

OKANOGAN COUNTY

ORDINANCE 2019 - 1

An ordinance amending OCC 17A.400.130-Water Availability Study Areas to designate the Upper Tunk Basin, Lower Tunk Basin, and Tamarack Springs Basin all located in Water Resource Inventory Area #49, as water availability study areas and repealing Ordinance 2018-13.

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 Okanogan Board of County Commissioners (BOCC) 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 BOCC determined that Okanogan County Code (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 would be conducted, and

WHEREAS: On August 6, 2018 the BOCC adopted Ordinance 2018-10 which amended OCC 17A by creating a new section OCC 17A.400 titled water availability study areas which created the process by which water availability study areas would be created, and

WHEREAS: On January 19, 2018 the Washington state legislature adopted ESSB 6091 which identified Water Resource Inventory Area #49-Okanogan River as a "Hirst affected WRIA" which requires the creation of an update to watershed plan adopted in 2009 to mitigate for future water use from permit exempt wells, and

WHEREAS: Scientific Investigations Report 2009-5143 conducted by the USGS found the Tunk Basin to be a mix of negative and positive gain reaches and that a high degree of groundwater and surface water connectivity exists, and

WHEREAS: Senior water right holders in the Tunk Basins have raised concerns over new permit exempt wells impairing their ability to divert the water to which they are entitled by reducing stream flows during low water periods, and

WHEREAS: The BOCC finds additional information is necessary before it can be determined if sufficient groundwater exists in the Upper and Lower Tunk Basins to meet the requirements of RCW 58.17.110 for an adequate supply of potable water for land

division proposals, and

WHEREAS: On August 28, 2018 the BOCC adopted Ordinance 2018-13 as in interim control in accordance with RCW 36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length allows the adoption of interim land use controls without a public hearing provided a public hearing is scheduled on the interim controls within 60 days of adoption, which amended OCC 17A.400.130 by adopting subsection (1) listing the Upper Tunk Basin, Lower Tunk Basin, and Tamarack Springs Basin in WRIA 49 as water availability study areas, and

WHEREAS: On September 18, 2018 the BOCC conducted a public hearing to take comments on the interim controls and, after consideration of the comments determined the interim controls should remain in place until the proposal had been reviewed by the Okanogan County Regional Planning Commission, and

WHEREAS: On October 25, 2018 the SEPA Responsible Official issued a Final Determination of Non-significance for the proposal and a public hearing was scheduled with the Okanogan County Regional Planning Commission (planning commission) for November 19, 2018, and

WHEREAS: After considering the comments received the Planning Commission deliberated and found that insufficient information had been collected to determine if there was adequate water to provide for additional development in the basins under consideration. The Planning Commission voted to recommend to the BOCC the proposed amendments be adopted, and

WHEREAS: A public hearing was scheduled with the BOCC on January 7, 2019, and

WHEREAS: After considering the information submitted the BOCC determined that insufficient information had been collected to determine if there was adequate water to provide for additional development in the basins under consideration, and

WHEREAS: The BOCC finds that completing a study of water availability in the basins identified before approving the creation of additional lots is in the best interest of the public,

BE IT THEREFORE ORDAINED: OCC 17A.400.130 is amended by adopting subsection (1) listing the Upper Tunk Basin, Lower Tunk Basin, and Tamarack Springs Basin in WRIA 49 as depicted in the map found as attachment A to this ordinance as water availability study areas, and

BE IT FURTHER ORDAINED: The purpose of the water availability study area designation is to determine:

- 1) If the current use of permit exempt wells has impaired the ability of senior water right holders to obtain the water to which they are legally entitled.

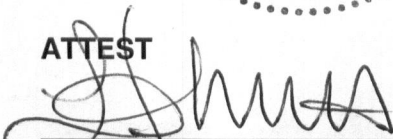
- 2) If the projected use of permit exempt wells will likely impair the ability of senior water right holders to obtain the water to which they are legally entitled.
- 3) If the current and projected use of permit exempt wells has contributed to an inability to meet instream flow appropriations identified in WAC 173-549, and The types of mitigation measures, if found to be necessary, that would meet the objectives of protecting the rights of senior water right holders to obtain the water to which they are legally entitled and eliminate the impact of new permit exempt wells on meeting the in-stream flow appropriation.

BE IT FURTHER ORDAINED: Ordinance 2018-13 adopting amendments to OCC 17A.400.130 as interim land use controls is hereby repealed.

DATED at Okanogan, Washington this 5th day of February 2019.

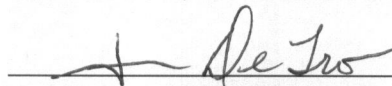


ATTEST



Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**



Jim DeTro, Chairman



Chris Branch, Member



Andy Hover, Member



Robert Tunk Creek

The information displayed on this map is for evaluation purposes only and does not represent actual surveyed boundaries or locations. Okanagan County does not grant permission for the reproduction of the Information Map requires from all sources have been adjusted to achieve the "best fit". While great care was taken in this process, maps from different sources rarely agree as to the precise location of geographic features.

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

- A. Upper Tunk Creek, Lower Tunk Creek, and Tamarak Spring HUC 12 boundaries.

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.