

SEP 25 2002
JEFFERSON COUNTY
PROSECUTING ATTORNEY

JEFFERSON COUNTY
State Of Washington

IN THE MATTER OF AN) **ORDINANCE NO. 09-0923-02**
INTERIM ZONING CONTROL)
PURSUANT TO RCW 36.70.795)
AND RCW 36.70A.390 RELATING)
TO SEAWATER INTRUSTION)

WHEREAS, the Jefferson County Commissioners (or “BoCC”) adopted Ordinances #04-0422-02 and #07-0723-02 in order to comply with a Final Decision and Order (“FDO”) published by the Western Washington Growth Management Hearings Board (“WWGMHB”) in Hearings Board Cause #01-2-0015 (Olympic Environmental Council, Shine Community Action Council v. Jefferson County); and

WHEREAS, Ordinance #07-0723-02 created new Seawater Intrusion Protection Zones, or “SIPZ” as critical areas or zones requiring protection and designation pursuant to the FDO promulgated by the WWGMHB pursuant to the WWGMHB’s interpretation of what the state law known as the Growth Management Act (“GMA”) requires of counties who plan under the GMA; and

WHEREAS, one of the three kinds of SIPZ is a “High-Risk” SIPZ, defined as specifically a “High Risk” Seawater Intrusion Protection Zone; and

WHEREAS, a High Risk SIPZ extends in a thousand foot radius from any individual well that indicates a chloride reading of 200 parts per million (or “200 ppm”); and

WHEREAS, Ordinance #07-0723-02 contained language stating that the entire region of a High-Risk SIPZ would be, for the purposes of the Washington Administrative Code §173-160-171(3)(a)(v) and the Department of Ecology’s implementation of that WAC provision, considered to be a “known or potential source(s) of contamination,” specifically the contaminant known as “sea-salt water intrusion areas; and

WHEREAS, the County understood that since only Ecology held the authority to grant permission to install a well upon or near a contaminated source, then only Ecology could grant authority to install a well in a High Risk SIPZ, which was, by definition, a source or potential source of a known contaminant; and

WHEREAS, Ecology has the authority to grant a waiver from rules prohibiting installation of a well upon a potential or known source of contamination pursuant to WAC §173-160-106; and

WHEREAS, in furtherance of our understanding that Ecology had in place this variance process that granted it the authority to grant a waiver that would permit installation of an individual well proposed at any location within a High-Risk SIPZ as a source or potential source of contamination, the County established in Ordinance #07-0723-02 a system whereby any applicant or landowner wishing to install a well in a High Risk SIPZ **AND** then use that well as proof of potable water for a building permit would be required to obtain a variance from the State Department of Ecology (pursuant to state administrative code) to install that well as a precondition to installing that well; and

WHEREAS, the County Commissioners (with County staff present) held telephone conferences with representatives from the Department of Ecology on September 17th and 19th and discovered from those conferences that the Department of Ecology would not, under any circumstances, grant a waiver (i.e., grant permission) for a well to be installed at any location inside the High Risk SIPZ because the County had defined the High-Risk SIPZ as a “source of known or potential contamination;” and

WHEREAS, the Department of Ecology interpretation, in conjunction with the language found in Ordinance #07-0723-02, the bottom of page 6 of the line in-line out Exhibit attached to that Ordinance, codified at UDC §3.6.5(d)(9)(iv)(C)(3), serves to make any and all High-Risk SIPZ the equivalent of a “NO-BUILD” zone since Ecology’s permission would never be granted to an applicant; and

WHEREAS, the best available science in this regard, e.g., the December 1994 Hong West report to this County, NEVER CONCLUDED that the region or area in proximity to a well indicating chloride in excess of 200 ppm should be subject to a BUILDING MORATORIUM, and

WHEREAS, instead reports such as Hong West indicated that new wells could be constructed and installed within 1000 feet of a well showing 200+ ppm if the applicant obtained a "Seawater Intrusion Evaluation Report," which would determine the impacts the new well might have on older, surrounding wells and would generally require monitoring as well as water conservation measures; and

WHEREAS, the County Commissioners never intended by the enactment of Ordinance #07-0723-02 to transform every High-Risk SIPZ into a NO-BUILD zone and such a result, intended or not, is not acceptable to the County Commissioners; and

WHEREAS, the amendments adopted by this Ordinance no longer define the entire High-Risk SIPZ as a "known or potential source of contamination" [the phrase found in the WAC §173-160-171(3)] and instead define only the pinpoint, i.e., the individual well indicating chloride in excess of 200 ppm as the "known or potential source of contamination;" and

WHEREAS, the effect of this Ordinance is to require any person with real property inside a High Risk SIPZ who chooses to use either an extant well or a well that is to be constructed as proof of potable water for a residence to obtain an expert's report, specifically a hydro-geological assessment, indicating that there is a "reasonable probability" that the applicant's well will not degrade the aquifers BEFORE this County will concur that he has provided proof of sufficient potable water; and

WHEREAS, this Ordinance does not lessen the regulations (e.g., mandatory monitoring, mandatory water conservation measures) imposed upon an applicant owning land located inside a High Risk SIPZ who chooses to use either an extant well or a well that is to be constructed as proof of potable water for a residence, but instead only eliminates from the process any language

that requires the applicant to contact the Department of Ecology because of the "blanket" rule Ecology staff laid down during the telephone conference of September 19th; and

WHEREAS, this Ordinance does not alter any of the other conditions that are imposed upon an applicant owning land located inside a High Risk SIPZ who chooses to use either an extant well or a well that is to be constructed as proof of potable water for a residence; and

WHEREAS, this Ordinance is authorized as an interim control pursuant to RCW 36.70.795 and RCW 36.70A.795; and

WHEREAS, adoption of this Ordinance does not change the regulatory structure, meaning that the County continues to be in full compliance with the FDO of January 2002 issued in WWGMHB Cause No. 01-2-0015.

NOW, THEREFORE, BE IT ORDAINED as follows:

Section 1-Revisions to the UDC

The attached Exhibit modifies the UDC and more specifically repeals and replaces the modifications made to the UDC through this Commission's adoption of Ordinance #07-0723-02.

Section 2-Severability

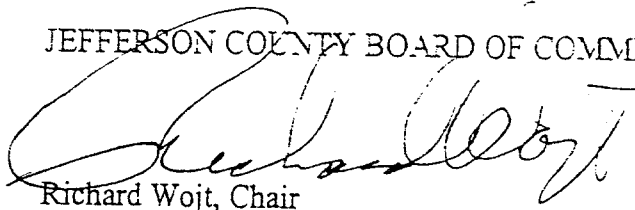
If any section, subsection, sentence, clause or phrase of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application to other persons or circumstances shall not be affected.

Section 3-Effective Date

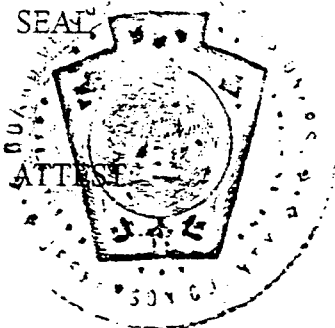
This Ordinance is effective as of its date of adoption.

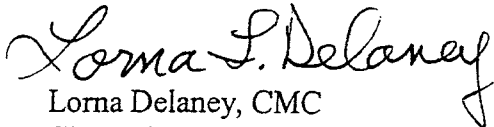
APPROVED AND SIGNED this 23rd day of September 2002.

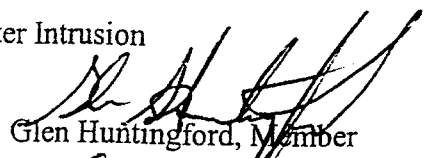
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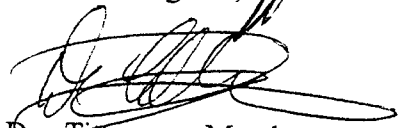


Richard Wojt, Chair



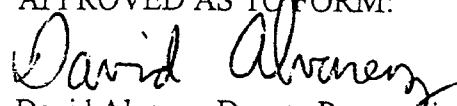

Lorna Delaney, CMC
Clerk of the Board


Glen Huntingford, Member


Dan Titterness, Member

APPROVED AS TO FORM:

9/24/02


David Alvarez, Deputy Prosecuting Attorney

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UDC groundwater protection/seawater intrusion amendments

**In conjunction with Coastal Seawater Intrusion Policy dated July 23, 2002
The amendments found on this page remain the same and are made part of BOTH
Ordinance #07-0723-02 and Ordinance #09-0923-02**

Section 2 Definitions

Alternative Water System

Any source of water for an individual single-family use *that is not* a legally constructed well that produces more than 400 gallons per day or an approved public water system that can provide adequate water for the intended use of a structure.

Critical Aquifer Recharge Areas *(for reference; no amendment proposed)*

Selected watersheds and critical aquifers where resources are potentially threatened by salt water intrusion or primary contaminants or limited due to poor recharge. (p.2-6)

Seawater Intrusion

(See "Salt Water Intrusion")

Salt Water Intrusion *(for reference; no amendment proposed)*

The underground flow of salt water into wells and aquifers. (p.2-20)

Source of Contamination

A facility or disposal or storage site for material that impairs the quality of ground water to a degree that creates a potential hazard to the environment, public health, or interferes with a beneficial use. Or in reference to well drilling, a specific area or source as defined in WAC 173-160-171. (p.2-22)

UDC groundwater protection/seawater intrusion amendments

In conjunction with Coastal Seawater Intrusion Policy

As adjusted September 23, 2002

Section 3 Land Use Districts

3.6 Overlay Districts

3.6.5 Critical Aquifer Recharge Areas.

- a. **Classification.** Critical Aquifer Recharge Areas are naturally susceptible due to the existence of permeable soils or a seawater wedge in coastline aquifers. Certain overlying land uses can lead to water quality and/or quantity degradation. The following classifications define Critical Aquifer Recharge Areas.

- (1) **Susceptible Aquifer Recharge Areas** are those with geologic and hydrologic conditions that promote rapid infiltration of recharge waters to groundwater aquifers. For the purposes of this section, unless otherwise determined by preparation of an Aquifer Recharge Area Report authorized under this section, the following geologic units, as identified from available State of Washington Department of Natural Resources geologic mapping, define Susceptible Aquifer Recharge Areas for east Jefferson County:

- i. Alluvial fans (Ha),
- ii. Artificial fill (Hx),
- iii. Beach sand & gravel (Hb),
- iv. Dune sand (Hd),
- v. Flood plain alluvium (Hf),
- vi. Vashon recessional outwash in deltas and alluvial fans (Vrd),
- vii. Vashon recessional outwash in meltwater channels (Vro),
- viii. Vashon ice contact stratified drift (Vi),
- ix. Vashon ablation till (Vat),
- x. Vashon advance outwash (Vao),
- xi. Whidbey formation (Pw), and
- xii. Pre-Vashon stratified drift (Py).

- (2) Those areas meeting the requirements of Susceptible Aquifer Recharge Areas (above) and which are overlain by the following land uses as identified in this Code are subject to the provisions of the protection standards in this Section:

- i. All Industrial Land Uses
- ii. All Commercial Uses
- iii. All Rural Residential Land Uses
 - A. requiring a Discretionary Use or Conditional Use Permit or
 - B. with nonconforming uses that would otherwise require a Discretionary Use or Conditional Use Permit
- iv. Unsewered Planned Rural Residential Developments
- v. Unsewered residential development with gross densities greater than one unit per acre

- (3) **Special Aquifer Recharge Protection Areas** include:

- i. Sole Source Aquifers designated by the U.S. Environmental Protection Agency in accordance with the Safe Drinking Water Act of 1974 (Public Law 93-523).
- ii. Special protection areas designated by the Washington Department of Ecology under Chapter 173-200 WAC.

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- iii. Wellhead Protection Areas determined in accordance with delineation methodologies specified by the Washington Department of Health under authority of Chapter 246-290 WAC.
 - iv. Ground Water Management Areas designated by the Washington Department of Ecology in cooperation with local government under Chapter 173-100 WAC.
- (4) **Seawater Intrusion Protection Zones (SIPZ)** are aquifers and land overlying aquifers with some degree of vulnerability to seawater intrusion. SIPZ are defined either by proximity to marine shoreline or by proximity to groundwater sources that have demonstrated high chloride readings. All islands and land area within ¼ mile of marine shorelines and associated aquifers together compose the coastal SIPZ. Additionally, areas within 1000 feet of a groundwater source with a history of chloride analyses above 100 milligrams per liter (mg/L) are categorized as either at risk (between 100 mg/L and 200 mg/L) or high risk (over 200 mg/L) SIPZ. Individual groundwater sources with a history of chloride analyses above 200 mg/L shall be considered "sea-salt water intrusion areas," which are among the "sources or potential sources of contamination" listed in Washington Administrative Code (WAC) 173-160-171, implementing code for the Water Well Construction Act.

In some cases, high chloride readings may be indicative of connate seawater (i.e., relic seawater in aquifers as opposed to active seawater intrusion). When best available science or a hydrogeologic assessment demonstrate that high chloride readings in a particular area are due to connate seawater, the area in question shall *not* be considered an at risk or high risk SIPZ. When the status of an area is in question, the UDC Administrator is responsible for making the determination based upon recommendation from County Department of Health and Human Services.

- b. **Designation.** Jefferson County shall prepare and exhibit dated Critical Aquifer Recharge Area maps which demonstrate the approximate distribution of the Susceptible Aquifer Recharge Areas, Special Aquifer Recharge Protection Areas, and Seawater Intrusion Protection Zones. The Critical Aquifer Recharge Area maps shall be periodically revised, modified, and updated to reflect additional information.
- c. **Applicability.**
 - (1) The following land use activities are considered high impact land uses due to the probability and/or potential magnitude of their adverse effects on groundwater and shall be prohibited in Susceptible Aquifer Recharge Areas and Special Aquifer Recharge Protection Areas. In all other areas of the County outside of Susceptible Aquifer Recharge Areas and Special Aquifer Recharge Protection Areas, these activities shall require an Aquifer Recharge Area Report pursuant to this Section.
 - i. Chemical manufacturing and reprocessing;
 - ii. Creosote/asphalt manufacturing or treatment (except that asphalt batch plants may be permitted in Susceptible Aquifer Recharge Areas ONLY if such areas lie outside of Special Aquifer Recharge Protection Areas and ONLY if best management practices are implemented pursuant to sections 4.24.8d and 6.17 of this Code and an accepted Aquifer Recharge Area Report);
 - iii. Electroplating and metal coating activities;
 - iv. Hazardous waste treatment, storage and disposal facilities;
 - v. Petroleum product refinement and reprocessing;
 - vi. Underground storage tanks for petroleum products or other hazardous materials;
 - vii. Recycling facilities as defined in this Code;
 - viii. Solid waste landfills;
 - ix. Waste piles as defined in Chapter 173-304 AC;
 - x. Wood and wood products preserving;
 - xi. Storage and primary electrical battery processing and reprocessing.

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- (2) All other land uses shall be subject to the protection standards contained in this Section and mitigating conditions included with an Aquifer Recharge Area Report, where applicable.
 - (3) **Seawater Intrusion Protection Zones.** Marine shorelines and islands are susceptible to a condition that is known as seawater intrusion. Seawater intrusion is a condition in which the saltwater/freshwater interface in an aquifer moves inland so that wells drilled on upland areas cannot obtain freshwater suitable for public consumption without significant additional treatment and cost. Maintaining a stable balance in the saltwater/freshwater interface is primarily a function of the rate of aquifer recharge (primarily through rainfall) and the rate of groundwater withdrawals (primarily through wells). The Washington Department of Ecology is the agency with statutory authority to regulate groundwater withdrawal for individual wells in Jefferson County. New development, redevelopment, and land use activities on islands and in close proximity to marine shorelines in particular should be developed in such a manner to maximize aquifer recharge and maintain the saltwater/freshwater balance to the maximum extent possible by infiltrating stormwater runoff so that it recharges the aquifer.
- d. **Protection Standards.**
- (1) **General.** The following protection standards shall apply to land use activities in Susceptible Aquifer Recharge Areas and Special Aquifer Protection Areas, and when specified in Seawater Intrusion Protection Zones, unless mitigating conditions have been identified in a Critical Aquifer Recharge Report that has been prepared pursuant to this section.
 - (2) **Stormwater Disposal.**
 - i. Stormwater runoff shall be controlled and treated in accordance with best management practices and facility design standards as identified and defined in the Stormwater Management Manual for the Puget Sound Basin, as amended and the stormwater provisions contained in Section 6 of this Code.
 - ii. To help prevent seawater from intruding landward into underground aquifers, all new development activity on Marrowstone Island, Indian Island and within $\frac{1}{4}$ mile of any marine shoreline shall be required to infiltrate all stormwater runoff onsite. The Administrator will consider requests for exceptions to this policy on a case-by-case basis and may require a hydrogeologic assessment.
 - (3) **On-Site Sewage Disposal.**
 - i. All land uses identified in Section 3.6.5.a and Special Aquifer Recharge Protection Areas that are also classified as Susceptible Aquifer Recharge Areas (as defined in this Section), shall be designated Areas of Special Concern pursuant to Chapter 246-272-21501 WAC.
 - A. Such designation shall identify minimum land area and best management practices for nitrogen removal as design parameters necessary for the protection of public health and groundwater quality.
 - B. Best Management Practices (BMPs) shall be adopted by action of the Board of Health.
 - ii. As new information becomes available that would classify an area as a Special Aquifer Recharge Protection Area or an Area of Special Concern under this Section, said area may be designated as such by the County. Any additional Areas of Special Concern designated through this process shall receive the same protections identified in Subsection (3)i.A and B above.
 - (4) **Golf Courses and Other Turf Cultivation.** Golf courses shall be developed and operated in a manner consistent with "Best Management Practices for Golf Course Development and Operation", King County Environmental Division (now: Depart-

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ment of Development and Environmental Services), January 1993. Recreational and institutional facilities (e.g. parks and schools) with extensive areas of cultivated turf, shall be operated in a manner consistent with portions of the aforementioned best management practices pertaining to fertilizer and pesticide use, storage, and disposal.

- (5) **Commercial Agriculture.** Commercial agricultural activities, including landscaping operations must be operated in accordance with best management practices for fertilizer, pesticide, and animal waste management as developed by the Jefferson County Conservation District.
- (6) **Above Ground Storage Tanks.** Above ground tanks shall be fabricated, constructed, installed, used and operated in a manner which prevents the release of a hazardous substances or dangerous wastes to the ground or groundwater. Above ground storage tanks intended to hold or store hazardous substances or dangerous wastes are provided with an impervious containment area, equivalent to or greater than 100 percent of the tank volume, enclosing and underlying the tank, or ensure that other measures are undertaken as prescribed by the Uniform Fire Code which provide an equivalent measure of protection.
- (7) **Mining and Quarrying.** Mining and quarrying performance standards containing ground water protection best management practices pertaining to operation, closure, and the operation of gravel screening, gravel crushing, cement concrete batch plants, and asphalt concrete batch plants, where allowed, are contained in Sections 4 and 6 of this Code.
- (8) **Hazardous Materials.** Land use activities that generate hazardous waste, which are not prohibited outright under this code, and which are conditionally exempt from regulation by the Washington Department of Ecology under WAC 173-303-100, or which use, store, or handle hazardous substances, shall be required to prepare and submit a hazardous materials management plan that demonstrates that the development will not have an adverse impact on ground water quality. The hazardous materials management plan must be updated annually by the facility owner.
- (9) **Well Drilling, Land Division, and Building Permits in Seawater Intrusion Protection Zones.**
 - i. *Well Drilling:* The Washington State Department of Ecology regulates well drilling pursuant to the Water Well Construction Act. Proposed wells, including those exempt from permitting requirements, must be sited at least 100 feet from "known or potential sources of contamination," which include "Sea-salt water intrusion areas" (WAC 178-160-171), unless a variance is obtained from Ecology per WAC 173-160-106.
 - ii. *Subdivisions:* Applications for land division (UDC Section 7) when the average net density proposed is less than five acres per dwelling unit must include specific and conclusive proof of adequate supplies of potable water through a qualifying hydrogeologic assessment (relevant components of an Aquifer Recharge Area Report per UDC 3.6.10.e) that demonstrates that the creation of new lots and corresponding use of water will not impact the subject aquifer such that water quality is degraded by seawater intrusion.
 - iii. *Building Permits:*
 - A. Evidence of potable water may be an individual well, connection to a public water system, or an alternative system. Whatever method is selected, the regulatory and operational standards for that method must be met, including Jefferson County Health Codes and Washington Administrative Code.

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B. All types of building permits that require proof of potable water use are subject to this policy, specifically building permits for new single-family residences (SFRs) or other structures with plumbing that are not associated with an existing SFR (i.e., shops or garages with a bathroom).

iv. Voluntary and mandatory measures of the Jefferson County seawater intrusion policy apply to development proposals within the coastal, at risk, and high risk SIPZ in the following manner, in addition to all existing applicable Health Codes:

A. COASTAL SIPZ

VOLUNTARY ACTIONS:

1. Water conservation measures.
2. Installation of a flow meter.
3. On-going well monitoring for chloride concentration.
4. Submittal of data to County.

MANDATORY ACTIONS:

1. For proof of potable water on a building permit application, applicant must utilize DOH-approved public water system *if available*.
2. If public water is unavailable, an individual well may be used as proof of potable water subject to the following requirements:
 - o Chloride concentration of a laboratory-certified well water sample submitted with building permit application.
3. If public water is unavailable, a qualifying alternative system may be used as proof of potable water.

B. AT RISK SIPZ

VOLUNTARY ACTIONS:

1. Water conservation measures.

MANDATORY ACTIONS:

1. For proof of potable water on a building permit application, applicant must utilize DOH-approved public water system *if available*.
2. If public water is unavailable, an individual well may be used as proof of potable water subject to the following requirements:
 - o Chloride concentration of a laboratory-certified well water sample submitted with building permit application.
 - o Installation of a flow meter.
 - o On-going well monitoring for chloride concentration.
 - o Submittal of flow and chloride data to the County per monitoring program.
3. If public water is unavailable, a qualifying alternative system may be used as proof of potable water.

C. HIGH RISK SIPZ

MANDATORY ACTIONS:

1. Water conservation measures (per list maintained by UDC Administrator).

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2. For proof of potable water on a building permit application, applicant must utilize DOH-approved public water system *if available*.
 3. If public water is unavailable, an individual well *may only be used* as proof of potable water subject to the following requirements:
 - o Variance from Chapter 173 WAC standards granted by Ecology per WAC 173-160-106 for a new groundwater well within 100 feet of a sea-salt water intrusion area per WAC 173-160-171 (i.e., within 100 feet of a groundwater source showing chloride concentrations above 200 mg/L or within 100 feet of the marine shoreline); or for an existing or proposed groundwater well not subject to an Ecology variance, applicant must provide evidence through a hydrogeologic assessment (relevant components of an Aquifer Recharge Area Report per UDC 3.6.10.e) of a reasonable probability that the subject aquifer will *not* be degraded by the proposed use of the well.
 - o Chloride concentration of a laboratory-certified well water sample submitted with building permit application.
 - o If chloride concentration exceeds 250 mg/L in a water sample submitted for a building permit, then the property owner shall be required to record a restrictive covenant that indicates a chloride reading exceeded the U.S. Environmental Protection Agency secondary standard (250 mg/L) under the National Secondary Drinking Water Regulations.
 - o Installation of a flow meter.
 - o On-going well monitoring for chloride concentration.
 - o Submittal of flow and chloride data to the County per monitoring program.
 4. If public water is unavailable, a qualifying alternative system may be used as proof of potable water.
- (10) **Mitigating Conditions.** The Administrator may require additional mitigating conditions, as needed, to provide protection to all Critical Aquifer Recharge Areas to ensure that the subject land or water use action will not pose a risk of significant adverse groundwater quality impacts. The determination of significant adverse groundwater quality impacts will be based on the Antidegradation policy included in Chapter 173-200 WAC.
- (11) **Authority for Denial.** The Administrator may deny approval if the protection standards contained herein or added mitigating conditions cannot prevent significant adverse groundwater quality impacts.