

OKANOGAN COUNTY COMMISSIONERS

ORDINANCE 2018 - 10

An ordinance adopting a new section to the Okanogan County Zone Code titled OCC 17A.400-  
Water Availability Study Area.

**WHEREAS:** In November of 2016 the Washington State Supreme Court issued a decision cited as *Whatcom-Hirst* decision, 186 Wn.2d 648, 381 P.3d 1 (2016) which further defined the role of Counties and the Department of Ecology 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:** Revised Code of Washington 58.17.110 (2) requires counties to determine that "adequate provisions are made.....for potable water supplies" before an application for the subdivision of land is approved, and

**WHEREAS:** ESSB 6091 adopted on January 19, 2018 determined that the in-stream flow rule Washington Administrative Code 173-549 for WRIA 49 does not explicitly regulate permit exempt wells, and

**WHEREAS:** ESSB 6091 adopted on January 19, 2018 determined that the in-stream flow rule Washington Administrative Code 173-548 for WRIA 48 does explicitly regulate permit exempt wells and WAC 173-548-050 closes several listed tributaries and lakes to further appropriation of surface water including groundwater withdrawals that are found to be in hydraulic continuity with the closed surface water, and

**WHEREAS:** The Okanogan Board of County Commissioners believes that insufficient information exists in certain basins and sub-basins to determine if water is physically and legally available for potable water supplies, and

**WHEREAS:** The Okanogan Board of County Commissioners believes OCC 17A zoning should allow for the designation of water availability study areas within which boundaries a review of water supplies and their ability to support additional levels of land development be conducted,

**BE IT THEREFORE ORDAINED:** The Okanogan Board of County Commissioners adopts a new title to OCC 17A titled Water Availability Study Areas OCC 17A.400 found as attachment 1 to this resolution.


DATED at Okanogan, Washington this 6<sup>th</sup> day of August 2018.

ATTEST:

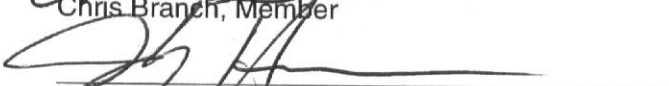


  
Laleña Johns, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS  
OKANOGAN, WASHINGTON

  
Jim De Leo, Chairman

  
Chris Branch, Member

  
Andy Hover, Member

## **OCC 17A.400 Overlays-Water Availability Study Areas**

### Sections:

- 17A.400.010 Purpose of classification
- 17A.400.020 Authority
- 17A.400.030 Permitted uses
- 17A.400.040 Conditional uses
- 17A.400.050 Accessory uses
- 17A.400.060 Lot area and width
- 17A.400.070 Density
- 17A.400.080 Property line setbacks
- 17A.400.090 Height
- 17A.400.100 Lot coverage
- 17A.400.110 Parking
- 17A.400.120 Special Provisions
- 17A.400.130 Adopted Water Availability study Areas
- 17A.400.140 Severability

### 17A.400.010 Purpose of classification

The purpose of this section is to develop a process for applying overlays to an underlying zoning district to impose special restrictions or processes as a result of information or a recognized lack of information regarding water available for potable water supplies.

### 17A.400.020 Authority

In response to the *Whatcom-Hirst* decision, 186 Wn.2d 648, 381 P.3d 1 (2016), Okanogan County has assumed greater responsibility in determining the legal and physical availability of groundwater drawn from permit exempt wells as defined in RCW 90.44.050 for use as a potable water supply for building applications in accordance with RCW 19.27.097 and subdivision applications in accordance with RCW 58.17.110. All decisions made regarding the availability of groundwater through permit exempt wells will be determined in accordance with the applicable in-stream flow rule as current or hereinafter amended and/or ESSB 6091.

### 17A.400.030 Permitted uses

Permitted uses are as indicated on the district use chart (see Chapter 17A.220 OCC) for the underlying zone.

### 17A.400.040 Conditional uses

Conditional uses are as indicated on the district use chart (see Chapter 17A.220 OCC) for the underlying zone.

### 17A.400.050 Accessory uses

Accessory uses are as follows:

A. Normal accessory uses customary and incidental to the permitted and/or conditional use of the property;

17A.400.060 Lot area and width

Lot area and width requirements are as indicated by the underlying zone.

17A.400.070 Density

Density restrictions are as indicated by the underlying zone.

17A.400.080 Property line setbacks

Property Line setbacks are as indicated by the underlying zone.

17A.400.090 Height

Height restrictions are as indicated by the underlying zone.

17A.400.100 Lot coverage

Lot coverage is as indicated by the underlying zone.

17A.400.110 Parking

Parking requirements area as indicated in Chapter 17A.240 OCC.

17A.400.120 Special Provisions

A. Adoption Criteria

A water availability study overlay may be adopted by the Okanogan Board of County Commissioners, upon their findings that sufficient information is known to support the conclusion that inadequate water supplies exist to support additional density or intensity of uses that require potable water supplies; or, that insufficient information exists to support the approval of subdivisions or other land use activities that require potable water supplies provided through groundwater withdrawals from wells permitted in accordance with RCW 90.44.050.

B. Boundaries

The boundary of a water availability study area adopted pursuant to this chapter will be adopted onto the Okanogan County Zone Map by ordinance of the Board of County Commissioners. The boundaries of all water availability study areas will follow the boundaries of basins and/or sub-basin(s) as depicted on the National Watershed Boundary Dataset as published on December 16, 2015 or the closed portions of basins identified in Washington Administrative Code 173-548-050 as further depicted on the basin closure maps provided by the Department of Ecology.

C. The ordinance adopting any water availability study area will describe the scope of work for the study including checkpoints for monitoring the progress of the study.

#### D. Subdivisions

No application for the subdivision of property located within an overlay zone will be accepted except for:

- 1) Public purpose segregations for which no potable water supply is required.
- 2) Divisions made by testamentary provisions, or the laws of descent in accordance with RCW 58.17.040.
- 3) Divisions made for purposes of separating land on which a residential structure(s) currently exists to allow the recording of Covenants, Conditions, and Restrictions or a Conservation Easement which prevents the construction of new residences on the parcel created through the land division process.
- 4) Divisions made where potable water supplies will be provided by a water right approved for such purposes by the Department of Ecology, or by purchase of credits from an approved water bank.
- 5) Divisions made where potable water supplies will be provided by an approved water purveyor or municipal system.

#### E. Building Permits

Building permits for residential structures may be issued in an adopted water availability study area when:

- 1) The application does not propose to use a permit exempt well as defined in RCW 90.44.050 as the source of potable water, or
- 2) The use of a permit exempt well as defined in RCW 90.44.050 as the source of potable water has been approved in accordance with the applicable in-stream flow rule as current or hereinafter amended and/or ESSB 6091.

#### F. 2-year Review

A water availability study area adopted in accordance with the provisions of this chapter shall expire 2 years after the date of adoption unless extended by ordinance of the legislative authority of Okanogan County adopted following a public hearing regarding the proposed extension, provided: the ordinance extending the duration of the study area shall include findings that state;

- 1) Substantial progress has been made in accomplishing the adopted scope of work, and
- 2) The extension is necessary to accomplish work that has been identified as necessary to complete the study, and
- 3) The necessary resources to complete the work have been budgeted or a source of the necessary resources has been identified and application made to utilize the resources.

#### 17A.400.130 Adopted Water Availability Study Areas

#### 17A.400.140 Severability

If any provision of this title is for any reason held to be invalid, the remainder of this title shall not be affected. If any provision of this title is adjudged invalid as applied to a

particular person or circumstance, that provision of this title shall not be affected as to other persons or circumstances.