinking water quality, recreational opportunities and, lake
71 property values; and

72
73 **WHEREAS**, actions required under the 303(d) listing and TMDL goals as well as
74 declining water quality will cause a hardship to tax payers, local property owners in the
75 watershed and water consumers and those hardships may be limited by effective planning,
76 prevention and remediation programs established prior to the establishment of the TMDL
77 goals; and

78
79 **WHEREAS**, the Whatcom County SEPA Official issued a Determination of Non-
80 significance on January 24, 2005; and

81
82 **WHEREAS**, the Council makes the following findings of fact to justify its actions as
83 required by RCW 36.70.795:

- 84
85 1. This interim moratorium on the acceptance of applications for division of land
86 into lots of smaller than five (5) acres is necessary to avoid future
87 degradation of the Lake Whatcom watershed and the associated threat to the
88 drinking water supply of approximately half of the citizens of Whatcom County
89 as well as recreational and lake property values.
90
91 2. Without a moratorium additional development lots may be created within the
92 Lake Whatcom Watershed that will lead to negative hydrologic and storm
93 water impacts that may cause irreversible harm to Lake Whatcom and
94 therefore cause harm to the health and welfare of the public.
95
96 3. The Whatcom County Council desires the opportunity to evaluate the impacts
97 of future development in relation to reducing phosphorus loads to Lake
98 Whatcom and meeting the TMDL goal of reversing the declining oxygen trends
99 in Lake Whatcom. This evaluation may include but are not limited to the
100 following:
101 ~ Storm water management plans, implementation and maintenance.
102 ~ Storm water funding in the watershed.

- 103 ~ Review existing zoning densities and development standards within the
- 104 Bellingham Urban Growth Areas in the Lake Whatcom watershed.
- 105 ~ Review existing zoning densities outside the Bellingham Urban Growth
- 106 Areas within county jurisdiction.
- 107 ~ Storm water management in areas that cross City of Bellingham and
- 108 Whatcom County jurisdictions.
- 109 ~ Transfer of development rights programs.
- 110 ~ Land acquisition.
- 111 ~ Reviewing the proposed TMDL from the Department of Ecology and its
- 112 implications for additional county land use regulations .
- 113 ~ Reviewing the ongoing monitoring studies on the Lake and its
- 114 tributaries to understand the extent to which new data further informs
- 115 our understanding of the relationships between development and other
- 116 land use activities and Lake Whatcom water quality.

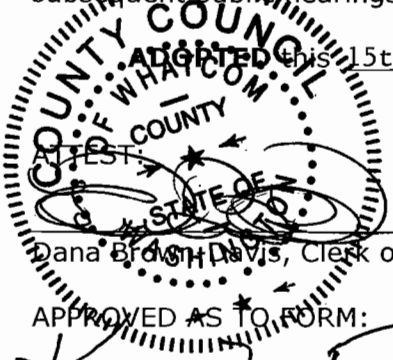
118 4. All of the parcels subject to this moratorium are also under review in one of
 119 two other planning reviews currently underway that may affect potential
 120 future development on those parcels: the 10 year UGA review and the rural
 121 element update/LAMIRD designation. Completion of those reviews is
 122 expected before this ordinance would expire and the outcome of those
 123 reviews will inform the Council's future decisions relating to a moratorium.

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

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

133 **BE IT FINALLY ORDAINED** by the Whatcom County Council that, pursuant to RCW
 134 36.70.795, this moratorium may be renewed for one or more six-month periods if
 135 subsequent public hearings are held and findings of fact are made prior to each renewal.

137 **ADOPTED** this 15th day of Sept., 2009.



143 Dana Brown Davis, Clerk of the Council

145 APPROVED AS TO FORM:
 146 *Karen A. Fraher*
 147 Civil Deputy Prosecutor

139 WHATCOM COUNTY COUNCIL
 140 WHATCOM COUNTY, WASHINGTON

141 *Seth Fleetwood*
 142 Seth Fleetwood, Council Chair

143 *Pete Kremen*
 144 Pete Kremen, Executive

149 () Approved () Denied

150 Date: 9-17-09