

OKANOGAN COUNTY COMMISSIONERS'

Ordinance 2019-8

An ordinance adopting an amendment to OCC 17A.400.120-Water Availability Study Areas to clarify the legislative intent of this section.

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: OCC 17A.400.120 as adopted created a restriction on land division applications to prevent the vesting of applications for which a subsequent determination that adequate provisions for potable water, as required by RCW 58.17.110 could not be made, and

WHEREAS: OCC 58.17.120 listed exceptions to the restrictions found in this section, and

WHEREAS: On April 1, 2019 the BOCC adopted Ordinance 2019-5 as an interim amendment to OCC 17A.400.130 which designated the restricted areas of the closed surface waters as listed in WAC 173-548-050 as water availability study areas, and

WHEREAS: The BOCC conducted a public hearing on April 29, 2019 to take public input regarding the interim controls adopted by ordinance 2019-5, and

WHEREAS: The BOCC determined from public input regarding the terms used in OCC 17A.400.120 that the language was confusing in terms of the types of land division applications to which the restrictions applied, and

WHEREAS: The BOCC continued the public hearing to May 20, 2019 to allow planning staff time to review and consider language that more accurately states the legislative intent of OCC 17A.400.120 as adopted, and

WHEREAS: Planning Department staff, in consultation with legal counsel, is proposing an amendment to OCC 17A.400.120 which more clearly states the original legislative intent, and

WHEREAS: The BOCC finds that clarity in the language of the law serves the public interest by making compliance with the law a more easily attainable objective, and

WHEREAS: RCW 36.70.795 allows the adoption of interim land use controls provided a public hearing is scheduled within 60 days of date of adoption, and

WHEREAS: The BOCC conducted the continued public on May 20, 2019 to take additional public comment on the interim controls adopted by Ordinance 2019-5 and to consider an amendment to OCC 17A.400.120 to more accurately state the original legislative intent,

BE IT THEREFORE ORDAINED: The interim amendments to OCC 17A.400.130 adopted by Ordinance 2019-5 will remain in force and the matter is transmitted to the Okanogan County Regional Planning Commission for further review and recommendation as required by RCW 36.70 Planning Enabling Act, and

BE IT FURTHER ORDAINED: The amendments to OCC 17A.400.120, found as attachment A to this ordinance are hereby adopted.

Dated at Okanogan, Washington this 20th day of May, 2019.

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**



ATTEST:

[Signature]
Lalena Johns, Clerk of the Board

[Signature]
Jim DeTro, Chairman

[Signature]
Chris Branch, Member

[Signature]
Andy Hover, Member

~~D. Subdivisions, Divisions of Land No applications for the subdivision of property division of land pursuant to OCC Title 16, including subdivisions, short subdivisions, large lot segregations, binding site plans, and exempt divisions in OCC 16.04.070, will be approved for property located in an overlay zone 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 the applicant can demonstrate appropriate provisions for potable water supplies by a ~~will be provided by a water right permit or certificate~~ approved for such purposes by the Department of Ecology, including approval of any changes, transfers, administrative divisions, or other amendments to the water right for consistency with the proposed division, ~~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.

D. Divisions of Land: No applications for the division of land pursuant to OCC Title 16, including subdivisions, short subdivisions, large lot segregations, binding site plans, and exempt divisions in OCC 16.04.070, will be approved for property located in an overlay zone 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 where the applicant can demonstrate appropriate provisions for potable water supplies by a water right permit or certificate approved for such purposes by the Department of Ecology, including approval of any changes, transfers, administrative divisions, or other amendments to the water right for consistency with the proposed division.
5. Divisions made where potable water supplies will be provided by an approved water purveyor or municipal system.
6. Divisions where the applicant can demonstrate mitigation measures that off-set the consumptive use. Mitigation plans shall be reviewed and approved by the County, consistent with professional standards, established Department of Ecology guidance and policy documents, and best management practices. Mitigation plans must not conflict with the intent of WAC 173-548 Methow Instream Flow Rule and WAC 173-549 Okanogan Instream Flow Rule as currently adopted and/or updated in accordance with RCW 90.94. Examples of mitigation measures may include but not be limited to water banking, use of storage, groundwater recharge, cisterns, etc.