

CHAPTER 13.30

CRITICAL AREA REVIEW PROCESS

13.30.010 PRELIMINARY CRITICAL AREAS REVIEW (Amended by BOCC Resolution #80-2004, July 6, 2004)

- (1) Each development proposal application shall include a completed Critical Areas Checklist or the report of a qualified professional assessing critical areas on or immediately adjacent to the development site, provided that residential remodels and commercial tenant improvement projects that result in no added floor area or change to a structure's footprint are exempt from this requirement:
- (2) Upon receipt of a completed development proposal application and a completed Critical Areas Checklist (in substantially the form as shown on Appendix A) or report from a qualified professional, the Administrator shall, within the time limits as provided by law, consult available reference material and maps to make a preliminary assessment of whether or not a critical area exists on or within approximately 200 feet of the development proposal site.
- (3) All applications that involve a development proposal within the boundaries of the Spokane Indian Reservation, shall be referred to the Spokane Tribe of Indians, Department of Natural Resources, for review and comment. A comment period of 14 days shall be provided.
- (4) It is the applicant's responsibility, to the best of their ability, to disclose the presence of critical area(s) on their property by completion of a Critical Area Checklist, land use application, site plan or by obtaining the services of a qualified professional.
- (5) If, after preliminary review, the Administrator determines that a critical area is not on or immediately adjacent to the development proposal site, further review under this Title is required.
- (6) If, after preliminary review, the Administrator determines that a critical area is on or immediately adjacent to the development proposal site, the requirements of this Title shall apply.
- (7) If, after preliminary review, the Administrator is unable to determine whether a critical area is on or immediately adjacent to the development proposal site, then one or more of the following shall be required:
 1. Additional information from the applicant;
 2. A site visit by County staff qualified to provide a basic assessment of critical areas;
 3. A site visit by a qualified professional under contract with the County to provide a basic critical areas site assessment; or,
 4. An applicant may be requested to provide a report prepared by a qualified professional. The report should:
 - Document that a critical area does not exist on the development site or immediately adjacent to the site, or
 - Identify, locate/delineate, and describe, in text and on a site plan, the critical area(s) on or adjacent to the development site;
 - Describe and map the amount and type of encroachment into the critical area(s) or associated buffer;
 - Describe how protection requirements for the specific critical area will be implemented and monitored;
 - The report may contain or consist of a site evaluation by appropriate agency(ies) of expertise, including but not limited to the DOE and WDFW.

13.30.020**LIMITATIONS AND EXEMPTIONS****(Amended by BOCC Resolution #80-2004, July 6, 2004)**

Certain types of development or land use activities are currently outside the jurisdiction of the County or are exempt from review by the Planning Department. These types of exemptions, including those listed below in subsections (1) through (9) remain in place under this Title, subject to the limitation that any disturbance in or adjacent to a critical area avoids or mitigates adverse impacts. For information related to non-conforming structures and uses and existing and ongoing agricultural activities see SCC 13.20.040 et seq. and 13.20.050 et seq. Activities that do not require building permits or planning department review are not subject to regulation pursuant to this Title except as specifically described.

- (1) Emergency Actions** - Emergency actions shall be exempt from the requirements of this Title, subject to the following:
 - A. An 'emergency' is 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 this Title.
 - B. The Administration shall determine when an emergency situation exists.
 - C. Where new protective structures are determined by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation any new structure shall be removed or any permit which would have been required, absent an emergency, shall be obtained.
 - D. Any emergency construction shall recognize to the fullest extent practicable the policies and requirements of this Title, other generally applicable development standards enforced by Stevens County, and the Stevens County Shoreline Master Program.
 - E. Flooding or other seasonal events that can be anticipated may occur but that are not imminent are not an emergency.
 - F. The Stevens County Planning Department shall be notified within five working days, of any impact to a critical area or associated buffer following resolution of the emergency situation, in order to evaluate the need for mitigation or restoration measures.
- (2) Forest practices** - Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW, Forest Practices Act and Title 222 WAC, Forest Practice Rules and Regulations are not subject to additional review by the County.
- (3) Government agencies** - Any development undertaken by a federal, state or tribal agency on lands owned by the agency or tribe and not subject to county jurisdiction is exempt from additional review by the County, unless the government grants or reserves to Stevens County substantial jurisdiction over land use and development activities on those lands.
- (4) Navigational Aids** - Construction or modification of navigational aids, channel markers and buoys are exempt from County review. These types of projects must avoid adverse impacts to critical areas or their associated buffers.
- (5) Passive Outdoor Recreation** - Passive outdoor recreational activities, such as fishing, bird watching, hiking, boating, horseback riding, hunting, swimming, boating, canoeing, bicycling, or other similar minimum impact activities are not regulated by this Title.
- (6) Site Investigations** - Site work such as surveys--including the marking of property lines or corners--activities necessary for land use applications, soil logs, percolation tests or other similar work is exempt from regulation under this Title provided that unavoidable impacts to critical areas and associated buffers shall be minimized and disturbed areas shall be restored to the maximum extent practical.
- (7) Wild Crop Harvest** - The harvesting of wild crops in a manner that is not injurious to the natural reproduction of such crops is exempt from regulation under this Title provided that the harvesting does not require tilling soil, planting, changing existing topography, water conditions or sources and provided that the activity does not adversely impact critical areas or their associated buffers.

- (8) Maintenance and Repair** - Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways is exempt from regulation under this Title, provided that any such maintenance or repair activities shall use reasonable methods to avoid impacts to critical areas. Any impact to a critical area or its buffer shall be mitigated to the extent feasible.
- (9) Removal of noxious weeds** in compliance with state or local law is allowed in critical areas and their associated buffers and shall be undertaken in a manner that prevents or minimizes long-term adverse impacts to the functions and values of the critical area and buffer. Hand pulling of aquatic weeds to help promote stream viability is allowed.

13.30.030 ADMINISTRATIVE REVIEW

Administrative Review occurs when the Administrator determines a regulated critical area exists within the vicinity of a proposed development and that the development proposal is not Exempt.

This process is used when the proposed development is subject to clear, objective and subjective standards that require the exercise of professional judgment about technical and non-technical issues. The Administrative Review process shall be in accordance with Stevens County Code Title 6, Local Project Review.

13.30.031 TYPES OF ACTIVITIES

The following types of development proposals are subject to Administrative Review, and when applicable, shall be consistent with the Stevens County Shoreline Master Program:

- (1) **Bulkhead for a Single-Family Residence** - A normal protective bulkhead is to be constructed at or near the ordinary high water mark (OHWM) of a water body to protect a single-family residence and is to protect land from erosion, and is not for the purpose of creating land. The construction shall be in a manner consistent with the Stevens County Shoreline Master Program.
- (2) **Construction of a Single-Family Residence** - "Single family residence" means a detached dwelling designed for one family including normal appurtenances. A "normal appurtenance" includes: a garage, deck, private storage structures, driveway, installation of an on-site sewage disposal system and grading which does not exceed 250 cubic yards and which does not involve placement of fill in a critical area.
- (3) **Dock Construction** - Construction of a fresh water dock, the cost or fair market value of which is equal to \$10,000 or less, designed for pleasure craft only, for the private noncommercial use of the property owner. It shall be constructed in a manner consistent with the Stevens County Shoreline Master Program.
- (4) **Enhancement Activities** - for fish, wildlife, riparian area or wetlands not required as mitigation, provided that USFWS, WDFW, DOE, the Department of Interior and/or the NRCS approve the project.
- (5) **Maintenance and Repair** - Normal maintenance, repair and operation of any of the following existing facilities:
 - Single family residence occupied by one family, including normal appurtenance.
 - Commercial structure, provided that no expansion of the original footprint occurs.
 - Utilities, sewage or water systems.
 - Public or private roads or driveways.
 - Drainage ditches and associated facilities.

- Noncommercial private dock.
 - Nonconforming structures, provided that the use does not change and that no expansion of the original footprint occurs.
 - ‘Normal maintenance’ includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. ‘Normal repair’ means to restore a development to a state comparable to its original condition, including but not limited to, its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shorelines 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.
- (6) **Modification of Existing Residence** - Modification of an existing single family residence that does not change the existing use from residential, does not expand the original building footprint and does not increase the nonconformity.
- (7) **Modification of Existing Nonconforming Residence** - see “Nonconforming Structures” Section 13.20.00.
- (8) **Modification of Other Existing Structures**- Modification of other existing structures that does not change the existing use, does not expand the original footprint and does not increase the nonconformity.
- (9) **Replacement of Manufactured Home** – replacement of a manufactured, mobile or modular home provided that the expansion does not exceed a total combined structure footprint of 30% of the square footage of that portion of the lot within the buffer area.
- (10) **Other** – Development proposals where the affected critical area is one of the following: Category 3 or 4 Wetland, Water Type 2, 3, 4 or 5 or Geologically Hazardous Areas or Frequently Flooded Area. Frequently Flooded areas are included because they are reviewed under the Flood Protection Regulations. Geologically hazardous areas are included because they are reviewed under the Uniform Building Code.

13.30.032 ADMINISTRATIVE REVIEW OUTCOMES

Upon review of all available information, the Administrator shall determine whether the proposed project is consistent with the protection requirements of this Title. The outcome of the Administrative Review is generally one of the following:

1. The critical area or associated buffer is not impacted by the development proposal. No further review under this Title is required.
2. The critical area or associated buffer is impacted by the development proposal, however, as submitted, the proposal is consistent with the protection requirements for the identified critical area or associated buffer. The development proposal can be approved without further conditions.
3. The critical area or associated buffer is impacted by the development proposal, however, the identified impact(s) can be avoided or minimized through mitigation.
4. The critical area or associated buffer is unacceptably impacted by the development proposal and no obvious mitigation measures will successfully abate the unacceptable impacts. The development proposal cannot be approved as submitted.

13.30.033 LETTER OF CONSISTENCY (LOC)

If the development proposal is found to be consistent with the critical area protection requirements, then the Administrator shall prepare a Letter of Consistency addressed to the applicant and a copy submitted to WDFW and/or DOE. The LOC shall indicate the specific administrative provisions and appropriate protection regulations that are being applied to the proposed development.

Note: Stevens County Planning Department reserves the right to review the development through completion to:

- assure compliance with proposal as submitted,
- require additional review or permitting in the event that applicant substantially changes the proposed development, or
- require additional review or permitting when new circumstances or information warrant a higher and more comprehensive evaluation of the impact(s) to a critical area or its associated buffer.

13.30.034 TIME LIMITS AND EXTENSIONS

The Stevens County Planning Department may issue a LOC with an expiration date of up to five years from the date of issuance. Completion or substantial progress toward completion must begin within two years after the date of issuance.

One extension of time may be granted upon written request, received prior to the expiration date, to the Stevens County Planning Department. The Administrator may extend the time limit for up to one year, provided that the applicant or the successor successfully demonstrates that extenuating circumstances have prevented completion of the project.

Prior to the granting of an extension, the Administrator may require updated studies and/or additional hearings.

13.30.040 PUBLIC REVIEW

Development proposals or land use activities not meeting the criteria for “Exemption” or “Administrative Review”, shall be reviewed under this Section. “Public Review” consists of a Preliminary Application Review followed by either a Full Administrative Review or a Quasi-Judicial Review under Stevens County Code Title 6, Local Project Review, which may include SEPA, public comment or a public hearing.

When more than one application is required for a development proposal, all applications may be submitted for review at one time. When more than one application is submitted, and the applications are subject to different types of review procedures, all of the applications shall be reviewed at the highest applicable level or most comprehensive type of review.

(1) Hearing Scope

Within the time limits specified in Stevens County Code 6.08.050, the Hearing Examiner shall issue a written “Quasi-Judicial Final Decision”. The decision shall meet the requirements of Stevens County Code 6.08.050 and may include findings of fact regarding the following:

- a) The critical area or associated buffer is not impacted by development proposal pursuant to the requirements of this Title;

- b) The critical area or associated buffer is impacted by the development proposal, however, as submitted, the proposal is consistent with the protection requirements for the identified critical area or associated buffer under this Title;
- c) The critical area or associated buffer is impacted by the development proposal, however, the identified impact(s) can be avoided or minimized through mitigation pursuant to the Mitigation and Critical Area Protection Requirement sections of this Title;
- d) The critical area or associated buffers is unacceptably impacted by the development proposal and no obvious mitigation measures can be successfully implemented. The development proposal cannot be approved as submitted.
- e) The proposed development does not pose a threat to the public health, safety or general welfare.
- f) Locating the proposed development as far away from the wetland as possible has minimized the disturbance of a wetland.
- g) The Hearing Examiner may specify mitigation measures or issue conditions of approval including modifications to the size and placement of structures and facilities to minimize impacts to critical areas or the associated buffers.
- h) The Hearing Examiner has the authority to establish an expiration date or time period within which the proposed development must be constructed. No extension of a specified expiration date or time period shall be permitted without an additional public hearing.

APPLICATION PROCESS FLOWCHART

