TO ALL COUNCILMEMBERS:

Additional Information:

- Draft Resolution
- Draft Senate Rural Water Legislation,
- Copy of a Letter co-signed by WSAC, AGC, BIAW, Farm Bureau, etc.

For

December 6, 2016

SCOTW Special Presentation and Discussion #1
and Public Hearing #1

AB2016-309A

1. Ordinance adopting interim amendments to the
   Whatcom County Comprehensive Plan and Whatcom
   County Code Title 15 (Buildings and Construction), Title
   20 (Zoning), Title 21 (Land Division Regulations), and
   Title 24 (Health Code) relating to water resources
   (related legislation: see ordinance below) (AB2016-
   309A)
   Pages 618 - 649

DISTRIBUTED: December 5, 2016
TIME: 10:29 AM
SUBMITTED BY: Ken Mann
WHEREAS, in 2012, a group of citizens and environmental groups, known as Hirst et al, challenged the Whatcom County Comprehensive Plan as it related to residential development and permit-exempt wells; and

WHEREAS, in 2013, The Growth Management Hearings Board ruled in favor of Hirst et al; and

WHEREAS, in 2013, Whatcom County appealed this ruling; and

WHEREAS, in 2013, Whatcom County contracted with Van Ness Feldman LLP, who specialize in water rights, water law and the Growth Management Act (GMA); and

WHEREAS, the State Department of Ecology, Washington Association of Realtors, and Washington Association of Counties, and other groups, sided with Whatcom County and filed Amicus briefs; and

WHEREAS, in 2015, the State Appeals Court overturned the Growth Management Hearings Board; and

WHEREAS, in 2015, Hirst et al appealed to the State Supreme Court; and

WHEREAS, Whatcom County has spent hundreds of thousands of dollars in legal fees fighting Hirst et al; and

WHEREAS, on October 6th, 2016 the Washington State Supreme Court issued its decision, now known as the Hirst ruling; and

WHEREAS, in response to the Hirst ruling, with unanimous advice from our legal staff, contract attorneys, and the administration, which includes people from both major political parties, the Whatcom County Council issued an emergency moratorium on building permits for properties relying on permit-exempt wells; and

WHEREAS, hundreds of property owners suddenly have been denied building permits for properties they have lawfully subdivided, platted, and even begun infrastructure improvements; and

WHEREAS, the Whatcom County Council believes that the Hirst decision is profoundly flawed, both in its legal reasoning and practical implications; and
WHEREAS, with the Hirst Decision, the State Supreme Court has caused devastating financial and emotional hardship for the people of Whatcom County; and

WHEREAS, residential water withdrawals from permit-exempt wells represents a tiny fraction of water consumption in Whatcom County; and

WHEREAS, Washington State and the Department of Ecology have sole responsibility for determining water availability, closing a basin, or issuing or interpreting water rights; and

WHEREAS, while the Hirst ruling impacts 29 counties planning under GMA, Whatcom County is the only defendant in this case and is therefore uniquely vulnerable and subject to immediate review for compliance and subsequent state sanctions, and

WHEREAS, half of Whatcom County’s budget comes from state or federal grants and programs, and

WHEREAS, the Whatcom County Council recognizes the precious value of clean and copious potable water; and

WHEREAS, The Whatcom County Council will continue to engage all stakeholders to collaborate on issues of water quality and water quantity; and

WHEREAS, the Whatcom County Council recognizes the financial and environmental impacts created by conversion of resource lands to low-density, residential sprawl; and

WHEREAS, denying citizens their right to use permit-exempt water withdrawals to provide for their homes and families is an inappropriate strategy for preventing sprawl; and

WHEREAS, the employees of Whatcom County are working hard to Hirst without jeopardizing the legal or financial standing of Whatcom County government; and

WHEREAS, we believe that a narrowly-focused, bi-partisan amendment to the GMA can resolve this egregious misinterpretation by the State Supreme Court; and

WHEREAS, there have been productive meetings with the State Legislature, support from the Washington State Association of Counties and other groups, and meetings with local state legislators of both parties and of both chambers; and

WHEREAS, the State Legislature alone has the power to remedy this grievous error imposed by the Supreme Court.

NOW, THEREFORE, BE IT RESOLVED The Whatcom County Council will send a letter, to be co-signed by as many other Counties as possible, to the State Legislature’s Local Government committee and Agriculture and Natural Resources committee requesting urgent
attention to this matter, and requesting a rapid, narrowly-focused, bi-partisan amendment to the Growth Management Act remedying the problems created by the Hirst ruling.

The letter is attached as exhibit A and signed by Council Chair on Council letterhead.

APPROVED this _____day of __________, 2016.

ATTEST: 
WASHINGTON

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Dana Brown-Davis, Clerk of the Council

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Barry Buchanan, Council Chair

APPROVED AS TO FORM:

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Civil Deputy Prosecutor
December 1, 2016

RE: Washington Supreme Court Decision on GMA & Rural Water Supply

Members of the Washington Legislature:

Our organizations are writing to explain our strong and united opposition to the recent decision of the Washington Supreme Court, Whatcom County v. Hirst et al., No. 91475-3. In this decision, the Court concluded that the Growth Management Act ("GMA") requires counties to regulate water supply for new development to a greater extent than required by both the Department of Ecology ("Ecology’s") local instream flow regulations and the state’s water code. The Court’s conclusion that the GMA requires local governments to exceed specific state environmental statutes and regulations is wholly unsupported by the GMA, related statutes on water availability, and the history of the GMA and state’s water code.

Over the past decades, local governments and landowners have relied on Ecology’s authority as our state’s sole water resource agency. Just five years ago, in its Kittitas County v. Eastern Washington Growth Board decision, the Supreme Court ruled that local government regulation of land use and Ecology’s regulation of water resources should be complementary and consistent. This decision tracked state GMA regulations providing that “if the department of ecology has adopted rules . . . , local regulations should be consistent with those rules. Such rules may include instream flow rules . . . “ WAC 365-196-825(3).
(emphasis added). Further, the state’s Water Resources Act, which provides the governing principles for Ecology’s instream flow rules, states plainly that county governments “shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of this chapter.” RCW 90.54.090. (emphasis added)

Now, the Supreme Court has elevated the general planning language of the GMA above the more specific provisions of state laws and regulations implemented by Ecology on water resources. The Supreme Court failed to note, let alone analyze, the various legal authorities that support consistency between local government land use permitting and Ecology’s water resource authority. Further, the Court badly confused the difference in the state’s water code between reviewing “impairment” of water rights (which only Ecology has the statutory authority and funding to do), to the review of “water adequacy” for building permits, which local governments do in reliance on Ecology’s permits and regulations. The impacts of this decision will be devastating to rural landowners and counties throughout Washington State, many of which have adopted or are considering residential building permit moratoria solely because of the Supreme Court’s decision. The economic losses to rural landowners could easily run into the hundreds of millions of dollars.

Our organizations request a solution that is not very novel: that the Legislature establish that local government land use plans and permit decisions can rely on Ecology’s regulation of water resources. We appreciate the candid comments of Ecology at the December 15, 2016 work session of the Senate Agriculture, Water, and Rural Economic Development Committee meeting that only “. . . . 1% of the cumulative use of water in Washington State” is from domestic exempt wells. In Whatcom County, total domestic exempt well use accounted for only .7% of total water use in that county during the growing season. In Skagit County, where Ecology’s ill-conceived 2001 Skagit Instream Flow Rule is being interpreted to establish a groundwater moratorium (though nothing of the sort was ever mentioned by Ecology upon adoption), domestic exempt well use also accounts for only .7% of total water use. In Central Puget Sound counties like King, Pierce, and Snohomish, areas that could be implicated by the Hirst decision, total domestic exempt well use accounts for 1%, 3.6%, and 6.3% of total growing season water use. See Ecology Publication No. 15-11-2016, Permit-Exempt Domestic Well Use in Washington State, Table 3, February 2015.

Further, the Legislature should recognize that the instream flow levels adopted by Ecology will, by design, rarely be met by actual flows, regardless of the amount of water use from domestic wells. Ecology’s adopted minimum instream flow for Nooksack River in late summer is 1,900 cubic feet per second (cfs). WAC 173-501-030. This adopted flow level has not been met in any of the past five years, as actual flows in late August have ranged between 973 cfs and 1,570 cfs. All domestic exempt wells in Whatcom County (including those with delayed or no impacts to the Nooksack River) use 600,000 gallons of water per day. Ecology Publication No. 15-11-2016, Permit-Exempt Domestic Well Use in Washington State, Table 3, February 2015. Thus, total domestic well use in Whatcom County is only .93 cfs – compared to an Ecology minimum instream flow level of 1,900 cfs during the late summer season.
The small amount of water used by domestic exempt wells and the immeasurable impacts of a single domestic well on instream flows does not mean that Ecology should not, or has not, addressed the issue where unique local circumstances exist. In recent years, the Legislature has spent millions of state dollars for water right acquisitions around the state to support Ecology instream flow rules that protect groundwater and instream flows. Recent Ecology rules in Spokane, Walla Walla, Clallam, Kittitas, and Jefferson Counties demonstrate a willingness by Ecology to seek to develop regulations that reflect local conditions. Beyond the rural domestic well issue, state, local, and ratepayer efforts have also achieved significant water use reductions through agricultural irrigation efficiencies and the state’s municipal water use efficiency rule. Our organizations don’t always agree with Ecology’s decisions, but regulation of water resources by Ecology reflects the agency’s statutory authority and expertise. The current level of chaos and uncertainty wrought by the Supreme Court’s Hirst decision is simply untenable.

There are those who are simply using the rural water supply issue to further restrict housing in rural areas. The reality is that some people want to live and work in rural areas, and this is where land and housing is often most affordable. In the 2017 Legislature, some will insist that all parts of Washington State impose “water banking” or other groundwater mitigation programs. For many parts of Washington State, this concept is doomed to fail. For example, Ecology and the Legislature have now spent millions of dollars and 15 years (15 years!) in the Skagit Basin seeking to develop groundwater mitigation programs. Cumulative impacts of small groundwater withdrawals, where they cause a significant impact, should be addressed in a manner that is cost-effective to both the state, counties, and landowners. The Legislature should insist that state funding and regulations be focused on what will provide the greatest returns for instream flow protections. In fact, many other Western states – including those with nearly perpetual water shortages – do just this, by statutorily protecting small domestic well use and while focusing on strategies that will actually increase streamflows and protect senior water rights.

Ultimately, the question is simple: Should counties and citizens be able to rely on the permits and regulations adopted by Ecology – our state’s sole water resource agency? The answer is clearly yes, and anything short of that is a disservice to our state’s counties and rural landowners.
BILL REQUEST - CODE RE viser'S OFFICE

BILL REQ. #:          S-0049.1/17
ATTY/TYPIST:         ML:akl
BRIEF DESCRIPTION:   Ensuring that water is available to support development.
AN ACT Relating to ensuring that water is available to support development; amending RCW 19.27.097, 36.70A.070, and 58.17.110; and adding a new section to chapter 90.44 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 19.27.097 and 2015 c 225 s 17 are each amended to read as follows:

(1) 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, including information pertaining to applicable water resources rules developed by the department of ecology. If an applicant for a building permit proposes to use a groundwater withdrawal that is exempt from permitting by the department of ecology under RCW 90.44.050 to supply potable water for a building, the local building permitting authority may determine that it is sufficient under this subsection for the applicant to provide evidence that water is physically available for use. (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.

(2) 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.

(3) Within counties not required or not choosing to plan pursuant
to RCW 36.70A.040, the county and the state may mutually determine
those areas in the county in which the requirements of subsections
(1) and (2) of this section shall not apply. The departments of
health and ecology shall coordinate on the implementation of this
section. Should the county and the state fail to mutually determine
those areas to be designated pursuant to this subsection, the county
may petition the department of enterprise services to mediate or, if
necessary, make the determination.

(4) Buildings that do not need potable water facilities
are exempt from the provisions of this section. The department of
ecology, after consultation with local governments, may adopt rules
to implement this section, which may recognize differences between
high-growth and low-growth counties.

Sec. 2. RCW 36.70A.070 and 2015 c 241 s 2 are each amended to
read as follows:
The comprehensive plan of a county or city that is required or
chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
and descriptive text covering objectives, principles, and standards
used to develop the comprehensive plan. The plan shall be an
internally consistent document and all elements shall be consistent
with the future land use map. A comprehensive plan shall be adopted
and amended with public participation as provided in RCW 36.70A.140.
Each comprehensive plan shall include a plan, scheme, or design for
each of the following:

(1) A land use element designating the proposed general
distribution and general location and extent of the uses of land,
where appropriate, for agriculture, timber production, housing,
commerce, industry, recreation, open spaces, general aviation
airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. In providing for the protection of the quantity of groundwater used for public water supplies, a county or city may rely on applicable water resources rules developed by the department of ecology. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.
(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources. Measures designed to protect surface water and groundwater resources under this subsection may rely on applicable water resources rules developed by the department of ecology; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.
(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-
scale businesses as long as those small-scale businesses conform with
the rural character of the area as defined by the local government
according to RCW 36.70A.030(15). Rural counties may also allow new
small-scale businesses to utilize a site previously occupied by an
existing business as long as the new small-scale business conforms to
the rural character of the area as defined by the local government
according to RCW 36.70A.030(15). Public services and public
facilities shall be limited to those necessary to serve the isolated
nonresidential use and shall be provided in a manner that does not
permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the
existing areas or uses of more intensive rural development, as
appropriate, authorized under this subsection. Lands included in such
existing areas or uses shall not extend beyond the logical outer
boundary of the existing area or use, thereby allowing a new pattern
of low-density sprawl. Existing areas are those that are clearly
identifiable and contained and where there is a logical boundary
delineated predominately by the built environment, but that may also
include undeveloped lands if limited as provided in this subsection.
The county shall establish the logical outer boundary of an area of
more intensive rural development. In establishing the logical outer
boundary, the county shall address (A) the need to preserve the
character of existing natural neighborhoods and communities, (B)
physical boundaries, such as bodies of water, streets and highways,
and land forms and contours, (C) the prevention of abnormally
irregular boundaries, and (D) the ability to provide public
facilities and public services in a manner that does not permit low-
density sprawl;

(v) For purposes of (d) of this subsection, an existing area or
existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to
plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW
36.70A.040(2), in a county that is planning under all of the
provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the
county's population as provided in RCW 36.70A.040(5), in a county
that is planning under all of the provisions of this chapter pursuant
to RCW 36.70A.040(5).
(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;
(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate Code Rev/ML:akl 8 S-0049.1/17
the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to
cover applicable local government costs are appropriated and
distributed by the state at least two years before local government
must update comprehensive plans as required in RCW 36.70A.130.

Sec. 3. RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
as follows:
(1) The city, town, or county legislative body shall inquire into
the public use and interest proposed to be served by the
establishment of the subdivision and dedication. It shall determine:
(a) If appropriate provisions are made for, but not limited to, the
public health, safety, and general welfare, for open spaces, drainage
ways, streets or roads, alleys, other public ways, transit stops,
potable water supplies, sanitary wastes, parks and recreation,
playgrounds, schools and schoolgrounds, and shall consider all other
relevant facts, including sidewalks and other planning features that
assure safe walking conditions for students who only walk to and from
school; and (b) whether the public interest will be served by the
subdivision and dedication.
(2) A proposed subdivision and dedication shall not be approved
unless the city, town, or county legislative body makes written
findings that: (a) Appropriate provisions are made for the public
health, safety, and general welfare and for such open spaces,
drainage ways, streets or roads, alleys, other public ways, transit
stops, potable water supplies, sanitary wastes, parks and recreation,
playgrounds, schools and schoolgrounds and all other relevant facts,
including sidewalks and other planning features that assure safe
walking conditions for students who only walk to and from school; and
(b) the public use and interest will be served by the platting of
such subdivision and dedication. If it finds that the proposed
subdivision and dedication make such appropriate provisions and that
the public use and interest will be served, then the legislative body
shall approve the proposed subdivision and dedication. Dedication of
land to any public body, provision of public improvements to serve
the subdivision, and/or impact fees imposed under RCW 82.02.050
through 82.02.090 may be required as a condition of subdivision
approval. Dedications shall be clearly shown on the final plat. No
dedication, provision of public improvements, or impact fees imposed
under RCW 82.02.050 through 82.02.090 shall be allowed that
constitutes an unconstitutional taking of private property. The
legislative body shall not as a condition to the approval of any
subdivision require a release from damages to be procured from other
property owners.

(3) If the preliminary plat includes a dedication of a public
park with an area of less than two acres and the donor has designated
that the park be named in honor of a deceased individual of good
character, the city, town, or county legislative body must adopt the
designated name.

(4) In approving a subdivision or dedication under this section,
a city, town, or county legislative body may rely on applicable water
resources rules developed by the department of ecology to determine
if appropriate provisions have been made for potable water supplies.

NEW SECTION. Sec. 4. A new section is added to chapter 90.44
RCW to read as follows:

(1) The legislature finds that certain groundwater withdrawals
were determined to be exempt from state permitting requirements under
RCW 90.44.050 because such withdrawals are small and consistent with
providing water to support various reasonable uses of property. The
legislature further finds that, due to the small amount of water
involved, permit-exempt withdrawals under RCW 90.44.050 can coexist
with policies establishing minimum flows or levels for surface
waters. Therefore, the legislature finds that it is necessary to
clearly establish that permit-exempt withdrawals under RCW 90.44.050
are not subject or subordinate to minimum flows or similar policies.
The legislature intends to promote and protect permit-exempt
withdrawals under RCW 90.44.050.

(2) A groundwater withdrawal that is exempt from the requirement
to obtain a permit from the department under RCW 90.44.050 may not be
considered to be causing impairment or injury to a base flow, minimum
flow, minimum level, or other similar standard or policy, established
by the department, regardless of the priority date of the base flow,
minimum flow, minimum level, or other similar standard or policy.

(3) This section does not affect the ability of any person to
pursue any lawful action for the protection of any water right that
is not a base flow, minimum flow, minimum level, or other similar
standard or policy, established by the department.

--- END ---