

Kootenai County Building & Planning Department

Site Disturbance Ordinance Amendment Proposal STAFF DRAFT 12

11-2-4: DEFINITIONS:

MECHANICAL GROUND DISTURBANCE: The use of mechanized and/or mechanically powered equipment in a manner that creates a disturbance within a Stream or shoreline Protection Buffer, regardless of whether the equipment itself is physically located within the applicable buffer. For example, a crane located outside a buffer which is operating a bucket with its boom in a manner that creates a disturbance within the buffer would be deemed to be causing a mechanical ground disturbance.

NATURAL STATE: A site shall be deemed to be in a natural state when it has either: a. Indigenous flora or other natural physical characteristics undisturbed by human activities; or, b. Introduced flora, physical characteristics and/or man-made improvements or alterations that existed prior to January 1, 1997, provided adequate documentation can be provided demonstrating such condition; or c. Introduced flora, physical characteristics and/or man-made improvements or alterations effected after January 1, 1997 pursuant to a valid permit or under circumstances for which a permit was not required at the time of such alterations.

ORDINARY HIGH WATER MARK: The line ~~which water impresses on the soil by covering it for sufficient periods to deprive it of vegetation~~ along the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

~~UNDISTURBED NATURAL VEGETATION SHORELINE and STREAM PROTECTION BUFFERS:~~ An area where no development activity has occurred or will occur, including, but not limited to, logging, construction of utility trenches, roads, structures, or surface and stormwater facilities. Buffer areas shall be left Areas retained in their natural state along lakes, rivers and streams.

11-2-8: DISTURBANCE RESTRICTIONS:

- A. Stream Protection ~~Zones~~ Buffers. Prior to, during, and after construction operations, stream beds and streamside vegetation and/or existing physical characteristics shall be protected to leave them in and retained in their most natural condition state possible in order to protect property, maintain water quality and aquatic habitat.
1. Stream Protection ~~Zone~~ Buffer Dimensions

- a. Class 1 Stream Protection ~~Zone~~ Buffer – The area encompassed by a slope distance of 75 feet on each side of the ordinary high water marks.
- b. Class 2 Stream Protection ~~Zone~~ Buffer – The area encompassed by a minimum slope distance of 30 feet on each side of the ordinary high water marks of a Class 2 stream.
- c. Naturally Occurring Drainage Swale Protection ~~Zone~~ Buffer – The area encompassed by a minimum slope distance of 5 feet on each side of the top of a naturally occurring drainage swale. In no case shall this protection ~~zone~~ buffer have a total width greater than 30 feet.
- d. For lots legally created prior to January 1, 1997, the width of any Stream Protection zone Buffer may be reduced to be no greater than 40% of the dimension of the lot perpendicular to the stream or water body.

(NOTE: The following section has been modified and moved to Section “C”)

2. ~~Protection Zone Restrictions~~

- a. ~~No mechanical ground disturbance shall be permitted within the protection zone except at identified and permitted crossings. When disturbance is necessary, across or inside a Protection Zone, it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. The extent of such disturbance shall be clearly indicated in the approved plans.~~
- b. ~~When streams must be crossed, adequate structures to carry stream flow shall be installed. Crossings and their approaches shall be at right angles to the channel or otherwise configured to minimize the disturbance within the Protection Zone. (Construction of hydraulic structures in stream channels is regulated by the Stream Protection Act, Title 42, Chapter 38, Idaho Code.) All temporary crossings shall be removed immediately after use.~~
- e. ~~Large organic debris (LOD), shading, wildlife cover, and water filtering effects of vegetation shall be maintained along streams as outlined in the Idaho Forest Practices Act.~~
- d. ~~Existing site improvements which lie within a stream protection zone may be replaced, altered, or enlarged, provided no addition or alteration encroaches farther into the protection zone than the existing improvements, site disturbing activity is minimized to the extent possible, and all other requirements of this chapter are met.~~
- e. ~~For site disturbing activity not exempted under paragraph 11-2-5(B)(11) of this chapter, the administrator may allow work within stream protection zones during periods of low flow, in accordance with all other requirements of this chapter. Prior to authorizing such work, the~~

administrator shall consult with the Idaho Department of Fish and Game, or other agencies as appropriate, to determine whether the timing or nature of the project will have an adverse impact on the environment.

B. Waterfront Lots; Undisturbed Natural Vegetation Buffer Shoreline Protection Buffer.

1. Prior to, during, and after construction operations, lakeside and riverside vegetation and/or existing physical characteristics shall be protected and retained in their natural state in order to protect property, maintain water quality and aquatic habitat.
2. Undisturbed Natural Vegetation Buffer Shoreline Protection Buffer Dimensions. For lots with frontage on a recognized lake or the Coeur d'Alene or Spokane Rivers, an Undisturbed Natural Vegetation Buffer Shoreline Protection Buffer shall be retained at the waterfront. The buffer shall be a minimum of 25 feet in slope distance from the ordinary high water mark of the water body.
3. Ordinary High Water Marks. For purposes of this Ordinance chapter, ordinary high water marks shall be considered to be the following elevations according to the North American Vertical Datum of 1988 (NAVD88):

Coeur d'Alene Lake	2128.0	<u>2128.7</u>
Fernan Lake	2131.37	<u>2135.1</u>
Hauser Lake	2187.0	<u>2190.9</u>
Hayden Lake	2239.0	<u>2242.9</u>
Pend Oreille Lake	2062.5	<u>2066.5</u>
Spirit Lake	2442.0	<u>2446.0</u>
Twin Lakes	2310.46	<u>2314.4</u>

The ordinary high water marks for all other water bodies shall be determined by on-site inspection of evidence of historical water levels.

C. Restrictions Applicable to Stream Protection Buffers and Shoreline Protection Buffers.

1. No mechanical ground disturbance shall be permitted within Stream Protection Buffers or Shoreline Protection Buffers. Only the use of hand tools shall be allowed when necessary to develop or establish a permitted use or activity (except at identified and permitted stream or river crossings). When disturbance is necessary across or inside Stream Protection Buffers or Shoreline Protection Buffers, it shall be done in such a manner as to minimize lake and/or river bank vegetation and/or channel disturbance. The extent of such disturbance shall be clearly indicated in the proposed and approved plans.
2. When streams or rivers must be crossed, adequate structures to carry water flow shall be installed. Crossings and their approaches shall be at right angles to the channel or otherwise configured to minimize the disturbance within the Stream Protection Buffer or Shoreline Protection Buffer. Construction of hydraulic structures in river channels shall conform to the requirements of the Stream Channel Protection Act, Title 42, Chapter 38, Idaho. All temporary crossings shall be removed immediately after use.

3. Shading, wildlife cover, and water filtering effects of vegetation shall be maintained along all Stream Protection Buffers and Shoreline Protection Buffers adjacent to lakes, rivers and streams as outlined in the IFPA and the Rules Pertaining to the Idaho Forest Practices Act, IDAPA 20.02.01 (IFPA).
4. Large organic debris (LOD) shall be maintained along all Stream Protection Buffers (but not Shoreline Protection Buffers) as outlined in the IFPA and the IFPA Rules.
5. Existing site improvements determined to be in a natural state, and which lie within a Stream Protection Buffer or an Shoreline Protection Buffer may be replaced or altered, provided:
 - a. No addition or alteration encroaches farther than the existing improvements; and
 - b. The site disturbing activity is minimized to the extent possible; and
 - c. All other requirements of this chapter are met.
6. One stairway or walkway (which does not exceed 4 feet in width), stairway landings (which do not exceed 6 feet in width or length), and/or a tram shall be allowed to encroach within a Stream Protection Buffer or Shoreline Protection Buffer. Such structures shall not be constructed in a manner that is parallel to the shoreline that would create a boardwalk along the waterfront. Where required due to steep slopes, switchback designs that provide access from higher elevations to lower elevations may be permitted.
7. For site disturbing activity not exempted under paragraph 11-2-5(B)(11) of this chapter, the Administrator may allow work within the Stream Protection Buffer or the Shoreline Protection Buffer during periods of either high or low water/flow, in accordance with all other requirements of this chapter. Prior to authorizing such work, the Administrator may consult with the Idaho Department of Fish and Game, or other agency(-ies) as appropriate, to determine whether the timing or nature of the project will have an adverse impact on the environment.
8. Development Exceptions within the Stream Protection Buffer or the Shoreline Protection Buffer:
 - a. Exception 1: Although not to be encouraged, mechanical ground disturbance may be permitted for authorized development provided the applicant can adequately demonstrate the necessity of such activity through the submission of a technical report prepared by a design professional. To approve an exception, the Administrator must make the following findings:
 1. Due to unique circumstances, there are no other reasonable alternatives; and
 2. The report adequately addresses and ensures that there will be no long-term negative effects to the site or surrounding area or bodies of water; and
 3. A site disturbance plan is provided specifically for the re-establishment of the Stream Protection Buffer or the Shoreline Protection Buffer; and
 4. The re-establishment of the Stream Protection Buffer or the Shoreline Protection Buffer is found to be equal to or an improvement of the buffer or buffer's natural state; and
 5. The end result will be consistent with the purpose of this chapter.

- b. Exception 2: Development/improvements and directly related limited mechanical ground disturbance may be permitted for: I) maintenance/repair and/or replacement of existing structures or improvements deemed to be in a Natural State; or II) to remedy significant erosion problems; provided the applicant can adequately demonstrate the necessity of such development and/or activity through the submission of a technical report prepared by a design professional. To approve an exception, the Administrator must make the following findings:
1. Findings 1 through 5 in Exception 1 above; and
 2. The improvement/work proposed is the minimum necessary in order to control or remediate the erosion problem or complete the necessary maintenance/repair or replacement; and,
 3. The erosion and/or maintenance/repair problem is not the result of any unpermitted actions of the current or previous property owners occurring on or after January 1, 1997; and,
 4. Jurisdictional agencies have been provided the opportunity to review and comment.
- c. Exception 3: The Board of County Commissioners may consider and allow site disturbances, construction and improvements within the Stream Protection Buffer and/or Shoreline Protection Buffer where it is determined that the project is of such size, scale, regional economic benefit and/or nature that allowing the work to proceed is found to be in the best interests of the public, including but not necessarily limited to: a) large scale rip-rap, bank stabilization, erosion control and similar projects that may include numerous adjacent/abutting property owners; b) publicly owned boat launch and support facilities; c) bank stabilization, rip rap, erosion control and similar projects and support facilities associated with large scale commercial marinas and facilities; d) multi-jurisdictional projects partially authorized by other agencies but not fully within the scope of 11-2-5,B. Exemptions. In such a request, the applicant shall first submit a preliminary request for Board consideration. If found to have merit for formal consideration based upon the size, scale, economic benefit and nature of the project, the applicant shall be required to demonstrate the necessity and public benefit of such improvement or activity through the submission of a complete Site Disturbance Application and technical report prepared by a design professional, which shall be considered at a public hearing before the Hearing Examiner with a final decision rendered by the Board of County Commissioners. To approve such an exception, the Board must make the following findings:
1. The improvement and/or activity proposed would otherwise not be allowed under the existing provisions of this code; and,
 2. Due to unique size, scale, regional economic benefit and/or circumstances of the project, there are no other reasonable alternatives; and,
 3. The report adequately addresses and ensures that there will be no long-term negative effects to the site or surrounding area or bodies of water; and,
 4. A site disturbance plan is provided specifically addressing the activities and development proposed within the Stream Protection Buffer or Shoreline

- Protection Buffer, including all phases from construction to ultimate completion; and,
5. The site disturbance plan is fully compliant with all of the applicable standards, provisions, requirements and/or best management practices that are not within the scope of the approved development exemption; and,
 6. Due to unique size, scale, regional economic benefit and/or circumstances of the project, the proposed activity and/or development is in the best interest of the public.
9. When a development exception is requested under paragraph (C)(8) of this section and the Administrator or Board determines that a second opinion from a Design Professional should be obtained, the Administrator or Board shall notify the applicant within 30 days from application submittal, or within 15 days of receiving agency comments when such comment is solicited (whichever is longer) of the intent to initiate an effort to request a second opinion. Such second opinion shall be at the direction of the County and paid for by the applicant.
10. The Administrator may request/seek a second opinion from a Design Professional regarding any permitted or proposed work within a Stream Protection Buffer or Shoreline Protection Buffer at any time. The cost of such a second opinion shall be borne by the County.