

# OKANOGAN COUNTY COMMISSIONERS'

## ORDINANCE 2021- 3

*An ordinance establishing a temporary moratorium on the issuance of building permits within water resource inventory area #48 on parcels of land that were subdivided post March 28, 2002 with the exception of the Columbia River influence.*

**WHEREAS**, Okanogan County has adopted the International Building, Residential, Mechanical, Fire, Plumbing, Fuel Gas, Washington State Energy, Ventilation, and Indoor Air Quality Codes, and the 1997 Edition of the Uniform Code for Abatement of Dangerous Buildings, and

**WHEREAS**, In November of 2016 the Washington State Supreme Court issued a decision cited as Whatcom-Hirst, 186 WN.2d 648, 381 P. 3d 1 (2016) which further defined the role of Counties in determining the legal and physical availability of water for building permits and land division applications that propose to use a permit exempt well as authorized in Revised Code of Washington 90.44.050 as the source of potable water, and

**WHEREAS**, the Whatcom-Hirst, 186 WN.2d 648, 381 P. 3d 1 (2016) decision prompted legislation that is codified in 90.94 RCW, 58.17.110 RCW, and 19.27.097 RCW, and

**WHEREAS**, An Assistant Attorney General representing the Department of Ecology ("Ecology") drafted a letter dated January 13, 2021 ("Letter"), to Okanogan County in which he provides Ecology's interpretation of how the Methow River Basin Instream Flow Rule, chapter 173-548 WAC relates to existing homes in subdivisions that are using water from the reservations, and parcels of land in existing subdivisions where building permits for construction of homes, that would rely on water from the reservations, have not yet been approved, and

**WHEREAS**, it is Ecology's position that its interpretation of the Rule should be applied when the County processes any application for subdivisions that are currently pending, or are filed in the future, and

**WHEREAS**, Ecology recognized that the County will need to determine how to evaluate future applications for building permits to construct homes in subdivisions that were earlier approved by the County and that would rely on permit-exempt groundwater under a reservation for water supply, and

**WHEREAS**, the Okanogan County Board of County Commissioners adopted interim controls (Ordinance 2021-1) applicable to water resource inventory area #48 with the exception of the Columbia River influence that prohibits the subdivision of land according to the provisions of OCC Title 16 and RCW 58.17, and

**WHEREAS**, OCC Interim Control Ordinance 2021-1 does not apply to divisions of land that are exempt from a determination of water adequacy under RCW 58.17.040, and

**WHEREAS**, Ecology's position, as expressed in its Letter, is that water from a permit exempt withdrawal pursuant to RCW 90.44.050 and under a reservation for "single domestic use" pursuant to chapter 173-548 WAC cannot serve as evidence of adequate legal water supply to support the issuance of building permits for homes on parcels in subdivisions that were approved after March 28, 2002, and

**WHEREAS**, Okanogan County disputes aspects of Ecology's legal position it has advanced in its Letter and is initiating legal action against Ecology to adjudicate and resolve those disputes to provide clarity and certainty for Okanogan County and its citizens and avoid unnecessary and costly appeals of land use decisions, and

**WHEREAS**, without and until judicial resolution of claims made in Ecology's Letter, property owners in Okanogan County at different stages of the land development process (e.g., plat, building permit) would face legal uncertainty as to water requirements and how to qualify for the "single domestic" reserve under chapter 173-548 WAC that could result in economic consequences from the uncertainty, and

**WHEREAS**, pending the outcome of that legal action, Okanogan County seeks to preserve the status quo to avoid making additional land use decisions that are inconsistent with Ecology's interpretation until such time as the County's dispute is resolved to avoid unnecessary appeals, avoid exacerbating potential adverse project outcomes, and entangling property owners in that process, but interim controls imposed under this Ordinance do not concede Ecology's interpretation in its Letter.

**BE IT THEREFORE ORDAINED AS FOLLOWS:**

- 1) A moratorium is placed on the acceptance of any building permit applications for residential development projects within water resource inventory area #48 (with the exception of the Columbia River influence) on parcels of land that were subdivided after March 28, 2002, if the application requires water adequacy/availability determination under RCW 19.27.097 and relies on a withdrawal that is exempt from water rights permitting under RCW 90.44.050.
- 2) This moratorium will expire six months after adoption unless otherwise extended or repealed on the basis of the outcome of the County's efforts to resolve the dispute with Ecology over the interpretation of the application of chapter 173-548 WAC.

**DATED** at Okanogan, Washington this 10<sup>th</sup> day of February, 2021.



**ATTEST:**

Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS  
OKANOGAN, WASHINGTON**

Chris Branch

Chris Branch, Chairman

Andy Hover

Andy Hover, Member

Jim DeTro

Jim DeTro, Member

**APPROVED AS TO FORM:**

David Gecas

David Gecas, Civil Deputy PA