



Planning and Land Services Department DEPARTMENT-WIDE POLICY

Policy Number:	DW2016-02
Title:	Building Permits/Subdivisions on New Permit-Exempt Wells
Date:	November 1, 2016
Management Approval:	Dennis Hanberg, Director
Related Documents:	WA State Supreme Court Decision – Whatcom County v. Hirst

Purpose

Identify necessary documentation to determine water availability when using a **new** permit-exempt well for a building permit or subdivision. A permit-exempt well is allowed per RCW 90.44.050. This State law allows use of groundwater for specific purposes without the need to obtain a water rights permit. One such use is a single home or group of homes that use no more than 5,000 gallons of water per day.

For the purpose of this Policy, a ‘new permit-exempt well’ shall be defined as a well in which an application to the Tacoma-Pierce County Health Department (TPCHD) was either approved, or applied for, after November 1, 2016. Building permit applications utilizing a preexisting approved permit-exempt well are not subject to this Policy.

Applicability

The documentation listed below shall be required for all building permits and subdivision applications proposed to use a **new** permit-exempt well for potable water within all of the following areas due to their status as “Closed,” “Seasonal Closure,” or having adopted minimum “Instream Flows”:

- Puyallup-White Watershed (WRIA 10),
- Nisqually Watershed (WRIA 11), or
- Chambers-Clover Watershed (WRIA 12).

This Policy shall only apply to those limited portions of the Kitsap Watershed (WRIA), which have a status of “Closed” or “Seasonal Closure.” The streams within the Kitsap Basin meeting this status include, but are not limited to:

- Stansberry Lake and tributaries
- Minter Creek and tributaries
- Crescent Creek and tributaries
- Purdy Creek and tributaries
- North Creek and tributaries
- #342 Unnamed Creek and tributaries
- #407 Unnamed Stream and tributaries
- Jod Creek and tributaries

Documentation Required to Prove Water Availability

The TPCHD approves the application for construction or re-construction of individual wells. In addition to providing this required TPCHD application material, a hydrogeologic study, stamped by a licensed hydrogeologist, shall be submitted to PALS at the time of application for a building permit or subdivision. The hydrogeologic study must indicate if the permit-exempt well:

- Impacts or impairs a senior water rights holder, and
- Impacts or impairs established instream flows and closures as identified by the State.

Determination of Water Availability

PALS shall determine if a building permit or subdivision has legal water based on the findings of the hydrogeologic study. PALS shall issue a building permit, or approve a subdivision application, only if it demonstrates that the permit-exempt well:

- Will not impact or impair a senior water rights holder, and
- Will not impact or impair established instream flows and closures as identified by the State.

Discussion

On October 6, 2016, the Washington State Supreme Court decision (*Whatcom County v. Hirst*) resulted in significant changes in the County's requirements for proof of water availability prior to the granting of a building permit.

Of significance are changes related to building permits constructed on a permit-exempt well. A permit-exempt well is typically a well drilled for a single-family home. In the past, a permit-exempt well did not require an "obtained" water right or a hydrogeologic study providing evidence of water being factually and legally available prior to issuance of a building permit.

This Court ruling changes the interpretation of RCW 19.27.097 such that permit-exempt wells must establish they do not infringe on a senior water right or on an established instream flow. For the County to determine water availability, in accordance with RCW 90.44.050, the applicant shall be required to provide evidence that the use of a permit-exempt well will not impair a senior water rights holder or instream flow. This evidence can only be provided through a hydrogeologic study.

State Law

RCW 19.27.097 Building permit application – Evidence of adequate water supply – Applicability – Exemption.

"(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..."

RCW 58.17.110 Boundaries and Plats – Plats-Subdivision-Dedications - Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages.

"(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..."

RCW 90.44.050 Water Rights - Regulation of public groundwaters - Permit to withdraw.

"After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section..."