

# **Pend Oreille** **County**



## **Development Regulations**

**April 12, 2021**

**TITLE XX**  
**PEND OREILLE COUNTY DEVELOPMENT REGULATIONS**  
**TABLE OF CONTENTS**

|                          |   |            |
|--------------------------|---|------------|
| <b>CHAPTER XX.02</b>     | <b>GENERAL PROVISIONS .....</b>                     | <b>4</b>   |
| <b>CHAPTER XX.10</b>     | <b>DEFINITIONS .....</b>                            | <b>7</b>   |
| <b>CHAPTER XX.14</b>     | <b>PROCESSING PROCEDURES .....</b>                  | <b>18</b>  |
| <b>CHAPTER XX.16</b>     | <b>PLANNING COMMISSION BYLAWS.....</b>              | <b>30</b>  |
| <b>CHAPTER XX.18</b>     | <b>ENVIRONMENTAL REVIEW .....</b>                   | <b>37</b>  |
| <b>CHAPTER XX.22</b>     | <b>CONCURRENCY MANAGEMENT.....</b>                  | <b>41</b>  |
| <b>CHAPTER XX.26</b>     | <b>ZONING CONTROLS .....</b>                        | <b>44</b>  |
| <b>CHAPTER XX.26.070</b> | <b>G AIRPORT OVERLAY.....</b>                       | <b>50</b>  |
| <b>CHAPTER XX.30</b>     | <b>DEVELOPMENT STANDARDS .....</b>                  | <b>57</b>  |
| <b>CHAPTER XX.34</b>     | <b>SHORELINE REGULATIONS .....</b>                  | <b>61</b>  |
| <b>CHAPTER XX.36</b>     | <b>ENVIRONMENTALLY SENSITIVE AREAS .....</b>        | <b>111</b> |
| <b>CHAPTER XX.40</b>     | <b>FOREST PRACTICES .....</b>                       | <b>171</b> |
| <b>CHAPTER XX.44</b>     | <b>RECREATIONAL AND TOURISM FACILITES.....</b>      | <b>172</b> |
| <b>CHAPTER XX.48A</b>    | <b>RECREATIONAL VEHICLE PARK REGULATIONS.....</b>   | <b>176</b> |
| <b>CHAPTER XX.48B</b>    | <b>RECREATIONAL VEHICLE RESORT REGULATIONS.....</b> | <b>183</b> |
| <b>CHAPTER XX.52</b>     | <b>BINDING SITE PLANS .....</b>                     | <b>190</b> |
| <b>CHAPTER XX.60</b>     | <b>MASTER PLANNED RESORTS .....</b>                 | <b>195</b> |
| <b>CHAPTER XX.64</b>     | <b>SUBDIVISIONS .....</b>                           | <b>198</b> |
| <b>CHAPTER XX.68</b>     | <b>CONDITIONAL USES .....</b>                       | <b>211</b> |
| <b>CHAPTER XX.70</b>     | <b>VACATION RENTAL REGULATIONS.....</b>             | <b>214</b> |
| <b>CHAPTER XX.72</b>     | <b>VARIANCES .....</b>                              | <b>216</b> |

|                      |  |            |
|----------------------|--|------------|
| <b>CHAPTER XX.74</b> | <b>REASONABLE USE EXCEPTION .....</b>      | <b>217</b> |
| <b>CHAPTER XX.76</b> | <b>NONCONFORMING USES .....</b>            | <b>219</b> |
| <b>CHAPTER XX.80</b> | <b>SPECIAL USES .....</b>                  | <b>221</b> |
| <b>CHAPTER XX.84</b> | <b>BUILDING REGULATIONS .....</b>          | <b>222</b> |
| <b>CHAPTER XX.88</b> | <b>AMENDMENTS AND REZONES .....</b>        | <b>229</b> |
| <b>CHAPTER XX.90</b> | <b>COMPREHENSIVE PLAN AMENDMENTS .....</b> | <b>230</b> |
| <b>CHAPTER XX.92</b> | <b>VIOLATIONS AND ENFORCEMENT .....</b>    | <b>232</b> |
| <b>CHAPTER XX.94</b> | <b>HEARING EXAMINER.....</b>               | <b>235</b> |

## **CHAPTER XX.02 GENERAL PROVISIONS**

|                  |                              |
|------------------|------------------------------|
| <b>xx.02.010</b> | <b>Introduction.</b>         |
| <b>xx.02.020</b> | <b>Administration.</b>       |
| <b>xx.02.030</b> | <b>Interpretations.</b>      |
| <b>xx.02.040</b> | <b>Financial Guarantees.</b> |
| <b>xx.02.050</b> | <b>Liability.</b>            |
| <b>xx.02.060</b> | <b>Severability.</b>         |

**xx.02.010 Introduction.** This Title was created to integrate land use planning regulations into a single code utilizing a common set of definitions and procedures.

**xx.02.020 Administration.** The Board of County Commissioners shall designate a Community Development Director who shall be responsible for the administration of this Title and related County planning provisions.

- A. The authority, responsibilities, and duties of the Community Development Director and his/her designee(s) shall include, but not be limited to:
1. Establishing and maintaining such application forms and administrative procedures as may be necessary to implement this Title;
  2. Interpreting County regulations, codes, and requirements and determining the applicability of this Title to proposed projects and development activities;
  3. Establishing and maintaining a fee schedule for all land use and building permit activities and any fee ordinances that may be approved by the Board of County Commissioners;
  4. Coordinate with Public Works to ensure standards for the design and construction of any public works or improvements that may be required as a condition of approval for any land use or building permit activity are met;
  5. Serving as the SEPA Responsible Official;
  6. Oversight of the review and approval of land use, shoreline, building permit, and related applications;
  7. Facilitating inspection and examination of structures or tracts of land, and to order in writing, remedies for any condition found to be in violation of the Pend Oreille County Development Regulations;
  8. The enforcement of county codes and regulations, the approval of compliance plans, the imposition and collection of fines for violations, issuance of Stop Work Orders, and/or the imposition of penalties;

9. Coordinating the activities of County Staff and Consultants involved in land use planning activities; and
10. Administering inter-local planning agreements for the coordinated delivery of planning services in the incorporated areas and designated Urban Growth Areas of the County.

**xx.02.030 Interpretations.** Wherever the requirements of this Title are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants to which the County is a party, the most restrictive or those imposing the higher standards shall govern.

- A. The Director of Community Development and/or his/her designee is authorized to make such interpretations of this Title as may be necessary to promote the streamlined implementation of the Comprehensive Plan, provide efficient development reviews, resolve conflicting requirements, clarify provisions, correct cross references, and/or to avoid unnecessary hardship; and
- B. Any person may submit a written request to the Community Development Director for a formal interpretation of the provisions of this Title or those codes referenced to this Title. The request shall reference the specific Titles, Chapters, or Sections in question and should include relevant background information and supporting documentation.

**xx.02.040 Financial Guarantees.** Prior to issuance of a permit or approval of a proposed development activity, the County may require an Applicant to provide a financial guarantee to assure compliance with the provisions of this Title, the conditions of required permits, and approved plans. Improvements and facilities that may require a financial guarantee by the Applicant may include, but is not limited to, temporary and permanent erosion and sedimentation control measures, drainage controls, activities in or near shorelines or environmentally sensitive areas, and restoration work.

- A. Financial guarantees shall be in a form acceptable to the County and will not be released until all work is completed in accordance with the approved plans and conditions of the permit. All work must be completed within the time limits as noted on the permit or the approved plan for the project. If not completed, the County may use the financial guarantee to complete the work as outlined in the permit or approved plans, or complete those items of work that would safeguard adjacent or downstream property owners or may deposit the financial guarantee in a designated account as contribution toward the cost of completing the work. Collection of the financial guarantee does not relieve the Applicant of the responsibility to complete the work and the County may act as necessary to insure completion of the work.
- B. All financial guarantees shall run continuously until released by the County and shall not be subject to an expiration or cancellation date.
- C. Applicants will be required to submit for County review and approval an estimate for the work to be accomplished, prepared by an engineer or qualified professional

based on current construction costs. The County will establish the minimum financial guarantee at 125 percent of the estimate to allow for inflation, engineering expenses and administrative costs should the County have to complete the work. The County shall retain from the funds all costs associated with administration, collection of the funds and completion of the guaranteed work.

- D. Upon receipt of acceptable documentation and verification by inspection, the County will release the applicable financial guarantee, provided that the County may retain a portion or require a new financial guarantee to ensure that the improvements are adequately maintained and perform as designed.

**xx.02.050 Liability.** The granting or approval of any structure or use shall not constitute a representation, guarantee, or warranty of any kind or nature by the County or any official or employee thereof, on the practicality or safety of any structure or use proposed and shall create no liability upon or cause of action against such public body, official, or employee for any damage that may result therefrom.

**xx.02.060 Severability.** If any provision of this Title or its application to any person or legal entity is held to be invalid, the remainder of this Title, or the application of this Title or the application of the provision to other persons or entities or circumstances shall not be affected.

## **CHAPTER XX.14**

### **PROCESSING PROCEDURES**

|                  |  |
|------------------|--|
| <b>xx.14.010</b> | <b>Purpose.</b>                        |
| <b>xx.14.020</b> | <b>Project Review Classifications.</b> |
| <b>xx.14.030</b> | <b>Procedures for Class 1 Review.</b>  |
| <b>xx.14.040</b> | <b>Procedures for Class 2 Review.</b>  |
| <b>xx.14.050</b> | <b>Procedures for Class 3 Review.</b>  |
| <b>xx.14.060</b> | <b>Procedures for Class 4 Review.</b>  |
| <b>xx.14.070</b> | <b>Consolidated Permit Processing.</b> |
| <b>xx.14.080</b> | <b>Completeness Review.</b>            |
| <b>xx.14.090</b> | <b>Notice of Application.</b>          |
| <b>xx.14.100</b> | <b>Preliminary SEPA Determination.</b> |
| <b>xx.14.110</b> | <b>SEPA Threshold Determination.</b>   |
| <b>xx.14.120</b> | <b>Determination of Consistency.</b>   |
| <b>xx.14.130</b> | <b>Notice of Decision.</b>             |
| <b>xx.14.140</b> | <b>Public Notice Requirements.</b>     |
| <b>xx.14.145</b> | <b>Site Posting Requirements</b>       |
| <b>xx.14.150</b> | <b>Appeals.</b>                        |
| <b>xx.14.160</b> | <b>Reapplications.</b>                 |

**xx.14.010 Purpose.** The purpose of this Chapter is to provide for effective and efficient administrative review of land use and development applications with consistent procedures for similar projects, and to combine procedural and substantive environmental reviews with the

review of project permit applications under other applicable requirements. This Chapter is intended to provide a framework within which the consistency of project permit applications with the Comprehensive Plan and Development Regulations shall be determined.

A. The following is a brief summary of key land use decision-making roles:

1. The Board of County Commissioners is the legislative body of the County and is the only body which can adopt or amend an ordinance. The Board shall make the final decisions on Class 3 and Class 4 applications. The Board shall also make appointments to the Planning Commission, designate a County Community Development Director, and appoint a County Hearing Examiner(s);
2. The County Planning Commission is the planning advisory body to the Board of County Commissioners and shall have the authority to make recommendations to the Board of County Commissioners on certain Class 4 applications and on long range planning matters, and shall perform other duties as assigned by the Board of County Commissioners;
3. The Community Development Director shall have the authority to make decisions on Class 1 applications. It shall be the duty of the Community Development Director and his or her designee(s) to administer the provisions of this Title and to coordinate the implementation of all planning requirements and activities in the County, and to interpret the provisions of this Code. The Community Development Director and all authorized County representatives are hereby empowered to cause any structure or tract of land to be inspected and examined, and to order, in writing, the remedying of any condition found to exist in violation of any provision of Pend Oreille County Code or ordinances;
4. The County Prosecuting Attorney shall advise the Board of County Commissioners, Planning Commission, and County Staff regarding the legal interpretations, applications, and the enforcement of this Title; and
5. The County Hearing Examiner shall be responsible for making decisions on certain Class 2 applications and performing other duties as assigned by the Board of County Commissioners.

**xx.14.020 Project Review Classifications.** Four classes of review are established for the purposes of administering this Title. These four classes, their appropriate decision-maker, hearing body, appellate body, and the types of permits included in each class are contained in the following Table:

| C | Types of Permit | H<br>e | D<br>e | Ap<br>p |
|---|-----------------|--------|--------|---------|
|---|-----------------|--------|--------|---------|



|   |  |                  |   |   |
|---|--|------------------|---|---|
| C | Boundary Line Adjustment*<br>Building Permit*<br>Certificate of Occupancy*<br>Clearing and Grading<br>Permit*<br>Code Enforcement Action*<br>Code Interpretation*<br>De Facto Segregation*<br>Flood Plain Development<br>Permit*<br>Forest Practices Act Permit*<br>Large Lot<br>Segregation/Aggregation*<br>Shoreline Authorizations*<br>SEPA Action<br>Short Plat / Final Short Plat (6 lots or<br>less)<br>Special Use Permit*<br>Shoreline Substantial<br>Development Permit | N<br>o<br>n<br>e | C<br>o<br>m<br>m<br>u<br>n<br>i<br>t<br>y<br>D<br>e<br>v<br>e<br>l<br>o | Hea<br>r<br>i<br>n<br>g<br>E<br>x<br>a<br>m<br>i<br>n<br>e<br>r |
|---|--|------------------|---|---|

|   |  |   |   |  |
|---|--|---|---|--|
| C | Conditional Use Permit<br>Master Planned Resort<br>Preliminary Binding Site<br>Plan<br>Preliminary Plat Approval<br>(5+ lots)<br>Reasonable Use Exception<br>Recreation/Tourism Facility<br>RV Park<br>RV Resort<br>Shoreline Conditional Use<br>Permit (1)<br>Vacation Rental<br>Variance | H<br>e<br>a<br>r<br>i<br>n<br>g<br>E<br>x<br>a<br>m<br>i<br>n<br>e<br>r | H<br>e<br>a<br>r<br>i<br>n<br>g<br>E<br>x<br>a<br>m<br>i<br>n<br>e<br>r | Sup<br>e<br>r<br>i<br>o<br>r<br>C<br>o<br>u<br>r<br>t      |
| C | -Final Plat Approval<br>(7 lots or more)   | N<br>o  | B<br>o  | Sup<br>e   |
| C | Comprehensive<br>Plan Amendments<br>Development Agreements<br>(3)<br>Development Regulation<br>Revisions<br>Future Land Use Map<br>Amendments<br>Shoreline Master Program<br>Amendment (2)<br>Site Specific Rezones  | P<br>l<br>a<br>n<br>i<br>n<br>g<br>C<br>o<br>m<br>m                     | B<br>o<br>a<br>r<br>d<br>o<br>f<br>C<br>o<br>u<br>n<br>t<br>y           | Gro<br>w<br>t<br>h<br>M<br>a<br>n<br>a<br>g<br>e<br>m<br>e |

#### Foot

notes:

- (1) Shoreline conditional use permits, and shoreline variances are subject to review and approval by the Department of Ecology and appeals are heard by the Shorelines Hearings Board.
- (2) Amendments to the Shoreline Master Program are subject to review and approval by the Department of Ecology and appeals are heard by the Growth Management Hearings Board.
- (3) Development agreements shall be reviewed and approved by the Board of County Commissioners in accordance with the Development Regulations and provisions of state law.

(\*) These items do not require public notice or advertising.

**xx.14.030 Procedures for Class 1 Review.** Class 1 permit applications involve administrative action by the Community Development Director without an open record public hearing. The Hearing Examiner shall conduct an open record public hearing for appeals of decisions on Class 1 permits unless otherwise noted in this Title.

- A. Applications for Class 1 permits shall be processed by the County in accordance with the following general procedures unless the Applicant is notified in writing by the Community Development Director:
  - 1. Completeness review and Determination of Completeness;
  - 2. Issuance of a SEPA Threshold Determination, if required;
  - 3. Distribution of Notice of Application, if required;
  - 4. Review of written comments;
  - 5. Determination of Consistency; and
  - 6. Distribution of Notice of Decision.

**xx.14.040 Procedures for Class 2 Review.** Class 2 reviews require that an open record public hearing be conducted prior to making a decision.

- A. Applications for Class 2 permits shall be processed by the County in accordance with the following general procedures, unless the Applicant is notified in writing by the Community Development Director:
  - 1. Completeness review and Determination of Completeness;
  - 2. Distribution of a Notice of Application;
  - 3. Issuance of a SEPA Threshold Determination, if required;
  - 4. Preparation of a staff report containing relevant information about the application and a Determination of Consistency. This report may also include a staff recommendation and shall be made available to the public at or before the open record public hearing conducted by the

Hearing Examiner;

5. An open record public hearing shall be conducted by the Hearing Examiner, during which the Applicant shall be given the opportunity to present the proposed project and interested parties shall be allowed to make comments and submit written testimony; and
6. Hearing Examiner review and issuance of a Notice of Decision.

**xx.14.050 Procedures for Class 3 Review.** Class 3 reviews involve the final review and approval of applications by the Board of County Commissioners to verify that all conditions of preliminary approval have been met. As a result, all required public hearings have already been conducted and all required public notices have already been provided.

A. Applications subject to a Class 3 review shall be processed by the County in accordance with the following general procedures, unless the Applicant is notified in writing by the Community Development Director:

1. Preparation of a staff report identifying all conditions of approval, documenting that all conditions have been met, and identifying the steps that must be taken to finalize and record the proposed action.
2. Board of County Commissioner review and final action.

**xx.14.060 Procedures for Class 4 Review.** Decisions on all Class 4 permit applications shall be made by the Board of County Commissioners following an open record public hearing conducted by the Planning Commission.

A. It is the intent of the County to integrate the review of Class 4 permit applications with the annual Comprehensive Plan amendment and the periodic update processes prescribed in this Title, and as a result shall publish an annual schedule for submitting Class 4 permit applications, provided that applications for site specific rezones may be submitted at any time.

3. Docketing Process. Written requests from the public to amend the Comprehensive Plan, the Future Land Use Map, and/or the County Development Regulations together with all relevant supportive or explanatory material as determined to be applicable by staff in the application packet, shall be submitted to the Planning Department. The County shall establish a closing date for the acceptance of written requests, and such shall be advertised in accordance with the County's noticing requirements. All plan amendment requests shall be docketed for possible consideration for inclusion in the Comprehensive Plan. The docketed list of proposed amendments shall be presented to the Planning Commission within 60 days of the closing date. The Planning Commission shall make a recommendation to the Board of County Commissioners on whether or not to move forward on consideration of docketed amendments.

4. The Board of County Commissioners, after a recommendation from staff and the Planning Commission, can recommend that an amendment be processed in the current amendment cycle or that the amendment remain on the docket list for future consideration, or that the amendment be denied further consideration.
- A. The Board of County Commissioners or County Departments, in consultation with the Board, may initiate amendments to the County Development Regulations at any time.
- B. Applications for site specific amendments to the Pend Oreille County Future Land Use Map will include an amendment to the official zoning map of Pend Oreille County. Rezone requests that require an amendment to the Comprehensive Plan or the Future Land Use Map shall be processed during the annual comprehensive plan amendment process.
- C. In general terms, applications for Class 4 permits accepted for processing shall be processed by the County in accordance with the following procedures, unless the Applicant is notified in writing by the Community Development Director:
  5. Determination of Complete Application;
  6. Distribution of a Notice of Application;
  7. Issuance of a SEPA Threshold Determination, if required;
  8. Preparation of a staff report and staff recommendation that shall be made available for public review prior to the open record public hearing;
  9. An open record public hearing shall be conducted, during which the Applicant shall be given the opportunity to present the proposed amendment, and interested parties shall be allowed to make comments and submit written testimony;
  10. Distribution of the proposed amendments to state agencies, as appropriate, for review and comment;
  11. The recommendation of the Planning Commission along with a complete copy of the record shall be provided to the Board of County Commissioners for review prior to their decision (if applicable); and
  12. Board of County Commissioner review and action.

**xx.14.070 Consolidated Permit Processing.** It is the goal of the County to consolidate the permit processing for projects or development activities that require two or more permits or approvals. The Community Development Director shall determine the appropriate means of consolidating the processing of all permits and shall assign

the highest-class review classification of the individual permits being sought to the consolidated permit application (with Class 4 being the highest followed by Class 3, 2, and 1). This consolidation may include integrating public hearings, establishing unified comment periods, and/or concurrent reviews. The Community Development Director is authorized to make modifications to the procedural requirements of this Title in order to effectively consolidate project reviews.

**xx.14.080 Completeness Review.** All applications shall be submitted on such forms and in accordance with such procedures as may be prescribed by the County, provided that:

- A. All applications shall be signed by the property owner or show owner consent of the application by the agent acting on the owner's behalf;
- B. All applicable fees shall be submitted at the time of application unless otherwise specified;
- C. Prior to submitting any Class 2 applications, Applicants shall make an appointment for and attend a pre-application meeting with County Staff. The purpose of this meeting is to identify and discuss the proposed project or development activities, permit procedures, processing requirements, permit fees, schedules, and information that will be necessary for project review. The Community Development Director may invite representatives from County departments and other affected agencies to attend;
- D. A completed SEPA checklist shall be filed at the same time as an application for all permits, except when the County has determined the activity to be Categorically Exempt from the requirements of SEPA, when the County and Applicant agree that an EIS is required, the SEPA compliance for the proposed project has already been completed, or SEPA compliance has been initiated by another agency;
- E. Within 28 days of submittal, the County shall conduct a review of all application materials to determine if the application is complete and ready for processing. The County shall then make a Determination of Completeness and shall notify the Applicant. The County may choose to notify an applicant by mail, telephone, or email that an application is complete. If the County does not notify the applicant of completeness or incompleteness within 28 days of submitting the application, the application shall be considered complete on the 29<sup>th</sup> day. Notifications shall contain the following:
  - 1. That the application is complete and ready for processing or that the application is incomplete and what is necessary to make the application complete;
  - 2. To the extent known by the County, the identity of other permits required by the project application; and

3. To the extent known by the County, the identity of other agencies with jurisdiction over the application.
- F. Nothing in this Title shall limit the Community Development Director from incorporating the Notice of Application and Determination of Completeness into one document.
- G. The issuance of a Determination of Completeness shall not preclude the County from requesting additional information from the Applicant in order to complete the processing of an application.
- H. If the County determines an application is not complete, or that additional information is necessary to complete the review of the application, and the Applicant fails to respond to the request from the County within 15 days, the County shall notify the Applicant in writing that the application has lapsed and become void.

**xx.14.090 Notice of Application.** Following the issuance of a Determination of Completeness, the County shall issue a Notice of Application for all Class 2 and Class 4 project permit applications.

A. Notices of application shall include:

1. A description of the proposed action;
2. Identification of the permits and approvals that may be required and opportunities for public review and comment; and
3. SEPA actions taken or Preliminary SEPA Threshold Determinations, if any.

**xx.14.100 Preliminary SEPA Determination.** A preliminary SEPA Threshold Determination or Preliminary SEPA action may be included with Notice of Application if such preliminary actions have been made at the time the Notice of Application is issued. A preliminary SEPA Threshold Determination, or preliminary SEPA action, does not substitute, or in any way circumvent, the process for making a final SEPA Threshold Determination or in taking a SEPA action. Preliminary SEPA determinations are intended to encourage early public comment on project applications.

**xx.14.110 SEPA Threshold Determinations.** A Threshold Determination is required for any proposal that is not categorically exempt within ninety days that an application has been deemed complete. All Threshold Determinations shall result in a Determination of Non-significance (DNS), or a Determination of Significance (DS), provided that the County may also issue a Mitigated Determination of Non-Significance (MDNS) based on conditions attached to the proposal, or on changes to, or clarifications of, the proposal made by the Applicant:

- A. After submission of an environmental checklist and prior to a Threshold Determination, the

County shall notify the Applicant if it is considering issuing a DS. As a result, the Applicant may clarify or change features of the proposal to mitigate the impacts which make the DS likely. If a proposal continues to have a probable significant adverse environmental impact, even with the mitigating measures, an EIS shall be prepared.

- B. If a preliminary SEPA Threshold Determination was not made in conjunction with a Notice of Application, and no probable significant adverse impacts are anticipated, a Determination of Non-Significance shall be issued, and a 15-day comment period may be required.
- C. If a pre-decision open record public hearing is required; the SEPA Threshold Determination must be issued at least 15 days before the hearing.
- D. Except for a Determination of Significance (DS), the County may not issue a decision on a project application until the expiration of the public comment period on the Notice of Application.
- E. If the County makes a SEPA Determination of Significance (DS) concurrently with the Notice of Application, the Notice of Application shall be combined with the Determination of Significance and Scoping Notice.
- F. Whenever the County makes a Threshold Determination, it shall seek to include the public notice for this SEPA action with the Notice of Application or Notice of Decision for any associated land use application(s) or permits, provided that:
  - 1. If no public notice is required for the permit or approval, the County shall give notice of the DNS or DS by publishing a notice in the County's Newspaper of Record;
  - 2. Whenever the County issues a DS, all public notices shall state the scoping procedure for the required EIS; and
  - 3. Whenever the County issues a DEIS (Draft EIS), or SEIS (Supplemental EIS), notice of the availability of those documents shall be given by at least 2 of the following methods:
    - 1. Indicating the availability of the DEIS or SEIS in any public notice required for an associated land use application or permit;
    - 2. Posting the property, for site-specific proposals;
    - 3. Publishing notice in the County's Newspaper of Record;
    - 4. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
    - 5. Notifying the news media; and/or



6. Publishing notice in agency newsletters and/or sending notice to agency mailing lists.

- G. Mitigation measures incorporated in the MDNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any manner specifically prescribed by the County.

**xx.14.120**     **Determination of Consistency.** As part of all project and application reviews, the County shall determine if a proposed project or development activity is consistent with applicable County development regulations, and the Goals and Policies of the adopted Comprehensive Plan.

- A. Nothing in this section shall limit the authority of the County in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.
- B. The County may determine that adopted comprehensive plans, sub-area plan elements of a comprehensive plan, development regulations, or other local, state or federal rules or laws provide adequate environmental analysis and mitigation of some or all specific probable adverse environmental impacts of a proposed action.

**xx.14.130**     **Notice of Decision.** A Notice of Decision shall be issued for all Class 2 applications. A Notice of Decision may not be issued until the expiration of the comment period on the Notice of Application.

- A. Notices of Decision shall include:
1. A description of the decision or actions taken;
  2. Any mitigation or conditions of approval required under applicable development regulations or under SEPA;
  3. If a SEPA threshold determination has not been issued previously, the Notice of Decision shall state this determination; and
  4. A description of applicable appeal procedures.

**xx.14.140**     **Public Notice Requirements.** For permit applications that require public notice the following provisions shall apply:

- A. These public notice requirements shall apply to the following unless otherwise specified:
1. Notices of Application;

2. Notices of Decisions;
  3. Public Hearing Notices;
  4. SEPA Threshold Determinations; and
  5. Notices of Appeals.
- B. All public notices will be mailed at least fifteen days prior to the date of any required public hearing and/or comment period to the:
1. Applicant;
  2. To the owners of all parcels within 300 feet of the boundaries of the parcel in question and any adjacent parcels under the ownership or control of the Project Sponsor;
  3. Agencies with jurisdiction;
  4. Potentially affected County Departments;
  5. Parties who have provided oral or written testimony on the permit and requested to be on the mailing list;
  6. Parties who have submitted written requests to receive notice; and
  7. Parties of Record.
- C. Public notices shall be published in the general newspaper of record at least fifteen days prior to the date of any public hearing and/or any public comment periods.
- D. Copies of public notices shall also be posted or available for review at the County Courthouse.
- E. In addition, Notices of Applications shall be posted in a highly visible location(s) on the site of the proposed activities in accordance with procedures established by the Community Development Director. The sign must be no smaller than 24" x 24" and must be of weather resistant construction.
- F. **Xx.14.145 Site Posting** All required site postings shall conform to the following requirements:
1. The following information must be contained in the site posting:
    - a. Notice of Public Hearing or Public Notice
    - b. Name of applicant
    - c. County file number

- d. Copy of site plan
- e. date, time, and location of hearing
- f. Date of end of public comment period

2. Site Posting must be removed within 24 hours after the date of the hearing but must remain in place until after the hearing has taken place.

**xx.14.150 Appeals.** All appeals of interpretations or actions regarding Class 1 and Class 2 Reviews shall be filed in a format prescribed by the County along with the required fee, within 14 days of the date of the interpretation or action. If the deadline to file an appeal falls on a weekend or on a County Holiday, the deadline shall become the next business day. The County shall mail written notice to all parties of record to apprise them of all open and closed record public appeal hearings and shall place a public notice in the County's Newspaper of Record at least fourteen days before the open record appeal hearing.

1. The Notice of Appeal shall specify the claimed error(s) and issue(s) which the Hearing Examiner is asked to consider, and shall specifically state all grounds for such appeal. Issues or grounds of appeal which are not so identified need not be considered by the Hearing Examiner;
  2. The Appellants and any Respondents to the Notice of Appeal shall have the opportunity to present oral and written arguments and evidence during open record appeal hearings. Oral argument shall be confined to the established record and to any alleged errors in the decision;
  3. Following an appeal hearing, the Hearing Examiner may affirm, reverse or modify the decision of record, and shall adopt its own written findings and conclusions in support of its decision; and
  4. The County may require an Applicant and/or the Appellant to reimburse the County for the cost of preparing materials to be used during open or closed record hearings including but not limited to the cost of copying, taping, and/or transcribing a certified record of the proceedings.
- B. Requests to appeal Class 4 decisions, must be filed with the Eastern Washington Growth Management Hearings Board or in accordance with the laws of Washington State.
- C. Appeals of SEPA threshold Determinations or SEPA actions shall be combined with any appeals of associated applications or permits.
- D. Except for the appeal of a SEPA Determination of Significance, no more than one open public record hearing and no more than one closed record appeal may occur on a single permit application or master application.
- E. Pursuant to WAC 197-11-680, the appeals of the following shall not be consolidated with a hearing or appeal on the underlying application:

1. An appeal of a determination of significance;
2. An appeal of a procedural determination made by the County when the County is a project proponent, or is funding a project, and chooses to conduct its review under SEPA prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction.
3. An appeal of a procedural determination made by an agency on a non-project action.

**xx.14.160 Reapplications.** Applications subject to a Class 2 or 4 review may not be resubmitted for at least 12 months from the date that the previous application for the same or a substantially similar project, as determined by the County, was denied or terminated.

## **CHAPTER XX.18 ENVIRONMENTAL REVIEW**

- xx.18.010 Purpose.**
- xx.18.020 Substantive Authority.**
- xx.18.030 Adoption of SEPA Rules.**
- xx.18.040 Designation of SEPA Responsible Official.**
- xx.18.050 Categorical Exemptions.**
- xx.18.060 Preparation of EIS.**

**xx.18.010 Purpose.** The purpose of this Chapter is to highlight the environmental review requirements of the County and to integrate the provisions of the Washington State Growth Management Act and the State Environmental Policy Act.

**xx.18.020 Substantive Authority.** The regulations set forth in this Chapter are supplementary to those incorporated by the State of Washington.

- A. The County may attach conditions to a permit or approval for the proposal so long as:
  - 1. Such conditions are necessary to mitigate specific probable adverse environmental documents prepared pursuant to this Chapter;
  - 2. Such conditions are in writing;
  - 3. The mitigation measures included in such conditions are capable of being accomplished;
  - 4. The County has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
  - 5. Such conditions are based on regulations in this Title and cited in the decision document.
- B. The County may deny a permit or approval for a proposal on the basis of a SEPA review so long as:
  - 1. A finding is made that approving the proposals would result in probable significant adverse environmental impacts that are identified in a FEIS (Final EIS) or final SEIS prepared pursuant to this Chapter;

2. A finding is made that there are no mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
  3. The denial is based on one or more regulations identified in this Title and identified in writing in the decision document.
- C. The County designates and adopts by reference the following as the basis for the County's exercise of authority pursuant to this section:
1. The current Pend Oreille County Comprehensive Plan:
  2. The current Pend Oreille County Shoreline Management Plan:

**xx.18.030 Adoption of SEPA Rules.** The County adopts Chapter 197-11 of the Washington Administrative Code (WAC) by reference unless otherwise noted or modified by the provisions of this Title.

**xx.18.040 Designation of SEPA Responsible Official.** For those proposed projects, development activities, or actions for which the County is the lead agency, the SEPA Responsible Official shall be the Community Development Director or his/her designee.

**xx.18.050 Categorical Exemptions.** All proposed projects or development activities are subject to the provisions of this Chapter and WAC 197-11 except those activities that are identified in WAC 197-11-800 as being categorically exempt from SEPA, provided that:

- A. The following new construction activities are exempt from the provisions of this Chapter and WAC 197-11 unless the site contains critical areas:
  1. The construction or location of up to four (4) dwelling units;
  2. The construction of a barn, loafing shed, farm equipment storage building, produce storage, or packing structure, or similar agricultural structure, covering up to 30,000 square feet, provided that said structure complies with all other provisions of the County code and is to be used by the property owner or his or her agent in the conduct of permitted farming of the property;
  3. The construction of an office, school, commercial, recreational, service, or storage building with up to 12,000 square feet and associated parking facilities designed for no more than 40 automobiles;

4. The construction of a parking lot designed for up to forty (40) automobiles; or
  5. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation.
- B. The County's determination that a proposal is exempt shall be final and not subject to appeal. If a proposal is exempt, none of the procedural requirements of this Chapter apply to the proposal. The County shall not require completion of an environmental checklist for an exempt proposal.
- C. If a proposal includes exempt and nonexempt actions, the County may authorize exempt actions prior to compliance with the procedural requirements of this Chapter, except that the County shall not give authorization for:
1. Any nonexempt action;

**xx.18.060 Preparation of EIS.** Preparation and issuance of a draft and final EIS (DEIS and FEIS) or a draft and final supplemental EIS (SEIS) is the responsibility of the County. The DEIS and FEIS or draft and final SEIS shall be prepared by a qualified consultant selected by the County in consultation with the proposed Project Sponsor. All costs associated with the preparation and issuance of an EIS document shall be the responsibility of the Applicant or proposed Project Sponsor in accordance with the provisions of the County fee schedule and/or voluntary cost sharing agreement.

## CHAPTER XX.22 CONCURRENCY MANAGEMENT

### Sections:

- xx.22.010 Purpose.**
- xx.22.020 Applicability.**
- xx.22.030 Transportation Concurrency Review Procedures.**
- xx.22.040 Transportation Concurrency Mitigation Methods.**
- xx.22.050 Utility Concurrency Management.**

**xx.22.010 Purpose.** The purpose of this Chapter is to *ensure that adequate public facilities are available when the impacts of development occur*. This means that facilities will have the capacity to serve development without decreasing levels of service below locally established minimums, and that the facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time.

**xx.22.020 Applicability.** All proposed projects or development activities must be reviewed for transportation and utility concurrency, provided that the County may establish an expedited concurrency review process for activities that do not meet SEPA Thresholds.

**xx.22.030 Transportation Concurrency Review Procedures.** The County shall utilize the following procedures for evaluating all projects or development activities for concurrency, unless the Applicant is otherwise notified:

A. Certificate of Concurrency.

1. The County shall complete a transportation concurrency evaluation at the time a development permit is applied for or during the course of permit review. The review shall conclude with a determination that the proposed project meets the level of service standards whereby a Certificate of Concurrency shall be issued and attached or incorporated to the development permit approval. When a project is determined to have not passed level of service standards the Certificate of Concurrency shall be conditioned in a manner that satisfies the requirements of this Chapter, or the project shall not be approved.
2. The Applicant shall provide the County with all information necessary to complete the concurrency evaluation on the proposed development. It shall be the responsibility of the Applicant to provide studies, surveys, traffic counts, engineering review or any other items determined to be necessary for an accurate concurrency evaluation.



3. A Certificate of Concurrency shall be accorded the same terms and conditions as those for the underlying development permit. If a development permit time line is extended the certificate shall also be extended for the same time duration. A Certificate of Concurrency shall be valid only for the development permit approved for the same parcel and may be transferable to any new owner(s) of the parcel to which it was issued.
4. A Certificate of Concurrency shall apply only to the specific land uses, densities, intensities and project described in the application and project permit. A concurrency certificate is valid for any modification of the permits for which the certificate was issued so long as such modification does not require the Applicant to obtain a new project permit.

B. Traffic Impact Calculations.

1. Trip Generation. Traffic calculations shall be based on the trip generation average described within the latest available edition of the Institute of Transportation Engineers (ITE) trip generation manual for the particular type and extent of the development being proposed.
2. Concurrency Test. The projected number of trips generated by a proposed development shall be subtracted from existing or new transportation capacity of the impacted transportation facility. If projected demand is less than available capacity the project is not averse to level of service standards and shall be issued a Certificate of Concurrency.

**xx.22.040 Transportation Concurrency Mitigation Methods.** The County shall use the following procedures and criteria to review and approve the adequacy of mitigation methods unless the Applicant is otherwise notified in writing:

- A. If mitigation is determined necessary to maintain level of service standards for an impacted transportation facility the Applicant may choose among the following actions subject to County review and approval:
  1. Reduce the size of the project until levels of service standards are met;
  2. Enter into a legally binding development agreement with the County whereby all required improvements will be constructed and completed within six years of the development approval date which also ensures that the financing will be available to pay for the improvements;

3. Be subject to a development approval conditioned that the required improvements be completed prior to the issuance of building permits, final plat or site plan approvals associated with the development;
4. Propose transportation demand management strategies to reduce vehicle trips generated by the project development; or
5. Await the County's completion of mitigating improvements if such improvements are underway or planned as part of the County's six-year transportation improvement plan; or
6. Any combination of the above.

B. Acceptable impact mitigation requires a finding of the following:

1. The mitigation contributes to transportation facility performance and established level of service standards;
2. The mitigation is consistent with the County's Comprehensive Plan;
3. Any improvements to an intersection or roadway do not shift traffic to residential areas or to other intersections where there is no mitigation being proposed;
4. Any adverse environmental impacts of the facility improvements may be reasonably minimized or eliminated; and
5. The improvements are consistent with the County's engineering standards.

**xx.22.050 Utility Concurrency Management.** All Applicants shall submit, subject to County review and approval, documentation that adequate provisions have been made to ensure that public facilities are in place or can reasonably be provided to serve the proposed development. This shall include but is not limited to; fire and emergency medical services, law enforcement, electrical service, water and sewer, and public health facilities.

## **CHAPTER XX.26 ZONING CONTROLS**

**xx.26.010 Purpose.**

**xx.26.020 Legal Lots.**

**xx.26.030 Establishment of Zoning Districts.**

**xx.26.040 Permitted and Conditional Uses.**

**xx.26.050 Development Standards.**

**xx.26.060 Rural Overlay.**

**xx.26.070 Essential Public Facilities.**

**xx.26.010 Purpose.** The purpose of this Chapter is to establish zoning controls to guide land use decisions in accordance with the provisions of the Pend Oreille County Comprehensive Plan and to promote the general health, safety and welfare of County residents, maintain the rural character, customs and culture of the County, safeguard the public interest in the preservation and conservation of natural resources, and to preserve designated agricultural, timber, and mineral lands of long term commercial significance.

**xx.26.020 Legal Lots.** All legal lots may be developed in accordance with the provisions of this Title and the Goals and Policies of the Comprehensive Plan provided that:

- A. In the event there is a question regarding the legal status of a lot, the property owner of the lot(s) in question may request that the Community Development Director make an administrative decision on the status of the lot in consultation with the County Assessor and the County Prosecuting Attorney based on information provided by the property owner. This decision shall be a Class 1 decision and made in accordance with the procedural requirements of this Title.
- B. In the event that the strict and literal interpretation of this Title serves to deny a property owner all reasonable use of their property, the property owner may apply for a reasonable use exception and may request the minimal relief necessary to enable the reasonable use of their property.
- C. If a river, County road, public right-of-way, or railroad right-of way has bisected a legal lot, the Community Development Director may approve, in consultation with the County Assessor and County Prosecuting Attorney, a request from the property owner to assign separate parcel numbers to each parcel that was previously created by this de facto segregation. A de facto segregation may not result in creating a non-conforming parcel. This decision shall be a Class 1

decision and made in accordance with the procedural requirements of this Title.

**xx.26.030 Establishment of Zoning Districts.** The following zoning districts are established in accordance with the provisions of the *Pend Oreille County Comprehensive Plan*:

- A. Rural Residential-5. The residential density of this zoning district is 1 dwelling unit per 5 acres. This zoning district is comprised of parcels with slopes less than 15%, well served for access by State and County roads, or areas that are already developed or platted with lots five acres in size or smaller.
- B. Rural Residential-10. The residential density of this zoning district is 1 dwelling unit per 10 acres. This zoning district includes parcels with slopes over 15%, have access via State or County roads, or areas that can provide a transition to Agricultural or Forest Resource lands.
- C. Rural-20. The residential density of this zoning district is 1 dwelling unit per 20 acres. These areas have steep topography, limited access via State and County roads, or areas that can provide a transition to Natural Resource lands.
- D. Rural-40. The residential density of this zoning district is 1 dwelling unit per 40 acres. This zoning district is beyond the existing all-weather county road system or private access network.
- E. Natural Resource Lands-20. The residential density of this zoning district is 1 dwelling unit per 20 acres. Parcels within this zone must have approved road access and designated as Timber, or Agricultural Lands, or currently in use as a mine and participate in a tax exemption program.
- F. Natural Resource Lands-40. The residential density of this zoning district is 1 dwelling unit per 40 acres. Parcels within this zone have no road access and must be designated as Timber, or Agricultural Lands, or currently in use as a mine and participate in a tax exemption program.
- G. Industrial Lands – These lands are well suited for industrial uses due to their historic uses, proximity to transportation systems, or, are served (or can be served) by adequate utilities to support an industrial use.

- H. Parks and Recreation – These parcels are under the ownership or management of Local, State, or Federal agencies and are used for recreational purposes.
- I. Commercial – These lands are generally located in areas with higher populations, are well served by a major road network, and are served (or can be served) by adequate utilities for a commercial use.
- J. Tribal Lands. The lands within this zone that are located within the Reservation boundary are under the jurisdiction of the Kalispel Tribe and all proposed development activities and uses are subject to approval by the Kalispel Tribe. Lands outside of the Reservation that are owned by the Kalispel Tribe fall under the jurisdiction of the County regulations.

1.

**xx.26.040 Permitted and Conditional Uses.** Land uses shall be permitted in accordance with the Table of Permitted Uses, provided that:

- A. Only those uses identified with a P (Permitted), or C (Permitted only through the issuance of a Conditional Use Permit) may be approved. Those uses identified with an X are not permitted in that zone.
  - 1. The permissibility of uses not specifically listed in the Table of Permitted Uses, or any questions about the interpretation of this Table, shall be addressed through an administrative code interpretation utilizing the most recent edition of the *North American Industry Classification System (NAICS) Manual* as determined by the County, and the intent of each zoning district.
  - 2. Uses not specifically identified as permissible (P, or C), or authorized through an administrative code interpretation, may not be approved.

**xx.26.050 Development Standards.** The following standards shall apply to all proposed developments and land use activities, unless otherwise specifically noted in this Title:

- A. Clustering of Dwellings. Approved dwelling units may be clustered on a lot or within a subdivision provided that:

1. The overall density of the development complies with the density of the zoning district in which the lot is located; and
2. The undeveloped portion of the lot is preserved in an open space tract, or similar means approved by the County, and/or a restriction is recorded on the face of the plat or on the Title of the lot that precludes further development or subdivision of the lot in excess of County standards.

**B. Setbacks and Buffering.**

1. All uses that may be permitted may only be approved based on a finding that adequate provisions have been made for setbacks and buffering from neighboring properties.
  - a. Agricultural buildings shall be set back from other buildings and property lines at least a distance equal to the structure's height above natural grade.
  - b. All development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, open range lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, open range lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development.
  - c. Impacts to neighboring properties shall be, minimized, mitigated, or avoided, including noise, light and glare, solid waste handling, odors, traffic, operating hours, signs and similar sources of conflict.

**C. Parking.** Commercial and industrial uses may be approved only based on a finding by the appropriate hearing body that adequate provisions have been made for off-street parking and safe access to public roads, with the number of points of access to arterial roads being limited to the requirements of the County Road Department or WSDOT.

**D. Water Access.** All applications for development activities fronting, near, or proposing to access a river, lake, stream, or other body of water shall include, subject to County review and approval, a Water Access Management Plan. This plan shall be processed in accordance with the procedures for any associated permits, and shall include, but is not limited to:

1. Identification of the proposed water related uses;

2. Proposed measures to stabilize the bank or shorelines and to preserve the natural environment;
  3. The location and type of proposed access;
  4. Proposed parking plans;
  5. Storm water management plans;
  6. Public health and safety facilities;
  7. Lighting, landscaping, and protective buffers;
  8. Proposed measures to comply with the requirements of this Title, the Comprehensive Plan, the Shoreline Master Program, and other applicable local, state, and federal permits and approvals; and
  9. Documentation that the proposed use will not exceed the natural capacity of the water body and that it will not adversely affect environmentally sensitive areas.
- E. Road Standards. At the time of project approval, all land use applications and development activities must conform with the current provisions of the *Pend Oreille County Road Regulations and Standards*, provided that:
1. The County Public Works Director shall be responsible for the administration of the *Road Regulations and Standards*;
  2. Whenever the requirements of the *Road Regulations and Standards* are at variance with the provisions of this Title, the more restrictive or those imposing the higher standard shall prevail; and
  3. Any person may submit a written request to the Public Works Director for a formal interpretation of the provisions of the *Road Regulations or Standards*. The request shall reference the specific Titles, Chapters, or Sections in question and should include relevant background information and supporting documentation.

**xx.26.060 Rural Overlay Zone.**

- A. The purpose of this zone is to identify rural areas that may be suitable for more intensive development and to establish standards to promote compatible land uses and economic development. Upon the completion of sub-area plans or other form of Zoning classification, some or all of the following areas may be designated by a Rural Overlay in accordance with the provisions of the Laws of Washington State:
1. Highway 2 Corridor from the intersection with Highway 211 to the Newport UGA;

2. Highway 2 Corridor from the intersection with Highway 211 to the Spokane County line;
3. Sacheen Lake;
4. Diamond Lake;
5. Highway 211 Corridor from Deer Valley Road to Fertile Valley Road;
6. LeClerc Road Corridor from the Pend Oreille River Bridge at Usk south to the Idaho State line;
7. Highway 20 Corridor from the Cusick UGA south to the intersection with Highway 211;
8. Highway 20 Corridor from Outpost to Blueslide; and
9. Highway 20 and Highway 31 intersection (Tiger).

**xx.26.070 Essential Public Facilities.** The Washington State Growth Management Act directs that no comprehensive plan or development regulation may preclude the siting of essential public facilities. The location and permitting of essential public facilities shall be guided by the policies of the Pend Oreille County Comprehensive Plan and the provisions of this Title, provided that:

- A. Essential public facilities may be permitted as a conditional use provided that:
  1. The County may require that alternative sites be identified and evaluated;
  2. Essential public facilities requiring urban levels of service should be located in urban growth areas; and
  3. Essential public facilities should not be located in or be incompatible with designated Natural Resource Lands.
- B. The County may require an extensive public involvement process to ensure that the public and affected property owners are actively involved throughout the pre-application and application review.
- C. The County may require a multi-jurisdictional review process if the facility serves a regional, Statewide, or national need.
- D. All costs associated with the processing of the required permits and approvals of an essential public facility shall be paid by the Applicant.
- E. An analysis of the facility's impact on County finances shall be undertaken. Mitigation of adverse financial impacts shall be required.



F. In addition to the general criteria for conditional uses, the following criteria shall be used to evaluate applications involving essential public facilities:

1. Whether there is a public need for the facility;
2. The impact of the facility on the surrounding uses and environment;
3. Whether the design of the facility or the operation of the facility can be conditioned, or the impacts otherwise mitigated, to make the facility compatible with the rural character of the county and the environment;
4. Whether a package of incentives can be developed that would make siting the facility within the community more acceptable;
5. Whether the factors that make the facility difficult to site can be modified to increase the range of available sites or to minimize impacts on affected areas and the environment;
6. The extent to which the proposed essential public facility is consistent with the County and local Comprehensive Plans; and
7. Essential public facilities shall comply with any applicable State siting and permitting requirements.

## **CHAPTER XX.26.070 G**

### **Airport (AP) Overlay**

|                       |   |
|-----------------------|---|
| <b>xx.26.070G.010</b> | <b>Intent.</b>                                      |
| <b>xx.26.070G.020</b> | <b>Statutory Authority.</b>                         |
| <b>xx.26.070G.030</b> | <b>Applicability.</b>                               |
| <b>xx.26.070G.040</b> | <b>Description of Airport Runways.</b>              |
| <b>xx.26.070G.050</b> | <b>Description of Overlay Zone.</b>                 |
| <b>xx.26.070G.060</b> | <b>Preexisting Uses.</b>                            |
| <b>xx.26.070G.070</b> | <b>Prohibited Uses within Compatible Use Zones.</b> |
| <b>xx.26.070G.080</b> | <b>Development Standards.</b>                       |

**xx.26.070G.010 Intent.** The intent of the airport (AP) overlay zone district is to protect the viability of the Ione Municipal Airport as a significant resource to the community by encouraging compatible land uses and densities, and reducing hazards that may endanger the lives and property of the public and aviation users. The airport (AP) overlay zone district identifies a series of compatible use zones designed to minimize such hazards.

**xx.26.070G.020 Statutory Authority.** The Joint Airport Zoning Board (“JAZB”) was lawfully created under the Airport Zoning Act, RCW 14.12.030(2), by joint Resolutions passed, respectively, by the Council of the Town of Ione, Washington, and the Pend Oreille County Board of Commissioners (“BOCC”); the Airport Zoning Commission was lawfully created under RCW 14.12.070(2) by JAZB Resolution.

This chapter is adopted pursuant to RCW 36.70.547 and RCW 36.70A.510, as written or hereafter amended, that require a county, city or town to enact development regulations to discourage the siting of incompatible land uses adjacent to general aviation airports.

**xx.26.070G.030 Applicability.** Provisions of this chapter shall apply to all lands, buildings, structures, natural features and uses located within the airport (AP) overlay zone district as depicted in the Airport Airspace Plan drawings included in Chapter 6 of the 2009 Airport Layout Plan (“ALP”) Update for the Ione Municipal Airport, which are incorporated by reference as though fully set forth herein, except that the provisions of this chapter shall not apply to any use that is defined by federal or State regulatory guidance as an aviation use. All uses and activities are at all times subject to the zoning regulations in effect for the underlying zoning district. Where the requirements and restrictions imposed by the airport (AP) overlay zone district conflict with the requirements of the underlying zoning district, the more restrictive requirements shall be applied.

**xx.26.070G.040 Description of Airport Runways.** The Town of Ione, Washington, owns the Ione Municipal Airport (“Robert Houston Davis Airport”), Site 26240.5A, WSDOT Aviation ID S23, a general purpose public airport located in northern Pend Oreille County approximately two miles south of the Town of Ione, which provides a single paved and lighted aircraft runway, designated in Chapter 2 of the ALP as Runway 15/33, which is

4,059 feet long by 45 feet wide, oriented in a northwest - southeast alignment, and which is in operation under day and night visual rules ("VFR"). Runway 15/33 does not currently have instrument approach capabilities.

**xx.26.070G.050 Description of Overlay Zone.** An airport (AP) overlay zone district is hereby created that is comprised of five compatible use zones. The compatible use zones are established to carry out the provisions of this chapter and to promote land use compatibility on lands within, adjacent to and in the vicinity of the Ione Municipal Airport. The five compatible use zones, as determined by the overlay drawings delineated in Chapter 6 of the ALP, consist of the following:

- a. Zone 1: Runway Protection Zone.
- b. Zone 2: Inner-Approach/Departure Zone.
- c. Zone 3: Inner Turning Zone.
- d. Zone 4: Outer Approach/Departure Zone.
- e. Zone 5: Sideline Zone.

**xx.26.070G.060 Preexisting Uses.**

a. Nothing contained herein shall require any change in the construction or alteration of any structure, if the construction or alteration of such was vested by recorded final plat or approved building permit prior to the effective date of this chapter.

b. Destruction. The owner of any preexisting use or structure legally constructed prior to the effective date of this chapter which, as a result of fire, explosion or other casualty is destroyed, shall be allowed to rebuild, reconstruct or rehabilitate the same preexisting use of the same size (gross square feet) on the same parcel, provided the use complies with the following:

- (1) The use complies with the height standards of the underlying zoning district;
- (2) The use is permitted in the underlying zoning district.

c. Expansion of Preexisting Uses. Any preexisting use legally constructed prior to the effective date of this chapter may be expanded, altered or otherwise enlarged if the use meets the following:

- (1) The use is not listed as a prohibited use by other sections of this chapter;
- (2) The use complies with the standards set forth in 26.070G.080;

- (3) The use complies with the height standards of the underlying zoning district;
- (4) The use is permitted in the underlying zoning district.

**xx.26.070G.070 Prohibited Uses within Compatible Use Zones.** Uses listed in this section are prohibited, except for those uses permitted pursuant to 26.070G.060. A use or building is deemed to be within the applicable compatible use zone if any portion of the use or building touches or extends into the applicable zone. The mere application of the zone on a tract of land upon which such use or building is located or proposed to be located shall not prohibit otherwise authorized development on the portion of the tract outside of the zone.

a. Zone 1 - Runway Protection Zone - Prohibited Uses.

- (1) Residential dwellings;
- (2) Storm water wet ponds;
- (3) Active recreational facilities (defined for the purposes of this chapter as leisure activities, usually performed with others, often requiring equipment and taking place at prescribed places, sites or fields. The term “active recreation” includes, but is not limited to, swimming, tennis, basketball and other court games, baseball, football or other field sports, golf and playground activities);
- (4) Schools, preschool/child care facilities, child day care centers, churches, hospitals, senior housing facilities, rest homes and group foster homes;
- (5) Uses that:
  - (a) Create lighting that diminishes the ability of pilots to distinguish between airport lights and non-airport lights;
  - (b) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
  - (c) Create dust, smoke or other emissions that result in impairment of visibility for pilots.

b. Zone 2 - Inner-Approach/Departure Zone - Prohibited Uses.

- (1) Multifamily dwellings;
- (2) Active recreational facilities;
- (3) Schools, preschool/child care facilities, child day care centers, churches, hospitals, senior housing facilities, rest homes and group foster homes;
- (4) Uses that:
  - (a) Create lighting that diminishes the ability of pilots to distinguish between airport lights and non-airport lights;
  - (b) Create electrical interference with navigational signals or radio communication between the airport and aircraft;

- (c) Create dust, smoke or other emissions that result in impairment of visibility for pilots.

c. Zone 3 - Inner Turning Zone - Prohibited Uses.

- (1) Multifamily dwellings;
- (2) Active recreational facilities;
- (3) Schools, preschool/child care facilities, child day care centers, churches, hospitals, senior housing facilities, rest homes and group foster homes;
- (4) Uses that:
  - (a) Create lighting that diminishes the ability of pilots to distinguish between airport lights and non-airport lights;
  - (b) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
  - (c) Create dust, smoke or other emissions that result in impairment of visibility for pilots.

d. Zone 4 - Outer Approach/Departure Zone - Prohibited Uses.

- (1) Multifamily dwellings;
- (2) Schools, preschool/child care facilities, child day care centers, churches, hospitals, senior housing facilities, rest homes and group foster homes;
- (3) Uses that:
  - (a) Create lighting that diminishes the ability of pilots to distinguish between airport lights and non-airport lights;
  - (b) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
  - (c) Create dust, smoke or other emissions that result in impairment of visibility for pilots.

e. Zone 5 - Sideline Zone - Prohibited Uses.

- (1) Multifamily dwellings;
- (2) Schools, preschool/child care facilities, child day care centers, churches, hospitals, senior housing facilities, rest homes and group foster homes;
- (3) Uses that:
  - (a) Create lighting that diminishes the ability of pilots to distinguish between airport lights and non-airport lights;
  - (b) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
  - (c) Create dust, smoke or other emissions that result in impairment of visibility for pilots.

**xx.26.070G.080 Development Standards.** Development standards are necessary to protect the health, safety, welfare and quality of life of the general public, property owners, airport operators, and aviation community, and also to ensure compatible land uses in the vicinity of the airport. Development standards imposed within the airport overlay zone district are in addition to the development standards of the underlying zoning district. Where standards imposed by the airport overlay zone district conflict with the standards of the underlying zoning district, the more restrictive standard shall be applied. Mixed use development that proposes both residential and nonresidential uses must meet applicable standards in both subsections below.

a. Residential standards. Residential land divisions, otherwise permitted by Pend Oreille County land use regulations, located within compatible use zones 3, 4 or 5 shall meet the following standards:

(1) The land division is approved as a clustered development with the residential lots located as far away from the runway centerline as possible.

(2) An open space area is provided on the project site. The purpose of this open space area is to provide sites that are suitable for emergency landing of aircraft. The required minimum size of this open space area is one-half acre or ten percent of the gross site area, whichever is greater. This open space area may be used to fulfill other applicable open space/park requirements for residential developments; provided, that active recreation facilities and above ground storm water ponds and infiltration facilities shall not be located in this open space area. This open space area should be contiguous to other open space areas within or adjacent to the project site, and may include wetlands and their buffers and other critical areas.

b. Nonresidential Standards. All nonresidential developments and uses shall meet the following intensity standards; provided, however, that these standards do not apply to preexisting uses as described in 26.070G.060b. The building code as adopted by Pend Oreille County shall be used for determining the building occupant load factor. For developments proposing two or more uses, the calculation must incorporate the occupant load factor and acreage for the entire development. For development involving land or buildings split by a compatible use zone boundary, only that portion of the land or building(s) located within the compatible use zone shall be subject to the standards below.

(1) Zone 1: twenty people per acre maximum;

(2) Zone 2: sixty people per acre maximum;

(3) Zone 3: one hundred twenty-five people per acre maximum;

(4) Zone 4: one hundred thirty-five people per acre maximum;

(5) Zone 5: one hundred fifty people per acre maximum.

People per acre shall be calculated as follows:

Step 1. Building size (gross square feet) divided by occupant load factor (square feet per occupant as set forth in the building code) equals maximum building occupancy.

Step 2. For retail and office uses only: maximum building occupancy multiplied by 0.50 equals adjusted maximum building occupancy.

Step 3. Maximum building occupancy divided by gross site acreage equals people per acre.

Note: A parking structure shall be excluded from the calculation unless the structure is the primary use of the site.

c. Flammable and Combustible Materials. Flammable and combustible liquids and specifications for fuel storage shall be in accordance with the fire code, as adopted by Pend Oreille County.

d. Noise Insulation. Noise insulation for new structures shall be in accordance with the building code as adopted by Pend Oreille County.

e. Disclosure Statement. A disclosure statement shall be recorded with the Pend Oreille County auditor for subdivisions, short subdivisions, binding site plans and building permits for any new building or expansion of an existing building located within the airport overlay zone district. The disclosure statement shall state that the property is located within the airport overlay zone district in which a variety of aviation activities occur, which may include but are not limited to: noise, vibration, chemicals, odors, hours of operation and other associated activities.

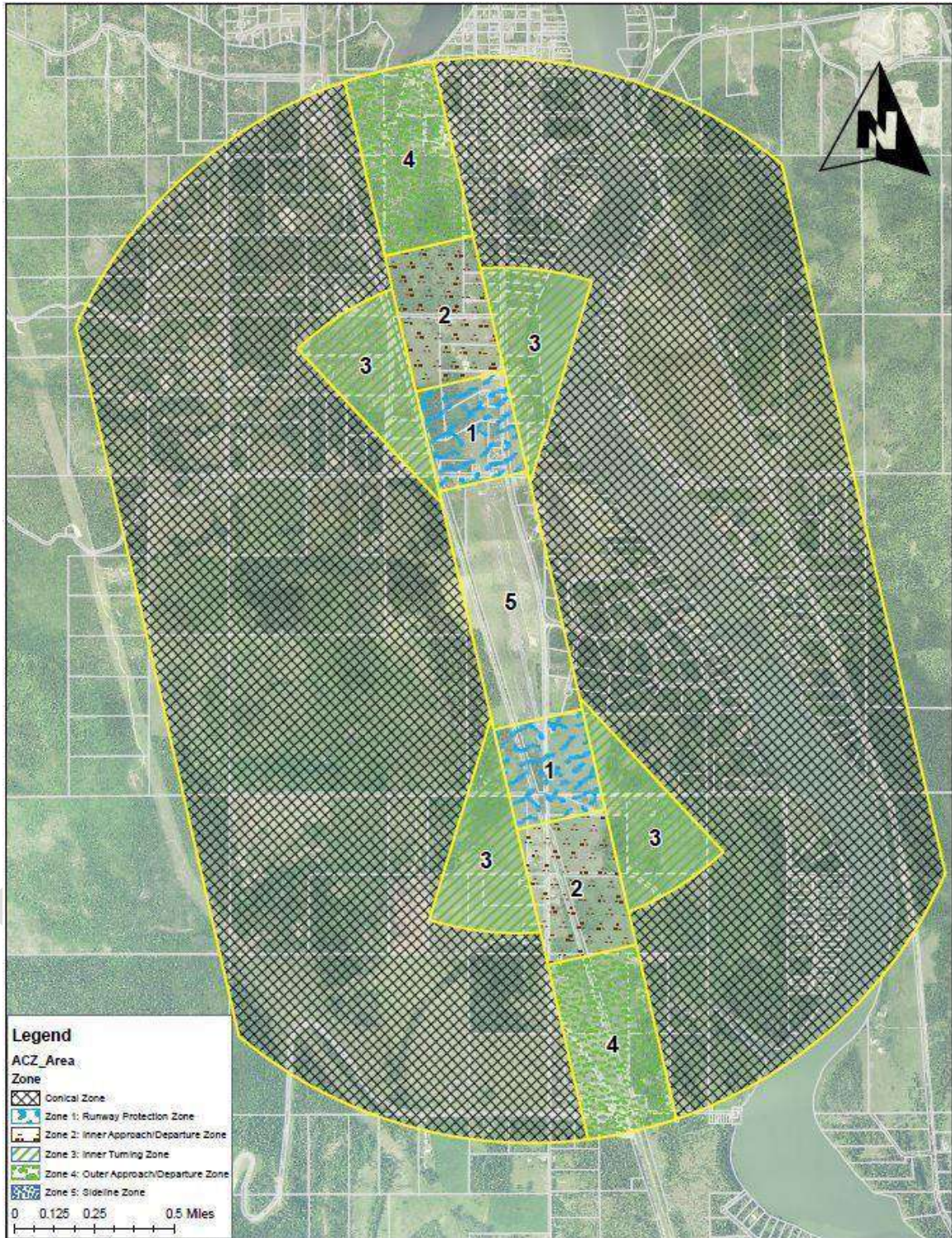
f. Land Divisions.

(1) A new lot proposed to be created by a land division shall not result in an increase in intensity on the newly created lot when the existing lot contains a nonresidential use that exceeds the intensity standards of subsection b of this section.

(2) A nonresidential use that complies with the intensity standards of subsection b of this section may proceed with a land division if the new lot to be created contains adequate gross site acreage such that the use of the new lot also meets the intensity standards of subsection b of this section.

DRAFT





Airport Overlay Zone - Figure 26.070G.050

**CHAPTER XX.30**  
**DEVELOPMENT STANDARDS**

**Sections:**

- xx.30.010      Off-Premise Sign Regulations.**
- xx.30.020      Outdoor Lighting Standards.**
- xx.30.030      Clearing, Grading, and Stormwater Management.**

- A. **Purpose.** The purpose of this section is to protect the general health, safety and welfare of County residents and the traveling public as well as their general aesthetic views within the County.
- B. **Applicability.** Off-premise sign regulations shall apply to any person, firm, corporation or business wanting to construct or erect an off-premise sign within the unincorporated portion of Pend Oreille County. Safety signs are excluded.
- C. **Design Criteria.** All off premise signs larger than 3 square feet shall be designed, constructed, and maintained in accordance with County Building Codes, all applicable ordinances, and the following standards:
- 1      Off premise signs may not be located on private property without the written approval of the property owner.
  2.      No off-premise sign may be located on County property or in the rights-of-way owned by the County or the State of Washington.
  3.      No off-premise sign may be located any closer than 660 feet (or line of site from approach to access road) to any dwelling unit, except the dwelling unit(s) owned by the owner of the site on which the sign is located. This distance may be reduced if all of the property owners within 660' of the proposed off premise sign provide an affidavit that they are knowledgeable about the proposed site and design of the sign and have no objections.
  4.      No off-premise sign shall interfere with public safety.
  5.      No off-premise sign shall be larger than 32 square feet;



6. No off-premise sign shall be taller than 15 feet in height as measured from the top of the sign to the surface of the existing grade adjacent to the sign.
7. Utility Poles and trees shall not be used to display signs.
8. All illuminated signs must meet the standards set forth in Ch. Xx.30.020 (Outdoor Lighting Standards) of the Pend Oreille County Development Regulations.
9. Signs within jurisdictional shoreline areas shall comply with the Shoreline Regulations, Chapter XX.34 of the Pend Oreille County Development Regulations.

**xx.30.020 Outdoor Lighting Standards.**

- A. The purpose of this section is to provide standards for outdoor lighting to help ensure compatibility with neighboring uses, preserve our dark skies, and provide a more pleasant and comfortable nighttime environment while preserving the ability to install effective security lighting.
- B. The following outdoor lighting standards shall apply in all zones:
  1. Lighting fixtures must be a full cut-off design that is shielded, hooded and oriented towards the ground so that direct rays of lighting source(s) are not visible past the property boundaries and do not shine into the night sky;
  2. The use of motion sensing devices is encouraged;
  3. No lighting shall blink, flash or be of unusually high intensity or brightness; and
  4. New or replacement lighting of County or private roads shall be shielded and downward pointing.
- C. The following lighting is exempt from the requirements of this Chapter:
  1. Lighting fixtures installed on residential structures with incandescent lamps, or equivalent. This exemption does not apply to fixtures that light parking areas, driveways, sports areas or outbuildings;
  2. Seasonal decorative lighting fixtures (i.e. Christmas lights);
  3. Lighting fixtures used temporarily for emergency purposes;
  4. Public athletic fields, fairgrounds, and approved temporary special events lighting;

5. Approved navigation, aviation, and traffic safety lighting; and
7. Construction lighting.

**xx.30.030 Clearing, Grading, and Stormwater Management**

- A. The purpose of this section is to provide standards to govern clearing and grading activities in order to protect private property, water quality, environmentally sensitive areas, shorelines, and priority habitat areas. No provision of this section is intended to impede commercial, forestry, or agricultural activities.
- B. The following clearing and grading standards shall apply to development activities in all zones and shall be processed as a Class 1 permit:
  1. All clearing and grading activities shall be conducted so as to minimize potential adverse effects on off-site property, surface water quality, critical areas, and shorelines.
  2. Stormwater runoff from new developments shall not adversely affect off-site property, surface water quality and quantity, and/or critical areas. Provisions shall be made to control the release of surface water runoff from the development both during and following construction.
  3. Clearing and grading, including drainage and erosion control measures, shall conform to the requirements of the Washington State Department of Ecology Stormwater Management Manual for Eastern Washington as adopted by Pend Oreille County , or alternative measures that meet or exceed these standards as determined by the County.
  4. All development shall ensure that soil erosion and sedimentation of drainage-ways will be controlled to prevent damage to adjoining property and downstream drainage channels and receiving waters.
  5. Surface drainage shall not be directed to or discharged onto county roads or ditches within county rights-of-way unless approved by the County Public Works Director or his/her designee.
  6. Drainage controls may be required to regulate velocities of runoff water and to control pollutants, erosion, and sedimentation if the County determines that it is probable that damage could occur downstream to property or water quality of receiving water bodies. Such controls may include landscaping or re-establishing native vegetation, ponds, catch basins, bio-filters, and other control structures or systems.
  7. If required by the County, a drainage analysis shall be prepared. A drainage report, prepared under the direction of and sealed by a professional engineer, shall be submitted by the Applicant for review as part of the permit application. The drainage report shall clearly define the measures proposed to control stormwater runoff so as to

avoid offsite, downstream impacts to adjacent property and receiving water bodies. The County Engineer shall have the authority to approve or reject the adequacy of drainage reports and stormwater control measures, which decision is final and not subject to administrative appeal.

8. The County may condition any approval of a development permit so as to require clearing, grading and drainage controls to meet the requirements of this Section.

C. The Following Clearing and grading activities are exempt from this section:

1. Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II, or III forest practice under RCW 76.09.050 or regulations there under.
2. Any clearing of vegetation that is less than 50% of the area of a lot which is 2 acres or less in size.
3. Any clearing of vegetation that is less than 1 acre on lots larger than 2 acres in size.

## **CHAPTER XX.34 SHORELINE REGULATIONS**

|                  |   |
|------------------|---|
| <b>xx.34.010</b> | <b>Purpose.</b>                                   |
| <b>xx.34.020</b> | <b>Applicability.</b>                             |
| <b>xx.34.030</b> | <b>Shoreline Designations.</b>                    |
| <b>xx.34.040</b> | <b>Shoreline Permits and Authorizations.</b>      |
| <b>xx.34.050</b> | <b>Table of Permitted Shoreline Uses.</b>         |
| <b>xx.34.060</b> | <b>Development Standards.</b>                     |
| <b>xx.34.070</b> | <b>Non-Conforming Uses and Structures.</b>        |
| <b>xx.34.080</b> | <b>Violations and Enforcement.</b>                |
| <b>xx.34.090</b> | <b>Shoreline Mitigation and Restoration Fund.</b> |

**xx.34.010 Purpose.** The purpose of this Chapter is to establish the regulations necessary to implement the updated Pend Oreille County Shoreline Master Program and to comply with the provisions of the Washington State Shoreline Management Act (RCW 90.58 as amended), the Washington State Growth Management Act (RCW 36.70, as amended), and the Washington State Environmental Policy Act, (RCW 43.21C, as amended).

A. It is the further purpose of these regulations to:

1. Recognize and protect property rights consistent with the public interest; and
2. Provide for the management of the shorelines within the County by planning for and fostering all reasonable and appropriate uses of the shorelines;
3. Ensure the development of the shorelines in a manner which, while allowing for the limited reduction of the rights of the public, will promote and enhance the public interests;
4. Provide protection against adverse effects to the public health and welfare while protecting, generally, public rights of navigation;
5. Preserve, to the greatest extent feasible, consistent with the overall best interest of the State and its people, the public's opportunity to enjoy the physical and aesthetic qualities of the Shorelines of the State;
6. Preserve and protect the ecological functions of the shoreline to assure maintenance of water quality, fish and wildlife habitat; and
7. Maintain and enhance the aesthetic characteristics and values of the shoreline.

**xx.34.020 Applicability.**

A. The regulations set forth in this Chapter shall apply to:

1. All bodies of water together with the land underneath them located in Pend Oreille County that meet the jurisdictional criteria for Shorelines of the State, specified in the Washington Administrative Code (RCW 90.58.030) which in general terms includes:
  - b. Segments of rivers and streams with a mean annual flow of 20 cubic feet per second or more; and
  - b. Lakes greater than 20 acres in size.
1. All upland areas, also known as “shorelands,” that extend 200 feet landward in all directions on a horizontal plane from the edge of the ordinary-high-water mark (OHWM) of Shorelines of the State.
2. All wetlands associated with Shorelines of the State.
3. All designated floodways as depicted on the most current FEMA Flood Insurance Rate Maps, as adopted by the County, and contiguous floodplain areas landward 200 feet from such floodways.
4. All required buffers including environmentally sensitive area buffers located within jurisdictional shoreline areas. In these instances, the jurisdictional boundary will move upland to encompass the land necessary for the buffer.

B. Certain Shorelines of the State have been designated by the State as Shorelines of Statewide Significance in accordance with the provisions of RCW 90.58.030 and as a result, may be subject to a higher degree of protection. In Pend Oreille County, these include the Pend Oreille River, Sullivan Creek, Sullivan Lake, and Calispell Lake.

1. Priority consideration shall be given to the following uses of these shorelines, in the following order of preference:
  - a. Recognize and protect the statewide interest over local interest;
  - b. Preserve the natural character of the shoreline;
  - c. Result in the long term over short term benefit;
  - d. Protect the resources and ecology of the shoreline;
  - e. Increase public access to publicly owned areas of the shorelines;

- f. Increase recreational opportunities; and
    - g. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.
  - 2. The review of project specific development proposals proposed for Shorelines of Statewide Significance shall consider incremental and cumulative benefit and impacts and shall not result in the net loss of shoreline ecosystems and eco-system wide processes.
- C. Pend Oreille County shall maintain an Official Shoreline Jurisdiction Map illustrating the shorelines of the state, their associated wetlands, and shorelands that fall under the jurisdiction of this Chapter. In general terms, the bodies of water in Pend Oreille County that meet the jurisdictional criteria of the Washington State Shoreline Management Act include:
- 1. Rivers:
    - a. Little Spokane-East Branch;
    - b. Little Spokane-West Branch;
    - c. Pend Oreille (Shoreline of Statewide Significance);
    - d. Priest-Upper West Branch; and
    - e. South Salmo.
  - 2. Creeks and Streams (greater than 20 cfs mean annual flow):
    - a. Big Muddy;
    - b. Buck;
    - c. Calispell;
    - d. Calispell-North Fork;
    - e. Calispell-South Fork;
    - f. Calispell-Middle Fork;
    - g. Cedar (North County);
    - h. Cusick;
    - i. Davis;
    - j. Goose;
    - k. Granite-North Fork;
    - l. Granite-South Fork;
    - m. Harvey;
    - n. LeClerc;
    - o. LeClerc-East Branch;



- p. LeClerc-West Branch;
- q. McCloud;
- r. Mill;
- s. Moon;
- t. Outlet;
- u. Skookum;
- v. Skookum-South Fork;
- w. Slate;
- x. Spring Heel;
- y. Sullivan (Shoreline of Statewide Significance);
- z. Tacoma; and aa. Tacoma-South Fork.

3. Lakes (greater than 20 acres):

- a. Bead;
- b. Big Meadow/Heather;
- c. Brownie;
- d. Browns (middle county);
- e. Browns (north county);
- f. Calispell (Shoreline of Statewide Significance);
- g. Chain;
- h. Crescent;
- i. Davis;
- j. Diamond;
- k. Fan;
- l. Frater;
- m. Horseshoe;
- n. Ione Mill Pond;
- o. Kings;
- p. Ledbetter;
- q. Lead King-Lower;
- r. Lead King-Upper;
- s. Leo;
- t. Lost;
- u. Mallard Marsh;
- v. Marshall;
- w. Metcalf;
- x. Mountain Meadows;
- y. Nile;
- z. Panhandle;
- aa. Parker;

- bb. Petit Lake;
- cc. Power;
- dd. Sacheen;
- ee. Scotchman;
- ff. Shearer;
- gg. Skookum-North;
- hh. Skookum-South;
- ii. Sullivan (Shoreline of Statewide Significance);
- jj. Sullivan Mill Pond;
- kk. Trask Pond;
- ll. Trout;
- mm. Unnamed Lake;
- nn. Unnamed Slough;
- oo. Unnamed Wetland;
- pp. Wilderness; and
- qq. Yocum.

- D. In the event that any of the boundaries on the Official Shoreline Jurisdiction Map conflict with the criteria of WAC 173-22-040 as amended, the criteria shall control.
- E. The Official Shoreline Jurisdiction Map generally depicts the shoreline areas that are under the jurisdiction of the Shoreline Management Act but the extent of jurisdictional shorelines on an individual lot, parcel or tract is to be determined by field investigations and a survey and is the responsibility of the project applicant/owner. Said investigation/survey shall be included in shoreline permit application submittals to determine the extent of shoreline jurisdiction.
  - 1. As a condition of surrendering the FERC license for the Sullivan Creek Hydroelectric Project the dam that creates Sullivan Mill Pond Lake will be removed. Upon completion of this project, an adjustment will need to be made to the Official Shoreline Map to remove Sullivan Mill Pond Lake and to extend the jurisdictional area of Sullivan Creek.
  - 2. Substantive changes to the Official Shoreline Map must be approved by the Department of Ecology in accordance with the provisions of RCW 90.58.
- F. The County Director of Community Development is authorized to make such administrative interpretations as may be necessary to determine the extent or applicability of the Washington State Shoreline Management Act or the provisions of this Chapter, in accordance with the provisions of RCW 90.58.

1. The Director shall consult with the Department of Ecology, as appropriate, to insure that formal written interpretations are consistent with the purpose and intent of RCW 90.58 and applicable guidelines.

**xx.34.030 Shoreline Designations.**

A. For purposes of administering the Pend Oreille County Shoreline Master Program, all jurisdictional shoreline areas shall receive one of the following shoreline designations:

1. Natural;
2. Rural Conservancy;
3. Rural Residential;
4. Rural Higher Intensity;
5. Urban Conservancy;
6. Urban Residential;
7. Urban Higher Intensity;
8. Aquatic; or
9. Tribal.

B. In the event that a jurisdictional shoreline area has not been designated or has been erroneously designated, the Director of Community Development in accordance with the provisions of state law is authorized to make the appropriate designation.

1. In the event that an amendment to the Shoreline Master Program is required, the area in question shall, as an interim measure, be designated as Urban Conservancy if it is in a designated Urban Growth Area, or Rural Conservancy, if it is not.
2. The County is in the process of reviewing and updating Urban Growth Area boundaries with each city and town. Through this process minor adjustments may be made so that UGA boundaries follow property lines and parcels inadvertently included or excluded from a UGA due to mapping errors are correctly designated. This may result in the minor re-designation of shoreline areas from Rural Conservancy to Urban Conservancy or vice versa, or from Rural Residential to Urban Residential or vice versa. No changes in the underlying designation will be made through this administrative adjustment process.

C. The purpose of each shoreline designation is as follows:

1. Natural: To protect those shoreline areas that are relatively free of human influence or that includes intact or minimally degraded shoreline functions largely intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes.
2. Conservancy: Preserve and enhance high priority ecological functions, conserve designated natural resource lands and designated environmentally sensitive areas, conserve public lands and resources, protect valuable historic and cultural areas, while providing appropriate recreational opportunities. Shorelines within designated Urban Growth Areas shall be designated as Urban Conservancy and shorelines outside of designated Urban Growth Areas shall be designated as Rural Conservancy.
3. Residential: Support residential uses at appropriate densities in accordance with local comprehensive plans, while protecting shoreline natural character, resources and ecology as required by RCW 90.58.020. Provide public access and appropriate types and levels of recreational uses. Shorelines within designated Urban Growth Areas shall be designated as Urban Residential and shorelines outside of designated Urban Growth Areas shall be designated as Rural Residential.
4. Higher Intensity: Provide for high-intensity water oriented commercial, transportation, and industrial uses. Shorelines within designated Urban Growth Areas shall be designated as Urban Higher Intensity and shorelines outside of designated Urban Growth Areas shall be designated as Rural Higher Intensity.
5. Kalispel Tribe: Shorelines located within the boundaries of the Kalispel Indian Reservation or held in trust by the U.S. Government for the Kalispel Tribe or a member of the Tribe, are under the jurisdiction of the Kalispel Tribe and as a result, are not subject to the provisions of the Pend Oreille County Shoreline Master Program.
6. Aquatic: To protect jurisdictional bodies of water and the underlying lands that are waterward of the ordinary high water mark from uses or development activities that interferes with public rights of navigation and to protect the ecological functions.

**xx.34.040 Shoreline Permits and Authorizations.** All proposed development activities and new uses within jurisdictional shorelines, as determined by the County, must conform to the provisions of this Chapter and must be reviewed for consistency with the goals, policies and use regulations of the Pend Oreille County Shoreline Master Program, and may proceed only after receipt of appropriate authorizations, permits, and approvals. Unless specifically exempted by statute, all proposed uses and development occurring

within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act and this Master Program whether a permit is required or not.

A. In addition to such permits and approvals that may be required by State and Federal Agencies, all development activities and uses proposed for jurisdictional shorelines must receive authorization from Pend Oreille County. This may include, but is not limited to the following authorizations or permits:

1. Shoreline Authorization (SA). Shoreline Authorizations shall be processed as a Class 1 Permit and shall be required for proposed uses and development activities as indicated on the Table of Permitted Shoreline Uses and/or for any proposed development activity or use that is exempt from the requirements for a Shoreline Substantial Development Permit or a Shoreline Conditional Use Permit, provided that:

- a. Proposed development activities and uses must comply with all applicable provisions of the Pend Oreille County Shoreline Master Program and all applicable provisions of this Title; and
- b. If any part of the proposed development activity or use requires a shoreline substantial development permit (SSDP), then the entire activity must receive a SSDP.
- c. The following uses are exempt from the requirements for a Shoreline Substantial Development Permit and may be permitted through the issuance of a Shoreline Authorization by Pend Oreille County. Please note that the exemptions to the SSDP shall be narrowly construed. Only those proposed developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the SSDP process and allowed through the issuance of an SA.

(1) Any use, modification, or development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred and eighteen dollars (\$5,718) or an amount subsequently established by the State of Washington, if such use, modification, or development does not materially interfere with the normal public use of the water or shorelines of the state. The total cost or fair market value of the use, modification, or development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

(2) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" means those usual acts to prevent a decline, lapse or cessation from a

lawfully established state comparable to its original condition, including but not limited to its size, shape, configuration, location, and external appearance, within twelve months after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resources or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

- (3) When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high-water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high-water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the State Department of Fish and Wildlife;
- (4) Emergency construction necessary to protect property from damage by the elements. An emergency means an unanticipated and imminent threat to public health, safety or the environment which requires immediate action within a time too short to allow full compliance with these Shoreline Regulations. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter 90.58 RCW or these Shoreline Regulations shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and the entire SMP. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

- (5) Construction and practices normal or necessary to maintain existing farming and irrigation activities, including agricultural service roads and utilities;
- (6) Construction or modification, by or under the authority of the Coast Guard, of navigational aids such as channel markers and anchor buoys;
- (7) Construction on shorelands by an owner, lessee, or contract purchaser of a singlefamily residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency and/or local government with jurisdiction, other than requirements imposed pursuant to chapter 90.58 RCW.

“Single-family residence” means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are normal appurtenance. An “appurtenance” is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high-water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or water ward of the ordinary high water mark. Construction authorized under this exemption shall be located landward of the ordinary high-water mark;

- (8) Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of single family and multiple-family residences. The fair market value of the dock shall not exceed ten thousand dollars, or an amount subsequently established by the State of Washington, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of a completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of these Shoreline Regulations;
- (9) Operation, maintenance or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

- (10) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- (11) Operation and maintenance of any system of dikes, ditches, drains, or other public facilities existing on September 8, 1975, which were created, developed or used primarily as a part of an agricultural drainage or diking system;
- (12) Any project with a certification from the Governor pursuant to Chapter 80.50 RCW;
- (13) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under these Shoreline Regulations, if:
  - (a) The activity does not interfere with the normal public use of the surface waters; and
  - (b) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values; and
  - (c) The activity does not involve the installation of any structure, and upon the completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity; and
  - (d) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the County to ensure that the site will be restored to preexisting conditions; and
  - (e) The activity is not subject to the permit requirements of RCW 90.58.550.
- (14) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW;



- (15) Watershed restoration projects as defined in WAC 173-27-040.
  - (16) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:
    - (a) The project has been approved in writing by the Department of Fish and Wildlife;
    - (b) The project has received Hydraulic Project Approval (HPA) by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW;
    - (c) The County has determined that the project is substantially consistent with these Shoreline Regulations. The County shall make such determination and provide it by letter to the project proponent; and
    - (d) The proposed project complies with the remaining provisions of WAC 173-27-040 as applicable.
  - (17) All other uses, modifications, and developments exempted by WAC 173-27-040.
2. Shoreline Substantial Development Permit (SSDP). Shoreline Substantial Development Permits shall be processed as a Class 2 Permit and shall be required for proposed uses and development activities as indicated on the Table of Permitted Shoreline Uses, provided that:
- a. Proposed development activities and uses must comply with all applicable provisions of the Shoreline Master Program and all applicable provisions of this Title; and
  - b. If the proposed development activity is certified to cost less than \$5,718 as determined by the County, then the proposed activity may be permitted through the issuance of a Shoreline Authorization.
3. Shoreline Conditional Use Permit (SCUP). Shoreline Conditional Use Permits shall be processed as a Class 2 Permit and shall be required for proposed uses and development activities as indicated on the Table of Permitted Shoreline Uses, provided that:
- a. Proposed development activities and uses must comply with all applicable provisions of the Shoreline Master Program and all applicable provisions of this Title; and

- b. Shoreline Condition Use Permits must also be reviewed and approved by the Washington State Department of Ecology in accordance with the provisions of WAC 173-27.
- B. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW [90.58.020](#). In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.
  - 1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
    - a. That the proposed use is consistent with the policies of RCW [90.58.020](#) and the master program;
    - b. That the proposed use will not interfere with the normal public use of public shorelines;
    - c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
    - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
    - e. That the public interest suffers no substantial detrimental effect.
  - 2. In the granting of all conditional use permits, consideration shall be given to the cumulative benefits and impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW [90.58.020](#) and shall not produce substantial adverse effects to the shoreline environment.
  - 3. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

4. Uses which are specifically prohibited by the master program may not be authorized.
- C. The requirements of this Chapter shall be considered as an overlay to the requirements of the applicable local zoning controls and Development Regulations. All proposed uses or development activities must comply with the requirements of this Chapter and all provisions of the underlying zoning district, as well as with the provisions of any applicable local, state, or federal law or requirement, provided that:
1. All proposed development activities or uses must comply with the Goals and Policies of the Pend Oreille County Comprehensive Plan and the County's Shoreline Master Program.
  2. It is the intent of Pend Oreille County to continue to update its regulations protecting environmentally sensitive areas in phases in accordance with the provisions of the Washington State Growth Management Act.
    - a. If a portion of a wetland or floodplain is determined to be associated with a jurisdictional shoreline then the entire wetland or floodplain shall be subject to the provisions of this Chapter.
    - b. In the event of a conflict between the requirements of these Shoreline Regulations and the provisions of other applicable laws or requirements, the provisions that implement the Shoreline Regulations shall apply.
  3. Development activities or uses proposed for areas that fall within the boundaries of designated Project Areas for the Box Canyon or Boundary Dams may also be subject to the provisions of Inter-local Agreements with the Pend Oreille Public Utility District or Seattle City Light as well as subject to review and approval by the Federal Energy Regulatory Commission (FERC) and/or their designated licensee.
  4. All proposed development activities or uses that require approval through the issuance of a Shoreline Substantial Development Permit (SSDP), or Shoreline Conditional Use Permit (SCUP) must include with their application a SEPA Checklist and shall be subject to a SEPA Threshold Determination unless specifically exempted by the County.
  5. This Chapter applies to direct federal activities in accordance with the provisions of WAC 173-27-060.
- D. The County may approve, approve subject to conditions, or disapprove an application for a SA, SSDP, or SCUP. It is the goal of the County to integrate the processing of

required permits or approvals for development activities or uses proposed for jurisdictional shorelines with other permits and approvals that may be required.

1. This may be accomplished in part through the Joint Aquatics Resources Permit Application (JARPA) process adopted by the County.
  2. Prior to submitting a Class 2 or Class 3 applications involving jurisdictional shorelines, prospective Applicants shall make an appointment for and attend a pre-application meeting with County Staff. The purpose of this meeting is to identify and discuss the proposed project or development activities, permit procedures, processing requirements, permit fees, schedules, and information that will be necessary for project review. The Community Development Director may invite representatives from County departments, other affected jurisdictions, agencies, or other entities to attend.
  3. New development activities and uses should be designed and constructed to avoid the net loss of shoreline ecological functions. Applications should highlight proposed measures to avoid, minimize, and/or mitigate measures that may have an adverse environmental impact or an adverse effect on ecological functions. The County may propose revisions that have less impact and/or require on- or off-site mitigation.
  4. Applicants intending to implement programmatic or phased projects are encouraged to include in their application all elements of the project that are known at the time of application.
  5. Revisions to permits must comply with the provisions of WAC 173-27-100.
- E. The County shall maintain a Table of Permitted Shoreline Uses and Activities that highlights the new development activities and uses that may be permitted through the issuance of a Shoreline Authorization, a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, as well as the new activities and uses that may not be permitted.
1. The County Director of Community Development is authorized to make such interpretations as may be necessary to administer this Chapter and to implement the provisions of the updated Pend Oreille County Shoreline Master Program. Such interpretations may be made in consultation with the Washington State Department of Ecology in order to ensure consistency with other interpretations of the provisions of the Shoreline Management Act. Interpretations made by the Director may include, but are not limited to:
    - a. Clarification of Shoreline Designations;

- b. Determinations of Exempt Activities in accordance with the provisions of WAC 17327-040;
  - c. Determinations of the permitting requirements for proposed development activities or uses not listed on the Table of Permitted Uses and Activities;
  - d. Resolution of conflicting code requirements or conflicting provisions of law; and/or
  - e. Determinations of complete applications.
2. Any proposed development activity or use not specifically identified on the Table of Permitted Uses shall only be permitted through the issuance of a Shoreline Conditional Use Permit.
3. The Director shall, when determining allowable uses and resolving use conflicts within jurisdictional shorelines, apply the following preferences and priorities in the order listed below:
- a. Avoid actions that unreasonably restrict private property rights, result in a taking of private property without just compensation, and/or deny the reasonable use of private property.
  - b. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
  - c. Reserve shoreline areas for water-dependent and associated water related uses, provided that mixed-use developments that include and support water-dependent uses may be permitted.
  - d. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
  - e. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
  - f. Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

- [illegible]

- e. The variance requested is the minimum necessary to afford relief;
  - f. The variance will not interfere with the operation of any federally licensed dam; and
  - g. The public interest as determined by the County will suffer no substantial detrimental effect.
3. Variances for development activities and/or uses that will be located waterward of the ordinary high water mark (OHWM), or within any jurisdictional wetland, may be authorized provided the Applicant can demonstrate all of the following:
- a. That the strict application of the bulk, dimensional or performance standards precludes all reasonable use of the property;
  - b. That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
  - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
  - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - e. That the variance requested is the minimum necessary to afford relief;
  - f. That the public interest as determined by the County will suffer no substantial detrimental effect; and
  - g. That the public rights of navigation and use of the shorelines will not be adversely affected.
4. In the granting of all variance permits, consideration shall be given to the cumulative benefits and impact of additional requests for like actions in the area, when applicable. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of the Shoreline Management Act and the Goals and Policies of this Shoreline Master Program and shall not cause substantial adverse effects to the shoreline environment.

5. Variances from the use regulations of the Shoreline Master Program are prohibited.

H. Appeals. Class 1 and Class 2 decisions made by the County to implement the provisions of this Chapter may be appealed in accordance with the provisions of this Title. Further appeals of decisions made to implement the County Shoreline Master Program shall be filed in accordance with the procedures contained within the Laws of Washington State.

**xx.34.050 Table of Permitted Shoreline Uses and Activities.**

A. Legend. The Table of Permitted Shoreline Uses and Activities contains the following acronyms to highlight the uses and activities that may be permitted and the permit or approval that is required. Activities permitted through a Shoreline Authorization, Shoreline Substantial Development Permit, or Shoreline Conditional Use Permit must comply with all applicable provisions of the Shoreline Master Program and all applicable development regulations. Additional permits and approvals may be required.

**X:** The proposed development activity or use is prohibited within jurisdictional shoreline areas.

**SA:** Development activity or use that may be permitted through the issuance of a written Shoreline Authorization by the County. This includes activities that are exempt from the requirements for a Shoreline Substantial Development Permit (SSDP) in accordance with the provisions of State Law, provided that if any part of a proposed activity or use requires a SSDP, then the entire use or activity must receive a SSDP.

**SSDP:** May be permitted through the issuance of a Shoreline Substantial Development Permit by the County and the Washington State Department of Ecology. Development activities certified to cost less than the State financial thresholds (\$5,718/\$10,000) may be permitted through a Shoreline Authorization from the County (SA) based on a finding such activity will not materially interfere with normal public use of the water or Shorelines of the State.

**SCUP:** Development activity or use that may be permitted through the issuance of a Shoreline Conditional Use Permit. Shoreline Conditional Use Permits must be approved by the County and the Washington State Department of Ecology. Development activities certified to cost less than the State financial threshold (\$5,718/\$10,000) may be permitted through a Shoreline Authorization from the County (SA) based on a finding such activity will not materially interfere with normal public use of the water or Shorelines of the State.

**B. Table of Permitted Uses and Footnotes.**



|   | Residential |       | Conservancy |       | Higher Intensity |       | Natural | Aquatic  |
|---|-------------|-------|-------------|-------|------------------|-------|---------|----------|
|   | Rural       | Urban | Rural       | Urban | Rural            | Urban |         |          |
| Activity/Use (1)                                    |             | (2)   |             | (2)   |                  | (2)   |         | (3)      |
| Advertising Signs and Billboards: Off-site          | X           | X     | X           | X     | X                | X     | X       | X        |
| Advertising Signs and Billboards: On-site (19)      | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | X        |
| Agricultural, Farming, and Ranching Activities (24) | SA          | SA    | SA          | SA    | SA               | SA    | X       | X        |
| Agricultural Buildings and Structures               | SA          | SA    | SA          | SA    | SA               | SA    | X       | X        |
| Agricultural Drainage/Diking System (25)            | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | X        |
| Aquaculture (30)                                    | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | SCUP    | SCUP     |
| Bank Stabilization Measures (4)                     | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SCUP    | SSDP     |
| Bed and Breakfast Inn                               | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | X        |
| Boat Ramp-Private                                   | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | SCUP    | SCUP     |
| Boat Ramp-Public/Community                          | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP     |
| Boating Facility (12)                               | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP     |
| Bulkheads (New)                                     | X           | X     | X           | X     | X                | X     | X       | X        |
| Camping Facilities (27)                             | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | X        |
| Camp: Non-Profit                                    | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | SCUP    | X        |
| Clearing and Grading (5)                            | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | X        |
| Commercial Development: Non-water Dependent (6)     | X           | X     | X           | X     | SSDP             | SSDP  | X       | X        |
| Commercial Development: Water Dependent             | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | SSDP (6) |
|   |             |       |             |       |                  |       |         |          |
|   |             |       |             |       |                  |       |         |          |
|   |             |       |             |       |                  |       |         |          |

***X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.***

|                                      |      |      |      |      |      |      |      |      |
|--------------------------------------|------|------|------|------|------|------|------|------|
| Commercial Timber Harvesting/Related | SSDP | SSDP | SSDP | SSDP | SSDP | SSDP | SCUP | SCUP |
|--------------------------------------|------|------|------|------|------|------|------|------|

|  | Residential |       | Conservancy |       | Higher Intensity |       | Natural | Aquatic |
|--|-------------|-------|-------------|-------|------------------|-------|---------|---------|
|  | Rural       | Urban | Rural       | Urban | Rural            | Urban |         |         |
| Activity/Use (1)   |             | (2)   |             | (2)   |                  | (2)   |         | (3)     |
|  |             |       |             |       |                  |       |         |         |
| Activities (7)   |             |       |             |       |                  |       |         |         |
| Conforming Structures: Normal maintenance or repair (31)   | SA          | SA    | SA          | SA    | SA               | SA    | SA      | SA      |
| Cultural and Historic Resource Protection                  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP    |
| Dock: Commercial Facility (8)                              | SCUP        | SCUP  | X           | X     | SCUP             | SCUP  | X       | SCUP    |
| Dock: Community (8)  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | SSDP    |
| Dock: Private Noncommercial                                | SA          | SA    | SA          | SA    | SA               | SA    | X       | SA      |
| Dock: Public Facility (8)                                  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP    |
| Dredging (9)   | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | SCUP    | SCUP    |
| Essential Public Facilities                                | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SCUP    | SCUP    |
| Fill (10)  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SCUP    |
| Conservation, Restoration, and/or Habitat Improvement (11) | SA          | SA    | SA          | SA    | SA               | SA    | SA      | SA      |
| Flood Hazard Reduction Measures (23)                       | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP    |
| Historical Building Adaptive Use (32)                      | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | SCUP    | SCUP    |
| Home Business  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | X       |
| Hotel/Motel  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | X       | X       |
| House Boats (Single Family Residence)                      | X           | X     | X           | X     | X                | X     | X       | X       |
| Hydroelectric Facility                                     | X           | X     | X           | X     | SCUP             | SCUP  | SCUP    | SCUP    |
| Industrial Development: Non-water Dependent (6)            | X           | X     | X           | X     | SSDP             | SSDP  | X       | X       |

|  |      |      |      |      |      |      |   |   |
|--|------|------|------|------|------|------|---|---|
|  |      |      |      |      |      |      |   |   |
|  |      |      |      |      |      |      |   |   |
|  |      |      |      |      |      |      |   |   |
| <b><i>X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.</i></b> |      |      |      |      |      |      |   |   |
| Industrial Development:<br>Water Dependent   | SSDP | SSDP | SSDP | SSDP | SSDP | SSDP | X | X |

|  | Residential |       | Conservancy |       | Higher Intensity |       | Natural | Aquatic |
|--|-------------|-------|-------------|-------|------------------|-------|---------|---------|
|  | Rural       | Urban | Rural       | Urban | Rural            | Urban |         |         |
| Activity/Use (1)   |             | (2)   |             | (2)   |                  | (2)   |         | (3)     |
|  |             |       |             |       |                  |       |         |         |
| Irrigation System Facilities                                       | SA          | SA    | SA          | SA    | SA               | SA    | X       | X       |
| Livestock Grazing  | SA          | SA    | SA          | SA    | SA               | SA    | X       | X       |
| Mining: Commercial (13)  | SCUP        | X     | SCUP        | X     | SCUP             | SCUP  | X       | X       |
| Multi-Family Residences  | SSDP        | SSDP  | SSDP        | SSDP  | X                | SSDP  | X       | X       |
| Navigational Aids and moorage buoys (21)                           | SA          | SA    | SA          | SA    | SA               | SA    | SA      | SA      |
| Non-classified Uses (14)   | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | SCUP    | SCUP    |
| Non- Conforming Structures: Maintenance, Repair, or Expansion (15) | SA          | SA    | SA          | SA    | SA               | SA    | SA      | SA      |
| Noxious Weed/Nuisance Plant Management (16)                        | SA          | SA    | SA          | SA    | SA               | SA    | SA      | SA      |
| Parking Lots (17)  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SCUP    | X       |
| Public Access Facilities   | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP    |
| Recreation: Non-water Dependent (6)(26)                            | SCUP        | SCUP  | SCUP        | SCUP  | SCUP             | SCUP  | X       | SCUP    |
| Recreation: Water Dependent (26) (27)                              | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP    |
| Resorts: Master Planned  | SSDP        | SSDP  | SCUP        | SCUP  | SSDP             | SSDP  | X       | X       |
| Resorts: Other   | SSDP        | SSDP  | X           | X     | SSDP             | SSDP  | X       | X       |
| Roads and Bridges  | SSDP        | SSDP  | SSDP        | SSDP  | SSDP             | SSDP  | SSDP    | SSDP    |
| RV Parks   | SSDP        | SSDP  | X           | X     | SSDP             | SSDP  | X       | X       |
| RV Resorts   | SSDP        | SSDP  | X           | X     | SSDP             | SSDP  | X       | X       |

|  |                    |              |                    |              |                         |              |                |             |
|--|--------------------|--------------|--------------------|--------------|-------------------------|--------------|----------------|-------------|
| Scientific, historical, cultural, educational research uses, and lowintensity water oriented recreation uses.  | SSDP               | SSDP         | SSDP               | SSDP         | SSDP                    | SSDP         | SSDP (22)      | SSDP        |
|  |                    |              |                    |              |                         |              |                |             |
|  |                    |              |                    |              |                         |              |                |             |
|  |                    |              |                    |              |                         |              |                |             |
| <b><i>X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.</i></b> |                    |              |                    |              |                         |              |                |             |
| Sewage Treatment Facilities  | SSDP               | SSDP         | SCUP               | SCUP         | SSDP                    | SSDP         | X              | X           |
| Signs (19)   | SSDP               | SSDP         | SSDP               | SSDP         | SSDP                    | SSDP         | SSDP           | SSDP        |
| Single Family  | SA                 | SA           | SA                 | SA           | SA                      | SA           | SCUP           | X           |
|  | <b>Residential</b> |              | <b>Conservancy</b> |              | <b>Higher Intensity</b> |              | <b>Natural</b> | <b>Aqua</b> |
|  | <b>Rural</b>       | <b>Urban</b> | <b>Rural</b>       | <b>Urban</b> | <b>Rural</b>            | <b>Urban</b> |                |             |
| <b>Activity/Use (1)</b>  |                    | <b>(2)</b>   |                    | <b>(2)</b>   |                         | <b>(2)</b>   |                | <b>(3)</b>  |
|  |                    |              |                    |              |                         |              |                |             |
| Residence/Accessory Structures (18)(29)  |                    |              |                    |              |                         |              |                |             |
| Solid Waste Facilities   | X                  | X            | X                  | X            | X                       | X            | X              | X           |
| Telecommunication Facilities   | SSDP               | SSDP         | SSDP               | SSDP         | SSDP                    | SSDP         | X              | X           |
| Tram/Funicular   | SSDP               | SSDP         | SSDP               | SSDP         | SSDP                    | SSDP         | SCUP           | SCU         |
| Utilities (28)   | SSDP               | SSDP         | SSDP               | SSDP         | SSDP                    | SSDP         | SCUP           | SCU         |
| Vacation Rentals (20)  | SSDP               | SSDP         | SSDP               | SSDP         | SSDP                    | SSDP         | X              | X           |
| Vegetation Management (16)   | SA                 | SA           | SA                 | SA           | SA                      | SA           | SA             | SA          |
| Watershed Restoration Projects (11)  | SA                 | SA           | SA                 | SA           | SA                      | SA           | SA             | SA          |
|  |                    |              |                    |              |                         |              |                |             |
| <b><i>X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.</i></b> |                    |              |                    |              |                         |              |                |             |

**Footnotes:**

- (1) Please consult with the Kalispel Tribe regarding uses and activities on lands under the jurisdiction of the Tribe.

- (2) Only if permitted by local zoning codes. Must also conform to the development regulations of the Town and County as appropriate.
- (3) Any uses or activities that may be permitted within shoreline areas designated as Aquatic must be authorized by the underlying property owner and/or all agencies with jurisdiction as well as comply with all provisions of the applicable local development regulations.
- (4) Please see xx. 34.060 L Shoreline Stabilization Measures for more details. Bank stabilization measures that do not meet the thresholds for a Shoreline Substantial Development Permit, as determined by the County, may be permitted through a Shoreline Authorization.
  - (a) Structural bank stabilization measures should only be permitted to protect a legally existing structure, or use that is in danger of loss or substantial damage and no other alternatives are available. New developments in these shoreline designations should be designed and located to preclude the need for such work.
  - (b) Biotechnical erosion control measures may be permitted in the Natural Shoreline Environment.
- (5) No clearing and grading activities shall occur in jurisdictional shorelines unless specifically authorized through the issuance of a Clearing and Grading Permit by the County. Please see xx.34.060 J Clearing and Grading for more details.
  - (a) Clearing and grading activities in the Natural Shoreline Environment may only be permitted in conjunction with an approved development activity.
- (6) May be permitted only if there is a finding that there are unique and unusual circumstances that warrant location within a jurisdictional shoreline and that no net loss of ecological function will occur.
- (7) All commercial timber harvesting must conform to Washington State Department of Natural Resource standards and the provisions of Pend Oreille County Development Regulations XX.40. Also see xx.34.060 R Timber Harvesting for more details.
  - (a) Commercial timber harvesting within Shorelines of Statewide Significance may only be approved through the issuance of a SCUP in accordance with the provisions of the Shoreline Management Act, RCW 90.58.
- (8) See xx.34.060 F Docks for more details. Docks certified to cost less than the State financial threshold (\$10,000) may be permitted through a Shoreline Authorization from the County (SA) based on a finding such activity will not materially interfere with normal public use of the water or Shorelines of the State.
- (9) Dredging may only be permitted in accordance with Washington State Department of Natural Resource and with U.S. Army Corps of Engineer Standards and /or FERC license or associated settlement conditions.
- (10) May be permitted only in conjunction with an approved flood proofing activity or bank stabilization project or with the conditions of approval of a federally-licensed dam.
  - (a) Fill waterward of the ordinary high water mark may only be allowed when necessary to support the uses identified in WAC 173-26-231(3)(c).
- (11) Must be designated as a conservation, restoration, and/or habitat improvement activity by the County, the Federal Energy Regulatory Commission, the Washington State Department of Fish and Wildlife, or other state or federal natural resource agency in accordance with the provisions of WAC 173-27-040(2)o.
- (12) Please see Chapter xx.34.060 G Boating Facilities for more details.
- (13) All mining activities must comply with Washington State Department of Natural Resource standards. Please see Chapter xx.34.060 N Mining for more details.

- (14) May be permitted through an administrative code interpretation if found to be consistent with other uses identified in this Table. Other uses may be permitted through the issuance of a SCUP in conformance with the standards applicable in the Conservancy designation or through an amendment to the SMP.
- (15) Please see Chapter xx.34.070 Non-conforming Uses and Structures for more details.
- (16) Please see Chapter xx. 34.060 H Vegetation Management and I Aquatic Plant Management for more details.
- (17) May be permitted as an accessory use only outside of required buffers.
- (18) Single family residences shall include associated on-site utilities such as sanitary sewers, septic-systems, wells and domestic water hook-ups, propane, electrical service, telephone lines, internet, and/or cable TV.
  - (a) For purposes of this Chapter, "appurtenant structures" means garages, sheds, and other legally established accessory structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.
  - (b) Septic drainfields must comply with all requirements of the Tri-County Health District and should not be located in required buffers unless no other feasible alternative exists as determined by the Health District.
- (19) Please see Chapter xx.34.060 O Signs for more details.
- (20) All vacation rentals must also comply with the provisions of Chapter XX.70.
  - (a) The construction of a new vacation rental must be approved through the issuance of a SSDP.
  - (b) The conversion of an existing single family residence to a vacation rental may be approved through the issuance of a SA.
- (21) Must comply with all applicable local, state, and federal regulations, including but not limited to U.S. Coast Guard rules.
- (22) May be permitted subject to conditions and may be denied based on a finding that the proposed use would degrade ecological functions or the natural character of the shoreline.
- (23) New structural flood hazard reduction measures may be permitted in jurisdictional shorelines only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with the provisions of the Washington Administrative Code.
  - (a) New structural public flood hazard measures such as dikes and levees, may be required to dedicate and improve public access pathways unless such improvements would cause unavoidable health and safety hazards, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflicts with the proposed use, and/or a cost that is disproportionate and unreasonable to the total long-term cost of the development.
- (24) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities and may be permitted only through the issuance of a SSDP.
- (25) Development activities associated with the operation and maintenance of any system of dikes, ditches, drains, or other public facilities existing on September 8, 1975, which were created,

developed or used primarily as a part of an agricultural drainage or diking system may be permitted through a shoreline authorization.

- (26) Includes commercial and public recreation facilities.
- (27) Only public camping and recreation facilities may be permitted in Natural Shoreline Areas, subject to a determination by the County that the proposed project is a low-impact design that will result in no net loss of ecological function.
- (28) Please see Chapter xx.34.060 W Utilities for more details.
- (29) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet current standards for setbacks, buffers, height or density shall be considered conforming structures.
  - (a) The redevelopment, expansion, or replacement of a residential structure may be permitted if it is otherwise consistent with the provisions of the County Development Regulations and this Master Program, including the requirement for no net loss of shoreline ecological functions.
- (30) Sponsors of proposed new aquaculture activities are encouraged to consult with the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources before submitting an application. In addition to permits from the County, an HPA from WDFW may be required, as well as other permits and approvals from agencies with jurisdiction.
- (31) Legally established residential and appurtenant structures in place on the date of adoption of this updated Shoreline Master Program shall be considered legal conforming uses and structures for purposes of implementing these shoreline regulations.
- (32) Buildings must be identified on the State Historic Registry.

**xx.34.060 Development Standards.** The following standards apply to all development activities and uses proposed for jurisdictional shoreline areas unless otherwise noted:

- A. **Shoreline Buffers.** In an effort to avoid or minimize potential adverse impacts on the ecological functions performed in shorelines, buffers may be established so that new development activities are setback from the ordinary high water mark. In general terms, the size of a buffer for a given site is best determined on a case-by-case basis taking into account the topography and condition of the shoreline area, the nature of the ecological functions, the intensity of the proposed new development activity, and the reasonably foreseeable cumulative effects. While a customized approach to setting buffers may be preferable, not all situations may warrant or support what is typically a more costly and time consuming approach. As a result, a series of standard buffers are provided for property owners seeking a less costly and more stream-lined approach for the review and approval of their development plans.

Sponsors of proposed new development activities may choose to incorporate the following standard buffers into their plans, or may, with the assistance of a qualified professional such as a wetlands biologist, submit plans for customized buffers for review and approval, in accordance with the following provisions:

- 1. **Standard Shoreline Buffers.**

- |   |                     |
|---|---------------------|
| a. Natural Shoreline Designation                | 200 feet from OHWM. |
| b. Rural Conservancy Shoreline Designation      | 150 feet from OHWM. |
| c. Rural Residential Shoreline Designation      | 100 feet from OHWM. |
| d. Rural Higher Intensity Shoreline Designation | 50 feet from OHWM.  |
| e. Urban Conservancy Shoreline Designation      | 100 feet from OHWM. |
| f. Urban Residential Shoreline Designation      | 50 feet from OHWM.  |
| g. Urban Higher Intensity Shoreline Designation | 50 feet from OHWM.  |

2. Customized Buffers.

- a. Buffer Averaging. The County may permit a proposal to reduce the standard buffer on a portion of a site if the buffer is increased on another portion of the site, so that the total buffer area has not been reduced, based on a written finding that that there will be no net loss of ecological function, provided that:
- (1) Averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property;
  - (2) Supporting documentation may be required from a qualified professional;
  - (3) The site has not applied buffer width reduction or modification by any prior action administered by Pend Oreille County. Sites which utilize this provision are not eligible for any future buffer width modifications, under any provision of this Program, except as part of an approved variance.
  - (4) Additional conditions of approval and/or mitigation measures including but not limited to such as requirements to increase native vegetation, limit native vegetation removal, limit the use of fertilizers and pesticides, further protect steep slopes, and/or the payment of a mitigation fee may be required; and
  - (5) At no point along the shoreline may the buffer be reduced by more than 35% of the standard buffer for the applicable designation, provided that:



- (a) On lots less than 300 feet in depth which are encumbered by a public transportation corridor, the buffer may be reduced through averaging up to 50% of the applicable standard buffer: and
  - (b) All structures are located as far landward as practical, and not closer than 50 feet from the ordinary high water mark.
- b. In-fill Development. In an effort to facilitate in-fill development in approved plats, the County may approve requests to reduce the standard shoreline buffers for a new single-family residence and appurtenant structures in accordance with the following criteria:
  - (1) Where there are single family residences within 150 feet on either side of the proposed residence in an existing plat, the buffer shall be determined as the greater of either a common line drawn between the nearest corners of the nearest residence, or a common line calculated by the average of the nearest residences' existing buffer.
  - (2) Where there is only a residence located within 150 feet on one side of the proposed residence in an existing plat, the standard buffer shall be determined as the greater of either a common line drawn between nearest corner of the nearest residence and the nearest point of the standard buffer on the adjacent vacant lot, or a common line calculated by the average of the nearest residence's setback and the standard buffer for the adjacent vacant lot.
- c. New single family residences may be permitted without a variance on lots whose dimensions do not allow a residence to be constructed outside of the standard shoreline buffer, provided that:
  - (1) The depth of the lot is equal to or less than the standard shoreline buffer;
  - (2) The lot was in existence at the time the this updated Shoreline Master Program went into effect;
  - (3) Appropriate measures are taken to avoid, minimize, or mitigate potential adverse impacts to the shoreline;
  - (4) The residence is located in the least environmentally damaging location relative to the shoreline and any critical areas;
  - (5) All structures are located as far landward as practical and not closer than 50 feet from the ordinary high water mark; and

- (6) The proposed development conforms to all other requirements of the Shoreline Master Program and the Shoreline Management Act
- d. Variance. Standards shoreline buffers may also be reduced through the issuance of a variance approved by the County and the Department of Ecology, provided that:
  - (1) The strict application of the bulk, dimensional or performance standards precludes or significantly interferes with the reasonable use of the property;
  - (2) The need for the variance is the result unique conditions, natural features, and/or the requirements of this master program, and is not the result of intentional actions of the property owner to create the need for the variance;
  - (3) The proposed activity is compatible with other uses in the area ;
  - (4) The variance will not constitute a grant of special privilege;
  - (5) The variance requested is the minimum necessary to afford relief; and
  - (6) The public interest will suffer no substantial detrimental effect.
  - (7) In the granting of all variance permits, consideration shall be given to the cumulative benefits and impact of additional requests for like actions in the area, when applicable. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of the Shoreline Management Act and the Goals and Policies of this Shoreline Master Program and shall not cause substantial adverse effects to the shoreline environment.
  - (8) Variances from the use regulations of the Shoreline Master Program are prohibited.
3. Property owners, prospective new property owners, and the sponsors of new development activities are strongly encouraged to schedule a pre-application meeting with Department of Community Development staff to discuss their development goals before applications are prepared to discuss options for complying with these buffer requirements.
4. All buffers shall be measured from the Ordinary High Water Mark (OHWM);

5. Approved uses, structures, and development activities may not encroach upon required buffers unless specifically authorized in this Chapter.
  6. Clearing, grading, and removal of native vegetation, may be permitted within the required shoreline buffers if specifically authorized in these regulations.
    - a. Property owners are encouraged to consult with the County regarding appropriate standards for the maintenance of native vegetation.
  7. Existing structures or uses within required shoreline buffers may not be expanded unless specifically authorized in this Chapter.
  8. Approved reductions in standard buffers shall not be in effect until a notice to title documenting the conditions of approval has been recorded in a format prescribed by the County.
  9. Property owners are encouraged to review Washington State Department of Natural Resources guidelines for defensible space around buildings before finalizing site plans. The Department recommends that there be at least 30 feet fire-safe defensible space around all homes.
- B. General Provisions. All development activities and uses within jurisdictional shoreline areas shall be subject to the following general standards applicable in all shoreline designations.
1. All development activities and uses shall be located, designed, constructed and managed to achieve no net loss of ecological functions.
    - a. Hydrological connections between water bodies, water courses, and associated wetlands shall be protected.
  2. All development activities and uses shall be subject to the following mitigation sequencing:
    - a. Avoidance of potential adverse impacts by not taking a certain action or parts of an action;
    - b. Minimizing potential impacts by limiting the degree or magnitude of a proposed action through the use of appropriate technology or by taking affirmative steps to reduce potential impacts;
    - c. Rectifying the potential impact by repairing, rehabilitating, or restoring the affected environment;

- d. Compensating for the potential impact by replacing, enhancing, or providing substitute resources or environments; and
    - e. Monitoring the direct impacts, mitigation, and compensation projects and taking appropriate corrective measures for adequate multi-year periods.
  - 3. Within the jurisdictional shorelines, property water ward of the OHWM shall not be counted in calculating lot area for purposes of minimum lot area requirements of single family zones or density standards of other zones.
  - 4. New buildings or structures built within jurisdictional shorelines shall not exceed 35 feet in height above the average grade unless a finding is made that the proposed height is in the public interest through the issuance of a variance.
  - 5. All discharges of effluent or drainage from developments in shoreline areas shall meet current requirements of federal, state, and local health laws and regulations on water quality and pollution prevention.
- C. Environmentally Sensitive Areas. The provisions of Chapter xx.36 Environmentally Sensitive Areas of the Pend Oreille County Development Regulations adopted by the Board of County Commissioners in conjunction with this updated Shoreline Master Program or as subsequently amended, shall apply to all jurisdictional shoreline areas.
- 1. In the event of a conflict between the provisions of Chapter XX. 34 Shoreline Regulations and Chapter xx.36 Environmentally Sensitive Areas the provisions of Chapter xx. 34 Shoreline Regulations shall apply.
- D. Creation of new lots. The creation of five or more new lots that are created through a subdivision, Master Planned Resort, RV Park, RV Resort, or Binding Site Plan from a parcel that contains jurisdictional shorelines or required buffers shall meet the following standards:
- 1. Land shall be dedicated to provide appropriate public access to shoreline areas, provided that:
    - a. Such access shall not be required if demonstrated to be incompatible due to reasons of safety, security, or impact to the shoreline;
    - b. Required access should be designed and improved in accordance with the provisions of state and federal law and local development regulations, including but not limited to the provisions of XX.26.050 D Water Access; and

- c. The provision of required public access should not result in a net loss of ecological functions.
- E. Docks. In addition to Pend Oreille County, several state and federal agencies including, but not limited to the U. S. Army Corps of Engineers, the Washington Department of Natural Resources, the Washington Department of Ecology, and the Washington Department of Fish and Wildlife, have standards and requirements that may affect the design and placement of docks. It is the intent of the County to coordinate and integrate the requirements of these agencies and to provide a stream-lined permitting process for docks that do not contribute to the net loss of ecological functions. In general terms, the smaller the dock, and the more it is designed to comply with the letter and intent of the various regulations that apply, the greater the likelihood it can be approved in a timely manner. **In all instances, prospective applicants are encouraged to consult with County Staff prior to submitting an application for a new dock.**
  - 1. The seasonal removal and reinstallation of the existing docks, as well as the routine repair or maintenance activities to the existing docks, may be initiated without a Shoreline Authorization from the County provided that:
    - a. There are no unresolved code violations involving the dock;
    - b. There is no change in the size or footprint of the deck;
    - c. The proposed activities do not trigger the need for a permit or approval from the U.S. Army Corps of Engineers, the Washington Department of Natural Resources, the Washington Department of Fish and Wildlife, the U. S. Department of Fish and Wildlife, or the Federal Energy Regulatory Commission;
    - d. The use of treated wood is prohibited. No new treated wood may be installed on existing docks. When existing treated wood or pilings need to be replaced, they should be replaced with alternative materials, such as untreated wood, metal, concrete, or plastic;
    - e. The use of tires on docks, above or below water, is prohibited (e.g., floatation, fenders, decking, etc). Tires may not be installed on existing docks. When repairs are performed to portions of the dock that include tires, they must be replaced with inert or encapsulated materials such as plastic or encased foam;
    - f. Un-encapsulated floatation material is prohibited. No un-encapsulated floatation materials may be installed on existing docks. New floatation material must be encapsulated within a shell that prevents breakup or loss of the floatation material into the water, and is not readily subject to damage by ultraviolet radiation or abrasion. When repairs are performed to portions of the

dock that includes unencapsulated floatation materials, it must be replaced with inert or encapsulated materials such as plastic or encased foam;

- g. Only low voltage solar or battery powered lighting may be permitted. Other forms of new permanent lighting including hard wired fixtures and high voltage lighting shall not be permitted on new or existing docks. Property owners are strongly encouraged to remove or replace existing lighting fixtures. When making repairs to or replacing existing lighting fixtures, the effects of artificial night lighting must be minimized by focusing the light on the dock surface, and using shades that avoid illumination of the surrounding environment; and
- h. If anchors or supporting lines/chains need to be replaced, soil screw anchors should be used whenever feasible.

(1) When replacing an anchor(s), the old anchor(s) should be removed.

- 2. New docks, the replacement of an existing dock, or the repair of an existing dock that does not meet the criteria of 1 above may be permitted through the issuance of a Shoreline Authorization from the County, which involves a Class 1 Administrative Review, provided that all of the following criteria and conditions are met:

- a. The dock must be for the private, non-commercial, recreational use of the occupant of the upland, residential property;
- b. The dock must be designed for the use of the upland single family residence, or in the case of a shared dock the adjoining single family residences, or no more than four multi-family units on the same lot;
- c. The proposed new dock must cost less than \$10,000 including the value of materials, equipment, and labor;
- d. The proposed action meets the Construction Specifications and Conservation Measures identified in Regional General Permit 7 (RGP 7) issued by the U.S. Army Corps of Engineers (USACE);

(1) It is important to note that the Construction Specifications and Conservation Measures shall apply to all docks in the County unless otherwise noted, and is not limited to docks on bodies of water under the jurisdiction of the USACE.

(2) The requirements to use grating on the surface area of piers, ramps and floats applies to the Pend Oreille River and may apply to other bodies of

water such as lakes. Please contact the Department of Natural Resources to determine if grating is required for overwater structures on state-owned aquatic lands.

- (3) Please note that in accordance with the provisions of RGP 7 that the USACE may not permit structures or shading objects on docks such as, but not limited to: storage boxes, benches, planters, sheds, tables, outdoor furniture, living quarters, fueling facilities, carpeting, or covered boat moorage. Please contact the USACE or the County Department of Community Development for more details.
  - (4) The County shall, upon the expiration of Regional General Permit 7, continue to apply the provisions of the expired Regional General Permit until such time that a new Regional General Permit is adopted and this Shoreline Master Program amended, as appropriate.
- e. The proposed action meets all of the standards of the Washington Department of Natural Resources, including but not limited to the provisions of WAC 332-30-144 that may be in effect at the time;
  - (1) Mechanical boat lifts may be permitted upon execution of a lease agreement with the Department of Natural Resources, as applicable.
- f. The proposed action meets all of the standards of the Washington Department of Fish and Wildlife, and has received a Hydraulics Project Approval (HPA), if applicable;
  - (1) Please note that WDFW, DNR, and/or the USACE may not permit covers over boat docks. Please contact WDFW, DNR, the USACE, or the County Department of Community Development for more details.
  - (2) Please note that WDFW may allow the installation and operation of a portable boat hoist in a lake without a HPA under certain circumstances. Please see WAC 220-114-040 and/or contact WDFW or the Department of Community Development for more details.
- g. Only low voltage solar or battery powered lighting may be permitted. Other forms of new permanent lighting including hard wired fixtures and high voltage lighting shall not be permitted on new or existing docks. Property owners are strongly encouraged to remove or replace existing lighting fixtures. When making repairs to or replacing existing lighting fixtures, the effects of artificial night lighting must be minimized by focusing the light on the dock

surface, and using shades that avoid illumination of the surrounding environment, the night sky;

- h. The use of treated wood is prohibited. Alternative materials, such as untreated wood, metal, concrete, or plastic must be used;
  - i. The use of tires is prohibited above or below water (e.g., floatation, fenders, decking, etc);
  - j. New floatation material must be encapsulated within a shell that prevents breakup or loss of the floatation material into the water, and is not readily subject to damage by ultraviolet radiation or abrasion;
  - k. The dock shall be secured with pilings or soil anchor screws whenever feasible;
  - l. Shared docks are strongly encouraged and preferred over new individual docks whenever feasible;
  - m. Property owners are encouraged to consult with their neighbors regarding the location and design of new docks; and
  - n. The dock is located to avoid degradation of habitat and to avoid the potential for the net loss of ecological function. Applications for new docks should highlight proposed measures to avoid, minimize, and/or mitigate measures that may have an adverse environmental impact or an adverse effect on ecological functions. The County may require revisions that have less impact and/or require on- or off-site mitigation.
3. New docks, the replacement of an existing dock, or the repair of an existing dock that does not meet the criteria of 1 or 2 above, may only be permitted through the issuance of a Shoreline Substantial Development Permit or a Shoreline Conditional Use Permit, as determined by the County, which involves a Class 2 Review. This may require the preparation of more extensive application materials and a longer review process, provided that all of the following criteria and conditions are met:
- a. The proposed activity must comply with the Construction Specifications and Conservation Measures contained in Regional General Permit 7 issued by the USACE, or as subsequently extended by the County.
- (1) Docks proposed for the Pend Oreille River that do not meet these Construction Specifications and Conservation Measures may be permitted only if an individual or nationwide permit has been obtained from the USACE, which may involve the preparation of a biological assessment and



an individual consultation in accordance with the requirements of the Endangered Species Act;

- (2) It is important to note that the Construction Specifications and Conservation Measures shall apply to all docks in the County unless otherwise noted, and is not limited to docks on bodies of water under the jurisdiction of the USACE.
  - (3) The requirements to use grating on the surface area of piers, ramps and floats applies to the Pend Oreille River as required by the USACE and may apply to other bodies of water such as lakes. . Please contact the Department of Natural Resources to determine if grating is required for overwater structures on stateowned aquatic lands.
  - (4) Please note that in accordance with the provisions of RGP 7 that the USACE may not permit structures or shading objects on decks such as, but not limited to: storage boxes, benches, planters, sheds, tables, outdoor furniture, living quarters, fueling facilities, carpeting, or covered boat moorage. Please contact the USACE or the County Department of Community Development for more details.
  - (5) The County shall, upon the expiration of Regional General Permit 7, continue to apply the provisions of the expired Regional General Permit until such time that a new Regional General Permit is adopted and this Shoreline Master Program is amended, as appropriate.
- b. The proposed activity must comply with all standards of the Washington Department of Natural Resources including, but not limited to the provisions of WAC 332-30-144 in effect at the time;
- (1) Mechanical boat lifts may be permitted upon execution of a lease agreement with the Department of Natural Resources, as applicable.
- c. The proposed activity must comply with all standards of the Washington Department of Fish and Wildlife (WDFW) and receive a Hydraulics Project Approval (HPA), if applicable;
- (1) Please note that WDFW, DNR, and/or the USACE may not permit covers over boat docks. Please contact WDFW, DNR, the USACE, or the County Department of Community Development for more details.
  - (2) Please note that WDFW may allow the installation and operation of a portable boat hoist in a lake without a HPA under certain circumstances. Please see WAC

220-114-040 and/or contact WDFW or the Department of Community Development for more details.

- d. New docks should be designed and constructed to avoid the net loss of ecological function. Applications for new docks should highlight proposed measures to avoid, minimize, and/or mitigate measures that may have an adverse environmental impact or an adverse effect on ecological functions. The County may propose revisions that have less impact and/or require on- or off-site mitigation;
  - e. Only low voltage solar or battery powered lighting may be permitted. Other forms of new permanent lighting including hard wired fixtures and high voltage lighting shall not be permitted on new or existing docks. Property owners are strongly encouraged to remove or replace existing lighting fixtures. When making repairs to or replacing existing lighting fixtures, the effects of artificial night lighting must be minimized by focusing the light on the dock surface, and using shades that avoid illumination of the surrounding environment; and
  - f. The use of treated wood is prohibited. Alternative materials, such as untreated wood, metal, concrete, or plastic must be used;
  - g. The use of tires is prohibited above or below water (e.g., floatation, fenders, decking, etc);
  - h. New floatation material must be encapsulated within a shell that prevents breakup or loss of the floatation material into the water, and is not readily subject to damage by ultraviolet radiation or abrasion;
  - i. The dock shall be secured with pilings or soil anchor screws whenever feasible;
  - j. Shared docks are strongly encouraged and preferred over new individual docks whenever feasible; and
  - k. Property owners are encouraged to consult with their neighbors regarding the location and design of new docks;
4. Additional requirements. In addition to the requirements of 1, 2, and 3 above, the following provisions shall also apply:
- a. Applications for the construction of a new dock may include a proposal to construct a landing pad landward of the ordinary high water mark, provided that:

- (1) The size of the landing pad shall be the minimum necessary to secure the ramp and/or dock and to provide safe access;
  - (2) The cost of the landing pad including labor, equipment, and materials does not exceed the \$5,718 threshold in order to be processed under a Shoreline Authorization. If it does, then a Shoreline Substantial Development Permit shall be required.
  - (3) The landing pad shall not result in the net loss of ecological function. This may require special conditions of approval or mitigating measures.
  - (4) Only low voltage solar or battery powered lighting may be permitted. Other forms of permanent lighting including hard wired fixtures and high voltage lighting shall not be permitted;
  - (5) The use of treated wood is prohibited waterward of the ordinary high water mark. Alternative materials, such as untreated wood, metal, concrete, or plastic must be used; and
  - (6) The landing pad may include temporary unattached storage areas, canopies, benches, planters, tables, or outdoor furniture. Permanent buildings, structures, or facilities may not be constructed on landing pads and Fueling facilities, or carpeting shall not be permitted.
- b. In the event of conflicting standards between agencies, the standards that provide the greatest protection to ecological functions of shorelines, as determined by the County, shall apply;
  - c. Proposed subdivisions that will create two or more new residential lots should be served by a shared or community dock(s) when feasible;
  - d. Docks on the Pend Oreille River may require approval of the Pend Oreille PUD or Seattle City Light or the Federal Energy Regulatory Commission in accordance with the provisions of the most recent licenses granted by the Federal Energy Regulatory Commission;
  - e. Docks that do not meet the criteria for exempt, private, recreational docks contained in RCW 79.105.403 may require a lease from the Washington Department of Natural Resources;
  - f. Certain docks or related facilities may also require a land use permit(s) or approvals or the preparation of a SEPA checklist, as determined by the County.

Project Sponsors are encouraged to consult with County Staff early in the process to determine if land use permits and approvals may be required; and

- g. All docks shall have permanent markings identifying the name, address, and telephone number of the owner.

F. Boating Facilities. New boating facilities including marinas may be permitted in accordance with local land use regulations, provided that:

1. The proposed site does not require dredging;
2. The proposed site is not located near the confluence of tributaries to the Pend Oreille River;
3. The proposed site is not located in close proximity to priority habitat areas;
4. The proposed development will not result in the net loss of ecological function;
5. The facility is designed in a manner that minimizes the potential for adverse shoreline impacts in the future, as well as hazards to navigation, and water oriented activities such as fishing, swimming, and the reasonable use of nearby properties;
6. The proposed facility complies with the rules and regulations of all other agencies with jurisdiction and the provisions of this Chapter;
7. Boating facilities on the Pend Oreille River may be subject to review and approval by the Pend Oreille PUD, Seattle City Light, and/or FERC;
8. Boating facilities may require a lease from the Washington Department of Natural Resources; and
9. Boating facilities may require a land use permit(s) or approvals and will involve the preparation of a SEPA checklist.
10. New marinas shall provide public access in accordance with WAC 173-26-221 (4).

G. Vegetation Management. The removal of native vegetation from jurisdictional shoreline areas shall be minimized and the planting of native species of vegetation shall be encouraged. Property owners shall minimize the use and presence of non-native species in jurisdictional shoreline areas and avoid the use of fertilizers and pesticides that can adversely affect water quality, provided that:

1. Species of plants that occur or historically occurred within Pend Oreille County before European contact based on the best available science and historic documentation (i.e. native vegetation) may not be removed from required shoreline buffers without a permit or authorization from the County.
2. Property owners are encouraged to consult with natural resource agencies regarding opportunities to plant non-invasive native vegetation in shoreline areas.
3. Property owners may propose the removal of native vegetation in order to provide access to shoreline areas, provided that:
  - a. The amount of vegetation proposed for removal is the minimum amount necessary in order to provide safe and reasonable access;
  - b. The access is designed to minimize adverse environmental effects and to avoid the net loss of ecological function;
  - c. Applications for vegetation management shall highlight proposed measures to avoid, minimize, and/or mitigate measures that may have an adverse environmental impact or an adverse effect on ecological functions. The County may propose revisions that have less impact and/or require on- or off-site mitigation; and
  - d. Property owners are encouraged to consult with local homeowners associations and resource agencies to learn more about low-impact property maintenance practices.

H. Aquatic Plant Management. In addition to Pend Oreille County, several state and federal agencies, including but not limited to the U. S. Army Corps of Engineers, the Washington Department of Ecology, and the Washington Department of Natural Resources, have standards and requirements that may affect the management of aquatic plants. The County shall coordinate and integrate the requirements of these agencies and seek to provide a stream-lined permitting process and to avoid the net loss of ecological functions. The removal of aquatic noxious weeds and nuisance plants may be permitted in accordance with the following provisions:

1. Herbicides may only be applied by licensed commercial applicators in accordance with state and local requirements and the conditions of NPDES permits in effect at the time of the proposed application.
2. Private property owners may remove or manage aquatic weeds in front of their property by hand (manual removal) provided that they have reviewed, have on-site, and comply with the pamphlet issued by the Washington Department of Fish and Wildlife, *Aquatic Plants and Fish publication #APF-11-97* and have received

guidance on how to identify plants appropriate for removal and appropriate removal techniques.

- a. Property owners are encouraged to notify the County of the location of bottom barriers.
3. The mechanical removal of aquatic noxious weeds and nuisance plants by commercial operators may be permitted through a site specific shoreline authorization and/or through an annual programmatic permit.
4. All other means of the removal of aquatic noxious weeds or nuisance plants may only be permitted through the issuance of required permit(s) and approvals provided that the proposed actions must comply with the standards of the Washington Department of Fish and Wildlife, the US Army Corps of Engineers, and the Washington Department of Natural Resources, and the provisions of this Chapter.

I. Clearing and Grading. Applications for Clearing and Grading permits shall include:

1. A proposed Temporary Erosion Control Plan prepared in accordance with the provisions of the Eastern Washington Storm Water Manual prepared by the Washington Department of Ecology as adopted by Pend Oreille County;
2. A proposed site plan prepared in accordance with County standards specifying the total disturbance footprint to include all primary and appurtenant structures, access roads and drives, permanent parking on-site wastewater treatment systems and all of their components including repair (replacement) sites for drainfields, electrical, natural gas, municipal sewage and any other utility lines, and location of temporary storage and staging of construction materials and equipment including vehicular use and parking;
3. A proposed Revegetation Plan that features no net loss of ecological function; and
4. Clearing and grading activities proposed for or near Environmentally Sensitive Areas must comply with all provisions of County Development Regulations including XX.36 Environmentally Sensitive Areas. Additional state and federal permits may be required. Applicants are strongly encouraged to contact the County Community Development Department to discuss their conceptual plans before detailed plans and application materials are prepared.

J. Impervious Surfaces. No new impervious surfaces may be approved or constructed in required shoreline buffers unless specifically authorized in this Chapter.

1. New impervious surfaces may be permitted within jurisdictional shoreline areas outside of the required buffers provided that a Stormwater Management Plan has been submitted for County review and approval in accordance with the provisions of the Eastern Washington Storm Water Manual prepared by the Washington State Department of Ecology as adopted by Pend Oreille County.
  2. Impervious surfaces that may be required to comply with the provisions of applicable federal, state, or local laws, such as the Americans with Disabilities Act, may be permitted.
- K. Shoreline Stabilization Measures. Proposed development activities or uses intended to stabilize banks and prevent erosion and/or protect recreation sites may only be permitted by the County based on a finding that the proposal will not result in a net loss of ecological function, provided that:
1. Biotechnical bank protection measures, which may include vegetation enhancement, upland drainage controls, or planting anchor trees, are preferred. “Hard” solutions such as the placement of rip rap may only be permitted upon a finding that no other less environmentally intrusive option is feasible.
    - a. New bulkheads are prohibited.
    - b. The use of gabions is prohibited.
  2. Project Sponsors are encouraged to design bank stabilization measures proposed for the Pend Oreille River in compliance with the standards of the Regional General Permit issued to the U.S. Army Corps of Engineers in effect at the time that the bank stabilization application has been submitted and deemed by the County to be complete. Bank stabilization measures that do not meet these standards may be permitted only if an individual or nationwide permit has been obtained from the U.S. Army Corps of Engineers which may include the preparation of a biological assessment and an individual consultation in accordance with the requirements of the Endangered Species Act.
    - a. Project Sponsors are also encouraged to consult the publication of the Washington State Department of Fish and Wildlife, prepared in consultation with several natural resource agencies, *Integrated Stream Bank Protection Guidelines*.
  3. New bank stabilization measures and the enlargement of existing structures should be designed and constructed to avoid the net loss of ecological function. Applications for bank stabilization projects should highlight proposed measures to avoid, minimize, and/or mitigate measures that may have an adverse environmental

impact or an adverse affect on ecological functions. The County may require revisions that have less impact and/or require on- or off-site mitigation.

- a. The County may require that the Project Sponsor prepare, at no cost to the County, a geotechnical report to address the necessity for shoreline stabilization by estimating time frames and rates of erosion and to report on the urgency associated with the specific situation.
  - b. The size of proposed stabilization measures shall be limited to the minimum necessary.
  - c. Publicly financed or subsidized shoreline erosion control measures should not restrict public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.
  - d. Adverse impacts to sediment conveyance systems should be avoided or if that is not possible, avoided.
4. New development that would require shoreline stabilization which would cause significant impacts to adjacent or down-current properties and shoreline areas should not be approved.
  5. An existing shoreline stabilization structure may be replaced with a similar structure provided that:
    - a. There is a demonstrated need to protect the principal use or structure from erosion;
    - b. The replacement structure is designed, located, sized, and constructed to assure no net loss of ecological functions; and
    - c. The replacement wall or bulkhead shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992 and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- L. Flood Hazard Reduction. All proposed uses and development activities must comply with the provisions of the County Development Regulations governing Frequently Flooded Areas and the following provisions:
1. All proposed actions must result in no net loss of ecological functions.



2. Where feasible, preference shall be given to nonstructural flood hazard reduction measures over structural measures.
3. Proposed flood hazard reduction measures should be based on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent the Shoreline Management Act and the provisions of WAC 173-26.
4. No new development activities or uses shall be permitted in areas designated by the County as having a High Probability of Channel Migration, provided that:
  - a. All development and uses including emergency actions proposed within the Channel Migration Zone shall be reviewed by a licensed geologist or licensed professional engineer with a demonstrated minimum of five years of field experience in fluvial geomorphology and evaluating channel response. This review shall be documented in a report prepared by the consulting professional. The review and report shall include a detailed assessment of the reach's channel migration zone and potential for erosion or flooding, and shall include a determination regarding the use or development's potential to result in interference with the long term natural channel migration processes of streams and rivers in Pend Oreille County, affect adjacent and across stream properties or infrastructure, and will not need future structural flood and erosion protection.
5. Removal of gravel for flood control purposes may be approved only if biological and geomorphological studies demonstrate a long-term benefit to flood hazard reduction, no net loss of ecological functions, and that extraction is part of a comprehensive flood management solution.

#### M. Mining.

1. Commercial mining activities will be permitted in shoreline areas in accordance with the following provisions:
  - a. No mining activities will occur in shoreline buffers or waterward of the ordinary high water mark;
  - b. Sub-surface mining may be permitted below jurisdictional shorelines in accordance with the provisions of federal, state, and local laws and no-mining areas designated in association with federally licensed dams, provided that the proposed activity will not result in a net loss of ecological functions;

- c. Dredging within the Aquatic Shoreline Environment may only be permitted in accordance with state regulations, and may not adversely affect fish or animal habitat and may not result in a net loss of ecological function;
    - d. Mining should not be permitted in channel migration zones of streams and rivers in Pend Oreille County; and
    - e. Applications for new mining activities should highlight proposed measures to avoid, minimize, and/or mitigate measures that may have an adverse environmental impact or an adverse effect on ecological functions. The County may propose revisions that have less impact and/or require on- or off-site mitigation.
  - 2. Personal mining may be allowed in accordance with the provisions of the publication Washington State publication, *Gold and Fish Rules for Mineral Prospecting and Placer Mining*, 2<sup>nd</sup> edition, April 2009, or as subsequently amended.
- N. Signs may be permitted within jurisdictional shorelines only when the following standards can be met:
- 1. New signs must comply with local development regulations;
  - 2. Signs located within designated scenic by-ways must comply with applicable federal, state, and local requirements; and
  - 3. Permitted signs in the Residential, Conservancy, and Higher Intensity Shoreline Environments shall be limited to include:
    - a. Interpretive, historical, informational, or directional signs approved and maintained by public agencies, as well as public signage necessary to protect the public health and safety;
    - b. On-site advertising in accordance with local regulations;
    - c. Approved real estate signs; and
    - d. Signs that constitute constitutionally protected forms of free speech as determined by the Pend Oreille County Prosecuting Attorney.
  - 4. Permitted signs in the Natural and Aquatic Shoreline Environments shall be limited to include:

- a. Interpretive, historical, informational, or directional signs approved and maintained by public agencies, as well as public signage necessary to protect the public health and safety;
- O. Public Access Facilities. New public access facilities may be approved on public or private land in accordance with the following standards:
- 1. The proposed access may not result in a net loss of ecological function;
  - 2. The proposed use must comply with the rules and regulations of all agencies with jurisdiction and the provisions of this Chapter;
  - 3. New public accesses should:
    - a. Be directed to areas that comply with local zoning, shoreline regulations, and development regulations;
    - b. Avoid impacts to fish spawning areas and riparian vegetation;
    - c. Feature low impact and avoid hardening of the access site and adjacent shoreline;
    - d. Should showcase appropriate shoreline restoration techniques and should include education about the values of the river's resources; and
    - e. Should be based on a long-term access management strategy for developing and restoring access to the site.
  - (1) Applications must include a site plan and supporting narrative to document the design and location of the site including adequate provisions for site access, parking, restrooms, boat launching, picnic, and camping facilities if applicable.
  - f. A management plan shall also be submitted that identifies proposed measures for maintaining the facility in a safe and sanitary condition, controlling the hours of use, regulating activities, and minimizing adverse impacts on neighboring properties.
  - 4. Shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, shall include public access measures as a part of each development project, unless such is shown to be incompatible due to reasons of safety, security, or impact to the shoreline

environment. This includes new publically funded dikes or levees, as described in WAC 173-26-221(3)(C)(4).

P. Archaeological and Cultural Resources. Upon discovery of any artifacts or evidence of potential archaeological or cultural resources within a jurisdictional shoreline area all authorized construction activities or uses shall be suspended pending authorization to proceed from the County, the Kalispel Tribe, and the Washington State Office of Archaeology and Historic Preservation, as appropriate.

1. Permits issued in areas documented to contain archaeological resources shall require a site inspection or evaluation by a qualified archaeologist in consultation with the Kalispel Tribe.

Q. Commercial Harvest of Timber.

1. All activities associated with the commercial harvest of timber must strictly comply with the provisions of the Washington State Forest Practices Act (RCW 76.09) and all applicable provisions of the Washington Administrative Code.
2. All activities must comply with the rules and regulations of other agencies with jurisdiction including the provisions of this Chapter.
3. Activities associated with the proposed conversion of timber lands to non-forestry uses shall not be considered a forest practice and must strictly comply with all provisions of this Chapter.

R. Agriculture.

1. Existing agricultural uses and activities may be exempt from the provisions of this Chapter in accordance with the provisions of RCW 90.58.065.
  - a. Property owners are strongly encouraged to adopt voluntary measures to minimize adverse environmental consequences associated with farming activities, particularly measures to limit the access of livestock to jurisdictional shorelines and associated wetlands.
2. New farming activities must comply with the provisions of this Chapter and the required Setbacks and Buffers.
  - a. Fencing must be installed in accordance with applicable standards in order to prevent livestock from entering jurisdictional wetlands and associated buffers.

S. Higher Intensity Uses. Uses proposed for shorelines designated as Urban or Rural Higher Intensity shall:

1. Not cause a net loss of shoreline ecological function.
2. Include visual and/or public access where feasible and appropriate.
3. Include sign control measures, appropriate development siting, screening and architectural standards, and maintenance of natural buffers to achieve aesthetic objectives.

T. Commercial Development. Commercial uses and development activities in jurisdictional shoreline areas must comply with all provisions of the local comprehensive plan and development regulations and all provisions of this Chapter including but not limited to:

1. The proposed use or development activity shall not result in a net loss of ecological functions or adversely impact navigation, recreation, and public access.
2. Public access and ecological restoration measures should be considered as conditions of approval unless demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access in accordance with the provisions of WAC 173-26-221(4) should be required.
3. Unless specifically authorized, non-water-dependent commercial uses may only be approved when they are auxiliary to and/or necessary in support of water-dependent uses.

U. Industrial Development. Industrial uses and development activities in jurisdictional shoreline areas must comply with all provisions of the local comprehensive plan and development regulations and all provisions of this Chapter including but not limited to:

1. The proposed use or development activity shall not result in a net loss of ecological functions and should not have significant adverse impacts to other shoreline resources and values that cannot be reasonably mitigated.
2. Public access and ecological restoration measures should be considered as conditions of approval unless demonstrated to interfere with industrial uses or create a hazard to life or property.
3. The reuse of former industrial sites is encouraged.

## V. Utilities.

1. When installing new utilities, shoreline areas should be avoided to the maximum extent possible;
  - a. Whenever these facilities must be placed in a shoreline area, the location should be chosen to avoid the obstruction of scenic views and damage to shoreline riparian and upland native vegetation, and marked to minimize potential adverse impacts to waterfowl.
2. Whenever feasible, these facilities should be placed underground or designed to do minimal damage to the aesthetic qualities of the shoreline area.
  - a. Installation should be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible.
3. The utility installation should not increase or decrease the natural rate of shore migration or channel migration.
4. The utility route should avoid paralleling the stream or following a down-valley course near the channel;
5. The utilities should cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
  - a. Crossings should be contained within the footprint of an existing road or utility crossing where possible.
6. Upon completion of installations and maintenance projects on shorelines, banks should be restored to a condition that meets or exceeds pre-project conditions, replanted with native species and provided maintenance care until the newly planted vegetation is established.

### **xx.34.070 Non-conforming Uses and Structures.**

- A. Uses, or structures that were legally established or constructed in accordance with the provisions of the Shoreline Management Act and its implementing regulations and programs in effect at the time, but that do not conform to the provisions of this Chapter, shall be considered legal non-conforming uses or structures, except as provided below. Uses or structures that were illegally constructed or established in accordance with laws, regulations, and programs in effect at that time, and that do not conform to the

provisions of this Chapter shall be considered illegal non-conforming uses or structures.

1. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet current standards for setbacks, buffers, height or density shall be considered conforming structures.
  - a. The redevelopment, expansion, or replacement of a residential structure may be permitted if it is otherwise consistent with the provisions of the County Development Regulations and this Master Program, including the requirement for no net loss of shoreline ecological functions.
2. All new uses and structures must comply with the provisions of this Chapter. No new non-conforming uses or structures may be permitted.
3. Existing non-conforming uses or structures included in a development proposal or application covered by the provisions of this Chapter, must be brought into compliance unless otherwise provided.
4. Non-residential structures that were legally established and are used for a conforming use but which are non-conforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of non-conformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.
5. Non-residential uses that were legally established and are non-conforming with regard to the use regulations of the master program may continue as legal non-conforming uses.
6. A structure which is being or has been used for a non-conforming use may be used for a different non-conforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
  - a. No reasonable alternative conforming use is practical;
  - b. The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.
  - c. In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the

master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

7. A non-conforming structure which is moved any distance must be brought into conformance with the provisions of the Shoreline Management Act and the Shoreline Master Program in effect at the time.
8. If a non-conforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the non-conforming rights shall expire and any subsequent use shall be conforming.
9. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Shoreline Management Act or in compliance with Shoreline Master Program in effect at the time, but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of this Shoreline Master Program.

**xx.34.080 Violations and Enforcement.** Violations of, or failure to comply with the provisions of this Chapter are declared to be unlawful and subject to the provisions of XX.92 Violations and Enforcement.

**xx.34.090 Shoreline Mitigation and Restoration Fund.** It is the goal of Pend Oreille County to experience no net loss of shoreline ecological functions. This can be accomplished by the avoidance, minimization, and mitigation of potential project specific adverse impacts as well as through the restoration of previously degraded shoreline areas. As a result, the County shall establish and maintain a dedicated fund known as the Shoreline Mitigation and Restoration Fund.

- A. This fund shall be established by Ordinance and shall include administrative procedures to guide the acceptance of voluntary payments in lieu of on-and off-site mitigation measures to achieve no net loss of ecological function, and/or to support shoreline restoration projects.
  1. The Board of County Commissioners may also allocate to this account revenues derived from fines, gifts, grants, or public revenues in accordance with the provisions of state and federal laws.
- B. These funds shall be used to finance on- and off-site compensatory mitigating measures, as well as shoreline restoration projects, provided that:
  1. The funds must be expended in the same water resource basin as the proposed project for which they were collected; and



2. Priority consideration shall be given to the use of these funds to leverage additional funding from federal, state, local, and non-profit sources.

The County may contract with a public agency or local non-profit organization to administer this fund and/or to administer project specific activities.

DRAFT

## **CHAPTER XX.36 ENVIRONMENTALLY SENSITIVE AREAS**

|                  |  |
|------------------|--|
| <b>xx.36.010</b> | <b>Purpose.</b>                                      |
| <b>xx.36.020</b> | <b>Applicability.</b>                                |
| <b>xx.36.030</b> | <b>General Provisions.</b>                           |
| <b>xx.36.040</b> | <b>Wetlands.</b>                                     |
| <b>xx.36.050</b> | <b>Geologically Hazardous Areas.</b>                 |
| <b>xx.36.060</b> | <b>Fish and Wildlife Habitat Conservation Areas.</b> |
| <b>xx.36.070</b> | <b>Frequently Flooded Areas.</b>                     |
| <b>xx.36.080</b> | <b>Critical Aquifer Recharge Areas.</b>              |

### *xx.36.010 Purpose*

The purpose of this Chapter is to identify and protect environmentally sensitive areas, also known as critical areas, and to supplement the County's development requirements by providing additional land use controls without violating the constitutional rights of property owners.

A. This Chapter is intended to meet the requirements of:

1. The Washington State Growth Management Act, RCW 36.70A; and
2. The Washington State Shoreline Management Act, RCW 90.58.

B. In the event of conflicts between this Chapter and the Chapter implementing the County's Shoreline Master Program, the provisions of the updated Shoreline Regulations shall prevail.

### *xx.36.020 Applicability*

All development activities including new uses of land and buildings and changes of use must comply with all provisions of this Chapter and this Title as well as all applicable provisions of local, state, and federal law.

A. Environmentally sensitive areas, or critical areas, subject to the provisions of this Chapter shall consist of:

1. Wetlands;
2. Geologically Hazardous Areas;
3. Fish and Wildlife Habitat Conservation Areas;
4. Frequently Flooded Areas; and

## 5. Critical Aquifer Recharge Areas.

- B. It is important to note that the shoreline areas within 200' of the ordinary high water mark of many of the rivers, streams, and lakes in the County and their associated wetlands are under the jurisdiction of the Washington State Shoreline Management Act and in addition to the requirements of this Chapter, proposed development activities involving these areas must also comply with the provisions of the Pend Oreille County Shoreline Master Program and the implementing regulations in Chapter xx.34.
- C. It shall be the responsibility of Property Owners and the sponsors of proposed development activities to know the location of environmentally sensitive areas and jurisdictional shoreline areas on and near their property and to comply with the provisions of this Chapter at all times.
  - 1. Property Owners and Project Sponsors that may be proposing development activities in proximity of environmentally sensitive areas are strongly encouraged to schedule an appointment with County Staff to discuss the applicability of these regulations prior to preparing and submitting land use applications to the County.
  - 2. The County shall maintain public maps and other resources that may assist in the identification of environmentally sensitive areas. However, it shall be the responsibility of the Property Owner or Project Sponsor to identify and map all environmentally sensitive areas on their property.
    - a. The presence of environmentally sensitive areas or associated buffers on a parcel triggers the requirements of this Chapter, regardless of whether or not an environmentally sensitive area or buffer is depicted on an official map.

### *xx.36.030 General Provisions*

- A. Mitigation Sequencing. Property Owners or Project Sponsors shall, when designing proposed new development activities that may potentially affect environmentally sensitive areas, use the following measures, listed in priority order, to avoid, minimize, and/or mitigate adverse impacts:
  - 1. Avoiding the adverse impact altogether by not taking a certain action or parts of an action or moving the proposed action;

2. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts;
3. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments; and/or
6. Monitoring the impact and taking appropriate corrective measures.

B. Environmentally Sensitive or Critical Areas Reports.

1. The cost of preparing any required environmentally sensitive areas report(s) shall be borne by the Applicant.
2. Environmentally sensitive areas reports shall be prepared by a qualified professional(s) as determined by the County.
3. The cost of a professional peer review of any required environmentally sensitive areas report, if required by the County, shall be borne by the Applicant.
4. Individual environmentally sensitive areas reports may be combined with other required environmentally sensitive areas or shoreline reports, in a format approved by the County.

C. Application Requirements.

1. It shall be the responsibility of Property Owners and the Sponsors of proposed development activities to identify all environmentally sensitive areas and jurisdictional shoreline areas on their property and within 300 feet of their property lines on all application materials including required environmental checklists.
  - a. If a proposed development activity that may have a potential adverse impact on an environmentally sensitive area(s) does not require a specific permit such as a building permit, short plat approval, etc, compliance with the provisions of this Chapter is still required.

(1) If a specific permit is not required, the County may require the Project Sponsor to submit an application for a Critical Areas Authorization.

(2) Project Sponsors are strongly encouraged to schedule an appointment and meet with County Staff to discuss development plans before application materials are prepared and submitted.

2. All land use applications submitted to the County involving environmentally sensitive areas must include a SEPA Checklist and at a minimum such information identified in WAC 173-27-180.

3. In order to fully assess the potential impact on environmentally sensitive areas and the effectiveness mitigation sequencing methods the County may require the preparation of an Environmentally Sensitive Areas Report(s) and supporting technical studies prepared by a qualified professional as determined by the County.

D. Overlapping Buffer Requirements. In the event that more than one buffer applies to a proposed development, the buffer affording the highest level of protection as determined by the County should apply where the buffers overlap, unless specifically authorized by the County.

1. For example, if a development proposal involves a parcel that includes a jurisdictional shoreline, a jurisdictional wetland, and a non-jurisdictional fish bearing stream there could be three different buffer requirements applicable to the site. Where the buffer areas overlap, the widest buffer area would apply, unless a lesser buffer area is approved in accordance with the provisions of this Title.

E. Emergency Measures to Protect the Public Health and Safety. Nothing in this Title shall prevent a public agency or a private property owner from taking emergency actions necessary to protect persons and property from immediate or urgent threats to the public health and safety.

1. Emergency measures should be limited to reasonable measures necessary to protect the public health and safety from the immediate or urgent threat.

2. The County, and other state and federal agencies, such as the Washington State Department of Fish and Wildlife, should be contacted as soon as practical after the emergency action to determine if any additional measures are required and what if any permits may be required.

3. Remediation may be required after the fact to restore the site to pre-emergency conditions. Once the immediate threat has been addressed, any adverse impacts on critical areas should be minimized and mitigated according to the provisions of this Chapter.
4. Property owners are advised that the failure to take appropriate preventative measures, the failure to secure required permits in advance, the failure to meet conditions of approval including the maintenance of erosion control measures, and/or the failure to act in a timely manner may not constitute an emergency and may result in the imposition of civil penalties and/or remediation measures.

F. Performance Bonds. In an effort to ensure the successful installation, operation, and maintenance of compensatory mitigation measures or other requirements under this Title, the County may require a performance bond(s) or comparable financial guarantee.

1. The performance bond or guarantee may be up to 150% of the estimated cost of the required improvement.
2. The duration and form of the financial guarantee shall be determined by the County in consultation with the County Prosecuting Attorney.

*xx.36.040 Wetlands*

A. The purposes of this Section are to:

1. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through bio-filtration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
2. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands.
3. Establish review procedures for development proposals in and adjacent to wetlands.

B. Identification of wetlands and the delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within Pend Oreille County

meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter.

1. Wetlands shall be delineated by a qualified wetland professional in accordance with the U. S. Army Corps of Engineers publication *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (WMVCR), *Regional Supplement to the 1987 Wetland Delineation Manual* (Corps Publication # ERDC/ EL TR-10-03).
  2. Wetland delineations are valid for five years; after five years the County shall determine whether a revision or additional assessment is necessary.
- C. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication #04-06-015, or as revised and approved by Ecology), provided that the County may utilize the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Western Washington* (Ecology Publication #04-06-025, or as revised and approved by Ecology) if warranted by local conditions.
1. Category I wetlands include:
    - a. Alkali wetlands;
    - b. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetlands;
    - c. Bogs;
    - d. Mature and old-growth forested wetlands over ¼ acre with slow-growing trees;
    - e. Forests with stands of aspen; and
    - f. Wetlands that scores of 22 points or more for all functions or having “Special Characteristics” identified in the rating system.

(Note: Category I Wetlands typically represent a unique or rare wetland type; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are difficult if not impossible to replace; or, provide a high level of function).

2. Category II wetlands include:
  - a. Forested wetlands in the floodplains of rivers;
  - b. Mature and old-growth forested wetlands over ¼ acre with fast-growing trees;
  - c. Vernal pools; and
  - d. Wetlands that perform for all functions scores between 19 to 21 points or having “Special Characteristics” identified in the rating system.

3. Category III wetlands include:
  - a. Vernal pools that are isolated; and
  - b. Wetlands with score between 16-18 points or more for all functions identified in the rating system.

(Note: Category III wetlands oftentimes have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands).

4. Category IV wetlands have the lowest level of functions, scoring less than 16 points for all functions identified in the rating system.

(Note: Category IV wetlands are typically heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected).

5. Wetland rating categories shall not change due to illegal modifications or unauthorized activities.

- D. Applicability. In addition to the provisions of this Chapter, all development activities including new uses of land and buildings and changes of use must comply with the Table of Permitted Zoning Uses and all provisions of this Title as well as all applicable provisions of local, state, and federal law, unless specifically exempted.



1. Development activities proposed for jurisdictional shoreline areas must also comply with the provisions of Chapter xx.34 Shoreline Regulations.
  - a. This includes the Table of Permitted Shoreline Uses which may be more restrictive than the uses permitted in the Table of Permitted Zoning Uses.
2. In particular, the following activities are subject to the provisions of this Section if they are proposed for a wetland or wetland buffer:
  - a. The construction, reconstruction, demolition, or expansion of any structure;
  - b. The creation of new lots through a subdivision, short plat, Master Planned Resort, RV Park, RV Resort, or binding site plan;
  - c. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
  - d. The dumping of, discharging of, or filling with any material;
  - e. The draining, flooding, or disturbing the water level or water table;
  - f. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland;
  - g. Pile driving;
  - h. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations", WAC 222-12030, or as thereafter amended;
  - i. Proposed uses or activities determined by the County to have a potential adverse impact on wetland values and functions; and/or
  - j. Activities that may result in:
    - (1) A significant change of water temperature.
    - (2) A significant change of physical or chemical characteristics of the sources of water to the wetland.

(3) A significant change in the quantity, timing or duration of the water entering the wetland.

(4) The introduction of pollutants.

E. Prospective applicants are encouraged to contact the Department of Ecology Eastern Regional office and the U. S. Army Corps of Engineers to determine what state and federal permits and approvals may be required.

F. The sponsors of proposed development activities that involve or may impact designated wetlands or their buffers shall prepare and submit for County review and approval an environmentally sensitive areas report unless specifically exempted. The following activities may be determined by the County to be exempt from the buffer requirements, and/or other provisions of this Section provided that appropriate measures are proposed to avoid or mitigate potential adverse impacts:

1. All isolated Category III and IV wetlands less than 1,000 square feet that:
  - a. Are not associated with riparian areas or buffer;
  - b. Are not part of a wetland mosaic;
  - c. Do not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife or species of local importance;
  - d. Are not a vernal pool;
  - e. Are not an alkali wetland; and
  - f. Do not contain aspen stands
2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

4. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
  5. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
  6. Educational and scientific research activities.
  7. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way or easement, provided that the maintenance or repair does not expand the footprint or use of the facility, easement, or right-of-way.
  8. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.
- G. Wetland Buffers. Unless specifically exempted, all regulated wetlands shall have a wetland buffer that shall not be disturbed unless specifically authorized.
1. All wetland buffers shall be measured from the wetland edge, as established by the approved wetland boundary survey.
  2. The width of the required wetland buffer shall be based on a determination by the County of the intensity of the proposed use. For purposes of administering this Section the following shall be used to determine low, medium, and high intensity activities:
    - a. High intensity activities may include:

- (1) Commercial uses;
  - (2) Industrial uses;
  - (3) More than one dwelling unit per acre;
  - (4) Higher intensity recreational uses such as golf courses, ball fields, motorized vehicle facilities; and/or
  - (5) Other uses determined by the County to be of a higher intensity than the enumerated low or medium intensity uses.
- b. Medium intensity activities may include:
  - (1) New residential development at a density not to exceed one (1) dwelling unit per acre;
  - (2) Moderate intensity open space and parks with recreation activities such as biking and jogging;
  - (3) Less intensive agricultural activities such as orchards and hay fields; and/or
  - (4) Building logging roads.
- c. Low intensity activities may include:
  - (1) Forestry (cutting trees only);
  - (2) Less intensive recreation activities such as walking bird watching, etc; and/or
  - (3) Other uses determined by the County to be of lesser intensity than the enumerated high or medium intensity uses.
3. Unless otherwise authorized, the required wetland buffer widths, shall be based on the category of the wetland and the intensity of the proposed development activity as follows in Table 1:

**Table 1 - Wetland Buffer Widths**

| Wetland Characteristics   | Buffer Width by Impact of Proposed Land Use  |
|---|--|
| <b>Category IV Wetlands (For wetlands scoring less than 16 points for all functions)</b>  |  |
| Score for all 3 basic functions is less than 16 points  | Low – 25 feet<br>Moderate – 40 feet<br>High – 50 feet  |
| <b>Category III Wetlands (For wetlands scoring 16 to 18 points or more for all functions)</b>   |  |
| Moderate level of function for habitat (score for habitat 5 to 7 points)<br>*If wetland scores 8 to 9 habitat points, use Category II buffers                           | Low – 75 feet<br>Moderate – 110 feet<br>High – 150 feet  |
| Score habitat for 3 to 4 points   | Low – 40 feet<br>Moderate – 60 feet<br>High – 80 feet  |
| <b>Category II Wetlands (For wetlands that score 19 to 21 points or more for all functions or having the “Special Characteristics” identified in the rating system)</b> |  |
| High level of function for habitat (score for habitat 8 to 9 points)  | Low – 100 feet<br>Moderate – 150 feet<br>High – 200 feet   |
| Moderate level of function for habitat (score for habitat 5 to 7 points)  | Low – 75 feet<br>Moderate – 110 feet<br>High – 150 feet  |
| High level of function for water quality improvement and low for habitat (score for water quality 8 to 9 points; habitat less than 5 points)                            | Low – 50 feet<br>Moderate – 75 feet<br>High – 100 feet   |
| Riparian forest   | Buffer width to be based on score for habitat functions or water quality functions   |
| Not meeting above characteristic  | Low – 50 feet<br>Moderate – 75 feet<br>High – 100 feet   |
| Vernal pool   | Low – 100 feet<br>Moderate – 150 feet<br>High – 200 feet<br><br>Or develop a regional plan to protect the most important vernal pool complexes – buffers of vernal pools outside protection zones can then be reduced to:<br>Low – 40 feet<br>Moderate – 60 feet<br>High – 80 feet |
| <b>Category I Wetlands (For wetlands that score 22 points or more for all functions or having the “Special Characteristics” identified in the rating system)</b>        |  |
| Wetlands of High Conservation Value   | Low – 125 feet<br>Moderate – 190 feet<br>High – 250 feet   |

| <b>Wetland Characteristics</b>  | <b>Buffer Width by Impact of Proposed Land Use</b>       |
|---|--|
| High level of function for habitat (score for habitat 8 to 9 points)  | Low – 100 feet<br>Moderate – 150 feet<br>High – 200 feet |
| Moderate level of function for habitat (score for habitat 5 to 7 points)                                      | Low – 75 feet<br>Moderate – 110 feet<br>High – 150 feet  |
| High level of function for water quality improvement (8 to 9 points) and low for habitat (less than 5 points) | Low – 50 feet<br>Moderate – 75 feet<br>High – 100 feet   |
| Not meeting above characteristics   | Low – 50 feet<br>Moderate – 75 feet<br>High – 100 feet   |

4. The width of a wetland buffer may be increased or decreased by the County on a case-by-case basis based on approval of a wetland report that documents that a larger buffer is needed to protect wetland functions or values or that a smaller buffer adequately protects wetlands without a net loss of functions or values.
  - a. The standard buffer widths identified above assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided. The proponent shall maintain the viability of the buffer in perpetuity as specified in the wetland report.
  - b. Wetland buffers may be reduced by no more than 25% of the standard buffer width.
5. The County may approve proposals to average required buffers based on a finding that the averaging will result in greater than or equal wetland protection or is necessary to allow the reasonable use of property, provided that:
  - a. The total area of the wetland buffer is not reduced; and
  - b. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
  - c. The averaged buffer will not result in degradation of the wetlands functions and values as demonstrated by a critical areas report from a qualified wetland professional.

- d. The buffer at its narrowest point is never less than either  $\frac{3}{4}$  of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.
6. The following uses may be permitted in a wetland buffer provided that they are not prohibited by other applicable laws and are conducted in a manner that does not adversely affect wetland function and values:
- a. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
  - b. Passive recreation facilities designed and in accordance with an approved critical area report, including:
    - (1) Walkways and trails; and
    - (2) Wildlife-viewing structures.
  - c. Dispersed camping areas.
  - d. Educational and scientific research activities.
  - e. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
  - f. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
  - g. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.

- h. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- i. Stormwater management facilities are limited to stormwater dispersion outfalls and bio-swales in the outer 25% of the buffer of Category III or IV wetlands only, provided that the location of such facilities will not degrade the functions or values of the wetland.
- j. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

#### 8. Signage and Fencing.

- a. All buffers shall be temporarily fenced during construction activities in a manner approved by the County that should include highly visible and durable protective barrier to prevent access and to protect the wetland and associated buffer.
- b. As a condition of approval the County may require temporary or permanent signs to clearly identify and protect wetlands and associated buffers.
- c. As a condition of approval, the County may require or authorize the construction of a temporary or permanent fence to protect wetlands and associated buffers, provided that:
  - (1) Fences should be installed on the outside perimeter of required wetland buffers;
  - (2) The fence shall be designed and constructed so that it does not interfere with animal migration and does not adversely affect animal habitats.
  - (3) Permanent fencing may be required if domestic grazing animals are on site or may be introduced to the site in the future.



- (4) Property owners are encouraged to consider the impacts of fencing on neighboring property owners.

H. Mitigation Sequencing. All proposed development activities that may impact wetlands and their associated buffers shall be designed and constructed in accordance with the following principles, listed in order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

I. Compensatory Mitigation. In certain circumstances where impacts to wetlands or their associated buffers cannot be avoided or minimized, the County may approve compensatory mitigation to achieve equivalent or greater biologic functions.

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10 Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1)*, Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1)*. Washington State Department of Ecology Publication #06-06-011a. Olympia, Washington. *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Publication #10-06-07, November 2010).

2. At a minimum, the mitigation ratios shall be as provided in Table 2:

**Table 2 - Mitigation Ratios**

| Category and Type of Wetland              | Creation or Re-establishment | Rehabilitation | Enhancement  |
|---|------------------------------|----------------|--------------|
| Category I:<br>Bog, Natural Heritage site | Not considered possible      | Case by case   | Case by case |
| Category I:<br>Mature Forested            | 6:1                          | 12:1           | 24:1         |
| Category I:<br>Based on functions         | 4:1                          | 8:1            | 16:1         |
| Category II                               | 3:1                          | 6:1            | 12:1         |
| Category III                              | 2:1                          | 4:1            | 8:1          |
| Category IV                               | 1.5:1                        | 3:1            | 6:1          |

Note:

1 These ratios are based on the assumption the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, and less-effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

3. Increased Replacement Ratio. The standard replacement ratio may be increased under any of the following circumstances consistent with:
- a. High degree of uncertainty as to the success of the proposed restoration or creation;
  - b. Significant period of time between destruction and replication of wetland functions;
  - c. Projected losses in functions;
  - d. Off-site compensation.
4. Decreased Replacement Ratio. The standard replacement ratio may be decreased under the following circumstances:
- a. Findings of special studies coordinated with agencies and/or a qualified professional, which demonstrate protection of wetland function or value is attained under the decreased ratio.
5. Advance Mitigation. The proposed actions for compensation are conducted in advance of the impact and are shown to be successful. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts, if the mitigation is implemented according to federal rules.
6. In all cases, a minimum acreage replacement ratio of 1:1 shall be required.
7. Mitigation requirements may also be determined using the credit/debit tool described in "Calculating Credits and Debits for Compensatory Mitigation in

8. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:
  - a. Restoration (re-establishment and rehabilitation) of wetlands.
  - b. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native species. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.
  - c. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
  - d. Preservation of high-quality, at risk-wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement, provided that a minimum of 1:1 acreage replacement is provided by reestablishment or creation. Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:
    - (1) Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA species.
    - (2) There is no net loss of habitat functions within the watershed or basin.
    - (3) The impact area is small (generally less than ½ acre) and/or impacts are occurring to a low functioning system (Category III or IV wetland).
    - (4) All preservation sites shall include buffer areas adequate to protect the habitat and its function from encroachment and degradation.
9. Compensatory mitigation actions shall be conducted on the site of the alteration except when all of the following apply (refer to the guidance document "Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010):

- a. There are no reasonable opportunities on-site (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydro-geomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
  - b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
  - c. Off-site locations shall be in the same sub-drainage basin unless:
    - (1) Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the County and strongly justify location of mitigation at another site; or
    - (2) Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the bank's certification.
  - d. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.
10. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora. Whenever practical, it is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands, but at a minimum compensatory mitigation shall be completed prior to the completion of the approved development activity and the issuance of a certificate of occupancy.

J. Wetland Mitigation Banks.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
  - a. The wetland bank is certified under state rules;
  - b. The County determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
  - c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

K. In-Lieu Fee. To aid in the implementation of off-site mitigation, the County may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with state and federal rules.

L. Wetlands Report. Unless specifically exempted by the County, all applications for proposed development activities in or near a wetland or wetland buffer shall include a wetlands report prepared by a qualified professional, as determined by the County. The County may provide more detailed guidelines for the preparation of a wetlands report. At a minimum a wetlands report and the accompanying plan sheets should contain the following information:

1. The name and contact information of the Applicant; authorization of the property owner if the owner is not the Applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

2. A statement specifying the accuracy of the report and all assumptions made and relied upon.
3. Documentation of any fieldwork performed on the site, including field data sheets for delineations, function assessments, baseline hydrologic data, etc.
4. A description of the methodologies used to conduct the wetland delineations, function assessments, or impact analyses including references.
5. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
6. For each wetland identified on-site and within 300 feet of the project site provide the following based on an assessment of the entire wetland complex, not just the portion present on the proposed project site:
  - a. The wetland rating;
  - b. Required buffers;
  - c. Hydrogeomorphic classification;
  - d. Wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions);
  - e. Cowardin classification of vegetation communities; and
  - f. Habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.).
7. A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives including a no-development alternative.

8. An assessment of the probable cumulative benefits and impacts to the wetlands and buffers resulting from the proposed development.
9. A description of reasonable efforts made to apply the required mitigation sequencing, xx.36.040, to avoid, minimize, and mitigate impacts to critical areas.
10. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.
11. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
12. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.
13. A description of proposed compensatory mitigation measures, if any, to address adverse impacts to wetlands and their buffers that cannot be avoided through mitigation sequencing.
14. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
  - a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on-site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates; and the location of proposed mitigation sequencing activities including proposed compensatory mitigation if applicable.
  - b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

M. Unauthorized Alterations and Enforcement. Unless otherwise provided for in this Title, the following shall apply:

1. When a wetland or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop and the critical area shall be restored.

- a. The County shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of provisions of this Chapter.
2. All development work shall remain stopped until a restoration plan is prepared and approved by County. Such a plan shall be prepared by a qualified professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described below. The County may, at the violator’s expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
3. The following minimum performance standards shall be met for the restoration of a wetland, provided that if the violator can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:
  - a. The historic structure, functions, and values of the affected wetland shall be restored, including water quality and habitat functions.
  - b. The historic soil types and configuration shall be restored to the extent practicable.
  - c. The wetland and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration.
  - d. Information demonstrating compliance with other applicable provisions of this Chapter shall be submitted to the County.
2. The County is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. Representatives of the County shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
3. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Chapter shall be guilty of a misdemeanor.
  - a. Each day or portion of a day during which a violation of this Chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Chapter shall



constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The County may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Chapter.

- b. If the wetland affected cannot be restored, monies collected as penalties shall be deposited in a dedicated account for the preservation or restoration of landscape processes and functions in the watershed in which the affected wetland is located. The County may coordinate its preservation or restoration activities with other communities in the watershed to optimize the effectiveness of the restoration action.

*xx.36.050 Geologically Hazardous Areas*

A. The purposes of this Section are to:

- 1. Identify and protect areas susceptible to erosion, sliding, earthquake or other geological events.
- 2. Provide guidance to enable property owners to avoid activities that may cause or be susceptible to damage from significant hazards.

B. Geologically hazardous areas are those areas susceptible to one or more of the following types of hazards:

- 1. Erosion Hazard;
- 2. Landslide Hazard;
- 3. Seismic Hazard;
- 4. Mine Hazard;
- 5. Volcanic Hazard; or
- 6. Other geological events such as mass wasting, debris flows, rock falls, and differential settlement.

C. Designation of Geological Hazard Areas. The following criteria shall be used to identify specific geological hazard areas, provided that the County may utilize updated or new information to identify these areas consistent with the principals of Best Available Science:

1. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to

severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone.

2. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:

- a. Areas of historic failures, such as:

- (1) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

- (2) Those areas mapped by the Washington State Department of Ecology (Coastal Zone Atlas) or the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or

- (3) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;

- b. Areas with all three of the following characteristics:

- (1) Slopes steeper than fifteen percent (15%);

- (2) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

- (3) Springs or ground water seepage.

- c. Areas that have shown movement during the Holocene Epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch.

- (1) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
- (2) Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;
- (3) Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;
- (4) Areas that show evidence of, or are at risk from snow avalanches;
- (5) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
- (6) Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten (10) feet of vertical relief.

3. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

- a. The magnitude of an earthquake;
- b. The distance from the source of an earthquake;
- c. The type of thickness of geologic materials at the surface; and
- d. The type of subsurface geologic structure.

4. Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings.

Factors that should be considered include: proximity to development, depth from ground surface to the mine working, and geologic material.

5. Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

6. Geologically hazardous areas shall also include areas determined by the County to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

D. The sponsors of proposed development activities that involve or may impact geologically hazardous areas or their buffers shall prepare and submit for County review and approval an environmentally sensitive areas report unless specifically exempted. The following activities may be determined by the County to be exempt from the requirements to prepare an environmentally sensitive areas report, the buffer requirements, and/or other provisions of this Section provided that appropriate measures are proposed to avoid or mitigate potential adverse impacts:

1. The following activities may be exempt in Seismic Hazard Areas, Mine Hazard Areas, Volcanic Hazard Areas, and Other Hazard Areas based on a determination by the County that the proposed activity will not increase the risk of hazard.

a. Additions to existing residences that are two hundred fifty (250) square feet or less; and

b. Installation of fences.

E. Performance Standards.

1. General Requirements. Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

a. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

b. Will not adversely impact other critical areas;

c. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and

- d. Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the State of Washington.
2. In addition to the general requirements above, proposed development activities on sites which contain erosion or landslide hazard areas shall meet the following standards:
    - a. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the County to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.
      - (1) The minimum buffer shall be equal to the height of the slope or fifty (50) feet, whichever is greater.
      - (2) The buffer may be reduced to a minimum of ten (10) feet when a qualified professional demonstrates to the County's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.
      - (3) The buffer may be increased based on a finding by the County that a larger buffer is necessary to prevent risk of damage to proposed and existing development.
    - b. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:
      - (1) The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
      - (2) The development will not decrease slope stability on adjacent properties; and
      - (3) Such alterations will not adversely impact other critical areas.
    - c. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this Title. The requirement for long-term slope stability

shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

- (1) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the Uniform Building Code;
  - (2) Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
  - (3) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;
  - (4) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
  - (5) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
  - (6) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and
  - (7) Development shall be designed to minimize impervious lot coverage.
- d. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;
- e. Approved clearing activities should be allowed only from May 1 to October 1 of each year provided that the County may extend or shorten the season on a caseby-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the Washington State Department of Natural Resources;
- f. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the Applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the

event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;

g. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

- (1) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;
- (2) Discharged at flow durations matching pre-developed conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the pre-developed state; or
- (3) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;

h. The division of land in landslide hazard areas and associated buffers is subject to the following:

- (1) Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer.
- (2) Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the County determines that no other feasible alternative exists; and

i. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.

3. In addition to the general requirements above, proposed development activities on sites which contain mine hazard areas shall meet the following standards:

a. Alterations. Alterations of a mine hazard area and/or buffer are allowed, as follows:

- (1) All alterations are permitted within a mine hazard area with a low potential for subsidence;
  - (2) Within a mine hazard area with a moderate potential for subsidence, all alterations are permitted subject to a mitigation plan to minimize risk of structural damage, as recommended in the hazard analysis.
  - (3) Within a mine hazard area with a severe potential for subsidence only fences and non-residential structures less than 200 square feet may be permitted.
- b. The division of land in mine hazard areas and associated buffers is subject to the following:
- (1) Land that is located within two hundred (200) feet of a mine hazard area with a severe potential for subsidence may not be subdivided. Land that is located partially within a mine hazard area may be divided provided that each resulting lot has sufficient buildable area that is two hundred (200) feet away from the mine hazard area with a severe potential for subsidence. Land that is located within a mine hazard area with a low or moderate potential for subsidence may be subdivided.
  - (2) Access roads and utilities may be permitted within two hundred (200) feet of a mine hazard area with a moderate or severe potential for subsidence if the County determines that no other feasible alternative exists.
- c. Reclamation Activities. For all reclamation activities, including grading, filling, and stockpile removal, as-built drawings shall be submitted in a format specified by the County.

- F. Geologically Hazardous Area Report. Unless specifically exempted by the County, all applications for proposed development activities in or near a geologically hazardous area or buffer shall include a report prepared by an engineer or geologist, licensed in the State of Washington with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard. The County may provide more detailed guidelines for the preparation of a geologically hazardous area report. At a minimum the report and the accompanying plan sheets should contain the following information:
1. The name and contact information of the Applicant; authorization of the property owner if the owner is not the Applicant; the name, qualifications, and contact information for the primary author(s) of the geologically hazardous



area report; a description of the proposal; identification of all the local, state, and/or federal geologically-related permit(s) required for the project; and a vicinity map for the project.

2. A statement specifying the accuracy of the report and all assumptions made and relied upon.
3. The report shall include a copy of the site plans for the proposal showing:
  - a. The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within three hundred (300) feet of, or that are likely to impact the proposal;
  - b. Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
  - c. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and
  - d. Clearing limits.
4. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
  - a. A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
  - b. A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site specific measurements, test, investigations, or studies that support the identification of geologically hazardous areas; and
  - c. A description of the vulnerability of the site to seismic and other geologic events;
5. The report shall contain a hazards analysis including a detailed description of the proposed project, its relationship to the geologic hazard(s), and its potential

impact upon the hazard area, the subject property, and affected adjacent properties.

- a. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
6. When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.
7. In addition to the requirements listed above, critical area reports for erosion and landslide hazard areas should also include:
  - a. A site plan depicting:
    - (1) The height of slope, slope gradient, the top and toe of the slope, and cross-section of the project area;
    - (2) The location of springs, seeps, or other surface expressions of ground water on or within three hundred (300) feet of the project area or that have potential to be affected by the proposal; and
    - (3) The location and description of surface water runoff features.
  - b. An analysis of the site including:
    - (1) A description of the extent and type of vegetative cover;
    - (2) A description of subsurface conditions based on data from site-specific explorations;
    - (3) Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;

- (4) An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
  - (5) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred-year storm event;
  - (6) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
  - (7) A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
  - (8) Recommendations for building siting limitations; and
  - (9) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion.
- c. A geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:
- (1) Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;
  - (2) Recommendations for drainage and sub-drainage improvements;
  - (3) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary;
  - (4) A description of reasonable efforts made to apply the required mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas; and
  - (5) A description of proposed compensatory mitigation measures, if any, to mitigate adverse site impacts that cannot be avoided through mitigation sequencing.

- d. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall conform to the requirements of the Washington State Department of Ecology Stormwater Management Manual for Eastern Washington as adopted by Pend Oreille County, or alternative measures that meet or exceed these standards as determined by the County;
  - e. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the Washington State Department of Ecology Stormwater Management Manual for Eastern Washington as adopted by Pend Oreille County, or alternative measures that meet or exceed these standards as determined by the County. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;
  - f. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and
  - g. If the County determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the County.
8. In addition to the requirements listed above, critical area reports for seismic hazard areas shall also include:
- a. On the site map all known and mapped faults within two hundred (200) feet of the project area or that have potential to be affected by the proposal;
  - b. In the analysis a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement); and
  - c. A geotechnical engineering report shall evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits and their liquefaction potential. If it is determined that the site is subject to

liquefaction, mitigation measures appropriate to the scale of the development shall be recommended and implemented.

9. In addition to the requirements listed above, critical area reports for mine hazard areas shall also include:
  - a. On the site plan site plan the delineation of any of the following features found within three hundred (300) feet of or directly underlying the project area, or that have potential to be affected by the proposal:
    - (1) The existence of mines, including all significant mine features, such as mine entries, portals, adits, mine shafts, air shafts, and timber shafts;
    - (2) The location of any nearby mines that may impact or be affected by the proposed activities;
    - (3) The location of any known sinkholes, significant surface depressions, trough subsidence features, coal mine spoil piles, and other mine-related surface features; and
    - (4) The location of any prior site improvements that have been carried out to mitigate abandoned coal mine features; and
  - b. A discussion of the potential for subsidence on the site and classify all mine hazards areas within three hundred (300) feet of the project area, or that have potential to be affected by the proposal, as either low, moderate, or severe. The hazards analysis shall include a mitigation plan containing recommendations for mitigation of the potential for future trough subsidence, as appropriate, for the specific proposed alteration and recommendations for additional study, reports, and development standards if warranted.

*xx.36.060 Fish and Wildlife Habitat Conservation Areas.*

- A. Areas within the County meeting one or more of the following criteria, may be designated as Fish and Wildlife Habitat Conservation Areas, subject to the provisions of this Chapter, and shall be managed consistent with the principles of best available science, such as the *Washington State Department of Fish and Wildlife's Management Recommendations for Priority Habitat and Species*.
  1. Areas with which State and Federally Designated Endangered, Threatened, and Sensitive Species have a primary association.

- a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered.
  - b. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats.
  - c. Habitats of Primary Association: “Habitats of primary association” means a critical component(s) of the habitats of federally or state-listed endangered, threatened, candidate, sensitive, and priority wildlife or plant species, which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of primary association include, but are not limited to: winter ranges, migration ranges, corridors, breeding sites, nesting sites, regular large concentrations, communal roosts, roosting sites, staging area, and “priority habitats” listed by the Washington State Department of Fish and Wildlife.
2. Priority habitats and species as identified by the Washington State Department of Fish and Wildlife, and as subsequently amended.
  3. Habitats and species designated by the County as being of local importance and warranting protection, based on the provisions of Best Available Science.
  4. Natural area preserves and natural resource conservation areas as defined, established, and managed by the Washington State Department of Natural Resources.
  5. Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program.
  6. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish and wildlife habitat;
  7. Land identified by the County as being essential for the preservation of connections between habitat areas and open spaces.

- B. The following fish and wildlife habitat areas shall be considered priority habitat areas in Pend Oreille County and shall be afforded the highest level of protection:
1. Areas with which State and Federally Designated Endangered, Threatened, and Sensitive Species have a primary association.
  2. Natural area preserves and natural resource conservation areas as defined, established, and managed by the Washington State Department of Natural Resources.
  3. Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program.
- C. While the County may maintain maps that highlight the potential location of fish and wildlife habitat conservation areas it shall be the responsibility of the property owner and project sponsor to identify all fish and wildlife habitat conservation areas on their property and to comply with the provisions of this Chapter at all times.
1. Note: Information regarding Priority Habitat and Species in Pend Oreille County may be found on the Washington State Department of Fish and Wildlife website.
- D. General Performance Standards.
1. It should be noted that properties that contain fish and wildlife habitat conservation areas may contain other environmentally sensitive areas and as a result, more than one critical areas report may need to be prepared.
  2. Development activities proposed for properties that contain fish and wildlife habitat conservation areas may also be under the jurisdiction of state and federal agencies and as a result, numerous permits and approvals may be required. As a result, Project Sponsors are strongly encouraged to schedule a pre-application conference with County Staff to discuss potential permitting requirements and opportunities for integrating and streamlining the development review process.
  3. Proposed development activities in or near fish and wildlife habitat conservation areas should follow the required mitigation sequencing outlined in XX.36.030 General Provisions, Mitigation Sequencing to avoid or minimize potential adverse impacts before considering any action that may require mitigation.

4. A fish and wildlife habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from fish and wildlife habitat conservation areas, unless specifically authorized by the County.
  - a. Any proposed alterations or impacts to a fish and wildlife habitat conservation area should be supported by the principles of best available science.
5. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a fish and wildlife habitat conservation area unless authorized by a state and/or federal permit or approval.
6. The County may deny, restrict, or condition approvals of a proposed use or development activity within or adjacent to a fish and wildlife habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the principles of best available science and may include, but are not limited to, the following:
  - a. Establishment of buffer zones;
  - b. Preservation of critically important vegetation and/or priority habitat features such as snags and downed wood;
  - c. Limitation of access to the habitat area, including fencing to deter unauthorized access;
  - d. Seasonal restriction of construction activities to protect priority fish and wildlife species;
  - e. Establishment of a duration and timetable for periodic review of mitigation activities; and
  - f. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
7. Mitigation of alterations to fish and wildlife habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse off-site impacts. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.



8. The County may require the establishment of buffer areas for activities adjacent to fish and wildlife habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat.
  - a. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington Department of Fish and Wildlife.
  - b. Fish and wildlife habitat conservation areas and their buffers should be preserved in perpetuity through the use of native growth protection areas, critical area tracts, or comparable methods as approved by the County.
9. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
10. The County may reduce fish and wildlife habitat area buffers in accordance with the provisions of the critical area report, the principles of best available science, and applicable management recommendations issued by the Washington Department of Fish and Wildlife, if:
  - a. It will not reduce stream or habitat functions;
  - b. It will not adversely affect fish habitat;
  - c. It will provide additional natural resource protection, such as buffer enhancement;
  - d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer.
11. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
  - a. Land that is located wholly within a habitat conservation area or its buffer should not be subdivided;
  - b. Land that is located partially within a habitat conservation area or its buffer may be divided provided that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and

meets the minimum lot size requirements and all applicable provisions of the applicable development regulations.

- c. Access roads and utilities serving the proposed subdivision may be permitted within the habitat conservation area and associated buffers only if the County determines that no other feasible alternative exists and when consistent with this Title

12. The outer perimeter of the fish and wildlife habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and verified by the County prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

13. As a condition of any permit or authorization issued pursuant to this Chapter, the County may require the Applicant to install permanent signs along the boundary of a fish and wildlife habitat conservation area or buffer.

- a. Signs should be designed, and installed in a manner to assure protection of sensitive features or wildlife and shall be subject to County approval.
- b. Signs shall be maintained by the property owner unless otherwise approved by the County.

14. The County may require as a condition of approval of any permit or authorization issued pursuant to this Chapter to require the Applicant to install a permanent fence at the edge of the fish and wildlife habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.

- a. The Applicant should be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.
- b. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts and shall be subject to County approval.

E. Habitat Specific Performance Standards. In addition to the general performance standards listed above, the following habitat specific performance standards may also apply, as determined by the County.

1. No development shall be allowed within a fish and wildlife habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.
  - a. Whenever activities are proposed adjacent to a fish and wildlife habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the County. Approval for alteration of land adjacent to the fish and wildlife habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.
  - b. Project Sponsors are encouraged to contact the U. S. Fish and Wildlife Service and/or the Washington State Department of Fish and Wildlife to determine what, if any, state or local laws protecting Bald or Golden Eagles may be applicable to their proposed development.
2. All activities, uses, and alterations proposed to be located in water bodies used by fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of fish habitat, including, but not limited to, adhering to the following standards:
  - a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
  - b. An alternative alignment or location for the activity is not feasible;
  - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
  - d. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report, and

- e. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
- 3. Fills, if otherwise permitted by the County Development Regulations including XX.34 Shoreline Regulations, shall not adversely impact fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.
- 4. Unless specifically authorized by the County, all structures and activities shall be located outside of designated riparian habitat areas and required riparian buffers.
  - a. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs
  - b. Riparian Habitat Area widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high-water mark, or from the top of bank, if the ordinary high-water mark cannot be identified. Riparian habitat areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of in-stream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.
  - c. Riparian habitat areas should retain their natural vegetative condition unless specifically authorized by the County.
- 5. Unless otherwise approved by the County, the recommended widths of Riparian Habitat Areas shall be as follows:
  - a. Type S (Shorelines of the State): (See xx.34 Shoreline Regulations, Required Buffers);
  - b. Type F (Fish Bearing): 150 feet;
  - c. Type NP (Non-fish bearing-perennial): 100 feet;
  - d. Type NS (Non-fish bearing-seasonal): 65 feet; and
  - e. Type U (Unknown, not typed): Must be evaluated with proposed type and Riparian Habitat Area width included in any development application.

6. The recommended riparian habitat area widths may be increased by the County, as follows:
  - a. Based on a finding that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
  - b. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
  - c. When a channel migration zone is present and mapped, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;
  - d. When the habitat area is in an area of high blow down potential, the riparian habitat area width shall be expanded an additional fifty (50) feet on the windward side; and/or
  - e. When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area width shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
7. The recommended riparian habitat area width may be reduced by the County in accordance with the recommendations of a critical area report only if:
  - a. The width reduction will not reduce stream or habitat functions, including those of non-fish habitat;
  - b. The width reduction will not degrade the habitat, including habitat for anadromous fish;
  - c. The proposal will provide additional habitat protection;
  - d. The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
  - e. The width reduction will not be located within another critical area or associated buffer; and
  - f. The reduced riparian habitat area width is supported by the best available science.

8. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted.
9. The performance standards set forth in this Subsection may be modified at the County's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.
10. The following specific activities may be permitted within a riparian habitat area, when the activity complies with the applicable provisions set forth in XX.34 Shoreline Regulations and the standards of this Subsection. The standards that provide the most protection to protected habitat and species shall apply.
  - a. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following should apply:
    - (1) Grading is allowed only during the dry season, which is typically regarded as beginning on May 1 and ending on October 1 of each year, provided that the County may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
    - (2) Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
    - (3) The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
    - (4) The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
    - (5) Erosion and sediment control that meets or exceeds the County standards shall be provided.
  - b. New, replacement, or substantially improved shoreline erosion control measures may be permitted in accordance with an approved critical area report that demonstrates the following:

- (1) Natural shoreline processes will be maintained.
  - (2) The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.
  - (3) Adequate mitigation measures ensure that there is no net loss of the functions or values of in-stream habitat or riparian habitat as a result of the proposed shoreline erosion control measures.
- c. Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.
- d. New public boat launches that meet the applicable provisions of XX.34 Shoreline Regulations may be permitted in accordance with an approved critical area report that has demonstrated the following:
- (1) The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate;
  - (2) The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;
  - (3) Adequate mitigation measures ensure that there is no net loss of the functions or values of in-stream habitat or riparian habitat as a result of the ramp; and
- e. Repair and maintenance of an existing dock or pier that otherwise meet all of the applicable provisions of XX.34 Shoreline Regulations may be permitted in accordance with an approved critical area report subject to the following:
- (1) There is no increase in the use of materials creating shade for predator species;
  - (2) There is no expansion in overwater coverage;
  - (3) There is no new spanning of waters between three (3) and thirteen (13) feet deep;
  - (4) There is no increase in the size and number of pilings; and

- (5) There is no use of toxic materials (such as creosote) that come in contact with the water.

f. Construction of trails may be permitted in accordance with an approved critical area report subject to the following standards:

- (1) There is no other feasible alternative route with less impact on the environment;
- (2) Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;
- (3) Trails and associated viewing platforms shall not be made of continuous impervious materials; and
- (4) Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;

g. Construction of roadways and minor road bridging, may be permitted in accordance with an approved critical area report subject to the following standards:

- (1) There is no other feasible alternative route with less impact on the environment;
- (2) The crossing minimizes interruption of downstream movement of wood and gravel;
- (3) Roads in riparian habitat areas or their buffers shall not run parallel to the water body;
- (4) Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;
- (5) Road bridges and culverts are designed and installed according to the Washington Department of Fish and Wildlife Fish Passage Design at Road Culverts, 1999, or as subsequently amended.
- (6) Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report; and



- h. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report, if they comply with the following standards:
- (1) Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
  - (2) Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
  - (3) The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
  - (4) Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
  - (5) The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and
  - (6) The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
- i. New public flood protection measures and expansion of existing ones may be permitted, subject to the County's review and approval of a critical area report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.
- j. In-stream structures, such as, but not limited to, high flow bypasses, sediment ponds, in-stream ponds, retention and detention facilities, dams, and weirs, shall only be allowed in conformance with applicable provisions of Chapter 90.58 and XX.34 Shoreline Regulations, and upon acquisition of any required local, state, and federal permits.
- k. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
- (1) No other feasible alternatives with less impact exist;
  - (2) Mitigation for impacts is provided;

- (3) Stormwater conveyance facilities shall incorporate fish habitat features; and
  - (4) Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.
- l. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.
- m. Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:
  - (1) Connection to an available public sanitary sewer system;
  - (2) Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the [local health district]; or
  - (3) Repair to the existing on-site septic system.

F. Fish and Wildlife Habitat Conservation Areas Report. Unless specifically exempted by the County, all applications for proposed development activities in or near a priority fish and wildlife habitat conservation area shall include a critical areas report prepared by a qualified professional, as determined by the County. The County may provide more detailed guidelines for the preparation of a wetlands report. At a minimum a critical areas report for a fish and wildlife habitat conservation area and accompanying plan sheets should contain the following information:

- 1. A description of the proposed development activity and a map(s) highlighting:
  - a. The project area of the proposed activity;
  - b. All habitat conservation areas and recommended buffers within three hundred (300) feet of the project area; and
  - c. All shoreline areas, floodplains, other critical areas, and related buffers within three hundred (300) feet of the project area.

2. An assessment of the habitat area(s) evaluating the presence or absence of designated critical fish or wildlife species or habitat. This assessment shall also include:

- a. A detailed description of vegetation on and adjacent to the project area, along with details from field assessment regarding presence/absence of fish, wildlife and habitats. Methods for conducting field work, date work conducted and field methods should also be characterized along with credentials of those completing the assessment;
- b. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
- c. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife management recommendations, as amended, that have been developed for species or habitats located on or adjacent to the project area;
- d. A detailed discussion of the direct and indirect potential benefits and impacts on habitat by the project, including potential impacts to water quality;
- e. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with the Mitigation Sequencing requirements of this Chapter, XX.36.030 A; and
- f. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

3. In addition, the County may also require:

- a. Detailed surface and subsurface hydrologic features both on and adjacent to the site.
- b. An evaluation by an independent qualified professional regarding the Applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate; and/or

- c. That the Applicant consults with the Washington Department of Fish and Wildlife, the Kalispel Tribe, and/or other appropriate agencies prior to preparing and submitting the report.

*xx.36.070 Frequently Flooded Areas*

A. Applicability. This Section shall apply to all areas of Special Flood Hazard within the jurisdiction of Pend Oreille County.

B. Statement of Purpose - It is the purpose of this code to promote the public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities, such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in flood hazard areas
6. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;
7. Notify potential buyers that the property is in a Special Flood Hazard Area;
8. Notify those who occupy flood hazard areas that they assume responsibility for their actions; and
9. Participate in and maintain eligibility for flood insurance and disaster relief.

C. Methods of Reducing Flood Losses - In order to accomplish its purposes, methods and provisions are provided for:

1. Restricting or prohibiting development that is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that development vulnerable to floods be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development, which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

#### D. Definitions

1. Alteration of watercourse: Any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.
2. Area of shallow flooding: A designated zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. Also referred to as the sheet flow area.
3. Area of special flood hazard: The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). "Special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".
4. Base flood: The flood having a 1% chance of being equaled or exceeded in any given year (also referred to as the "100-year flood").
5. Base Flood Elevation (BFE): The elevation to which floodwater is anticipated to rise during the base flood.

6. Basement: Any area of the building having its floor sub-grade (below ground level) on all sides.
7. Critical Facility: A facility for which even a slight chance of flooding might be too great. Critical facilities include (but are not limited to) schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.
8. Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.
9. Flood or Flooding:
  - a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
    - The overflow of inland or tidal waters.
    - The unusual and rapid accumulation or runoff of surface waters from any source.
    - Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
  - b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition.
10. Flood elevation study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS)

11. Flood Insurance Rate Map (FIRM): The official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
12. Floodplain or flood-prone area: Any land area susceptible to being inundated by water from any source. See "Flood or flooding."
13. Floodplain administrator: The community official designated by title to administer and enforce the floodplain management regulations.
14. Flood proofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Flood proofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.
15. Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as "Regulatory Floodway."
16. Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.
17. Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
18. Historic structure: Any structure that is:
  - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered

historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - By an approved state program as determined by the Secretary of the Interior, or
  - Directly by the Secretary of the Interior in states without approved programs.

19. **Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements (i.e. provided there are adequate flood ventilation openings).

20. **Mean Sea Level:** For purposes of the National Flood Insurance Program, the vertical datum to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

21. **Recreational Vehicle:** A vehicle,
- a. Built on a single chassis
  - b. 400 square feet or less when measured at the largest horizontal projection
  - c. Designed to be self-propelled or permanently towable by a light duty truck
  - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

22. **Start of construction:** Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.



Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

23. Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

24. Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

25. Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct previously identified existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

26. Variance: A grant of relief by a community from the terms of a floodplain management regulation.

27. Water surface elevation: The height, in relation to the vertical datum utilized in the applicable flood insurance study of floods of various magnitudes and frequencies in the floodplains of riverine areas.

#### E. General Provisions

1. Lands to Which This code Applies - This code shall apply to all special flood hazard areas within the boundaries of Pend Oreille County.
2. Basis for Establishing the Areas of Special Flood Hazard - The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study - Pend Oreille County, Washington and Incorporated Areas", dated March 4, 2002, and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, are hereby adopted by reference.
3. The Flood Insurance Study and the FIRM are on file at the County Courthouse.
4. The best available information for flood hazard area identification as outlined in Section xx.36.070 F.5 shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section xx.36.070 F.5.
5. Compliance - All development within special flood hazard areas is subject to the terms and other applicable regulations.
6. Penalties For Noncompliance - No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms and other applicable regulations. Violations of the provisions by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this code or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \_\_\_\_\_ or imprisoned for not more than \_\_\_\_\_ days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the \_\_\_\_\_ from taking such other lawful action as is necessary to prevent or remedy any violation.
7. Abrogation and Greater Restrictions -This code is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this code and another code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
8. Warning And Disclaimer of Liability - The degree of flood protection required by this code is considered reasonable for regulatory purposes and

is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This code does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This code shall not create liability on the part of Pend Oreille County, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this code or any administrative decision lawfully made hereunder.

9. Severability - This code and the various parts thereof are hereby declared to be severable. Should any Section be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the code as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

#### F. Administration

1. Development Permit Required - A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section xx.36.070 E.2. The permit shall be for all structures including manufactured homes, as set forth in the "Definitions," and for all development including fill and other activities, also as set forth in the "Definitions."
2. Application for Development Permit - Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
  - a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate completed by the Floodplain Administrator.
  - b. Elevation in relation to mean sea level to which any structure has been floodproofed;
  - c. Where a structure is to be floodproofed, certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet floodproofing criteria in Section xx.36.070 G.2.b;
  - d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development;
  - e. Where a structure is proposed in a V, V1-30, or VE zone, a V-zone design certificate;
  - f. Where development is proposed in a floodway, an engineering analysis indication no rise of the Base Flood Elevation, and

- g. Any other such information that may be reasonably required by the Floodplain Administrator in order to review the application.
3. Designation of the Floodplain Administrator - The Community Development Director is hereby appointed to administer, implement, and enforce this code by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.
4. Duties & Responsibilities of the Floodplain Administrator - Duties shall include, but not be limited to:
  - a. Review all development permits to determine that:
    - The permit requirements have been satisfied;
    - All other required state and federal permits have been obtained;
    - The site is reasonably safe from flooding;
    - The proposed development is not located in the floodway. If located in the floodway, assure the encroachment provisions of Section xx.36.070 G.1.a are met;
    - Notify FEMA when annexations occur in the Special Flood Hazard Area.
5. Use of Other Base Flood Data (In A and V Zones) - When base flood elevation data has not been provided (in A or V zones) in accordance with Section E.2, Basis for Establishing the Areas of Special Flood Hazard, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer Sections G.2, Specific Standards, and G.4 Floodways
6. Information to be Obtained and Maintained
  - a. Where base flood elevation data is provided through the FIS, FIRM, or required as in Section F.3-2, obtain and maintain a record of the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  - b. Obtain and maintain documentation of the elevation of the bottom of the lowest horizontal structural member in V or VE zones.
  - c. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section F.3-2:

- Obtain and maintain a record of the elevation (in relation to mean sea level) to which the structure was floodproofed.
  - Maintain the floodproofing certifications required in Section F.1-2(3).
- d. Certification required by Section G.4.1 {or the numbering system used by the community} (floodway encroachments).
- e. Records of all variance actions, including justification for their issuance.
- f. Improvement and damage calculations.
- g. Maintain for public inspection all records pertaining to the provisions.
7. Alteration of Watercourse - Whenever a watercourse is to be altered or relocated:
- a. Notify adjacent communities and the Department of Ecology prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.
- b. Assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.
8. Interpretation of FIRM Boundaries - Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g. where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the NFIP
9. Review of Building Permits - Where elevation data is not available either through the FIS, FIRM, or from another authoritative source (Section F.3-2), applications for floodplain development shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. (Failure to elevate habitable buildings at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.)

#### 10. Changes to Special Flood Hazard Area

- a. If a project will alter the BFE or boundaries of the SFHA, then the project proponent shall provide the community with engineering documentation and analysis regarding the proposed change. If the change to the BFE or boundaries of the SFHA would normally require a Letter of Map Change, then the project proponent shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR.
- b. If a CLOMR application is made, then the project proponent shall also supply the full CLOMR documentation package to the Floodplain Administrator to be attached to the floodplain development permit, including all required property owner notifications.

#### G. Provisions for Flood Hazard Reduction

1. General Standards - In all areas of special flood hazards, the following standards are required:

- a. Anchoring
  - All new construction and substantial improvements, including those related to manufactured homes, shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
  - All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. For more detailed information, refer to guidebook, FEMA-85, "Manufactured Home Installation in Flood Hazard Areas."
- b. Construction Materials and Methods
  - All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

- All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

c. Storage of Materials and Equipment

- The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas (recommended).
- Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

d. Utilities

- All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
- Water wells shall be located on high ground that is not in the floodway (WAC 173-160-171);
- New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

e. Subdivision Proposals and Development

- All subdivisions, as well as new development shall:
- Be consistent with the need to minimize flood damage;
- Have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- Have adequate drainage provided to reduce exposure to flood damage.

- Where subdivision proposals and other proposed developments contain greater than 50 lots or 5 acres (whichever is the lesser) base flood elevation data shall be included as part of the application.

2. Specific Standards - In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section E.2, Basis for Establishing the Areas of Special Flood Hazard, or Section F.3-2, Use of Other Base Flood Data. The following provisions are required:

a. Residential Construction

- In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained, new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the BFE. Mechanical equipment and utilities shall be waterproof or elevated least one foot above the BFE.
- New construction and substantial improvement of any residential structure in an AO zone shall meet the requirements in Appendix A.
- New construction and substantial improvement of any residential structure in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.
- New construction and substantial improvement of any residential structure in a V, V1-30, or VE zone shall meet the requirements in Appendix B.
- Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs must meet or exceed the following minimum criteria:
  - Have a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
  - The bottom of all openings shall be no higher than one foot above grade.
  - Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that



they permit the automatic entry and exit of floodwater.

- A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of flood waters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

b. Nonresidential Construction - New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements below:

- New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

- In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained:

New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor, including basement, elevated one foot or more above the BFE, or elevated as required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or elevated least one foot above the BFE, or as required by ASCE 24, whichever is greater.

- If located in an AO zone, the structure shall meet the requirements in Appendix A.
- If located in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the structure shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.
- If located in a V, V1-30, or VE zone, the structure shall meet the requirements in Appendix B.
- Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be

designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- Have a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
- The bottom of all openings shall be no higher than one foot above grade.
- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of flood waters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

- If the requirements of **subsection 1** are not met, then new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:
  - Be dry floodproofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water or dry floodproofed to the elevation required by ASCE 24, whichever is greater;
  - Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  - Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and

plans. Such certifications shall be provided to the official as set forth in Section F.3-3(2);

- Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in G.2-1(5);

Note: Applicants who are floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below). Floodproofing the building an additional foot will reduce insurance premiums significantly.

- c. **Manufactured Homes** - All manufactured homes to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement
- d. **Recreational Vehicles** - Recreational vehicles placed on sites are required to either:
  - Be on the site for fewer than 180 consecutive days, or
  - Be fully licensed and ready for highway use, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
  - Meet the requirements of 2.c above.
- e. **Enclosed Area Below the Lowest Floor** - If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the lowest floor, the areas shall be used solely for parking of vehicles, building access, or storage
- f. **Appurtenant Structures (Detached Garages & Small Storage Structures)**

- For A Zones (A, AE, A1-30, AH, AO) - Appurtenant structures used solely for parking of vehicles or limited storage may be constructed such that the floor is below the BFE, provided the structure is designed and constructed in accordance with the following requirements:
  - Use of the appurtenant structure must be limited to parking of vehicles or limited storage;
  - The portions of the appurtenant structure located below the BFE must be built using flood resistant materials;
  - The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement;
  - Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the BFE;
  - The appurtenant structure must comply with floodway encroachment provisions in Section G.4-1;
  - The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with Section G.2-1(5).
  - The structure shall have low damage potential,
  - If the structure is converted to another use, it must be brought into full compliance with the standards governing such use, and
  - The structure shall not be used for human habitation.
- Detached garages, storage structures, and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in Section G.2-1.
- Upon completion of the structure, certification that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

3. AE and A1-30 Zones with Base Flood Elevations but No Floodways - In areas with BFEs (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's FIRM,

unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

4. Floodways - Located within areas of special flood hazard established in Section E.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:

- a. No Rise Standard - Prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
- b. Residential Construction in Floodways - Construction or reconstruction of residential structures is prohibited within designated floodways, except for (i) repairs, reconstruction, or improvements to a structure that do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either, (A) before the repair or reconstruction is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the 50 percent.
- c. Replacement of Farmhouses in Floodway - Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and that are located on lands designated as agricultural lands of long-term commercial significance under RCW [36.70A.170](#) may be permitted subject to the following:
  - The new farmhouse is a replacement for an existing farmhouse on the same farm site;

- There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;
- Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;
- A replacement farmhouse shall not exceed the total square footage of encroachment of the farmhouse it is replacing;
- A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ninety days after occupancy of a new farmhouse;
- For substantial improvements and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is a minimum of one foot higher than the BFE;
- New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;
- New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and
- All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

d. Substantially Damaged Residences in Floodway - For all substantially damaged residential structures, other than farmhouses, located in a designated floodway, the Floodplain Administrator may make a written request that the Department of Ecology assess the risk of harm to life and property posed by the specific conditions of the floodway. Based on analysis of depth, velocity, flood-related erosion, channel migration, debris load potential, and flood warning capability, the Department of Ecology may exercise best professional judgment in recommending to the local permitting authority repair, replacement, or relocation of a substantially damaged structure consistent with WAC 173-158-076. The property owner shall be responsible for submitting to the local government and the Department of Ecology any information necessary to complete the assessment. Without a favorable recommendation from the department for the repair or replacement of a substantially damaged residential structure located in the

regulatory floodway, no repair or replacement is allowed per WAC [173-158-070](#)(1).

Before the repair, replacement, or reconstruction is started, all requirements of the NFIP, the state requirements adopted pursuant to 86.16 RCW, and all applicable local regulations must be satisfied. In addition, the following conditions must be met:

- There is no potential safe building location for the replacement residential structure on the same property outside the regulatory floodway.
  - A replacement residential structure is a residential structure built as a substitute for a legally existing residential structure of equivalent use and size.
  - Repairs, reconstruction, or replacement of a residential structure shall not increase the total square footage of floodway encroachment.
  - The elevation of the lowest floor of the substantially damaged or replacement residential structure is a minimum of one foot higher than the BFE.
  - New and replacement water supply systems are designed to eliminate or minimize infiltration of flood water into the system.
  - New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters.
  - All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.
- e. All Other Building Standards Apply in the Floodway - If Section G.4-1 is satisfied or construction is allowed pursuant to section G.4-2, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section G.0, Provisions For Flood Hazard Reduction.

5. Livestock Sanctuaries - Elevated areas for the purpose of creating a flood sanctuary for livestock are allowed on farm units where livestock is allowed. Livestock flood sanctuaries shall be sized appropriately for the expected number of livestock and be elevated sufficiently to protect

livestock. Proposals for livestock flood sanctuaries shall meet all procedural and substantive requirements of this chapter.

Note: To be “elevated sufficiently to protect livestock” typically means to be elevated at least one foot above the BFE.

- H. Variances - The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners

It is the duty of the County to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the Base Flood Elevation are so serious that variances from the flood elevation or from other requirements in the Frequently Flooded Areas section are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

1. Requirements for Variances - Variances shall only be issued:
  - a. Upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or codes;
  - b. For the repair, rehabilitation, or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
  - c. Upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
  - d. Upon a showing of good and sufficient cause;



- e. Upon a determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - f. Upon a showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section D.0 {or the numbering system used by the community} in the definition of “Functionally Dependent Use.”
2. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
3. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the BFE, provided the procedures of Sections F.0 and G.0 {or the numbering system used by the community} have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
4. Variance Criteria - In considering variance applications, the County shall consider all technical evaluations, all relevant factors, all standards specified in other sections, and:
- a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location, where applicable;
  - f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with existing and anticipated development;

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. The safety of access to the property in time of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and,
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical, water system, and streets and bridges.

#### 5. Additional Requirements for the Issuance of a Variance

- a. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:
  - The issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
  - Such construction below the BFE increases risks to life and property.
- b. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.
- c. The Floodplain Administrator shall condition the variance as needed to ensure that the requirements and criteria of this chapter are met.
- d. Variances as interpreted in the NFIP are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.

## I. Standards for Shallow Flooding Areas (AO Zones)

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In addition to other provisions in this code, the following additional provisions also apply in AO zones:

1. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement and mechanical equipment) elevated above the highest adjacent grade to the structure, one foot or more above\* the depth number specified in feet on the community's FIRM (at least two feet above the highest adjacent grade to the structure if no depth number is specified).
2. New construction and substantial improvements of nonresidential structures within AO zones shall either:
  - Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above\* the depth number specified on the FIRM (at least two feet if no depth number is specified); or
  - Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer, or architect as in section G.2-2(3).
3. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
4. Recreational vehicles placed on sites within AO zones on the community's FIRM either:
  - Be on the site for fewer than 180 consecutive days, or

- Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- Meet the requirements of subsections (1) and (3) above and the anchoring requirements for manufactured homes (Section G.1-1(2)).

DRAFT

## *xx.36.080 Critical Aquifer Recharge Areas*

### **A. Classification**

Aquifer recharge areas shall be rated and determined by the criteria established by Ecology (Publication #05-10-028, March 2005). The County hereby incorporates the ratings system as the first step in ranking the susceptibility of an aquifer to surface contamination. When applicable, the County will use wellhead protection areas developed for Class A water systems to further refine the degree of susceptibility. Aquifer recharge areas shall be classified as following:

1. Wellhead protection areas. Wellhead protection areas may be defined by the boundaries of the 10-year time of groundwater travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where groundwater time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.
2. Sole-source aquifers. Sole-source aquifers are areas designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.
3. Susceptible groundwater management areas. Susceptible groundwater management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted groundwater management program developed pursuant to WAC 173-100.
4. Special protection areas. Defined pursuant to WAC 173-200-090.
5. Moderately, highly vulnerable, or highly susceptible aquifer recharge areas. Aquifer recharge areas that are moderately, highly vulnerable, or highly susceptible to degradation or depletion due to hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the Ecology guidelines or meeting the criteria established by Ecology.

### **B. Susceptibility Factors, Rating Systems, and Designations**

Aquifer recharge areas designations include the wellhead protection areas for other Group A water systems within the County.

### **C. Protection Requirements**

Regulations adopted under this section shall not affect any right to use or appropriate water as allowed under state or federal law.

1. The following uses require aquifer recharge areas review and a hydrogeologic site evaluation pursuant to Section 13.50.040:

- a. Chemical manufacturing or reprocessing;
  - b. Commercial, industrial, institutional, or other facilities or activities that include storage, use, handling, or production of hazardous substances or waste products as defined by WAC 173-303;
  - c. Creosote and asphalt manufacture and treatment;
  - d. Electroplating;
  - e. Petroleum transmission facilities;
  - f. Sawmills producing more than 10,000 board feet per day;
  - g. Solid waste landfills;
  - h. Any septic or sewage disposal system with design flows of more than 3,500 gallons per day;
  - i. Surface mining operations requiring a permit from the State DNR; and
  - j. Type II and Type V Injection Wells.
2. The following uses may require aquifer recharge areas review and a hydrogeologic site evaluation pursuant to Section 13.50.040. The Administrator shall waive this requirement if an applicant provides documentation showing compliance with federal, state, and local laws, along with BMPs designed for the specific project, are sufficient to protect potentially affected aquifers.
- a. Aircraft, automobile, and boat repair and servicing;
  - b. Dry cleaners;
  - c. Funeral services;
  - d. Furniture stripping;
  - e. Gas stations and petroleum storage tanks (underground or aboveground) regulated and inspected by the Ecology;
  - f. Golf courses;
  - g. Junkyards and auto wrecking;
  - h. Other projects or activities, including septic or sewage disposal systems serving commercial and industrial projects as determined by the Administrator on recommendation from the Stevens County PUD, the Tri-County Health District, or an affected water purveyor.
3. The Administrator shall impose conditions to avoid, reduce, mitigate, or remediate impacts to an aquifer, as appropriate for the project and may require monitoring and bonding or other security to ensure conditions of approval are met. An approval based on compliance with federal, state, or local, but non-County, regulations shall not shift the burden of enforcement from the federal, state, or other local agency to the County.

#### **D. Hydrogeologic Site Evaluation**

1. A hydrogeologic site evaluation is a report prepared by a qualified professional (hydrogeologist) with demonstrated experience in surface water and groundwater analysis.

2. The report shall address the impact the proposed land use will have on the quality and quantity of water transmitted to an aquifer and shall include the following:
  - a. A description of surficial soil types and the geologic and hydrogeologic setting including: soil texture, permeability, and contaminant attenuation properties; characteristics of the vadose zone and geologic material including permeability and attenuation properties; and depth to groundwater and/or an impermeable soil layer;
  - b. The location and identification of wells within 1,300 feet of the site;
  - c. The location and identification of surface waterbodies and springs with recharge potential within 1,300 feet of the site;
  - d. A description of underlying aquifers, including water level, gradients, and flow direction;
  - e. Any available data on surface water and groundwater quality;
  - f. An assessment of the effects of the proposed development on water quality, quantity, and on the long-term viability of the groundwater resource;
  - g. Alternatives to avoid, reduce, mitigate, or remediate any substantial impact to the groundwater resource;
  - h. Recommendations for appropriate BMPs, monitoring, or other mitigation;
  - i. Other information as required by the Administrator in consultation with the Northeast Tri-County Health District, or an affected water purveyor.

## **CHAPTER XX.40 FOREST PRACTICES**

- xx.40.010 Purpose.**
- xx.40.020 Administrative Process.**
- xx.40.030 Public Process.**

**xx.40.010 Purpose.** The purpose of this Chapter is to assist the property owners in dealing with the State requirements and regulations associated with private timber harvest and forest management within the limits and constraints imposed by the Legislature of the State of Washington. More specifically this Chapter implements a process for lifting the six year moratorium for the purposes of constructing a single family residence or outbuildings or both on a legal lot and building site and establishes a procedure for extinguishment of the six year moratorium under certain stipulated conditions.

**xx.40.020 Administrative Process.** The six year moratorium may be lifted or rescinded with a Class 1 Review process when the following apply:

- A. For the purpose of allowing the applicant to construct a single family residence or accessory dwelling structure, outbuildings, well or sewage disposal system, on a legal lot and building site, subject to the applicants compliance with all local regulations, ordinances and provisions of this Title.
- B. The six year moratorium may be rescinded if an approved forest practice application has been withdrawn or expired and no harvest in reliance upon such approval has taken place.

**xx.40.030 Public Process.** The six year moratorium may be lifted pending a Class 2 Review process for all other applications. The application to lift the six year moratorium shall be consolidated with any other proposed development regulation.



## **CHAPTER XX.44**

### **RECREATION AND TOURISM FACILITIES**

|                  |                                  |
|------------------|----------------------------------|
| <b>xx.44.010</b> | <b>Purpose.</b>                  |
| <b>xx.44.020</b> | <b>Administration.</b>           |
| <b>xx.44.030</b> | <b>Development Standards.</b>    |
| <b>xx.44.040</b> | <b>Approval Criteria</b>         |
| <b>xx.44.050</b> | <b>Binding Site Plan.</b>        |
| <b>xx.44.060</b> | <b>Development Agreement(s).</b> |
| <b>xx.44.070</b> | <b>Cost Recovery.</b>            |

**xx.44.010 Purpose.** The purpose of this Chapter is to establish procedures to review proposed Recreation and Tourism Facilities on Natural Resource Lands in accordance with the Goals and Policies of the Pend Oreille County Comprehensive Plan.

**xx.44.020 Administration.** Applications for Recreation and Tourism Facilities shall be processed as a Class 2 Permit, provided that:

- A. Permitted uses shall be consistent with the provisions of a Conditional Use Permit approved by the County and the Goals and Policies of the Comprehensive Plan. Proposed uses and developments may include, but is not limited to:
  - 1. Bed and breakfast inns;
  - 2. Vacation Rentals;
  - 3. Guest houses;
  - 4. Bunk houses;
  - 5. Cottages;
  - 6. Hunting or fishing lodges;
  - 7. Event centers;
  - 8. Wineries;
  - 9. Breweries;
  - 10. Meaderies;
  - 11. Corrals, barns, and stables;
  - 12. Dude ranches; and
  - 13. Accessory uses and facilities such as parking lots, restrooms, and gift shops.
- C. In addition to the provisions of this Chapter, proposed Recreation and Tourism Facilities must comply with all applicable provisions of this Title, Pend Oreille County Development Regulations, and State and Federal Laws. This shall include but is not limited to the Washington State Environmental Policy Act, the Washington State Growth Management Act, and the Washington State Shorelines Management Act. In addition, the County may require a binding site plan, subdivision approval, and/or a development agreement.

- D. All decisions of the Community Development Director regarding interpretations of this Chapter, including but not limited to: clarifications of the provisions for processing applications and related permits, permitted uses revisions, and/or applicable development standards, must be in writing and may be appealed in accordance with the provisions of Chapter xx.14 Processing Procedures.
- E. Project Sponsors may submit an application(s) to modify approved Recreation and Tourism Facilities. Modifications that do not substantially change the nature or level of use or that do not require a new environmental review, may be considered minor amendments and may be approved by the Community Development Director or his/her designee. Modifications that would result in a substantial change of use, substantially change the nature or level of activity, or that would require the need for additional environmental review, shall be considered a major modification and must be approved by the Planning Commission or Hearing Examiner as required by the provisions of this Title.

**xx.44.030 Development Standards.** All proposed development activities must comply with the conditions of any required permits and approvals, and must comply with all applicable provisions of the Pend Oreille County Development Regulations and Ordinances unless alternative measures that meet or exceed the code requirements have been established in a Development Agreement approved by the Board of County Commissioners.

- A. Proposed Tourism and Recreation Facilities must also comply with the following standards and requirements:
  - 1. Business License. The project sponsor shall procure the appropriate business license.
  - 2. Traffic Impacts. A traffic study shall be prepared, subject to County review and approval, that identifies and mitigates, at no cost to the County, traffic impacts associated with the proposed development. If the proposal seeks to use access via a State Highway, the traffic study shall meet the minimum requirements of the Washington State Department of Transportation. A traffic study could be waived if determined by Community Development Department to be unnecessary while considering Concurrency management.
  - 3.
  - 4. Sewer, Water, Electrical, and Public Services. The Project Sponsor shall provide sufficient documentation to verify, subject to County review and approval, that adequate provisions can be made to provide water, sewer and electrical power service to the site, including but not limited to sufficient water rights, and other public facilities and services including law enforcement, fire suppression, and emergency services without adversely affecting existing levels of service.
    - a. This shall include consultation with the Tri-County Health District, the local fire district, and/or the Pend Oreille County Sheriff as appropriate.

5. Storm Water Management. All development activities must meet or exceed the design standards contained in the Department of Ecology Storm Water Design Manual for Eastern Washington as adopted by the County.
6. Environmentally Sensitive Areas. The Project Sponsor shall, at no cost to the County, identify all environmentally sensitive areas on or near the site and shall make adequate provisions to avoid or mitigate potential adverse impacts in accordance with the provisions of this Title, including but not limited to Chapter XX.30 Shoreline Regulations and Chapter XX.36 Environmentally Sensitive Areas.
7. Unless the proposed Tourism and Recreation Facility is located within an urban growth area, measures must be included, as necessary, to protect the rural character of the County and to preclude new urban or suburban land uses in the vicinity of the proposed Recreation and Tourism Facility.
8. Recreation and Tourism Facilities proposed for designated Natural Resource Lands must be designed, constructed, and operated in a manner that does not adversely affect the economic viability or the productivity of these lands;
9. Recreation and Tourism Facilities must be located, designed and operated so as to not interfere with, and to support the continuation of, the overall agricultural and forest management of the property and neighboring properties;
10. Recreation and Tourism Facilities shall not be located outside the area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural or timber land to nonagricultural or non-timber uses without completing the necessary Conversion Application to the satisfaction of the Washington Department of Natural Resources or any other effected agency.
11. Recreation and Tourism Facilities that include access to water must also submit a Water Access Management Plan in accordance with the provisions of Chapter XX.26.050.
12. Recreation and Tourism Facilities that involve overnight stays by visitors, guests, or customers must comply with the provisions of Chapter XX.70 Vacation Rentals, including but not limited to a Property Management Plan, certification of life and safety inspections, and the payment of all required fees and charges.
13. Setbacks and Buffers. All buildings and structures shall be setback from exterior property lines at least one hundred feet (100') to allow for a perimeter buffer, provided that:
  - a. The perimeter buffer shall be landscaped with natural or native vegetation and kept free of debris;

- b. The perimeter buffer shall be designed and landscaped so that vehicles and structures are screened and/or obscured from neighboring residences, the County and State roads and/or rivers, lakes, and other water bodies;
- c. Perimeter buffers may be reduced based on a finding that adequate provisions have been made to ensure that the site is screened and/or obscured from neighboring residences, the County and State roads and/or rivers, lakes, and other water bodies; and
- d. Buffer requirements may be increased based on a finding that the location of proposed sewer or septic systems may adversely affect neighboring properties.

**xx.44.040 Approval Criteria.** Applications may be approved in accordance with the provisions of Chapter XX.68 Conditional Uses, and:

A. Based on written findings that:

- 1. All requirements and standards have been met;
- 2. The proposed uses(s) and facilities have been designed, and will be constructed and operated to serve recreational and tourism users;
- 3. The proposed uses and facilities will not adversely affect the rural character of the County; and
- 4. The proposed uses and facilities will not adversely affect timber, agricultural, or mining activities designated for protection in accordance with the provisions of the County Comprehensive Plan and Development Regulations.

**xx.44.050 Binding Site Plan.** Concurrent with or following the review of a proposal and the nature of the proposed activities, the County may require that a binding site plan be submitted for review and approval in accordance with the provisions of this Title.

**xx.60.060 Development Agreement(s).** The County and the Project Sponsor may execute in accordance with the provisions of State law a Development Agreement(s) to implement the provisions of the approved recreation and Tourism Facility and related permits and approvals.

**xx.44.070 Cost Recovery.** The Project Sponsor shall be responsible for reimbursing the County for all costs associated with reviewing proposed projects under the provisions of this Chapter. This may include the execution of a written cost recovery agreement and the requirement to maintain a minimal level of funds on deposit with the County to cover costs incurred by the County.

**CHAPTER XX.48A**  
**RECREATIONAL VEHICLE PARK REGULATIONS**

**Sections:**

- xx.48.010 Purpose.**
- xx.48.020 Applicability.**
- xx.48.030 Application Requirements.**
- xx.48.040 Approval Criteria.**
- xx.48.050 Project Approval.**
- xx.48.060 Revisions to Approved Plans.**

**xx.48.010 Purpose.** The purpose of this Chapter is to establish the standards for the transient use of real property for recreational vehicle parking sites.

**xx.48.020 Applicability.**

- A. Any person seeking to use real property as a “Commercial Use” for recreational vehicle parking sites that do not involve the sale, or transfer of ownership of RV parking sites shall be processed as a Recreational Vehicle Park and must apply for and receive a Conditional Use Permit from the County, provided that:
  - 1. Any person seeking to divide his or her property for the purpose of sale or transfer or ownership, of recreational vehicle parking sites shall be processed as a Recreational Vehicle Resort in accordance with the provisions of Chapter xx.48B.
- B. The temporary expansion of existing recreational vehicle parks for not more than 72 hours may be approved by the Community Development Director through the issuance of a Special Use Permit in accordance with the provisions of this Title and based on a finding that adequate provisions have been made to protect the public health and safety and to ensure that the site will be cleaned and restored in a timely manner.
- C. RV Parks are intended to accommodate the seasonal or transient use of RV’s. RV’s shall not be used as a permanent residence and RV’s must have their tongue and wheels attached and shall be removed from an RV Park at least once every 90 days.

**xx.48.030 Application Requirements.** The County Community Development Director is authorized to establish such forms, procedures,

and fees as may be necessary to process applications for Recreational Vehicle Parks and related permits, provided that:

- A. Prior to submitting an application(s) to the County for a Conditional Use Permit or related permits, the Applicant must schedule and participate in a pre-application review conference.
- B. All RV Park applications shall be processed as a Class 2 Permit in accordance with the provisions of this Title.
- C. It is the intent of the County to process Conditional Use Permits in conjunction with any other permits and approvals as may be required for a proposed Recreational Vehicle Park. The County Community Development Director shall be responsible for determining the required permits and establishing the appropriate review and public comment procedures.
- D. At a minimum, an application for an RV Park and associated permits shall include the following:
  - 1. The name and address of Applicant and property owner(s);
  - 2. A complete description of the interest of the Applicant in the property and a thorough project description including rent, lease, and/or marketing plans;
  - 3. A statement of any proposed or anticipated limitations or conditions on the use of the land;
  - 4. A traffic study based on the total number of trips that will be generated at full build out and that identifies such traffic mitigation measures that may be required to meet County Level of Service and Road standards;
  - 5. A site plan drawing(s) that is neat and accurate at a scale not less than one inch for each two hundred feet on a sheet or sheets measuring eleven by seventeen inches (or as required by the Planning Department) that depicts:
    - a. The location of all existing and proposed property lines, lots, sites, tracts, neighboring parcels, RV parking sites, and/or open spaces along with required buffers or setbacks;
    - b. Proposed landscaping;
    - c. Known or potential environmentally sensitive areas and the associated buffers or setbacks;

- d. Streets, roads, access points, parking areas, trails and driveways;
  - e. Existing and proposed easements;
  - f. Existing and proposed water and sewer system improvements, storm water facilities, and utilities;
  - g. Existing and proposed open space and recreation areas; and
  - h. A proposed development schedule including the projected completion or build out date and potential phases of developments.
6. A copy of the title report for the parcel(s).
- E. All applications for RV Parks with five or more RV sites and/or that involve parcels that contain or are adjacent to environmentally sensitive areas, shall be accompanied by a SEPA Checklist.
- F. All applications for Recreational Vehicle Parks within a shoreline area as defined by the Washington State Shoreline Management Act shall submit an application for Shoreline Substantial Development Permit and shall be accompanied by a SEPA Checklist.

**xx.48.040 Approval Criteria.** Recreational Vehicle Park Permit applications shall be reviewed for compliance with the provisions of this Chapter and must meet or exceed the following criteria:

- A. Pend Oreille County Comprehensive Plan, Shoreline Master Program, ordinances and regulations, State and County Building Codes, and the Washington State Environmental Policy Act (SEPA).
- B. Washington State Department of Health, Department of Ecology, and Northeast Tri-County Health District requirements for sewage disposal and potable water supply, provided that:
  - 1. The Applicant shall demonstrate that adequate water right(s) exist to serve the proposed RV Park, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050;
  - 2. No RV Park shall be permitted to operate without the approval of a community water supply plan by the Washington State Department of

Health, Department of Ecology, and Northeast Tri-County Health District,  
as applicable;

3. Water from a public or private water system(s) shall be provided to serve each lot, lease space, or site;
  4. All requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to specific binding site plan approval; and
  5. All RV parks designed for five or more RV's shall include at least one approved sanitary sewer dump station.
- C. Pend Oreille County and Washington State Department of Transportation, regulations pertaining to roads, utilities, drainage, fire protection, access for emergency vehicles, and other infrastructure improvements, including but not limited to:
1. Access to all RV parks shall be on paved roads built and maintained to current County standards with a minimum width of 60 feet of right-of-way.
  2. All new RV Parks shall provide at least two means of ingress and egress that meets or exceeds current County Fire Codes and current County Road Standards.
  3. All interior roads will be built to County Road Design Standards and maintained by the property owner, unless dedicated to and accepted by the County and shall meet the following requirements:
    - a. Two-Lane Road: Twenty-four feet (24') of paved surface;
    - b. One-Way Road: Twelve feet (12') of paved surface;
    - c. All interior streets shall be paved with appropriate storm water management facilities;
    - d. Grades of all interior streets shall be sufficient to ensure adequate surface drainage, but shall not be more than eight percent; and
    - e. Streets shall intersect at approximately right angles. Intersections of more than two (2) streets at one point should be avoided.
  4. Adequate parking shall be provided in accordance with a parking plan approved by the



County on individual lots or in designated parking areas and shall not be permitted on internal roads or on County roads outside of the RV Park.

D. The following recreational area and open space standards:

1. Each park designed to accommodate up to ten recreational vehicles or trailers shall provide at least 10,000 square feet of recreational area and open space, improved in accordance with the provisions of an onsite recreation plan approved by the County and an additional 5,000 square feet for each additional ten sites or fraction thereof, provided that:
  - a. Open space and recreational areas must be located on site and clearly designated;
  - b. Designated open space areas shall not include roads, driveways, parking lots, small areas of land between lots, driveways and roads, individual RV lots, or the areas occupied by structures; and
  - c. A minimum of twenty five percent of the designated open space shall be in one area and available for the recreational use of the RV Park and shall not include ponds, wetlands, storm drainage areas, buffers, trails, fields, and playgrounds.

E. Project Sponsors shall consult with the local Fire District and/or the County Fire Marshall to determine what improvements or mitigating measures may be required in order to provide adequate fire protection and access for emergency vehicles, provided that:

1. In the absence of adequate on-site water sources, as determined by the Fire Marshal, such as reservoirs, swimming pools, lakes, rivers, and streams, the provisions of the Uniform Fire Code shall apply for purposes of satisfying the required fire flows.

F. Easements shall be dedicated to provide required access to all utilities.

G. The storage, collection and disposal of solid waste in recreational vehicle parks shall not create a health hazard. All solid waste shall be stored in closed containers and shall be emptied at least once a week, with the solid waste disposed of at a sanitary landfill or other approved facility, in accordance with the provisions of a solid waste management plan approved by the County.

H. The following design standards:

1. All recreational vehicles in the setup position and all buildings and structures shall be separated from each other by at least 10 feet (10').

2. All recreational vehicles, buildings, and structures shall be setback from exterior property lines at least one hundred feet (100') to allow for a perimeter buffer, provided that:
  - a. The perimeter buffer shall be landscaped with natural or native vegetation and kept free of debris;
  - b. The perimeter buffer shall be designed and landscaped so that the RV Park vehicles and structures are screened and/or obscured from neighboring residences, the County and State roads and/or rivers, lakes, and other water bodies;
  - c. The Planning Commission or Hearing Examiner may reduce the perimeter buffer based on a finding that adequate provisions have been made to ensure that the site is screened and/or obscured from neighboring properties and residences, the County and State roads and/or rivers, lakes, and other water bodies;
  - d. The Planning Commission or Hearing Examiner may increase the buffer requirements based on a finding that the location of proposed sewer or septic systems may adversely affect neighboring properties: and
  - e. The 100' buffer requirement may be superseded by but shall not be additive to the requirements of the County's Shoreline Master Program.
3. All setbacks shall be landscaped with natural or native vegetation and kept free of debris, provided that:
  - a. Septic tanks and associated drain fields shall not be permitted in required perimeter buffers.
4. All RV Parks shall have at least one (1) approved toilet/lavatory/shower facility for each sex for every twenty-five (25) RV sites, or fractional part thereof;
5. All lighting shall be pointed down, directed internally, and/or screened to minimize the adverse effects of the lighting on neighboring properties, provided that this requirement shall not preclude the appropriate display of the flag of the United States, the Dominion of Canada, or the State of Washington.
6. All improvements to existing and proposed recreational vehicle parks shall conform to the current building, plumbing, mechanical, and fire codes of Pend Oreille County, and/or the State of Washington.

7. Only one address shall be assigned and one mailbox permitted at each RV Park.
8. A finding that the proposed Recreational Vehicle Park functions as a single site with respect to, but not limited to, lot access, interior circulation, open space, landscaping, drainage facilities, facility and utility systems, and parking.
9. The maximum number of RV sites that may be permitted in an approved RV Park is 150.

**xx.48.050 Project Approval.** Approved Recreational Vehicle Park Permits shall include all conditions of approval and shall incorporate by reference all requirements and conditions of associated permits and approvals provided that:

- A. All required improvements shall be installed by the Project Sponsor, and approved by the County prior to any public use or occupancy of the site; and
- B. Failure to comply with the terms and conditions of approval may result in the suspension or revocation of permits and approvals and/or civil or criminal penalties.

**xx.48.060 Revisions to Approved Plans.** Requests to revise approved Recreation Vehicle Park Permits may be processed as a Class 1 Permit provided that the proposed revisions do not result in substantial changes.

- A. For the purpose of this section substantial change includes, but is not limited to:
  1. The creation of additional RV sites;
  2. Changes in access points; or
  3. Changes in the proposal that may lead to built or natural environmental impacts that were not addressed in the original approval.
- B. All substantial revisions shall be processed as a Class 2 permit and shall be treated as a new application for purposes of vesting.

**CHAPTER XX.48B**  
**RECREATIONAL VEHICLE RESORT REGULATIONS**

**Sections:**

- xx.48.010 Purpose.**
- xx.48.020 Applicability.**
- xx.48.030 Application Requirements.**
- xx.48.040 Approval Criteria.**
- xx.48.050 Project Approval.**
- xx.48.060 Revisions to Approved Plans.**

**xx.48.010 Purpose.** The purpose of this Chapter is to establish the standards for the division of land for sale, transfer of ownership, or lease of real property for recreational vehicle parking sites.

**xx.48.020 Applicability.** Any person seeking to use real property as a “Commercial Use” for recreational vehicle parking sites that involves the sale, or transfer of ownership of RV parking sites shall be processed as a Recreational Vehicle Resort and must apply for and receive a Conditional Use Permit from the County, provided that:

- A. Any person seeking to use his or her property for “Commercial Use” by RV’s that does not involve the sale or transfer or ownership, of recreational vehicle parking sites shall be processed as a Recreational Vehicle Park in accordance with the provisions of Chapter xx.48A.
- B. Any person seeking to divide his or her property for the purpose of sale or transfer of ownership for a Recreational Vehicle Resort is also required to apply for and receive an approved subdivision or binding site plan from the County. All subdivisions or binding site plans for Recreational Vehicle Resorts must comply with the density requirements of the zoning district in which it is located.

**xx.48.030 Application Requirements.** The County Community Development Director is authorized to establish such forms, procedures, and fees as may be necessary to process applications for Recreational Vehicle Resorts and related permits, provided that:

- A. Prior to submitting an application(s) to the County, the Applicant must schedule and participate in a pre-application review conference.
- B. All Recreational Vehicle Resort applications shall be processed as a Class 2 Permit in accordance with the provisions of this Title.
- C. It is the intent of the County to integrate the processing of all permits and approvals as may be required for a proposed Recreational Vehicle Resort. The County Community Development Director shall be responsible for determining the required permits and establishing the appropriate review and public comment procedures.
- D. At a minimum, an application for Recreational Vehicle Resort and associated permits shall include the following:
  - 1. The name and address of Applicant, representative(s) and property owner(s);
  - 2. A complete description of the interest of the Applicant in the property and a thorough project description including sales, lease, and/or marketing plans;
  - 3. A statement of any proposed or anticipated limitations or conditions on the use of the land;
  - 4. A traffic study based on the total number of trips that will be generated at full build out and that identifies such traffic mitigation measures that may be required to meet County Level of Service and Road standards.
  - 5. A site plan drawing(s) that is neat and accurate at a scale not less than one inch for each two hundred feet on a sheet or sheets measuring eleven by seventeen inches (or as required by the Planning Department) that depicts:
    - a. The location of all existing and proposed property lines, lots, sites, tracts, neighboring parcels, and/or open spaces along with required buffers or setbacks, provided that;
      - i. The County may prescribe more extensive survey or submittal requirements in accordance with the provisions of RCW 58.17, RCW 64.32, and RCW 64.34.
    - b. Proposed landscaping;

- c. Known or potential environmentally sensitive areas and the associated buffers or setbacks;
  - d. Streets, roads, access points, parking areas, trails, and driveways;
  - e. Existing and proposed easements;
  - f. Existing and proposed water and sewer system improvements, storm water facilities, and utilities;
  - g. Existing and proposed open space and recreation areas; and
  - h. A proposed development schedule including the projected completion or build out date and potential phases of developments.
6. A copy of the proposed Lot Owners Association By-Laws or comparable documents that will govern the ownership and maintenance of land or facilities in shared or common ownership. These by-laws shall include, but is not limited to:
- a. Provisions to ensure the ongoing maintenance and operation of required water and sewer systems; and
  - b. Provisions for annual fire and safety inspections by the appropriate Fire District or jurisdiction.
7. A copy of the title report for the parcel(s).
- E. All applications for RV Resorts with five or more RV sites and/or that involve parcels that contain or are adjacent to environmentally sensitive areas, shall be accompanied by a SEPA Checklist.
- F. All applications for Recreational Vehicle Resorts within a shoreline area as defined by the Washington State Shoreline Management Act shall submit an application for Shoreline Substantial Development Permit and shall be accompanied by a SEPA Checklist.

**xx.48.040 Approval Criteria.** Recreational Vehicle Resort Permit applications and associated binding site plans or subdivisions shall be reviewed for compliance with the provisions of this Chapter and must meet or exceed the following criteria:

- A. Pend Oreille County Comprehensive Plan, Shoreline Master Program, ordinances and regulations, State and County Building Codes, and the Washington State Environmental Policy Act (SEPA).

- B. Washington State Department of Health, Department of Ecology, and Northeast Tri-County Health District requirements for sewage disposal and potable water supply, provided that:
1. The Applicant shall demonstrate that adequate water right(s) exist to serve the proposed Recreational Vehicle Resort, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050;
  2. No Recreational Vehicle Resort shall be permitted to operate without the approval of a community water supply plan by the Washington State Department of Health, Department of Ecology, and Northeast Tri-County Health District, as applicable;
  3. Water from a public or private water system(s) shall be provided to serve each lot, lease space, or site;
  4. All requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to specific binding site plan approval; and
  5. All Recreational Vehicle Resorts designed for five or more RV sites shall include at least one approved sanitary sewer dump station.
- C. Pend Oreille County and Washington State Department of Transportation, regulations pertaining to roads, utilities, drainage, fire protection, access for emergency vehicles, and other infrastructure improvements, including but not limited to:
1. Access to all Recreational Resorts shall be on paved roads built and maintained to County standards with a minimum width of 60 feet of right-of-way.
  2. All new Recreational Vehicle Resorts shall provide at least two means of ingress and egress that meet or exceed current County Fire Codes and current County Road Standards.
  3. All interior roads will be built to current County Road Design Standards and maintained by the property owner, unless dedicated to and accepted by the County and shall meet the following requirements:
    - a. Two-Lane Road: Twenty-four feet (24') of paved surface;
    - b. One-Way Road: Twelve feet (12') of paved surface;

- c. All interior streets shall be paved with appropriate storm water management facilities;
    - d. Grades of all interior streets shall be sufficient to ensure adequate surface drainage, but shall not be more than eight percent; and
    - e. Streets shall intersect at approximately right angles. Intersections of more than two (2) streets at one point should be avoided.
  - 4. Adequate parking shall be provided in accordance with a parking plan approved by the County on individual lots or in designated parking areas and shall not be permitted on internal roads or on County roads outside of the Recreational Vehicle Resort.
- D. The following recreational area and open space standards:
- 2. Each Recreational Vehicle Resort designed to accommodate up to ten recreational vehicles shall provide a recreational area(s) and open space improved in accordance with the provisions of an onsite recreation plan approved by the County, provided that:
    - a. Open space and recreational areas must be located on-site and clearly designated;
    - b. Designated open space areas shall not include roads, driveways, parking lots, small areas of land between lots, driveways and roads, individual RV lots, or the areas occupied by structures; and
    - c. A minimum of twenty five percent of the designated open space shall be in one area and available for the recreational use of the Recreational Vehicle Resort and shall not include ponds, wetlands, storm drainage areas, buffers, trails, fields and playgrounds.
- E. Project Sponsors shall consult with the local Fire District and/or the County Fire Marshall to determine what improvements or mitigating measures may be required in order to provide adequate fire protection and access for emergency vehicles, provided that:
- 1. In the absence of adequate on-site water sources, as determined by the Fire Marshal, such as reservoirs, swimming pools, lakes, rivers, and streams, the provisions of the Uniform Fire Code shall apply for purposes of satisfying the required fire flows.
- F. Easements shall be dedicated to provide required access to all utilities.



G. The storage, collection and disposal of solid waste in recreational vehicle parks shall not create a health hazard. All solid waste shall be stored in closed containers and shall be emptied at least once a week, with the solid waste disposed of at a sanitary landfill or other approved facility, in accordance with the provisions of a solid waste management plan approved by the County.

H. The following design standards:

1. All recreational vehicles in the setup position and all buildings and structures shall be separated from each other by at least 10 feet (10').
2. All recreational vehicles, buildings, and structures shall be setback from exterior property lines at least one hundred feet (100') to allow for a perimeter buffer, provided that:
  - a. The perimeter buffer shall be landscaped with natural or native vegetation and kept free of debris;
  - b. The perimeter buffer shall be designed and landscaped so that the Recreational Vehicle Resort vehicles and structures are screened and/or obscured from neighboring residences, the County and State roads and/or rivers, lakes, and other water bodies;
  - c. The Planning Commission or Hearing Examiner may reduce the perimeter buffer based on a finding that adequate provisions have been made to ensure that the site is screened and/or obscured from neighboring properties and residences, the County and State roads and/or rivers, lakes, and other water bodies;
  - d. The Planning Commission or Hearing Examiner may increase the buffer requirements based on a finding that the location of proposed sewer or septic systems may adversely affect neighboring properties: and
  - e. The 100' buffer requirement may be superseded by but shall not be additive to the requirements of the County's Shoreline Master Program.
  - f. All setbacks shall be landscaped with natural or native vegetation and kept free of debris, provided that:
    - i. Septic tanks and associated drain fields shall not be permitted in required perimeter buffers.
3. All Recreational Vehicle Resorts shall have at least one (1) approved toilet/lavatory/shower facility for each sex for every twenty-five (25) RV sites, or fractional part thereof.

4. All lighting shall be pointed down, directed internally, and/or screened to minimize the adverse effects of the lighting on neighboring properties, provided that this requirement shall not preclude the appropriate display of the flag of the United States, the Dominion of Canada, or the State of Washington.
5. Only one address shall be assigned, and one mailbox permitted at each Recreational Vehicle Resort.
6. A finding that the proposed Recreational Vehicle Resort functions as a single site with respect to, but not limited to, lot access, interior circulation, open space, landscaping, drainage facilities, facility and utility systems, and parking.
7. The minimum recreational vehicle lot size shall be two thousand five hundred (2,500) square feet. The RV lots shall not exceed a length to width ratio of 4:1.

**xx.48.050 Project Approval.** Approved Recreational Vehicle Resort permits, and associated subdivisions or binding site plans shall include all conditions of approval and shall incorporate by reference all requirements and conditions of associated permits and approvals, provided that:

- A. All required improvements shall be installed by the Project Sponsor, and approved by the County prior to any public use or occupancy of the site; and
- B. Failure to comply with the terms and conditions of approval may result in the suspension or revocation of permits and approvals and/or civil or criminal penalties.

**xx.48.060 Revisions to Approved Plans.** Requests to revise approved Recreation Vehicle Resort permits and/or associated binding site plans and subdivisions may be processed as a Class 1 Permit provided that the proposed revisions do not result in substantial changes.

- A. For the purpose of this section substantial change includes, but is not limited to:
  1. The creation of additional lots;
  2. Changes in access points; or
  3. Changes in the proposal that may lead to built or natural environmental impacts that were not addressed in the original approval.
- B. All substantial revisions shall be processed as a Class 2 permit and shall be treated as a new application for purposes of vesting.

## **CHAPTER XX.52 BINDING SITE PLANS**

|                  |  |
|------------------|--|
| <b>xx.52.010</b> | <b>Purpose.</b>                                  |
| <b>xx.52.020</b> | <b>Application Requirements.</b>                 |
| <b>xx.52.030</b> | <b>Approval Criteria.</b>                        |
| <b>xx.52.040</b> | <b>Preliminary Binding Site Plan Approval.</b>   |
| <b>xx.52.050</b> | <b>Final Binding Site Plan Approval.</b>         |
| <b>xx.52.060</b> | <b>Revisions to Approved Binding Site Plans.</b> |

**xx.52.010 Purpose.** The purpose of this Chapter is to establish or reference the procedure and requirements for the application, orderly review, and expeditious approval of binding site plans as an alternative to subdivisions in accordance with the provisions of RCW 58.17

**xx.52.020 Application Requirements.** The County Community Development Director is authorized to establish such forms, procedures, and fees as may be necessary to process binding site plans in accordance with the provisions of RCW 58.17 and County Ordinances:

- A. Prior to submitting an application for a binding site plan, the Applicant must schedule and participate in a pre-application review conference;
- B. Preliminary Binding Site Plan applications shall be processed as a Class 2 Permit and a final Binding Site Plan shall be processed as a Class 3 permit; and
- C. It is the intent of the County to process Binding Site Plan applications in conjunction with any other permits and approvals that may be required. The County Community Development Director shall be responsible for determining the required permits and establishing the appropriate review and public comment procedures.

**xx.52.030 Approval Criteria.** Binding site plans shall be reviewed for compliance with the provisions of this Chapter and:

- A. RCW 58.17;
- B. Pend Oreille County Comprehensive Plan, Shoreline Master Program, ordinances and regulations, State and County building codes, and the Washington State Environmental Policy Act (SEPA);

- C. New land divisions located within city urban growth areas must conform to city development standards, in accordance with adopted inter-local agreements;
- D. Washington State Department of Health, Department of Ecology and Northeast Tri-County Health District (NETCHD) requirements for sewage disposal:
  - 1. Within urban growth areas, public sewer shall be required in binding site plans unless the on-site sewage disposal requirements of the Department of Health and/or Department of Ecology and minimum land area requirements can be met.
  - 2. Outside of urban growth areas, binding site plans shall not be approved that require extension or expansion of public sewer except when:
    - a. Public sewer is necessary to protect the public health, safety or environment; and
    - b. Public sewer is financially supportable at rural densities and does not permit urban development.
  - 3. On-site sewage disposal systems shall meet the requirements of the Department of Health, or Department of Ecology, and NETCHD.
  - 4. All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to specific binding site plan approval.
- E. Washington State Department of Health, Department of Ecology and NETCHD requirements for potable water supply:
  - 1. Water from a public water system(s) shall be provided to serve each lot or lease space.
  - 2. The applicant shall demonstrate that adequate water right(s) exist to serve the binding site plan, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.
  - 3. If a Group B or Group A public water system is created to serve the binding site plan, the number of wells shall be limited to the minimum needed to serve the water needs of the binding site plan as determined by the Health Department.
  - 4. All requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to specific binding site plan approval.

- F. Binding site plans shall incorporate adequate capability for fire protection in accordance with sound engineering practices, locally adopted codes and development standards, and the effected Fire District.
- G. Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.
1. Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, may be required whenever a binding site plan abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.
  2. Frontage improvements required to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification and current Public Works construction specification prior to recording the general or specific binding site plan.
  3. .
  4. All binding site plans shall abut and be accessed by a constructed and maintained roadway. Access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer to analyze present and future traffic circulation patterns, to determine the appropriate location and number of access points to the site, and to determine the appropriate classification of the proposed roads.
  5. Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the binding site plan.
  6. Public road rights-of-way and/or easements shall be extended to the boundaries of binding site plans that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.
  7. Private roads may be permitted in a binding site plan when in compliance with the Pend Oreille County Public Works Road Standards.
- H. The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the binding site plan.
- I. Easements shall be provided where applicable for development related facilities.

1. All easements shown on binding site plans shall include:
  - a. The beneficiary of the easement;
  - b. The purpose of the easement; and
  - c. A clear depiction of the easement (including dimensions) on the face of the binding site plan.
2. The owner may specify the burdening of the easement. The owners of the subservient estates are not entitled to rely upon the County to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of, or issuance of, permits for development of properties that burden the easements referred to herein.

**xx.52.040 Preliminary Binding Site Plan Approval.** Binding Site Plan applications may receive preliminary approval based on a written finding by the Planning Commission that the following standards and criteria have been met:

- A. The proposal is in conformity with the provisions of this Chapter and applicable land division, zoning, critical areas, shoreline management, and other land use regulations, and County Regulations; and that
- B. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the recording of such binding site plan and dedication.

**xx.52.050 Final Binding Site Plan Approval.** Upon satisfactory completion of all terms and conditions of preliminary approval including the inspection and approval of all required improvements, the Applicant shall be authorized by the County to proceed with the filings necessary for final binding site plan approval, provided that:

- A. Improvements and other requirements shall be provided to the extent that each specific phase of the binding site plan will be adequately served by all roads, utilities, drainage facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed; and
- B. As an alternate to complete installation of required improvements, the Applicant may propose to post securities in a form prescribed by the County and subject to County approval, guaranteeing completion of the work. No occupancy permit, final

inspection, or use of the lot(s) created by a binding site plan shall be issued or allowed until all necessary infrastructure improvements as specified by this Chapter have been met.

- C. Work on required improvements must be commenced within one year of the time of approval and completed within three years of commencement of the project. An Applicant who files a written request to the Department of Community Development at least thirty days before the expiration of this three year period may be granted one one-year extension upon a showing that the Applicant has attempted in good faith to complete the action within the three year period.

1. Failure to meet the conditions of approval may result in the revocation of the permit or preliminary approval, the forfeiture of performance bonds or financial guarantees, and/or the imposition of additional conditions of approval.

**xx.52.060 Revisions to Approved Binding Site Plans.** Requests to revise approved Binding Site Plans shall be processed as:

- A. A Class 2 Decision if the proposed revisions may result in any substantial changes as determined by the County Community Development Director, and shall be treated as a new application for purposes of vesting. For the purpose of this section substantial change includes:
1. The creation of additional lots;
  2. Changes in access points; or
  3. Changes in the proposal that may lead to built or natural environmental impacts that were not addressed in the original approval.
- B. A Class 1 decision if the proposed revisions do not result in substantial changes as determined by the County.

## **CHAPTER XX.60**

### **MASTER PLANNED RESORTS**

- xx.60.010 Purpose.**
- xx.60.020 Administration.**
- xx.60.030 Development Standards.**
- xx.60.040 Cost Recovery.**
- xx.60.050 Development Agreement(s).**

**xx.60.010 Purpose.** The purpose of this Chapter is to establish procedures to review proposed Master Planned Resorts in accordance with the Goals and Policies of the Pend Oreille County Comprehensive Plan. A master planned resort is a self-contained, fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities, consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. Residential uses are permitted only if they are integrated into and support the on-site recreational nature of the resort.

**xx.60.020 Administration.** Master Planned Resorts shall be processed as a Class 2 Permit, provided that:

- A. Master Planned Resorts may be permitted on any parcel not designated as a Natural Resource Land. Master Planned Resorts on designated timber, agricultural, and mining lands are specifically prohibited.
- B. Permitted uses in a Master Planned Resort shall be consistent with the provisions of a Master Plan approved by the County and the Goals and Policies of the Comprehensive Plan.
- C. In addition to the provisions of this Chapter, proposed Master Planned Resorts must comply with all applicable provisions of this Title, Pend Oreille County Ordinances, and State and Federal Laws. This shall include but is not limited to the Washington State Environmental Policy Act, the Washington State Growth Management Act, and the Washington State Shorelines Management Act. In addition, the County may require a binding site plan or subdivision approval.
- D. All decisions of the Community Development Director regarding interpretations of this Chapter, including but not limited to: modifications to the provisions for processing Master Plans and related permits, permitted uses revisions, and/or applicable development standards, must be in writing and may be appealed to the Planning Commission.



- E. Project Sponsors may submit an application(s) to modify approved Master Planned Resorts. Modifications that do not substantially change the nature or level of use or that do not require a new environmental review, may be considered minor amendments and may be approved by the Community Development Director or his/her designee. Modifications that would result in a substantial change of use, substantially change the nature or level of activity, or that would require the need for additional environmental review, shall be considered a major modification and must be approved by the Planning Commission, Hearing Examiner or Board of County Commissioners as required by the provisions of this Title.

**xx.60.030 Development Standards.** All development activities must comply with the conditions of the approved Master Plan, the conditions of any required permits and approvals, and must comply with the provisions of the Pend Oreille County Development Regulations and Ordinances unless alternative measures that meet or exceed the code requirements have been established in a Development Agreement approved by the Board of County Commissioners.

A. Master Planned Resort shall be located in a setting of significant natural amenities.

B. Approved Master Plans must also meet the following standards:

14. Traffic Impacts. A traffic study shall be prepared, subject to County review and approval, that identifies and mitigates, at no cost to the County, all traffic impacts associated with the proposed development.
15. Sewer, Water, Electrical, and Public Services. The Project Sponsor shall provide sufficient documentation to verify, subject to County review and approval, that adequate provisions can be made to provide water, sewer and electrical power service to the site, including but not limited to sufficient water rights, and other public facilities and services including law enforcement, fire suppression, and emergency services without adversely affecting existing levels of service.
16. Storm Water Management. All development activities must meet or exceed the design standards contained in the Department of Ecology Storm Water Design Manual for Eastern Washington as determined by the County.
17. Environmentally Sensitive Areas. The Project Sponsor shall, at no cost to the County, identify all environmentally sensitive areas on or near the site and shall make adequate provisions to avoid or mitigate potential adverse impacts.
18. Setbacks and Buffers. All buildings and structures shall be setback from exterior property lines at least one hundred feet (100') to allow for a perimeter buffer, provided that:

- a. The perimeter buffer shall be landscaped with natural or native vegetation and kept free of debris;
  - b. The perimeter buffer shall be designed and landscaped so that vehicles and structures are screened and/or obscured from neighboring residences, the County and State roads and/or rivers, lakes, and other water bodies;
  - c. The Planning Commission or Hearing Examiner may reduce the perimeter buffer based on a finding that adequate provisions have been made to ensure that the site is screened and/or obscured from neighboring residences, the County and State roads and/or rivers, lakes, and other water bodies; and
  - d. The Planning Commission or Hearing Examiner may increase the buffer requirements based on a finding that the location of proposed sewer or septic systems may adversely affect neighboring properties.
19. Unless the master planned resort is located within an urban growth area, comprehensive plan provisions and development regulations shall be adopted and enforced to preclude new urban or suburban land uses in the vicinity of the master planned resort.

**xx.60.040 Cost Recovery.** The Project Sponsor shall be responsible for reimbursing the County for all costs associated with reviewing proposed projects under the provisions of this Chapter. This may include the execution of a written cost recovery agreement and the requirement to maintain a minimal level of funds on deposit with the County to cover costs incurred by the County.

**xx.60.050 Binding Site Plan.** Concurrent with or following the review of a proposed Master Plan and the nature of the proposed activities, the County may require that a binding site plan be submitted for review and approval in accordance with the provisions of this Title.

**xx.60.050 Development Agreement(s).** The County and the Project Sponsor may execute in accordance with the provisions of State law a Development Agreement(s) to implement the provisions of the Master Plan and related permits and approvals.

## **CHAPTER XX.64 SUBDIVISIONS**

|                  |  |                  |                  |
|------------------|--|------------------|------------------|
| <b>xx.64.010</b> | <b>Purpose.</b>                              |                  |                  |
| <b>xx.64.020</b> | <b>General Provisions.</b>                   |                  |                  |
| <b>xx.64.030</b> | <b>Preliminary Plat Review and Approval.</b> |                  |                  |
| <b>xx.64.040</b> | <b>Final Plat Approval.</b>                  |                  |                  |
| <b>xx.64.050</b> | <b>Design and Improvements.</b>              |                  |                  |
| <b>xx.64.060</b> | <b>Dedications and Covenants.</b>            |                  |                  |
| <b>xx.64.070</b> | <b>Surety.</b>                               |                  |                  |
| <b>xx.64.080</b> | <b>Boundary Line Adjustments.</b>            | <b>xx.64.090</b> | <b>Large Lot</b> |
|                  | <b>Segregations.</b>                         |                  |                  |
| <b>xx.64.100</b> | <b>Planned Unit Developments</b>             |                  |                  |

**xx.64.010 Purpose.** The purpose of this Chapter is to provide criteria, regulations and standards to govern the subdivision of land within the County. No division of land shall be made within the County, except in full compliance with the provisions of this Title.

**xx.64.020 General Provisions.**

- A. Applicability. The provisions of this Chapter for division of land shall apply to every subdivision and segregation of land within the unincorporated area of Pend Oreille County, except those exempted from platting under RCW 58.17.040.

**xx.64.030 Preliminary Plat Review and Approval.**

- A. The preliminary approval of all short plat subdivisions shall be processed as a Class 1 Permit; the preliminary approval of all long plat subdivisions shall be processed as a Class 2 Permit.
- B. All subdivision, boundary line adjustments, lot line adjustments, and binding site plan applications shall include a title report in such format as may be prescribed by the County.
- C. All contiguous land shall be included in a short subdivision application. Multiple applications or applications and/or exemptions shall not be utilized as a substitute for comprehensive subdividing in accordance with the requirements of this Title. The Applicant shall certify that he/she has included all contiguous land in a short subdivision application and that he/she does not own or otherwise have a legal

interest in ownership of contiguous parcels, provided that for purposes of determining compliance with the provisions of this Title, contiguous land does not include parcels separated by intervening ownership or rights-of way.

C. Approval Criteria.

1. For all Class 2 Permit proposals, the Community Development Department shall prepare a staff report that highlights all comments received, and documents that the preliminary plat is consistent with the requirements of this Title and that adequate provisions have been made for health, safety and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, public and private utilities, parks, playgrounds, sites for schools and school grounds, and whether the public use and interest will be served by the platting of such subdivision.
2. Subdivisions may be approved if, after a public hearing, after a formal written finding of fact that the proposed subdivision is in conformity with Chapter 58.17 RCW, any applicable zoning ordinance, and other applicable land use regulations of the County.
  - a. The County Public Works Department must review and approve the design of all roads for compliance with County Road Standards.

3.

**xx.64.040 Final Plat Approval.** The final plat shall conform substantially to the preliminary plat, and shall incorporate any conditions or recommendations imposed by the County.

- A. The final plat shall be submitted within five years of the date of preliminary plat approval.
- B. The County shall review the final plat for conformance to conditions imposed on the approved preliminary plat, provided that:
  1. The County Public Works Department has confirmed that all required road improvements have been designed, constructed, and accepted by the County for ownership and maintenance or the appropriate bond and development agreement with the County are in place.
  2. All community water and sewer systems have been installed and accepted by the appropriate agency and operation and maintenance covenants have been filed with the County Auditor.

3. The County Surveyor confirms that the final plat meets State Code requirements of RCW 58.17 for a final plat and confirms that the mathematical closures are accurate.

4. Recommended conditions to be fulfilled, if any, after approval of the preliminary plat that shall be written on the face of the plat in addition to dedications and covenants.

5. Dedication of land to any public body, or fees paid in lieu thereof, may be required as a condition of subdivision approval and shall be clearly shown on the final plat.

C. Upon approval, a final plat shall be recorded with the County Auditor within thirty days following the date of approval. If the subdivider fails to file his final plat prior to the expiration of the above time period, the approval shall lapse and the subdivider shall resubmit the plat in accordance with the provisions of this Title.

D. Once a plat has been filed with the County Auditor, it shall remain as the official plat covering the land. If a person proposes to alter or vacate the plat in whole or in part, the procedures set forth in RCW 58.17 shall be followed.

E. No building permit shall be issued or approved until such time as the County approves and accepts the final plat for the subdivision and the final plat is recorded with the County Auditor, except that the owner of record of the land may obtain a building permit.

F. Inspection of improvements shall be made during construction and after completion of required improvements. Scheduling of inspections shall be the responsibility of the Applicant and shall be coordinated with the appropriate County Staff.

G. Once a short plat has been recorded with the County Auditor, it can be altered or vacated in whole or part in a manner not involving a re-subdivision into more than four lots from the original short plat. When a proposed alteration or vacation involves a public dedication, the alteration or vacation shall be processed in accordance with RCW 58.17. If the proposed alteration or vacation does not involve a public dedication, the amended short plat shall be processed in accordance with the following provisions:

1. The amended short plat must comply with the procedures and requirements of this Chapter for original short plat approval. A new survey shall not be required except for new lines created by the amended short plat.

2. The amended short plat shall show all of the land shown on the original short plat and shall bear the acknowledged signatures of all parties having ownership

interest in the affected lots, tracts, parcels, sites or divisions within the original short plat as shown by a current title certificate.

3. The amended short plat shall not increase the number of lots, tracts, parcels, sites or divisions into more than four from the original short plat for a period of five years from the date of recording of the original short plat, unless a final plat has been approved and filed for record or a long plat application has been submitted pursuant to the regular plat provisions of this Title.
  4. Minor errors not involving a change in lines may be corrected by the surveyor upon approval of the Community Development Director by recording an affidavit with the County Auditor specifically referencing the short plat by number and the correction.
- H. Once property is subdivided in accordance with the short subdivision regulations of this Title, no further division creating more than four lots, tracts, parcels, sites or divisions from the original short plat shall be made for a period of five years from the date of recording of the short plat, unless a final plat has been approved and filed for record pursuant to the regular plat provisions of this Title. In the case of a proposed re-division of land within a short plat or a regular plat, either the short subdivision or regular subdivision provisions or this chapter and RCW 58.17 shall be complied with dependent upon the number of divisions proposed within the land as defined by this Chapter and/or the period of time that has elapsed since the recording of a prior short plat.
- I. All actions and exemptions from this Chapter must be completed within five years of the time of approval. An Applicant who files a written request to the Board of County Commissioners at least thirty days before the expiration of this five-year period may be granted one one-year extension upon a showing that the Applicant has attempted in good faith to complete the action within the five year period.

#### **xx.64.050 Design and Improvements.**

##### **A. Design of Subdivisions.**

1. No lot or tract shall have a width to depth ratio less than 1 to 5 (i.e. the width of the lot must be at least 20% of the length of the lot;
2. The number of new lots may not exceed the density standards in xx.26.030 unless otherwise authorized by the provisions of this Title;  
No new lots may be created that do not conform to the provisions of this Title; Lots that contain critical areas or shorelines may not be subdivided to create nonconforming lots or that may only be developed through a variance or reasonable use exception;
3. New land divisions located within city urban growth areas must conform to city development standards, in accordance with adopted inter-local agreements;

4. Fire Protection Facilities. Adequate provisions must be made for fire protection and suppression to the satisfaction of the current edition of the International Fire Code This may include but is not limited to the provision of a site for fire protection facilities.
5. Lot Line Angles: Where practicable, side lot lines shall be straight lines running at or near right angles to the road upon which the lots front. Side lot lines on a curve should run at or near radially to the road.
6. Drainage Easements: Easements for drainage channels and ways, when required, shall be of sufficient width to assure that the same way be maintained and improved.
7. Access. All lots less than twenty acres in size shall have sixty feet of frontage on a maintained County Road or State Highway.
8. Adequate provisions shall be made in the subdivision for such drainage ways, roads, alleys, easements, parks, playgrounds, sites for school, school grounds, and other general purposes as may be required to protect health, safety and welfare.

B. Roads and Access.

1. The Applicant shall submit to the County Engineer for approval a preliminary design of all subdivision roads. The County Engineer must approve construction of all access roads and subdivision roads prior to final approval of the preliminary plat.
2. Major roads within every subdivision shall conform to the County Comprehensive Plan and shall provide for the continuation of major roads which serve property contiguous to the subdivision.
3. Lot access shall meet the following requirements:
  - a. Every lot shall be provided with satisfactory access by a public or private road connecting to an existing maintained public road with at least a minimum of 60 feet of road frontage.
  - b. An easement shall serve no more than one lot. An easement shall be a minimum of 30 feet in width and permanent and inseparable from the lot served.

C. Water.

1. Provisions for an adequate domestic water supply and/or fire protection shall be in compliance with current Pend Oreille County, Northeast Tri-County Health District, Department of Health or the other appropriate agencies' regulations
2. Within a short plat, no dwelling may be constructed or located on a lot or tract prior to the approval of a domestic water source acceptable to the County Health Officer.
3. No permanent dwelling may be constructed or located on any lot prior to the establishment of a domestic water supply approved by the County Health Officer unless evidence of authorization to use a temporary building, structure or trailer is provided to the County..

D. Sewage Disposal.

1. The Health Officer shall report to the Community Development Director on the approval of the sewage disposal arrangements prior to submission of the plat for final approval.
2. Suitability shall be based on the ability of the soils to accept effluent, on the effect and presence of a high ground water table, and on the elevation and distance of suitable sewage disposal sites above and back from bodies of water, streams, swamps, marshes, etc.
3. No dwelling may be established on a lot or tract prior to the approval of a sewage disposal method acceptable to the Northeast Tri-County Health District.

E. Utilities.

1. Provisions must be made for power, telephone, solid waste transfer sites, water and sewer rights-of-way. Easements for electric, telephone, water, gas and similar utilities shall be sufficient width to assure future maintenance. Subdivider shall submit a letter of approval from utility companies in regards to rights-of-way.

**xx.64.060 Dedications and Covenants.**

A. Dedications.



1. Land for public use shall be dedicated on the face of the plat or by a separate written instrument and signed and acknowledged before a notary public by parties having any ownership interest in the lands subdivided and recorded as part of final plat.
2. Protective improvements and easements to maintain such improvements shall be dedicated.
3. Access to every lot shall be provided by a dedicated road or by easement which is permanent and inseparable from the lot served.
4. If the County concludes that the public interest will be served thereby, the County may, in lieu of requiring the dedication of land in a subdivision for protective improvements, drainage ways, roads, alleys, sidewalks, parks, playgrounds, recreational, community or other general purposes, allow said land to be conveyed to a homeowner's association or similar non-profit corporation.
5. A subdivider who wishes to make a conveyance as permitted by this Section, shall provide the County with copies of the grantee organizations articles of incorporation and bylaws and with evidence of the conveyance or a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the subdivision; that the corporation is empowered to assess that said land for costs of construction and maintenance of the improvements and property owned by the corporation and that such assessment shall be a lien upon the land. The Board may impose such other conditions as it deems appropriate to assure that the property and improvements owned by the corporation will be adequately constructed and maintained.

B. Covenants. At a minimum, the following covenants shall be noted on the face of the plat:

1. Construction of the exterior of all buildings shall be completed within three (3) years of the start of construction
2. No dwelling may be constructed or located on a lot or tract prior to the approval of domestic water source by the Health Department.
3. No dwelling may be constructed or located on a lot or a tract prior to the approval of a sewage disposal method acceptable to the Health Department.
4. No roads or streets will be accepted by the Board of County Commissioners as part of the county road maintenance system, or other work until it has been

constructed to minimum county road standards and until the amount of use, condition of the roads, taxable property involved, availability of maintenance and construction funds and other similar conditions, warrant the taking of the road into the maintenance system. By approval of this plat, the Board does not warrant, promise or imply that any subdivision or access road will be taken into the County Road System within the foreseeable future or ever. If the roads are private then public and other services, such as mail delivery and school bus service, may not be available.

5. All property owners within this subdivision of property recognize that designated or all properties are within proximity of resource lands of long-term commercial significance and that commercial uses may occur that are not compatible with residential development, therefore, any claim of public nuisance against any permitted use is invalid, provided, the practice conforms with all applicable local, State and Federal laws. Residential lot owners shall not interfere with any nearby, lawful natural resource operation.

**xx.64.070 Surety.** In lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the County may accept a bond in an amount and with surety and conditions satisfactory to the County, or other secure method, providing for and securing to the County the actual construction and installation of all improvements within a time period specified by the County expressed in said surety. In addition, the bonds or other security may be required securing to the County the successful operation of the improvements for up to two years after final plat approval.

**xx.64.080 Boundary Line Adjustments.** A boundary line adjustment is a mechanism by which the County may approve the alteration of boundary lines between platted or unplatted lots, where such an adjustment does not create any additional lot, tract, parcel, site, or division, nor create lots which are nonconforming or more nonconforming than exists. . Aggregations or adjustments between two lots are allowed as long as no lot is adjusted below its original platted size.

A. The Community Development Director may approve an application for a boundary line adjustment provided the following criteria are met:

1. The proposed adjustment shall meet the exemption requirements provided in RCW 58.17.040(6);
2. The boundary line adjustment shall not result in the creation of any additional tract, lot, parcel, site or division;
3. The property being transferred within the boundary line adjustment shall be combined with the benefiting parcel and shall not be a separate parcel, which

could be mistaken as a separate and distinct, conveyable tract without proper research;

4. No parcels resulting after the boundary line adjustment shall be made more non-conforming than before the boundary line adjustment was requested.
5. All parcels modified by the boundary line adjustment procedures shall have legal access meeting the standards of Pend Oreille County;
6. The boundary line adjustment shall not violate an applicable requirement or condition of a previous land use action.
7. All boundary line adjustments that cannot be described with an aliquot legal description shall be recorded surveys consistent with the requirements of Chapter 58.09 RCW and Chapter 332-130 WAC. and newly established lot corners shall be monumented.

**xx.64.090 Large Lot Segregations.** The subdivision of land into 10 acre parcels or larger may be segregated, provided that the following conditions are met to the satisfaction of the County:

- A. Twenty-acre segregations. Subdivisions in which the lots are twenty acres or larger that comply with the minimum lot size and density requirements of this Title may be exempt from the requirements of this Chapter provided that the following conditions are met to the satisfaction of the County:
  1. In lieu of a survey, a clean and clear aliquot description of the subject parcels may be provided in a form prescribed by the County.
  2. In lieu of a soil percolation test, the Applicant submits in a form prescribed by the County an acknowledgement that all development activity must comply with the requirements of the Northeast Tri-County Health District and that a reasonable use exception shall not be granted if any of the lots fail to comply with all applicable public health and safety standards.
  3. Evidence of adequate access to the site in accordance with County standards is provided, subject to County review and approval. This may include deeded access and/or a recorded easement, subject to County approval.
  4. Land within an approved exempt segregation within five years immediately preceding, may not be further divided for five years from the date of approval

unless all requirements of the long subdivision or long plat process have been met.

5. Government lots thirty-six acres in size or larger that do not border bodies of water may be segregated into two lots of eighteen acres or more provided that all other conditions of this code apply.
- B. Ten-acre lot segregations. Subdivisions of land into up to 4 lots where no lot contains less than 10 acres, may be segregated provided that:
1. In lieu of a survey, a clean and clear aliquot description of the subject parcels may be provided in a form prescribed by the County.
  2. In lieu of a soil percolation test, the Applicant submits in a form prescribed by the County an acknowledgement that all development activity must comply with the requirements of the Northeast Tri-County Health District and that a reasonable use exception shall not be granted if any of the lots fail to comply with all applicable public health and safety standards.
  3. Each lot shall have 60 feet of frontage on a maintained County road and shall have adequate access in accordance to County Road Standards and subject to County review and approval.
  4. Land within an approved segregation within five years immediately preceding may not be further divided for five years from the date of approval unless all requirements of the long subdivision or long plat process have been met.

**xx.64.100 Planned Unit Development (PUD)** This chapter includes provisions that allow flexibility in how development and uses can be configured and phased on a site, provided that the following conditions are met to the satisfaction of the County:

1. Zones permitting Planned Unit Developments:  
Planned unit developments (PUDs) are permitted in all zones except Natural Resource.
2. Planned Unit Development classification and minimums:
  - A. A "small scale residential" PUD consisting of only residential and accessory uses and having six (6) dwelling units or fewer.
  - B. A "large scale residential" PUD consisting of only residential and accessory uses and having more than six (6) dwelling units.
3. Uses permitted within Planned Unit Developments:

Permitted uses shall be the same as those within the base zone district, with the following exceptions:

A. Duplexes and multi-family dwellings are permitted in the Rural Residential District, provided the development meets applicable density limits set forth in section XX.26 of this title.

4. Planned Unit Development application requirements:

Application for a PUD shall be made with the Pend Oreille County Community Development Department. In addition to the basic information requirements and application forms provided by the department, a completed application shall include the following:

- A. Environmental analysis, which shall address the impacts of the development on the various physical features of the land, including wetlands, wildlife habitat, vegetation, floodplain and floodways, cultural resources, water quality and other natural resources
- B. Preliminary development plan or conceptual land use plan for a "large scale" PUD of significant size which may be planned in phases for a variety of land use types over a period of time. The preliminary development plan contents for a "small scale", or for any portion of an approved "large scale" PUD which is contemplated to be completed or under construction within two (2) years after approval, shall include the proposed use or uses, housing densities and arrangements, parking facilities, preliminary subdivision plan (if applicable), common areas, open spaces and a transportation network for vehicular and pedestrian circulation. The Community Development Director may require drawings and sketches demonstrating the design characteristics and physical relationships of various uses and siting conditions in order to determine the feasibility and desirability of any necessary variation from the conventional development standards of this title.
- C. A trip generation and distribution letter.

5. Preapplication meeting:

The developer or developer's representative for a PUD shall meet with the Community Development Director or designee, prior to submitting an application. The purpose of this meeting is to discuss early and informally with the developer, the purpose and qualifying provisions of this chapter along with any known constraints in order to assist the applicant in determining the feasibility of the proposal. The meeting will familiarize the developer with the comprehensive plan, this title, sewer and water regulations and general soil information. The developer shall also consult with the serving utility companies and agencies regarding electrical power, sewer and water supply prior to submission of the preliminary development plan.

6. Concurrent processing of Planned Unit Development and subdivision applications:

When a PUD includes a subdivision, the processing of the subdivision application shall take place concurrently with the PUD application.

7. Large scale PUD, general provisions:

A. A conditional use permit may be granted for a conceptual land use plan for a "large scale" PUD, subject to submission of preliminary development plans as provided in this title. The hearing body shall consider the conceptual land use plan and shall make its recommendation to the Board, which may conduct its own hearing on the plan. If phasing is proposed, a phasing schedule shall be provided with the application. Subdivisions may be considered concurrently with the conceptual land use plan or separately after approval of the conceptual land use plan, pursuant to the provisions of this chapter.

B. Development plans submitted as part of an approved "large scale" PUD shall be in substantial compliance with the approved conceptual land use plan. Any significant change affecting the original approval of the plan shall require a public hearing. A change in density or a more intensive use of the same area constitutes a significant change

**8. Procedure for approval of Planned Unit Developments:**

The hearing body shall consider the subdivision associated with a planned unit development proposal and shall make its recommendation to the Board of County Commissioners after holding a public hearing.

**9. Design standards for Planned Unit Developments:**

Approval of a development plan by the hearing body shall include, but is not limited to, the following performance standards and requirements, which may be in addition to and may vary from the minimum standards of this title:

A. Common Open Space: At least ten percent (10%) of the gross land area of a residential PUD shall be reserved as common open space, exclusive of streets, parking areas, and utility easements and other improvements which would detract from the function of the "common open space", as defined below. The required common open space must fall into one or more of the following categories:

1. Wildlife habitat or wildlife corridors, as identified by the Washington Department of Fish and Wildlife or U.S. Fish and Wildlife Service. These areas might be stream corridors, waterways, wetlands, grasslands, stands of mature timber, areas with snags, wintering areas, nesting and roosting sites, waterfront areas and travel corridors between habitat blocks and sources of food and water.
2. Recreational areas, including trails, sports courts and wildlife viewing areas, and other similar recreational uses.
3. Historic or culturally significant areas as determined by the Washington State Historical Preservation Office.
4. Areas within a scenic byway.
5. Actively managed pasture, farm or timbered land in the rural districts. Accessory agricultural structures are allowed within the common open space.

B. Owners' Association: A PUD shall include a homeowners' association and/or corporate ownership, which shall be responsible for the development, use and permanent maintenance of all common activities and facilities.

C. Covenants, Articles Of Incorporation: Articles of incorporation for the homeowners' association or corporate entity governing the PUD shall be recorded with the final plat of any PUD subdivision or final development plans. The covenants, conditions and restrictions shall be sufficient to enforce development requirements and responsibilities of the homeowners' association and/or ownership.

D. Development Density: The unit density of a PUD containing residential uses (dwelling units/acre) shall not exceed the density of the zone district in which it is located, except for density bonuses as provided in the following tables:

TABLE  
DENSITY BONUS FOR COMMON OPEN SPACE  
(Numbers in parentheses refer to additional standards located below the table.) 2-1

| Maximum Percentage Increase In Approved Building Density (1) |                              |
|--|------------------------------|
| Amount Of Common Open Space<br>(Percent Of Site) (2)         | Rural, Rural Residential (3) |
| .10 percent - 19 percent                                     | 0 percent                    |
| .20 percent - 29 percent                                     | 10 percent                   |
| .30 percent - 39 percent                                     | 20 percent                   |
| .40 percent - 49 percent                                     | 30 percent                   |
| .50 percent - 79 percent                                     | 40 percent                   |

|                     |            |
|---------------------|------------|
| .80 percent or more | 50 percent |
|---------------------|------------|

Standards:

1. To qualify for the full bonus percentages herein, the common open space must comply with applicable requirements of subsection A of this section.

2. Common open space percentages may be rounded off to the nearest whole percentage.

3. Planned unit development subdivisions shall not exceed 150 percent of the density allowed by the underlying zoning district through provision of common open space percentages and other density bonus actions listed in table 2-2 below. For example, an applicant with 40 acres in the Rural district [normally allowed a maximum of 8 lots] may qualify for up to 12 lots via common open space and other bonus actions.

4. Planned unit development subdivisions shall not exceed 150 percent of the density allowed by the underlying zoning district through provision of common open space percentages and other density bonus actions listed in table 2-2 below. For example, an applicant with 40 acres in the Rural district [normally allowed a maximum of 8 lots] may qualify for up to 12 lots via common open space and other bonus actions.

TABLE

2-2

DENSITY BONUS FOR OTHER ACTIONS

| Density Bonus Action   | Maximum Percentage Increase In Approved Building Lots |
|--|---|
| 1. Provide subdivision residents with usable access to adjacent lakes, streams or public lands.  | 5 percent   |
| 2. Provide general public with usable access to common open space, adjacent lakes, streams or public lands. (Note: This option is in lieu of, not in addition to, action 1.) | 15 percent  |



|  |   |
|--|---|
| 3. Provide a sidewalk or pathway system that connects each lot in the subdivision.   | 5 percent if open only to subdivision residents.<br><br>15 percent if open to the general public. |
| 4. Provide other public amenities.<br>The board may approve bonus lots for other improvements and amenities, both on and off site, where the applicant can successfully demonstrate that the proposed improvements/amenities benefit the public. | Up to 25 percent  |
| 5. Bonus for urban sewer (where not required to achieve given density)   | 25 percent  |

E. Public Amenities: Below are public amenities that can be provided to obtain a density bonus. All are subject to approval by the board:

1. Construct recreational improvements that are available for the use by the general public. Improvements may include, but are not limited to, play fields, picnic shelters, children play areas and indoor recreational facilities. Applicants must successfully demonstrate that the improvements are safe, accessible and desirable to the general public.
2. Construct public facilities such as schools, fire stations or libraries. To qualify, the land and/or facilities must be accepted by the applicable public agency. The land itself set aside for such public use shall be considered as common open space for the purposes of obtaining a density bonus.
3. Pave roadways (where they are not required to be paved).
4. Provide environmental improvements as certified by wetlands, plant or other biologists having expert knowledge of the specific environmental feature. An example could be replacement of nonnative vegetation with native vegetation in common open space areas. Such improvements are particularly desirable in and around wetland areas and designated critical wildlife habitat.
5. Provide off site road improvements (above and beyond what is required by board for subdivision approval).

The applicant shall include a cost estimate for the proposed public amenity improvements prepared by a professional construction estimator, registered

general contractor, engineer, architect or landscape architect shall be submitted with the application. The cost estimate shall be limited to physical improvements, labor and utility costs associated with the proposed public amenity feature.

F. Requirements For Public Amenities: To qualify for a density bonus, the proposed public amenity must meet the following requirements:

1. Applicants must successfully demonstrate how the improvements benefit the public.

F. Design Standards: Minimum development standards set forth in this title may be increased or decreased sufficient to accomplish design objectives in the utilization of natural or created amenities (i.e., topographic features, seasonal recreational uses, etc.), provided the development meets the intent of the standards.

G. Minimum Lot Sizes

1. With a paved road – 5 Acres
2. With a paved road and public water or public sewer treatment system – 2.5 Acres
3. With a paved road, public water and public sewer treatment system – 1 Acre
4. Shared wells and community drainfields do not qualify as public systems. Public systems must be facilities that are approved, licensed and regulated by the State of Washington.

H. Buffering, Clustering: Residential PUDs shall provide for the clustering of dwelling units. Clustered lots shall be accessed by interior road systems. To the maximum extent possible, cluster lots shall be located so that common open space provides a buffer between the cluster lots and adjacent properties and/or right of way. When this is not possible, the development shall be designed to provide at a minimum one of the following:

1. Cluster lots that abut surrounding properties or right of way shall be at least seventy five percent (75%) of the minimum lot size standard for the subject parcel.
2. Cluster lots that abut surrounding properties or rights of way shall be separated from adjacent properties or rights of way by a minimum buffer strip of one hundred feet (100'). At a minimum, proposed or existing landscaping and vegetation within the buffer strip shall be of sufficient size and type to provide a buffer of vegetation six feet (6') in height and fifty percent (50%) opaque year round within three (3) years of planting. New landscaping materials shall consist of a combination of native trees and shrubs. Variations to these standards may be permitted where the applicant can demonstrate that unique topographic conditions provide sufficient buffering, such as intervening waterways, ridges or ravines, or other land features.

## **CHAPTER XX.68 CONDITIONAL USES**

|                  |                          |
|------------------|--------------------------|
| <b>xx.68.010</b> | <b>Purpose.</b>          |
| <b>xx.68.020</b> | <b>Applicability.</b>    |
| <b>xx.68.025</b> | <b>Amendments</b>        |
| <b>xx.68.030</b> | <b>Time Limitations.</b> |

**xx.68.010 Purpose.** The purpose of the Chapter is to establish the conditions under which certain uses and structures may be permitted. Proposed conditional uses may be permitted if the use is compatible with or can be conditioned to be compatible with neighboring uses in the area in which the application is sought.

**xx.68.020 Applicability.** Conditional use permits shall be processed as Class 2 Permits.

- A. In considering conditional use permits, the County shall have the discretionary authority to determine and recommend whether a conditional use permit should be granted, and grant conditional use permits with safeguards and limitations as are appropriate under this Title. The County may deny those applications that it finds not in harmony with the purpose and intent of adopted plans, policies and this Title. Each application is declared to be and shall be considered as a separate and unique case.
- B. Conditions and safeguards may be prescribed which are in conformity with adopted plans and policies and this Title which are considered necessary to protect the best interest of the immediate neighborhood, surrounding area or the County as a whole. These conditions and safeguards may include, but are not limited to the following:
  - 1. Increasing the required lot size, setback or yard dimensions;
  - 2. Limit the height of buildings or structures;
  - 3. Control the number and location of vehicular access points;
  - 4. Require the dedication of additional rights-of-way for future public street improvements;

5. Require the designation of public use easements or drainage easements and the recording of same;
6. Increase the number of required off-street parking and/or loading spaces;
7. Limit the size, shape, location and lighting of signs;
8. Require view-obscuring fencing, landscaping, diking, or other measures to screen from adjacent or nearby properties;
9. Designation of sites and/or size of open space or recreational areas;
10. Site reclamation upon discontinuance of use and/or expiration or revocation of the Conditional Use Permit;
11. Limit the period of time that the Conditional Use Permit is allowed;
12. Require annual inspections be made to ensure compliance with the permit and may require that the inspections be paid for by the owners of the conditional use facility;
13. Require the proponent obtain a liability insurance policy that directly relates to impacts of the proposed use; and
14. Limit the hours and/or days of operation.

C. Conditions of Approval. At a minimum, all conditional uses must comply with all County Codes and ordinances, the goals and policies of the Comprehensive Plan as well as the following conditions, and any additional conditions that may be imposed as a condition of approval by the County:

1. The Project Sponsor shall maintain on file at the County Community Development Department an up-to-date Property Management Plan, approved by the County, that identifies the property owner and agents authorized to act on the property owners behalf, includes emergency contact information, and that identifies how the Project Sponsor will enforce compliance with the terms and conditions of approval.
- a. It is important to note that converting an existing structure from one use to another use may result in requiring changes to the structure to meet the requirements of the new use, and may require a Building Permit.

2. The Project Sponsor shall provide such financial guarantees or deposits as may be required by the County to ensure full compliance with the conditions of approval. The County may utilize such deposits to offset the costs associated with responding to complaints for non-compliance.
- D. All physical conditions required by the County shall be completed prior to reviewing authorization to occupy the use as defined in the application.
- E. The failure to comply with the terms and conditions of approval may result in the suspension or revocation of a Conditional Use Permit and/or civil or criminal penalties.

**xx.68.025 Amendments.** Any endeavor being conducted under an approved Conditional Use Permit that wishes to vary from the original approval by undertaking a use that was not included in the original approval shall seek a modification of the original Conditional Use Permit. The procedures for processing a proposed modification will substantially adhere to the process and requirements of a new Conditional Use Permit application.

**xx.68.030 Time Limitations.** The project shall commence within two years of the date of preliminary project approval. An Applicant who files a written request to the Board of County Commissioners at least thirty days before the expiration of this two-year period may be granted one one-year extension upon a showing that the Applicant has attempted in good faith to commence the project within the two year period. The project shall be completed within five years of commencement unless other approvals are granted by the County

## **CHAPTER XX.72 VARIANCES**

- xx.72.010 Purpose.**
- xx.72.020 Approval Criteria.**
- xx.72.030 Approval Standards**

**xx.72.010 Purpose.** The purpose of this Chapter is to establish a process and criteria to allow variances from this Title in cases where special circumstances prevent Applicants from full compliance. Such special circumstances shall include size, shape, topography, location or surroundings of the property in question

**xx.72.020 Approval Criteria.** Variances shall be processed as a Class 2 Permit and may be approved based on a finding that all five of the following criteria have been met in order to grant a variance:

- A. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
- B. That the strict application and interpretation of the provisions of this Title would result in practical difficulties or unnecessary hardships;
- C. The granting of the variance will not be materially detrimental or prejudicial to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
- D. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of the properties in the vicinity and zone in which the property is located; and
- E. The variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.

**xx.72.030 Approval Standards.** It is the responsibility of an Applicant to provide the proof necessary for approval at the associated public hearing. The Applicant has the burden of proof that they meet the requirements in A. through E.

## **CHAPTER XX.74**

### **REASONABLE USE EXCEPTION**

- xx.74.010 Purpose.**  
**xx.74.020 Scope.**  
**xx.74.030 Applicability.**  
**xx.74.040 Application Requirements.**

**xx.74.010 Purpose.** The County recognizes that the strict application of this Title may, in some cases, deny all reasonable economic use of private property. In such cases, the applicant may seek a reasonable use exception from the standards of this Title.

**xx.74.020 Scope.** The standards and regulations of this Title are not intended and shall not be construed or applied in a manner, to deny all reasonable economic use of private property. If an Applicant demonstrates to the satisfaction of the County that strict application of these standards would deny all reasonable economic use of the property, development may be permitted subject to appropriate conditions.

**xx.74.030 Applicability.**

- A. A landowner/applicant may apply for a reasonable use exception pursuant to this title if the landowner/applicant has reason to believe that the application of this title denies any fundamental attribute of private property ownership inconsistent with the limitations upon other properties in the zone in which the property is situated.
- B. A landowner/applicant may apply for a reasonable use exception pursuant to these regulations if the landowner/applicant has reason to believe that the application of this Title denies all economically viable use of private property as a whole or creates a severe impact on a landowner's/applicant's economic interest in the property as a whole.
- C. A landowner/applicant, who satisfies one or more of the above criteria, may apply for a reasonable use exception, without first having applied for a variance, only if the requested reasonable use exception includes relief from standards for which a variance cannot be obtained.

**xx.74.040 Application Requirements.**

- A. The application for a reasonable use exception shall include the following information:

1. A description of site; and a description of the areas of the site which do not conform to the regulatory requirements of the ordinance from which the applicant seeks the reasonable use exception;
  2. A description of the proposed development, including a site plan;
  3. An analysis of the modification needed to the standards of the ordinance from which the applicant seeks the reasonable use exception to accommodate the proposed development; and
  4. Such other information as the county determines reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development including, but not limited to, the information required by the reasonable use exception submittal requirements' checklist.
- B. The County shall make a final decision as to whether the reasonable use exception will be granted based upon the following criteria:
1. Whether the application of this title would prohibit all economically viable or beneficial uses of the property, absent a demonstration by the county that the proposed use(s) are prohibited by the laws of nuisance or other preexisting limits on the property which prohibit such use(s);
  2. Whether there are no other reasonable uses to which the property can be put;
  3. Whether the proposed use poses an unreasonable threat to the harm sought to be avoided by the application this title, or to the public health, safety or welfare on or off the exception site;
  4. Whether the inability of the applicant to derive reasonable use of the property is the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of the resolution codified in this Chapter;
  5. Whether the exception to bulk, dimensional and performance standards is the minimum necessary to allow for reasonable use of the property;
  6. Whether the use and activity to which the property is put is consistent with the permitted uses and activities within the zone district; and
  7. Whether such use is consistent with the general purposes of this title and the public interest.



## **CHAPTER XX.76 NONCONFORMING USES**

- xx.76.010      Applicability.**
- xx.76.020      Continuation.**
- xx.76.030      Expansion.**
- xx.76.040      Repair and Maintenance.**

**xx.76.010 Applicability.** Uses, structures, or lots that were legally constructed or established in accordance with regulations and laws in effect at that time, but that do not conform to the provisions of this Title, shall be considered legal non-conforming. Uses or structures that were illegally constructed or established in accordance with regulations and laws in effect at that time, and that do not conform to the provisions of this Title, shall be considered illegal non-conforming. Structures identified on the State Historic Registry are legal non-conforming structures and can accommodate an adaptive use as appropriate.

- A. All new lots, structures and uses must comply with the provisions of this Title. No new non-conforming lots, structures, or uses may be permitted.
- B. Existing non-conforming lots, structures, or uses included in a development proposal or application covered by the provisions of this Title, must be brought into compliance unless otherwise provided.
- C. Non-conforming shoreline uses and structures are subject to the provisions of XX.34.070 Non-conforming Uses and Structures.

**xx.76.020 Continuation.** A legal non-conforming use of a structure or land may continue, provided that if such non-conforming use is discontinued for one year or longer, it shall not be reestablished:

- A. Structures, or the use of a structure or lot, that was not legally established or are otherwise not legally conforming may not be continued and shall be discontinued upon notice; and
- B. Uses of similar impact may replace a legally non-conforming use provided that the new use occupies the same space within a structure, or in the case of an outdoor use, occupies the same amount of land, as the previous use. Similarity of impact shall be determined by the County based on the listing of permitted uses. The replacement use shall continue to be subject to the limitations on non-conforming

uses specified in this Chapter. Any non-conforming use which has been discontinued for a year or more shall only be replaced by a use which conforms to the regulations of the zone in which it is located.

**xx.76.030 Expansion.** An existing legal non-conforming structure cannot be enlarged or expanded in a manner which would increase the degree of nonconformance. If only a limited aspect of a use or structure is non-conforming, the use or structure may be expanded provided that the aspect of non-conformity is not increased.

A. Illegal non-conforming uses or structures may not be expanded.

**xx.76.040 Repair and Maintenance.** Legal non-conforming structures may be repaired and maintained in accordance with the provisions of this Title, provided that the degree of nonconformity is not increased.

Any non-conforming structure or non-conforming use damaged by fire, explosion, accident, act of God or act of a public enemy, may be restored to its status prior to the act of damage provided such efforts are commenced within two years. If restored under these circumstances, the structure or use shall occupy no more floor area than existed prior to the act of damage and the use and building shall remain non-conforming. If reconstruction of a non-conforming structure is not commenced within two years of the act of damage, the land and any development on it shall thereafter conform to the regulations of the zone in which it is located; provided, that a conditional use permit may be issued to reestablish a non-conforming structure, the restoration of which is not commenced within two years if circumstances such as lengthy litigation or disputed insurance settlements delay the Applicant from commencing reconstruction within the specified two-year time frame.

## **CHAPTER XX.80 SPECIAL USES**

**xx.80.010 Purpose.**

**xx.80.020 General Conditions.**

**xx.80.010 Purpose.** The purpose of this Chapter is to establish the conditions under which certain special uses of buildings and public and private property may be permitted on a temporary basis or for a limited duration when safe and compatible with the general vicinity and adjacent uses.

**xx.80.020 General Conditions.** The following conditions must be met in order to issue a special use permit:

- A. Each site occupied by a special use must provide or have available sufficient parking and vehicular maneuvering area for customers and must provide safe and efficient interior circulation and ingress and egress to and from public rights-of-way;
- B. The special use shall comply with all applicable standards of the County Health Department;
- C. All special uses shall obtain, prior to occupancy of the site, all applicable County permits, licenses and other approvals (i.e., business license, building permit, administrative approvals, etc.);
- D. All special uses shall also get approvals and permits from any other affected State or Federal Agency as necessary.
- E. The Applicant for special use shall supply written authorization from the owner of property on which the special use is located;
- F. Each site occupied by a special use and the surrounding area shall be left free of debris, litter, or other evidence of the special use upon completion of removal of the use;
- G. All materials, structures and products related to the special use must be removed from the premises between days of operation on the site, provided that materials, structures and products related to the special use may be left on-site overnight

between consecutive days of operation. They shall be removed at the end of the permit period; and

- H. The Community Development Director may establish such additional conditions as may be deemed necessary to ensure land use compatibility and to minimize potential impacts on nearby uses. These include but are not limited to, time and frequency of operation, special arrangements for parking and traffic circulation, requirement for screening or enclosure, notification of affected property owners, and guarantees for site restoration and cleanup following special uses.
- I. Special use permits expire at the conclusion of the event or the end of each calendar year, whichever comes first.

**CHAPTER XX.88**  
**AMENDMENTS AND REZONES**

- xx.88.010 Purpose.**  
**xx.88.020 Approval Criteria.**

**xx.88.010 Purpose.** The purpose of this Chapter is to establish the procedures to amend these development regulations and/or zoning map when the proposed change would be consistent with the Goals and Policies of the Comprehensive Plan and the intent of this Title.

**xx.88.020 Approval Criteria.** In considering a text or map amendment or a proposed land use map amendment, the Board of County Commissioners shall consider:

- A. Comments from property and business owners and residents of the community;
- B. Recommendations from interested agencies and departments;
- C. Findings from the Planning Commission including:
  - 1. Suitability of the property in question for uses permitted under the proposed zoning;
  - 2. The extent to which the proposed amendment(s) are in compliance with the Goals and Policies and the Future Land Use Map in the Comprehensive Plan;
  - 3. The adequacy of necessary public facilities, such as sewer, water, roads and other required public services.
  - 4. The compatibility of the proposed map amendment change/changes and associated compatible use with neighboring land uses;
  - 5. The public need or benefit of the proposed change; and
- 5. Whether the proposed amendment complies with the applicable goals and requirements of the Washington State Growth Management Act.

**CHAPTER XX.90**  
**COMPREHENSIVE PLAN AMENDMENTS**

- xx.90.010 Purpose.**  
**xx.90.020 Initiation of Text and Map Amendments.**  
**xx.90.030 Criteria for Amendment Procedure.**  
**xx.90.040 State Review of Text and Map Amendments.**

**xx.90.010 Purpose.** The purpose of this Chapter is to provide the procedural steps needed to govern any amendments to the Comprehensive Plan text and/or maps.

**xx.90.020 Initiation of Text and Map Amendments.**

- A. Proposed amendments or revisions to the Comprehensive Plan shall be docketed and considered by the County no more frequently than once every year except that amendments may be considered more frequently under the following circumstances:
1. The initial adoption of a sub-area plan; and
  2. The adoption or amendment of a shoreline master program under the procedures set forth in RCW Chapter 90.58.
  3. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a County budget.
- B. All amendment proposals shall be considered by the County concurrently so the cumulative effect of the various proposals can be ascertained. However, the County may adopt amendments or revisions to its Comprehensive Plan that conform with RCW Chapter 36.70A whenever an emergency exists or to resolve an appeal of a Comprehensive Plan filed with the Growth Management Hearings Board or with a court.

The County shall revise its projected population figures in accordance with the schedule established in RCW 36.70A.130 to accommodate the growth projected to occur in the County for the succeeding 20 year period.

**xx.90.030 Criteria for Amendment Procedure.** The criteria staff uses to make recommendations to the Board of County Commissioners on whether or not to consider an amendment to the comprehensive plan include the following:

- A. Conditions in the vicinity of the proposal have markedly changed since the subject property was designated, and under those changed conditions, a plan amendment is within the public interest.
- B. The proposal is limited in scope and can fit within the Planning Department's work program for the current year.
- C. The proposal is correcting an inconsistency within the Plan or is a clarification of the Plan.
- D. The public interest is served by dealing with the proposal at the present time rather than later.
- E. The proposal bears a substantial relation to the promotion and preservation of public health, safety and welfare.
- F. The proposal will result in long-term benefits to the community as a whole and is in the best interest of the community.
- G. Whether the proposal complies with the applicable goals and requirements of the Washington State Growth Management Act.

**xx.90.040 State Review of Text and Map Amendments.** In proposing any changes to its Comprehensive Plan, the County shall notify the appropriate state agencies of its intent to adopt such amendments at least 60 days prior to final adoption. The County shall transmit a complete and accurate copy of its Comprehensive Plan to state agencies in accordance with State law.

## **CHAPTER XX.92 VIOLATIONS AND ENFORCEMENT**

|                  |   |
|------------------|---|
| <b>xx.92.010</b> | <b>Violations Declared Unlawful.</b>                    |
| <b>xx.92.020</b> | <b>Civil Penalty.</b>                                   |
| <b>xx.92.030</b> | <b>Remedies and Penalties for Continuing Violation.</b> |
| <b>xx.92.040</b> | <b>Persons Liable.</b>                                  |
| <b>xx.92.050</b> | <b>Enforcement Duty and Authority.</b>                  |
| <b>xx.92.060</b> | <b>Right of Entry.</b>                                  |
| <b>xx.92.070</b> | <b>Corrective Actions.</b>                              |

**xx.92.010 Violations Declared Unlawful.** Violations of, or failure to comply with the provisions of this Title are declared to be unlawful.

**xx.92.020 Civil Penalty.** In addition to any other penalty or remedy provided by this Chapter or by law, civil penalties in accordance with the County fee schedule and ordinances may be imposed upon any person, firm or corporation who violates the provisions of this Title. The civil penalty shall occur from the date set for correction until violation is corrected. The civil penalty is a personal obligation of the person or persons to whom the Notice of Violation is directed. The County Attorney, on behalf of the County, is authorized to collect the civil penalty by use of appropriate legal remedies, the seeking or grant of which shall neither stay nor terminate the accrual of additional civil penalties, as long as the violation continues.

**xx.92.030 Remedies and Penalties for Continuing Violations.** An imposition of one penalty for any violation shall not excuse the violation or permit it to continue. Any person, firm or corporation shall be required to correct such violation or defects.

- A. In addition to the civil proceedings authorized to enforce this Title and in addition to any fine or penalty provided, continuing violations of this Title may be enjoined or ordered abated in civil proceedings for injunction, abatement or other relief. For those actions, violation of this Title is declared to be a public nuisance.
- B. Any person, firm or corporation violating any of the provisions of this Title shall be liable in any private or public action brought to enforce the provisions of this Title for all costs of proceedings, expenses of abatement and for reasonable attorney fees. These expenses are cumulative and in addition to any penalties or other remedies available.



**xx.92.040 Persons Liable.** The owner, lessee or tenant of any building, structure, premises or part thereof, and the architect, builder, contractor, employee agent or other person who commits, authorizes, participates in, assists in, or who maintains after notice, a violation of this Title may be held jointly liable in any civil action brought to enforce the provisions of this Title.

**xx.92.050 Enforcement Duty and Authority.** The Community Development Director and/or his/her designee is authorized and directed to enforce the provisions of this Title. The County shall, either upon complaint or initiative, investigate potential violations of this Title. It shall be the duty of all the County officers to assist in the performance of this duty. It shall be the duty on the County Sheriff and all officers charged with the enforcement of the law to assist in the enforcement of this Title and its provisions. Contractors found working without a permit shall be fined an amount equal to the owner's fine.

**xx.92.060 Right of Entry.** Whenever necessary to make an inspection, to enforce any of the provisions of this Title, or whenever the County has reasonable cause to believe that a violation of this Title exists or is occurring on any property or within any building, authorized County personnel may enter onto such property or within any building at any time, to inspect the same or to perform any duty imposed by this Title; provided, that before entering into any dwelling or any area of the building not otherwise open to the public, proper credentials shall be presented to the owner or person in possession or occupation of said property and request entry. If such entry is refused, the County shall have recourse to every remedy provided by law to secure entry.

**xx.92.070 Corrective Actions.** Whenever necessary to implement corrective actions the following procedure is to be followed:

- A. Letter of Inquiry. If the County determines that any activity, condition, structure or use exists that does not conform to the provisions of this Title, a Letter of Inquiry may be issued. A Letter of Inquiry will be sent to the party requesting information relating to the applicable required permits for the action. The letter will specify the date required for response to the Letter of Inquiry. Failure to respond to the Letter of Inquiry within 15 days may result in additional corrective actions.
- B. Notice of Violation/ Order to Correct. If the County determines that any activity, condition, structure or use exists that does not conform to the provisions of this Title, a Notice of Violation or Order to Correct will be issued. The notice shall be directed to the owner of the property and/or to such other persons as are causing or contributing to such violation and must be responded to with 15 days. The Notice of Violation or Order to Correct shall be served upon the person or persons to whom it is directed either personally in the manner provided for by personal service to summons and complaint or by mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested, to such person(s) at his/her

last known address. Proof of personal service shall be made at the time of service by a written declaration under penalty of perjury executed by the person making service, declaring the time, date, and manner by which the service was made. For good cause shown, the County may extend the date set for correction of the Notice of Violation or Order to Correct. This action is subject to possible fees and/or fines.

- C. Stop Work Orders. The Community Development Director or his/her designee(s) may issue an order to stop work and collect fines for any activity being conducted or any improvement being erected or altered which does not conform to this Title.
1. The Stop Work Order shall be prominently placed on the subject property and reasonable attempts to forward a copy of the order to the owner of the property, the person in charge of the property or occupant thereof, or the person causing the activity to be established or conducted will be made.
  2. When any order to Stop Work has been posted on the subject property, it is unlawful for any person with active or constructive knowledge of the order to conduct the activity or do the work covered by the order until the County has removed the posted copy of the order and issued a written authorization for the activity or work to be continued. The County will mail notice of the Stop Work order to the owner of record and will require response within 15 days.
  3. If work continues under a Stop Work Order or the party fails to take appropriate steps as required and within the time frames specified by the Stop Work Order then the case will be turned over to the County Prosecuting Attorney for prosecution.
  4. The issuance of an order to stop activity may be appealed to the Board of County Commissioners but such order shall remain in full force and effect during the appeal process unless the County issues an interim or final order staying or lifting the Stop Work Order. When considering the appeal, the duty of the Commissioners is to determine whether the County Staff correctly interpreted and applied the ordinance when issuing the stop work order.

## **CHAPTER XX.94 HEARING EXAMINER**

|                  |                                      |
|------------------|--------------------------------------|
| <b>xx.94.010</b> | <b>Purpose.</b>                      |
| <b>xx.94.020</b> | <b>Hearing Examiner.</b>             |
| <b>xx.94.030</b> | <b>Standards of Conduct.</b>         |
| <b>xx.94.040</b> | <b>Rules.</b>                        |
| <b>xx.94.050</b> | <b>Authority and Duties.</b>         |
| <b>xx.94.060</b> | <b>Requests for Reconsideration.</b> |
| <b>xx.94.070</b> | <b>Appeals.</b>                      |

**xx.94.010 Purpose.** It is the purpose of this Chapter to establish a hearing examiner system to promote the principles of fairness and due process in public hearings and to provide an efficient and effective decision-making system for appeals.

**xx.94.020 Hearing Examiner.** The Board of County Commissioners shall appoint a qualified person(s) to serve as the County Hearing Examiner. This position, to be known as the County Hearing Examiner, Hearing Examiner, or Examiner, will be a contracted position, with the terms and conditions of appointment specified in a contract between the Board of County Commissioners and the Examiner(s).

- A. The Examiner shall be appointed solely with regard to qualifications for the duties of the position and shall have the professional training or experience necessary to enable the Examiner to conduct administrative or quasi-judicial land use hearings and to make decisions on land use applications and appeals. The Examiner must have expertise and experience in land use planning in Washington State and should have knowledge or experience in at least one of the following areas: environmental sciences, law, architecture, economics, or engineering. An understanding of local planning in Pend Oreille County is preferred, but not a requirement for the position.
- B. As a contract position, the Examiner shall serve at the pleasure of the Board of County Commissioners and may be dismissed from the position without cause, in accordance with the terms and conditions of appointment and the corresponding personal services contract.

**xx.94.030 Standards of Conduct.** The Examiner shall perform the duties of the position in accordance with the ethical standards established for the planning profession and in accordance with the laws of Washington State and will not conduct or participate in any hearing or decision in which the Examiner has a direct or indirect financial or personal interest.

- A. No County Commissioner, County Official, County Staff, or any other person shall interfere with or attempt to influence the Hearing Examiner in the performance of their duties.

**xx.94.040 Rules.** The Hearing Examiner shall prepare and implement procedural rules to guide public hearings and the performance of the duties of the position in accordance with the provisions of this Title and RCW 36.70.970 and RCW 58.17.330.

**xx.94.050 Authority and Duties.** The Examiner shall receive and examine relevant information and staff reports including environmental documents, conduct required public hearings, prepare a public record of the proceedings, and:

- A. Make findings and conclusions for the appeal of Class 2 reviews as specified in Pend Oreille Municipal Code xx. 14.020;
- B. Shall perform other duties as may be prescribed in the Pend Oreille County Codes or as may be assigned by the Board of County Commissioners.

**xx.94.060 Requests for Reconsideration.**

- A. Any party or agency of record may request a reconsideration of a decision by the Hearing Examiner. Requests for reconsideration may be granted by the Examiner based on a demonstration of one or more of the following:
  - 1. An irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
  - 2. Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
  - 3. A clear mistake as to a material fact; or
  - 4. A clear error as to the law, which should be corrected in the interests of justice.
- B. Requests for reconsideration must be filed with the County Department of Community Development within 10 days of the issuance of a Notice of Decision. The Examiner shall act on requests for reconsideration within 10 days of acceptance by the County and shall:
  - 1. Issue revised findings;
  - 2. Set a public hearing to further consider the request; or
  - 3. Deny the request.

**xx.94.070 Appeals.** Requests to appeal a final decision of the Hearing Examiner must be filed by Parties and Agencies of Record within 21 days of the issuance of the Notice of Decision in Pend Oreille County Superior Court in accordance with the provisions of Pend Oreille Code xx.14.150 Appeals.

DRAFT