

CHAPTER XX.34 SHORELINE REGULATIONS

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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.

- g. Preserve the ability of the federally-licensed dams to operate consistent with the terms of the federal licenses and associated Settlement Agreements.
 4. 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.
- F. Reasonable Use Exception. If the strict application of the provisions of this Chapter denies all reasonable economic use of private property, the property owner may seek a reasonable use exception from the standards in accordance with the provisions of Pend Oreille County Municipal Code xx.74, Reasonable Use Exception.
1. Requests for a reasonable use exception must also be approved as a Shoreline Variance in accordance with the criteria and procedures in this Chapter.
- G. Variances. Variances from bulk and dimension standards and associated performance standards shall be requested in writing and will be processed by the County as a Class 2 permit in accordance with the provisions of this Title.
1. Variances must be consistent with the policies of the Shoreline Management Act and the Goals and Policies of this Shoreline Master Program;
 2. Variances for development activities and/or uses that will be located landward of the ordinary high water mark (OHWM), may be authorized provided the Applicant can demonstrate that:
 - a. The strict application of the bulk, dimensional or performance standards precludes, or significantly interferes with, reasonable use of the property;
 - b. 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, special considerations associated with in-fill development, and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - c. 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. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

- 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
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	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

<i>X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.</i>								
Industrial Development: 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
<i>X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.</i>								
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
	Residential		Conservancy		Higher Intensity		Natural	Aquatic
	Rural	Urban	Rural	Urban	Rural	Urban		
Activity/Use (1)		(2)		(2)		(2)		(3)
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	SCUP
Utilities (28)	SSDP	SSDP	SSDP	SSDP	SSDP	SSDP	SCUP	SCUP
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
<i>X=Prohibited, SA=Shoreline Authorization Required, SSDP=Shoreline Substantial Development Permit Required, SCUP=Shoreline Conditional Use Permit Required.</i>								

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 typography 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*, 2nd 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.

