

## OKANOGAN COUNTY COMMISSIONERS

### ORDINANCE 2020 – 3

#### Ordinance

*An ordinance which imposes interim land use controls in accordance with RCW 36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length by 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.*

**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:** In 2017 the Okanogan County Comprehensive plan was opened up for review to address the issues raised in current litigation and this sub-basin water availability study information will be necessary to inform the plan.

**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 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 watershed plan adopted in 2009 to be revised by February of 2021, 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 Okanogan County Comprehensive plan is currently under review for to address the issues due to current litigation which sub-basin water availability study information will be necessary to inform the plan.

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

land division proposals, and

**WHEREAS:** 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,

**BE IT THEREFORE ORDAINED:** The Okanogan Board of County Commissioners amends 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,

**BE IT FURTHER ORDAINED:** amendments to OCC 17A.400.120 found in Attachment A which prohibits applications for the division of land pursuant to OCC title 16, including subdivisions, short subdivisions, large lot segregations, binding site plans, and exempt division in OCC 16.04.070; 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 surface 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 surface 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

**BE IT FURTHER ORDAINED:** The BOCC has scheduled a public hearing on June 23, 2020 at 3:00 p.m. to take public testimony on the interim controls adopted as amendments to OCC 17A.400.130 by this ordinance.


**DATED** at Okanogan, Washington this 2<sup>nd</sup> day of June 2020.

**ATTEST:**

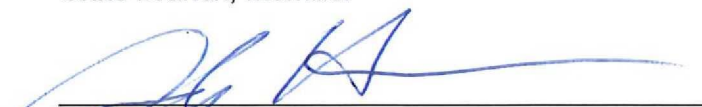


Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS  
OKANOGAN, WASHINGTON**

  
Jim DeTro, Chairman

  
Chris Branch, Member

  
Andy Hoyer, Member



## Attachment A

### 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 a water availability study area 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 Available 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