

## ORDINANCE NO. 327

**AN ORDINANCE OF THE COMMISSIONERS OF WALLA WALLA COUNTY, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS OF FACT TO JUSTIFY THE CONTINUED MAINTENANCE OF THE MORATORIUM IMPOSED UNDER ORDINANCE NO. 323, ON THE ACCEPTANCE OF NON-EXEMPT APPLICATIONS FOR CERTAIN PROPERTY LOCATED IN SCOTT CANYON, WHICH MORATORIUM SHALL BE EFFECTIVE FOR A PERIOD OF SIX MONTHS, PURSUANT TO RCW 36.70A.390.**

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WHEREAS, on September 12, 2005, the Walla Walla County Commissioners adopted Ordinance No. 320, which declared an emergency necessitating the immediate imposition of a Moratorium on the acceptance of non-exempt applications in the area of Scott Canyon (as shown on a map identified as Attachment A to that Ordinance); and

WHEREAS, on November 7, 2005, the Walla Walla County Commissioners adopted Ordinance No. 323 also pertaining to the moratorium,

WHEREAS, the County's SEPA Responsible Official issued a Determination of Non-Significance for the previous moratorium, which was not appealed; and

WHEREAS, on February 21, 2006, the Commissioners held a public hearing on renewing the Moratorium, and on that date, accepted testimony from all members of the public desiring to be heard on the subject; and

WHEREAS, during the public hearing, the Commissioners heard testimony from property owners in Scott Canyon, who contended that the moratorium should not apply to property for which there is a vehicle access other than Scott Road, requesting that the Moratorium Property (as identified in

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Attachment A to Ordinance 323) be changed to reflect the property identified in Exhibit 1 to this Ordinance; and

WHEREAS, during the public hearing, the Commissioners were presented with the issue whether any of the exempt development permits should include permits for expansions of structures that would result in more people living in Scott Canyon, which would place additional demands on Scott Road with additional vehicles, as well as demands for roadway improvements; and

WHEREAS, on March 6, 2006, the Commissioners considered these Findings of Fact, deliberated on the issue whether to maintain the moratorium, and voted to continue the moratorium as described in Ordinance No. 323 with the amendments set forth in this Ordinance; Now, Therefore,

THE COUNTY COMMISSIONERS OF THE COUNTY OF WALLA WALLA, WASHINGTON, 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 and is defined as follows:

1. Administrative interpretations;
2. Sign permits;
3. Street use permits;
4. Permits for interior alterations of a structure with no change in use, PROVIDED THAT: if the alteration of the structure results in the addition of 1,000 square feet or more to the size of the structure, such permit shall not be exempt;
5. Right of way permits;
6. Single family remodeling with no change in use, PROVIDED THAT: if the alteration of the structure results in the addition of 1,000 square feet or more to the size of the structure, such permit shall not be exempt;

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7. Plumbing permits;
8. Electrical permits;
9. Mechanical permits;
10. Tenant improvement permit, PROVIDED THAT: if the improvements result in the addition of 1,000 square feet or more to the size of the structure, such permit shall not be exempt;
11. Fire code permits;
12. Boundary line adjustments; and
13. 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 Ordinance 320.

Section 3. The definition in Section 1(C) of Ordinance 323 is hereby amended to read as follows:

C. "Moratorium Property" shall include the property legally described in Exhibit 1, which is the map attached to this Ordinance, the map attached hereto and which is by this reference made a part hereof, and more commonly described as the properties, and portions thereof 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., that cannot be accessed from another County Road.

Section 4. Adoption of Findings of Fact. As required by RCW 36.70A.390, the County Commissioners hereby adopt the following findings of



fact to support the continued imposition of the County's six (6) month moratorium on the acceptance of Non-Exempt Applications.

A. Staff Report. During the public hearing, the County's Community Development Director, Scott Revell, provided written and oral testimony as to the following facts:

- 1) 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; and
- 2) Dry Creek contains summer steelhead that were listed as threatened species in 1999 under the federal Endangered Species Act (ESA); and
- 3) 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; and
- 4) Harming a listed fish, its eggs or its habitat can violate the Endangered Species Act. 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 the moratorium be adopted so that the County may evaluate its options with regard to use, maintenance and repair of the road. In addition, the County desires to evaluate its comprehensive plan and development regulations to ensure that its permitting decisions will not violate the ESA; and
- 5) 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
- 6) 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



- 7) 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
- 8) Continued increases in traffic use due to development activity is likely as evidenced by recent permit submittals. If the County does not impose a moratorium while it evaluates the situation, additional development permits may be submitted, become vested, and thwart the County's ability to address this problem at this early stage; and
- 9) Scott Road streambed fords are inadequate to handle more traffic due to development, given the fragility of the critical area and environment; and
- 10) The County desired 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
- 11) The County will evaluate the Scott Road streambed fords on the North Fork Dry Creek with the assistance of the Washington Department of Fish and Wildlife 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
- 12) 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.

B. Oral Testimony from the Public: 4 members of the public testified.

1. Janelle Carman, 6 East Alder Street, Walla Walla, WA 99362. Ms. Carman, attorney for Mike Birge, stated that her opinion tourists using Scott Road were being treated better than property owners in the moratorium area. She stated that she supports a gate on the road as a solution.

2. March Wachtel, 2315 N. Discovery Place, Spokane Valley WA 99216 Washington Department of Fish and Wildlife Regional Program Habitat



Manager testified that his agency was ready to provide technical assistance and expertise to the County to find solutions to the road crossing issues.

3. Ardell Ainsworth, 5883 Lewis Peak Road, Dixie, WA. Ms. Ainsworth asked the County Commissioners to consider the fact that the hillside was unstable between Lewis Peak Road downhill toward Scott Road and Dry Creek.

4. Gale Supplee, 2024 Scott Road, explained that he supported continuing the moratorium and that there had been poaching and trespass problems in the past because there is no public property along Scott Road.

C. Written Testimony by the Public. The County Commissioners kept the record open until 5 p.m. on February 24, 2006.

1. Mark Grandstaff-2315 N. Discovery Place, Spokane Valley WA 99216  
Washington Department of Fish and Wildlife Assistant Regional Program Habitat Manager

2. Raymond Nilson, 671 Scott Road, Dixie, WA

3. March Wachtel-2315 N. Discovery Place, Spokane Valley WA 99216  
Washington Department of Fish and Wildlife Regional Program Habitat Manager.

4. Nathaniel F. and Holly Farnham, 729 Scott Road, Dixie WA 99329.

5. Stacy Bjordahl, 422 W. Riverside, Spokane, WA 99201, attorney for Mike Birge. Letters dated February 21, 2006 and February 23, 2006.

6. Mike Berglund, 720 E. Fremont Dayton, WA 99362

D. Deliberations by Commissioners. Commissioner Tompkins stated that the County was working to find equitable solutions for the affected property owners that did not burden the taxpayers of the County.

E. Need to Preserve the Status Quo. Walla Walla County Watershed Planning Director Cathy Schaeffer explained that a moratorium was needed to preserve the status quo with regard to development in Scott Canyon. If the



County did not impose a moratorium and study the problem, the County might violate the ESA, resulting in enforcement action from the federal government.

F. Moratorium to be Maintained for Six Months. In light of the above, the Commissioners desire to maintain the moratorium imposed by Ordinance No. 323 for a period of six months. This moratorium shall apply to all non-exempt applications for property within the area defined as the Moratorium Property.

G. Duration of Moratorium. The moratorium imposed by Ordinance 323 commenced on the effective date of that Ordinance. The moratorium shall terminate six months thereafter. The Commissioners shall make the decision to terminate by ordinance and termination shall not otherwise be presumed to have occurred.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Publication. This Ordinance will be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect and be in full force immediately.

PASSED by the Walla Walla County Commissioners on this 6<sup>th</sup> day of March, 2006.

WALLA WALLA COUNTY



absent  
David G. Carey, Chairman

Gregg C. Loney  
Gregg C. Loney, Commissioner

Gregory A. Tompkins  
Gregory A. Tompkins, Commissioner

ATTEST/AUTHENTICATED:

By: Connie R. Vinti  
Connie R. Vinti, Clerk of the Board

APPROVED AS TO FORM:

By: Jess B. Nolte  
County Prosecuting Attorney Deputy



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# Scott Canyon Moratorium Area



**Legend**

- Tax Parcels
- State Highways
- Public Roads
- Private Roads
- Railroad

**Scott Road Moratorium Area**

NOTE: Properties with access via another county road cannot be accessed via Scott Road.

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