

ORDINANCE NO. 453
CASE NO. ORA10-0006
SITE DISTURBANCE ORDINANCE TEXT AMENDMENTS

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO SITE DISTURBANCES AND STORMWATER CONTROL; AMENDING TITLE 11, CHAPTER 2, KOOTENAI COUNTY CODE AS FOLLOWS: AMENDING SECTION 11-2-4 TO ADD AND AMEND CERTAIN DEFINITIONS, AND AMENDING SECTION 11-2-8 TO PROVIDE UNIFORM STANDARDS FOR STREAM PROTECTION BUFFERS AND SHORELINE PROTECTION BUFFERS, PROVIDE FOR DEVELOPMENT EXCEPTIONS WITHIN STREAM PROTECTION BUFFERS AND SHORELINE PROTECTION BUFFERS, AND TO AUTHORIZE THE ADMINISTRATOR TO REQUEST A SECOND OPINION FROM A DESIGN PROFESSIONAL AT COUNTY EXPENSE REGARDING WORK WITHIN A STREAM PROTECTION BUFFER OR SHORELINE PROTECTION BUFFER; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS REGARDING VIOLATIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

SECTION 1. That Section 11-2-4, Kootenai County Code, be and the same is hereby amended to read as follows:

11-2-4: DEFINITIONS:

ADMINISTRATOR: The Director is hereby designated as being responsible for the administration of the provisions of this chapter and as having authority to hire a design professional to provide technical advice on matters subject to the provisions of this chapter.

BEST MANAGEMENT PRACTICES (BMPs): Physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water and erosion of soils.

BUFFER STRIP: A vegetated area that slows stormwater runoff and provides filtration. The effectiveness of buffer strips is determined by several factors that include soil type, slope, width and vegetation type. Typically stormwater must enter the buffer strip as sheet flow for the buffer to provide any significant treatment.

CLEARING: The destruction and removal of vegetation by manual, mechanical, or chemical methods.

COMMUNITY STORMWATER SYSTEM: A BMP or series of BMPs which serve(s) more than one parcel.

CONVEYANCE: A mechanism for transporting water from one point to another, including pipes, ditches, and channels.

CUT: To excavate into a hillside to create a flat area or to steepen or flatten a bank.

DEPARTMENT: ~~The~~ Kootenai County Community Development. ~~Building and Planning Department.~~

DESIGN PROFESSIONAL: A professional engineer, landscape architect, or geologist, registered for their respective profession by the State of Idaho or a Certified Professional in Erosion and Sediment Control (CPESC) as determined by the Soil and Water Conservation Society and the International Erosion Control Association.

DETENTION: The temporary storage of storm runoff, used to control the peak discharge rates and provide gravity settling of pollutants.

DIRECTOR: The Director of ~~the~~ Kootenai County Community Development ~~Building and Planning Department~~, or his or her designee.

DRIVEWAY: For purposes of managing and treating stormwater, a driveway shall be a means of vehicular access from a public or private road to a point within an individual lot which is less than 150 feet in length.

EASEMENT, DRAINAGE: A legal encumbrance placed against a property's for maintenance access or to reserve other specified privileges for the users and beneficiaries of the drainage facilities contained within the boundaries of the easement.

EROSION: The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

EROSION AND SEDIMENTATION CONTROL: Those BMPs which are employed to prevent or reduce erosion or sedimentation and are typically necessary when ground disturbance occurs.

EXCAVATE: Any act by which earth, sand, gravel, rock, or other earthen material is cut into, dug, uncovered, displaced, or relocated.

FILL: A solid material which increases the ground surface elevation or the act of depositing such material by mechanical means.

FLOOD CONTROL STRUCTURE: A man-made feature designed or constructed to reduce damage caused by flood events, including, but not limited to, a dam, dike, channel, levy, or similar device.

GRADING: Any excavation, filling, or movement of earth for the purposes of changing the shape or topography of the land.

GROUNDWATER: Water in a saturated zone or stratum beneath the land surface or a surface water body.

GUARANTEE OF FINANCIAL SURETY: A surety bond, cash deposit, or escrow account, irrevocable letter of credit, or other means acceptable to or required by the County to guarantee that infrastructure or improvements are completed in compliance with the project's approved plans.

~~HIGH WATER MARK: The line which water impresses on the soil by covering it for sufficient periods to deprive it of vegetation.~~

IMPERVIOUS SURFACE: Any hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel and compacted native surface roads, compacted earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

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/MODIFIED STATE: A site shall be deemed to be in a natural/modified 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.

NATURALLY OCCURRING DRAINAGE SWALE: Natural drainage conveyances that provide for the discharge of stormwater to Class 1 or Class 2 streams, but have bed and banks which are vegetatively covered and stable.

ORDINARY HIGH WATER MARK: The line along the shore established by the fluctuation of water and indicated by physical characteristics such as a 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.

PRIVATE ROAD: A means of vehicular access which does not meet the definition of "driveway" and is not maintained by a public highway agency.

PUBLIC HIGHWAY AGENCY: The Idaho Transportation Department, a Highway District, or other political subdivision of the state with jurisdiction over public highways, public streets, and public rights-of-way.

PUBLIC ROAD: Public highway or street which has been accepted for maintenance by a Public Highway Agency.

RATHDRUM PRAIRIE AQUIFER: A geologic stratum containing ground water in northern Kootenai County, further delineated on the Water Resources map in the Kootenai County Comprehensive Plan.

RETENTION: The holding of runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

SCARIFY: To break up or loosen the ground surface of an area.

SEDIMENT: Fragmented material that originates from weathering and erosion of rocks or unconsolidated deposits and is transported by, suspended in, or deposited by water.

SEDIMENTATION: The deposition of sediment on ground surfaces and in water courses.

SHORELINE PROTECTION BUFFERS and STREAM PROTECTION BUFFERS: Areas maintained in their natural/modified state along lakes, rivers and streams.

SITE: The parcel of land on which grading or excavation activity is conducted. A road right-of-way shall be considered a separate site from adjacent properties.

SPOIL PILE: Soil and/or rock excavated from an area which may be used for backfill or final grading on-site.

STABILIZED CONSTRUCTION ENTRANCE: A stabilized pad of clean, crushed rock located where traffic enters or leaves a construction site onto a paved public or private road. The pad shall be a minimum of 6 inches thick, with a minimum rock size of 2-3 inches, and a length sufficient to minimize off-site tracking.

STORMWATER: That portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel, or a constructed infiltration facility.

STORMWATER CONTROL: Those BMPs which are employed to convey, direct, treat, or dissipate stormwater and are typically necessary when impervious area is created or the natural drainage is interrupted.

STREAM: A water course of perceptible extent which confines and conducts continuously or intermittently flowing water. This definition is intended to include streams in natural or man-made channels. This definition is not meant to include dead-end streams which do not support fish or other beneficial uses. A "dead-end" stream is one which infiltrates into the ground prior to reaching a larger body of water.

STREAM, CLASS 1: A stream which exhibits a definite bed and banks (a clay, silt, sand, gravel, cobble, boulder, or bedrock stream bottom which results from the scouring action of water flow) and is used for domestic water supply or by fish for spawning, rearing, or migration. Such waters will be considered to be Class 1 upstream from the point of domestic diversion for a minimum distance of 1,320 feet. The Coeur d'Alene River, Spokane River, and all recognized Kootenai County lakes are excluded from this definition for purposes of this chapter.

STREAM, CLASS 2: A stream which exhibits a definite bed and banks (a clay, silt, sand, gravel, cobble, boulder, or bedrock stream bottom which results from the scouring action of water flow) and is usually found in headwater areas or minor drainages and is not used by fish. Their principal value lies in their influence on water quality or quantity downstream in Class 1 streams.

SURFACE WATER: For purposes of this chapter, surface water shall include all lakes, rivers, streams, wetlands, and similar features and any feature which acts as a conveyance of water to a surface water feature. Conveyance features may include natural or man-made ditches. Ponds, springs, or similar features that are entirely contained within the property shall not be considered surface water features.

TREATMENT: Removal of sediment or other pollutants from stormwater.

~~**UNDISTURBED NATURAL VEGETATION BUFFER:** 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 in their natural state.~~

SECTION 2. That Section 11-2-8, Kootenai County Code, be and the same is hereby amended to read as follows:

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 maintained in their most natural/modified state condition 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 mark, 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 mark, 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.

~~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.~~
- ~~c. 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. Shoreline Protection Buffer. Waterfront Lots.

1. Prior to, during, and after construction operations, lakeside and riverside vegetation and/or existing physical characteristics shall be protected and maintained in their natural/modified state in order to protect property, maintain water quality and aquatic habitat.
2. Shoreline Protection Buffer Dimensions. For lots with frontage on a recognized lake or the Coeur d'Alene or Spokane Rivers, a shoreline protection buffer an Undisturbed Natural Vegetation Buffer shall be maintained retained at the waterfront. A stairway or walkway (which does not exceed 4 feet in width), stairway landings (which do not exceed 6 feet in width or length), or a tram shall be allowed to encroach within the buffer. 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 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>2315.8</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 Code. 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 Rules).
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 or conditions determined to be in a natural/modified state, and which lie within a stream protection buffer or a 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 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 a Stream Protection Buffer or Shoreline Protection Buffer:
 - a. Exception 1: 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:

- i. Due to unique circumstances, there are no other reasonable alternatives; and
 - ii. 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
 - iii. A site disturbance plan is provided specifically for the re-establishment of the stream protection buffer or the shoreline protection buffer; and
 - iv. 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/modified state; and
 - v. 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/modified state; or II) to remedy significant erosion, structural integrity, or bank stabilization 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:
- i. Findings (i) through (v) in Exception 1 above; and
 - ii. The improvement/work proposed is the minimum necessary in order to control or remediate the erosion, structural integrity, or bank stabilization problem or complete the necessary maintenance, repair or replacement; and
 - iii. The problem which the improvement/work proposed is intended to remedy is not the result of any unpermitted actions of the current or previous property owners occurring on or after January 1, 1997; and
 - iv. Jurisdictional agencies have been provided the opportunity to review and comment.

9. The Administrator may request 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.

SECTION 3. Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.


SECTION 5. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

ADOPTED this 19th day of May 2011

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**



W. Todd Tondee, Chairman

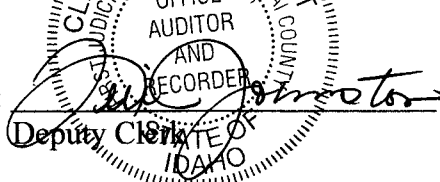


Daniel H. Green, Commissioner

Jai K. Nelson, Commissioner

ATTEST
DANIEL ENGLISH, CLERK

By:



The seal is circular with a double-line border. The text inside the seal reads: "CLERK OF 1ST DISTRICT-KOOTENAI COUNTY" around the top edge, "OFFICE OF THE CLERK" in the center, "AUDITOR AND RECORDER" below that, and "STATE OF IDAHO" around the bottom edge. A handwritten signature is written across the seal.

Publication Date: May 25, 2011

C: Community Development, Prosecuting Attorney (Civil and Criminal Divisions), Sterling Codifiers, Ordinance File