

## Whatcom County Council response to Hirst v Whatcom County

I received a note from Whatcom County Councilmember Barbara Brenner asking me to correct an error regarding how votes were cast on ordinances in my recent article posted on [NW Citizen](#) titled [A Water Shortage Problem, Not a Water Shortage](#). That error has been corrected by the editor and I would like to thank Barbara for bringing the mistake to my attention.

I understand that the Washington State Growth Management Act is complex and sometimes difficult to comprehend for people who are not actively involved in the planning process. According to [Steve Lundin](#), former senior counsel to the Washington State House of Representatives Local Government Committee, only the state of Washington, Oregon, Florida and Hawaii have adopted comprehensive growth management laws. Steve was the original author of the original Growth Management Act adopted by the Washington State Legislature in 1990. He also drafted many amendments in the years that followed. I hope you enjoy the interview with Steve, that I linked to above.

So, why is there so much unrest about the [Hirst](#) decision? The majority of the Washington State Supreme Court appears to have disregarded the legislative intent of the GMA, while drafting their opinion.

### **36.70A.011**

#### **Findings—Rural lands.**

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW [36.70A.070\(5\)](#), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

[ [2002 c 212 § 1.](#)]

But our rural citizen cannot achieve the legislature's goals without water. Water is and will remain the lifeblood of our community.

At the heart of this issue is the question about fairness: how do we (Whatcom County) comply with the Hirst decision, without compromising the legislature's intent to preserve traditional rural lifestyles and rural economic prosperity? How do we achieve balance between the competing needs of fish, wildlife and people?

These are some of the issues our county executive and county council members are struggling with, as they attempt to comply with the decision.

For your review, I have posted the highlights of the council's actions regarding the Hirst decision from October 25, 2016 to December 6, 2016. Please note that I have not included committee hearings or recommendations in this post. That information can be obtained on the county's website; or, by contacting your county council member.

On October 25, 2016: the council adopted an ordinance imposing an emergency moratorium on the acceptance and processing of applications and permits for subdivisions, building permits, and discretionary permits that rely on permit-exempt wells for water supply in closed basins. This ordinance is numbered AB2016-309. The measure was adopted with a vote of 6-1, Council member Brenner opposed adopting the ordinance. The newly adopted ordinance number is 2016-048.

On December 6, 2016: The council voted to approve a motion 7-0 to approve a resolution to send a letter to the State legislature requesting amendments to the Growth Management Act clarifying that counties can rely on Department of Ecology guidance for determining legal water availability. This resolution is now listed as number 2016-050.

1. An 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 was amended and adopted 5-2, Brenner and Mann opposed. Related legislation is AB2016-309A. This interim ordinance is now numbered as 2016-066.

2. On December 6<sup>th</sup>, a public hearing was held on ordinance 2016-048 imposing an emergency moratorium on the acceptance and processing of applications and permits for subdivisions, building permits, and discretionary permits that rely on permit-exempt wells for water supply in closed basins. This was a procedural hearing. The ordinance was adopted on October 25, 2016. The ordinance number is now AB2016-309. Public Hearing Held and Comments Received.

The council also voted to approve 7-0, a request authorization for the County Executive to enter into a contract for services agreement between Whatcom County and Associated Earth Sciences, Inc. for groundwater monitoring services to support the ongoing groundwater modeling project in the north county, in the amount of \$17,025. The request for funds is numbered AB2016-389.

I hope this post provides additional transparency regarding the actions taken by the council in reaction to the Hirst court decision to date.

Here are some links to the December 6, 2016 public hearing and individual council member special presentations and discussion materials that readers may find interesting.

Special presentation regarding 2016-309A. A proposal by council member Rud Browne regarding the [Seasonal Storage](#) of water as a domestic water source option that also provides mitigation.

A copy of [draft legislation](#) (Senate) from the Code Reviser; and, a proposed county resolution with a supporting letter provided by councilmember Ken Mann.

A proposed [amendment](#) to ordinance 2016-309A by councilmember Todd Donovan.

Additional information and other relevant supporting documents can be found on the Whatcom County Council 2016 agendas, action taken, minutes, [website](#).

Whatcom County Action [taken](#) report on December 6, 2016.  
[Agenda](#) for December 6, 2016 meeting.

Whatcom County Action [taken](#) report on October 25, 2016  
Agenda Revision [Notice](#) distributed on October 25, 2016 regarding emergency moratorium on exempt wells.