

Return Address

Walla Walla County Commissioners

Document Titles (i.e.: type of document)

Ordinance No. 320

Auditor File Number(s) of document being assigned or released:

Grantor

1. **Walla Walla County Commissioners**

2.

3.

Additional names on page ____ of document.

Grantee

1. **The Public**

2.

3.

Additional names on page ____ of document.

Legal description (i.e.: lot and block or section township and range)

Additional legal is on page ____ of document.

Assessors Parcel Number

Additional parcel number is on page ____ of document.

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. Please type or print the information. This page becomes part of document.



Walla Walla County, WA

ORD

2005-11446

Page: 1 of 10

09/15/2005 11:01A

ORDINANCE NO. 320

ADOPTING AN IMMEDIATE EMERGENCY SIX MONTHS MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR DEVELOPMENT OF PROPERTY LOCATED IN SCOTT CANYON, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF THIS ORDINANCE.

WHEREAS, the County Commissioners of Walla Walla County may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications, provided that the County Commissioners hold a public hearing on the proposed moratorium within sixty (60) days after adoption of the Ordinance (RCW 36.70A.390); and

WHEREAS, Scott Road is a public road that is located about five miles east of Dixie. Scott Road accesses a few dozen properties that are located along Dry Creek. Scott Road crosses Dry Creek in several places via streambed fords. Dry Creek contains summer steelhead that were listed as threatened species in 1999 under the federal Endangered Species Act (ESA). Endangered fish and/or their eggs can be present in the subsurface gravels of each streambed ford even when the creek appears to be dry. Harming a fish, its eggs or its habitat can violate the ESA. The County has been advised by the National Marine Fisheries Service that the County could share in the liability for violations based on the activities authorized in furtherance of permits issued by the County, including vehicles driving through the stream. As a result, the County's legal consultants have recommended that a moratorium be adopted; and



WHEREAS, the County has obtained information from the Washington Department of Fish and Wildlife (WFDW) confirming that the sections of Dry Creek that are crossed by the access road to the subject area are located in an area of known distribution of the listed species, and also contains critical habitat for rearing and spawning of threatened species (summer steelhead). This information is contained in the Walla Walla Sub-basin plan and WFDW publication "Assessment of Salmonids and their habitat conditions in the Walla Walla River Basin"; and

WHEREAS, the National Marine Fisheries Service has confirmed this information, and further has advised the County that penalties under the federal endangered species act (ESA) could result if actions associated with the use of the road by County permittees violate the ESA; and

WHEREAS, Scott Road is also the site of road work undertaken by the County Public Works Department in 2003 that may have impacted critical habitat. A component of the remediation efforts negotiated by the National Marine Fisheries Service and the Washington State Department of Fish and Wildlife for the road work included a training program for County employees on work in and around critical areas, and consideration of a development moratorium; and

WHEREAS, continued increases in traffic use due to development activity is likely as evidenced by recent permit submittals; and



WHEREAS, Scott Road streambed fords are inadequate to handle more traffic due to development, given the fragility of the critical area and environment; and

WHEREAS, the County desires to impose an immediate moratorium on the acceptance of development applications for property located in the Scott Canyon area, in order that the County can determine whether or not development in the Scott Canyon area, as contemplated in the existing Comprehensive Plan and development regulations, is consistent with existing law, specifically the Endangered Species Act, the State Environmental Policy Act and the Growth Management Act; and

WHEREAS, the moratorium is also required to evaluate the Scott Road streambed fords on the North Fork Dry Creek to determine long term options for reducing or eliminating traffic impacts to steelhead critical habitat from existing and/or new development in the area; and

WHEREAS, if the County finds that its existing Comprehensive Plan and development regulations are not consistent with law, the moratorium will be needed to craft and adopt new Comprehensive Plan and development regulations; and

WHEREAS, the County Commissioners desire to impose an immediate moratorium on the acceptance of development applications in the Scott Canyon area, consistent with this Ordinance; Now, Therefore,

THE COUNTY COMMISSIONERS OF WALLA WALLA COUNTY,
WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the following definitions apply:

A. **“Exempt Development Permits”** shall include any permit applications identified below, applicable to the Moratorium Property:

1. Administrative interpretations;
2. Sign permit;
4. Street use permit;
5. Permits for interior alterations of a structure with no change in use;
6. Right of way permit;
7. Single family remodeling permit with no change of use;
8. Plumbing permit;
9. Electrical permit;
10. Mechanical permit;
11. Tenant improvement permit;
12. Fire code permit;
13. Boundary Line Adjustment;
14. Design Review approval.

Notwithstanding the inclusion of any permit in the list above, if any of the above permit applications request any alteration or changes which would also require a critical areas permit or trigger review under the State Environmental Policy Act (SEPA), such application shall not be exempt. In addition, an exempt permit shall include any other development application submitted to the County for the Moratorium Property that is complete on or before the effective date of this Ordinance.

B. **“Non-Exempt Development Permits”** shall include any development permits or development permit applications for any “development activity,” which includes any subdivision, construction or expansion of a building, structure or use; any change in the use of a building or structure; or any changes in the use of the land that



requires a permit of any type from the County. A “development permit” is any land use permit required by the County for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, planned residential developments, conditional uses, critical areas permits, shoreline substantial development permits, variances, conditional use permits, driveway permits, site plan reviews, and site specific rezones.

C. “Moratorium Property” shall include the property legally described in Exhibit A, the map attached hereto and which is by this reference made a part hereof, and more commonly described as the property located above the first (seaward) Scott Road streambed ford located in Sections 9, 10 and 15 in Township 7 North, Range 38 East, W.M.

Section 2. Purpose. The purpose of this moratorium is (A) to allow the County adequate time to perform the necessary studies to determine whether or not development in the Scott Canyon area, as contemplated in the existing Comprehensive Plan and development regulations, is consistent with existing law, specifically the Endangered Species Act, the State Environmental Policy Act and the Growth Management Act; (B) to evaluate the Scott Road streambed fords on the North Fork Dry Creek to determine long term options for reducing or eliminating traffic impacts to steelhead critical habitat from existing and/or new development in the Moratorium Property; and (C) if the County finds that the County’s existing Comprehensive Plan and development regulations are not consistent with law, the moratorium will be needed to extended, the County would need to hold hearings and adopt new Comprehensive Plan and development regulations.



Section 3. Moratorium Imposed. The County Commissioners hereby impose a moratorium on the acceptance of all non-exempt development permit applications for property located in the Moratorium Property area. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the County's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the date of adoption of this Ordinance. Provided that the County holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 5 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. However, the County Commissioners shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390, the County Commissioners shall hold a public hearing on this moratorium within sixty (60) days of adoption, or before November 10, 2005. The Commissioners shall hold this hearing on October 17, 2005. Immediately after the public hearing, the County Commissioners shall adopt findings of fact on the subject of this moratorium, and either justify its continued existence or terminate the moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction,



such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Declaration of Emergency. The Board of County Commissioners hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by the Board, and that the same is not subject to a referendum (RCW 36.70A.390). Without an immediate moratorium on the County's acceptance of non-exempt development applications for the Moratorium Property, such applications could become vested, even though there may not be adequate public facilities to serve the development. In addition, applications could become vested before the County has performed the necessary analysis to determine whether or not development may take place in the Moratorium Property without significant adverse environmental impacts. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of development applications to the County in an attempt to vest rights under the existing development regulations, which may not be adequate to protect the environment. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the County. This Ordinance only imposes a moratorium in the area described as the Moratorium Property, and those property owners with exempt applications/permits for the Moratorium Property may have their applications processed.


Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7.



PASSED by the County Commissioners of Walla Walla County this 12th day of
September, 2005.

Attest:


Connie R Vinti

Connie R. Vinti, Clerk of the Board

Gregory A. Tompkins

Gregory A. Tompkins, Chairman

Gregg C. Loney

Gregg C. Loney, Commissioner

David G. Carey

David G. Carey, Commissioner

*Constituting the Board of County Commissioners
of Walla Walla County, Washington*

APPROVED AS TO FORM:

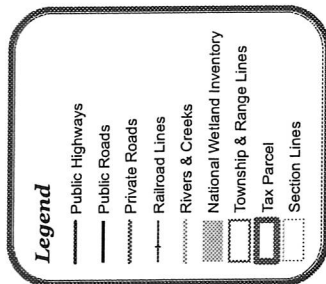
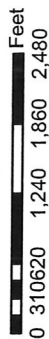
Scott R. [Signature]

County Prosecuting Attorney

PASSED BY THE BOARD OF COMMISSIONERS:
FILED WITH THE COUNTY AUDITOR:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

September 12, 2005
September 12, 2005
September 15, 2005
September 12, 2005
320





A large scale color map is available at the Walla Walla County Board of Commissioners office.

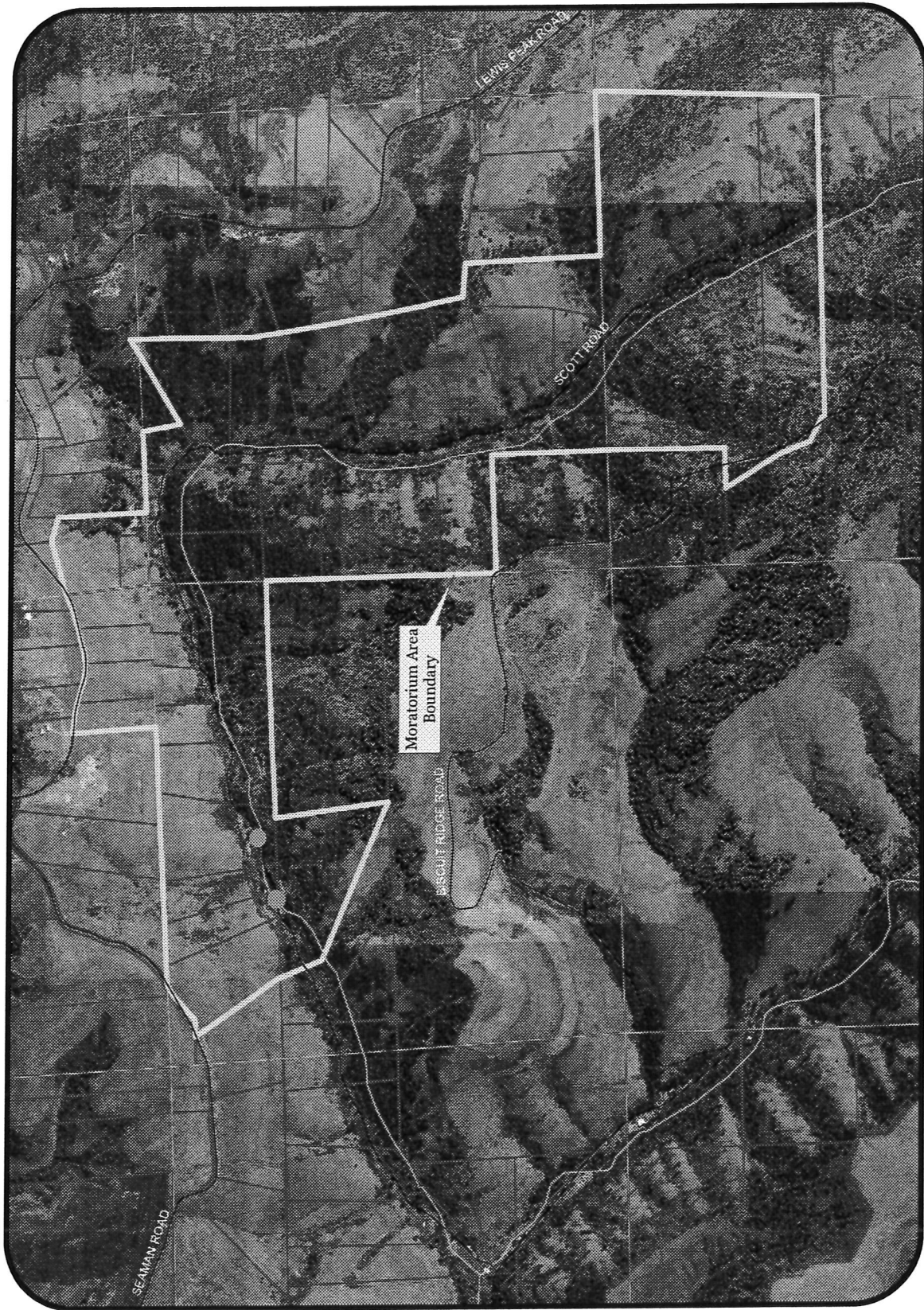
Disclaimer:

Disclaimer: Please be advised that the data contained in Walla Walla County's Geographic Information System (GIS) is subject to constant change and that Walla Walla County, its agents, consultants, contractors, or employees collectively referred to as "the County" do not guarantee that the information presented is accurate or complete. All data contained in the County's GIS is provided by the County AS IS without warranty of any kind, implied or express, as to the information being accurate or complete.

County's GIS, each user agrees to waive, release and indemnify Walla Walla County, its agents, consultants, contractors or employees from any and all claims, actions, or causes of action for damages or injury to persons or property arising from the use or inability to use Walla Walla County's GIS data.

Walla Walla County will not be responsible for any data distributed by others. The release of data to the requestor below does not authorize the party to redistribute or recell or act as an agent for any data received from the County.

Print Date: 09/14/2005
Path: projects\ pw\ Scott Canyon Noowner.mxd



2005-11446

Page: 10 of 10

09/15/2005 11:01A

Walla Walla County, WA

ORD