

PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

**ORDINANCE NO. 2018-00\_\_**

**AN INTERIM ORDINANCE REPEALING ORDINANCE NO. 2017-057 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE 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**

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, Whatcom County Code (WCC) Chapter 15.04 specifies information required for a complete building permit application; and,

**WHEREAS**, WCC Chapter 20.97 provides definitions of terms used in the code; and

**WHEREAS**, WCC Chapters 21.04 and 21.05 contain requirements for water supply in short subdivisions and long subdivisions, respectively; and,

**WHEREAS**, WCC Chapter 24.11 contains requirements for potable water; and,

**WHEREAS**, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating groundwater withdrawals, adding Policy 2DD-2.C.3.6, which adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and,

**WHEREAS**, because Comprehensive Plan Policy 2DD-2.C.3.6 adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, 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,

**WHEREAS**, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and,

**WHEREAS**, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and,

**WHEREAS**, on December 6, 2016 the County Council adopted Ordinance 2016-066, an interim ordinance adopting amendments to the Whatcom County Comprehensive Plan and WCC Title 15, Title 20, Title 21, and Title 24 relating to water resources, which is effective until March 18, 2017, and the County has applied the provisions of the ordinance to project permit applications relying on new permit-exempt groundwater withdrawals; and,

**WHEREAS**, on March 7, 2017 the County Council adopted Ordinance 2017-008, a second interim ordinance; and,

**WHEREAS**, on April 18, 2017 the County Council adopted Ordinance 2017-008, a third interim ordinance; and,

**WHEREAS**, on October 10, 2017, the County Council adopted Ordinance 2017-057, a fourth interim ordinance, which is effective until March 30, 2018; and,

**WHEREAS**, 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,

**WHEREAS**, ESSB 6091, in 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,

**WHEREAS**, 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,

**WHEREAS**, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 30, 2018; and,

**WHEREAS**, 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,

**WHEREAS**, with the enactment of ESSB 6091, Ordinance No. 2017-057 is no longer necessary to ensure that Whatcom County is in compliance with state law; and,

**WHEREAS**, in accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed interim amendments contained herein; and,

**WHEREAS**, this ordinance shall be effective for not longer than six months following its effective date, but 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; and,

**WHEREAS**, the County Council is scheduled to hold a public hearing on this ordinance on February 13, 2018;

**NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390.

**BE IT FURTHER ORDAINED** that Ordinance No. 2017-057 is hereby repealed in its entirety upon the effective date of this ordinance.

**BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance, and if the provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

**BE IT FURTHER ORDAINED** by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A.

**BE IT FINALLY ORDAINED** that this ordinance shall be effective for not longer than six months following its effective date.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Rud Browne, Chairperson

APPROVED as to form:

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Jack Louws, Executive

( ) Approved      ( ) Denied

Date: \_\_\_\_\_

**EXHIBIT A**  
**Whatcom County Code**  
**AMENDMENTS**

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**TITLE 15 BUILDINGS AND CONSTRUCTION**

**CHAPTER 15.04 BUILDING CODES**

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**15.04.020 Amendments to the International Building Code.**

A. The IBC is amended as follows:

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5. Section 105.3, Application for Permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Include signature by the applicant or the applicant's authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.
8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued septic system permit shall be specific to the project application.
9. For buildings requiring potable water, provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).

10. Provide additional data and information in the designated sequence, as required by the Building Official.

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#### **15.04.030 Amendments to the International Residential Code.**

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D. Section R105.3, Application for permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Include signature by the applicant or the applicant's authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.
8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.
9. For buildings requiring potable water provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).
10. Provide additional data and information in the designated sequence, as required by the Building Official.

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## TITLE 20 ZONING

### CHAPTER 20.84 VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

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#### 20.84.200 Conditional uses.

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#### 20.84.220 Criteria.

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

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(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, adequate water supply (as defined in WCC 20.97.451), ~~and~~ sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

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### CHAPTER 20.97 DEFINITIONS

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#### **20.97.451 Water Supply, Adequate**

"Adequate water supply" means a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability, as documented by a water availability notification signed by the director of the Whatcom County Health Department, per WCC 24.11.060.

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## TITLE 21 LAND DIVISION REGULATIONS

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### CHAPTER 21.04 SHORT SUBDIVISIONS

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#### 21.04.090 Water supply.

(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.

- (2) For ~~a~~ residential short subdivision~~s~~, private water supplies may be ~~utilized~~used under the following circumstances:
- (a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and
  - (b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and
  - (c) The water source is groundwater ~~and not surface water~~; and
  - (d) The applicant demonstrates that an adequate water supply (as defined in WCC 20.97.451) exists to serve the short subdivision; and
  - (e) The short subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor's water line; or
  - ~~(c)(f) If the short subdivision is located within the designated water service area of a public water purveyor, that is shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor's water lines and:~~
    - (i) The ~~purveyor water~~ cannot ~~be provided~~ water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the Hearing Examiner or County Council; or
    - (ii) The purveyor states in writing that it is unable or unwilling to provide the service; or
    - (iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.
- (3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

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## CHAPTER 21.05 PRELIMINARY LONG SUBDIVISIONS

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### 21.05.080 Water supply.

- (1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.
- (2) For a residential subdivision with six or fewer residences, private water supplies may be utilizedused under the following circumstances:
  - (a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of

the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the [Whatcom County](#) Health Department and confirmed by the Health Board; and

(c) The water source is groundwater ~~and not surface water~~; and

(d) The long subdivision is *not* located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor's water line; or

~~(d)~~(e) If the subdivision is *located* within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water lines *and*:

(i) The ~~purveyor water~~ cannot ~~be~~ provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water ~~right(s)~~ supply (as defined in WCC 20.97.451) exists to serve the subdivision, ~~except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.~~

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the [Whatcom County](#) Health Department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

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## TITLE 24 HEALTH CODE

### CHAPTER 24.11 DRINKING WATER

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#### 24.11.050 General requirements.

A. Applicants must submit all required forms, letters, and documents to the director.

- B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.
- C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:
  - 1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or
  - 2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or
  - 3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or
  - 4. The existing public water system has defined a "service area boundary" in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.
- D. The director will only approve a private or Non-Group B 2-two-party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminate level (MCL) adopted by Washington State Department of Health.
- E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:
  - 1. All surface water sources excluding seawater.
  - 2. All groundwater sources using more than 5,000 gallons per day.
  - 3. Irrigating more than one-half acre of lawn or noncommercial garden.

**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. ~~to Whatcom County planning and development services (PDS) except when:~~ 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. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and 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.
6. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in those Limited Coastal Areas that may not be in hydraulic continuity with regulated surface waterbodies, as shown on Figure 24.11.060, 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, for new permit-exempt groundwater withdrawals per RCW 90.44.050 within WRIA 1 (Nooksack) or within those

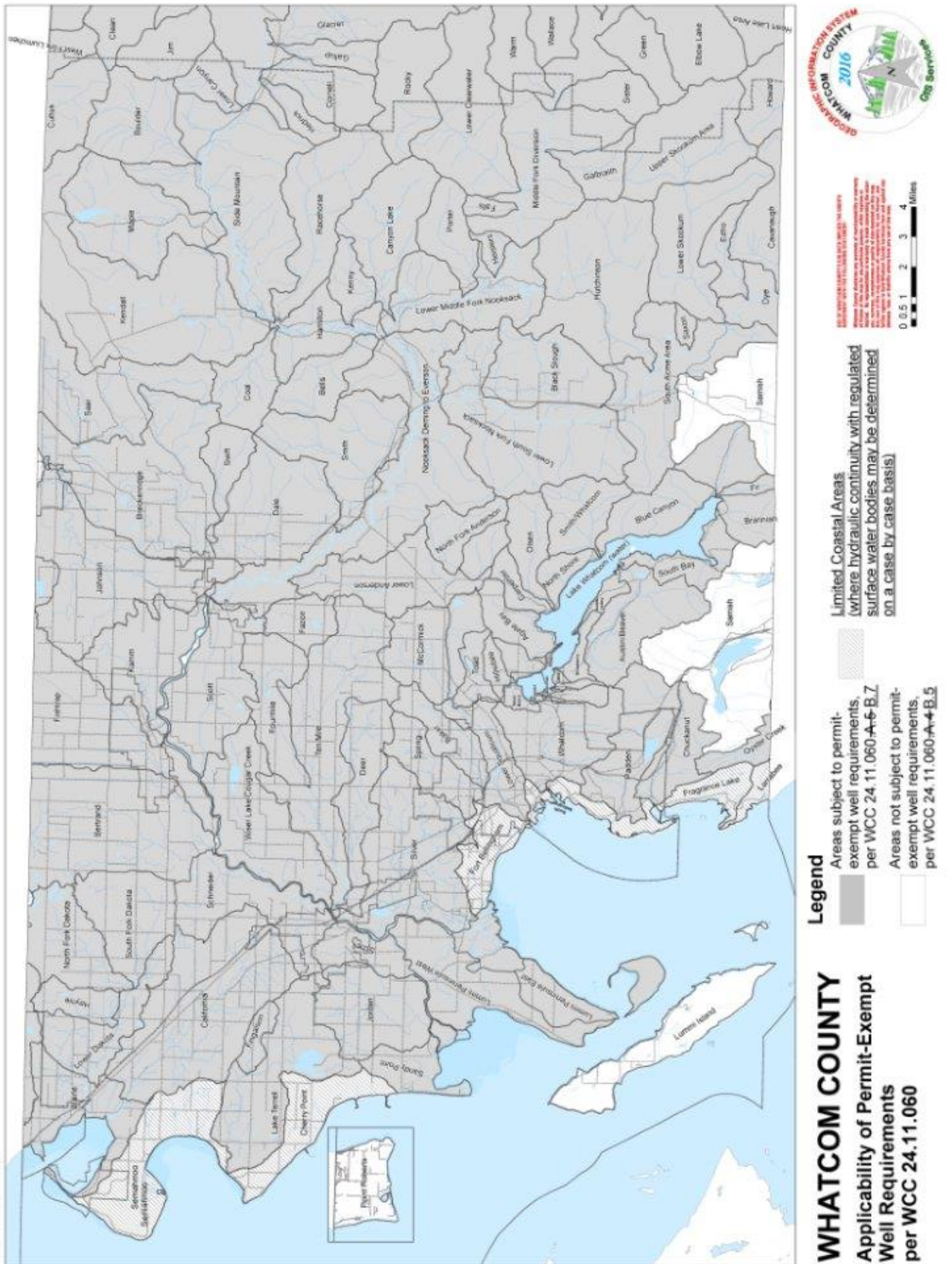
Limited Coastal Areas where the applicant has not met subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:

- a. Water shall be for domestic use only, with 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
- a-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 building~~ 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, as approved by the director. A residential remodeling does not add additional bedrooms or result in an increase of floor space of more than 50 percent.~~
- 2. A project permit relying on surface water withdrawal for potable water (a) a remodel of an existing building or (b) replacement of a demolished or removed building, 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 water quality and quantity, as approved by the director. PDS determines that the building will replace a demolished or removed building and the building will not have more bedrooms or more than 50 percent greater floor space than the previous building.

Figure 24.11.060



**24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.**

- A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:
  - 1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:
    - a. Must indicate on the form that the water system will provide water to the proposed building.
    - b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.
- B. The director will review the completed Availability Notification for Public Water (form) for approval. The director will approve the completed form if:
  - 1. The applicant and the authorized representative met all the criteria listed on the form.
  - 2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the building.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

**24.11.080 Determining adequacy of water supply for building permit applications proposing to create a new public water system.**

Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:

- A. Provisions of the Whatcom County Coordinated Water System Plan.
- B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
- C. The applicable sections of this chapter pertaining to public water supplies and water availability.

**24.11.090 Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.**

- A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must:
  - 1. Notify the director of the intent to use a well.
  - 2. Request that the director conduct a site inspection and approve the proposed well site.
- B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

- C. If the director approves the well location the applicant shall submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.
- ~~A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.~~
- ~~B.D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:~~
  - 1. The applicant met all the criteria listed on the form.
  - 2. The applicant submitted all of the required documents.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. ~~well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.~~

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**24.11.100 Determining adequacy of water supply for building permit applications proposing to use a well to serve two single-family dwellings or two single-family living units.**

- A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a well to serve two single-family dwellings or two single-family living units, the applicant must:
  - 1. Notify the director of the intent to use a well or wells.
  - 2. Request that the director conduct a site inspection and approve the proposed well sites.
- B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
- C. If the director approves the well locations the applicant shall submit a completed Water Availability Notification Non-Group B – 2 Home Well form (as amended) and all required documents for each well to the director for approval.
- D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:
  - 1. The applicant met all the criteria listed on the form.
  - 2. The applicant submitted all of the required documents.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. ~~The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.~~

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**24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.**

- A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
  - 1. Notify the director of the intent to use a spring.
  - 2. Provide information to the director showing that they cannot drill an adequate well on their property.
  - 3. Request that the director conduct a site inspection and approve the proposed location of the spring.
- B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.
- C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.
- D. The director will review the completed form and required documents for approval. The director will approve the application if:
  - 1. The applicant met all the criteria listed on the form.
  - 2. The applicant submitted all of the required documents.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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**24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.**

- A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
  - 1. Notify the director of the intent to use a spring.
  - 2. Provide information to the director showing that an adequate well cannot be drilled on their property.
  - 3. Request that the director conduct a site inspection and approve the proposed location of the spring.

- B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location, the director will deny the application and give the reasons for denial.
- C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification – 2 Home Spring form (as amended) and all required documents for approval by the director.
- D. The director will review the completed form and required documents for approval. The director will approve the application if:
  - 1. The applicant met all the criteria listed on the form.
  - 2. The applicant submitted all of the required documents.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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**24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water, or rainwater for one or two single-family dwelling units or two single-family living units.**

- A. The director shall not approve use of surface water, sea water, or rainwater as evidence of an adequate water source unless the applicant:
  - 1. Cannot obtain water from an existing public water supply.
  - 2. Cannot use an approved source of groundwater from a well.
  - 3. Could only use contaminated groundwater.
- B. Prior to director approval of evidence of adequate water supply the applicant must:
  - 1. Meet all applicable requirements for surface water, sea water or rainwater treatment design, maintenance and operation contained in Whatcom County health and human services Water Availability ~~for a Private Surface Water Source (as amended)~~ Notification as determined by the director.
  - 2. Provide evidence of legal availability of water for the proposed project per WCC 24.11.060. The surface water site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
  - 3. Meet all other state and local regulations.
  - 4. Sign and have recorded with the Whatcom County auditor's office the following documents:
    - a. A document stating which contaminate the untreated source water exceeded.

- b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.
- c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.
- d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.
- e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.
- f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

**24.11.140 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.**

- A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:
  - 1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:
    - a. Must indicate that the water system will provide water to each proposed lot.
    - b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.
- B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:
  - 1. The applicant and the authorized representative meet all the criteria listed on the form.
  - 2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the short subdivision, long subdivision, or binding site plan, except for Group A water systems the following conditions also apply:
    - a. DOH has issued a green operating permit to the purveyor; or
    - b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

**24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.**

Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:

- A. Provisions of the Whatcom County Coordinated Water System Plan.
- B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
- C. The applicable sections of this chapter pertaining to public water supplies and water availability.

**24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.**

- A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:
  - 1. Notify the director of the intent to use a private well or wells.
  - 2. Request that the director conduct a site inspection and approve the proposed well sites.
- B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
- C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
- D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:
  - 1. The applicant met all the criteria listed on the form.
  - 2. The applicant submitted all of the required documents.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. ~~The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.~~

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**24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.**

- A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.
- B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:
  - 1. Notify the director of the intent to use a well or wells.
  - 2. Request that the director conduct a site inspection and approve the proposed well sites.
- C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
- D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
- E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:
  - 1. The applicant met all the criteria listed on each of the forms.
  - 2. The applicant submitted all of the required documents.
  - 3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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