

RESOLUTION 2019-021

RESOLUTION DECLARING A FREEZE OR A TEMPORARY MORATORIUM ON DEVELOPMENT IN THE AQUIFER PROTECTION OVERLAY ZONE SUBJECT TO EXEMPTIONS FOR 90 DAYS.

WHEREAS, the Board of Commissioners for Albany County (County) has reaffirmed that the safeguarding of the County's drinking water in the Casper Aquifer is critical to the protection of public health and safety within the County;

WHEREAS, the Casper Aquifer supplies more than fifty percent (50%) of the County's fresh drinking water and one hundred percent (100%) to the rural homeowners that fall within the Casper Aquifer recharge area;

WHEREAS, the delineated recharge area of the Casper Aquifer in the Laramie area encompasses approximately seventy-nine (79) square miles that lie east of the City of Laramie, Wyoming (City) and extends to the crest of the Laramie Range, with the northern boundary approximately six (6) miles north and the southern boundary six (6) miles south of the City limits. The City has municipal well fields 3-6 which draw water from this area. Exposure of the Casper Formation in the delineated area results in increased vulnerability to contamination from land uses;

WHEREAS, on January 4, 2011, the County Commissioners adopted the Casper Aquifer Protection Plan (Plan);

WHEREAS, the Plan indicated that care should be taken to protect the Casper Aquifer from potential contamination and drawdown resulting from residential densities becoming too high and recommended the Casper Aquifer Protection Overlay Zone for further low-density residential development and that commercial land uses not be extended into this area;

WHEREAS, the Plan includes a delineation report, contaminant source inventory, contaminant management plan and contingency plan for the Casper Aquifer wells and springs and provides standards for development within the Plan area;

WHEREAS, the County Commissioners adopted zoning regulations creating the Aquifer Protection Overlay Zone to safeguard the Casper Aquifer wells and spring area;

WHEREAS, due to recent litigation between the County and a retail gas station which is a pre-existing non-conforming use located on the Casper Aquifer, it was determined that the current regulations failed to provide a process for addressing pre-existing nonconforming uses as well as review and enforcement provisions for compliance with Aquifer Protection Overlay Zone regulations;

WHEREAS, the Supreme Court has recognized that the zoning authority which has been granted to counties includes the power to adopt temporary freeze resolutions so that the status quo may be preserved until planning and zoning decisions can be made." (citing, *Schoeller v. Bd. of County Commissioners*, 568 P.2d 869, 874-75). However, the power is subject to restrictions. "A freeze

resolution may initially continue only for a length of time which affords an opportunity to give notice and hold a hearing on the issue of whether such resolution should be given more permanent status under Wyo. Stat. § 18-5-202.” *Schoeller* at 878-879;

WHEREAS, it is recognized that if the subject matter of the freeze resolution was not noticed, there is a concern that developers and landowners would file applications for development or expansion in the Aquifer Protection Overlay Zone prior to the implementation of the freeze resolution taking effect, thus defeating the legitimate governmental purpose of freezing construction in the Casper Aquifer until the new amended Aquifer Protection Overlay Zone regulations and other applicable regulations can be completed. According to County Zoning Resolution, once an application is deemed sufficient, the application is reviewed pursuant to the Regulations in place on that date, thus any changes made to Regulations after the application is deemed sufficient, would have no applicability to that application;

WHEREAS, inappropriate development on the Aquifer Protection Overlay Zone can adversely affect the water quality of the County’s drinking water through the intentional or unintentional release of contaminants harmful to the health and welfare of County residents;

WHEREAS, for the protection of the public welfare, health and safety of the citizens of the County, a revision of the Aquifer Protection Overlay Zone regulations is necessary to ensure the protection of the County’s water supply from inappropriate development and pollution that could degrade the aquifer and be harmful to the health and safety of the County’s citizens;

WHEREAS, the County Commissioners previously met on June 10, 2019 at 3:30 p.m. in an Emergency Meeting and approved Emergency Resolution 2019-001 declaring a freeze or a temporary moratorium on development in the Aquifer Protection Overlay Zone;

WHEREAS, Wyo. Stat. §16-4-404(d) requires that any action taken in an emergency meeting be reviewed and acted upon at an open public meeting within 48 hours. County Commissioners met at a Special Meeting on June 11, 2019 at 1:00 p.m. which was properly noticed by the County Clerk and open to the public and public comment and considered the freeze or a temporary moratorium on development in the Aquifer Protection Overlay Zone and adopted Resolution 2019-13 declaring a freeze or a temporary moratorium on development in the Aquifer Protection Overlay Zone;

WHEREAS, on June 11, 2019, the County Commissioners referred this matter to County Planning and Zoning Commission to determine whether or not the County should temporarily freeze or place a temporary moratorium for 90 days on any building permit, subdivision plat or any other development, construction, or land use or zoning application regarding property situated in whole or in part within the Aquifer Protection Overlay Zone located in the unincorporated area of Albany County except that the freeze will not apply to all pending permits and to all development or construction for projects previously approved by the County Commissioners pursuant to current County Zoning Regulations to allow Albany County, Wyoming to revise the zoning regulations for the protection of the Casper Aquifer;

WHEREAS, the County Planning and Zoning Commission met on June 12, 2019 which was properly noticed by the County Clerk and open to the public and public comment and after receiving public comments, determined to delay the temporary freeze or placing a temporary moratorium until an exemption process could be drafted for their consideration;

WHEREAS, the County Planning and Zoning Commission met on June 19, 2019 which was properly noticed by the County Clerk and open to the public and public comment and after receiving public comments approved and certified the temporary freeze or placing a temporary moratorium as outlined by the County Commissioners subject to the exemption process which is marked Exhibit 1 and is attached hereto and incorporated herein;

WHEREAS, Wyoming law requires that said public hearing of the Board of County Commissioners occur after a notice of time and place of the hearing being given by one (1) publication in a newspaper of general circulation in Albany County at least fourteen (14) days before the date of the public hearing;

WHEREAS, a public hearing was held on July 5, 2019 which was properly noticed by the County Clerk and open to the public and public comment and public comments were received on the extension of the temporary moratorium for 90 days subject to the exemption process.

NOW THEREFORE THE BOARD OF COUNTY COMMISSIONERS OF ALBANY COUNTY, WYOMING, RESOLVE:

Section 1. That the foregoing recitals are incorporated in and made a part of this resolution by this reference.

Section 2. That the Board of County Commissioners of Albany County declares that a temporary freeze or moratorium is placed on any building permit, subdivision plat or any other development, construction, or land use or zoning application regarding property situated in whole or in part within the Aquifer Protection Overlay Zone located in the unincorporated area of Albany County except that the freeze will not apply to all pending permits and to all development or construction for projects previously approved by the County Commissioners pursuant to current County Zoning Regulations to allow Albany County, Wyoming the opportunity to revise the zoning regulations for the protection of the Casper Aquifer and for the health and safety of the citizens of the County. Further, the temporary freeze or moratorium shall exist for 90 days.

Section 3. That the temporary freeze or moratorium is subject to the exemption as adopted and certified by the Planning and Zoning Commission which is marked Exhibit 1 and is attached hereto and incorporated herein.

PASSED, APPROVED, AND ADOPTED THIS 5 day of July 2019.

**THE BOARD OF COUNTY COMMISSIONERS OF
ALBANY COUNTY, WYOMING**


Terri Jones, Chairperson

ATTEST:

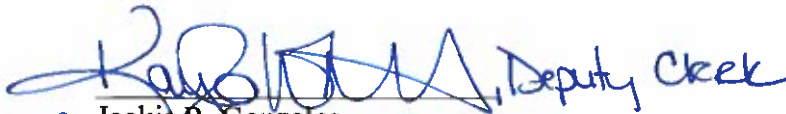

for Jackie R. Gonzales,
Albany County Clerk

EXHIBIT 1

Temporary Moratorium Exemption Process

- I) Exemptions in the Aquifer Protection Overlay Zone (APOZ) that are eligible for approval include the following:**
- A) Residential, Agricultural, Commercial, or Industrial Uses that are not listed as prohibited uses in the Aquifer Protection Overlay Zone Prohibited Use Table and that meet Zoning Certificate requirements, where applicable.**
 - B) Home businesses/occupations that are not listed as prohibited uses in the Aquifer Protection Overlay Zone Prohibited Uses Table and that meet the standards in the Zoning Resolution.**
 - C) Subdivisions that meet County regulations and that are approved by the Board of County Commissioners.**
 - D) Outdoor signs.**
 - E) Towers, including temporary towers, small wind energy towers, commercial wind energy systems, and tower co-locations.**
 - F) Pre-existing non-conforming uses, structures, and lots as well as verification of continuous uses.**
 - G) Subdivision Exemptions.**
 - H) Properly designed and approved Small Wastewater Systems.**
 - I) Variances approved by the Board of County Commissioners.**
 - J) Conditional Use applications approved by the Board of County Commissioners.**
 - K) Zoning Change applications approved by the Board of County Commissioners.**
 - L) Mobile Home Park applications approved by the Board of County Commissioners.**
- II) Exemption Approval Process.**
- A) All proposed development in the APOZ, during the temporary moratorium, shall require the submittal of a completed exemption form to the Albany County Planning Office for approval before beginning construction, excavation, or other development activities. If a Zoning Certificate, Small Wastewater Permit, or any other land use permit is required, the exemption form may not be required as long as all information required on the exemption form is included.**
 - B) A site plan for the proposed development must be included with the exemption form and shall require the following criteria:**
 - 1) Show the entire lot or parcel with dimensions and orient the drawing to the North Arrow.**
 - 2) Indicate adjacent roads and their names.**
 - 3) Indicate locations and outside dimensions of all buildings.**
 - 4) Setbacks are required for buildings. Please show setbacks from property**

lines for all proposed structures and provide the distances on the site plan.

- 5) Setbacks are required from the property lines for both the well and septic system. Setbacks must be 50 feet from all property lines and 100 feet between well and nearest corner of any septic system.
- 6) Indicate other significant features or improvements of the subject property, such as streams, ponds, irrigation ditches, wells, floodplains, septic systems, corrals, fences, towers, overhead power lines.
- 7) Indicate any known vulnerable features on the property which may include: faults, folds, exposed bedrock, drainages, or shallow depth to groundwater.

C) Site Specific Investigation.

- 1) Any new Commercial/Industrial uses must complete a Site Specific Investigation in accordance with Chapter 3, Section 3, D of the Albany County Zoning Resolution and include findings with the exemption form.
- 2) Any modification, upgrade, expansion, repair of a pre-existing nonconforming use must complete a Site Specific Investigation and include findings with the exemption form.

D) Inspections. The Planning Office may make inspections on any approved moratorium exemptions to ensure compliance with moratorium requirements.

E) Approval of the moratorium exemptions.

1) Approval Criteria.

- (a) A complete moratorium exemption form is submitted.
- (b) All Zoning Resolution, including Aquifer Protection Overlay Zoning, requirements are met.
- (c) The use is listed as a moratorium exemption above.
- (d) If a Site Specific Investigation is required, the proposed development must conform to any recommendations of the report.

2) The Albany County Planning Office will approve moratorium exemption requests that meet the criteria above except those exemptions where underlying regulations require Planning & Zoning Commission and County Commissioner approval.

F) Enforcement. Enforcement shall be done in accordance with Chapter 1, Section 11 of the Albany County Zoning Resolution and W.S. § 18-5-204 through W.S. § 18-5-206.