

option A

**OKANOGAN COUNTY COMMISSIONERS'**

**ORDINANCE 2021-**

*An ordinance adopting interim land use controls applicable to water resource inventory area #48 with the exception of the Columbia River influence that prohibits the subdivision of land according to the provisions of OCC Title 16 and RCW 58.17 repealing Ordinance 2020-4 and schedules 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:** The *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:** On December 18, 2019, the Board of County Commissioners determined that a water availability study pursuant to Okanogan County Code (OCC) 17A Zoning should be applied to WRIA 48 as an interim control as provided under RCW 36.70.795 to determine legal water availability; and

**WHEREAS,** in reviewing the water availability study provisions contained in OCC 17A, the Board of County Commissioners feels that a more direct approach is necessary to clearly comply with the provisions of RCW 36.70.795; and

**WHEREAS:** The Board of County Commissioners finds that additional information is necessary before it can be determined ~~legal~~ water is legally available for **NEW** 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

**WHEREAS:** The Board of County Commissioners 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

**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 Board of County Commissioner's previously adopted Ordinance 2020-6 and held a public hearing on Monday, September 28, 2020 at 2 p.m.

~~A public hearing is scheduled with the Board of County Commissioners on Monday, August 3, 2020.~~<sub>[JRM1]</sub>

**WHEREAS:**  
The Planning Director was instructed to make changes to the ordinance based on an Attorney General letter from DOE dated January 13, 2021.

**BE IT THEREFORE ORDAINED AS FOLLOWS:**

- 1) From the date of the adoption of this ordinance no new subdivision of land as set forth in OCC Title 16 may be vested within WRIA 48 that depends on domestic exempt wells for their water source, including those areas within WRIA 48 not influenced by the Columbia River that are outside the closed tributary boundaries;
- 2) The provisions of this ordinance shall <sup>not</sup> apply to subdivisions of land <sup>are exempt from</sup> decisions that ~~do not require~~ a determination of water adequacy under RCW 58.17.040, ~~and / or Okanogan County Code 16.04.070.~~

**BE IT FURTHER ORDAINED:** This ordinance shall be in effect for a period of one-year subject to a work plan that includes the following objectives:

- 1) Determine the legal extent of WAC 173-548 for single family domestic use for subdivision of land.
- 2) Determine the applicability and relationship between WAC 173-548 and legal precedence set forth in the case *Campbell and Gwinn vs Dept of Ecology*.
- 3) Determine The types of mitigation measures necessary to meet the objectives of protecting the closed surface waters from further appropriation and impairment.
- 4) 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.
- 5) Consult with the Department of Ecology to determine if water appropriated from outside of the restricted areas may be used within the restricted areas.
- 6) Determine how much of the 2cfs reserve is available under WAC 173-548.

**BE IT FURTHER ORDAINED:** that Ordinance **2020-6** is hereby repealed.

**DATED** at Okanogan, Washington this 26th day of January, 2021.

**Board of County Commissioners  
OKANOGAN, WASHINGTON**

\_\_\_\_\_  
Chris Branch, Chairman

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Jim DeTro, Member

\_\_\_\_\_  
Andy Hover, Member

**ATTEST:**

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Laleña Johns, Clerk of the Board

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WHEREAS: A public hearing on this ordinance is scheduled with the Board of County Commissioners on- \_\_\_\_\_, 2021 at 2 p.m. \_\_\_\_\_.

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