

**OKANOGAN COUNTY**

**COMMISSIONERS' ORDINANCE NO. 2016 - 8**

*An Ordinance adopting a new title to Okanogan County Code Title 20 Development Permit Procedures and Administration.*

**WHEREAS:** The Washington State Legislature adopted Revised Code of Washington (RCW) 36.70B in 1995, which is often cited as regulatory reform, in response to the adoption of the Growth Management Act and the growing complexity of land use regulation and permit review, and

**WHEREAS:** The Washington State Legislature, in adopting RCW 36.70B found:

(1) As the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process.

(2) The increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes.

(3) This regulatory burden has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes, and

**WHEREAS:** RCW 36.70B.060 required counties: Not later than March 31, 1996, each local government planning under RCW 36.70A.040 shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations, and

**WHEREAS:** RCW 36.70B.150 allows: A local government not planning under RCW 36.70A.040 may incorporate some or all of the provisions of RCW 36.70B.060 through \* 36.70B.090 and 36.70B.110 through 36.70B.130 into its procedures for review of project permits or other project actions, and

**WHEREAS:** A draft Okanogan County Code title 20 Development Permit Procedures and Administration was submitted to the Okanogan Board of County Commissioners(BOCC) by members of an advisory committee formed for purposes of working on the revised zone code for their consideration, and

**WHEREAS:** The BOCC determined the proposed draft OCC Title 20 should be published for public review, and

**WHEREAS:** A public hearing has been scheduled for September 26, 2016, and

**WHEREAS:** The SEPA Responsible Official has determined this proposal is exempt from the review requirements of RCW 43.21C and OCC 14.04 in accordance with Washington Administrative Code 197-11-800 (19), and

**WHEREAS:** The BOCC conducted the public hearing on September 26, 2016

**WHEREAS:** Since publication of the draft ordinance the Washington State Supreme Court has handed down the Whatcom-Hirst decision which increased the responsibility of the Counties to determine that adequate provisions for potable water have been made regarding land use applications reviewed in accordance with RCW 58.17.110 and RCW 19.27.097, and

**WHEREAS:** In response to the Whatcom-Hirst decision the Okanogan Board of County Commissioners adopted interim ordinance 2016-5 on November 8, 2016 which created a process for review of land use applications that proposed a new use of permit exempt wells as defined in RCW 90.44.050 as the source of potable water, and

**WHEREAS:** A public hearing was scheduled for December 19, 2016 during which public testimony and written comments were reviewed regarding OCC Title 20 and Ordinance 2016-5, and

**WHEREAS:** The public hearing was continued to December 28, 2016 during which the Board of County Commissioners will consider the adoption of OCC Title 20 including amendments consistent with the final form of the process adopted on an interim basis through Ordinance 2016-5,

**BE IT THEREFORE ORDAINED**

The Okanogan Board of County Commissioners adopts:

Attachment A: Okanogan County Code Title 20 as amended

Attachment B: Findings of Fact

Attachment C: Conclusions of Law

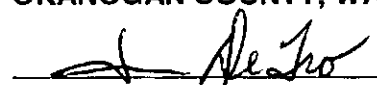
**DATED** this 23 day of December, 2016, at Okanogan, Washington.

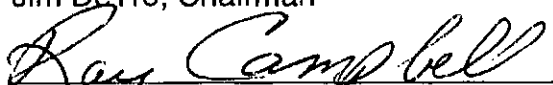


**ATTEST:**

  
Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS  
OKANOGAN COUNTY, WASHINGTON**

  
Jim DeTro, Chairman

  
Ray Campbell, Member

  
Sheilah Kennedy, Member

**Title 20**

**DEVELOPMENT PERMIT PROCEDURES AND ADMINISTRATION**

**Title 20.02  
GENERAL PROVISIONS**

**20.02.005 Purpose and applicability.**

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(1) The purpose of this title is to enact the processes and timelines for land development permitting and comprehensive plan and development regulation amendments. The objective is to encourage the preparation of appropriate information early in the permitting process; to process permit applications in a timely manner; to provide the general public with an adequate opportunity for review and comment; and to provide the development community with a standardized process and enhanced predictability.

(2) This title shall apply to permit applications for land development under the following titles of the Okanogan County Code:

- (A) Title 14— Environment;
- (B) Title 16— Land Divisions;
- (C) Title 17A -- Zoning; and

**20.02.020 Administrative interpretations.**

Any project applicant or other person may request in writing an administrative interpretation of any development regulation. The county official charged with the responsibility of enforcing and interpreting the applicable regulation shall provide the requested interpretation in writing with supporting documentation within thirty calendar days of receipt of the request.

**20.02.030 Amendments.**

Amendments to this title are procedural and shall be processed at the sole discretion of the board of county commissioners.

**Title 20.04**  
**ADMINISTRATION**

**20.04.010 Roles and responsibilities.**

(1) The regulation of land development is a cooperative activity including elected officials, the planning commission, the hearing examiner and county staff. The specific responsibilities of these bodies are set forth below.

**20.04.020 Director.**

The Director of Planning and Development (Director) and or his/her designee shall review and act on the following:

- (1) Authority. The director is responsible for the administration of county code related to land-use matters.
- (2) Administrative Interpretation. Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation within thirty calendar days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.
- (3) Administrative Decisions. Unless otherwise directed in an applicable regulation, the director is responsible for issuing administrative decisions as set forth herein.

**20.04.030 Board of county commissioners.**

The board of county commissioners shall review and act on the following subjects:

- (1) Recommendations of the planning commission;
  - (2) May adopt policy consistent with the respective titles in the Okanogan County Code;
- and
- (3) Final plat approvals.

**20.04.040 Planning commission.**

The planning commission shall review and make recommendations on the following issues:

- (1) Amendments to the comprehensive plan;
- (2) Amendments to the official land-use controls;
- (3) Other actions requested or remanded by the board of county commissioners.

**20.04.050 Hearing examiner.**

The hearing examiner shall review and make decisions as provided in Title 2.65 as amended.

**Title 20.06**  
**APPLICATION FORMS**

**20.06.010 Application forms.**

- (1) An application shall be made using the appropriate form adopted by the Planning and Development Department. (Department)

**Title 20.08**  
**APPLICATION PROCESS**

**20.08.005 Application process**

The application process shall consist of the following components:

- (1) Pre-application meetings (required for major subdivision and recommended for all other applications);
- (2) Plan review;
- (3) Determination of completeness;
- (4) Notice of application;
- (5) Application review;
- (6) Notice of final decision

**20.08.010 Pre-application meetings.**

(1) As determined necessary and appropriate by the Department, prospective applicants may be required to participate in a pre-application meeting. If a pre-application is not required, an applicant may still request such conference. Prior to the scheduling of a pre-application meeting, the applicant shall submit to the department four sets of plans and other information sufficient to describe essential features of the property, and the proposed or contemplated uses and development. Additionally, the applicant may also submit electronic copies of plans and application materials.

(2) The purpose of the pre-application meeting is to provide the applicant with the best available information regarding the development proposal and application processing requirements. The pre-application meeting provides an opportunity for the applicant, staff and other agencies to informally discuss and review the proposed development, the application and permit requirements, fees, the review process and schedule, and applicable development standards, plans, policies, and laws.

(3) The department shall provide a checklist of development requirements, submittal checklist, appropriate application forms, support documentation, and appropriate fees. Additional information or studies may be required during the review process that was not known at the time of the submission of the application materials. As part of the preparation for a pre-application conference, county staff shall schedule a date for a site visit and make every reasonable effort to visit the site, weather conditions permitting. If the director determines that a site visit is infeasible, the applicant may reschedule the pre-application meeting or waive this requirement.

(4) The department shall provide the best assessment of any issues relevant to the application and provide the applicant and interested parties a written summary of the pre-application conference. Provided an application is submitted consistent with materials presented at the pre-application conference, the applicant and the county can reasonably rely on commitments made at the pre-application conference.

#### **20.08.015 Consolidated application process.**

(1) When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time, except that application requests requiring legislative action must be processed separately if required by law.

(2) Applications for proposed development and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed concurrently and in accordance with the state and local laws, regulations and ordinances.

(3) When more than one application is submitted under a consolidated review and the applications are subject to different types of review procedure, all of the applications for the proposed development shall be subject to the highest level of review procedure which applies to any of the applications.

(4) If an applicant elects a consolidated application process, the determination of completeness, the notice of application, and the notice of final decision must include all applications being reviewed, except that application requests requiring legislative action must be processed separately, if required by law.

**20.08.020 Plan review.**

(1) A plan review shall be conducted to determine if the application is complete. A plan review shall determine if adequate information is provided in or with the application in order to begin processing the application and that all required information and materials have been supplied in sufficient detail to begin the application review process. All information and materials required by the application form or from the pre-application meeting must be submitted. All studies supporting the application or addressing projected impacts of the proposed development must be submitted.

(2) The purpose of the plan review is to ensure adequate information is contained in the application materials to demonstrate consistency with applicable comprehensive plans, development regulations and other applicable county codes. Department staff will coordinate the involvement of other agencies responsible for review. The Director or designee may waive any application item that is deemed superfluous or unneeded.

**20.08.030 Determination of completeness.**

(1) Within twenty-eight calendar days after receiving an application, the department shall complete the plan review of the application and provide the applicant a written determination that the application is complete or incomplete; provided, however, that if a pre-application conference was held, then such plan review, at the request of the applicant, shall be reviewed for completeness at a scheduled intake meeting, and if complete, such notice of completeness shall be issued within two working days of the completion of the intake meeting. An application shall be deemed complete under this section if the county does not provide a written determination that the application is incomplete.

(2) An application shall be determined complete only when it contains all of the following information and materials:

- (A) A fully completed and signed application;
- (B) Applicable review fees;

- (C) All information and materials required by the application form and any information required by a pre-application conference;
  - (D) A fully completed and signed environmental checklist for projects subject to review under the State Environmental Policy Act;
  - (E) A plot plan disclosing all existing and proposed structures and features applicable to the desired development; for example, parking, landscaping, preliminary drainage plans with supporting calculations, signage, setbacks, etc.;
  - (F) Any supplemental information or special studies identified by the director.
- (3) For applications determined to be incomplete, the department shall identify, in writing, the specific requirements, information or materials necessary to constitute a complete application. Within ten working days after its receipt of the additional requirements, information or materials, the department shall issue a determination of completeness or identify the additional requirements, information, or materials still necessary for completeness.
- (4) A determination of completeness shall identify, to the extent known, other local, state or federal agencies that may have jurisdiction over some aspect of the application.
- (5) A determination of completeness shall not preclude the county from requesting additional information or studies where a change in the proposed development occurs, or if there are errors or inconsistencies in the materials submitted by the applicant. Where any other request for additional information is made of the applicant, such request shall be justified and reasonably necessary to complete a thorough evaluation of the proposal.

#### **20.08.040 Application vesting.**

An application shall become vested on the date a determination of completeness is made under this title. Thereafter, the application shall be reviewed under the codes, regulations and other laws in effect on the date of vesting; provided, in the event an applicant substantially changes his/her proposed development after a determination of completeness, as determined by the director, the application shall not be considered vested until a new determination of completeness on the changes is made under this title.

#### **20.08.050 Notice of application.**

(1) Within fourteen calendar days after issuing a determination of completeness, the department shall issue a notice of application. If an open record pre-decision hearing or administrative



decision is required, the notice of application shall be provided at least fifteen calendar days prior to the date of open record hearing. The notice shall include, but not be limited to, the following:

- (A) The date of application, the date of the determination of completeness, and the date of the notice of application;
  - (B) A description of the proposed project action, a list of permits required for the application, and, if applicable, a list of any studies requested;
  - (C) The identification of other required permits not included in the application, to the extent known by the director;
  - (D) The identification of existing environmental documents which evaluate the proposed development and the location where the application and any studies can be reviewed;
  - (E) A statement of the public comment period, which shall be not less than fourteen calendar days nor more than thirty calendar days following the date of the notice of application, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision once made, and a statement of any appeal rights. Public comments will be accepted at any time prior to the closing of the record of an open meeting;
  - (F) The date, time, location and type of hearing, if applicable and scheduled at the date of the notice of application;
  - (G) A statement of the threshold State Environmental Policy Act (SEPA) determination, if one has been made at the time of notice of application, of those development regulations that will be used for project mitigation and of consistency with the type of land use of the proposed site, the density and intensity of proposed development, infrastructure necessary to serve the development, and the character of the development;
  - (H) Any other information determined by the department to be appropriate.
- (2) Notice of application shall be provided to the public and the departments and agencies with jurisdiction in the following manner:
- (A) A notice of application shall be published in the official County newspaper and a newspaper of general circulation in the general area where the proposal is located. Said notice shall contain information regarding the project location, description, type of permit(s) required, comment period dates and location where the complete application may be reviewed.
  - (B) Posting the notice of application on the subject property by the applicant for site-specific proposals for the duration of the public comment period. After the public

comment period, the applicant shall sign an affidavit of posting with the department verifying that the above requirements have been met.

(C) Mailing to all property owners, as shown on the records of the county assessor, and all street addresses of properties within three hundred feet or greater if required by other ordinances.

(D) When the subject property is located in a remote area and posting the notice of application will not provide reasonable and meaningful notice to the public, the director may require additional and/or alternative means of informing the public of the notice of application.

(3) The notice of application is not a substitute for any required notice of a public hearing. It may serve as notice of a public hearing, provided it contains all of the information required for a public hearing notice and complies with all other public notice requirements for the type of action being sought.

(4) A notice of application is not required for the following actions or when the actions are categorically exempt from SEPA or environmental review has been completed in connection with other project permits.

(A) Application for a single-family residence, accessory uses or other minor construction building permits.

(B) Application for boundary line adjustments or certificate of exemption.

(C) Any application for which administrative review is determined applicable.

(D) Legislative actions such as comprehensive plan amendments, area-wide rezones, etc.

(5) A State Environmental Policy Act (SEPA) threshold determination may be issued for a proposal concurrent with the notice of application

### **20.08.060 Notice of public hearing.**

(1) Except as otherwise required, notice of a public meeting or hearing for all development applications and all open record appeals shall be given as follows:

(A) Publication in the official newspaper at least ten calendar days before the date of a public meeting, hearing or pending action; and

(B) Mailing at least ten calendar days before the date of a public meeting, hearing or pending action to all property owners, as shown on the records of the county assessor, and all street addresses of properties within three hundred feet, not including street rights-of-way, or the boundaries of the property which is the subject of the meeting or pending action.

(2) The public notice shall include a general description of the proposed project, action to be taken, a non-legal description of the property or a vicinity map or sketch, the time, date and place of the public hearing and the place where further information may be obtained.

(3) If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date, time and place certain and no further notice under this section is required.

## **Title 20.10**

### **APPLICATION REVIEW**

#### **20.10.005 Application review criteria.**

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Review of an application and proposed development shall be governed by and be consistent with the fundamental land use planning policies and choices which have been made in adopted comprehensive plans and development regulations. The review process shall consider the type of land use permitted at the proposed site, the density and intensity of the proposed development, the infrastructure available and needed to serve the development, the character of the development and its consistency with development regulations.

#### **20.10.010 Application review classification.**

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(1) Following the issuance of a determination of completeness and a notice of application, an application shall be reviewed at one of three levels, as determined by the Director: administrative review, non-administrative review, and legislative review.

(2) If this title or the Okanogan County Code provides that a proposed development is subject to a specific type of review, or a different review procedure is required by law, the application for such development shall be processed and reviewed accordingly. If this title does not provide for a specific type of review or if a different review procedure is not required by law, then the director shall determine the type of review to be used for the

type and intensity of the proposed development. In instances where more than one type of review applies to a project, the process shall follow the review procedure for the highest-level decision.

(3) Any public meeting or required open record hearing may be combined by the department with any public meeting or open record hearing that may be held on the proposed development by another local, state, federal or other agency. Hearings shall be combined if requested by the applicant. However, joint hearings must be held within Okanogan County and within the time limits of this title and Chapter 36.70B RCW.

(4) No more than one open record public hearing and one closed record appeal shall be held on an application.

#### **20.10.020 Administrative review of applications.**

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(1) Administrative review shall be used when the proposed development is subject to objective and subjective standards that require the exercise of limited discretion about nontechnical issues and about which there may be limited public interest. The proposed development may or may not be subject to SEPA review. Included within this type of review are interpretation of codes and ordinances, boundary line adjustments, certificates of exemption, short subdivisions, binding site plans and other permits that are categorically exempt from SEPA.

(2) This review procedure under administrative review shall be as follows:

(A) If the proposed development is subject to the State Environmental Policy Act (SEPA), the final determination shall be made after the closing of the public comment period required in the notice of application.

(B) Upon the completion of the public comment period and the comment period required by SEPA, if applicable, the department may approve, approve with conditions, or deny the application. The department shall mail the notice of decision to the applicant and all parties of record. The decision shall include:

(i) A statement of the applicable criteria and standards in the development codes and other applicable law;

(ii) A statement of the findings of the review authority, stating the application's compliance or noncompliance with each applicable criterion, and assurance of compliance with applicable standards;

(iii) The decision to approve or deny the application

(iv) A statement that the decision is final unless appealed as provided in the respective governing regulation;

### **20.10.030 Non-administrative review of applications.**

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(1) Non-administrative review shall be used when the development or use proposed under the application requires a public hearing before a hearing body. This type of review shall be used for appeals of administrative decisions, major subdivisions, conditional use permits, planned developments, variances, rezones that are not of general applicability (site-specific) and other similar applications.

(2) The review procedure under non-administrative review shall be as follows:

(A) A non-administrative review process requires an open record public hearing before the appropriate hearing body.

(B) The public hearing shall be held after the completion of the public comment period and the comment period required by SEPA, if applicable, except as otherwise authorized in WAC 197-11.

(C) The notice of public hearing shall be given as identified in Title 20.08.060.

(D) At least seven (7) working days prior to the date of the public hearing, the department will issue a written staff report, integrating the SEPA review and threshold determination and shall make available to the public a copy of the staff report for review and inspection, and shall mail and e-mail, if address is provided, a copy of the staff report and recommendation to the applicant or the applicant's designated representative. The department shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.

(E) Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing body. A public hearing shall be recorded. If for any reason the hearing cannot be completed on the date set in the public notice, it may be continued during the public hearing to a specified date, time and location, without further public notice required.

(F) Within ten working days after the date the public record closes, the hearing body shall issue a written decision regarding the application(s).

(G) The hearing body may approve, approve with conditions or deny the application and shall mail and e-mail, if address is provided, the notice of its decision to the department, applicant, the applicant's designated representative, the property owner(s), and any other parties of record. The decision shall include:

(i) A statement of the applicable criteria, standards and law; and

(ii) A statement of the findings of fact and conclusions of the hearing body showing the proposal does or does not comply with each applicable approval criterion and assurance of compliance with applicable standards; and

(iii) A statement that the decision is final unless appealed. The appeal closing date shall be listed; and

(iv) A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection during the open office hours at Okanogan County department of Planning and Development. The notice shall list the place and telephone number of the department.

#### **20.10.040 Legislative review of applications.**

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(1) Legislative review shall be used when the proposal involves the creation, implementation or amendment of county policy. In contrast to the other procedure types, legislative review usually applies to a relatively large geographic area containing several property owners. This type of review shall be used for comprehensive plan, subarea plan, zoning and/or development code amendments and generalized zoning district map reclassifications.

(2) Legislative review shall be conducted as follows:

(A) Legislative review requires at least one open record public hearing before the Okanogan County planning commission and one public meeting before the Okanogan County board of commissioners.

(B) Notice of a public meeting or hearing shall be given as follows:

(i) Publication in the official County newspaper at least ten calendar days before the date of a public meeting, hearing or pending action.

(ii) The public notice shall include the SEPA threshold determination, a general description of the proposed project, action to be taken, a non-legal description of the property or a vicinity map or sketch, the time, date and place of the public hearing and the place where further information may be obtained.

(iii) If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date, time and place certain and no further notice under this section is required.

(C) At least five working days prior to the hearing, the department shall issue a written staff report, integrating the SEPA review and threshold determination and shall make available to the public a copy of the staff report for review and inspection, and shall mail and e-mail, if address is provided, a copy of the staff report and recommendation to the applicant or the applicant's designated representative, and planning commission members. The department shall make available a copy of the staff report, subject to a reasonable charge, to other persons who request it.

(D) Following the public hearing and in accordance with RCW 36.70.630, the recommendation of the planning commission shall be forwarded to the board of county commissioners. Upon receiving the recommendation from the planning commission, the board of county commissioners shall set a public meeting to consider the proposal, at which the board may either accept or reject the recommendation, or remand the application back to the planning commission for reopening of the open record hearing to consider specific issues identified by the county commission.

(E) The board of county commissioners must hold a public hearing to consider any changes to the recommendation of the planning commission. The board of county commissioners may approve, approve with conditions, deny or remand the proposal back to the planning commission for further review after such public hearing. The final decision of the board of county commissioners shall be adopted by resolution or as otherwise provided for by law.

(F) The final decision of the board of county commissioners shall be in writing and include:

- (i) A statement of the applicable criteria and law;
- (ii) A statement of the findings indicating the application's compliance or noncompliance with each applicable approval criterion;
- (iii) The decision to approve, condition or reject the planning commission recommendation or remand for further review;
- (iv) A statement that the decision is final unless appealed to superior court within twenty-one days of the issuance of the decision, as determined pursuant to Chapters 36.70C RCW, as applicable. The appeal closing date shall be listed;
- (v) A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection during the open office hours at Okanogan County department of community development. The notice shall list the place and telephone number of the department.

### **20.10.050 Review of Water Adequacy**

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(1) Purpose: On October 6, 2016 the Washington State Supreme Court imposed a duty on local governments to independently verify the presence of a lawful and a physical source of water for any land use project seeking to use water from an exempt well before any such permit may be approved by local government, and in so doing, the county is required to make an independent finding of availability and may not solely rely on indications from WDOE regulations and specifically WRIA regulations, in Okanogan County, WAC 173-548 (Methow River) and WAC 173-549 (Okanogan River).

(2) Applicability: The provisions of this section shall be applicable to all land use permits issued by the County, including but not limited to building permits (Chapter 19.57 RCW) and subdivisions (Chapter 58.17 RCW), and for any other permit, the source of water for which is



governed by RCW 90.44.050 concerning exempt wells, existing or new. All such permits are referred to hereunder as "Land Use Permits". This section shall also apply to all pending applications for land use permits which have not been finally approved.

(A) All subdivision applications including short plats will be required to have water adequacy determined by the hearing examiner in accordance with OCC 20.10.050(5)

(B) All building permit applications will be reviewed administratively by the Planning Department for water adequacy in accordance with OCC 20.10.050(4)

(3) Application: Upon application for a land use permit, the approving agency of the County shall notify the Planning Department.

(A) Building permit applications will be reviewed administratively in accordance with OCC 20.10.050(4) .

(B) All subdivision applications deemed complete in accordance with OCC 20.08.030 shall be scheduled for an open record hearing before the Okanogan County Hearing Examiner to determine, based on the record at the hearing, on the issue of lawful and physical availability of water.

(4) Administrative Review process:

(A) A complete application would be vested in accordance with OCC 20.08.040. The application would be reviewed in accordance with existing requirements and reviewed for water adequacy. The information gathered during the omnibus hearings in January as well as the site specific information obtained from the applicant would be used as the basis for the decision regarding water adequacy.

(B) When the decision regarding water adequacy is made notice shall be published and mailed to water right holders in the respective WRIA, adjoining landowners, and commenting agencies.

(i) The notice will read as follows:

"The Planning Department has reviewed an application for (building permit/other landuse) at (location) and has determined that the proposed use of a permit exempt well in accordance with RCW 90.44.050 will provide an adequate supply of potable water. This decision will not be final until (deadline 20 days). Anyone with standing who desires a public hearing be held on this application to determine water adequacy must submit a request in writing by the deadline listed above. The request must state the basis upon which the request is made which must include a statement that the requesters lawful use of water from a senior source will be impaired if the decision stands."

(C) This decision may be appealed in accordance with OCC 2.67 within 20 days.

(D) Upon the close of the decision deadline published in the notice in OCC 20.10.050(4)(B)(i), if no request for an appeal has been received, a notice of final decision shall be published and mailed in accordance with OCC 20.10.050(4)(B).

(5) Hearing Examiner Procedure:

(A) Notice of Hearing in front of Hearing Examiner:

(i) Notice of the hearing shall be published in the Okanogan County periodical of record not less than 15 days prior to the hearing.

(ii) Notice of the hearing shall be sent to the following:

- (a) The applicant;
- (b) The holders of water right certificates in the reach potentially affected by the application;
- (c) Washington State Department of Ecology;
- (d) Okanogan County Public Health;

(B) Participation shall be limited to those parties who receive direct notice in accordance with OCC 20.10.050(5)(ii) and others who can establish a direct interest or adverse physical impact to water rights they may hold affected by the proposed withdrawal.

(C) At the hearing the project applicant shall have the burden of proof that the proposed project has lawful and physically available water sufficient to serve the project. For purposes of this proof:

(i) The applicant may not simply rely on WDOE regulations which may suggest water is available.

(ii) Where the proposed well is in a land area where ground water is hydraulically connected to a stream that is closed to certificated appropriation or consistently below minimum base flows established under Chapter 90.54 RCW, the applicant will have to show that the proposed application meets the tests set forth by the Courts and any applicable regulations for lawful water appropriation.

(iii) Where water is available for certificated appropriation, water should also be available for exempt appropriation unless WDOE or any other interested party can demonstrate cause why the well should not be approved.

(D) Proceedings: This matter is directed to the County Hearing Examiner pursuant to OCC 2.65.070(D)(11).

(i) Where more than one application is proposed for a given reach of a river, the examiner may consolidate such hearings to assure that the cumulative impact of such applications will not raise any issues as to availability.

(ii) In the event of conflict, the first in time shall be given priority.

(iii) Except as specifically provided in this section, the rules and regulations governing the hearing examiner shall govern the proceedings.

(iv) The hearing examiner shall issue a written decision with findings and conclusions based on the record.

(v) Any appeal of the examiner decision will be an appeal of a land use decision pursuant to chapter 36.70C RCW where there is no administrative appeal of this decision.

(6)Severability: Should any part of this section be declared unlawful for any reason, the remainder of the ordinance shall remain in full force and effect until replaced by an action of the Board of County Commissioners.

**20.10.060 Notice of final decision.**

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(1) The county shall to issue a written notice of final decision on an application reviewed pursuant to either a administrative or non-administrative review process within one hundred twenty calendar days after the date of the determination of completeness, unless timelines are specified otherwise in the respective title. In determining the number of days that have elapsed, the following periods shall be excluded:

(A) Any period during which the applicant has been requested by the department to correct plans, perform required studies, or provide additional information or materials. The period shall be calculated from the date the department issues the request to the applicant to, the earlier of, the date the department determines whether the additional information satisfies its request or fourteen days after the date the information has been received by the department.

(B) If the county determines the information submitted by the applicant under subsection (1)(A) of this section is insufficient, it shall again notify the applicant of deficiencies and the procedures under subsection (1)(A) of this section shall apply to the request for information.

(C) Any period during which an environmental impact statement (EIS) is being prepared following a determination of significance pursuant to Chapter 43.21C RCW.

(D) Any period for administrative appeals.

(E) Any extension of time mutually agreed upon in writing by the applicant and the department.

(2) The time limit by which the county will issue a notice of final decision does not apply if an application:

(A) Requires an amendment to the comprehensive plan or a development regulation.

(B) Is substantially revised by the applicant after a determination of completeness has been issued, in which case the time period shall start from the date on which the revised project application is determined to be complete.

(3) If the county is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

(4) The review authority shall provide the notice of decision or copy of findings of fact and conclusions of law and decision to the applicant, agent (if applicable), surveyor (if applicable), commenting agencies of jurisdiction, and any parties of record (any person who prior to the rendering of the decision requested notice of decision, submitted written comments on the application, or testified at the public hearing).

## Attachment B: Findings of Fact

1. The Washington State Legislature adopted the Revised Code of Washington (RCW) 36.70B in which the legislature found as the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process. The increasing number of local and state land use permits has generated continuing potential for conflict, overlap, and duplication between the various permit review processes. This has added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes.
2. RCW 36.70B.060 required counties no later than March, 31, 1996, each local government planning under RCW 36.70A.040 shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations.
3. RCW 36.70B.150 allows a local government not planning under RCW 36.70A.040 may incorporate some or all of the provisions of RCW 36.70B.060 through 36.70B.090 and 36.70B.110 through 36.70B.130 into its procedures for review of project permits or other project actions.
4. The Okanogan Board of County Commissioners determined an Administrative Title 20 was necessary to consolidate permit review procedures and authorized the release of Draft Title 20 for public review on September 7, 2016.
5. The SEPA Responsible Official has determined this proposal is exempt from the review requirements of RCW 43.21C and OCC 14.04 in accordance with Washington Administrative Code 197-11-800(19).
6. A public hearing was held on September 26, 2016 by the Board of County Commissioners to take public testimony on the Draft Title 20 Code Amendment 2016-01.
7. Based on comments received the Okanogan Board of County Commissioners determined removing the reference to the Roads and Bridges, Water and Sewer, Building and Construction, and the Shoreline Master Program was necessary to maintain consistency with administrative provisions already included in the respective titles.
8. Based on comments received the vesting language was modified to be consistent with state law.
9. Based on comments received section 20.10.020 Limited administrative review was removed and the permits listed in that section were added to the Administrative Review of Applications.
10. Based on comments received section 20.10.040(G)(iii) was removed.
11. The Washington State Supreme Court handed down the Whatcom-Hirst decision which increased the responsibility of the Counties to determine that adequate provisions for potable water have been made regarding land use applications reviewed in accordance with RCW 58.17.110 and RCW 19.27.097.
12. The Hirst decision makes reference to the Washington State growth Management Act, Chapter 36.70A RCW as the case arose under that act and a decision of the Washington state growth

management hearings board. Upon review, however, the County has determined that the decision also pertains to land use permits issued by Okanogan County, a non-GMA county for the following reasons:

- a. The Planning Enabling Act under which the County plans contains language that " the land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies: RCW 36.70.330. The language is identical to the language in the Growth Management Act in which the Court relied.
  - b. The Court also relied on RCW 19.27.097 and RCW 58.17.100 which were adopted as part of GMA amendments, but which by their terms applied to all Counties and not simply to Counties required to fully plan under the Growth Management Act, Chapter 36.70A RCW.
13. The Board of County Commissioners recognized that the decision of the Supreme Court will make the case and time of secure exempt well permits more time consuming and expensive. This will have a direct effect on the cost and availability of new housing in rural areas. Further the consequences in some cases may be that exempt wells will not be allowed in reaches where WDOE has not formally closed basins to hydraulically connected appropriation, but where base flow minimums are routinely exceeded and exempt wells may well be prohibited.
  14. In response to the Whatcom-Hirst decision, the Okanogan Board of County Commissioners adopted an interim ordinance 2016-5 on November 8, 2016.
  15. A public hearing was held December 19, 2016 during which public testimony and written comments were reviewed regarding OCC title 20 and Ordinance 2016-5.
  16. Section 20.10.060 was changed from Notice of Final Decision to Review of Water Availability to incorporate changes based on comments received for ordinance 2016-5. Notice of Final Decision language was moved to section 20.10.070.
  17. A public hearing was continued to December 28, 2016 during which the Okanogan Board of County Commissioners will consider the adoption of OCC Title 20 including amendments of the process adopted on an interim basis through Ordinance 2016-5.