

OKANOGAN COUNTY COMMISSIONERS'

Ordinance 2019-11

An ordinance adopting as interim land use controls an amendment to OCC 17A.400.130-and 17A.400.120 (D) Water Availability Study Areas to designate water resource inventory area #48 with the exception of the Columbia River influence as a water availability study area, repealing Ordinance 2019-5 and scheduling a public hearing in accordance with Revised Code of Washington 36.70.795.

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: *Whatcom-Hirst*, 186 Wn.2d 648, 381 P.3d 1 (2016) decision has been codified in 90.94 RCW, 58.17.110 RCW, and 19.27.097 RCW, and

WHEREAS: The Okanogan Board of County Commissioners (BOCC) believes that insufficient information exists in WRIA 48 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: The BOCC finds that completing a study of water availability and mitigation measures in WRIA 48 with the exception of the Columbia influence as mapped in Attachment A is in the best interest of the public, and

WHEREAS: The BOCC finds that additional information is necessary before it can be determined legal water is available for group domestic use in WRIA 48 with the exception of the Columbia influence, not including restricted areas under WAC 173-548-050 provided by the Department of Ecology as depicted in the map found as Attachment A to this ordinance. Areas restricted under WAC 173-548-050 are not included as they do not have water available for further appropriation unless one of the narrow exceptions under 173-548-050 applies.

WHEREAS: The BOCC finds that additional information is necessary before it can be determined if sufficient groundwater is legally accessible in WRIA #48 to meet the requirements of RCW 58.17.110 for an adequate supply of potable water for land division proposals except for those land divisions where an existing residence with an existing water supply can create one additional lot.

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: A public hearing is scheduled with the BOCC on Monday, January 27, 2019.

BE IT THEREFORE ORDAINED: OCC 17A.400.120 (D) is amended by adopting subsection (2) which includes all of WRIA 48 with the exception of the Columbia influence as mapped in Attachment A and subsection (2)(a) which includes restricted areas under WAC 173-548-050 provided by the Department of Ecology as depicted in the map found as Attachment B to this ordinance as water availability study area, and

BE IT FURTHER ORDAINED amendments to OCC 17A400.120 found in Attachment C which adds an exception to allow areas within WRIA 48 not influenced by the Columbia River that are outside the closed tributary boundaries where the land has an existing single family residence with an existing water supply to subdivide allowing one additional lot to be created containing a new legal single domestic water supply; and

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

- 1) The types of mitigation measures necessary to meet the objectives of protecting the closed surface waters from further appropriation and impairment.
- 2) Consult with the Department of Ecology to determine if WAC 173-548-050 allows the appropriation of groundwater consistent with the restrictions of RCW 90.44.050 if the water consumptively used is replaced.
- 3) Consult with the Department of Ecology to determine if water appropriated from outside of the restricted areas may be used within the restricted areas.
- 4) Determine how much of the 2cfs reserve is available under WAC 173-548-030;

And

BE IT FURTHER ORDAINED: A public hearing is scheduled for Monday, January 27, 2019 at the hour of 5:00 p.m. in the Methow Valley, to take public testimony regarding the adoption of these interim controls; and

BE IT FURTHER ORDAINED: Ordinance 2019-5 is hereby repealed.

DATED at Okanogan, Washington this 18th day of December, 2019.



ATTEST:

Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**

Jim DeTro, Chairman



Chris Branch, Member

Andy Hover, Member



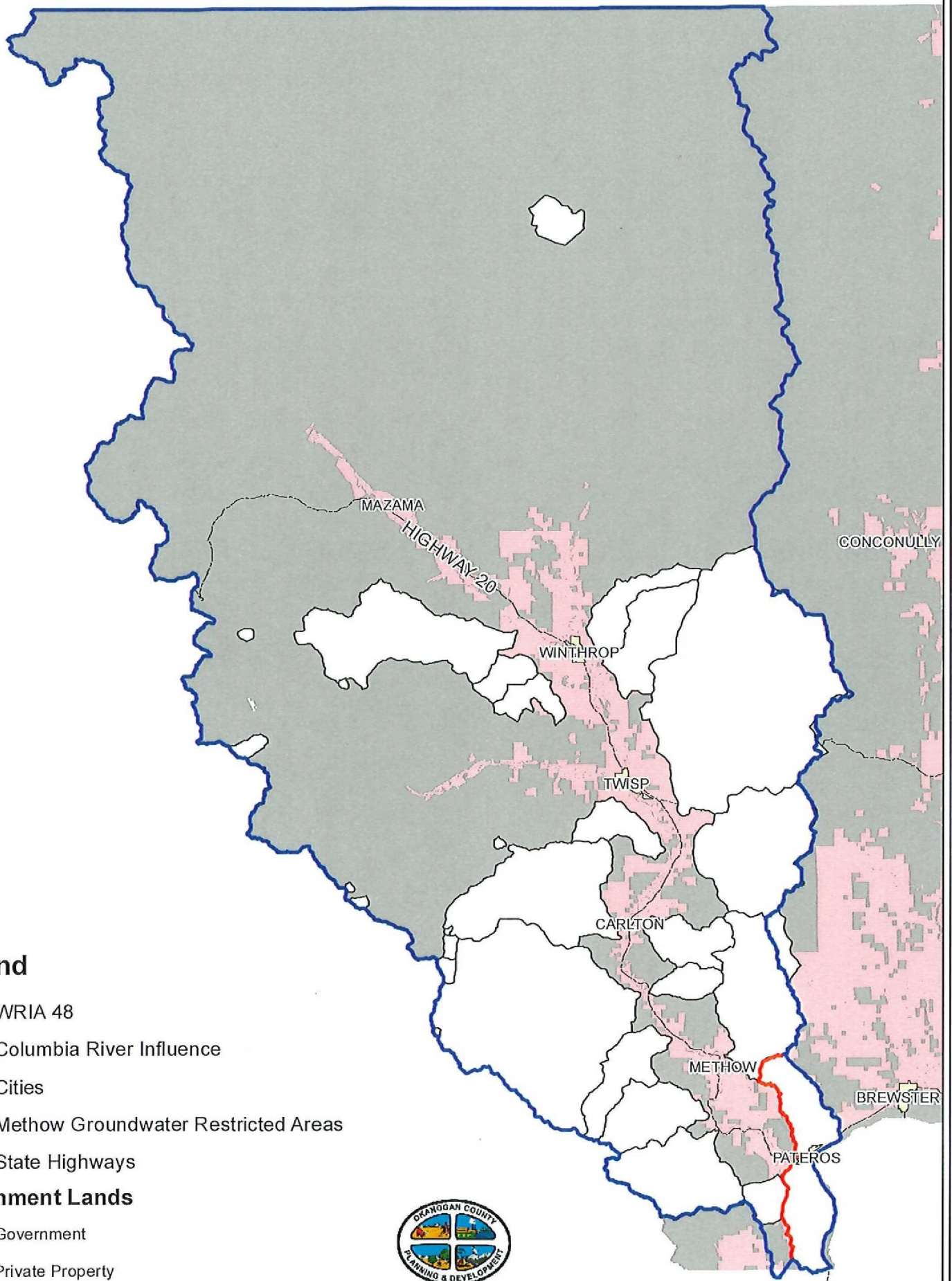
ATTACHMENT A

Legend

-  WRIA 48
-  Columbia River Influence
-  Cities
-  Methow Groundwater Restricted Areas
-  State Highways

Government Lands

-  Government
-  Private Property

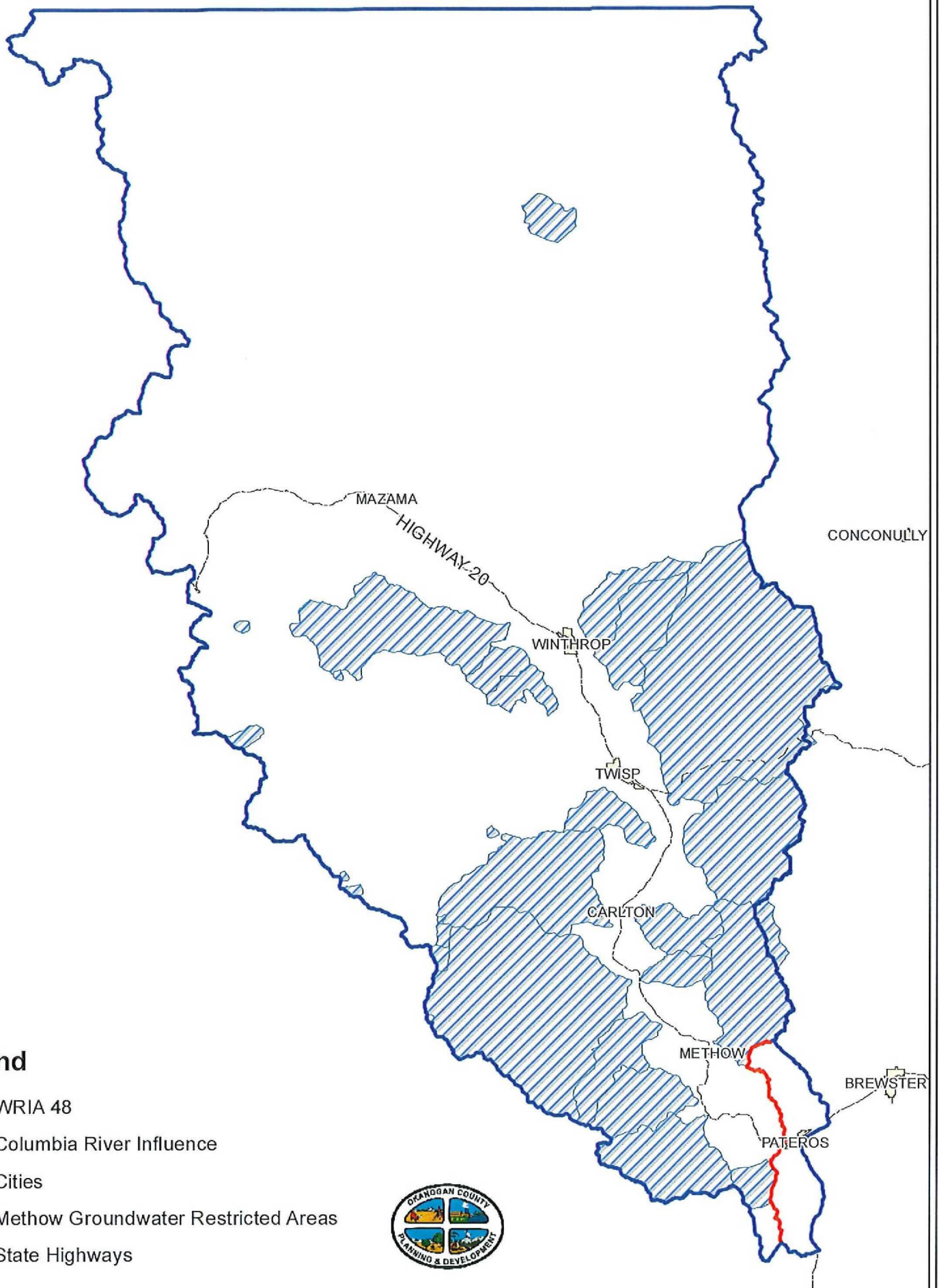




ATTACHMENT B

Legend

-  WRIA 48
-  Columbia River Influence
-  Cities
-  Methow Groundwater Restricted Areas
-  State Highways



Attachment C

17A400.120

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 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. Those areas within 17A400.130(2) not including (2)(a) that have an existing single family residence with an existing water supply can subdivide allowing one additional lot to be created containing a new legal water supply.
 - a. The subdivision shall be consistent with available water left in the 2 cfs reserve in the instream flow rule under WAC 173-548.
 - b. The subdivision shall comply with the standards in Okanogan County Code title 16 and RCW 58.17.

17A400.130 Adopted Water Availably Study Areas

1. Upper Tunk Basin, Lower Tunk Basin, and Tamarack Springs Basin
2. WRIA 48 with the exception of the Columbia River influence.
 - a. Restricted areas under WAC 173-548-050



OKANOGAN COUNTY

Board of Commissioners

Chris Branch
Commissioner District 1
Andy Hover
Commissioner District 2
Jim DeTro
Commissioner District 3
Laleña Johns
Clerk of the Board

FINDINGS OF FACT Ordinance 2019-11


1. 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
2. *Whatcom-Hirst*, 186 Wn.2d 648, 381 P.3d 1 (2016) decision has been codified in 90.94 RCW, 58.17.110 RCW, and 19.27.097 RCW, and
3. The Okanogan Board of County Commissioners (BOCC) believes that insufficient information exists in WRIA 48 to determine if water is physically and legally available for potable water supplies, and
4. 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
5. The BOCC finds that completing a study of water availability and mitigation measures in WRIA 48 with the exception of the Columbia influence as mapped in Attachment A is in the best interest of the public, and
6. The BOCC finds that additional information is necessary before it can be determined legal water is available for group domestic use in WRIA 48 with the exception of the Columbia influence, not including restricted areas under WAC 173-548-050 provided by the Department of Ecology as depicted in the map found as Attachment A to this ordinance. Areas restricted under WAC 173-548-050 are not included as they do not have water available for further appropriation unless one of the narrow exceptions under 173-548-050 applies; and
7. The BOCC finds that additional information is necessary before it can be determined if sufficient groundwater is legally accessible in WRIA #48 to meet the requirements of

RCW 58.17.110 for an adequate supply of potable water for land division proposals except for those land divisions where an existing residence with an existing water supply can create one additional lot; and

8. RCW 36.70.795 allows the adoption of interim official controls provided a public hearing is scheduled within 60 days of date of adoption, and
9. Ordinance No. 2019-11 containing recitals presenting the facts supporting said ordinance was adopted on (date) as an interim land use control; and
10. Pursuant to the requirements of RCW 36.70.795 a public hearing was duly advertised and held by the BOCC on January 27, 2020 where verbal testimony was closed after said testimony was heard but the written testimony was left open and the hearing was continued to February 25, 2020; and
11. The public hearing reconvened on February 25, 2020 where written testimony was terminated and said hearing was extended to July 28, 2020 pending an Attorney General Opinion (AGO) on matters of interpretation; and
12. On March 31, 2020 the BOCC closed the hearing after considering that public meetings would be discontinued indefinitely due to a global pandemic and further investigation including an AGO could continue to determine the outcome of the interim official control until reconsideration on July 28, 2020.
13. These findings are consistent with the facts contained in the recitals of Ordinance 2019-11 adopted on December 18, 2020 which were the facts considered upon adoption of said ordinance.

These findings of fact are hereby adopted supporting the adoption of Ordinance 2019-11 and shall affirm that the recitals presented were the facts considered satisfying RCW 36.70.795 requiring that findings of fact be adopted after holding a required public hearing if not adopted at the time of interim official control adoption.

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**

 3/31/2020
Chris Branch, Member