

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



J.E. "Sam" Ryan
Director

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On October 6, 2016, the Washington State Supreme Court issued a ruling in the case of Whatcom County v. Western Washington Growth Management Hearings Board, which is available on-line at:

<http://www.courts.wa.gov/opinions/pdf/914753.pdf> . The case challenged the validity of Whatcom County's Comprehensive Plan and Development Regulations relating to the protection of water quality and quantity under the Growth Management Act (36.70A RCW). The Supreme Court essentially ruled:

- Development permit applications that are proposing to use a private well water supply (in a basin that is closed or partially closed to surface water withdrawals by the Department of Ecology) must demonstrate that groundwater withdrawal will not impair a senior water right, including instream flows established in Chapter 173-501 WAC (the Nooksack Basin Instream Flow Rule)¹.
- It is the County's responsibility under the Growth Management Act to determine legal availability of water for purposes of issuing land use decisions, not the Department of Ecology.

The ruling is currently being reviewed to determine its effect on planning and development activities in Whatcom County. ***Landowners should be aware this ruling may have a significant impact on their ability to develop property when relying on private ("exempt") wells as the water source.*** Whatcom County will provide updates on the impacts of this ruling as they become available. Please periodically check this website to stay informed.

Whatcom County government is assessing the ramifications of this case on issuance of building permits, subdivisions, and other development permits that utilize exempt wells. Interim guidance is provided below:

1. Since the Growth Management Hearings Board did not invalidate the County's development regulations (and the Supreme Court declined to reverse the Board's decision on that issue), Whatcom County will continue to take in building permit applications, subdivision applications, and other development permit applications in the interim.

¹ A minimum instream flow, adopted by the Department of Ecology in WAC 173-501, may not be impaired by subsequent groundwater withdrawals.

2. The Whatcom County Council will review this issue in the coming weeks and may take action to clarify or modify our current regulations, policies or procedures related to the County's determination of legal water availability as it relates to processing land use permit applications.
3. The Department of Ecology is committed to working closely with county leaders and stakeholder groups to best manage our water resources and has provided additional information at:
<http://www.ecy.wa.gov/programs/wr/nwro/hirst.html>
4. You may be able to drill a well.... but can you use the water?
Landowners should be advised that the presence of a well on a property does not necessarily constitute a right to use groundwater for a specific purpose. Whatcom County advises landowners to investigate their right to use water prior to drilling a well for use as a residential or commercial water source. Further information on groundwater rights and wells is provided on the Washington Department of Ecology's website at:
<http://www.ecy.wa.gov/programs/wr/wells/wellhome.html>.
The Notice of Intent (NOI) to Drill a Well is not a permit, certificate, or application for a water right. Your Notice of Intent does not represent approval or permission to use water from the well.