

**MEMORANDUM OF UNDERSTANDING (MOU)**  
**BETWEEN ECOLOGY AND LOCAL JURISDICTIONS**  
**RE GUIDANCE ON APPLICABILITY OF PERMIT EXEMPTION**

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**Parties**

The Washington State Department of Ecology (Ecology) Water Resources Program regulates the use of water resources of the state of Washington under the surface and ground water codes and other relevant laws and regulations. As the state agency responsible for determining whether a ground water permit is required under RCW 90.44.050, Ecology routinely makes determines whether a proposed use would be eligible for the permit exemption under RCW 90.44.050.

The local jurisdiction signatory (local jurisdiction) has authority to issue land use approvals under RCW 58.17.080 (short plats and short subdivisions) and RCW 58.17.110 (subdivisions and dedications). Under these provisions, the local jurisdiction issues findings on whether “appropriate provisions are made for . . . potable water supply.” Similarly, on applications for building permits under RCW 19.27.097, the local jurisdiction issues findings whether evidence exists of an “an adequate water supply of potable water.”

**Purposes of the MOU**

The purpose of this MOU is to facilitate local jurisdictions in making such findings relating to water supply by establishing (1) a process for local jurisdictions to obtain non-binding written guidance from Ecology on whether an owner(s) of a lot(s) is eligible to use the exemption under RCW 90.44.050, and (2) assurances of Ecology, subject to the conditions of this MOU, to request the Attorney General to assist in defending the guidance if a decision of the local jurisdiction relying upon it is legally challenged.

**Process for Local Jurisdictions to Request Ecology Guidance**

1. For purposes of making findings relating to water supply, a signatory local jurisdiction may request written guidance from Ecology as to whether an owner(s) of a lot or lots is eligible to use the exemption under RCW 90.44.050. The decision whether to make such a request is at the sole prerogative and discretion of the local jurisdiction. All requests for Ecology guidance shall be sent by the signatory local jurisdiction, or its designated agent, to the Water Section manager of the Regional

Office of Ecology that covers the area where the property in question is located. The street and email addresses of the regional managers are contained in appendix A below. The request may be sent in writing or electronically, preferably both. The request shall provide a brief description of the application, the number and size of lots, a map showing the location of the lots, and copies of the application and all environmental documents prepared or submitted to date relating to that application or project. The guidance request shall designate a local jurisdiction contact.

2. Upon receipt of a written or electronic request for guidance by a local jurisdiction signatory to this MOU as to the eligibility of an applicant to rely upon the ground water permit exemption under RCW 90.44.050 for water supply, Ecology will within ten (10) days notify the applicant of the request and solicit any comments by the applicant. The local jurisdiction will cooperate with Ecology by providing relevant information and documents available to it as requested by Ecology. Ecology will make best efforts to provide a written or electronic response to the local jurisdiction regarding the guidance request within sixty (60) days of Ecology's receipt of the request of sooner if possible. More time may be necessary in factually complex cases or where necessary information, staff, or legal counsel is not available.

### **Ecology's Responsibilities with Respect to Defending Guidance**

3. If the local jurisdiction relies on Ecology's guidance in the specific case giving rise to the request, and the local jurisdiction's reliance on such guidance is legally challenged in a forum with competent authority over the matter and parties, the local jurisdiction may request Ecology to participate in the proceeding to defend such guidance. Absent a change in legal standards or material new information or analysis that may affect the soundness of such guidance, Ecology will request the Attorney General to file the necessary papers to intervene or to file an amicus brief. However, the Attorney General is an independent state official, and any decision to act on Ecology's request is solely within the discretion of the Attorney General.
4. If intervention or amicus status is sought and granted, Ecology will provide legal filings and/or testimony in defense of its guidance as its attorneys deem appropriate. To the extent disputes arise in the litigation about facts that the local jurisdiction has provided to Ecology, the local jurisdiction shall be responsible for defending such factual disputes.
5. If the ruling in the legal proceeding with respect to Ecology's guidance is appealed, Ecology will request the Attorney General to participate in the appeal proceeding, provided changes in the law or material new information or analysis do not alter the basis for Ecology's original guidance.

**Term of MOU and Early Termination.**

- 6. This MOU shall be in effect for a period of three years from the date the local jurisdiction signed the MOU, unless the MOU is extended prior to such date in a writing signed by the local jurisdiction and Ecology.
- 7. Any signatory to this MOU may terminate its participation in and obligations under this MOU prior to three years by providing written notice by certified mail to the director of Ecology or the office of the local jurisdiction that signed this MOU. Such termination shall be effective until receipt of such notice.

**Complete Agreement**

- 8. This MOU contains all of the terms and conditions of agreement and is complete by itself.

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Ken Slattery, Manager  
Water Resources Program  
WA Department of Ecology

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