

12-28-2011

Kootenai County v. Harriman-Sayler Augmentation Record Dckt. 39071

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Kootenai County v. Harriman-Sayler Augmentation Record Dckt. 39071" (2011). *Idaho Supreme Court Records & Briefs*. 3761.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3761

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

In the Supreme Court of the State of Idaho

KOOTENAI COUNTY, a political subdivision)
of the State of Idaho, and PANHANDLE)
HEALTH DISTRICT NO. 1, a public health)
district duly established pursuant to Title 39,)
Chapter 4, Idaho Code,)

Plaintiffs-Respondents,)

v.)

PEGGY HARRIMAN-SAYLER and TERRY)
SAYLER,)

Defendants-Appellants,)

LAW CLERK

ORDER GRANTING MOTION TO
AUGMENT RECORD

Supreme Court Docket No. 39071-20
Kootenai County Docket No. 2009-33

A MOTION TO AUGMENT RECORD was filed by counsel for Respondents on Dec
21, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondents' MOTION TO AUGMENT RECORD be
hereby is, GRANTED and the augmentation record shall include the documents listed below,
stamped copies of which accompanied this Motion:

1. Affidavit of Dennis Lacy, with attachments, file-stamped September 22, 2009;
2. Affidavit of Shane Harmon, with attachments, file-stamped September 22, 2009;
3. Affidavit of Kristina Keating, with attachments, file-stamped September 22, 2009;
4. Affidavit of Patrick M. Braden, with attachments, file-stamped September 22, 2009;
5. Affidavit of Tom Wilson, file-stamped November 19, 2010;
6. Motion for Summary Judgment, file-stamped November 19, 2010;
7. Memorandum in Support of Motion for Summary Judgment, file-stamped November 19, 2010; and
8. Reply Memorandum in Support of Motion for Summary Judgment, file-stamped December 15, 2010.

DATED this 28th day of December, 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

ORDER GRANTING MOTION TO AUGMENT RECORD – Docket No. 39071-2011

In the Supreme Court of the State of Idaho

KOOTENAI COUNTY, a political subdivision)
of the State of Idaho, and PANHANDLE)
HEALTH DISTRICT NO. 1, a public health)
district duly established pursuant to Title 39,)
Chapter 4, Idaho Code,)

Plaintiffs-Respondents,)

v.)

PEGGY HARRIMAN-SAYLER and TERRY)
SAYLER,)

Defendants-Appellants,)

ORDER GRANTING MOTION TO
AUGMENT RECORD

Supreme Court Docket No. 39071-2011
Kootenai County Docket No. 2009-3339

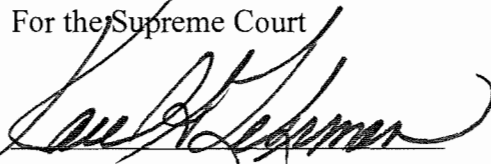
A MOTION TO AUGMENT RECORD was filed by counsel for Respondents on December 21, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondents' MOTION TO AUGMENT RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Affidavit of Dennis Lacy, with attachments, file-stamped September 22, 2009;
2. Affidavit of Shane Harmon, with attachments, file-stamped September 22, 2009;
3. Affidavit of Kristina Keating, with attachments, file-stamped September 22, 2009;
4. Affidavit of Patrick M. Braden, with attachments, file-stamped September 22, 2009;
5. Affidavit of Tom Wilson, file-stamped November 19, 2010;
6. Motion for Summary Judgment, file-stamped November 19, 2010;
7. Memorandum in Support of Motion for Summary Judgment, file-stamped November 19, 2010; and
8. Reply Memorandum in Support of Motion for Summary Judgment, file-stamped December 15, 2010.

DATED this 28th day of December, 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

FILE COPY

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2009 SEP 22 PM 2: 26

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

AFFIDAVIT OF DENNIS LACY

STATE OF IDAHO }
 } ss.
COUNTY OF KOOTENAI }

DENNIS LACY, being first duly sworn under oath deposes and says:

1. I am over the age of 18 years. I make this affidavit of my own personal
knowledge, and I am competent to testify to the matters set forth herein.

AFFIDAVIT OF DENNIS LACY - 1

H:\Building and Planning\Code Enforcement Cases\Harriman-Saylor - CV-09-3339\Affidavits\Affidavit of
Lacy.doc

2. I am employed by the Kootenai County Building and Planning Department as a Code Compliance Officer/Code Inspector with the Kootenai County Building and Planning Department. I have been with the Kootenai County Building and Planning Department for four (4) years, and my duties have included code enforcement during this entire period. My assigned duties include enforcement of the Kootenai County Zoning Ordinance, currently enacted as Ordinance No. 401, as amended and codified at Title 9, Kootenai County Code (hereinafter referred to as the "Zoning Ordinance"), including the provisions regarding conditional use permits (CUPs).

3. I am familiar with the provisions of the Zoning Ordinance pertaining to the uses of real property which are permitted, uses which are prohibited, and uses which are permitted only upon approval of a CUP by the Kootenai County Board of Commissioners ("Board"), in each zone. I am also familiar with the enforcement provisions contained in the Zoning Ordinance, and the penalties which may be imposed for violations thereof.

4. The property which is the subject of this action ("the Subject Property") is located within the Rural zone.

5. Under section 9-13-9 of the Zoning Ordinance, commercial resorts are among the conditional uses permitted in the Rural zone upon approval and issuance of a CUP by the Board. Section 9-24-5 of the Zoning Ordinance specifies that recreational vehicle (RV) parks are among the permitted uses within an approved commercial resort. The terms "commercial resort," "recreational vehicle," and "recreational vehicle park" are all defined in section 9-2-2 of the Zoning Ordinance.

6. On June 22, 2005, during the course of my assigned duties, I viewed and took photographs of the Subject Property. At that time, I observed areas which appeared to have been intended to serve as campsites for RVs, including electrical and water hookups. However, I observed no RVs in any of those sites. All of the sites I observed at that time were overgrown with grasses and weeds. Based on these observations, I determined that the Subject Property was not being used as an RV park at that time and had not been used as an RV park for a considerable amount of time prior to that.

7. While conducting this inspection, I took the photographs attached as **Exhibits 1 through 5** to this Affidavit, which are incorporated by reference herein. The attached photographs truly and accurately depicted the condition of the Subject Property as of June 22, 2005.

8. On September 11, 2007, during the course of my assigned duties, I again viewed the Subject Property, this time from a neighboring property with the consent of the neighboring property owner.

9. At that time, I observed that the campsite areas had been cleared of vegetation and had picnic tables, and that they still contained electrical and water hookups. I also observed an RV in one of the sites. Based on these observations, I determined that the Subject Property was being used as an RV park at that time.

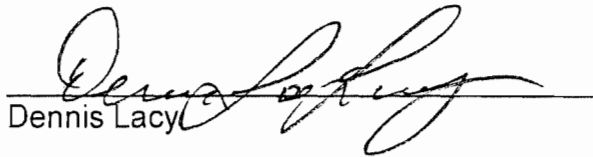
10. While conducting this inspection, I took the photographs attached as **Exhibits 6 through 22** to this Affidavit, which are incorporated by reference herein. The attached photographs truly and accurately depicted the condition of the Subject Property as of September 11, 2007.

11. I have also reviewed photographs of the Subject Property taken by Shane Harmon of the Kootenai County Assessor's Office on or about January 10, 2007, and by Sandra Forstrom of the Kootenai County Building and Planning Department on August 1, 2008.

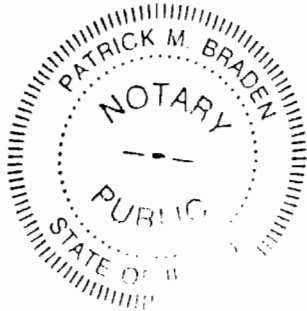
12. Based on my own observations of the Subject Property on September 11, 2007 and the photographs referenced above, I determined that the Defendants were not in compliance with the applicable provisions of the Zoning Ordinance regarding the operation of an RV park on property located within the Rural zone without a CUP from the County.

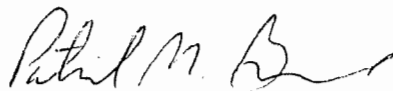
FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 18 day of September, 2009.


Dennis Lacy

SUBSCRIBED AND SWORN before me this 18th day of September, 2009.

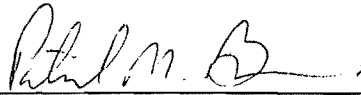



Notary Public for the State of Idaho
Residing at Hayden
My Commission Expires 10-27-09

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2009, I caused to be served a true and complete copy of the foregoing via hand delivery to:

R.D. Watson
WATSON LAW OFFICE
408 E. Sherman Avenue, Suite 202
P.O. Box 1085
Coeur d'Alene, ID 83816-1085



Patrick M. Braden



Case # 1-273 (P3)
Parcel # _____
Address _____
Violation _____
Inspector D. Lacey
Date 6-22-05 1:02 PM

EXHIBIT
Lucy Hood
1
CV-09-3339



Exhibit # 2 275J14
Case # _____
Parcel # _____
Address _____
Violation _____
Inspector 62245 D Lacy
Date 6-22-05

EXHIBIT
Lacy Att'd
2
CV-09-3339



Exhibit # 3 2775Pe
Case # _____
Parcel # _____
Address _____
Violation _____
Inspector D. L. K. 7
Date 6-22-05

EXHIBIT
Lucy Affa
3
CV-09-3339



Exhibit # 7 279 JPE
Case # _____
Parcel # _____
Address _____
Violation _____
Inspector D. L. H. _____
Date 6-22-05 _____

EXHIBIT
Leafy Area
4
CV-09-3339



Exhibit # 5 281-116
Case # _____
Parcel # _____
Address _____
Violation _____
Inspector D Lacy
Date 6-22-05

EXHIBIT
Lacy Hfd
5
CV-04-3339

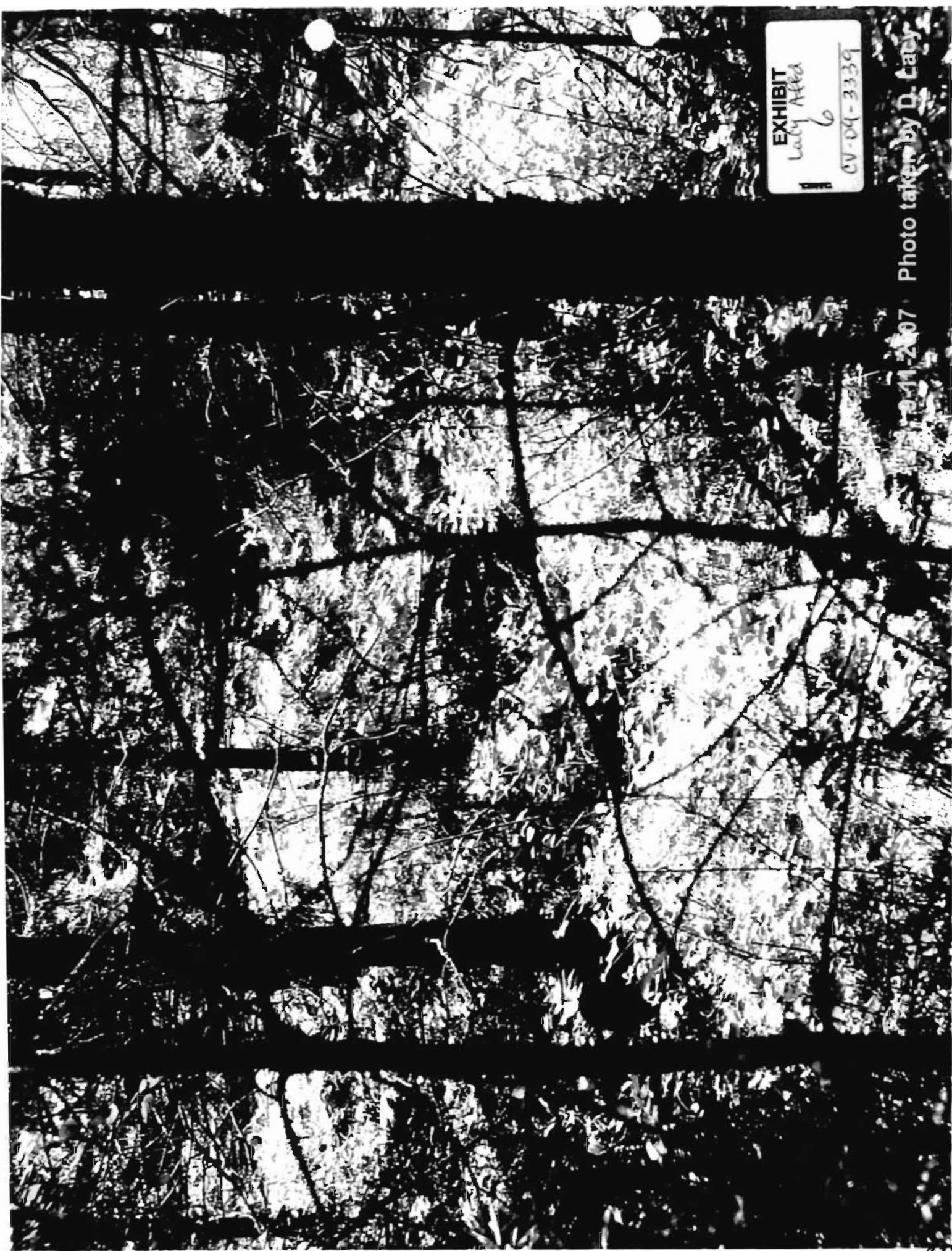


EXHIBIT
Lucy Area
6
CV-09-3339

03-11-2007 13:41:20 Photo taken by D. Lacy

EXHIBIT
Lacy Meek
7
CV-09-3339

9-14-2007 Photo taken by D. Lacy

EXHIBIT
Lacy Aced
8
CV-09-3339

9-11-2007 Photo taken by D. J. Jay

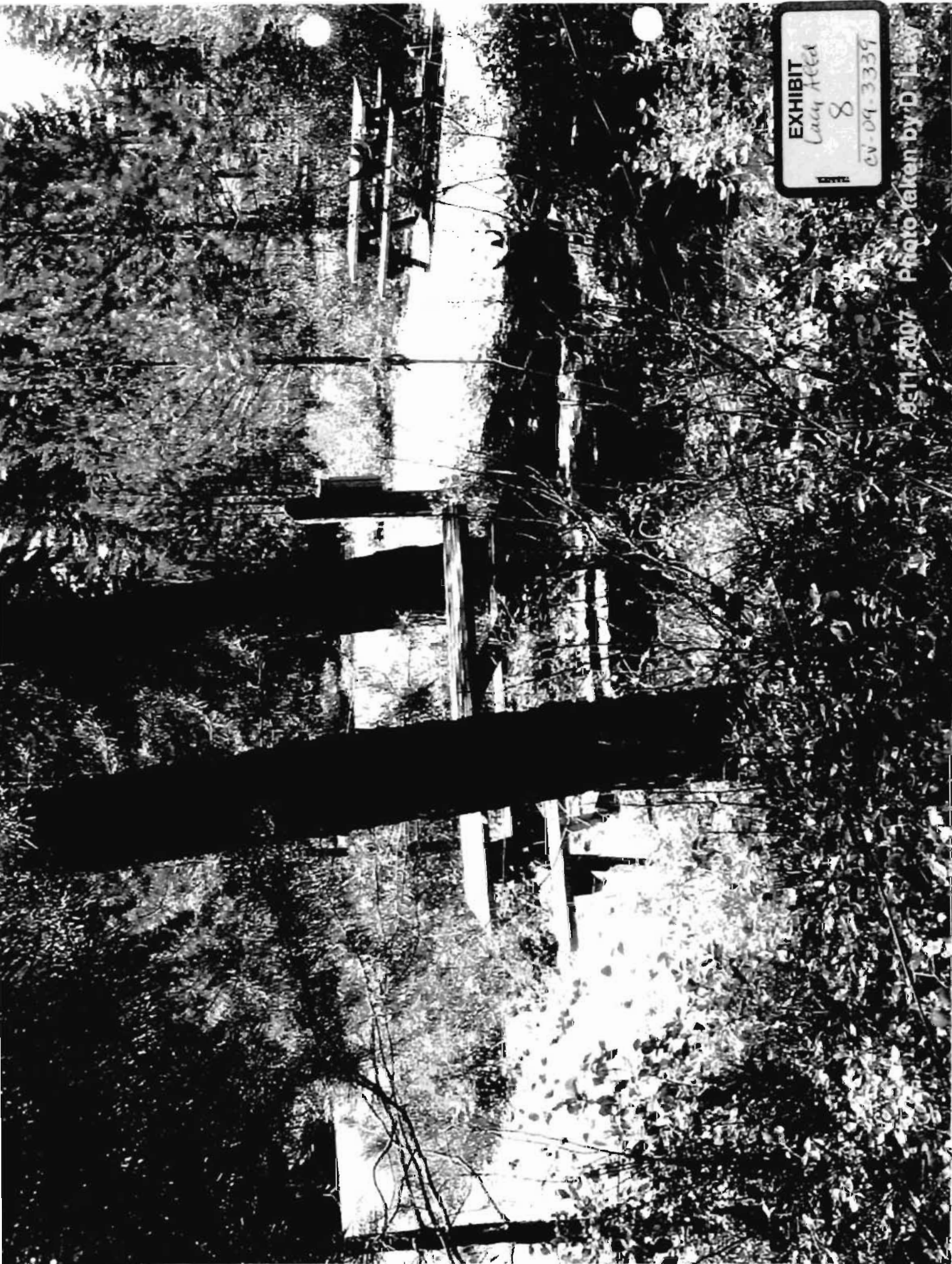
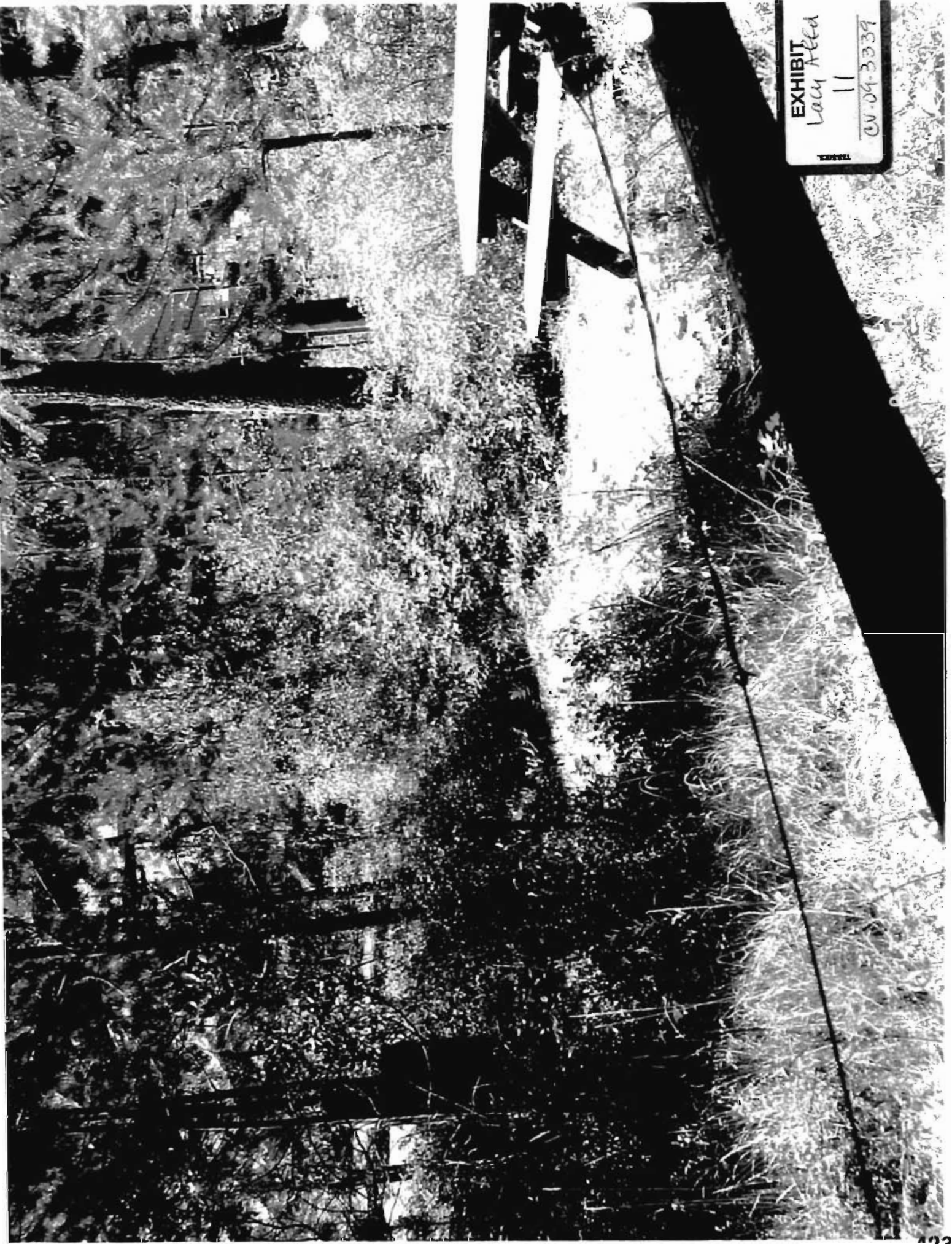


EXHIBIT
Lacy Allen
9
CV-09-3339



EXHIBIT
Lucy Area
10
CV-09-3339

9-11-2007 Photo taken by D. Lacy



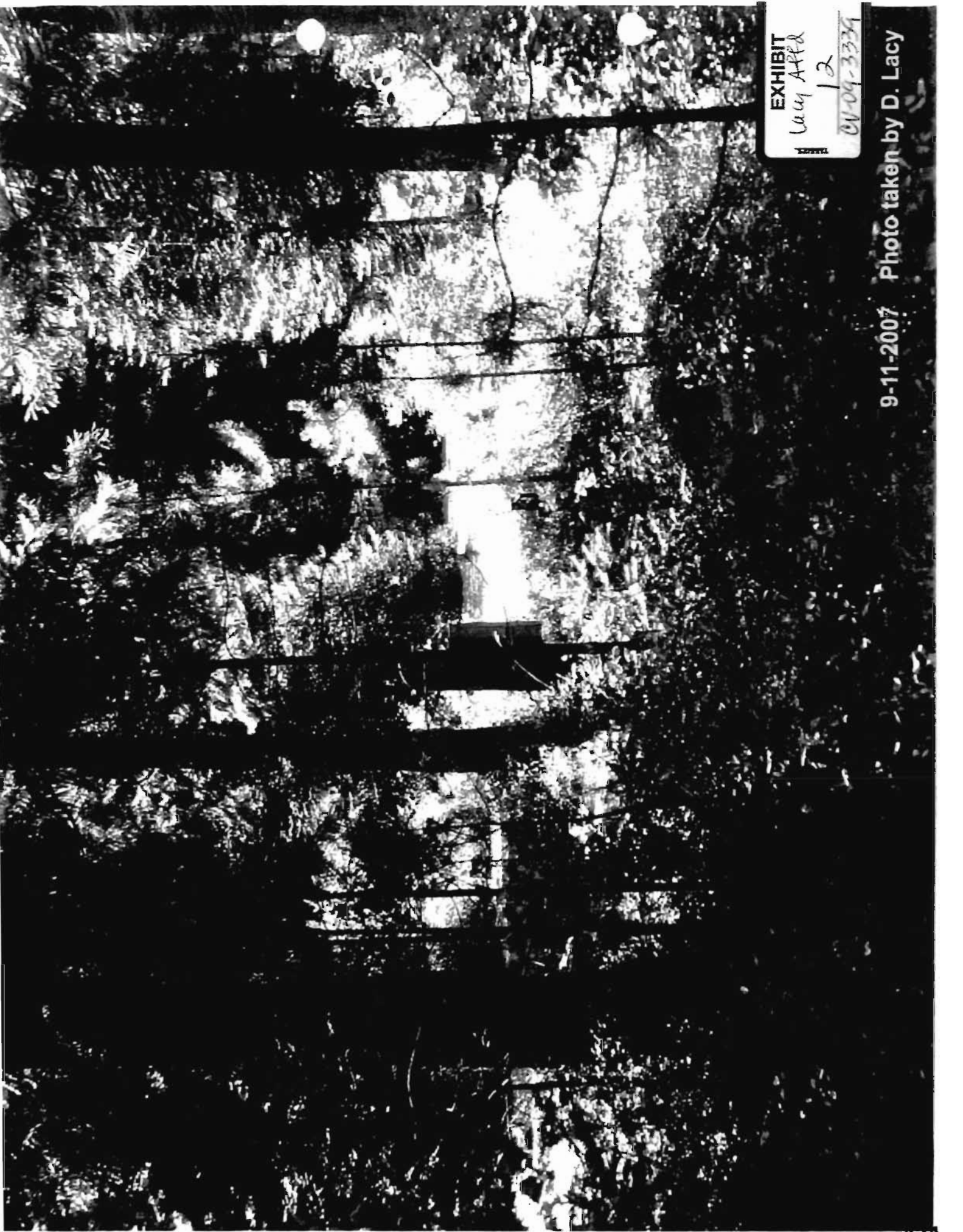


EXHIBIT
Lacy Affd
12
CV-09-3334

9-11-2007 Photo taken by D. Lacy

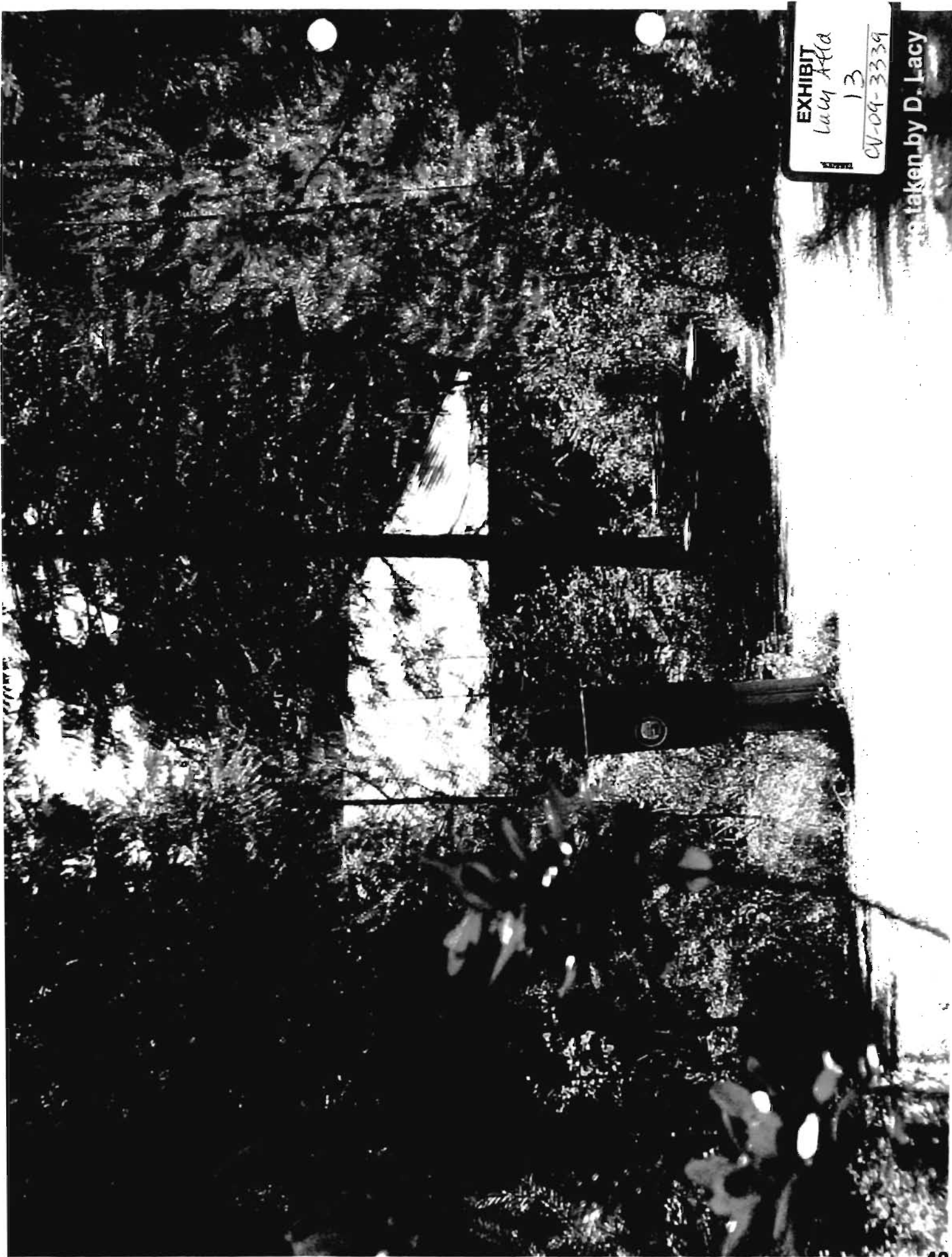


EXHIBIT
Luby Alla
13
CV-09-3339
taken by D. Lacy



EXHIBIT
Lacy Alpha
14
CV-09-3339

9-11-2007 Photo taken by D. Lacy

EXHIBIT
Lacy Atta
15
CV-09-3339

9-11-2007 Photo taken by D. Lacy

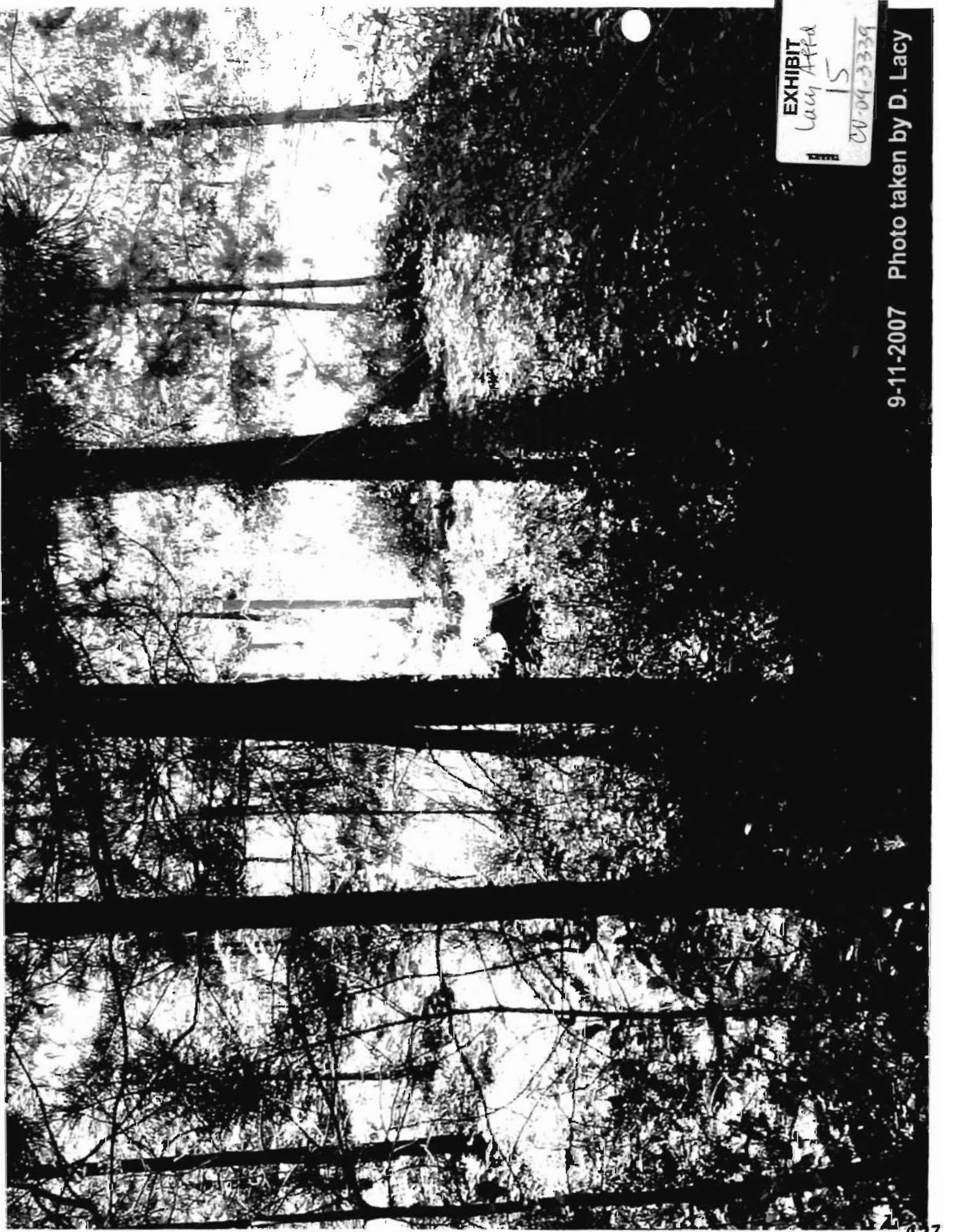


EXHIBIT
Lucy Ktda
16
CV-09-3334

9-21-2007 Photo taken by D. Lacy

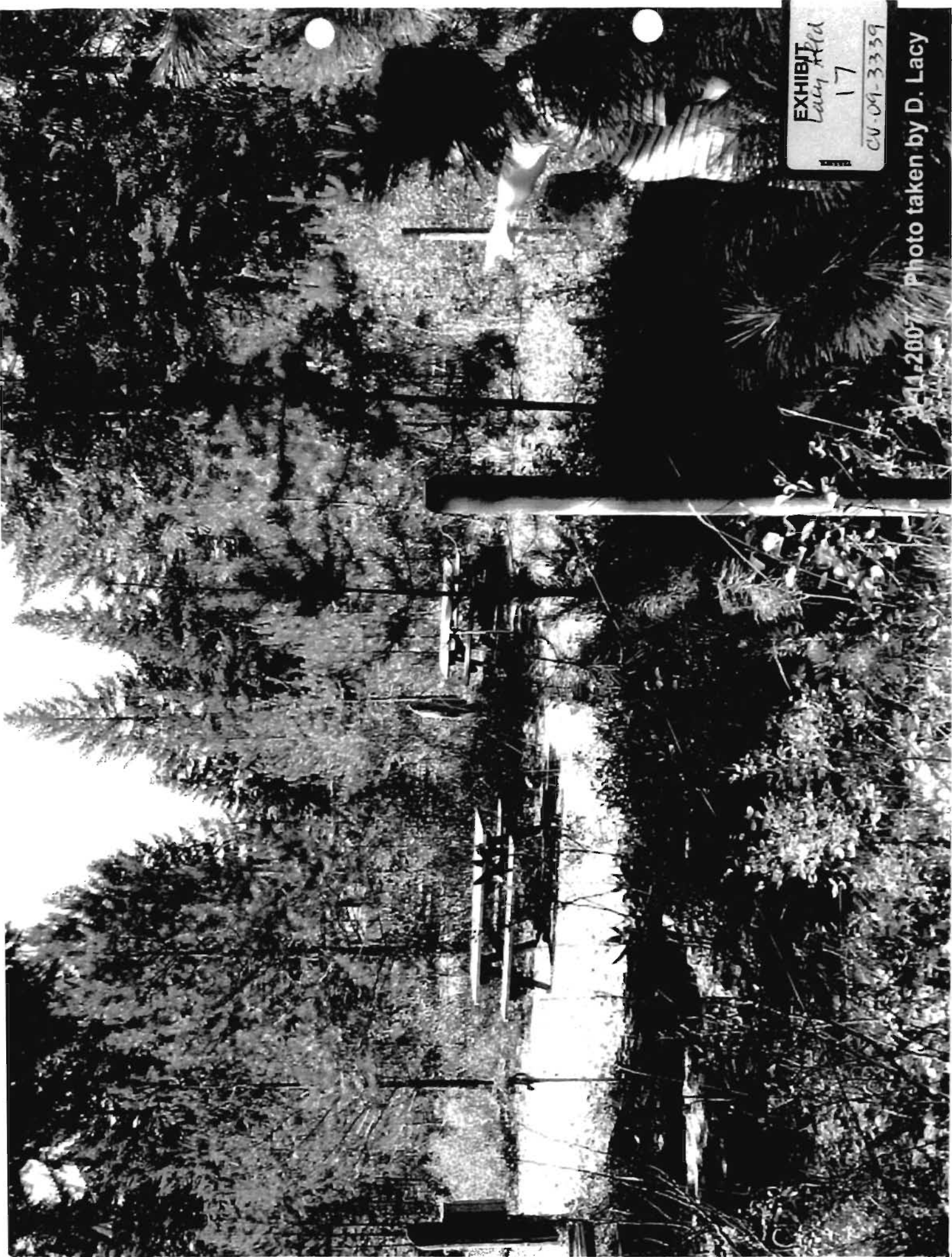


EXHIBIT
Lacy #114
17
CV-09-3339

11-2007 Photo taken by D. Lacy



EXHIBIT
Lacey Akela
18
CV-04-3339

EXHIBIT

Lucy, Aldo

19

CV-24-3339

9-11-2007 Photo tak

EXHIBIT
Lacy Attd
20
CV-09-3339





EXHIBIT
21
CV-09-3339

Photo taken by D. Lacy

9-11-07



EXHIBIT
22
CV-09-3339

photos

9-11-2007 Photo taken by D...

FILE COPY

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2009 SEP 22 PM 2: 27

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

AFFIDAVIT OF SHANE HARMON

STATE OF IDAHO }
 }ss.
COUNTY OF KOOTENAI }

SHANE HARMON, being first duly sworn under oath deposes and says:

1. I am over the age of 18 years. I make this affidavit of my own personal
knowledge, and I am competent to testify to the matters set forth herein.

AFFIDAVIT OF SHANE HARMON – 1

C:\Documents and Settings\sharmon\My Documents\Affidavit of Harmon response2 FINAL.doc

2. I am employed in the Office of the Kootenai County Assessor as a Residential Appraiser III. I have been with the Assessor's Office for 5 years 11 months, and my duties have included residential appraisal for all of those years. In this position, I perform appraisals of real property in order to determine the market value of each property as prescribed in Title 63, Idaho Code and standards of professional appraisal practice. One of these requirements is that actual and functional use must be given major consideration in valuing real property.

3. When appraising real property, I observe and photograph the physical characteristics of the property in order to perform an accurate valuation of each property I am assigned to appraise.

4. The Subject Property is within the appraisal district to which I am assigned.

5. In January of 2007, I had received information from Roxy Webb of the Kootenai County Building and Planning Department that a second home had been built on this parcel. I decided to view the property, as the addition of a structure on a parcel would affect the valuation of the property on which it has been built. On January 10, 2007, I viewed and took photographs of the Subject Property. At that time, I observed several campsites which contained electrical, water and sewer hookups.

6. While I was on the property, I took the photographs attached as **Exhibits 1 through 12** to this Affidavit, which are incorporated by reference herein. The attached photographs truly and accurately depicted the condition of the Subject Property as of January 10, 2007. Exhibit 1 and Exhibits 3 through 12 show areas cleared for vehicles with adjacent electrical and water. Some of these pictures also

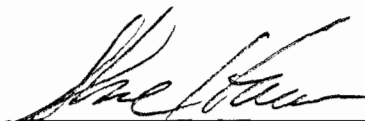
show adjacent sewer hookups. Exhibit 2 is a close-up shot of a sewer hookup at one of the campsites. I also observed an hours of operation sign for the RV park on the front door of the residence.

7. Based on these observations, I determined that the western portion of the Subject Property was an RV park, and that it should be appraised as such for purposes of property taxation.

8. In 2008, Peggy Hariman appealed the valuation of the Subject Property to the Kootenai County Board of Equalization (BOE) in Appeal No. 2008-318. The appeal to the BOE was in part due to the amount of timberland that was taken out of exemption. During the course of this proceeding, the BOE requested an on-site visit. At that time, Terry Saylor granted Gordon Harnash and I permission to visit the parcel. Both of us visited the site. During that visit, the campsites and hookups I saw in January of 2007 were still there.

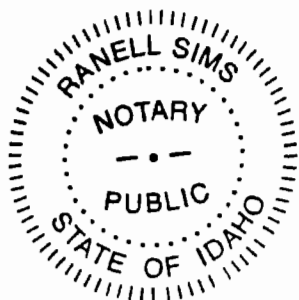
FURTHER YOUR AFFIANT SAITH NAUGHT.

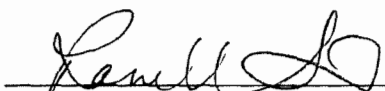
Dated this 21st day of September, 2009.



Shane Harmon

SUBSCRIBED AND SWORN before me this 21st day of September, 2009.



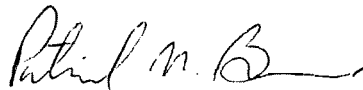


Notary Public for the State of Idaho
Residing at Coeurd Alene
My Commission Expires 5-18-2013

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2009, I caused to be served a true and complete copy of the foregoing via hand delivery to:

R.D. Watson
WATSON LAW OFFICE
408 E. Sherman Avenue, Suite 202
P.O. Box 1085
Coeur d'Alene, ID 83816-1085



Patrick M. Braden



EXHIBIT
Harmon Affd
1
CV-09-3339

1 of 4
Case # CV-4438-060
Parcel # 172324
Address _____
Violation composites
Prud no permit
Inspector Shale Harmon - Assessor
Date 1-9-2007

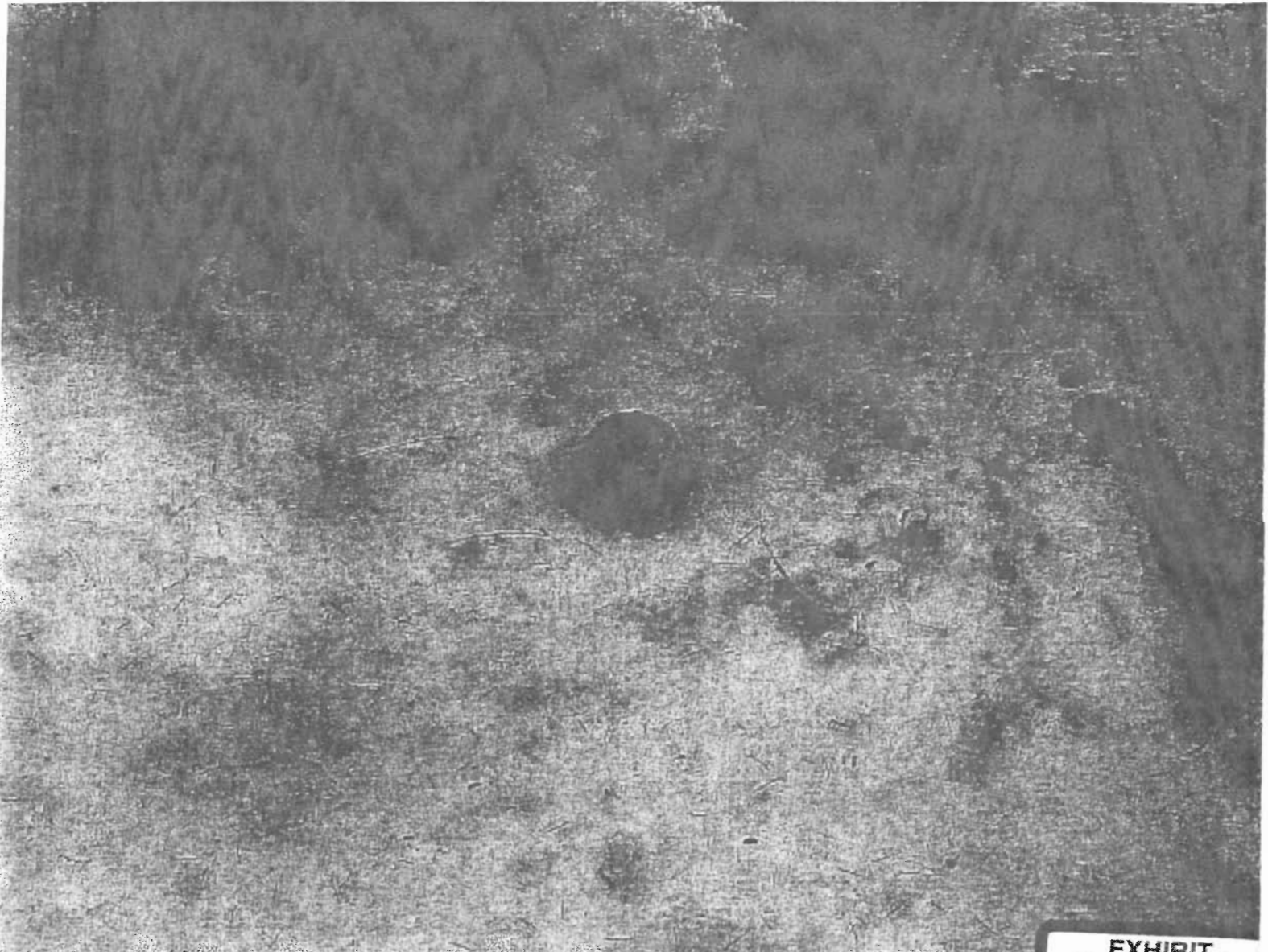


EXHIBIT
 Harman Afd
 2
 CV-09-3339

Exhibit # 2 of 4
 Case # CV-4438-06P
 Parcel # 172324
 Address _____
 Violation Camp Park
All no permits
 Inspector Shane Thomas - Assessa
 Date 1-9-07

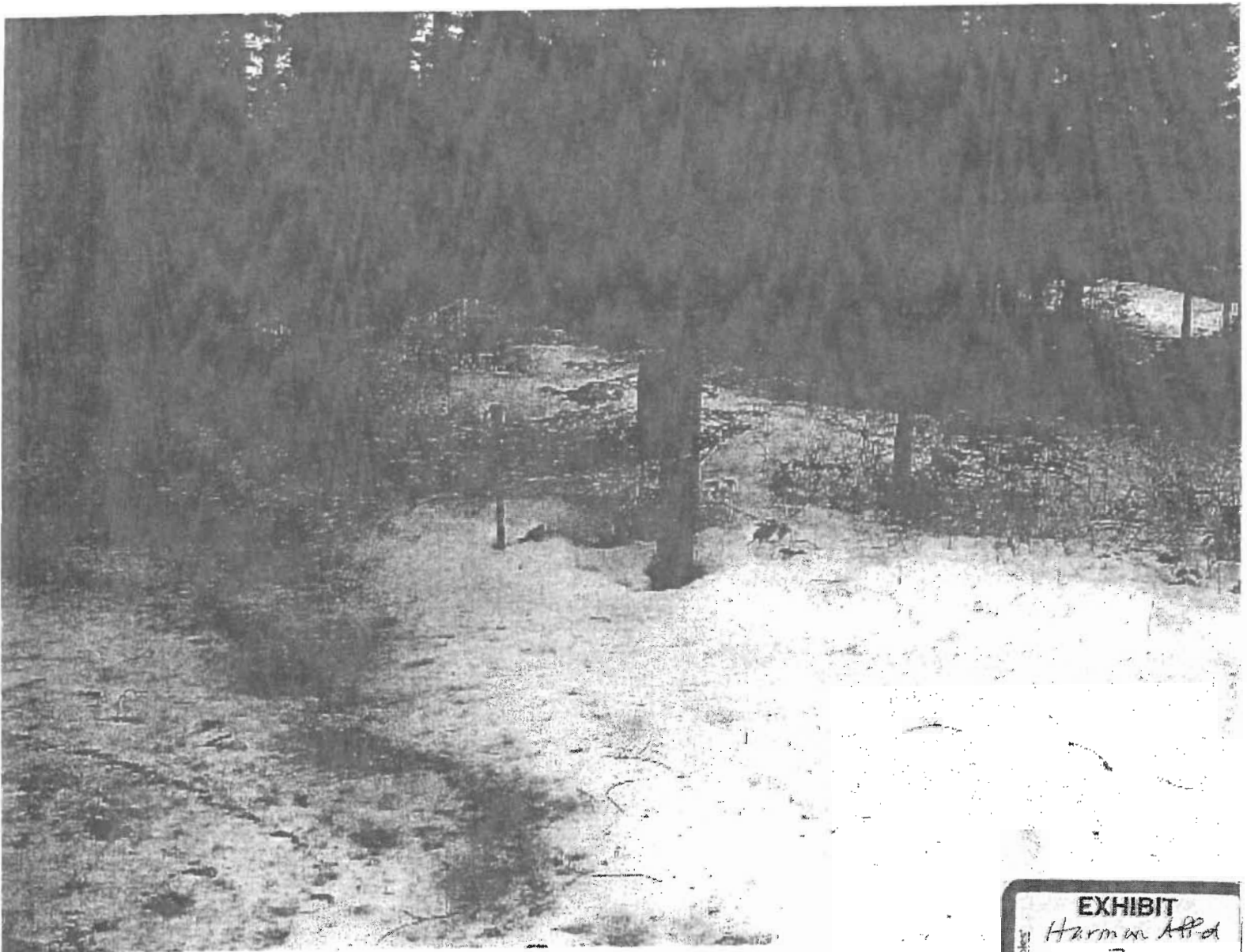


EXHIBIT
Harman App'd
3
CV-09-3339

Exhibit # 3 of 4
Case # CV-09-3339-06P
Parcel # 172324
Address
Violation Area + Camp
sites - no permits
Inspector Shaw Harmon - Assessor
Date 1-9-07



EXHIBIT
Harmon Aff
4
CV-09-3339

Exhibit # 4 of 4
Case # CV-4438-06P
Parcel # 172324
Address _____
Violation Camp sites -
Pit no permits
Inspector Shelia Harmon - Assessor
Date 1-9-07

EXHIBIT
Harmon Affa
5
DW-09-3339
Labbie

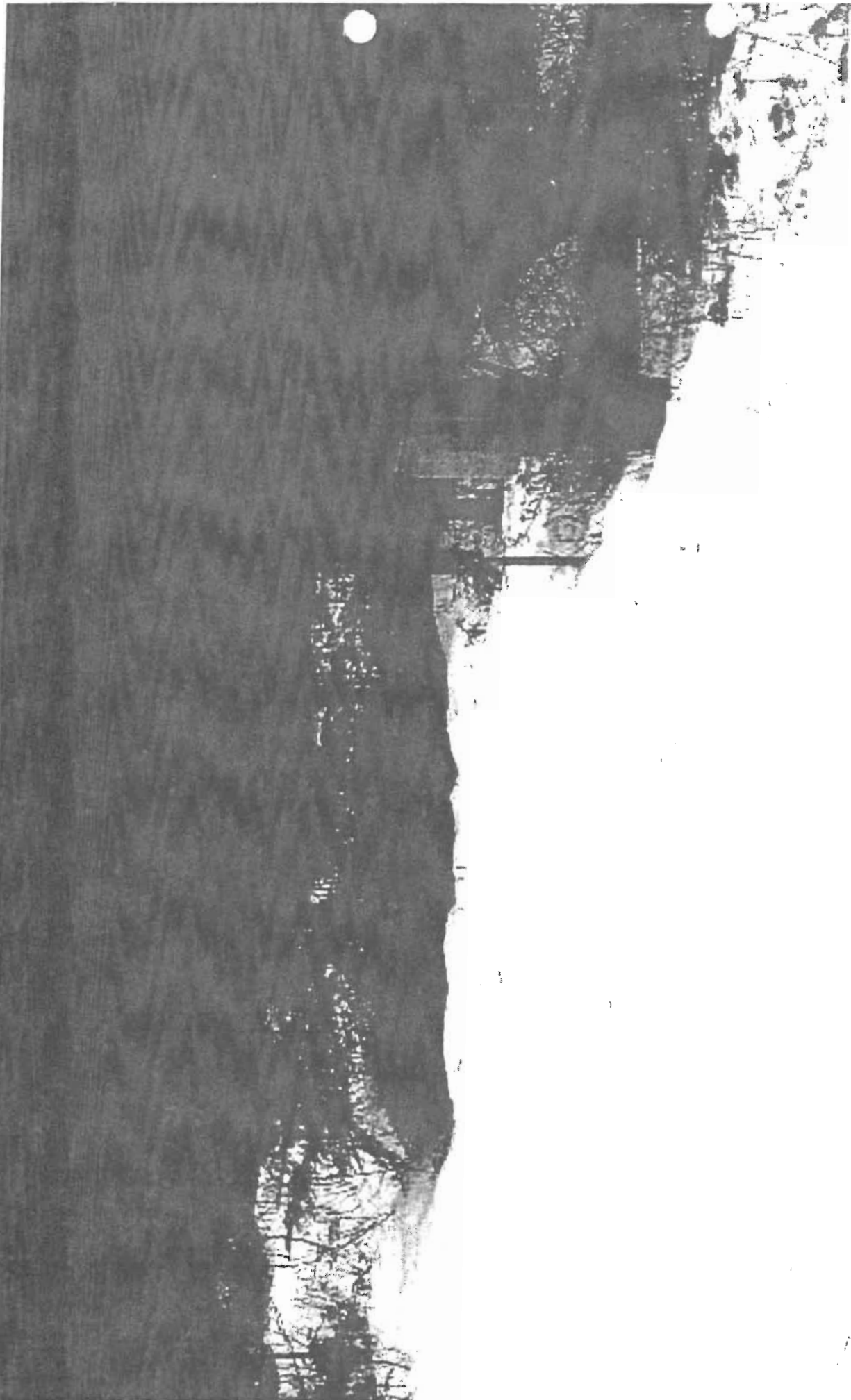


EXHIBIT
Hanson Affel
6
CV-04-3339
labrics

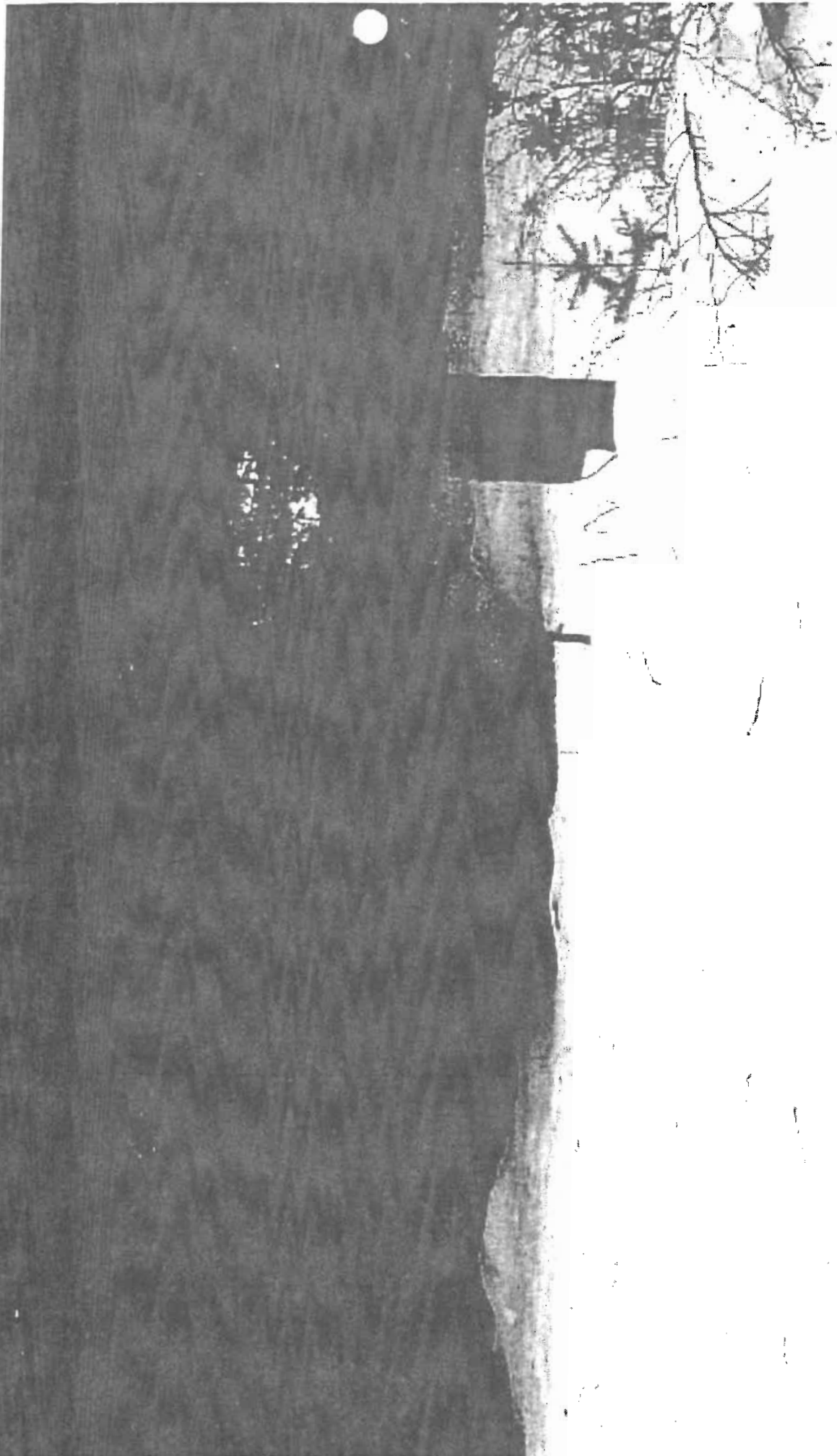


EXHIBIT
Harmon Affid
7
CV-04-3339
tabbies

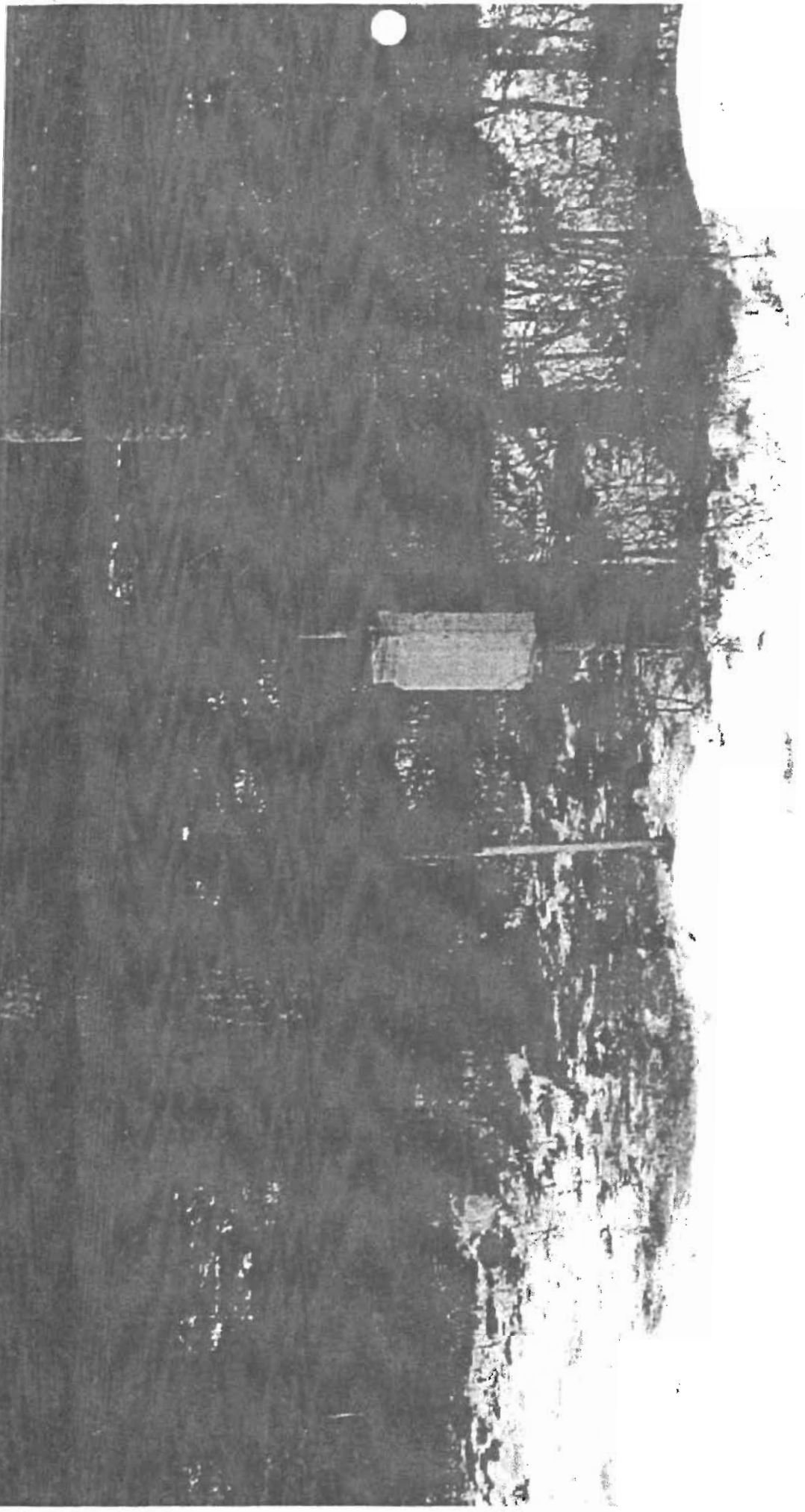


EXHIBIT
Harmon Alpha
8
CV-09-3339
tabbles

EXHIBIT
Harmon Alfa
9
OV-81-3339
Labels



EXHIBIT
Hammac Affel
10
CV-09-3339
Labels

EXHIBIT
Harmon Affid
11
01-04-3339
labbes

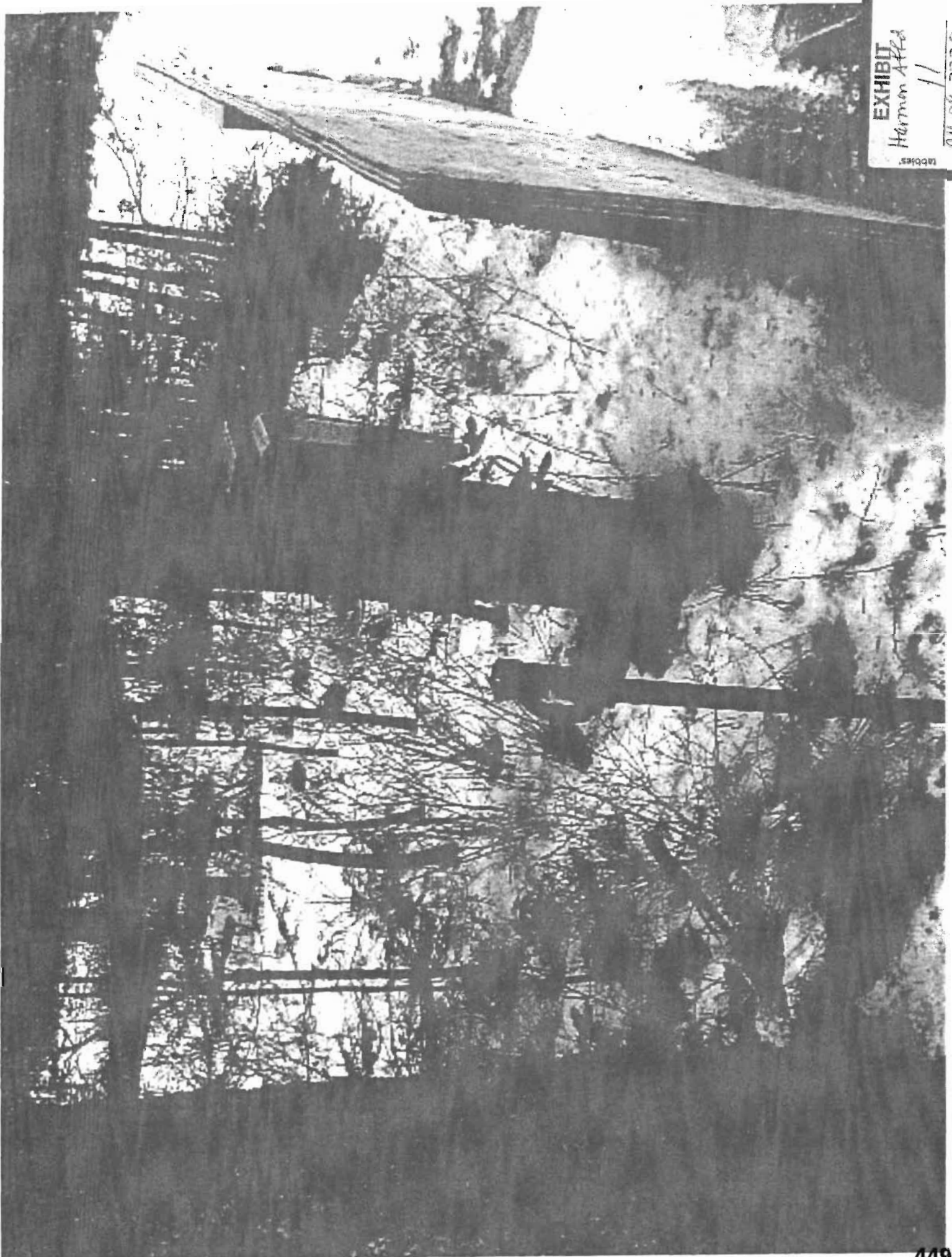
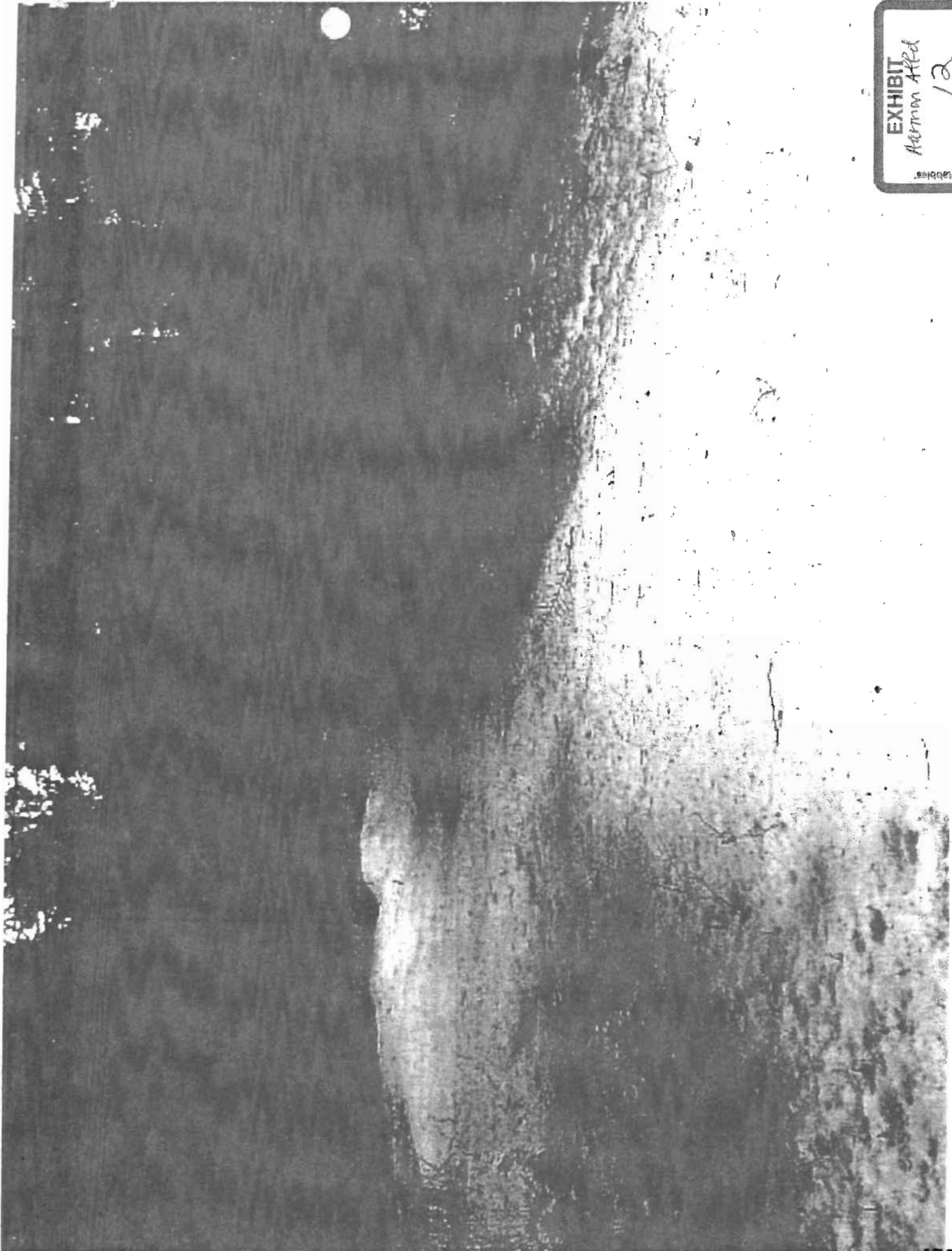


EXHIBIT
Aarman Aked
12
BU-081-3339
lablles



FILE COPY

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2009 SEP 22 PM 2: 27

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

AFFIDAVIT OF KRISTINA KEATING

STATE OF IDAHO }
 } ss.
COUNTY OF KOOTENAI }

KRISTINA KEATING, being first duly sworn under oath deposes and says:

1. I am over the age of 18 years. I make this affidavit of my own personal
knowledge, and I am competent to testify to the matters set forth herein.

AFFIDAVIT OF KRISTINA KEATING – 1

C:\Documents and Settings\kkeating\Local Settings\Temporary Internet Files\OLK11\Affidavit of
Keating1.doc

2. I am employed by Panhandle Health District (hereinafter "the District") as a Senior Environmental Health Specialist. I have been employed by the District as an Environmental Health Specialist for four (4) years. My assigned duties include inspection of individual subsurface sewage systems, processing of permits for such systems for 3½ of these years, and enforcement of laws and rules pertaining to such systems.

3. I am familiar with the provisions of the Rules of Idaho Public Health District #1, also known as the Environmental Health Code of Panhandle Health District, IDAPA 41.01.01 (hereinafter "Environmental Health Code"), pertaining to the permitting and installation of private sewage disposal systems within the District. I am also familiar with the provisions of the Individual/Subsurface Sewage Disposal Rules promulgated by the Idaho Department of Environmental Quality (DEQ), IDAPA 58.01.03 (hereinafter "Individual Sewage Disposal Rules") pertaining to individual subsurface sewage disposal (septic) systems. I am also familiar with the enforcement provisions contained in Idaho Code and the above-referenced rules, and the penalties which may be imposed for violations thereof.

4. The District issued a permit for an individual subsurface sewage disposal system for the property which is the subject of this action (hereinafter "the Subject Property") (Permit No. 94-28-50531) on May 27, 1994. The system subject to this permit is allowed to serve only one (1) single family residence with a maximum of three (3) bedrooms. This permit is still valid. A true and correct copy of Permit No. 94-28-50531 is attached hereto as **Exhibit 1** to this Affidavit, and is incorporated by reference herein.

5. The District also issued a permit for an subsurface sewage disposal system for twenty-eight (28) RV sites on the Subject Property (Permit No. 99-28-0008) on May 13, 1999. However, the system contemplated in this permit was never installed or approved by the District. Therefore, this permit expired in May of 2000. A true and correct copy of Permit No. 99-28-0008 is attached hereto as **Exhibit 2** to this Complaint, and is incorporated by reference herein.

6. In September of 2007, Jesse Anglesey and I went out to the Subject Property to determine whether a subsurface sewage disposal system had been installed and was being used on the Subject Property. Terry Saylor met us on the property. At that time, we observed two or three sewer connections at different campsites. We also saw one recreational vehicle (RV) on the premises. We also observed a building with restrooms and showers.

7. At that time, there was no valid permit for the subsurface sewage disposal system which was serving the RV park, the restroom/shower building, or the second residence located on the Subject Property.

8. Since the 2007 inspection, neither Mr. Saylor nor Peggy Harriman have applied for a permit for the subsurface sewage disposal system which serves the RV park, the restroom/shower building, and the second residence. The District has issued no permit for this system since that inspection.

7. On September 19, 2007, I sent Ms. Harriman a letter notifying her that this subsurface sewage disposal system was being operated in violation of the Environmental Health Code and/or the Individual Sewage Disposal Rules. It further stated that the "[f]ailure to correct this potential violation may result in a Notice of

Violation, and notification of the Kootenai County Prosecuting Attorney.” A true and correct copy of this letter is attached hereto as **Exhibit 3** to this Affidavit, and is incorporated by reference herein.

8. Neither Ms. Harriman nor Mr. Saylor took any action to bring the unpermitted subsurface sewage disposal system on the Subject Property into compliance with the Environmental Health Code or the Individual Sewage Disposal Rules after the September 19, 2007 was sent.

9. On September 5, 2008, I issued a Notice of Violation for the subsurface sewage disposal system being operated in violation of the Environmental Health Code and/or the Individual Sewage Disposal Rules on the Subject Property. A true and correct copy of this Notice of Violation is attached hereto as **Exhibit 4** to this Complaint, and is incorporated by reference herein

10. On October 1, 2008, Dick Martindale and I met with Peggy Harriman and Terry Saylor to discuss the entry of a consent order addressing the need for them to bring the unpermitted subsurface sewage disposal system on the Subject Property into compliance with the Environmental Health Code and the Individual Sewage Disposal Rules. At that meeting, they refused to execute the Consent Order which had been drafted to address this issue. Afterward, we referred the matter to legal counsel Nancy Stricklin for further action.

11. On December 17, 2008, Ms. Stricklin sent Ms. Harriman a letter notifying her that “you must immediately stop using the non-permitted septic system/systems. Your continued use of the non-permitted system is a public health hazard.” This letter indicated that the District would be willing to enter into a Consent Order regarding this

system pursuant to Idaho Code § 39-108 on or before December 30, 2008, and warned that if she failed to enter into a Consent Order by that date, "this matter will be forwarded to the appropriate prosecutorial agency for enforcement." A true and correct copy of this letter is attached hereto as **Exhibit 5** to this Affidavit, and is incorporated by reference herein.

12. The District received a copy of the letter from Ms. Stricklin attached as Exhibit 5 to this Affidavit, which is now part of the District's official record pertaining to this matter. I am one of the custodians of those records.

13. To date, no Consent Order has been entered into between the District and Ms. Harriman and/or Mr. Saylor, nor have Ms. Harriman and/or Mr. Saylor applied for a permit for the unpermitted subsurface sewage disposal system on the Subject Property.

14. To the best of my knowledge, the unpermitted subsurface sewage disposal system continues to be used for sewage disposal for the RV park, the restroom/shower building, and/or the second residence on the Subject Property.

15. The Subject Property is located in a recharge area of the Spokane Valley-Rathdrum Prairie Aquifer, which has been designated as the sole source of drinking water for over 500,000 people in the Coeur d'Alene and Spokane areas.

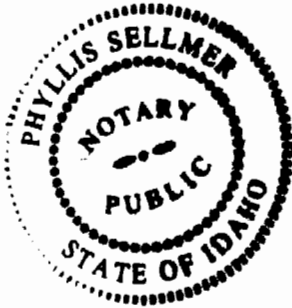
16. The ongoing operation of an unpermitted subsurface sewage disposal system on the Subject Property by Ms. Harriman and/or Mr. Saylor is a violation of the applicable provisions of Idaho Code, the Environmental Health Code and the Individual Sewage Disposal Rules, and is also a public health hazard.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 21st day of September, 2009.

Kristina Keating
Kristina Keating

SUBSCRIBED AND SWORN before me this 21st day of September, 2009.



Phyllis Sellmer
Notary Public for the State of Idaho
Residing at Careywood, ID
My Commission Expires 10/27/11

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2009, I caused to be served a true and complete copy of the foregoing via hand delivery to:

R.D. Watson
WATSON LAW OFFICE
408 E. Sherman Avenue, Suite 202
P.O. Box 1085
Coeur d'Alene, ID 83816-1085

Patrick M. Braden
Patrick M. Braden

**PANHANDLE HEALTH DISTRICT I
APPLICATION AND PERMIT FOR ON-SITE SEWAGE SYSTEM**

INDIVIDUAL SEWAGE DISPOSAL SITE EVALUATION

Site Eval. #: _____

Fee: _____
Date: _____

Applicant (Name): Possey Harriman
 Legal Description of Property: Tract 5 in SW 1/4 Sec. 19, T 52N, R 3W
 Parcel Number: _____
 Location: Cedar Grove Lane - 1653 E. Size of Lot (Acres): 10.31
 Applicant's Signature: _____
 Mailing Address: _____ Phone #: _____
 Applicant is: () Landowner () Contractor () Installer Soil Type: A

SEE TEST HOLE INFORMATION SHEET

Remarks: _____

Valid For One Year From Date: _____ By: _____
 Environmental Health Specialist

INSPECTION TIME: _____

INDIVIDUAL SEWAGE DISPOSAL INSTALLATION PERMIT

INDIVIDUAL SEWAGE DISPOSAL PERMIT Fee: \$165.00 Aquifer Surcharge: No
 Permit #: 10442 Date: 05/27/94

PLOT PLAN ATTACHED (show house, other buildings, etc.)
 Bedrooms 3 Baths 2 Sq. Ft. 1438 No. of People 1
 Septic Tank: 1,000 Gallons, Distance to dwelling foundation: 5 ft. min. Well: 50 ft. min. Water Line: 10 ft. min. Public
 Water Line 25 ft. min. Type of tank: Cement x Other 300 sq. Ft.
 Component separations: Property lines 5 ft. min./Dwelling foundation 20 Ft. min./Well 100 ft. min./Surface water 300 ft.
 min./Neighbor's well 100 ft. min./Septic tank 6 ft. min./Water service lines 25 ft. min./Water suction line 100 ft. min.

TYPE OF DWELLING	TYPE OF INSTALLATION	DISP SYSTEM	EST TYPE
(<input checked="" type="checkbox"/>) SINGLE	(<input checked="" type="checkbox"/>) NEW	() DRAINFIELD	() 231 COMM SEW
() MULTIPLE	() REPLACEMENT	() ABS BED	(<input checked="" type="checkbox"/>) 232 NEW RES
() COMMERCIAL		() BASIC ALTER	() 233 EXIT RES
() OTHER		() COMPLEX ALTER	() 234 RES ALT
			() 235 NEW NON RI
			() 236 EXIT NON RES
			() 237 NON RES ALT

Remarks and/or conditions: Drainfield must be installed before permit and to
depth - conditional issuance with time set for site plan
I understand that this permit is non-transferable and is valid for 1 year
from date of application. Drainfield must not exceed 4 feet in depth.

Applicant's Signature: _____ Phone: _____
 Mailing Address: _____
 Plot plan submitted: _____ Approved: 7/28/94 Not Approved: _____
 Permit issued by: Steve A. Harriman Environmental Health Specialist

INSPECTION TIME: 11/6

THIS OFFICE MUST BE NOTIFIED FOR FINAL INSPECTION

Approved: Steve A. Harriman Not Approved: _____ Date: 7/28/94
 Inspected by: RS Installed by: DIC DUC BACKHOE Installer Lic. #: _____
 Remarks: _____ 7/28/94

INSPECTION TIME: _____

Reference: Rules & Regulations for Individual and Subsurface Sewage Disposal Systems Revised 10/93

EXHIBIT
 Keating Affd
 CV-04-3339

Panhandle Health District I
ON-SITE SEWAGE SYSTEM PERMIT

Septic Permit # SP 99-28-0008

Issue Date 5/13/99

This permit is valid for one year from issue date for an individual subsurface sewage disposal system for:

Parcel # 52N03W-19-5550, Township 52N, Range 03W, Section 19, Boise Meridian; a 10.32 acre plot currently belonging to PEGGY HARRIMAN. The system has been sized for a 0 square foot commercial building.

The following conditions are placed upon the permit:

SEPTIC TANK-

Tank Capacity will be at least 8000 gallons

DRAINFIELD (& replacement area)-

Drainfield size will be at least 3200 square feet

CONDITIONS-

Sewer lines / Effluent Lines must be double encased under roadways.
No parking, driving, structures or livestock over the drainfield or replacement area.
Manufacturer's Recommendations must be followed on all components.
Maintain all separation distances listed on the permit and/or listed within the Technical Guidance Manual for Individual and Subsurface Sewage Disposal.
This permit is for a 30 site RV park with one restroom/shower house. 12 of the RV and the restroom /shower house are to be hooked up to one of the drainfields and the other 18 RV sites are to be hooked up to the other drainfield. Each drainfield will consist of two 1500 gallon septic tanks hooked up in a series and then connected to a 1800 square ft. drainfield. See plot plan.

SEPARATION DISTANCES:

- Distance of tank from dwelling foundation - 5 feet minimum
- Distance of tank from well - 50 feet minimum
- Distance of tank from private water lines - 10 feet minimum
- Distance of tank from public water lines - 25 feet minimum
- Distance of field from property line - 5 feet minimum
- Distance of field from dwelling foundation - 20 feet minimum
- Distance of field from well - 100 feet minimum
- Distance of field from surface water - 300 feet minimum
- Distance of field from septic tank - 6 feet minimum
- Distance of field from water lines - 25 feet minimum
- Drainfield must not exceed 4 feet in depth unless specified alternative system

Permit Issued by Dave Hylsky Environmental Health Specialist

Final Approval of this Permit requires inspection of the system in the ground, uncovered, and submittal of a plot plan distinguishing system construction specifications and final layout including location on the plot with respect to other permanent structures. To Schedule a final inspection call the number listed below:

Reference: Rules & Regulations for Individual and Subsurface Sewage Disposal Systems

2195 Ironwood Court • Coeur d'Alene, Idaho 83814 • (208) 667-9513

Page 1 of 1

EXHIBIT
Keating Affd
2
CV-09-3339



PANHANDLE HEALTH DISTRICT

Healthy People in Healthy Communities

SEP 24 2007

ENVIRONMENTAL HEALTH
8500 N. ATLAS ROAD
HAYDEN, IDAHO 83835
(208) 415-5200
<http://www2.state.id.us/phd1>

September 19, 2007

CV-4438-06P

Peggy Harriman
P.O. Box 2585
Hayden, ID 83835

Dear Ms. Harriman:

It has come to the attention of Panhandle Health District that an RV park is currently in operation on your property, parcel #52N03W-19-5550: 18209 N. Cedar Grove Lane, Hayden, ID 83835. This property is served by an individual subsurface sewage disposal system (permit #94-28-50531). This septic system is permitted to service 1 dwelling, only, with a maximum of 3 bedrooms.

I did visit this site and noticed that each of the RV parking sites (approximately 28) appear to have water and sewer hook-ups. These suspected sewer hookups and/or the sewage disposal system for the RV's are not permitted by Panhandle Health District. I also noticed a building, separate from the main house that does have plumbing i.e. public restrooms and showers. If the plumbing in this building is used without being connected to an approved septic system then it is in violation of IDAPA 58.01.03.002.04. PHD has no record of an approved septic system for this structure or the RV sites.

A septic permit (#99-28-0008) for the 28 RV sites was issued in 1999, but the system was never installed or approved. This permit has now been expired since May, 2000.

To correct these situations you will need to reapply for a new septic permit. You must submit detailed plans for the septic system using the Large Soil Absorption system criteria detailed in the Technical Guidance Manual.

Failure to obtain a permit is a violation of IDAPA 58.01.03.002.04 (Responsibilities) and 58.01.03.005.01 (Permit Required). These violations may be subject to a fine and as the owner of the property you could be subject to a \$1000 a day fine or \$10,000 fine per incident per Idaho Code 39-117.

Please respond to this letter within seven (7) days with corrective procedures that will be implemented. Failure to correct this potential violation may result in a Notice of Violation, and notification of the Kootenai County Prosecuting Attorney.

Please call me if you have any questions or require additional information.

Sincerely,


Kristina Keating
Environmental Health Specialist

C: Kootenai County Building and Planning
Nancy Stricklin, Attorney at Law





PANHANDLE HEALTH DISTRICT

Healthy People in Healthy Communities

ENVIRONMENTAL HEALTH
8500 N. ATLAS ROAD
HAYDEN, IDAHO 83835
<http://www.phd1.idaho.gov>

September 5, 2008

Peggy Harriman
P.O. Box 2585
Hayden, ID 83835

PANHANDLE HEALTH DISTRICT NOTICE OF VIOLATION

You are being placed on Notice that your property, parcel 52N03W-19-5550, located at 18209 N. Cedar Grove Lane, Hayden, ID, is in violation of IDAPA 58.01.03.002.04 which states as follows: "**Responsibilities.** (7-1-93) a. Every owner of real property is jointly and Individually responsible for: (10-1-90) i. Storing, treating, and disposing of blackwaste and wastewater generated on that property. (10-1-90) ii. Connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility. (10-1-90) iii. Obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems. (10-1-90) iv. Abandonment of an individual or subsurface sewage disposal system. (10-1-90) b. Each engineer, building contractor, individual or subsurface system installer, excavator, plumber, supplier, and every other person, who for compensation shall design, construct, abandon, or provide any system or part thereof, is jointly and individually responsible for compliance with each of these rules that are relevant to that service or product. (5-7-93)"

This Notice of Violation is based on the following facts: Each of the RV sites have sewer hook-ups that are not connected to an approved or permitted subsurface sewage disposal system. The public shower house/bathrooms are not hooked to an approved or permitted septic system. PHD sent a letter to you regarding this issue on September 19, 2007. After receipt of that letter, Peggy Harriman and Terry Saylor met with Shawn Ellison and me to discuss plans to correct these issues. To this date, no corrections have been made.

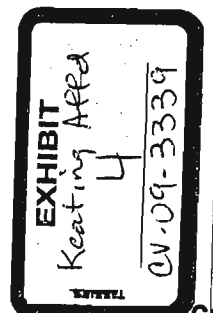
The civil penalty for such a violation is \$10,000 per violation or \$1000 for each day of a continuing violation. The condition of your property is a continuing violation.

Failure to comply is also a misdemeanor violation punishable by a fine of not more than \$300 for each separate violation and/or 6 months in jail.

A compliance conference is available at your request. If you wish to have a compliance conference, you have 15 days from receipt of this letter in which to contact this office to set a date for a compliance conference.

This public health hazard must be corrected or a compliance order entered into no later than September 26, 2008. If this public health hazard is not corrected by this date or a compliance

Bonnars Ferry (208) 267-5558, Kellogg (208) 786-7474, Sandpoint (208) 265-6384, St. Maries (208) 245-4556



order entered into, Panhandle Health District will notify the Kootenai County Prosecuting Attorney and begin the process for criminal action against you.

In the interim, it is your responsibility to immediately stop using the non-permitted septic system/systems.

We are available to discuss options to manage the interim situation.

Dated: September 5, 2008



Kristina Keating
Environmental Health Specialist
Panhandle Health District

C: Nancy Stricklin, Attorney at Law

MASON & STRICKLIN, LLP
LAWYERS

JERRY D. MASON
jerry@m-slayers.com

Heather Vestal, Office Manager
manager@m-slayers.com

NANCY STRICKLIN
nancy@m-slayers.com

December 17, 2008

Peggy Harriman
P.O. Box 2585
Hayden, ID 83835

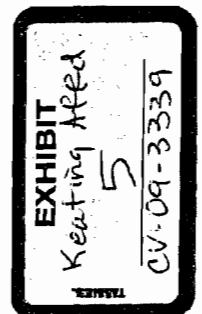
RE: Parcel 52N03W-19-5550, 18209 N. Cedar Grove Lane

Dear Ms. Harriman:

On September 5, 2008 Kristina Keating, Panhandle Health District, Environmental Health Specialist, sent to you a Notice of Violation relating to the recreational vehicle sites you have installed at the above address and giving you until September 26, 2008 to either corrected the violation or enter into a Consent Order. In that letter you were also given the opportunity for a compliance conference with Panhandle Health staff. On October 1, 2008 you met with Ms. Keating and Dick Martindale to discuss the violation and advised them that you would not be entering into a Consent Order.

As of this date, your property is still in violation. The recreational vehicle sites still have sewer hook-ups that are not connected to an approved or permitted subsurface sewage disposal system and the public shower house/bathrooms are not hooked to an approved or permitted septic system. You have had ample time to remedy this problem. The Notice of Violation dated September 5, 2008 was not the first time that you were put on notice of the problem. You were sent a letter regarding the violations and met with Panhandle Health District staff almost a year before the formal Notice was sent. Pursuant to I.C. 39-108, if a Consent Order is not reached within sixty (60) days of your receipt of the Notice of Violation, a civil action can be commenced against you. In addition to any civil action, a criminal action may also be brought.

Although more than sixty (60) days have passed since you received the Notice of Violation, Panhandle Health District is willing to extend to you until December 30, 2008 to enter into the Consent Order. If you wish to enter into the Consent Order, please contact Kristina Keating by that date. After that date, if there is not a Consent Order in effect this matter will be forwarded to the appropriate prosecutorial agency for enforcement. In the interim, you must immediately stop using the non-permitted septic

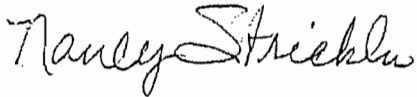


Letter to Peggy Harriman
RE: Cedar Grove RV Park
December 17, 2008

Page 2

system/systems. Your continued use of the non-permitted system is a public health hazard.

Yours truly,

A handwritten signature in cursive script that reads "Nancy Stricklin".

Nancy Stricklin

c: Kristina Keating, PHD
Dick Martindale, PHD
Pat Braden, Kootenai County Legal Services

FILE COPY

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2009 SEP 22 PM 2: 28

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

**AFFIDAVIT OF PATRICK M.
BRADEN**

STATE OF IDAHO }
 }ss.
COUNTY OF KOOTENAI }

PATRICK M. BRADEN, being first duly sworn under oath deposes and says:

1. I am the attorney of record for Kootenai County in the pending matter
before the District Court. I am over the age of 18 years, I make this affidavit voluntarily,

AFFIDAVIT OF PATRICK M. BRADEN – 1

H:\Building and Planning\Code Enforcement Cases\Harriman-Saylor - CV-09-3339\Affidavits\Affidavit of
PMB.doc

and I am competent to testify concerning the matters stated herein based upon my personal knowledge.

2. A certified copy of Instrument No. 1218028, records of Kootenai County, Idaho, evidencing the conveyance of the Subject Property from Diana Kendle and Frederick Michael Ferree, as wife and husband, to Peggy Harriman as her sole and separate property, is attached as **Exhibit 1** to this Affidavit, and is incorporated by reference herein.

3. A certified copy of Instrument No. 1218029, records of Kootenai County, Idaho, evidencing the conveyance of the Subject Property from William M. Hatch to Peggy Harriman as her sole and separate property, is attached as **Exhibit 2** to this Affidavit, and is incorporated by reference herein.

4. Certified copies of Instrument Nos. 1568871, 1568872, and 1816405, records of Kootenai County, Idaho, evidencing the conveyance of the Subject Property from Terry Saylor (spelled "Sayler") and Peggy Harriman as husband and wife to Peggy Harriman as her sole and separate property, are attached as **Exhibit 3, Exhibit 4, and Exhibit 5**, respectively, to this Affidavit, and are incorporated by reference herein.

5. A certified copy of the currently enacted Kootenai County Zoning Ordinance, Ordinance No. 401 (the "Zoning Ordinance"), is attached as **Exhibit 6** to this Affidavit, and is incorporated by reference herein. Ordinance No. 401 has been twice amended since its original enactment, by Ordinance No. 411, effective February 6, 2008, and by Ordinance No. 415, effective July 30, 2008. Neither of these amendments is germane to this action. The Kootenai County Zoning Ordinance is codified at Title 9 of the Kootenai County Code.

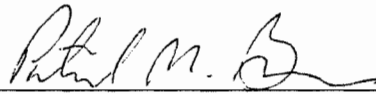
6. The provisions of the Zoning Ordinance pertaining to this matter have not substantively changed during the relevant time period, whether enacted as Ordinance No. 348 (as subsequently amended), Ordinance No. 393, or Ordinance No. 401, nor has any relevant provision substantively changed as a result of codification, which originally occurred upon enactment of Ordinance No. 393.

7. A true and correct copy of the current the Environmental Health Code of Panhandle Health District, IDAPA 41.01.01, is attached as **Exhibit 7** to this Affidavit, and is incorporated by reference herein. I obtained this copy of the Environmental Health Code from the Idaho Administrative Code website (<http://adm.idaho.gov/adminrules/rules/idapa41/0101.pdf>) on or about April 1, 2009.

8. A true and correct copy of the current Individual/Subsurface Sewage Disposal Rules promulgated by the Idaho Department of Environmental Quality (DEQ), IDAPA 58.01.03, is attached as **Exhibit 8** to this Affidavit, and is incorporated by reference herein. I obtained this copy of the Individual/Subsurface Sewage Disposal Rules from the Idaho Administrative Code website (<http://adm.idaho.gov/adminrules/rules/idapa58/0103.pdf>) on or about April 1, 2009.

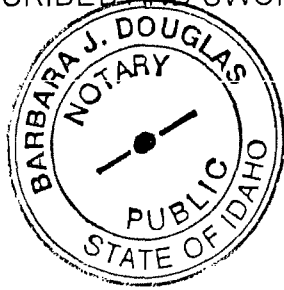
FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 22nd day of September, 2009.



Patrick M. Braden

SUBSCRIBED AND SWORN before me this 22nd day of September, 2009.



Barbara J. Douglas
Notary Public for the State of Idaho
Residing at Coeur d'Alene
My Commission Expires 8/22/12

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2009, I caused to be served a true and complete copy of the foregoing via hand delivery to:

R.D. Watson
WATSON LAW OFFICE
408 E. Sherman Avenue, Suite 202
P.O. Box 1085
Coeur d'Alene, ID 83816-1085

Patrick M. Braden
Patrick M. Braden

1218028 WARRANTY DEED

For Value Received

DIANA KENDLE (who acquired title as Diana Kendle, an unmarried woman), and Frederick Michael Ferree, wife and husband

The grantor s do hereby grant, bargain, sell and convey unto Peggy Harriman, a married woman as her separate property

the grantee , whose current address is PO Box 1161, Coeur d'Alene, ID 83814

the following described premises, in Kootenai County Idaho, to-wit:

(Continued)

See exhibit "A" attached hereto and made a part of this instrument

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
SECURITY TITLE COMPANY

MAY 15 12 07 PM '91

[Signature]
DEPUTY

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee her heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee , that the y are the owner s in fee simple of said premises; that they are free from all incumbrances EXCEPT: current year taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record

and that the y will warrant and defend the same from all lawful claims whatsoever.

Dated: May 15, 1991

[Signature]
Diana Kendle

[Signature]
Frederick Michael Ferree

STATE OF IDAHO, COUNTY OF KOOTENAI
On this 15th day of May, 19 91
before me, a notary public in and for the said State, personally appeared
Diana Kendle
Frederick Michael Ferree

Known or identified to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same

[Signature]
Notary Public
Coeur d'Alene, Idaho
9/23/94

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
SEP 20 2009

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE
DANIEL J. ENGLISH
Clerk/Recorder
By: [Signature] Deputy

INSTRUMENT # 1218028

EXHIBIT
Braden Aff'd
1
CV-09-3339

Legal Description (Continued)

A tract of land in the Southwest quarter of Section 19, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at the West quarter corner of Section 19, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho, said West quarter corner being the TRUE POINT OF BEGINNING for this description; thence

North $88^{\circ}52'41''$ East along the East-West centerline of Section 19, a distance of 563.34 feet to a $5/8$ inch iron pin; thence

South $00^{\circ}25'46''$ East, a distance of 789.34 feet to a $5/8$ inch iron pin on the Northerly line of a 30.00 foot easement; thence

continuing South $00^{\circ}25'46''$ East a distance of 30.00 feet; thence

South $88^{\circ}52'09''$ West a distance of 533.44 feet to the intersection with the West line of the Southwest quarter of Section 19; thence

North $02^{\circ}31'11''$ West along the West line of the Southwest quarter of Section 19 a distance of 819.61 feet to the West quarter corner, the TRUE POINT OF BEGINNING.

A strip of land 30.00 feet in width lying parallel and adjoining the Southerly line of the above described tract is reserved for public roadway and utility purposes.

INGRESS AND EGRESS IN GOVERNMENT LOT 4, SECTION 19

Right of Ingress and Egress is granted over a strip of land in the Southwest quarter of Section 19, Township 52 North, Range 3 West, Boise Meridian, lying 30.00 feet each side of the following described centerline;

Commencing at the Southwest corner of Section 19, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho; thence

North $88^{\circ}51'39''$ East along the South line of Section 19, a distance of 195.06 feet; thence

North $02^{\circ}31'11''$ West, a distance of 25.00 feet to the TRUE POINT OF BEGINNING for this description and the Northerly right-of-way line of the County Road; thence

continuing North $02^{\circ}31'11''$ West a distance of 239.00 feet to a point of curve; thence

Northwesterly along the curve being concave to the Southwest a distance of 94.89 feet, the radius being 121.77 feet, delta angle being $44^{\circ}38'47''$, to a point of tangent; thence

North $47^{\circ}09'58''$ West, a distance of 134.80 feet to a point of curve; thence

Northwesterly along the curve being concave to the Northeast a distance of 94.89 feet, the radius being 121.77 feet, delta angle being $44^{\circ}38'47''$, to a point of tangent; thence

North $2^{\circ}31'11''$ West, parallel and 30.00 feet East of the West line of said Section 19 a

distance of 460.00 feet to the intersection with the South line of the North 330.00 feet of Government 4, Section 19.

1218029

QUITCLAIM DEED

For Value Received ~~XXXXXXXXXX~~ (husband of grantee herein)
WILLIAM M. HATCH

do hereby convey, release, remise and forever quitclaim unto
PEGGY HARRIMAN, a married woman as her separate property
whose current address is PO Box 1161, Coeur d'Alene, ID 83814
the following described premises, to-wit:

See exhibit "A" attached hereto and made a part of this instrument

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
SECURITY TITLE COMPANY

May 16 12 07 PM '91

[Signature]
Notary Public

COEUR D'ALENE COUNTY

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss

SEP 21 2009

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF
THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE

DANIEL J. ENGLISH *[Signature]* Instrument # 1218029
Clerk/Recorder By *[Signature]* Deputy 2 PAS

together with their appurtenances.

Dated: May 15, 1991

STATE OF IDAHO }
COUNTY OF Kootenai } ss
On this 15th day of May in the
year 19 91 before me, a Notary Public, personally appeared
William M. Hatch

known, or presumed to me to be the person whose name
subscribed to the within instrument, and acknowledged to me that
he executed the same.

[Signature]
Notary Public
Residing at *[Signature]*
Coeur. d'Alene 9-23-94

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at
the request of

at _____ minutes past _____ o'clock M.,
this _____ day of _____
19 _____, in my office, and duly recorded in Book
of Deeds at Page _____

Ex-Officio Recorder

INSTRUMENT No.

EXHIBIT
Braden Acct
2
CV-09-3339

Legal Description (Continued)

A tract of land in the Southwest quarter of Section 19, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at the West quarter corner of Section 19, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho, said West quarter corner being the TRUE POINT OF BEGINNING for this description; thence

North $88^{\circ}52'41''$ East along the East-West centerline of Section 19, a distance of 563.34 feet to a $5/8$ inch iron pin; thence

South $00^{\circ}25'46''$ East, a distance of 789.34 feet to a $5/8$ inch iron pin on the Northerly line of a 30.00 foot easement; thence

continuing South $00^{\circ}25'46''$ East a distance of 30.00 feet; thence

South $88^{\circ}52'09''$ West a distance of 533.44 feet to the intersection with the West line of the Southwest quarter of Section 19; thence

North $02^{\circ}31'11''$ West along the West line of the Southwest quarter of Section 19 a distance of 819.61 feet to the West quarter corner, the TRUE POINT OF BEGINNING.

A strip of land 30.00 feet in width lying parallel and adjoining the Southerly line of the above described tract is reserved for public roadway and utility purposes.

INGRESS AND EGRESS IN GOVERNMENT LOT 4, SECTION 19

Right of Ingress and Egress is granted over a strip of land in the Southwest quarter of Section 19, Township 52 North, Range 3 West, Boise Meridian, lying 30.00 feet each side of the following described centerline;

Commencing at the Southwest corner of Section 19, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho; thence

North $88^{\circ}51'39''$ East along the South line of Section 19, a distance of 195.06 feet; thence

North $02^{\circ}31'11''$ West, a distance of 25.00 feet to the TRUE POINT OF BEGINNING for this description and the Northerly right-of-way line of the County Road; thence

continuing North $02^{\circ}31'11''$ West a distance of 239.00 feet to a point of curve; thence

Northwesterly along the curve being concave to the Southwest a distance of 94.89 feet, the radius being 121.77 feet, delta angle being $44^{\circ}38'47''$, to a point of tangent; thence

North $47^{\circ}09'58''$ West, a distance of 134.80 feet to a point of curve; thence

Northwesterly along the curve being concave to the Northeast a distance of 94.89 feet, the radius being 121.77 feet, delta angle being $44^{\circ}38'47''$, to a point of tangent; thence

North $2^{\circ}31'11''$ West, parallel and 30.00 feet East of the West line of said Section 19 a

distance of 460.00 feet to the intersection with the South line of the North 330.00 feet of Government 4, Section 19.

1568871

File No: 51414

QUITCLAIM DEED

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
AT THE REQUEST OF _____
KOOTENAI COUNTY TITLE CO.

Dec 28 11 10 AM '98

DANIEL J. ENGLISH

For Value Received TERRY SAYLER, a married man and husband of Grant Deputy FEE\$ 3.00

do hereby convey, release and forever quit claim unto PEGGY HARRIMAN, a married woman as her sole and separate property

Address: P.O. Box 2585, Hayden Lake, Id 83835

The following described premises, to wit:

~~SEE ATTACHED EXHIBIT "A"~~

All that portion of Government Lot 3 of Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at the West Quarter corner of Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho, said West Quarter corner being the TRUE POINT OF BEGINNING for this description; thence, North 88°52'41" East along the East-West centerline of Section 19, a distance of 563.34 feet to a 5/8 inch iron pin; thence, South 00°25'46" East, a distance of 789.34 feet to a 5/8 inch iron pin on the Northerly line of a 30.00 foot easement; thence, continuing South 00°25'46" East a distance of 30.00 feet; thence, South 88°52'09" West a distance of 533.44 feet to the intersection with the West line of the Southwest Quarter of Section 19; thence, North 02°31'11" West, along the West line of the Southwest Quarter of Section 19, a distance of 819.61 feet to the West Quarter corner of the TRUE POINT OF BEGINNING.

together with their appurtenances. TOGETHER WITH any and all after acquired title.

Dated: 12 28 98

TERRY SAYLER

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
SEP 21 2009
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE
Instrument # 1568871-1 Page
DANIEL J. ENGLISH Deputy
NOTARY PUBLIC STATE OF IDAHO

STATE OF Idaho)
COUNTY OF Kootenai)

ON THIS 22nd day of December, 1998, before me, The undersigned a Notary Public in and for said State, personally appeared TERRY SAYLER and

and known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same.

Sarah Henderson
Notary Public for Idaho
Residing at: *
Commission Expires: 12-2003
STATE OF IDAHO

EXHIBIT
Braden Affd
3
CV-09-3339

1568872

STATE OF IDAHO
County of Kootenai

KOOTENAI COUNTY TITLE CO.
DEC 26 11 20 AM '98
DANIEL J. ENGLISH
DEPUTY 3.00
FEES

File No: 51414

QUITCLAIM DEED

For Value Received PEGGY HARRIMAN, a married woman as her sole and separate property who acquired title as PEGGY HARRIMAN, an unmarried person

do hereby convey, release and forever quit claim unto PEGGY HARRIMAN, a married woman as her sole and separate property

Address: P.O. Box 2585, Hayden Lake, ID 83835

The following described premises, to wit:

~~SEE ATTACHED EXHIBIT "A"~~

All that portion of Government Lot 3 of Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at the West Quarter corner of Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho, said West Quarter corner being the TRUE POINT OF BEGINNING for this description; thence, North 88°52'41" East along the East-West centerline of Section 19, a distance of 563.34 feet to a 5/8 inch iron pin; thence, South 00°25'46" East, a distance of 789.34 feet to a 5/8 inch iron pin on the Northerly line of a 30.00 foot easement; thence, continuing South 00°25'46" East a distance of 30.00 feet; thence, South 88°52'09" West a distance of 533.44 feet to the intersection with the West line of the Southwest Quarter of Section 19; thence, North 02°31'11" West, along the West line of the Southwest Quarter of Section 19, a distance of 819.61 feet to the West Quarter corner of the TRUE POINT OF BEGINNING.

together with their appurtenances. TOGETHER WITH any and all after acquired title.

Dated: 12-22-98

Peggy Harriman
PEGGY HARRIMAN

STATE OF IDAHO
COUNTY OF KOOTENAI } ss: SEP 21 2009
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE
1568872-1838
DANIEL J. ENGLISH
Clerk/Recorder
Deputy

STATE OF Idaho)

COUNTY OF Kootenai)

ON THIS 22nd day of December, 1998, before me, The undersigned a Notary Public in and for said State, personally appeared PEGGY HARRIMAN and

and known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that she executed the same.

Sandra Henderson
Notary Public for: Idaho
Residing at: Athol
Commission Expires: 9-12-05
SANDRA HENDERSON
NOTARY PUBLIC
STATE OF IDAHO

EXHIBIT
Braden Affel
4
CV-09-3339

File No: 59781-*sh*

QUITCLAIM DEED

STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF
Kootenai County Title Co.

2003 JUL 25 A 11: 10

DANIEL J. ENGLISH *DM*

DEPUTY 3.00

FEES 3.00

1816405

For Value Received TERRY SAYLER, a married man and husband of Grantee

do hereby convey, release and forever quit claim unto PEGGY HARRIMAN, a married woman as her sole and separate property

Address: 1653 EAST CEDAR GROVE LANE, HAYDEN, ID 83835

The following described premises, to wit:

~~SEE ATTACHED EXHIBIT 111~~

All that portion of Government Lot 3 of Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at the West Quarter corner of Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho, said West Quarter corner being the TRUE POINT OF BEGINNING for this description; thence, North 88°52'41" East along the East-West centerline of Section 19, a distance of 563.34 feet to a 5/8 inch iron pin; thence, South 00°25'46" East, a distance of 789.34 feet to a 5/8 inch iron pin on the Northerly line of a 30.00 foot easement; thence, continuing South 00°25'46" East a distance of 30.00 feet; thence, South 88°52'09" West a distance of 533.44 feet to the intersection with the West line of the Southwest Quarter of Section 19; thence, North 02°31'11" West, along the West line of the Southwest Quarter of Section 19, a distance of 819.61 feet to the West Quarter corner of the TRUE POINT OF BEGINNING.

together with their appurtenances. TOGETHER WITH any and all after acquired title.

Dated: July 21, 2003

Terry Saylor
TERRY SAYLER

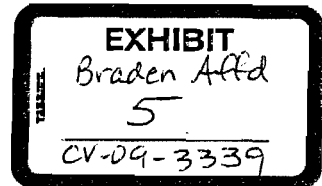
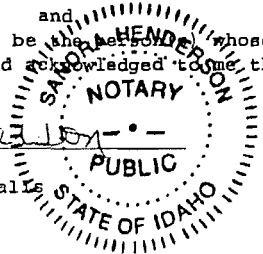
STATE OF IDAHO
COUNTY OF KOOTENAI } ss. SEP 21 2009
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE
for Braden Affd
507181
1 P pgs.
DANIEL J. ENGLISH *DM*
Deputy
Clerk/Recorder
STATE OF IDAHO

STATE OF Idaho)
COUNTY OF Kootenai)

ON THIS *21st* day of July, 2003, before me, The undersigned a Notary Public in and for said State, personally appeared TERRY SAYLER and

known or identified to me to be the person whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same.

Sandra Henderson
Notary Public for: Idaho
Residing at: Post Falls
Commission Expires: 09/12/03



KOOTENAI COUNTY ZONING ORDINANCE NO. 401
CASE NO. OA-133-06 (Ordinance Text Amendments)
Title 9, Kootenai County Code

TABLE OF CONTENTS

CHAPTER 1	TITLE, AUTHORITY, PURPOSE AND APPLICABILITY OF ZONING ORDINANCE
CHAPTER 2	RULES AND DEFINITIONS
CHAPTER 3	ESTABLISHMENT OF ZONES AND ZONING DISTRICT PROVISIONS FOR OFFICIAL ZONING DISTRICT MAP
CHAPTER 4	ZONE BOUNDARIES
CHAPTER 5	APPLICATION OF ZONING DISTRICT REGULATIONS
CHAPTER 6	AGRICULTURAL ZONE (A)
CHAPTER 7	AGRICULTURAL SUBURBAN ZONE (AS)
CHAPTER 8	RESTRICTED RESIDENTIAL ZONE (RR)
CHAPTER 9	COMMERCIAL ZONE (C)
CHAPTER 10	LIGHT INDUSTRIAL ZONE (LI)
CHAPTER 11	INDUSTRIAL ZONE (I)
CHAPTER 12	MINING ZONE (M)
CHAPTER 13	RURAL ZONE (R)
CHAPTER 14	HIGH-DENSITY RESIDENTIAL ZONE (HDR)
CHAPTER 15	PLANNED UNIT DEVELOPMENT
CHAPTER 16	AIRPORT DISTRICT (Overlay District)
CHAPTER 17	DESIGN STANDARDS
CHAPTER 18	HIGHWAY 41 OVERLAY ACCESS MANAGEMENT
CHAPTER 19	SUPPLEMENTARY REGULATIONS
CHAPTER 20	NONCONFORMING PARCELS, STRUCTURES AND USES
CHAPTER 21	AMENDMENTS
CHAPTER 22	ADMINISTRATION AND ENFORCEMENT
CHAPTER 23	CONDITIONAL USE, VARIANCE AND SPECIAL NOTICE PROCEDURES
CHAPTER 24	CONDITIONAL USE AND SPECIAL NOTICE PERMIT STANDARDS



Amending the following Chapters and Sections of Title 9, Kootenai County Code, as amended: Chapter 1, adding Title, Authority and Applicability; Chapter 2, Section 9-2-2, Corrections to formatting, Accessory Living Unit requirements, clarifying the numbering of each requirement, clarifying requirements for measuring the square feet of the accessory living unit, amending the site plan size for accessory living unit applications from 11 x 17 to 8½ x 11, amending the definition of roof sign; Chapter 6, Section 9-6-5, adding personal storage buildings as an allowed use on property less than five acres; Chapter 13, Section 9-13-4, adding personal storage buildings as an allowed use on property less than five acres, adding farming as an allowed use on property less than five acres; Section 9-13-5, adding subdivisions as defined in the Kootenai County Subdivision Ordinance, providing severability; repealing conflicting Ordinances; and providing an effective date.

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

SECTION 1. That Kootenai County Ordinance No. 348, enacted on February 3, 2005, as amended by Ordinance No. 348, enacted on February 8, 2005, Ordinance No. 375, enacted on December 8, 2005, and Ordinance No. 388, enacted on August 31, 2006, be, and the same are hereby designated as Title 9, Kootenai County Code, and are hereby amended to read as follows:

CHAPTER 1
TITLE, AUTHORITY, PURPOSE AND APPLICABILITY OF ZONING ORDINANCE

9-1-1: TITLE: This title shall be known as the *Zoning Ordinance of Kootenai County, Idaho*.

9-1-2: AUTHORITY: In addition to the general authorities set out in section 1-1-2 of this code, the provisions of this title are authorized under Title 67, Chapter 65, *Idaho Code*, as amended or subsequently codified.

9-1-3: PURPOSE:

- A. Promote the health, safety and the general welfare of Kootenai County;
- B. Carry out the intent and purposes of the "Local Land Use Planning Act," *Idaho Code* § 67-6501 et seq., as amended;
- C. Carry out the policies of the applicable comprehensive plan by classifying and regulating the uses of property and structures within the unincorporated areas of Kootenai County;
- D. Establish zoning districts within Kootenai County in accord with the adopted applicable comprehensive plan in conformance with *Idaho Code* § 67-6511;
- E. Provide standards for the orderly growth and development of Kootenai County and to avoid undue concentration of population and overcrowding of land. As required by *Idaho Code* § 67-6511, such standards include but are not limited to, those regulating:
 - 1. The height, number of stories, size, construction, reconstruction, alteration, repair or location of structures.
 - 2. Percentage of coverage, size of required yards, and density of residential dwellings.
 - 3. The use of structures and property.
- F. Ensure the most appropriate use of properties;
- G. Protect property rights and enhance property values; and
- H. Provide a method of administration and prescribe penalties for the violations of regulations hereafter described as authorized by the constitution and laws of the State of Idaho.

9-1-4: APPLICABILITY: The provisions of this title shall apply to all property located within the unincorporated areas of Kootenai County, Idaho.

**CHAPTER 2
RULES AND DEFINITIONS**

9-2-1: GENERAL: The rules and definitions contained in this section shall be observed and applied, except when the context clearly indicates:

- A. Words used in the present tense shall include the future and words used in the singular number shall include the plural number and the plural the singular.
- B. The word "shall" shall be mandatory and not discretionary.
- C. The word "may" is permissive.
- D. The word "lot" shall include the word "piece" and "parcel"; the word "building" includes all other structures of every kind regardless of similarity to buildings; and the phrase "used for" shall include the phrases "arranged for," "designed for," "maintained for," and "occupied for."

9-2-2: DEFINITIONS:

ACCESS ROADWAY/DRIVEWAY STANDARDS FOR RESIDENTIAL PROPERTIES -

- A. Road/Driveway shall have an all weather driving surface. Design shall consist of removing all topsoil and duff, putting down 8 inches of compacted ballast (pit run material), then a minimum of 4 inches of compacted base material (crushed aggregate). Road/Driveway shall be maintained by plowing, grading, and re-graveling.
- B. Minimum common driveway and private road width of twenty (20) feet; minimum driveway width of fourteen (14) feet.
- C. A minimum turning radius for all corners shall be twenty (20) feet, as measured to the inside of the corner.
- D. A minimum distance between switchbacks shall be seventy-five (75) feet, as measured along the centerline between curves.
- E. Turnarounds with a minimum radius of fifty (50) feet at the end of any roadway or driveway longer than 150 feet, or as approved by the applicable fire district.
- F. Minimum unobstructed overhead clearance shall be fourteen (14) feet.
- G. No private road or driveway shall have greater than 12% grade. Grades of 10% or greater shall not exceed one-hundred (100) feet in length.
- H. All private roadways shall enter public roadways at a right angle and meet the radius requirements listed above; all driveways shall enter public or private roads at a right angle and meet the radius requirements listed above.
- I. Bridge and culvert crossings with a travel distance less than ten (10) feet in length must support a minimum of 34,000 pounds. Crossings with travel distances ten (10) feet or greater must support a minimum of 60,000 pounds.

ACCESSORY BUILDING OR USE - A building or use which is dependent to that of the main building or use on the same lot or parcel.

ACCESSORY LIVING UNIT - A building or portion(s) of a building, located on the same lot, but separate from the principal dwelling, with at least 220 feet of habitable space. For purposes of this section, habitable space shall be considered to be any enclosed area(s) with plumbing for a sink, toilet, or bathing facilities that is capable of being lived in. Habitable space shall not include garages with a toilet, sink or shower, providing the garage has a door at least 8 feet wide. Square footage of habitable space shall include, but not be limited to, all bathrooms, bedrooms, closets, laundry facilities, offices, living and recreational rooms, kitchens, and storage space, except storage space in a garage. Accessory living units are allowed in the Agriculture, Rural, Agriculture Suburban and Restricted Residential Zoning Districts. An accessory living unit permit is required. The application shall be on forms provided by the Planning Department and shall contain a site plan, a narrative and an affidavit attesting to the validity of the information provided. Upon review of the information, the Director shall determine if the minimum requirements delineated below have been met and either approve or deny the permit. Appeals of the Director's determination shall be filed within twenty-eight days under section 9-22-8 of this title.

Additional standards for accessory living units are as follows:

- A. The accessory living unit shall not be a rental unit.
- B. The square footage of the accessory living unit shall not exceed 1,000 square feet of habitable space. New structures that will be used solely for accessory living units shall be measured from the exterior walls. Existing structures that will add habitable space will be measured from interior dimensions of the habitable space. Only one accessory living unit shall be allowed on a parcel.
- C. Water, telephone, electric, and gas services shall be extended from the primary dwelling and shall not be billed separate from the primary dwelling. Sewer systems shall be as approved by Panhandle Health District and/or Division of Environmental Quality.
- D. The accessory living unit shall not receive mail delivery.
- E. No new approach from a public or private road shall be permitted. Existing ingress/egress used by the principal dwelling shall also serve as the ingress/egress for the accessory living unit.
- F. Open space and setback requirements of the underlying zone shall be met.
- G. The application form delineates the application requirements for the Planning Department. The application package shall include but is not limited to: detailed site plan, drawn to scale on 8 ½ x 11" paper, which includes, but shall not be limited to, the following: man-made structures, ingress/egress, setback lines of existing structures, the proposed accessory living unit, and natural features. The application shall also include a floor plan, drawn to scale, of the accessory living unit, and the foot print of the primary dwelling. If applicable, the floor plan shall delineate the area of an attached garage.
- H. The accessory living unit shall meet all International Building Code requirements for this type of use, and an occupancy permit shall be made a condition of approval.
- I. Must meet all requirements of Panhandle Health District.
- J. Conditions of approval shall include compliance with all applicable County ordinances.

ACREAGE - Any tract of land or parcel of land which has not been subdivided or platted.

ADMINISTRATOR - An official having knowledge in the principles and the practices of administration of this title, who is appointed by the Board of County Commissioners to administer the provisions of this title and the *Kootenai*

County Subdivision Ordinances. Said Administrator may select a designee or designees to assist in the administration of the provisions and procedures of said ordinances.

AIRCRAFT PARKING AREAS - Those areas designated as parking areas for parking and maneuvering aircraft while on the ground. "Tie-down" areas shall also mean aircraft parking areas and will be marked by "tie-down" to denote this area.

AIRPORT - Any area of land or water designed and set aside for landing and take-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

AIRPORT ADVISORY BOARD - The Board consisting of members as defined by current by-laws to provide information and recommendations to the Airport Manager and County Commissioners pertaining to airport flight-line operations and development in the Airport Operations Area.

AIRPORT DEVELOPMENT CONTROL COMMITTEE - The Committee consisting of members as defined by current by-laws to provide information and recommendations to the Airport Manager and County Commissioners pertaining to development in the Light Industrial and Terminal Support Areas in the Airport District.

AIRPORT HAZARD - Any structure, or tree, or use of land which obstructs the airspace required for the flight of aircraft in landing and taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

AIRSTRIP - improved or unimproved landing areas used by pilots to land, park, take off, unload, load and taxi all types and styles of aircraft.

AMENDMENT - A change in the wording context, or substance of this title, or change of the zone boundaries upon the Official Zoning Map, which Map is a part of this title when adopted by ordinance passed by the Board of County Commissioners in the manner prescribed herein.

ANIMATED SIGN - A moving sign or display, or a sign depicting action or motion, through electrical or mechanical means.

ANTENNA - A device used in the sending and receiving of electromagnetic waves.

APARTMENT HOUSE - Any building or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied as the home or residence of five or more families living independently of each other and doing their own cooking in said building and shall include flats, apartments, and multi-family dwellings. An apartment house is the same as a "multi-family dwelling." "Apartment Houses" and "Multi-Family Dwellings" refer to buildings or portions thereof, which are built, rented, leased, let, or hired out to be occupied on a permanent basis, as distinguished from a transient occupancy basis.

APPROACH - A point of access onto a publicly dedicated and maintained road for which approval has been given by the appropriate Highway District or Idaho Transportation Department.

APRON - The portion of the aircraft parking area (or tie-down area) used for access between taxiways, aircraft parking positions, hangers, and storage facilities. An apron is outside the normal area of movement for aircraft. An apron and a taxi lane are the same.

AUTOMOBILE WRECKING YARD - Any area, lot, land, or parcel, excluding automotive hobby, and excluding completely enclosed buildings, whereon more than two (2) motor vehicles without current registration, or where more than two (2) inoperable or dismantled motor vehicles, or any combination of more than two (2) unregistered, inoperable, or dismantled motor vehicles, not in operating condition are standing more than thirty (30) days, or on which such used motor vehicles or parts thereof, are dismantled or stored. For purposes of this definition, the term

"inoperable" means the motor vehicle cannot move under its own power or does not meet the minimum legal requirements necessary for the motor vehicle to be operated in a safe and lawful manner upon the roads and highways in the State of Idaho as set forth in the Idaho Motor Vehicle Laws of the State of Idaho.

AUTOMOTIVE HOBBY - An accessory use involving the restoration maintenance, and/or preservation of motor vehicles. It is the intent of this section to provide for, and to protect the property rights of, those individuals who are involved in the restoration, maintenance, and/or preservation of motor vehicles. For the purposes of implementing these provisions, the following standards are applicable to the accessory use of automotive hobby:

- A. No commercial, retail, or wholesale sales of automotive parts or supplies shall be conducted upon a site, which is used for automotive hobby.
- B. Automotive restoration may be conducted as a hobby.
- C. No commercial restoration, repair, or maintenance of motor vehicles shall be conducted upon a site used for automotive hobby.
- D. The site for an automotive hobby shall be maintained in an orderly manner so as to prevent the creation of a public nuisance or a health hazard.
- E. Not more than two (2) inoperable, dismantled, or unregistered motor vehicles may be visible from ground level on any adjacent property. All other inoperable, dismantled, or unregistered motor vehicles shall be covered, or stored behind a 100% sight-obscuring fence or hedge which is not less than six (6) feet in height; or, within a completely enclosed building.
- F. All inoperable, dismantled, or unregistered motor vehicles being maintained on the site for an automotive hobby shall be necessary and wanted. Once the need and/or want for the inoperable, dismantled, or unregistered automobile has passed, the automobile shall be removed from the site for proper disposal.

AWNING (OR CANOPY) SIGN - A sign located on an awning or canopy that is attached to a building.

BANNER - A sign or display on lightweight fabric or similar material.

BED AND BREAKFAST - An owner-occupied single-family residence which provides up to five (5) rooms for lodging and breakfast for paying guests.

BOARD OF COUNTY COMMISSIONERS - The Board of County Commissioners of Kootenai County, Idaho, herein further referred to as the Board.

BOARDING KENNELS - SEE KENNELS, BOARDING

BOARDING STABLE - A structure designed for the feeding, housing, and exercising of horses not owned by the owner of the premises and for which the owner of the premises receives compensation. Boarding facilities may include training and scheduled events such as horse shows, workshops and clinics.

BUILDING - See "STRUCTURE."

BUILDING, HEIGHT - The vertical distance at the center of the building's front measured from the average elevation of the finished grade along the front of the building to the highest point of the coming of a flat roof, or to the deck line of a measured roof, or to the average height of the highest gable of a pitch or hip roof, excepting chimneys and steeples.

BUILDING LINE - A line denoting the outer perimeter of a structure that is permanently affixed to the land.

BUILDING RESTRICTION LINE - A line established by the Federal Aviation Administration across which no structural development may occur. These lines normally connect in such a fashion as to enclose an area in which no structures may be built, except those necessary and incidental to airport operations.

CHURCH - An institution that people regularly attend to participate in or hold religious services, meetings, and other activities. The term "church" shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held. A church may include a rectory.

CLEAR ZONE (CLEARWAY) - An area beyond the stop end of a runway, not less than 500 feet (150 m) wide, centered on the extended centerline of the runway, and controlled by airport authorities.

CLINIC OR HOSPITAL, ANIMAL OR VETERINARY - A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

CLINIC, MEDICAL OR DENTAL - A building or portion of a building containing offices for providing medical, dental, or psychiatric services for outpatients only.

COLLOCATION - The placement of additional antennas on an existing transmission tower or structure. Such antennas shall be placed and colored to blend into the architectural detail and coloring of the host structure. The placement of an antenna on an existing tower or structure does not require a conditional use permit unless otherwise required by this title. Collocation shall be a permitted, accessory use.

COMMERCIAL RESORT - A privately-owned, outdoor recreation area, operated for profit. A commercial resort may include permanent facilities for overnight or seasonal living, camping areas, recreational vehicle parks, and limited commercial activities associated with convenience goods and services that serve to enhance the primary recreational use or activity.

COMMERCIAL RIDING ARENA OR EQUINE TRAINING CENTER OR FACILITY (MAY INCLUDE BOARDING STABLES)- land or a building or a part thereof dedicated to clinics, workshops and training of horses. A training center or facility may include horse boarding facilities.

COMMON DRIVEWAY - A driveway that provides vehicular access from a public or private road to not more than four lots or parcels of land. Common driveways shall be at least 20 feet in width and shall meet the "Minimum requirements for access roadways/driveways to residential properties" as defined in this section.

CONDITIONAL USE - A use listed among those classified in any given zone but permitted to locate only after review and which requires a special degree of control to make such use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities and facilities.

CONDOMINIUM - A condominium is an estate consisting of (i) an undivided interest in common in real property, in an interest or interests in real property, or in any combination thereof, together with (ii) a separate interest in real property, in an interest or interests in real property, or in any combination thereof. *Idaho Code* §55-101B. Further, is defined as the interior surfaces of the perimeter walls, floors, ceilings, windows and doors, thereof, and the unit includes both the portions of the building so described and the airspace so encompassed. *Idaho Code* §55-1509.

CONSERVATION DESIGN SUBDIVISION - A subdivision design that maximizes the conservation of open space and the natural, cultural or historic characteristics of an area. The subdivision name for a conservation design subdivision will be followed by the suffix "CDS".

DAY CARE - means care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes. (*Idaho Code* §39-1102(3)).

DAY CARE CENTER - Any child care arrangement that provides care and supervision for compensation during any part of a 24-hour day for more than thirteen (13) children. See *Idaho Code* §39-1102.

DECIBEL - A unit of measurement of the intensity (loudness) of sound. Sound level meters which are employed to measure the intensity of sound are calibrated in "Decibels."

DESIGN PROFESSIONAL - An individual with specialized knowledge and experience, who is qualified to develop plans for various components of a subdivision development. With regard to stormwater plans, the design professional must meet the definition found in the *Kootenai County Site Disturbance Ordinance*.

DEPARTMENT - The Kootenai County Building and Planning Department.

DIRECTOR - The Director of the Kootenai County Building and Planning Department or his designee.

DIRECT ACCESS - A driveway or common driveway that directly intersects with a public road.

DRAINAGEWAY - A water course that does not meet the definition of a Class I or Class II stream.

DRIVEWAY - A means of vehicular access from a public or private road to any point on a lot.

DWELLING - A building whose primary use is for residential purposes, including single-family, two-family, and multi-family structures, but not including hotels, motels, and boarding houses.

DWELLING, MULTIPLE-FAMILY - A building, or a portion thereof, containing at least three (3), but not more than four (4), dwelling units.

DWELLING, SINGLE-FAMILY - A building containing one dwelling unit. Single-family dwelling includes a Group Home.

DWELLING, TWO-FAMILY, OR DUPLEX - A site-built structure containing two (2) dwelling units, which have either a) a common interior wall or b) a common roofline with a common exterior wall.

DWELLING UNIT - One or more rooms physically arranged so as to create a habitable housekeeping unit that includes sleeping, eating, and sanitary facilities for occupancy by one family.

EASEMENT, PUBLIC OR PRIVATE - A grant by a property owner to specific persons or to the public to use land for specific purposes. Also, a right of use acquired by prescription, if such right has been adjudicated. No transfer of land title is implied.

ELECTRONIC MESSAGE CENTER - A variable message sign using computer generated messages or some other electronic means of changing copy.

FAMILY - One or more persons occupying a dwelling unit and living as a single housekeeping unit. Family is also defined as: eight (8) or fewer persons occupying a dwelling unit and living as a single housekeeping unit, if the occupants are mentally or physically handicapped persons or eight (8) or fewer elderly persons.

FAMILY DAY CARE HOME - means a home, place, or facility providing day care for six (6) or fewer children.

FARMING, GENERAL - The production of crops and/or animals.

FEED LOT - An enclosed area where livestock is confined for the purpose of resale or slaughter.

FLASHING LIGHT, SIGN OR DISPLAY - A sign, light or display with lighting or messages that change more than once every 4 seconds. Generally, the flashing is the primary attention getting device.

FOOT-CANDLE - A measure of the amount of light cast onto a given point. One foot-candle is equivalent to one lumen per square foot. Foot candles may be measured in a horizontal or vertical plane, at a specified height, or with no direction or height specified.

FRONTAGE LENGTH - That portion of a lot, site, tract, or parcel of land, held in fee simple, adjoining a publicly dedicated and maintained road and measured as a length along said road.

GATED COMMUNITY - a form of closed community with more than ten residential lots, characterized by a controlled entrance for pedestrians, bicycles, and automobiles, may be staffed by full-time, private security guards, may lead into one or more small residential streets, with walls or fences surrounding the perimeter of the entire development. Many gated communities may have various amenities which make it possible for residents to stay within the community for day-to-day activities.

GRANGE HALL - A building used as a meeting place by a fraternal association normally comprised of farmers.

GREENHOUSE, COMMERCIAL - An establishment where flowers, shrubbery, vegetables, trees, and other horticultural products are grown in the open and/or in an enclosed building for sale to the general public on a retail basis.

GREENHOUSE, WHOLESALE - An establishment where flowers, shrubbery, vegetables, trees, and other horticultural products are grown in the open and/or in an enclosed building for sale on a wholesale basis, with retail sales on premises to be on an occasional and incidental basis.

GROUP DAY CARE FACILITY - means a home, place, or facility providing day care for seven (7) to twelve (12) children. (*Idaho Code* §39-1102)

GROUP HOME - A single-family dwelling that provides residential shelter to eight (8) or fewer unrelated, mentally and/or physically handicapped, or elderly persons, who are supervised, and reside as a single-family unit. No more than two, related or non-related, staff members shall reside in the dwelling at any one time.

HEARING EXAMINER - An individual appointed by the Board who shall, for the purposes of this title, perform the powers and duties of the Board of Adjustment and such other duties as deemed necessary by the Board and as authorized by *Idaho Code* §67-6520.

HEIGHT - For the purpose of determining the height limits in the Airport District, the datum shall be the National Geodetic Vertical Datum (NGVD).

HIGHWAY DISTRICT - The agencies that have jurisdiction over secondary roads in Kootenai County. Authority results from powers vested by *Idaho Code*, Title 40, Chapter 6.

HOME OCCUPATION - An occupation, profession, or craft which is clearly incidental to the residential use of a site, subject to the following requirements:

- A. The home occupation shall be conducted by an immediate member of the family residing within the dwelling on the site.

- B. There shall be no more than one (1) individual employed at the site who does not live in the dwelling on the site.
- C. The home occupation may be conducted in an accessory building on the site, although no home occupation shall be allowed on sites without a dwelling.
- D. The home occupation shall be of a nature that does not generate retail business or have customer traffic on a regular basis. Equipment storage facilities where more than one employee arrives at the site to pick up equipment, then leaves to work off-site, shall not be considered home occupations.
- E. Storage of equipment, inventory, or work-related items other than vehicles, shall be within the residence or a permitted accessory building. Outside storage or storage within a cargo container or trailer is prohibited.
- F. A Home Occupation Permit is required. The application shall be on forms provided by the department and shall contain a site plan, a narrative and an affidavit attesting to the validity of the information provided. Upon review of the information, the Planning Director shall determine if the minimum requirements have been met and either approve or deny the permit.

HOSPITAL - An institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons and licensed by State Law to provide facilities and services in surgery, obstetrics, and general medical practice.

HOT MIX ASPHALT PLANT OR CONCRETE BATCH PLANT - A facility where asphalt or cement is mixed with aggregate to create hot mix asphalt or concrete paving materials. Such facilities do not include the actual manufacture or storage for resale or distribution of the asphalt tars and oils, or Portland cement.

HOTEL - A building in which there are six (6) or more guest rooms where lodging with or without meals is provided for compensation and where no provisions are made for cooking in any individual room or suite, but shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed and detained under restraint.

ILLUMINATED SIGN - A sign illuminated internally through its face by a light source contained inside the sign, or externally by reflection of a light aimed at its surface.

JUNK YARD - An outdoor space where waste, discarded, or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, stored or handled, including automobile wrecking yards, farm equipment wrecking yards, organic waste, house wrecking yards, used lumber yards and places or yards for storage of salvaged house wrecking and structural steel materials and equipment; but excluding such places where such uses are conducted entirely within a completely enclosed building, such as pawn shops and establishments for the sale, purchase or storage of used furniture and household equipment or for used cars in operable condition, or salvaged materials incidental to manufacturing operations.

KENNEL, BOARDING - A commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation, on any lot or adjacent lot(s), or any building(s), structure(s), enclosure(s) or premises on the same or adjacent lot(s), in which a total of six (6) or more dogs, six (6) months of age or over, are kept or maintained by one or more persons. The term "kennel" shall not include any veterinary hospital, office or clinic operated by a veterinarian licensed by the state of Idaho.

KINDERGARTEN - A school, public or private, whether operated for a profit or not for profit, giving preschool instructions to children under seven (7) years of age.

LABORATORY - A place devoted to experimental study such as testing and analyzing. Manufacturing of a product or products is not to be permitted.

LIVESTOCK - Large animals, such as horses, cattle, pigs, sheep, goats, llamas, etc.

LODGE - A building where members of a local chapter of an association, or fraternal, cultural, or religious organization hold their meetings.

LOT - For purposes of this title, a lot shall meet one of the following criteria. Railroad and road rights of way shall not be considered a lot unless specifically recognized in writing by the Department prior to July 16, 2001.

- A. A lot created prior to January 3, 1973, that is described by metes and bounds or aliquot parts; the conveyance and description of which has been so recorded in the Kootenai County Clerk and Recorder's Office; OR
- B. A lot created after January 3, 1973, and prior to November, 17, 1995, that was not created by the County's subdivision process, that is described by metes and bounds or aliquot parts, the conveyance and description of which has been so recorded in the Kootenai County Clerk and Recorder's Office, and that has duly recorded legal access to a public road. Access to the lot shall meet "Access Roadway/Driveway Standards for Residential Properties" or as approved by the applicable Fire Protection District. In cases where width is fixed by easement, or where topographic features present an undue hardship, a variance may be applied for as set forth in Chapter 23 of this title; OR
- C. A lot created after November, 17, 1995, that was created through an exemption to the County's *Subdivision Ordinance*, that is described by metes and bounds or aliquot parts, the conveyance and description of which has been so recorded in the Kootenai County Clerk and Recorder's Office, and that has duly recorded legal access to a public road. Access to the lot shall meet "Access Roadway/Driveway Standards for Residential Properties" or as approved by the applicable Fire Protection District. In cases where width is fixed by easement, or where topographic features present an undue hardship, a variance may be applied for as set forth in Chapter 23 of this title; OR
- D. A lot platted by the subdivision process which has been recorded in the Kootenai County Clerk and Recorder's Office, and that has legal access from a public road, or private road, as approved by the Board of County Commissioners at the time of platting. Driveways shall meet the "Access Roadway/Driveway Standards for Residential Properties." Water access is acceptable only if it was approved by the Board of County Commissioners at the time of platting.

LOT, FRONTAGE - The front of a lot shall be construed to be in the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under the definition of "Yard" contained in this section.

LOT LINE - The lines (lease or property lines) bounding a lot as defined herein.

LOT MEASUREMENTS:

- A. Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
- B. Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard; provided, however, that width between side lot lines in the foremost points (where they intersect with the street line) shall not be less than eighty (80) percent of the required lot width, except in the case of lots on the turning circle of cul-de-sacs, where the eighty (80) percent requirement shall not apply.

LOT TYPES:

- A. "Corner Lot" defined as a lot located at the intersection of two (2) or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost point of a lot meet at an interior angle of less than one hundred thirty-five (135) degrees.
- B. "Interior Lot" defined as a lot other than a corner lot with only one (1) frontage on a street.
- C. "Through Lot" defined as a lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.
- D. "Reversed Frontage Lot" defined as a lot on which the frontage is at right angles or approximately right angles (interior angles less than one hundred thirty-five (135) degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot, or a through lot.
- E. "Water Front Lot" defined as a lot that adjoins or abuts the high water mark of a lake, river, or stream.

LUMEN - A measure of the amount of light emitted by a light source.

MANUFACTURED HOME (formerly mobile home) - A dwelling unit that is not constructed in accordance with the standards set forth in the International Building Code for single-family dwellings and is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis. Recreational vehicles shall not be considered to be manufactured homes. Manufactured homes constructed prior to June 15, 1976, must obtain a Rehabilitation Certificate of Compliance prior to application for a permit from Kootenai County as provided by Chapter 25, Title 44, *Idaho Code*. For the purposes of this title, manufactured housing units are classified as follows:

Class A: A manufactured home that satisfies the following additional criteria:

- A. The home has a minimum living space of one thousand (1,000) square feet.
- B. The home shall have a pitched roof, except that no standards shall require a slope of greater than one (1) foot in height for each four (4) feet in width.
- C. The exterior siding of the home consists of wood, hardboard, or aluminum comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction. Carports or garages shall be constructed of like materials.
- D. The home is placed on an excavated and backfilled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade.
- E. The tongue, axles, transporting lights, and removable towing apparatus are removed from the home after placement on the lot and before occupancy.

Class B: A manufactured home that does not satisfy the criteria necessary to qualify the home as a Class A manufactured home. A Class B manufactured home requires a special notice permit in the Agriculture Suburban and Restricted Residential Zoning Districts.

MANUFACTURED HOME PARK - A parcel of land under single ownership on which three or more manufactured homes are occupied as residences. Said park may include special facilities for common use of the occupants such as recreational building, swimming pool, common open space, laundry facilities, and commercial uses incidental thereto.

MINI-STORAGE - Storage facility with multiple individual units available for lease. Individual units shall be no larger than 14 feet in width or 40 feet in length and total building height shall not exceed 22 feet.

MONUMENT SIGN - A sign with low overall height, supported by a footing in the ground, the sole purpose of which is to support the sign, and where the entire base of the sign is in contact with the ground.

MOTEL OR TOURIST COURT - A group of attached or detached buildings containing individual sleeping or living units where a majority of such units open individually and directly to the outside, and where a garage is attached or a parking space is conveniently located to each unit, all for the use by automobile tourists or transients, and such words include auto courts, motor lodges, motor inns, and similar terms.

NATURAL SLOPE - The slope of the land prior to any man-made disturbance.

NONCONFORMING LOT OR PARCEL - A lot or parcel that was lawfully established prior to the adoption of this title or previous applicable ordinances, and which was in compliance with land development regulations then in effect, but which no longer conforms to the regulations for the zone in which it is located. Examples include lots that do not meet the minimum lot sizes or open space requirements, and lots that have a substandard access driveway.

NONCONFORMING STRUCTURE - A building, sign or other structure, that was lawfully constructed prior to the adoption of this title or previous applicable ordinances, but which no longer conforms to the regulations for the zone in which it is located. Examples include signs and buildings that do not meet required setbacks to property lines or that exceed height or size requirements.

NONCONFORMING USE - The use of a lot, parcel or structure that was lawfully established prior to the adoption of this title or previous applicable ordinances, and which was in compliance with land development regulations then in effect, but which no longer conforms to the regulations for the zone in which it is located. Examples include residing in a second home on a parcel which has not been approved as an Accessory Living Unit, using a parcel in a manner that does not meet landscaping, parking or lighting requirements, and using a parcel or structure for a business that is no longer allowed, or that is allowed contingent upon requirements that are not being met.

NONDOMESTIC WASTE WATER - Any waste water that is not produced as sanitary wastewater from restroom facilities, showers, or kitchens.

NONPROFIT PUBLIC OR PRIVATE COMMUNITY FACILITY (AGRICULTURAL AND RURAL DISTRICTS ONLY) - A facility that includes property utilized by business leagues, boards of trade, or other associations of persons having some common business interest in agriculture, livestock production, or forestry that is recognized by State and Federal Taxing authorities as nonprofit. The purpose of the nonprofit public or private community facility is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

NOXIOUS MATTER - A material which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the physical or economic well-being of individuals.

NUISANCE - Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, stream, canal or basin, or any public park, square, street or highway, is a nuisance.

NURSING HOME - A home, place, or institution for the care of children, the aged or infirm, or a place of rest for those suffering bodily disorders, but not including facilities for the treatment of sickness or injuries or for surgical care.

OCTAVE BAND - A means of dividing the range of sound frequencies into octaves in order to classify sound in pitch.

OCTAVE BAND FILTER - An electrical frequency analyzer designed according to standards formulated by the American Standards Association and used in conjunction with a sound level meter to take measurements in specific octave intervals.

OFF-PREMISE SIGN - A sign that is not accessory to or associated with a permitted structure or use on a parcel of land, such as a sign that directs attention to a business, product, service, entertainment, event or other activity that is conducted, produced, furnished, sold, or offered at another location.

ON-PREMISE SIGN - A sign that is located on the same parcel of land as the owner or lessee's business, organization, product, service, event, activity, or residence, and that is accessory to or associated with an allowed structure or use.

OPEN SPACE - Any open area, including, but not limited to, the following: Parks, yards, playgrounds, beaches, waterways, parkways, and streets.

OUTDOOR RECREATIONAL FACILITIES - Areas designed for active recreation, whether publicly or privately owned, including but not limited to, baseball diamonds, soccer and football fields, golf courses, tennis courts, swimming pools, race tracks, arenas, and similar places of outdoor assembly, and including private recreational facilities accessory to one-family dwelling properties.

PARCEL - A piece of land that is separately described in a deed of conveyance. Parcel boundaries, as used in this title, may or may not coincide with parcel boundaries as assigned by the Kootenai County Assessor.

PERSONAL STORAGE BUILDING - A structure used solely for the storing of personal property.

PERFORMANCE STANDARD - A criterion established to control noise, odor, smoke, toxic or noxious mater, vibration, fire, and explosive hazards, and glare or heat generated by or inherent in uses of land or buildings.

PLANNED UNIT DEVELOPMENT - A Planned Unit Development (PUD) is an integrated design for development of residential, commercial or industrial uses, or combinations of uses, under single ownership or control, in which the standards of this title may be varied. PUD's allow flexibility and creativity in site and building design and location, in accordance with an approved plan, and the goals and policies of this title and the *Comprehensive Plan*. PUD's associated with subdividing lots must include at least 25 lots.

PLANNING AND ZONING COMMISSION - The Kootenai County Planning and Zoning Commission, herein further referred to as the Commission.

POLE SIGN - A sign supported by a footing in the ground, the sole purpose of which is to support the sign.

PORTABLE SIGN - A sign capable of being carried or easily moved.

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

PROJECTING SIGN - A sign, other than a wall sign, that projects from and is supported by the wall of a building or structure, with the face of the sign perpendicular to the building.

PROPERTY LINE - A series of lines which when connected denote the outer perimeter of a lot as described herein. These lines are described by metes and bounds, and meet the criteria defined as establishing a separate parcel as a "Lot of Record", or as a legally "Subdivided" parcel.

PUBLIC OFFICE BUILDING - A structure used as the office or for the purpose of conducting official business by an agency of the Federal Government, State Government, or a political subdivision of the State of Idaho.

PUBLIC UTILITY COMPLEX FACILITY - A public utility facility of major importance involving construction of facilities of a complex nature including, but not limited to: station houses or station grounds, pumping stations, power substations, dam structures, water storage facilities which hold more than 100,000 gallons or are greater than 25 feet in height, fire stations, telephone transmission stations, sewage disposal or storage stations, railroad transportation lines or spurs, railroad classification yards, high voltage or high pressure transmission lines, or structures principally used in interstate transmission of electricity, natural gas, or fuel. Cellular telephone, radio and television towers shall not be included in this definition.

RECREATIONAL BUILDING, PUBLIC OR NON-PROFIT - Any facility which provides recreational activities for use by the general public including, but not limited to, non-profit or public buildings, such as libraries, museums, art galleries, etc.

RECREATIONAL FACILITY - Any facility which provides recreational activities for use by the general public including, but not limited to, parks, playgrounds, picnic areas, etc.

RECREATIONAL VEHICLE - A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, fifth-wheel camper, and motor home.

RECREATIONAL VEHICLE PARK - A parcel of land upon which three (3) or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles, or tents, as temporary living quarters for recreation, camping, or vacation purposes.

RENTAL WAREHOUSE - Storage facility available for lease, with or without individual units, which does not meet the definition of Mini-storage.

RIGHT-OF-WAY, PRIVATE - A strip of land reserved for use as a private roadway for one (1) or more parcels of land, which normally includes a private street and may incorporate private utilities or service areas.

RIGHT-OF-WAY, PUBLIC - A strip of land publicly dedicated and accepted by a Highway District for use as a roadway. In addition to the roadway, it may also incorporate curbs, utilities, lawn strips, sidewalks, parking lanes, lighting and drainage facilities and may include special features such as grade separation, landscaped areas, viaducts and bridges. The term public right-of-way shall also include public easements acquired by prescription.

ROAD FRONTAGE - The frontage that abuts onto a publicly dedicated and maintained road.

ROAD OR STREET, PUBLICLY DEDICATED AND MAINTAINED - That portion of a public right-of-way prescriptive easement which is improved, dedicated, and maintained by a local Highway District and intended for use by vehicles to provide traffic circulation and primary access to abutting properties.

ROOF SIGN - A sign erected upon the roof of a building or the top of a structure.

Sign - Any device, structure, fixture, display, painting or visual image using words, graphics, symbols, numbers, letters or lights to convey information or attract attention. Signs include their structure and component parts, and typically identify a residence or place of business, provide information, or direct attention to a subject matter, product, service, event, place, activity, institution, or organization.

RUNWAY - A defined rectangular area on an airport prepared for the landing and takeoff of aircraft.

SANITARIUM - A residence for the care of children, the elderly, infirm, incurable or convalescent of any age in which persons are provided with food, lodging and medical care, but not including hospitals, clinics or group homes.

SCHOOL, PRESCHOOL OR NURSERY - A school or organized program for the care and instruction of preschool age children under the age of six (6) years whether public or private and whether or not operated for profit.

SCHOOL, PUBLIC OR PRIVATE – Any land, building or part thereof which is designed, constructed or used for education or instruction in any branch of knowledge.

SENSITIVE AREAS - Sensitive areas are defined as a) land in, or within 300 feet of wetlands, streams, or lakes, b) areas where the water table is within 6 feet of ground surface at any time of the year, c) areas with slopes $\geq 25\%$ or that exhibit signs of instability, d) habitat for rare, threatened or endangered plants or animals, e) areas where the ground surface is within 50 feet of an unconsolidated, sand or gravel aquifer, and f) areas of special flood hazard (flood zones).

SETBACK LINE - A line established by these regulations or by other ordinances to govern the placement of buildings or other structures with respect to lot lines, streets, taxi-ways, or flanking roadways.

SIGN - Any device, structure, fixture, display, painting or visual image using words, graphics, symbols, numbers, letters or lights to convey information or attract attention. Signs include their structure and component parts, and typically identify a residence or place of business, provide information, or direct attention to a subject matter, product, service, event, place, activity, institution, or organization.

SIGN FACE - The surface of a sign on which an advertising message is displayed.

SITING AREA - That portion of a lot that contains the transmission tower, related buildings, and/or equipment required for the operation of a wireless communication facility.

SLOPE - An incline, described by the vertical change in elevation that occurs in 100 feet of horizontal distance (rise divided by run), expressed in percent (%). Slope is measured perpendicular to the contour of the land, and is the maximum incline for a given area.

SOUND LEVEL METER - An instrument standardized by the American Standards Association for measurement of intensity of sound.

SPECIAL EVENTS - Special events shall include, but not be limited to, outdoor musical concerts, festivals, fairs, carnivals, or any other outdoor public assembly in which persons are gathered together for commercial, civic, or social functions, recreation or for food or drink consumption, which may be expected to have or have 500 or more people at any one time. The provisions contained within this title which apply to special events shall not apply to the Kootenai County Fairgrounds. Special events as applied in this title shall not apply to any marine event conducted on the waters of Kootenai County which is regulated under *Idaho Code* §67-7030.

SPECIAL EVENTS LOCATION - A site that has been specifically approved through the Conditional Use Permit process to hold Special Events. The Kootenai County Fairgrounds and marine events conducted on the waters of Kootenai County are exempt from these requirements. No other sites or facilities in the unincorporated area of Kootenai County are considered "grandfathered" or exempt from the Conditional Use Permit requirement for Special Events.

STEALTH DESIGN - Constructed or modified in such a way as to best blend in with the surrounding environment and, in some circumstances, may not be readily recognized as a wireless communication facility.

STORAGE UNIT - A non-habitable building or portion of a building used for storage of equipment or materials associated with the principal or accessory use of the site. Storage units are typically distinguished from habitable space by having a door at least 8 feet in width to access the storage area.

STORY - That portion of a building included between the surface of any floor and the surface of the floor next above, or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story for the purpose of this title when more than one-half (1/2) of such basement height is above the established curb level or above the finished lot grade level where curb level has not been established.

STREAM - A natural water course of perceptible extent, with definite beds and banks, which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow.

Class I - A stream used for domestic water supply, or which is important for the spawning, rearing or migration of fish. Such waters will be considered to be class I upstream from the point of domestic diversion for a minimum distance of 1,320 feet.

Class II - Usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, streams shall be considered class II where the total upstream watershed is less than two hundred forty (240) acres. The principal value of class II streams lies in their influence on water quality and quantity in class I streams.

STREET - A public right-of-way which affords a primary means of access to abutting property.

STRUCTURAL ALTERATION - Any change other than incidental repairs, which would prolong the life of the supporting members of a building, such as the bearing walls, beams, or girders.

STRUCTURE - That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed or parts joined together in some definite manner.

SUBSTANTIAL CHANGE – Any change that will likely cause a material or directly relevant bearing on the decision making process or the public's, or an agency's, reasonable expectation of information provided at the time of application.

SURFACE MINE - An area where minerals are extracted by removing the overburden above and adjacent to natural deposits of minerals, and mining the deposits thereby exposed.

SURFACE MINING - Activities performed on a surface mine in the process of extracting minerals from the ground, including the excavation of pits, removal of materials, disposal of overburden, and the construction of haulage roads. Extraction of rock or fill material, or the processing of rock or other road materials, by a Kootenai County highway district shall not be considered surface mining activity for purposes of this title when the activity is carried on within a public right-of-way, or immediately adjoining property during temporary construction activity associated with publicly maintained roadways.

TAXIWAY - A defined path, from one part of an airport to another, selected or prepared for the taxiing of aircraft.

TEMPORARY HARDSHIP USE - A temporary use which is used as living quarters for a dependent relative when the temporary use is located on the same parcel as the dwelling of the owner of the property, and when the temporary use is accessory to the dwelling of the owner of the property and shall not be considered as a use to be transferred when the owner's property is sold or leased.

TEMPORARY SIGN - An easily removable sign, constructed of plywood or other non-durable material, displayed for a short period of time.

TOP SOIL - The darker colored, more friable upper position of the soil, down to such restrictions as claypans, hardpans, coarse sand and gravel, or rock.

TOXIC MATERIALS - Materials which are capable of causing injury to living organisms by chemical means when present in relatively small amounts.

TRANSMISSION TOWER - A tower, including, but not limited to, a self-supporting lattice or monopole structure, which elevates a wireless communication antenna and may include accessory transmission and receiving equipment.

TREE - A woody perennial plant, typically large and with a single, well-defined stem.

USE - The purpose or activity for which the land, or building thereon, is designed or intended, or for which is occupied or maintained, and shall include any manner or performance of such activity with respect to the performance standards of this title.

USES, PROHIBITED - Those uses not specifically enumerated as permitted uses. Prohibited uses are listed in this title for purposes of clarity and emphasis only. Prohibited uses mentioned include, but are not limited to, enumerated prohibited uses.

VARIANCE - As defined by *Idaho Code* §67-6516, "A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest."

VISUAL CLUTTER - A crowded, confused, disorderly collection of things that is visible to neighbors or the public.

WALL (OR BUILDING MOUNTED) SIGN - A sign painted on, applied to, or attached to the exterior surface of a building or structure, with the exposed face of the sign in a plane parallel to the plane of the wall, and where no part of the sign structure extends more than 16 inches out from that surface.

WETLAND - Those areas that are inundated or saturated by surface or ground water, at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marches, bogs and similar areas.

WETLAND SPECIALIST - A specialist in the field of wetlands delineation and assessment. A wetlands specialist has the ability to delineate wetlands, assess the function and value of particular wetlands, and provides assistance with wetland regulations and permits including the completion of application and permit forms, and provide technical advice about avoidance, minimization and compensatory mitigation of effects to wetlands. A wetlands specialist shall have at a minimum of a Bachelors of Science degree from an accredited university in biology, botany, ecology or a similar related field and a minimum of two years full time field experience as a wetlands professional or additional education that includes completion of a wetland-specific training program. This field experience may be in the form of certification from the Society of Wetlands Specialists or a list of accepted and approved plans from the U.S. Army Corps of Engineers or other applicable local, state or federal agencies. Any additional education or training shall include comprehensive information on wetland hydrology, hydric soils and hydroptic vegetation. Experience in wetland delineation should include delineating wetlands using state or federal regulatory manuals, preparing wetlands delineation reports as outlined by state or federal regulations, conducting wetland function and value assessments, and developing and implementing mitigation plans.

WIRELESS COMMUNICATION FACILITY (WCF) - Any facility designed and used for the purpose of transmitting, receiving, or relaying voice and data signals. Facilities include siting areas, transmission towers and antennas. This definition includes previously approved cell phone towers. Amateur radio, broadcast radio and television facilities, towers less than 20 feet in height that are mounted upon another structure and facilities with towers less than 40 feet in height above natural ground level are excluded from this definition. Minor modifications of WCFs are permitted. However, substantial changes to current WCFs (as determined by the Director), including, but not limited to, the physical expansion of a siting area or the extension of a transmission tower beyond 20 feet from its original height shall require a new or modified conditional use permit.

YARD - An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this title .

YARD, FRONT - A yard extending along the full length of the front lot line between the side lot lines.

YARD, REAR - A yard extending along the full length of the rear lot line between the side lot lines.

YARD, SIDE - A yard extending along a side lot line from the front yard to the rear yard.

ZONE OR DISTRICT - The words "Zone" and "District" are interchangeable in this title . "Zone" or "District" means all land or water areas within a stated boundary.

ZOO - A collection of living mammals, birds, and/or reptiles located and housed for public display.

CHAPTER 3
ESTABLISHMENT OF ZONES AND ZONING DISTRICT
PROVISIONS FOR OFFICIAL ZONING DISTRICT MAP

9-3-1: OFFICIAL ZONING DISTRICT MAP: The County is hereby divided into zones, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this title .

The Official Zoning Map shall be identified by the signature of the Chairman of the Board, attested by the County Clerk:

"This is to verify that this is the Official Zoning District Map referred to in Title 9 of the County Code of Kootenai County, Idaho."

Changes in boundaries of zones shall be made by ordinance after duly-noticed public hearing as prescribed by *Idaho Code* and Chapter 21 of this title . Upon adoption and publication of such amendment ordinance, said changes shall be made on the Official Zoning Map of Kootenai County, along with a notation of the date, file number(s), and initials of the person making the changes.

Regardless of the existence of purported copies of the Official Zoning District Map which may from time to time be made or published, the Official Zoning District Map, which shall be located in the Office of the Building and Planning Department, shall be final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

9-3-2: REPLACEMENT OF OFFICIAL ZONING DISTRICT MAP: In the event that the Official Zoning District Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature of number of changes and additions, the Board may, by ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning District Map. The new Official Zoning District Map may correct drafting or other errors or omissions in the prior Official Zoning District Map, but no such correction shall have the effect of amending the original Official Zoning District Map or any subsequent amendment thereof. The new Official Zoning District Map shall be identified by the signature of the Chairman of the Board, and attested by the County Clerk:

"This is to verify that this Official Zoning District Map supersedes and replaces the Official Zoning District Map adopted (date of Adoption of map being replaced) as part of Title 9 of the County Code of Kootenai County, Idaho."

Unless the prior Official Zoning District Map has been lost, or has been totally destroyed, the prior Map or any significant parts thereof remaining, shall be preserved, together with all available records pertaining to its adoption or amendment.

CHAPTER 4
ZONE BOUNDARIES

9-4-1: RULES AND INTERPRETATION : Where uncertainty exists as to the boundaries of zone, as shown on the Official Zoning District Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerlines;
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- C. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
- D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- E. Boundaries indicated as following shorelines shall be construed to follow such shorelines and legally established meander lines. In the event of change in the shoreline, it shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines;
- F. Boundaries indicated as parallel to or extensions of features indicated in Subsections "A" through "E" above, shall be so construed. Distances not specifically indicated on the Official Zoning District Map shall be determined by the scale of the Map;
- G. Boundaries indicated as following Section or Township lines shall be construed as following such Section or Township lines;
- H. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning District Map, or in other circumstances not covered by subsections "A" through "G" above, the Board of Adjustment/Hearing Examiner shall interpret the zone boundaries.
- I. Where a zone boundary line divides a lot which was in single ownership at the time of passage of this title, the Board may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the zone line into the remaining portion of the lot.

CHAPTER 5
APPLICATION OF ZONING DISTRICT REGULATIONS

9-5-1: MINIMUM AND UNIFORM: The regulations set by this title within each zone shall be minimum regulations and shall apply uniformly to each class or kind of structure or land use.

9-5-2: COMPLIANCE WITH ZONING REGULATIONS REQUIRED: No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered, except in conformity with all of the regulations herein specified for the zone in which it is located.

9-5-3: ERECTION AND ALTERATION OF BUILDINGS: No building or other structure shall hereafter be erected or altered:

- A. To exceed the height regulations;
- B. To accommodate or house a greater number of families;
- C. To occupy a greater percentage of lot area;
- D. To have narrower or smaller rear yards, front yards, side yards, or other open space than herein required; or in any other manner contrary to the provisions of this title .

9-5-4: INCLUSION OF OPEN SPACE: No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this title shall be included as part of a yard, open space, or off-street parking, or loading space similarly required for any other building.

9-5-5: YARD AND LOT SIZES: No yard or lot existing as of the effective date of Kootenai County Zoning Ordinance No. 348, February 8, 2005, shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after January 3, 1973, or in the Rural Zone, September 1, 1978, shall meet at least the minimum requirements.

In zones with a five (5.00) acre or larger minimum lot size, the size of the lots may be figured using gross acreage (including ½ of the adjacent right-of-way), provided the net lot size (excluding right-of-way) is no more than 10% smaller than the minimum lot size listed for the zone (4.50 acres net for a 5.00 acre minimum lot size). In zones with minimum lot sizes smaller than 5.00 acres, the size of the lots shall be figured using net acreage.

**CHAPTER 6
AGRICULTURAL ZONE (A)**

SECTIONS:

- 9-6-1 AGRICULTURAL ZONE DEFINED
- 9-6-2 RESTRICTIONS
- 9-6-3 LOT SIZE AND SITE AREA
- 9-6-4 EXISTING CEMETERIES
- 9-6-5 USES PERMITTED - EXISTING PROPERTY OF LESS THAN 5.00 ACRES
- 9-6-6 USES PERMITTED - 5.00 ACRES OR MORE
- 9-6-7 USES PERMITTED - STORAGE
- 9-6-8 USES PROHIBITED
- 9-6-9 FRONT, SIDE, AND REAR YARDS
- 9-6-10 OFF-STREET PARKING
- 9-6-11 CONDITIONAL USES
- 9-6-12 USES REQUIRING SPECIAL NOTICE

9-6-1: AGRICULTURAL ZONE DEFINED: The "Agricultural zone" is a land use classification for a district suitable for farming and agricultural pursuits, tree farms, and all uses that come under the title of forestry uses.

9-6-2: RESTRICTIONS: In the Agricultural zone, no building or premises shall be used, nor shall any building or structure hereafter erected or altered (unless provided in this title), except for one or more of the following uses in accordance with the following standards; provided, however, that those standards shall not be in conflict with *Idaho Code* § 67-6529, which reads in part: "No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product." For purposes of this title, agricultural land is defined as a tract of land containing not less than five (5.00) acres, including canal and railroad rights-of-way, used exclusively for agricultural purposes.

9-6-3: LOT SIZE AND SITE AREA: After January 3, 1973, the minimum lot size in the Agricultural zone, shall be five (5.00) acres. The following uses are permitted, provided sixty-five percent (65%) of the lot is left as open space free from structures.

9-6-4: EXISTING CEMETERIES: Any existing cemetery shall not be restricted in any manner, except that expansion of existing property shall conform with the laws of Idaho.

9-6-5: USES PERMITTED - EXISTING PROPERTY OF LESS THAN 5.00 ACRES: On lots created prior to January 3, 1973, which are less than 5.00 acres in size, only the following uses are permitted:

- A. General farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- B. One single-family dwelling, including Class A and B manufactured homes, with accessory buildings.
- C. Prior to the establishment of a principal use, one personal storage building not to exceed 3,000 square feet, however, a special notice permit shall be required for personal storage buildings on lots or parcels under two (2.00) acres in size where the principal building or use has not yet been established, and shall not exceed 2,000 square feet in size..

9-6-6: USES PERMITTED – 5.00 ACRES OR MORE: On lots, as defined by this title, that are a minimum of five (5.00) acres, the following uses are permitted:

- A. General Farming.

- B. Roadside stands of not more than three hundred (300) square feet used for sale of agricultural products on the premises.
- C. One single-family dwelling, including Class A and B manufactured homes, with accessory buildings.
- D. Home occupation, as defined in this title.
- E. Publicly-owned parks, playgrounds, recreational facilities.
- F. Bed and Breakfast, subject to the following provisions:
 - 1. Maximum of five (5) rooms for lodging of paying guests.
 - 2. Must provide off-street automobile parking space for each guest room.
 - 3. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.
- G. One two-family dwelling or duplex.
- H. Processing plants, feed mills, packing plants, and warehouses for the purpose of processing, packing, and storage of agricultural products, employing regularly not more than ten (10) persons, but excluding meat, poultry, slaughterhouses, and commercial fertilizer manufacturing.
 - 1. Dairy products manufacture.
- J. Cemeteries, provided that they meet all standards of the *Idaho Code* and approved by the Panhandle Health District.
- K. Temporary Hardship Use, subject to the standards of this title.
- L. Temporary or intermittent recreational use of a Recreational Vehicle provided the following conditions are met:
 - 1. The Recreational Vehicle (RV) shall have current registration and shall be in serviceable condition so it can be operated in a safe and lawful manner upon the roads and highways in the State of Idaho as set forth in the Idaho Motor Vehicle Laws of the State of Idaho. The RV shall not be set on blocks with the tires or running gear removed.
 - 2. No decks or additions shall be attached to the RV, nor shall the RV be skirted.
 - 3. The RV shall not be used as a dwelling. The owners must have a primary residence other than the RV. There shall be no mail service to this type of use. An RV may be used as a dwelling for the owners of the property during construction of a dwelling on the same property as the RV site. Upon completion of the residence or expiration of the building permit for the residence, the use of the RV shall revert to the temporary or intermittent use as allowed under this provision.
 - 4. The RV must be hooked into a sewage disposal system which meets the requirements of the Panhandle Health District, or shall be totally self-contained and removed from the site to empty holding tanks at an approved location.
 - 5. The RV shall not be used as a rental property.

6. RV's located in flood plains must comply with the *Flood Damage Prevention Ordinance*.

M. Prior to the establishment of the principal use, one (1) personal storage building not to exceed 3,000 square feet.

N. Accessory Living Unit. See definitions for additional standards.

9-6-7: USES PERMITTED – STORAGE: Except as allowed with a Conditional Use Permit, no property in the Agricultural zone shall be used as a storage area for any purpose other than storage of material used in connection with the operation of the above uses.

9-6-8: USES PROHIBITED: Prohibited uses in the Agricultural zone include, but are not limited to, the following:

- A. General commercial uses, except as specifically permitted.
- B. General manufacturing uses, except as specifically permitted.
- C. Subdivisions, as defined in the *Kootenai County Subdivision Ordinance*.

9-6-9: FRONT, SIDE, AND REAR YARDS: The following front, side, and rear yard requirements shall apply in the Agricultural zone:

A. Residential Structures:

- 1. Front Yard..... 25 feet
- 2. Side yard 10 feet
 With an alley 6 feet
- 3. Rear yard 25 feet
- 4. Flanking street 15 feet

B. Accessory buildings, Personal Storage buildings:

- 1. Front yard 25 feet
- 2. Side yard 10 feet
 With an alley 6 feet
- 3. Rear yard 15 feet
- 4. Flanking street 15 feet

C. All other allowed structures:

- 1. Front yard 30 feet
- 2. Side yard 30 feet
- 3. Rear yard 30 feet
- 4. Flanking street 25 feet

9-6-10: OFF-STREET PARKING: Off-street parking for vehicles is required as follows:

A. Residence - One (1) off-street parking space for each dwelling. Two (2) off-street parking spaces are required for a two-family dwelling or duplex.

9-6-11: CONDITIONAL USES:

- A. Gun Clubs, Rifle Ranges, and Archery Ranges.
- B. Slaughterhouses and Rendering Plant.

- C. Golf Course and Driving Range.
- D. Commercial Fur Farms.
- E. Commercial Resort.
- F. Agricultural Products Sales Store.
- G. Rental Warehouse.
- H. Clinics or Hospital – Animal or Veterinary.
- I. Automobile Wrecking Yards, Junk Yards.
- J. Sawmills, Shingle or Planing Mill, or Woodworking Plant.
- K. Retirement, Convalescent, and Nursing Homes.
- L. Radio and Television Towers.
- M. Airports and Airstrips.
- N. Race Tracks.
- O. Feed Lots.
- P. Private Resort (Nonprofit).
- Q. Public Utility Complex Facility.
- R. Wholesale Greenhouses.
- S. Restricted Surface Mining.
- T. Day Care Center, Group Day Care Facility.
- U. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
- V. Churches, grange halls, lodges, and other nonprofit public or private community facility.
- W. Mini-Storage.
- X. Fish hatchery or fish farm.
- Y. Public and private schools.
- Z. Hospitals and sanitariums.
- AA. Residential Care Facility.

BB. Special Events Location.

CC. Wireless Communication Facility (WCF).

DD. Kennels, Boarding.

EE. Commercial Riding Arena or Equine Training Center or Facility.

9-6-12: USES REQUIRING SPECIAL NOTICE:

A. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of an allowed railroad or trucking business.

CHAPTER 7
AGRICULTURAL SUBURBAN ZONE (AS)

SECTIONS:

- 9-7-1 AGRICULTURAL SUBURBAN ZONE DEFINED
- 9-7-2 RESTRICTIONS
- 9-7-3 LOT SIZE, DENSITY AND SITE AREA
- 9-7-4 USES PERMITTED - EXISTING PROPERTY LESS THAN 8,250 SQUARE FEET
- 9-7-5 USES PERMITTED - LOTS MEETING MINIMUM SIZE REQUIREMENTS
- 9-7-6 USES PERMITTED - STORAGE
- 9-7-7 USES PROHIBITED
- 9-7-8 FRONT, SIDE, AND REAR YARDS
- 9-7-9 OFF-STREET PARKING
- 9-7-10 CONDITIONAL USES
- 9-7-11 USES REQUIRING SPECIAL NOTICE

9-7-1: AGRICULTURAL SUBURBAN ZONE DEFINED: The "Agricultural Suburban zone" is a land use classification for a district suitable for residential and agricultural uses.

9-7-2: RESTRICTIONS: In the Agricultural Suburban zone, no building or premises shall be used, nor shall any building or structure hereafter be erected or altered (unless provided in this title) except for one (1) or more of the following used in accordance with the following standards.

9-7-3: LOT SIZE, DENSITY AND SITE AREA: Minimum lot sizes in the Agricultural Suburban Zone are as follows:

Lots legally created by a deed or plat recorded prior to February 8, 2005:	8,250 sq. ft.
Lots in Conservation Design Subdivisions:	14,520 sq. ft.
All other lots:	2.00 acres

The maximum base density in conservation design subdivisions shall be one (1) lot per two (2.00) acres. The following uses are permitted, provided sixty-five (65) percent of the area of the lot is left in open space free from structures.

9-7-4: USES PERMITTED - EXISTING PROPERTY OF LESS THAN 8,250 SQUARE FEET: On lots created prior to January 3, 1973, which are less than 8,250 square feet in size, the uses shall be limited to one (1) single-family dwelling, including Class A manufactured homes, with accessory buildings.

9-7-5: USES PERMITTED - LOTS MEETING MINIMUM SIZE REQUIREMENTS: On lots, as defined by this title , created after January 1, 1973 that meet the minimum size requirements, the following uses are permitted:

- A. General farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- B. Temporary office for the sale of real estate for a period not to exceed two (2) years.
- C. One (1) single-family dwelling, including Class A manufactured homes, with accessory buildings.
- D. Home occupations, as defined in this title.
- E. Subdivisions as defined in the *Kootenai County Subdivision Ordinance*.
- F. Temporary Hardship Use, subject to the standards of this title.

- G. Bed and Breakfast, subject to the following provisions:
 - 1. Maximum of five (5) rooms for lodging of paying guests.
 - 2. Must provide off-street automobile parking space for each guest room, as well as all vehicles owned by permanent residents.
 - 3. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.
- H. Publicly-owned parks, playgrounds, and recreational facilities.
- I. Continued operation of airports or airstrips that were in existence at the time of adoption of Kootenai County Zoning Ordinance No. 11, January 3, 1973, and which have been used continuously (at least once every 6 months) since that date.
- J. Temporary or intermittent recreational use of a Recreational Vehicle provided the following conditions are met:
 - 1. The Recreational Vehicle (RV) shall have current registration and shall be in serviceable condition so it can be operated in a safe and lawful manner upon the roads and highways in the State of Idaho as set forth in the Idaho Motor Vehicle Laws of the State of Idaho. The RV shall not be set on blocks with the tires or running gear removed.
 - 2. No decks or additions shall be attached to the RV, nor shall the RV be skirted.
 - 3. The RV shall not be used as a dwelling. The owners must have a primary residence other than the RV. There shall be no mail service to this type of use. An RV may be used as a dwelling for the owners of the property during construction of a dwelling on the same property as the RV site. Upon completion of the residence or expiration of the building permit for the residence, the use of the RV shall revert to the temporary or intermittent use as allowed under this provision.
 - 4. The RV must be hooked into a sewage disposal system which meets the requirements of the Panhandle Health District, or shall be totally self-contained and removed from the site to empty holding tanks at an approved location.
 - 5. The RV shall not be used as a rental property.
 - 6. RV's located in flood plains must comply with the *Flood Damage Prevention Ordinance*.
- K. One (1) two-family dwelling or duplex.
- L. Prior to establishment of the principal use, one (1) personal storage building not to exceed 2,000 square feet on lots or parcels two (2.00) acres or more in size.
- M. Accessory Living Unit. See definitions for additional standards.

9-7-6: USES PERMITTED – STORAGE: No property in the Agricultural Suburban zone shall be used as a storage area for any purpose other than storage of material used in connection with the above permitted uses, or with an approved conditional use or special notice permit.

9-7-7: USES PROHIBITED: Prohibited uses in the Agricultural Suburban zone include, but are not limited to, the following:

- A. Commercial uses.

B. Manufacturing uses.

9-7-8: FRONT, SIDE, AND REAR YARDS: The following front, side, and rear yard requirements shall apply in the Agricultural Suburban zone:

A. Residential structures:

1. Front yard 25 feet
2. Side yard 10 feet
 With an alley..... 6 feet
3. Rear yard..... 25 feet
4. Flanking street..... 15 feet

B. Accessory buildings, Personal Storage buildings:

1. Front yard 25 feet
2. Side yard..... 10 feet
 With an alley..... 6 feet
3. Rear yard 15 feet
4. Flanking street..... 15 feet

C. All other allowed structures:

1. Front yard 30 feet
2. Side yard..... 30 feet
3. Rear yard 30 feet
4. Flanking street..... 25 feet

9-7-9: OFF-STREET PARKING: Off-street parking for vehicles is required as follows:

A. Residence - One (1) off-street parking space for each dwelling. Two (2) off-street parking spaces are required for a two-family dwelling or duplex.

9-7-10: CONDITIONAL USES:

- A. Golf Courses and Driving Ranges.
- B. Commercial Resort.
- C. Retirement, Convalescent, and Nursing Homes.
- D. Private Resort (non-profit).
- E. Privately-owned recreational facilities which are open to public use (with or without a membership or fee), such as Tennis Courts, Racquet Clubs, Softball Fields, Baseball Fields, and Soccer Fields.
- F. Public Utility Complex Facility.
- G. Wholesale Greenhouses.
- H. Day Care Center, Group Day Care Facility.
- I. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
- J. Churches, grange halls, or lodges.
- K. Mini-Storage.

- L. Cemeteries.
- M. Medical and Dental Clinics.
- N. Public and private schools.
- O. Hospitals and Sanitariums.
- P. Residential Care Facility.
- Q. Kennel, Boarding.
- R. Clinic or Hospital, Animal or Veterinary.

9-7-11: USES REQUIRING SPECIAL NOTICE:

- A. Class B Manufactured Home.
- B. Multiple-family dwelling.
- C. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of an allowed railroad or trucking business.
- D. On lots or parcels under two (2.00) acres in size, personal storage buildings where the principal building or use has not yet been established. Personal storage buildings shall not exceed 2,000 square feet.

**CHAPTER 8
RESTRICTED RESIDENTIAL ZONE (RR)**

SECTIONS:

- 9-8-1 RESTRICTED RESIDENTIAL ZONE DEFINED
- 9-8-2 RESTRICTIONS
- 9-8-3 LOT SIZE AND SITE AREA
- 9-8-4 USES PERMITTED - PROPERTY LESS THAN 8,250 SQUARE FEET
- 9-8-5 USES PERMITTED - PROPERTY OF 8,250 SQUARE FEET
- 9-8-6 USES PERMITTED - 9,900 SQUARE FEET
- 9-8-7 USES PERMITTED - 5.00 ACRES OR MORE
- 9-8-8 USES PERMITTED - STORAGE
- 9-8-9 USES PROHIBITED
- 9-8-10 FRONT, SIDE, AND REAR YARDS
- 9-8-11 OFF-STREET PARKING
- 9-8-12 CONDITIONAL USES
- 9-8-13 USES REQUIRING SPECIAL NOTICE

9-8-1: RESTRICTED RESIDENTIAL ZONE DEFINED: The "Restricted Residential zone" is a land use classification for a district suitable for residential use which is, or will become, a one- or two-family unit living area. Uses are generally limited to residential uses.

9-8-2: RESTRICTIONS: In the Restricted Residential zone, no building or premises shall be used nor shall any building or structure hereafter be erected or altered (unless provided in this title) except for one (1) or more of the following uses in accordance with the following standards. Within the boundaries of Area of City Impact of the City of Hayden Lake, the density shall be limited to no more than one single-family dwelling per acre.

9-8-3: LOT SIZE AND SITE AREA: The minimum lot size in the Restricted Residential Zone shall be 8,250 square feet. The following uses are permitted, provided sixty-five (65) percent of the area of the lot is left in open space free from structures.

9-8-4: USES PERMITTED - EXISTING PROPERTY OF LESS THAN 8,250 SQUARE FEET: On lots created prior to January 3, 1973, which are less than 8,250 square feet in size, the uses shall be limited to one (1) single-family dwelling, including Class A manufactured homes, with accessory buildings.

9-8-5: USES PERMITTED - PROPERTY OF 8,250 SQUARE FEET: On lots, as defined by this title, that are a minimum of eight thousand two hundred fifty (8,250) square feet, the following uses are permitted:

- A. One (1) single-family dwelling, including Class A manufactured homes, with accessory buildings.
- B. Home occupations, as defined in this title.
- C. Publicly-owned parks, playgrounds, recreational facilities.
- D. Subdivisions, as defined in the *Kootenai County Subdivision Ordinance*.
- E. Temporary Hardship Use, subject to the standards of this title.
- F. Bed and Breakfast, subject to the following provisions:
 - 1. Maximum of five (5) rooms for lodging of paying guests.

2. Must provide off-street automobile parking space for each guest room, as well as all vehicles owned by permanent residents.
3. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.

G. Temporary or intermittent recreational use of a Recreational Vehicle provided the following conditions are met:

1. The Recreational Vehicle (RV) shall have current registration and shall be in serviceable condition so it can be operated in a safe and lawful manner upon the roads and highways in the State of Idaho as set forth in the Idaho Motor Vehicle Laws of the State of Idaho. The RV shall not be set on blocks with the tires or running gear removed.
2. No decks or additions shall be attached to the RV, nor shall the RV be skirted.
3. The RV shall not be used as a dwelling. The owners must have a primary residence other than the RV. There shall be no mail service to this type of use. An RV may be used as a dwelling for the owners of the property during construction of a dwelling on the same property as the RV site. Upon completion of the residence or expiration of the building permit for the residence, the use of the RV shall revert to the temporary or intermittent use as allowed under this provision.
4. The RV must be hooked into a sewage disposal system which meets the requirements of the Panhandle Health District, or shall be totally self-contained and removed from the site to empty holding tanks at an approved location.
5. The RV shall not be used as a rental property.
6. RV's located in flood plains must comply with the *Flood Damage Prevention Ordinance*.

H. Accessory Living Unit. See definitions for additional standards.

9-8-6: USES PERMITTED - 9,900 SQUARE FEET: On lots, as defined by this title, that are a minimum of nine thousand nine hundred (9,900) square feet, the following uses are permitted:

- A. Any of the uses listed in section 9-8-5 of this chapter.
- B. One (1) two-family dwelling or duplex.
- C. Accessory Living Unit. See definitions for additional standards.

9-8-7: USES PERMITTED - FIVE (5.00) ACRES OR MORE: On property of not less than five (5.00) acres, the following uses are permitted:

- A. Any of the uses listed in section 9-8-6 of this chapter.
- B. The keeping of livestock subject to the following limitations:
 1. Livestock limited to three (3) animals per every five (5) acres.
 2. No commercial breeding programs allowed.
 3. Livestock limited to recreation, hobby, or community/school projects.

4. Livestock must be confined to enclosed areas:
 - a. At least 300 feet from permanent or intermittent water bodies, or drainage ways.
 - b. At least 100 feet from residential property line or at least 200 feet from neighboring residential dwellings, whichever ever is greater.
5. Livestock care and animal waste management must meet all applicable Health District regulations.

C. Accessory Living Units. See definitions for additional standards.

9-8-8: USES PERMITTED – STORAGE: No property in the Restricted Residential zone shall be used as a storage area for any purpose other than storage of material used in connection with the above permitted uses, or with an approved conditional use.

9-8-9: USES PROHIBITED: Prohibited uses in the Restricted Residential Zone, include, but are not limited to the following:

- A. General Commercial uses.
- B. General Manufacturing uses.

9-8-10: FRONT, SIDE, AND REAR YARDS: The following front, side, and rear yard requirements shall apply for all permitted structures in the Restricted Residential zone:

- | | |
|--------------------|---------|
| A. Front yard | 25 feet |
| B. Side yard | 10 feet |
| With an alley | 6 feet |
| C. Rear yard | 25 feet |
| D. Flanking street | 15 feet |

9-8-11: OFF-STREET PARKING: Off-street parking for vehicles is required as follows:

- A. Residence – One (1) off-street parking space for each dwelling. Two (2) off-street parking spaces are required for a two-family dwelling or duplex.

9-8-12: CONDITIONAL USES:

- A. Golf Courses and Driving Ranges.
- B. Commercial Resort.
- C. Private Resort (non-profit).
- D. Public Utility Complex Facility.
- E. Retirement, Convalescent, and Nursing Homes.
- F. Day Care Center and Group Day Care Facility.

- G. Privately-owned recreational facilities which are open to public use (with or without a membership or fee) such as Tennis Courts, Racquet Clubs, Softball Fields, Baseball Fields, and Soccer Fields.
- H. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
- I. Church.
- J. Residential Care Facility.

9-8-13: USES REQUIRING SPECIAL NOTICE:

- A. Class B Manufactured Home.
- B. Personal storage building, located on a lot where the principal building or use has not yet been established. Personal storage buildings shall not exceed 2,000 square feet.

**CHAPTER 9
COMMERCIAL ZONE (C)**

SECTIONS:

- 9-9-1 GENERAL COMMERCIAL ZONE DEFINED
- 9-9-2 9.01 PERFORMANCE STANDARDS
- 9-9-3 9.02 SITE AREAS
- 9-9-4 9.03 USES PERMITTED
- 9-9-5 9.04 FRONT, SIDE, AND REAR YARDS
- 9-9-6 9.05 USES PERMITTED - STORAGE
- 9-9-7 9.06 USES PROHIBITED
- 9-9-8 9.07 CONDITIONAL USES
- 9-9-9 9.08 RECREATIONAL VEHICLE PARK PERFORMANCE STANDARDS
- 9-9-10 9.09 SPECIAL NOTICE PERMITS

9-9-1: GENERAL COMMERCIAL ZONE DEFINED: The "General Commercial zone" is a land use classification for a district suitable for wholesale and retail sales and services.

9-9-2: PERFORMANCE STANDARDS: In the Commercial zone, no building or premises shall be used, nor any building or structure be hereafter erected or altered, unless otherwise provided in this title, except for one (1) or more of the following uses in accordance with the following standards. A Commercial lot shall have direct access from a public road.

All uses shall meet the following standards:

- A. Requirements of Chapter 17 of this title, Design Standards
- B. Requirements of Chapter 19 of this title, Supplementary Regulations
- C. Anticipated traffic impacts will be determined for all commercial uses using the most current edition of the "Trip Generation Manual." A Special Notice Permit shall be required for commercial uses or buildings that are anticipated to generate traffic impacts in excess of the following thresholds:
 - 1. For sites which access directly onto a State or Federal Highway- 25 cars per hour, or 250 vehicles per day.
 - 2. For sites which access onto other public roads - 50 cars per day.
- D. Uses on all lots or parcels in the Commercial zone which front on a state or federal highway shall require a Special Notice Permit.
- E. Requirements of the applicable Highway District and Idaho Transportation Department or if the site is within an area of city impact, the city's standards for access, approaches, and street design, whichever is the higher standard.
- F. If an existing community water system within 1,000 feet of the site is willing and able to provide water service to the use, connection to that system shall be required.
- G. Requirements of the Panhandle Health District for sanitary sewage disposal.
- H. Requirements of the Panhandle Health District's Critical Materials Regulation.

I. All uses shall be in a structural Fire Protection District and meet all applicable District regulations; or absent a structural Fire Protection District, shall incorporate fire protection measures recommended by the State Fire Marshall.

J. No uses shall generate sound pressure levels greater than 80 dBA as measured at the property line.

9-9-3: **SITE AREAS:** Fifty percent (50%) of the area of all sites must be left in open spaces free from structures.

9-9-4: **USES PERMITTED:**

- A. Parks, playgrounds, and golf courses.
- B. Community facilities, including fire stations, public utility installations, etc.
- C. Public or non-profit recreational buildings.
- D. Any wholesale, retail or service business.
- E. Public or private office buildings.
- F. Any eating or drinking establishment, or other entertainment facility.
- G. Hospitality businesses, such as hotels and motels, and meeting and convention facilities.
- H. Transfer, storage, and warehouse facilities, except outside storage must be within a sight-obscuring fence.
- I. Single family, two-family or multi-family dwellings are allowed provided they are on the second and/or third floors of a commercial building, or in a separate structure provided it is accessory to the commercial use of the site. Residential uses are subject to the density requirements of the High Density Residential (HDR) zone.
- J. Recreational vehicle park.
- K. General farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- L. Vocational, trade, or private instructional schools, providing a specialized or single-item curriculum.
- M. Churches.

9-9-5: **FRONT, SIDE, AND REAR YARDS:** The following front, side, and rear yard setback requirements shall apply in the Commercial zone.

All Buildings:

- A. Front yard.....35 feet
- B. Side yard.....none
- C. Flanking street.....20 feet
- D. Rear yard.....15 feet

9-9-6: **USES PERMITTED – STORAGE:** No premises in the Commercial zone shall be used as a storage area for any purpose other than storage of materials required in connection with the enumerated permitted uses in the Commercial zone.

Storage areas must conform to the minimum setback regulations of the zone. Automobiles and other machinery normally displayed for sales purposes on an open lot may be so displayed.

9-9-7: USES PROHIBITED:

- A. Automobile wrecking yards and junk yards.
- B. Processing and manufacturing are prohibited, unless they are part of the operation of a business or service specifically permitted in the Commercial zone. Such processing and manufacturing uses must be clearly incidental to the permitted use on the site.

9-9-8: CONDITIONAL USES:

- A. Outdoor Theaters.
- B. Public Utility Complex Facility.
- C. Zoos.
- D. Radio and Television Towers.
- E. Special Events Location (Note: See the definitions of Special Events and Special Events Location in Section 9-2-2 of this Title).
- F. Wireless Communication Facility (WCF).

9-9-9: RECREATIONAL VEHICLE PARK PERFORMANCE STANDARDS:

- A. Intent - The intent of these standards is for temporary living quarters and not permanent or year-round housing.
- B. Accessory Uses - Management headquarters, recreational facilities, toilets, dumping stations, coin-operated laundry facilities, and other convenience establishments are permitted as accessory uses incidental to the operation of the recreational vehicle park.
- C. Recreational vehicles shall be separated from each other and from other structures by at least ten (10) feet. Any accessory structures, such as attached awnings or carports, shall, for the purpose of this separation requirement, be considered to be part of the recreational vehicle.
- D. Each recreational vehicle lot/space shall contain a stabilized vehicular parking pad composed of paving, compacted crushed gravel, or other all-weather material.
- E. Interior drives in recreational vehicle parks which enter and exit onto a public road must be approved by the applicable Highway District or the Idaho Transportation Department.
- F. Yards, fences, walls, or vegetative screening shall be provided at the property lines of a recreational vehicle park where the park adjoins adjacent lands that are zoned or used for residential purposes. In particular, extensive off-street parking areas and service areas for loading and unloading purposes other than for passenger uses and areas for storage and collection of refuse shall be screened.
- G. If it is determined by the applicable Highway District or Idaho Transportation Department that traffic control devices or other traffic regulation improvements are required as a result of development of a recreational vehicle park, the Sponsor shall be responsible for the cost of installation or construction of said improvements.

- 11. Internal roads and parking service areas shall provide safe and convenient access for service and emergency vehicles and to amenities within the recreational vehicle park. Internal roads shall not be designed to encourage use by outside traffic to traverse the recreational vehicle park to adjoining developed areas.
- I. Each recreational vehicle lot shall have one (1) off-street vehicle parking space.
- J. Any action toward removal of wheels of a recreational vehicle, except for temporary purposes of repair or to attach the recreational vehicle to the grounds for stabilizing purposes is prohibited.
- K. Occupancy of a recreational vehicle park space by a particular recreational vehicle shall be limited each year to only those days between Memorial Day and October 1, and/or a maximum of thirty (30) consecutive days during the remaining months of the calendar year.
- L. A site plan shall be submitted upon application for a building permit with a North arrow and date of drawing, showing uses and structures which are proposed. Said plan shall include adequate information to clearly depict existing and proposed structures and their uses, existing and proposed roads, easements, points of access, recreational vehicle lot dimensions, number of acres in site, dimensions of property lines, property line setbacks, reserved or dedicated open space, major landscape features (both natural and man-made), locations of existing and proposed utility lines, accessory off-street parking and loading facilities, parking space areas, wastewater drainfield area, traffic circulation patterns, refuse and service areas, signs, outdoor storage, and fences, yards, or wall or vegetative screening.

9-9-10: SPECIAL NOTICE PERMITS:

- A. Outdoor Lighting of Permitted Recreational Uses.
- B. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of a railroad or trucking business.
- C. As required by section 9-9-2 of this chapter.

CHAPTER 10
LIGHT INDUSTRIAL ZONE (LI)

SECTIONS:

9-10-1	LIGHT INDUSTRIAL ZONE DEFINED
9-10-2	RESTRICTIONS
9-10-3	USES PERMITTED - AGRICULTURAL, COMMERCIAL AND LIGHT INDUSTRIAL
9-10-4	USES PERMITTED - STORAGE
9-10-5	USES PROHIBITED
9-10-6	FRONT, SIDE, AND REAR YARD SETBACKS
9-10-7	BUILDING LINE VARIATIONS
9-10-8	BUILDING HEIGHT
9-10-9	CONDITIONAL USES
9-10-10	USES REQUIRING SPECIAL NOTICE

9-10-1: LIGHT INDUSTRIAL ZONE DEFINED: The "Light Industrial zone" is a land use classification for a district suitable for manufacturing and processing of a non-nuisance character. The purpose of the Light Industrial zone is to encourage the development of manufacturing and wholesale business that is clean, quiet, and free of noise, odor, dust, and smoke.

9-10-2: RESTRICTIONS: In the Light Industrial zone, no building or premises shall be used nor any building or structure be hereafter erected, altered, or occupied except in compliance with all provisions of this title. A Light Industrial lot shall have direct access from a public road, or the frontage road or interior road serving more than one Light Industrial lot shall have direct access from a public road.

9-10-3: USES PERMITTED:

- A. General Farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- B. Public Parks.
- C. Light Industrial uses that meet the following requirements:
 - 1. Are carried on in such a manner and with such precautions against fire and explosion hazards as provided by the International Building Code.
 - 2. Screen or store all raw materials, finished products, machinery, and equipment, including company-owned or operated trucks, within a building, a fence, or vegetative barrier as required by this Article.
 - 3. Emit no obnoxious odors of any kind.
 - 4. Exhaust no waste or dust created by business operation into the air.
 - 5. Discharge no treated or untreated sewage or waste into any reservoir or lake. Discharge and disposal of untreated sewage or industrial waste shall comply with the standards approved by the State Department of Health.
 - 6. Be conducted so that direct and indirect illumination shall not exceed 0.2 foot candle across lot lines of the subject property.

7. Conduct no mining, extraction, filling, or soil-stripping operations.
8. Use only oil, gas, or electricity as industrial fuel.
9. Emit noise causing sound pressure levels greater than those listed in section 9-11-10 of this title.

9-10-4: USES PERMITTED – STORAGE: On any property of whatever size with frontage on a public street the following uses are permitted:

- A. Storage of materials and machinery - Storage areas must conform to the minimum setback regulations of the zone.
- B. Storage of up to five-thousand (5,000) gallons of petroleum products, in conformance with the Kootenai County *Best Management Practices for Containing Critical Materials During Above Ground Storage and Handling* and section 9-11-10 of this title .

9-10-5: USES PROHIBITED: Prohibited uses in the Light Industrial zone include, but are not limited to, the following:

- A. General Residential Uses.
- B. Public and private schools, general hospitals, sanatoriums, churches, and cemeteries.
- C. Stockyards, soap manufacture, glue manufacture, tannery, paper manufacture, wool scouring and cleaning, cotton textile sizing, scouring, leaching, dyeing, and similar uses; varnish manufacture; creosote; and products manufacture.
- D. The production of corrosive and noxious chemicals, including, but not limited to, acids, acetylene gas, ammonia, chlorine, and bleaching compounds.
- E. The production and process of coal and coal tar, the processing of petroleum and petroleum products, and petroleum refining.
- F. The extraction, preparation, and processing of dust-producing mineral products including, but not limited to, abrasive, cement, lime, fertilizer, plaster, crushed stone, mining of sand, gravel, topsoil.
- G. The smelting and reduction of metallic ores including, but not limited to, blast furnaces, open hearth, and electric furnaces, bessemer converters, and non-ferrous metal smelters.
- H. The manufacture and storage of explosive products, including, but not limited to, dynamite, commercial explosives, T.N.T., military explosives, and fireworks.

9-10-6: FRONT, SIDE, AND REAR YARD SETBACKS:

- A. Public and Semi-Public Uses:
 1. Front Yard.....35 feet
 2. Side Yard.....No requirement, except when the use abuts any Residential zone; then the side yard shall be five (5) feet for each story of the building.
 3. Flanking Street.....20 feet
 4. Rear Yard.....35 feet
- B. Commercial and Industrial Buildings:
 1. Front Yard.....35 feet

2. Side Yard.....No requirement except when a commercial or industrial building abuts any Residential zone then the side yard shall be five (5) feet for each story of the building.
3. Flanking Street.....20 feet
4. Rear Yard.....15 feet

9-10-7: BUILDING LINE VARIATIONS: Where there is an established building line in a Light Industrial zone, a commercial or industrial building may be built on the established building line. The established building line shall be determined by sixty-five (65) percent of the existing buildings within two hundred (200) feet from each side of the lot.

9-10-9: BUILDING HEIGHT: No building hereafter created or structurally altered in a Light Industrial zone shall exceed three (3) stories or a maximum height of thirty-five (35) feet.

9-10-10: CONDITIONAL USES:

- A. Slaughterhouse and Rendering Plant.
- B. Automobile Wrecking Yard, Junk Yard.
- C. Above-ground storage of over five-thousand (5,000) gallons (per site) of petroleum products.
- D. Public Utility Complex Facility.
- E. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
- F. Radio and Television Towers.
- G. Special Events Location.
- H. Any wholesale, retail or service business.
- I. Public or private office buildings.
- K. Wireless Communication Facility (WCF).

9-10-11: USES REQUIRING SPECIAL NOTICE:

- A. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of a railroad or trucking business.

CHAPTER 11
INDUSTRIAL ZONE (I)

SECTIONS:

9-11-1	INDUSTRIAL ZONE DEFINED
9-11-2	RESTRICTIONS
9-11-3	SITE AREA
9-11-4	USES PERMITTED - GENERAL
9-11-5	USES PROHIBITED
9-11-6	SMOKE AND PARTICULATE MATTER
9-11-7	ODOROUS MATTER
9-11-8	TOXIC MATTER
9-11-9	RADIOACTIVE MATERIALS
9-11-10	EXPLOSIVE AND FLAMMABLE MATERIALS
9-11-11	NOISE
9-11-12	VIBRATION
9-11-13	GLARE
9-11-14	WASTES AND SURFACE DRAINAGE
9-11-15	PROPERTY CONTROL
9-11-16	CONDITIONAL USES
9-11-17	USES REQUIRING SPECIAL NOTICE

9-11-1: INDUSTRIAL ZONE DEFINED: The "Industrial zone" is a land use classification for a district suitable for manufacturing and processing of all types.

9-11-2: RESTRICTIONS: In the Industrial zone, no building or premises shall be used nor shall any building or structure be hereafter erected or altered unless otherwise provided in this Title, except for one or more of the following uses in accordance with the following standards. An Industrial lot shall have direct access from a public road, or the frontage road or interior road serving more than one Industrial lot shall have direct access from a public road.

9-11-3: SITE AREA: Twenty (20) percent of the area of the site must be left in open space free from structure.

9-11-4: USES PERMITTED – GENERAL:

- A. Any trade, industry, or processing facility of any type, provided the performance standards of this chapter are met and, in addition, all applicable legislation and official regulation promulgated by a public agency having jurisdiction.
- B. Public or non-profit recreational buildings.
- C. Parks, golf courses, and driving ranges.
- D. Storage of up to five-thousand (5,000) gallons of petroleum products in conformance with the Kootenai County *Best Management Practices for Containing Critical Materials During Above Ground Storage and Handling* and section 9-11-10 of this chapter .

9-11-5: USES PROHIBITED:

- A. General residential and commercial uses, except those specifically permitted in section 9-11-4 of this chapter.

B. Public and private schools, hospitals, sanatoriums, churches, cemeteries.

9-11-6: SMOKE AND PARTICULATE MATTER: Emissions of dustfall, smoke, and suspended matter shall meet the requirements of the State of Idaho Air Pollution Control Commission.

9-11-7: ODOROUS MATTER: Odorous matter is defined as any material, gaseous, liquid, or solid, that produces a response in the normal human nose. The release of odorous material from any plant shall be controlled so as not to become a nuisance or source of unreasonable discomfort at any point beyond the plant property line.

9-11-8: TOXIC MATTER: The discharge of toxic matters shall meet the requirements of the State of Idaho Air Pollution Control Commission.

9-11-9: RADIOACTIVE MATERIALS: The manufacture, utilization, and storage of radioactive materials shall comply with the regulations established by the Nuclear Regulatory Commission, the Idaho Department of Health, and other authorities having jurisdiction.

9-11-10: EXPLOSIVE AND FLAMMABLE MATERIALS:

- A. The manufacture, transportation, storage, and use of materials or products which decompose by detonation shall be conducted in accordance with the National Fire Protection Association Standard No. 495, "Code for Manufacture, Transportation, Storage and Use of Explosives and Blasting Agents," and the rules and regulations governing explosives promulgated by the State of Idaho and other authorities having jurisdiction. Explosive materials not covered by these standards and regulations shall be manufactured, stored, or utilized no closer than one hundred (100) feet from a plant property line or two hundred (200) feet from the boundary line separating it from a residential or commercial area.
- B. The manufacture, transportation, utilization, and storage of flammable materials shall be conducted in accordance with accepted standards for safety and fire prevention. Such standards shall include the National Fire Codes, and the appropriate standards of the American Petroleum Institute, the Manufacturing Chemists' Association, and other organizations that promulgate standards of good practice. The storage, utilization, or manufacture of flammable gases or liquids having a flash point below one hundred ten (110) degrees F shall not be permitted within two hundred (200) feet of the boundary line separating a site from any area within Kootenai County except when stored underground or in containers of five thousand (5,000) gallons or less above ground. (When flammable gases are stored in the gaseous phase, the above limit in gallons shall be multiplied by thirty (30) to obtain the limit in cubic feet at 14.7 pounds per square inch absolute and sixty (60) degrees F.)
- C. Flammable liquids, which may get into the waste system, shall be trapped and contained at a point within the plant boundaries. No flammable liquids shall be permitted in the central waste collection and treatment system.

9-11-11: NOISE:

A. Definitions

- 1. Impact Noise - A short duration or rapidly changing sound which causes fluctuations of the sound level meter needle in excess of plus or minus two (2) decibels and is, therefore, incapable of being accurately measured on a sound level meter.
- 2. Octave Band - A prescribed interval of sound frequencies which permits classifying sound according to its pitch. Octave bands specified are those adopted by the American Standards Association as, "Preferred Frequencies for Acoustical Measurements," S1.6-1960.

3. Sound Level Meter - An instrument, including a microphone, amplifier, output meter, and frequency weighing network, for the measurement of noise and sound levels in a specified manner.
 4. Sound Pressure Level - The intensity of sound measured in decibels as recorded or indicated on a sound level meter.
- B. Sound levels shall be measured with a sound level meter and an associated octave band analyzer, both manufactured in accordance with standards prescribed by the American Standards Association. Measurements shall be made using the flat network of the sound level meter. Impact noises shall be measured with an impact noise analyzer.
- C. Noise emissions from any site shall not cause sound pressure levels greater than those listed in Column Three (3) below, measured at any point beyond the plant property line, either at ground level or at a habitable elevation, whichever is more restrictive.

Sound Pressure Level (decibels, re: 0.0002 Microbar)

Octave Band Center Frequency (cycles per second)	COL.(1)	COL.(2)	COL.(3)
31.5	97	90	83
63	87	77	68
125	78	68	58
250	73	63	52
500	69	58	47
1000	65	55	44
2000	63	50	39
4000	60	48	37
8000	57	46	35
Impact Noise (Overall)	97	90	83

For the convenience of those who may wish to use sound level meters calibrated in accordance with the American Standard Z 24.10-1953, the following table shall be considered equivalent to the table listed above:

Sound Pressure Level (decibels, re: 0.0002 Microbar)

Octave Band Center Frequency (cycles per second)	COL.(1)	COL.(2)	COL.(3)
37.5-75	89	82	75
75-150	81	71	62
150-300	74	64	54
300-600	69	59	48
600-1200	66	55	44
1200-2400	63	53	42
2400-4800	62	49	38
4800-9600	59	47	36

9-11-12: VIBRATION:

- A. Definitions:

1. Amplitude - The vibration intensity measured in inches of earth borne vibration. The amplitude is one-half (1/2) the total earth displacement, as measured with a three-component measuring system.
2. Earth borne Vibrations - A cyclic movement of the earth due to energy propagation.

B. The amplitude, in inches, of earth borne vibrations caused by the plant shall not exceed:

$$\frac{.0001K}{F}$$

F = The vibration frequency in cycles per second.

K = 15 for measurements made within an Industrial zone at any point on or beyond the plant property line.
 K = 3 for measurements made in any residential area outside an Industrial zone.

Impact vibrations with less than one hundred (100) impulses per minute shall be permitted amplitudes of twice those computed above.

9-11-13: GLARE: Any operation or activity shall be conducted so that direct and indirect illumination shall not exceed 0.2 foot candle across lot lines of the subject property.

9-11-14: WASTES AND SURFACE DRAINAGE:

- A. Liquid Wastes - The volume, quality and point of discharge of industrial and domestic liquid wastes shall not exceed standards approved by the State Department of Health, or such other agency of the State of Idaho which may succeed to its authority.
- B. Surface Drainage - Storm drainage and surface runoff shall be segregated from industrial and domestic waste. To avoid contaminating surface drainage, all apparent sources of contamination, such as operating areas, loading or unloading areas, product transfer pump areas, and equipment cleaning and maintenance areas shall be curbed and drained to the waste system. Drainage from tankage area impoundments may be combined with storm drainage and surface runoff if approved by the State Department of Health.
- C. Solid Waste - Off-test and rejected products, by-products, spent catalysts, waste sludges, garbage, trash, scrap, rubble, refuse, and other such waste materials shall be temporarily stored or permanently disposed of in such a way as not to pollute the air or surface runoff nor cause odors or an unsightly appearance. If disposal is by incineration, care shall be taken to insure compliance with other parts of these standards covering air pollution. If disposal is by landfill, disposal procedures shall comply with the rules and regulations promulgated by the State Department of Health.

9-11-15: PROPERTY CONTROL:

- A. Setback of Structures - Fixed and permanent structures on plant sites shall have a minimum setback of fifty (50) feet from any plant property line. In the case of small plant sites where this setback would result in a clear area greater than twenty (20) percent of the total plant site area, the setback distance shall be reduced to not less than the following minimum distances, providing that the resulting clear area is not less than twenty (20) percent of the total plant site area:

	Minimum setback
Property line adjoining public thoroughfare	50 feet

Property line adjoining other plant site 25 feet
Property line adjoining easements of right-of-way (other than public thoroughfare)
having total width of W feet 50 feet

- B. Area Maintenance - Plant sites shall be maintained in accordance with good housekeeping principles and sound operating practices.
- C. Storage of Materials and Machinery - Storage areas must conform to the minimum setback regulations of the zone.

9-11-16: CONDITIONAL USES:

- A. Slaughterhouses and Rendering Plant.
- B. Automobile Wrecking Yard, Junk Yard.
- C. Cement, Gypsum, or Asphalt Plant.
- D. Explosive - Storage and Manufacturing.
- E. Above-ground storage of over five-thousand (5,000) gallons (per site) of petroleum products.
- F. Public Utility Complex Facility.
- G. Restricted Surface Mining.
- H. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
- I. Gun Clubs, Rifle Ranges, Archery Ranges.
- J. Radio and Television Towers.
- K. Special Events Location.
- L. Wireless Communication Facility (WCF).

9-11-17: USES REQUIRING SPECIAL NOTICE:

- A. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of a railroad or trucking business.

**CHAPTER 12
MINING ZONE (M)**

SECTIONS:

9-12-1	MINING ZONE DEFINED
9-12-2	RESTRICTIONS
9-12-3	SITE AREA
9-12-4	PERMITTED USES
9-12-5	CONDITIONAL USES
9-12-6	USES REQUIRING SPECIAL NOTICE
9-12-7	PROHIBITED USES
9-12-8	GENERAL STANDARDS

9-12-1: MINING ZONE DEFINED: The "Mining zone" is a land use classification for a district of properties suitable for excavation and processing materials secured from the earth.

9-12-2: RESTRICTIONS: In the Mining zone, no building or premises shall be used nor shall any building or structure be hereafter erected or altered unless otherwise provided in this Title, except for one (1) or more of the following uses in accordance with the following standards or the rules and regulations promulgated by the State Inspector of Mines.

9-12-3: SITE AREA: No uses of land in the Mining zone shall be conducted on a parcel of land less than five (5) acres.

9-12-4: PERMITTED USES:

- A. All surface and subsurface mining operations are permitted including the processing of materials, necessary plants and offices, equipment, storage space, and facilities directly related to the mining operation.
- B. General Farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.

9-12-5: CONDITIONAL USES:

- A. Sanitary Landfills, provided all requirements of the State Department of Health are met.
- B. Custodial Quarters.
- C. Public Utility Complex Facility.
- D. Special Events Location.

9-12-6: USES REQUIRING SPECIAL NOTICE:

- A. Asphalt or Concrete Batch Plant.
- B. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of a railroad or trucking business.

9-12-7: PROHIBITED USES:

- A. All types of dwelling units.
- B. All types of commercial uses.

9-12-8: GENERAL STANDARDS:

- A. All mining operations must be setback one thousand (1000) feet from any Residential zone except a setback of not less than two hundred (200) feet may be allowed when a structural or vegetative buffer designed to adequately provide visual, noise and dust screening of mining operations has been incorporated in a Zoning Development Agreement.
- B. Excavations must be fifty (50) feet from any property line and seventy-five (75) feet from any public highway right-of-way. If the nature of materials and depth of excavation constitutes danger of caving and slumping, as determined by the County Engineer and other expert opinions acquired by the Commission, the greater distance from property lines and rights-of-way shall be required.
- C. Whenever use of a site has been terminated, the owner shall undertake measures to rehabilitate the area. Specific requirements in this regard shall be specifically defined in the permit authorizing the land use and a bond required to insure rehabilitation.
- D. There shall be no disposal of top soil as such soil shall be used in the rehabilitation of the mining operation.
- E. Fencing sufficient to exclude people, livestock, and animals, if it is necessary in the interest of the public health and safety, to be determined by the Board.
- F. Road approaches to a site shall meet the requirements of the appropriate road authority.
- G. Storage areas must conform to the minimum setback regulations of the zone.

**CHAPTER 13
RURAL ZONE (R)**

SECTIONS:

9-13-1	RURAL ZONE DEFINED
9-13-2	RESTRICTIONS
9-13-3	LOT SIZE, DENSITY AND SITE AREA
9-13-4	USES PERMITTED - EXISTING PROPERTY OF LESS THAN 5.00 ACRES
9-13-5	USES PERMITTED - LOTS MEETING MINIMUM SIZE REQUIREMENTS OF FIVE (5.00) ACRES OR MORE
9-13-6	USES PERMITTED - STORAGE
9-13-7	PROHIBITED USES
9-13-8	FRONT, SIDE, AND REAR YARD SETBACKS
9-13-9	CONDITIONAL USES
9-13-10	USES REQUIRING SPECIAL NOTICE

9-13-1: RURAL ZONE DEFINED: The "Rural zone" is a classification for a district suitable for rural uses, such as rural residential uses and agricultural pursuits, including farming and forestry.

9-13-2: RESTRICTIONS: In the Rural zone, no building or premises shall be used, nor shall any building or structure hereafter be erected or altered (unless provided in this title) except for one (1) or more of the following uses in accordance with the following standards.

9-13-3: LOT SIZE, DENSITY AND SITE AREA: The minimum lot size in the Rural zone, except in Conservation Design Subdivisions, shall be five (5.00) acres. The minimum lot size in Conservation Design Subdivisions shall be 14,520 sq. ft. The maximum base density in conservation design subdivisions shall be one (1) lot per 5.00 acres. Sixty-five (65) percent of the area of all lots shall be left in open space free from structures.

9-13-4: USES PERMITTED - EXISTING PROPERTY OF LESS THAN 5.00 ACRES: On lots created prior to the minimum lot size requirement in the Rural zone (September 1, 1978) that are less than 5.00 acres in size, the uses shall be limited to:

- A. One (1) single family dwelling, including Class A and Class B manufactured homes, with accessory buildings.
- B. Prior to the establishment of a principal use, one personal storage building not to exceed 3,000 square feet, however, a special notice permit shall be required for personal storage buildings on lots or parcels under two (2.00) acres in size where the principal building or use has not yet been established, and shall not exceed 2,000 square feet in size.
- C. General farming and agriculture uses except the minimum lot area for the keeping of livestock shall be 3/4 acre.

9-13-5: USES PERMITTED - LOTS MEETING MINIMUM SIZE REQUIREMENTS OF FIVE (5.00) ACRES OR MORE: On lots, as defined in section 9-2-2 of this title, that meet the minimum size requirements of five (5.00) acres or more, the following uses are permitted:

- A. General farming and agricultural uses.
- B. Home occupations as defined in this title.
- C. Publicly-owned parks, playgrounds, and recreational facilities.

- D. One (1) single-family dwelling, including a Class A or Class B manufactured home, or one duplex, accessory buildings.
- E. Roadside stands of not more than three hundred (300) square feet for the sale of agricultural products produced on the premises.
- F. Temporary Hardship Use, subject to the standards of this title.
- G. Bed and Breakfast, subject to the following provisions:
 - 1. Maximum of five (5) rooms for lodging of paying guests.
 - 2. Must provide off-street automobile parking space for each guest room as well as all vehicles owned by permanent residents.
 - 3. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.
- H. Continued operation of airports or airstrips that were in existence at the time of adoption of Kootenai County Zoning Ordinance No. 11, January 3, 1973, and which have been used continuously (at least once every 6 months) since that date.
- I. Temporary or intermittent recreational use of a Recreational Vehicle provided the following conditions are met:
 - 1. The Recreational Vehicle (RV) shall have current registration and shall be in serviceable condition so it can to be operated in a safe and lawful manner upon the roads and highways in the State of Idaho as set forth in the Idaho Motor Vehicle Laws of the State of Idaho. The RV shall not be set on blocks with the tires or running gear removed.
 - 2. No decks or additions shall be attached to the RV, nor shall the RV be skirted.
 - 3. The RV shall not be used as a dwelling. The owners must have a primary residence other than the RV. There shall be no mail service to this type of use. An RV may be used as a dwelling for the owners of the property during construction of a dwelling on the same property as the RV site. Upon completion of the residence or expiration of the building permit for the residence, the use of the RV shall revert to the temporary or intermittent use as allowed under this provision.
 - 4. The RV must be hooked into a sewage disposal system which meets the requirements of the Panhandle Health District, or shall be totally self-contained and removed from the site to empty holding tanks at an approved location.
 - 5. The RV shall not be used as a rental property.
 - 6. RV's located in flood plains must comply with the *Flood Damage Prevention Ordinance*.
- J. Prior to the establishment of the principal use, one (1) personal storage building not to exceed 3,000 square feet.
- K. Accessory Living Unit. See definitions for additional standards.
- L. Subdivisions, as defined in the *Kootenai County Subdivision Ordinance*

9-13-6: USES PERMITTED – STORAGE: Except as allowed with a Conditional Use Permit, no property in the Rural zone shall be used as a storage area for any purpose other than storage of material used in connection with the operation of household and agricultural activities associated with the normal operation of the above uses, except that property may be used for the storage of materials used in the construction of the buildings on the property, as long as there is an active building permit for the structures.

9-13-7: PROHIBITED USES:

- A. Industrial uses.
- B. Manufacturing uses.
- C. Commercial uses.

9-13-8: FRONT, SIDE, AND REAR YARD SETBACKS:

The following setbacks shall apply to all structures in the Rural zone:

- A. Front Yard.....25 feet
- B. Side Yard.....10 feet
- C. Rear yard 15 feet
- D. Flanking street.....15 feet

9-13-9: CONDITIONAL USES:

- A. Gun Clubs and Rifle Ranges.
- B. Commercial Fur Farms.
- C. Rental Warehouse.
- D. Clinics or Hospitals, Animal or Veterinary .
- E. Agricultural Products Sales Store.
- F. Outdoor Theaters.
- G. Automobile Wrecking Yards, Junk Yards.
- H. Sawmills, Shingle or Planing Mill, Woodworking Plant.
- I. Radio and Television Towers.
- J. Airports and Airstrips.
- K. Race Tracks.
- L. Explosive Storage and Manufacturing.
- M. Private Resort (non-profit).
- N. Cemeteries.

- O. Sanitary Landfills.
 - P. Public Utility Complex Facility.
 - Q. Wholesale Greenhouses.
 - R. Restricted Surface Mining.
 - S. Commercial Resort.
 - T. Day Care Center, and Group Day Care Facility.
 - U. Retirement, Convalescent, Shelter and Nursing Homes.
 - V. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
 - W. Zoo.
 - X. Public and private schools.
 - Y. Churches, grange halls, lodges, and other non-profit public or private community facilities.
 - Z. Mini-Storage.
 - AA. Hospitals and Sanitariums.
 - BB. Privately-owned recreational facilities which are open to public use (with or without a membership or fee) such as Tennis Courts, Racquet Clubs, Softball Fields, Baseball Fields, and Soccer Fields.
 - CC. Residential Care Facility.
 - DD. Asphalt or Concrete Batch Plant.
 - EE. Special Events Location.
 - FF. Wireless Communication Facility (WCF).
 - GG. Kennel, Boarding.
 - HH. Commercial riding arena or equine training center or facility (May include boarding stables).
- 9-13-10: USES REQUIRING SPECIAL NOTICE:**
- A. Railroad car or truck cargo container/trailer used for storage or any other purpose not associated with the active operation of a railroad or trucking business.

CHAPTER 14
HIGH-DENSITY RESIDENTIAL ZONE (HDR)

SECTIONS:

9-14-1	HIGH-DENSITY RESIDENTIAL ZONE DEFINED
9-14-2	RESTRICTIONS
9-14-3	SITE AREA
9-14-4	DENSITY AND USES PERMITTED
9-14-5	USES PERMITTED - MULTIPLE-FAMILY UNITS
9-14-6	USES PERMITTED - MANUFACTURED HOME ON INDIVIDUAL LOTS
9-14-7	USES PROHIBITED
9-14-8	FRONT, SIDE, AND REAR YARD SETBACKS
9-14-9	CONDITIONAL USES

9-14-1: HIGH-DENSITY RESIDENTIAL ZONE DEFINED: The "High-Density Residential zone" is a classification for high-density residential uses including manufactured home units used as single-family residences on individual lots or, by conditional use in parks (courts). All such districts must have direct access to arterial thoroughfare. The predominant housing type will be manufactured homes, courts, and apartments.

9-14-2: RESTRICTIONS: No uses, other than those provided for in this title, are permitted.

9-14-3: DENSITY AND SITE AREA: Unless otherwise provided in this section, the maximum density in High Density Residential Zones shall be one (1) dwelling unit per 3,000 square feet. Sixty-five (65) percent of the area of all lots must be left in open space free from structures.

9-14-4: USES PERMITTED: Uses permitted within the Agricultural Suburban zone will also be permitted in the High-Density Residential zone, in accordance with the area and setback standards of the Agricultural Suburban zone.

9-14-5: USES PERMITTED - MULTIPLE-FAMILY UNITS: On property of not less than twelve thousand (12,000) square feet, with frontage on a public street, multiple-family residential uses will be permitted providing that sixty-five percent (65%) of the land is left in open space and that there is a ratio of not less than three thousand (3,000) square feet of land per living (apartment) unit.

9-14-6: USES PERMITTED - MANUFACTURED HOMES ON INDIVIDUAL LOTS: On property of not less than six thousand (6,000) square feet with frontage on a public street, one (1) manufactured home may be used as a single-family residence.

9-14-7: USES PROHIBITED:

- A. General commercial uses, except as specifically permitted in Manufactured Home Parks (see section 9-24-26 of this title).
- B. Industrial or manufacturing uses.
- C. Storage of materials not associated with the permitted use.

9-14-8: FRONT, SIDE, AND REAR YARD SETBACKS: The following front, side, and rear yard requirements shall apply in the High-Density Residential zone, except in Manufactured Home Parks:

- A. Front Yard..... 25 feet
- B. Side Yard..... 10 feet
- With an Alley..... 6 feet

- C. Flanking Street.....15 feet
- D. Rear Yard..... 25 feet

9-14-9: CONDITIONAL USES:

- A. Golf Courses and Driving Ranges.
- B. Commercial Resort.
- C. Retirement and Convalescent Home.
- D. Private Resort.
- E. Manufactured Home Parks (courts).
- F. Public Utility Complex Facility.
- G. Day Care Facility.
- H. Accessory building, structure, or use not located on the same zoning lot as the principal building or principal use served, provided that it is located on a lot within 200 feet of the lot housing the principal building or principal use served; or an accessory building, structure, or use located on a lot where the principal building or use has not yet been established.
- I. Lighting for any outdoor recreational facility, regardless of whether the use requesting such lighting is a permitted use or a conditional use.
- J. Residential Care Facility.

CHAPTER 15
PLANNED UNIT DEVELOPMENT

SECTION

9-15-1	PLANNED UNIT DEVELOPMENT
9-15-2	PURPOSE AND INTENT
9-15-3	COORDINATION WITH OTHER REGULATIONS
9-15-4	OWNERSHIP/ PROJECT CONTROL
9-15-5	PERMITTED USES
9-15-6	DENSITY
9-15-7	DESIGN REQUIREMENTS
9-15-8	APPLICATION REQUIREMENTS
9-15-9	APPROVAL PROCEDURE AND REQUIRED FINDINGS
9-15-10	PHASING REQUIREMENTS
9-15-11	PUD EXTENSIONS, AMENDMENTS AND MODIFICATIONS
9-15-12	CONDOMINIUMS
9-15-13	OPERATION AND MAINTENANCE REQUIRED

9-15-1: PLANNED UNIT DEVELOPMENT: A Planned Unit Development (PUD) is an integrated design for development of residential, commercial or industrial uses, or combinations of uses, under single ownership or control, in which the standards of this title may be varied. PUD's allow flexibility and creativity in site and building design and location, in accordance with an approved plan, and the goals and policies of this title and the *Comprehensive Plan*. Subdivisions may not be developed as a PUD unless they include at least 25 lots (however clustering of fewer than 25 lots may be accomplished through a Conservation Design Subdivision).

Applications for PUD permits are processed using procedures similar to those for Conditional Use Permits, including the notice and hearing requirements outlined in *Idaho Code* § 67-6512. Approval of a PUD does not change the underlying zoning district.

9-15-2: PURPOSE AND INTENT: The purpose of a Planned Unit Development is to allow diversification in the relationship of various uses and structures to their sites, and to permit more flexibility in the use of such sites. The application of planned unit concepts is intended to:

- A. Allow for and encourage a variety of housing types and environments;
- B. Allow for greater flexibility and a more creative and imaginative approach to the design of residential and commercial developments and open space, while ensuring substantial conformance with the intent of this title and the *Kootenai County Comprehensive Plan*.
- C. Encourage more functional, efficient and economical use of land, resulting in smaller networks of utilities, streets and other infrastructure features, and maximizing the allocation of fiscal and natural resources;
- D. Ensure that development occurs at proper locations, away from environmentally sensitive areas, and on land physically suited to construction;
- E. Encourage land development that, to the greatest extent possible, preserves valuable natural areas, respects natural topographic and geologic features, scenic vistas, vegetation and natural drainage patterns, and that creates more usable open space and recreational amenities;
- F. Encourage more convenience in the location of commercial and industrial uses and services.

9-15-3: COORDINATION WITH OTHER REGULATIONS: Approval of a PUD permit allows the typical standards of this title to be replaced with alternative standards unique to the PUD. For example, a mix of residential and commercial uses, with different property line setbacks, lot sizes, or building heights may be approved as a PUD. The PUD must, however, meet the requirements of other County ordinances, and those of other agencies.

If land is being divided in conjunction with a PUD, the development must also meet the requirements of the *Kootenai County Subdivision Ordinance*. If the objective is simply to create a subdivision with smaller, clustered lots, without mixed uses or other variations from the requirements of this title, that may be more easily accomplished through a "Conservation Design Subdivision," without a PUD. Currently, Conservation Design Subdivisions are allowed only in the Rural and Agricultural-Suburban Zoning Districts. PUD and subdivision applications may be combined into one request, providing the requirements for each application are met.

If there is a conflict or difference between the provisions of this chapter and other sections of this title, the provisions of this chapter shall prevail. Subjects not covered by this chapter shall be governed by the applicable provisions of this title.

9-15-4: OWNERSHIP/PROJECT CONTROL: The entire project developed under a PUD permit must be under single ownership or control. If components of the project will be under separate ownership, a cooperative corporation or similar organization must be established to provide oversight and control in perpetuity. The documents establishing the organization must be approved by the Director, and must include procedures allowing corporation officers to submit PUD amendment applications and take other action on behalf of the owners in the development.

9-15-5: PERMITTED USES:

- A. The primary uses in a PUD shall be those allowed or conditionally allowed in the applicable zoning district. Other uses may be considered, providing they are harmoniously incorporated into the design of the PUD, are compatible with the surrounding area, and meet the requirements of this chapter.
- B. Residential PUD's may include both single-family and multifamily dwelling units such as townhouses, garden apartments, and common wall, single-family and multi-family dwellings.

9-15-6: DENSITY: The overall density, or number of dwelling units in a PUD, shall conform to the requirements of the zoning district in which the PUD is located, however lot sizes may be varied. If a PUD is located in more than one zoning district, the allowable density for the land in each zone shall be calculated separately and then added together to yield the allowable density for the development. The distribution of dwellings within the PUD shall not be affected by zoning district boundaries.

9-15-7: DESIGN REQUIREMENTS: This section delineates the minimum, on site design requirements for PUD's. While off site improvements may also be required to mitigate negative effects of the development, these will be considered project by project.

A. General Design Requirements.

- 1. The proposed uses and design of a PUD must be compatible with existing homes, businesses, neighborhoods, and the natural characteristics of the area. PUD's shall minimize grading, road construction and disturbance of the terrain, vegetation, soils, and drainageways, and shall prevent soil erosion. To achieve this, the Board may require building envelopes, no-disturbance zones, height restrictions and planting or retention of vegetation.
- 2. The development must be planned as a cohesive, integrated whole, consistent with the intent and purpose of this title .

3. The plan must be compatible with the goals, policies and future land use map of the *Kootenai County Comprehensive Plan*.
4. Within the Airport District overlay zone, the proposal must be in conformance with the *Airport Master Plan* and an aviation easement, approved by the Airport Director, must be recorded.
5. Open spaces are an important facet of the community's environment and character. The PUD approach is an efficient instrument for preserving and enhancing open spaces, particularly recreational areas within residential developments. Open space shall be distinguished as common (for use by all home owners) or public (open to all members of the general public).

B. Utilities and Services

The development of a PUD must occur in conjunction with services and facilities that are appropriate and adequate for the proposed uses, with urban services provided for urban densities. Services and facilities necessary to serve the development must be feasible, available and adequate, and the proposal must include on and off site improvements to mitigate the negative effects of the development so that the existing quality of services is not compromised, and so there is no substantial increase in the cost of services to existing residents.

The following are minimum requirements. Other services and facilities may be required on a project by project basis.

1. A sewage disposal system or systems meeting the requirements of Panhandle Health District or DEQ (Idaho Department of Environmental Quality). Commercial and industrial areas must be served by a wastewater treatment plant approved by DEQ. No subsurface discharge of treated or untreated, non-domestic wastewater is permitted.
2. A water system, approved by DEQ, that can provide fire flows or water storage if required by the fire district. The new components of a water system and any necessary improvements to an existing system, must be designed and constructed in conformance with the requirements of DEQ, the *Idaho Division of Public Works - Idaho Standards for Public Works Construction*, the fire district, and if applicable, the water district, utility or corporation.
3. Electrical service.
4. Fire protection from a structural fire protection district. PUD's shall meet the requirements of the fire district, including those pertaining to roads, driveways, fire flows, hydrants, water storage and defensible space.

PUD's shall also minimize the hazards associated with wildfire, and when located in timbered areas, shall provide a Fire Mitigation Plan, developed by a professional forester, that is approved by the Director, the Fire District, or the Idaho Department of Lands. The plan must be implemented as part of the essential, required improvements for the PUD.

5. Roads and Trails.
 - a. The PUD must have direct access to a publicly maintained road. With the exception of common driveways approved by the Board and the highway district, roads in PUD's shall meet the *Highway Standards for the Associated Highway Districts, Kootenai County, Idaho*, including all provisions for variance, exception or other means of deviation from the *Standards*, as approved by the highway district. If a highway district approves a road with a variance, the road will be deemed to comply with the *Standards* and with the requirements of this title. Except for gated

communities approved by the Board, such roads shall be dedicated to the applicable highway district; in gated communities the highway district shall verify that the road meets their *Standards*, and the road shall be dedicated to the maintenance entity. If a road meeting highway district standards is required, it shall be constructed through the PUD, to the property line, unless topography or other factors make continuation of the road impossible. Roads shall not be constructed within stream protection zones for lakes, streams, drainageways, or wetlands, except for crossings in conformance with the *Kootenai County Site Disturbance Ordinance*.

The Board may approve a privately maintained, common driveway as the means of access to new lots, if it serves, or is used to access no more than four lots or parcels, and the highway district with jurisdiction makes the following findings:

- (a) A road through the land proposed for the PUD is not appropriate or necessary to provide access to private lands lying adjacent to or beyond the development; and
- (b) Access through the land is not now necessary, nor will it be necessary in the future, to provide continuity of public roads with functional grades and design; and
- (c) The lots being created will not be further subdivided, and no additional access to the driveway will be allowed, unless it is constructed in accordance with this title and the *Highway Standards for the Associated Highway Districts, Kootenai County, Idaho* (with or without variances). The Board may require the recordation of a public covenant in favor of the County and the highway district, to ensure compliance with this requirement.

Common driveways are a required infrastructure improvement, and shall be constructed prior to final approval of a PUD, unless a financial guarantee is provided, then they shall be constructed prior to issuance of non-infrastructure building permits. Common driveways must be constructed in accordance with the "Access Roadway/Driveway Standards for Residential Properties" contained in section 9-2-2 of this title.

- b. **Pedestrian/ Bicycle Access.** Off road trails, lanes or walkways may be required a) if shown on a bicycle facilities plan adopted by a road agency, b) along through streets in PUD's within 1.5 miles of a school, park, bicycle trail, recreational area, or community facility, or c) when necessary to ensure the safety of pedestrians and bicyclists. The trail shall be designed to serve the intended use, and except for bicycle lanes, shall be separated from the road by a vegetation strip at least five (5) feet wide. If there is no direct route through a PUD, or if cul-de-sacs are proposed, one or more trails may be required to provide short, direct routes for pedestrians. For safety, trails should be located in close proximity to and visible from homes, streets and businesses. If a trail or walkway is required, an easement or right of way must be dedicated to Kootenai County or to the entity that will provide maintenance as approved by the Board. When future access may be needed to adjacent parcels of land, trails and/or easements for trails shall extend to the property line of the PUD. The width of trail easements and rights-of-way shall be adequate for the intended use, and shall meet the requirements of the County or maintenance entity.
- c. **Connectivity.** Roads, trails and sidewalks in PUD's shall be designed to complement and enhance existing transportation systems, so as to create an integrated network that allows for the safe and efficient movement of people within the development, to adjacent developments, and to nearby commercial areas, schools, churches and other community facilities. Roads shall be designed with as many connections as possible, and with relatively direct routes in and out of the PUD, without running traffic through neighborhoods. Cul-de-sacs are discouraged but may be approved where natural or built features preclude connection to existing or future roads. When future access may be needed to adjacent parcels of land, road and trail rights-of-way shall extend to the property lines

of the PUD. Roads and trails shall be designed to minimize conflict between vehicles and pedestrians.

6. Garbage collection.
7. Underground Utilities. Unless utility providers determine that site conditions preclude such installation, all utilities shall be installed underground. The Board may, however, allow appurtenances to these systems to be installed above ground if they can be effectively screened in a manner that is visually appealing and compatible with the PUD.

C. Sensitive Area Requirements

1. Viewsheds. Mountain views and vistas are an important part of the character of Kootenai County, contributing to the visual quality of the area, increasing property values, attracting visitors, and enhancing the desirability and livability of the community. As such, it is in the public interest that land be developed in a manner that is visually unobtrusive, environmentally responsible, and is compatible with the character of the area.

PUD's must be designed to fit houses, structures and roads into and around hillsides in a manner that minimizes disturbance of the terrain, vegetation and drainageways, that will not result in soil erosion, and that is compatible with the natural characteristics of the area.

If the vertical height of any cut or fill slope, or any combination thereof, will exceed thirty (30) feet, effective measures must be taken to mitigate the visibility of the slope.

2. Hydrologic Protection Areas.

When a PUD abuts a lake, river, stream, wetland, or drainage way, a Hydrologic Protection Area must be reserved and shown on the plan. The purpose of this area is to protect downstream property owners and water resources from increased or decreased flows, to prevent sedimentation, to promote good water quality, and to protect fish and wildlife habitat. The area shall be labeled "Stream (lake or wetland, as applicable) Protection Area", and within this area native vegetation and large organic debris shall be protected or replanted to leave the area in the most natural condition possible. Any necessary maintenance must be in conformance with the *Kootenai County Site Disturbance Ordinance* and with applicable best management practices. Proposed road and utility crossings must be shown on the plan, must be kept to a minimum, and must take the shortest possible route across the area. Other than approved crossings, roads and utilities shall not be constructed within this area. Fences, walkways which do not exceed four (4) feet in width, stairway landings which do not exceed six (6) feet in length or width, and trams may be constructed in hydrologic protection areas, providing there is minimal disturbance of the ground and vegetation. The Board may require that this area be shown as an easement, including a conservation easement, or that ownership of the area be transferred to a homeowners association, highway district or other maintenance entity.

Hydrologic Protection Areas shall be as follows:

Lakes	45 feet from the ordinary high water mark
Spokane and Coeur d'Alene Rivers	45 feet from the ordinary high water mark
Class I Streams	75 feet from the ordinary high water mark
Class II Streams	30 feet from the ordinary high water mark
Drainageways	5 feet
Wetlands	Determined by the Board, based on the wetland analysis.

D. Zero Lot Line Development

PUD designs may include zero lot line development for single-family and multifamily dwellings, with each dwelling and lot independently owned, and lot lines along common walls providing:

1. The construction complies with all applicable building codes and regulations pertaining to common wall and/or zero lot line construction;
2. Common walls are adequately sound-proofed in accordance with *International Building Code* requirements.
3. Electrical, water, sewer, heating and air conditioning systems, and all other incorporated utility systems are separately installed for each dwelling unit. In no case shall such systems penetrate common walls unless otherwise approved by the Department.
4. Deeds and covenants pertaining to buildings must contain appropriate provisions to ensure harmonious maintenance of shared indoor or outdoor walls, and outdoor yard areas. Easements shall be recorded as necessary to assure access to shared outdoor walls and yards.

E. Common Open Space.

Common open space in PUD's shall meet the following requirements:

1. The amount and design of common open space in a PUD must be appropriate to the scale and character of the project, considering its size, density, expected population, topography, and the number and type of dwellings to be provided. A minimum of fifteen percent (15%) of the land within the PUD shall be developed into usable public or common open space, or recreational facilities for the residents or users of the development. If possible, the open space should be designed to connect with existing or planned open space on neighboring properties. Areas designated as open space shall be accessible to all residents of the development from a road or right-of-way. Utility, drainage and similar easements and rights-of-way are not acceptable for common open space unless such land is usable for a trail or similar purpose and is approved by the Board.
2. Common open space in a PUD shall either a) be held by owner(s) of the development, b) be dedicated to the public, or c) be conveyed to a cooperative corporation such as a homeowners association. The responsibility for maintenance of open space areas shall be specified by the developer in the application for final plan approval and must be approved by the Board.

F. Commercial and Industrial Uses.

PUD's that include commercial or industrial uses and structures must meet the following additional requirements:

1. Commercial and industrial areas must be developed with park-like surroundings utilizing landscaping and/or existing woodlands around structures, parking areas, roads, loading areas, and areas used for outdoor storage of raw materials or products.
2. If the PUD includes, or is located near residential zones or residential uses, commercial or industrial uses must be of a non-nuisance character, and must be clean, quiet and free of bright lighting, odor, dust or smoke.
3. Loading areas must be provided for delivery trucks.

4. All areas designed for future expansion or not intended for immediate improvement or development shall be landscaped or otherwise maintained in a neat and orderly manner.
5. Lighting may not exceed .2 foot candles at the property line of any lots used for commercial or industrial purposes.

9-15-8: APPLICATION REQUIREMENTS:

A. Conceptual Plan Approval.

The PUD permit application contains the information that the hearing body and Board need to make a decision on the proposal. To gain approval, adequate information must be provided to demonstrate that the project can meet the requirements of the County and of other agencies.

For conceptual PUD plan approval, the applicant is required to submit one complete application packet to the County, plus additional packets for each agency/organization reviewing the proposal. The Director determines which agencies will receive applications and the County will forward the application packets to those agencies. An applicant may request that an incomplete application be accepted by submitting a letter stating which items are missing, and giving a detailed explanation and rationale for the incomplete submission. If the Director determines that the information is not necessary to establish conformance with the required findings, he may approve the request, the application will be deemed to be complete, will be vested under current ordinances, and will be processed. If the Director denies the request, the application will not be processed or scheduled for public hearing until it is complete. This determination may be appealed in accordance with section 9-22-8 of this title. An application shall be governed by the rules and policies in effect on the day a complete application is submitted to the Department.

The following items constitute a complete application for conceptual PUD plan approval, with the required elements of agency packets identified by a ☆ symbol.

1. ☆ Application Form - completed application form with property owners' signatures or a notarized letter from the property owners' authorizing the applicant to file the application. Applications for amendments to existing PUD's may also be submitted by a cooperative corporation, or other organization with the authority to act on behalf of the property owners within a PUD.
2. Completed check list of application requirements.
3. Fees as adopted by Board resolution.
4. Legal description for the property.
5. Title report or similar document containing the legal description, ownership and easements for the property.
6. ☆ Large conceptual plan - must meet the requirements outlined in Table 15-1 (three copies for the County, two for highway district, one for other agencies).
7. Small conceptual plan - 11" x 17" copy of the plan.
8. Surrounding Area/ Adjoining Subdivisions Map - scale not less than 1"=400', showing the site of the proposed PUD; adjoining lots, parcels and subdivisions; street and lot layout sufficiently distant from the project to illustrate the relationship to proposed streets and lots; neighboring land owned by the same

applicant; and surrounding properties within ¼ mile or 2 parcels (whichever is greater) in every direction (four copies).

9. ☆ Photos - at least six pictures of the site, taken at various angles, depicting the general character of the site, accompanied by a map showing the location and orientation of the photos.
10. ☆ Narrative – describing a) the general character of the proposed development, including the design principles for buildings and streetscapes, b) the acreage, number of lots, and number and type of housing units in each area, c) nonresidential structures or uses that are proposed, d) existing uses, zoning districts, and the existing characteristics of the site, including vegetation, soils and wildlife, e) proposed changes to the standard requirements of this title, f) what is proposed for water, sewer, roads, trails, parking, landscaping and other improvements, g) plans for recreation facilities and common open space, h) proposed methods of ownership and/or control of the project, including proposed maintenance arrangements for common areas and shared infrastructure and improvements, i) a statement explaining the reasons the PUD will be in the public interest, and j) the proposed completion schedule including any phasing. Normally, conceptual PUD plan approval is valid for one year, and construction must be started within two years of final PUD plan approval, but the Board may approve phasing of the project, and/or an alternative completion schedule, if it is requested in the preliminary application. As part of the application narrative, a qualified professional engineer, land surveyor, biologist, wetlands specialist, or other qualified professional with expertise in the initial determination of wetlands, must provide a written statement regarding the presence or absence of wetlands on the property, and the applicant must identify sensitive areas, as defined in this title .
11. Groundwater quantity – adequate information must be provided to ensure that new or existing wells will provide sufficient water for the development, without negatively affecting nearby property owners. The PUD application must include a) DEQ written approval of an engineering report prepared by an Idaho licensed P.E. (professional engineer) or P.G. (professional geologist) demonstrating an adequate water supply is available to meet the estimated demand, or b) for developments served by connection to an existing public water system, a letter from the owner of the system indicating it has sufficient reserve production capacity to supply water to the PUD (two copies).
12. Conceptual Stormwater Plan – a plan, developed by a design professional, proposing suitable methods and locations for stormwater treatment systems. Proposed systems must conform to the *Kootenai County Site Disturbance Ordinance*, associated resolutions, and approved best management practices (BMP's). If slopes, soils, groundwater or other conditions may not meet the design parameters of proposed BMP's, the Director may require that test holes be evaluated to determine soil types in the vicinity of the stormwater systems. (four copies).
13. Conceptual Engineering Plan – When land disturbing activity is proposed in areas where the natural slope equals or exceeds 15%, the Director may require a conceptual engineering plan as part of a PUD application. The plan shall be developed by an Idaho licensed civil engineer, and shall depict proposed building sites, road and driveway grades, profiles and cross sections, and the slope and location of cuts and fills. The purpose of this plan is to demonstrate the feasibility of the proposed PUD plan and to illustrate the nature and extent of earth work required for site preparation and construction. (four copies).
14. Traffic Impact Study - when requested by a road agency or the Director. This study shall include: a) existing traffic counts and level of service on adjacent and nearby streets, b) vehicle trips that will be generated by the development, c) the effect the development will have on the level of service on affected streets, d) the effect added traffic will have on signals, turn lanes, or other transportation infrastructure, e) improvements needed to maintain adequate levels of service, and f) any other information required to evaluate impacts to the transportation system (four copies).

15. Geotechnical Analysis - for proposed building sites, roads, driveways or other development where the natural slope equals or exceeds 15%, where there is a high water table (within 6 feet of ground surface at any time of year), where soils are highly erodible, or where there are scarps, slumps, seeps or other geologic features that may be unstable, as determined by the Director. The geotechnical analysis shall be stamped and signed by an Idaho licensed civil or geological engineer having sufficient education and experience to prove competency in the field of geotechnical engineering. The geotechnical analysis shall explain the geologic and hydrologic features of the area, shall evaluate the suitability of the site for intended uses, shall identify potential problems relating to the geology and hydrology, shall summarize the data upon which conclusions are based, and shall propose mitigation measures (four copies).
16. Wetland Delineation and Analysis – If National Wetlands Inventory maps show wetlands on the site, or if soil survey maps indicate the presence of hydric soils, or if a qualified professional or the Director determine there may be wetlands on the site, a more detailed delineation and classification shall be provided and shown on the supplemental page of the plat. The wetlands delineation must be provided by a qualified professional, which includes but is not limited to professional engineer, landscape architect or wetlands specialist in accordance with the *Corps of Engineers Wetlands Delineation Manual* and the *Classification of Wetlands and Deepwater Habitats of the United States*, published by the U.S. Dept. of the Interior, Fish and Wildlife Service. In addition to delineating the boundaries and classifying the wetland, the professional must provide a report explaining the likely impacts of the project on the wetland, and recommend actions to mitigate the impacts and preserve the wetland plants and animals (three copies).
17. Pursuant to *Idaho Code* 67-6512, the Director, hearing body or Board may require additional studies of the social, economic, fiscal or environmental effects of the PUD.

B. Application Requirements – Final PUD Plan Approval

The following items constitute a complete application for final PUD plan approval. The applicant is required to submit one application packet. An application that is incomplete will not be processed.

1. Application Form - a completed application form with property owners' signature(s) or a notarized letter from the property owners' authorizing the applicant to file the application. Applications for amendments to existing PUD's may also be submitted by a cooperative corporation, or other organization with the authority to act on behalf of the property owners within a PUD.
2. Completed check list of application requirements.
3. Fees as adopted by Board resolution.
4. Large plan, prepared by an Idaho licensed surveyor, meeting the requirements of Table 15-1.
5. Small plan - 11" x 17" copy of the plan.
6. Narrative - explaining a) how conditions of approval were met (those required prior to application for final plan approval), b) any modifications from the original proposal, and c) the completion schedule for the project or phase.
7. Documentation demonstrating that the entire project is under single ownership or control. Control over the PUD may be achieved through a cooperative corporation or similar organization.
8. Preliminary building plans including floor plans and exterior elevations.

9. Preliminary landscaping plans for common areas which implement water wise landscaping principals.
10. Preliminary plans for signs including the height, dimensions and proposed lighting.
11. For PUD's in timbered areas, a wildfire mitigation plan, prepared by a professional forester, approved by the fire district, the Director, or Idaho Dept. of Lands.
12. Any documentation needed to show compliance with requirements or conditions of approval (those required prior to application for final plan approval), including approval letters from other agencies or departments.
13. Associated Documents - copies of any documents, such as deed restrictions, restrictive covenants, by-laws and homeowners association articles of incorporation, that are associated with the PUD or that will be used to control the use, development, operation or maintenance of the land and improvements. If components of the project will be under separate ownership, a cooperative corporation or other organization must be established to provide oversight and control in perpetuity. The documents establishing the organization must be approved by the Director, and must include procedures for submitting PUD amendment applications on behalf of the owners in the development.

**TABLE 15-1
FORM AND CONTENT OF PUD PLAN**

PLAN COMPONENT	CONC. PUD PLAN	FINAL PUD PLAN
1. Size and Format. Size 18" x 27". Plan must encompass all land included in the PUD, including open space that will not be used for building sites. Must also include north arrow, date, legend, vicinity map and scale. Scale must be suitable to ensure clarity, and between 1"=40' and 1"=100'.	X	X
2. PUD Name. If a previously approved PUD is being amended, the name must include the word "amended".	X	X
3. Location. Section, quarter section, township, range, meridian, county and state.	X	X
4. The proposed layout, showing the location, type and acreage of proposed uses; landscaping; signs; the approximate location, use, height, dimensions and proposed setbacks of structures; proposed number of dwelling units for each area; and adjacent parcels shown with dashed lines.	X	
5. The final, approved layout showing dimensions, lot lines and the exterior boundary of the PUD by distance and bearing; area of each lot in acres; the location and type of approved land uses, including landscaping, parks, residential, commercial and public uses; the approved location, use, height, dimensions and setbacks of structures and signs; and approved density and number of dwelling units for each area.		X
6. Roads, trails, parking and loading areas within and adjacent to the PUD.	X	X
7. Easements - the location, dimensions, and purpose of existing or proposed easements, with instrument numbers noted.	X	X
8. Hydrography – drainages, water courses, water bodies and wetlands and associated protection areas.	X	
9. Topographic Elevations – contours shown at vertical intervals of not more than 5 feet, at a scale between 1"=40' and 1"=100', and identifying the following slope zones: 0-14% 15-34% ≥35% Contours shall be generated from field survey or aerial photography, and may not be interpolated from USGS maps. Contours are not required for lots designated as open space that will not be used for roads, driveways or structures.	X	
10. Physical Features – the location of significant physical features such as ridges, rock outcrops or wooded areas.	X	
11. Flood Plain – the location of any areas of special flood hazard and the language required by the <i>County Flood Damage Prevention Ordinance</i> .	X	X
12. Existing built features including structures, wells, sewage systems and roads.	X	
13. Building envelopes if required by the Director or Hearing Body.		X
14. Sensitive areas, as defined in this title, if their location is known and can be shown on the plan.	X	

9-15-9: APPROVAL PROCEDURE AND REQUIRED FINDINGS:

A. Following is the approval procedure for a PUD permit application and associated construction:

1. Review and approval (or denial) of the conceptual PUD plan recommended by the hearing body, and decided by the Board of County Commissioners, in accordance with the hearing and notice procedures for Conditional Use Permits and the requirements of this chapter. The hearing body shall make a recommendation, and the Board shall make the final decision on the application. Upon granting or denying the application, the Board shall specify:
 - a. The ordinances, laws and standards used in evaluating the application.
 - b. The reasons for the approval or denial;
 - c. The actions, if any, the applicant could take to obtain a permit.

Approval of the conceptual PUD plan expires if a complete application for approval of the final PUD plan is not submitted within one (1) year from the date of conceptual approval. If phasing was approved, an application for final plan approval for the first phase must be submitted within one (1) year, and the plans for subsequent phases must be submitted in accordance with the schedule approved by the Board.

2. Review and approval (or denial) of the final PUD plan (for the entire project, or if phasing was approved, for the first phase of the project) by the Director and then the Board of County Commissioners. The Director shall make a recommendation, and the Board shall make the final decision on the application. If necessary, supplementary conditions may be attached to the approval. Upon granting or denying the application, the Board shall specify:
 - a. The ordinances, laws and standards used in evaluating the application.
 - b. The reasons for the approval or denial;
 - c. The actions, if any, the applicant could take to obtain a permit.

The Order of Decision approving the final PUD plan is the "PUD Permit."

3. Approval of infrastructure plans by the agencies with jurisdiction, and issuance of associated construction permits, including a County Site Disturbance Permit.
4. Construction of required infrastructure and improvements serving the PUD. If additional lots are being created within the PUD, infrastructure must be completed, or financial guarantees provided, in accordance with the requirements of the *Kootenai County Subdivision Ordinance*. If additional lots are not being created, the Board may require an acceptable financial guarantee to assure completion of improvements within two (2) years from the date of final PUD plan approval. Upon written request by the property owner, the Director may grant one extension of up to one (1) year for cause. Non-infrastructure building permits will not be issued until the essential infrastructure and improvements (e.g. roads, water, sewer, fire suppression systems, wildfire mitigation) have been completed and approved by the agencies with jurisdiction.

Construction of non-essential improvements, such as landscaping and recreational facilities, shall be completed in proportion to the overall progress on the project, and shall be totally completed and approved by the time building permits are issued for fifty percent (50%) of the units. If this requirement

is not met, the Director may suspend the issuance of building permits until the non-essential improvements are completed.

5. Approval of individual building permits in accordance with the approved final PUD plan and associated conditions.

The PUD permit expires if construction on the project has not begun within two (2) years from the date of the final plan approval, unless an extension was granted by the Director, or an alternative completion schedule was approved by the Board.

B. PUD Conditions.

PUD plans may be approved with conditions including, but not limited to those that:

1. Minimize or mitigate adverse effects on service delivery by political subdivisions, including school districts;
2. Minimize or mitigate adverse effects on other developments;
3. Control the sequence, timing and duration of development;
4. Assure that the development is maintained properly;
5. Designate the exact location and nature of development;
6. Require the provision of on-site or off-site public facilities or services;
7. Require more restrictive standards than those generally required in this title.

Following notice to the property owner(s) and a public hearing, the Board may revoke or suspend a PUD permit for non-compliance with conditions or restrictions.

C. Required Findings for Approval.

To approve an application for a PUD permit, the hearing body must recommend and Board must find that the facts submitted with the application establish that:

1. The proposal is compatible with the goals, policies and future land use map of the *Kootenai County Comprehensive Plan*.
2. The proposal is consistent with the intent and purpose of this title. The amenities, design, and benefits of the PUD justify any requested deviation from the normal requirements of this title. Development of the PUD is in the best interest of the public.
3. The application and design meet the requirements of this chapter, other applicable sections of this title, other County ordinances, and the requirements of other agencies.
4. The proposed structures and uses within the PUD are compatible with one another.
5. The proposed development is compatible with surrounding homes, businesses and neighborhoods, and with the natural characteristics of the area. Areas not suited for development are designated as open space. Road construction and disturbance of the terrain, vegetation and drainageways will be minimized

and will not result in soil erosion. Any site constraints, hazards or negative environmental, social or economic impacts will be adequately mitigated.

6. Services and facilities necessary to serve the development are feasible, available and adequate. Any adverse effects on service delivery by political subdivisions, will be adequately mitigated.
7. Proposed roads, sidewalks, trails and parking facilities within the development establish or adequately contribute to a transportation system for vehicles, bicycles and pedestrians that is safe, convenient, efficient and that minimizes traffic congestion.
8. The proposal is not anticipated to result in significant degradation of surface or ground water quality as determined by DEQ.
9. The PUD will be held in one ownership, or there is an effective means of control and oversight of the development in perpetuity. Provisions for maintaining land, infrastructure and shared improvements are adequate.
10. If the application is for final plan approval, any applicable conditions of conceptual plan approval have been met.
11. Public notice and the processing of the application met the requirements set forth in this title, County adopted hearing procedures, and *Idaho Code* §67-6512.

9-15-10: PHASING REQUIREMENTS: The Board may approve alternative PUD construction schedules and/or phasing of PUD projects. Each phase shall be configured to create a serviceable project, capable of standing alone or with other completed phases, if the project were to be terminated at the conclusion of that phase. Project phasing shall not produce an imbalance of common/ private space or land use density when compared to the overall project ratios. Lands designated for development in subsequent phases shall be encumbered by the density limitations of the project as a whole, even if the project fails to develop as planned.

9-15-11: PUD EXTENSIONS, AMENDMENTS AND MODIFICATIONS:

- A. **Extension of approval.** Conceptual PUD plan approval is valid for one (1) year, and construction must be started within two (2) years of final PUD plan approval, unless phasing and/or an alternative completion schedule was approved by the Board, or an extension is granted by the Director. At any time prior to expiration of approval, the applicant may request one extension of up to one (1) year for conceptual PUD plan approval, and two (2) years for the start of construction, according to the following procedure.
 1. Application Requirements. The following items constitute a complete application:
 - a. Application form.
 - b. Fees as adopted by Board resolution.
 - c. Narrative explaining: a) the reasons the final PUD plan, or if the application is for extension of final PUD plan approval, construction was not completed within the original timeline, b) the status of compliance with the original conditions of approval, and c) the anticipated schedule for completing the plan and/or beginning construction.
 - d. As part of a complete application, the Director may require additional information to determine compliance with conditions of approval, County ordinances, or the requirements of other agencies.

2. Approval Requirements

The Director may grant the extension providing: a) a complete application was submitted, b) the project is in compliance with the requirements of the County and other agencies (those that were in place at the time a complete conceptual PUD application was received by the Department), and c) the project is in compliance with its conditions of approval. Unless otherwise approved by the applicant, the Director shall make a decision within five (5) weeks of the receipt of a complete application. The Director's decision may be appealed in accordance with section 9-22-8 of this title .

- B. Amendments and modifications.** Minor changes to a PUD, its structures or uses, may be authorized by the Director without amending the PUD Plan. Minor changes include, but are not limited to, adjustments to platted lot lines, or a combination of the boundary lines of platted and legally created, unplatted parcels, providing a) no additional lots or parcels are created, b) the lots or parcels are changed less than 20% from the original platted lot boundary, c) the resulting lots are in conformance with the size and design approved for the PUD and are in conformance with all other County ordinances, d) the adjustment does not result in lots separated by a right-of-way or road, and e) a statement is included on the deed of conveyance indicating that the instrument is being recorded for lot line adjustment purposes and that the property being transferred is not a separate, buildable lot.

Significant changes in use, structures, lot or boundary lines, conditions of approval, and all other aspects of a final PUD Plan must be approved by the Board in accordance with the application, hearing and approval procedures for a new PUD. If components of the PUD are under separate ownership, the cooperative corporation or other organization established to provide oversight and control of the project may be authorized to submit the application on behalf of the property owners in the development. If an organization with such authority has not been established, then all affected persons within the PUD must be co-applicants for the request. For application purposes, the Director shall determine which property owners are affected persons as defined by *Idaho Code (ref. IC § 67-6521)*.

9-15-12: CONDOMINIUMS: Condominiums are defined as a system of separate ownership of individual units in a multiple unit building, together with an undivided ownership of the common areas and elements of the real property, by the owners of the individual units. They are an estate consisting of an undivided interest in real property, together with a separate, fee simple interest in a portion of the same property (ref. *Idaho Code § 55-101B*). Condominiums are created by recording a plat and declaration in accordance with *Idaho Code Title 55, Chapter 15*.

If allowed in the zoning district, structures containing two, three or four dwelling units may be platted as condominiums without creating a PUD. For example, if duplexes are allowed in the zoning district, a two unit condominium could be platted without obtaining a PUD permit. In some zones a Conditional Use Permit is, however, required.

If the number of condominiums proposed exceed the dwelling units allowed per parcel in the underlying zone, a PUD is required. The total number of dwelling units permitted in a PUD shall not exceed that allowed in the underlying zoning district or districts.

9-15-13: OPERATION AND MAINTENANCE REQUIRED:

- A. Operation and Maintenance Required.** All PUD improvements and land, including common areas, shall be operated and maintained by the owner(s), in accordance with applicable best management practices (BMP's) and approved plans, and in a manner that is visually appealing. If the development will not remain under one ownership, an organization must be established to operate and maintain shared land and improvements in perpetuity. Organizational options include taxing districts (such as water or sewer districts), for profit corporations, including utility corporations, and cooperative corporations such as homeowners associations. If

private maintenance by a cooperative corporation is proposed, the documents establishing the organization must be approved by the Director.

CHAPTER 16
AIRPORT DISTRICT (Overlay District)

SECTIONS:

9-16-1	AIRPORT DISTRICT DEFINED (Overlay District)
9-16-2	GENERAL
9-16-3	AREA OF APPLICABILITY
9-16-4	RESTRICTIONS
9-16-5	MARKING AND LIGHTING
9-16-6	VARIANCES
9-16-7	AIRPORT AREA DESIGNATIONS
9-16-8	FRONT, SIDE, AND REAR SETBACK REQUIREMENTS
9-16-9	HEIGHT RESTRICTIONS
9-16-10	OPEN SPACE REQUIREMENT
9-16-11	STORAGE REQUIREMENTS
9-16-12	LANDSCAPING REQUIREMENTS
9-16-13	AIRPORT DISTRICT SECURITY

9-16-1: AIRPORT DISTRICT DEFINED (Overlay District): The purpose of this district is to protect the airspace in the vicinity of the airport and its runway approaches, to protect the lives of airport users, and to protect the property and occupants of land in its vicinity. This district will regulate and restrict the height of structures and objects, either natural or man-made, and restrict the uses of the property in accordance with this title, the boundaries outlined on the Kootenai County Zoning Map, and the areas depicted on the Airport Overlay Map.

9-16-2: GENERAL: The uses permitted, the building site areas, setbacks, and all other regulations imposed by the provisions of this title in any Zone shall apply under this title, except as provided in this chapter.

9-16-3: AREA OF APPLICABILITY: All of the unincorporated land in Kootenai County lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces identified on the Kootenai County Zoning Map as:

- A. Height Limitation Area** - All of the land within fourteen thousand (14,000) feet, horizontal distance from the established airport primary runway surface (precision instrument runway and approaches), divided into four (4) height limiting categories.
1. Transition Area - Slope seven (7) feet outward for each foot upward beginning at the primary approach surface extending to a height of one hundred fifty (150) feet.
 2. Horizontal Area - One hundred fifty (150) feet above the airport elevation or at a height of two thousand four hundred sixty-eight (2,468) feet above Mean Sea Level.
 3. Conical Area - Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the Horizontal Area at one hundred fifty (150) feet above the airport elevation and extending to a height of three hundred fifty (350) feet above the airport elevation.

4. Approach Areas:

- a. Slopes fifty (50) feet outward for each foot upward beginning at the end of, and at the same elevation as, the primary surface; and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway centerline; thence sloping forty (40) feet outward for each foot upward to an additional horizontal distance of forty thousand (40,000) feet along the extended runway centerline.
- b. Slopes thirty-four (34) feet outward for each foot upward beginning at the end of, and at the same elevation as, the primary surface; and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway centerline.
- c. Slopes twenty (20) feet outward for each foot upward beginning at the end of, and at the same elevation as, the primary surface, and extending to a horizontal distance of five thousand (5,000) feet along the extended runway centerline.

B. Land Use Guide (L.U.G.) Area - All of the land identified as L.U.G. which will conform to the 10 PNdb composite noise contour established by the Airport Master Plan, considered hazardous because of noise or has the potential of endangering the lives and property of the users.

9-16-4: RESTRICTIONS:

- A. Notwithstanding any other provisions of this Title, no use may be made of land or water within any area established by this District in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.
- B. No place of public assembly (i.e., schools, theaters, churches, hospitals) shall hereafter be constructed or otherwise established within the L.U.G. Area as identified.
- C. All new subdivisions within the L.U.G. Area will be subject to Aviation Easements.

9-16-5: MARKING AND LIGHTING: Notwithstanding the provisions of the nonconforming uses prescribed for Height Limitation Areas, the owner, and all future owners, of any existing nonconforming structure or tree hereby waives the right to object to the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Federal Aviation Administration to indicate to the operators of aircraft in those Height Limitation Areas of airport obstructions. Such markers and lights shall be installed at the expense of the Kootenai County Airport.

9-16-6: VARIANCES: Any person desiring to erect or increase the height of any structure or the growth of any tree not in accordance with the regulations prescribed herein will apply to the Board of Adjustment or Hearing Examiner. The application will be accompanied by a determination from the Airport Board, or the Airport Development Control Committee, as applicable; and the Federal Aviation Administration as to the effect of the proposal on the operation of the airport.

9-16-7: AIRPORT AREA DESIGNATIONS:

- A. Operations Areas: Those areas external to the Building Restriction Line, which are defined as areas for airport operations only. Airport operations areas are defined as aircraft maintenance areas, hangers, passenger service areas, and other structures with frontage on airport ramps, landing and take off runways, and taxi-ways.

- B. Terminal Support Area: The area designated for activities which provide support services for activities for airline passengers, or other members of the public utilizing the airport terminal. The support services are commercial in nature and include, but are not limited to, parking, car rental agencies, restaurants, motels, hotels, etc.
- C. Light Industrial Areas (LI-1 and LI-2): Those areas identified as a land use classification that meets the requirements set forth in the Light Industrial District, except as specified in the airport district overlay.

9-16-8: FRONT, SIDE, AND REAR SETBACK REQUIREMENTS:

A. Operations Area - No setback requirements except as specified below:

- 1. *International Building Code* requirements for abutting structures shall apply.
- 2. Apron, runway, taxiway, and tie down clearance specifications specified by the Federal Aviation Administration shall apply.
- 3. Recommendations shall be sought to ensure consistency with procedures and regulations specified by special purpose districts (Fire District, Highway District, Panhandle Health District, etc.).
- 4. When the use abuts a roadway, or any other zone defined in this title; then the side setback shall be five (5) feet for each ten (10) feet of building height above grade.
- 5. Setbacks shall be determined during the lease negotiation process and incorporated as conditions, covenants, and restrictions in the lease. The setbacks shall be established as required by need, in terms of the following:
 - a. Compliance with clearance specifications for aprons, runways, taxiways, and tiedown areas established by the Federal Aviation Administration.
 - b. Compliance with landscaping and open space sections of this chapter.
 - c. Compliance with this Section as set forth above.

B. Terminal Support Area

- 1. Front: Thirty-five (35) feet
- 2. Side: No requirement except when a commercial or light industrial structure abuts any other zone designated in this title; then the side setback requirement shall be five (5) feet for each ten (10) feet of building height above grade.
- 3. Side (corner lot flanking street): fifteen (15) feet
- 4. Rear: Fifteen (15) feet

C. Light Industrial Areas (LI-1 and LI-2)

- 1. Front: Thirty-five (35) feet

2. Side: No requirement except when a commercial or light industrial structure abuts any other zone designated in this title; then the side setback requirement shall be five (5) feet for each ten (10) feet of building height above grade.
3. Side (corner lot flanking street): fifteen (15) feet.
4. Rear: Fifteen (15) feet

9-16-9: HEIGHT RESTRICTIONS:

- A. Except as otherwise stated in this title, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any airspace zone created in Section 9-16-3 of this Chapter so as to project above any imaginary airspace surfaces described in this chapter. Any proposed structure which will exceed thirty-five (35) feet above grade in the Airport District shall have the site and structural plans submitted to the Kootenai County Airport Advisory Board or the Airport Development Control Committee, as appropriate, for architectural/design/safety review. The cognizant reviewing authority shall provide recommendations to the Board of County Commissioners for final approval of the proposed structure.
- B. Operations Area: No structure or tree shall be constructed, altered, maintained, or allowed to grow in the Operations Area, so as to exceed four (4) stories or a maximum height of fifty (50) feet above airport elevation.
- C. Terminal Support Area: Shall conform to height restrictions set forth in subsection (A) of this section.
- D. Light Industrial Areas (LI-1 and LI-2): Shall conform to height restrictions set forth in subsection (A) of this section.

9-16-10: OPEN SPACE REQUIREMENT:

- A. Operations Area: Maximum building coverage of eighty (80) percent of the site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage.
- B. Terminal Support Area: Maximum building coverage of sixty-five (65) percent of a site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage. The goal is to develop a "campus style" commercial area with an emphasis on landscaped green belts and open space.
- C. Light Industrial Areas LI-1: Maximum building coverage of sixty (60) percent of a site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage. The goal is to develop "campus style" light industrial area stressing open space and landscaped green belts.
- D. Light Industrial Area LI-2: Maximum building coverage of seventy-five (75) percent of a site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage. The goal is to develop a light industrial area with more limited open space and green-belt areas than those in the LI-1 area.

9-16-11: STORAGE REQUIREMENTS:

- A. Operations Area

1. No outdoor storage.
2. Automobiles or other machinery normally displayed for sales purposes on an open lot shall not be displayed in this area. This restriction does not apply to the display of aircraft for the purpose of sale.
3. Storage of below-ground petroleum products shall be permitted for airport operations and shall meet the regulations and standards established by the following agencies:
 - a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality
 - c. Federal Aviation Administration
 - d. National Fire Protection Association
 - e. Northern Lakes Fire Protection District
 - f. Any other agency which may have jurisdiction subsequent to adoption of this title.
4. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.

B. Terminal Support Area:

1. No outdoor storage.
2. Automobiles or other machinery normally displayed for sales purposes on open lot shall not be displayed in this area.
3. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet regulations and standards established by the following agencies:
 - a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality
 - c. Federal Aviation Administration
 - d. National Fire Protection Association
 - e. Northern Lakes Fire Protection District
 - f. Any other agency which may have jurisdiction subsequent to adoption of this title .
4. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.

C. Light Industrial Area (LI-1)

1. No outdoor storage.
2. Automobiles or other machinery normally displayed for sales purposes on open lot shall not be displayed in this area.
3. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet regulations and standards established by the following agencies:
 - a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality

- c. Federal Aviation Administration
- d. National Fire Protection Association
- e. Northern Lakes Fire Protection District
- f. Any other agency which may have jurisdiction subsequent to adoption of this title .

4. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.

D. Light Industrial Area (LI-2)

1. Storage of materials and machinery - all storage shall be indoors, or within a six (6) foot high sight obscuring fence, or screened with vegetative materials, so that the storage area cannot be seen by adjacent properties and the traveling public. Storage areas must conform to the minimum setback regulations of the zone. Automobiles or other machinery normally displayed for sales purposes on an open lot shall not be so displayed.

2. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet regulations and standards established by the following agencies:

- a. Environmental Protection Agency
- b. Idaho Department of Environmental Quality
- c. Federal Aviation Administration
- d. National Fire Protection Association
- e. Northern Lakes Fire Protection District
- f. Any other agency which may have jurisdiction subsequent to adoption of this title .

3. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.

9-16-12: LANDSCAPING REQUIREMENTS:

- A. The front, rear, and side setback areas shall be landscaped with an effective combination of ground cover, shrubbery, and trees. All other unpaved areas shall be landscaped in similar fashion, except those areas designated for parking or storage on site plans approved by the Director.
- B. The entire area between the curb and a point fifteen (15) feet back from the front lot line shall be landscaped for the purpose of forming a vegetative frontage, except for driveway access in the immediate area. Notwithstanding the aforementioned vegetative frontage, the entire area between the curb and the building line of any lot, except for concrete/paved walkways, shall be landscaped.
- C. Undeveloped areas that are owned or are under lease agreement, and are proposed or set aside for future development shall be maintained in a weed-free condition by the lessee.
- D. All areas under lease shall submit a landscaping plan to the Airport Development Control Committee for architectural/design review. The Committee shall provide recommendations to the Board of County Commissioners for all landscaping in the Airport District.
- E. Areas used for parking shall be landscaped in such a manner as to provide a vegetative frontage, or a visual vegetative barrier along areas in view of access streets, freeways, and adjacent properties.

- F. All stormwater run off from parking areas shall receive primary treatment and disposal through grassy swales. Engineered site plans shall allow acreage sufficient to provide primary treatment for the first one-half (1/2) inch of stormwater runoff generated from paved or impervious parking surface.

9-16-13: AIRPORT DISTRICT SECURITY: Airport District security shall be maintained in conformance with Federal Aviation Regulations, Part 107, as set forth by the Federal Aviation Administration.

CHAPTER 17
DESIGN STANDARDS

SECTIONS:

9-17-1	PURPOSE
9-17-2	APPLICABILITY
9-17-3	GENERAL
9-17-4	LANDSCAPING
9-17-5	SCREENING AND FENCING
9-17-6	PARKING

9-17-1: PURPOSE: The purpose of this chapter is to provide standards and minimum regulations for landscaping, screening and fencing, parking, and circulation to promote public health, safety, and general welfare. In addition, it is the purpose of these standards to promote traffic safety and improve the appearance of the County.

9-17-2: APPLICABILITY: This chapter shall apply to all commercial, light industrial and industrial uses. This chapter shall also apply to community uses, including, but not limited to, schools, libraries, churches, meeting halls, hospitals, etc. These standards may also be required as a Condition of Approval for Conditional Use Permits.

9-17-3: GENERAL: The standards provided in this chapter are the minimum standards required. A combined site plan addressing landscaping, parking, and lighting is acceptable, provided it can be easily reviewed and implemented. If the site plan becomes too cluttered or difficult to review for compliance with the requirements, separate site plans may be required by the Director.

9-17-4: LANDSCAPING:

A. Landscape Plans Required. Prior to the issuance of a building or site disturbance permit for uses to which this chapter applies, a landscape plan shall be submitted to the Department for review and approval. At the time an applicant applies for a building permit or site disturbance permit, the landscaping standards in place pursuant to this title or any amendments thereto will govern that application. The landscape plan shall be a drawing to scale, prepared by a landscape designer, including the following information:

1. Boundaries and dimensions of the site.
2. Identification of all species and locations of existing trees that are to be retained.
3. Location and identification of species of all proposed plantings.
4. Location and design of areas to be landscaped, buffered, and maintained.
5. Type, location and design of proposed irrigation.
6. Plant lists or schedules with common name, quantity, spacing and size of all proposed landscape material at the time of planting.
7. Location and description of other landscape improvements, such as earth berms, walls, fences, screens, sculptures, fountains, street furniture, lights, and paved areas.
8. Methods and details for protecting existing vegetation during construction.

For purposes of this chapter, a landscape designer is defined as an individual skilled in the trade of nursery operation or landscape design to include the drafting of landscape plans and construction details, development of plant material lists, and construction material selection, but need not have completed the State of Idaho qualifications necessary to be classified as a Landscape Architect.

As part of the landscape plan submittal, the plan designer shall determine whether the site contains noxious weeds. If it is determined that there are noxious weeds on site, then the Certificate of Occupancy shall not be issued until a weed mitigation plan is developed and approved by County.

B. Landscape Standards

1. General Requirements

- a. Existing on-site trees and shrubs may be included in the application of these standards, provided they are depicted on the plan and retained.
- b. All landscaped areas, including trees, shrubs, and ground cover, shall be permanently maintained in a healthy growing condition. Irrigation shall be available to maintain healthy growing condition. To maintain the integrity of the original design, any dead tree or shrub shall be replaced with the same or similar species originally planted unless a substitute is approved by the Director.
- c. No landscape area shall include artificial trees, plants, or any carpeting designed as a vegetative substitute.
- d. Unless otherwise specified, landscaping shall consist of, but not be limited to, a mix of deciduous and evergreen trees, shrubs, and planted ground cover. The use of native vegetation is encouraged. There shall be at least one tree and three shrubs for every 300 square feet of landscaped area. At the time of planting, deciduous trees shall be a minimum of 2" inch caliper (as measured 6 inches above grade), and evergreen trees shall be at least five (5) feet tall. At the time of maturity, all trees shall be at least twenty (20) feet tall. Where shrubs are required, they shall be a minimum of a 3 gallon tub.
- e. All required landscape areas shall be planted so as to achieve 100% ground coverage by under story plant materials within five (5) years. If this amount of ground coverage is not achieved, the area shall be planted with mature plant material immediately or as soon as the planting season permits.
- f. Around primary structures, a strip of landscaped area at least 25 feet wide shall be provided in front, and a strip at least 15 feet wide shall be provided along the sides of the structures. Walkways up to 6 feet in width may be installed within these landscaped areas.
- g. No landscaping shall be placed so as to obstruct a motorist's clear view of a street, highway, or public right-of-way within a fifty-foot (50') vision obstruction triangle. Trunks of deciduous trees are acceptable within the fifty-foot (50') vision obstruction triangle.

2. Parking Lots.

Landscaping shall be required for all parking lots based on a percentage of the gross parking area used for parking spaces. Traffic aisles and driveways are excluded from this calculation. The area calculations are as follows:

- a. 1 to 50 spaces = 10 percent of the area

- b. 51 to 99 spaces = 12 percent of the area
- c. 100 or more spaces = 15 percent of the area

Example: 8 parking spaces, each space is 10 feet wide and 20 feet long (200 square feet per space).

$$\begin{aligned} 8 \text{ spaces} \times 200 \text{ sq. ft.} &= 1600 \text{ sq. ft.} \\ 1600 \times 10\% &= 160 \text{ square feet of landscaped area} \end{aligned}$$

In addition, parking lots and the accompanying landscaping shall be configured so that no parking space is more than 75 feet from a landscaped area.

3. Areas Adjacent to Residential Zones.

A 15-foot wide minimum planting strip buffer in conjunction with a 50% site obscuring fence not less than six feet in height shall also be required where the development abuts an existing residential zone or existing residential use.

Planting strip buffers shall consist of sight-obscuring vegetative screening, and shall attain 50% sight obscurity along the entire strip within three years. (Only 50% of the site is visible from the street or from an adjacent residential property after three years of plant growth.) Buffering shall provide a year-round visual screen in order to minimize adverse impacts on adjacent property. No buildings, structures, accessory structures, parking, driveways, loading areas or storage of materials shall be permitted in the buffer area.

4. Pedestrian Walkways.

Pedestrian walkways shall be landscaped for their entire length. Trees shall be sized large enough so that, at maturity, a minimum vertical clearance of 7 feet between the sidewalk and the lowest branch is attained. Trees shall be at least two (2) feet from sidewalks and curbs at the time of planting. Root control barriers between the proposed tree planting location and the curb and sidewalks may be required to maintain the health of the tree.

5. Public Road Frontage

Frontage buffer areas shall be provided for all nonresidential uses adjacent to all public roads. The minimum depth of said buffer shall be fifteen (15) feet. Frontage buffers shall be planted with grasses, deciduous trees, evergreens, or constructed of berms, boulder accents, mounds or combinations. Frontage buffers shall require a minimum of three (3) trees and three (3) shrubs for every thirty (30) feet of street frontage. If a landscaped berm is provided, the berm shall be at least two and one half (2.5) feet higher than the finished elevation of the parking lot and planting requirements may be reduced to two (2) trees and 3 shrubs for every thirty (30) feet of public road frontage. If planted berms are used, the minimum top width shall be four (4) feet, and the maximum side slope shall be 2:1. No buildings, structures, accessory structures, parking, driveways, loading areas or storage of materials shall be permitted in the buffer area.

C. Planting Implementation

- 1. All existing trees that are to be saved shall be unmistakably delineated in the field so that it is obvious to construction personnel and equipment operators.
- 2. All field construction personnel and equipment operators shall use appropriate construction practices to prevent damage to existing and new landscaping.

3. Prior to issuance of the Certificate of Occupancy, the designer shall submit a completion report attesting to the correct installation of healthy trees, shrubs, groundcover and other landscape treatments as shown on the landscape site plan, and that the installation is a correct representation of the plan.
4. The Director may authorize a delay in the completion of planting during the months of November, December, January, February, and up to March 15th (or adverse weather conditions which threaten survivability of plants). Should a delay occur, a guarantee of financial surety equal to one hundred fifty percent (150%) of the costs of landscaping will be provided by the owner/developer and held by the County until the landscaping is complete. No Certificate of Occupancy shall be issued until the required landscape development is complete, or a financial guarantee has been approved.

D. Alternative Methods Of Compliance

It is recognized that with certain site conditions, a strict interpretation of requirements may be physically impossible or economically impractical. In cases of hardship, these alternative compliance procedures allow modifications to the above landscaping requirements. Requests for use of alternative landscaping schemes are justified only when one or more of the following apply:

1. The site has space limitations or the parcel is unusually shaped.
2. Topography, soil, vegetation or other physical hardship site conditions are such that full compliance is impossible or impractical.
3. Due to a change of use of an existing site, the required buffer is larger than can be provided.
4. Legitimate safety considerations from other public agencies are raised.

An applicant applying for relief under this provision shall submit, in addition to the information required in the Landscape Plan, a written narrative explaining the alternative methods of compliance, also prepared by a designer, and the applicable fees. The proposed solution shall equal or exceed existing requirements.

Upon receipt of the completed application, the Director shall review the request and submit a decision to the applicant within 10 working days of the request. If the application is denied, the Applicant may appeal the Director's decision to the County Hearing Examiner. The Hearing Examiner shall make a recommendation to the Board of County Commissioners. The decision from the Board shall be final.

9-17-5: SCREENING AND FENCING:

- A. Refuse containers shall be screened from view by a 100 percent sight obscuring fence that is a minimum of six feet (6') in height.
- B. Storage of Equipment, Materials and Goods - Equipment, materials or goods not housed within the primary building shall be stored within an accessory building or within a 100 percent sight obscuring fence that is a minimum of six (6) feet in height. Materials and goods shall not be stored in any manner where they are visible from adjacent property or a public right-of-way.
- C. Fencing material shall not consist of tires, manufactured home parts, salvaged building materials, automobile parts, junk, or garbage.
- D. Fencing shall be a maximum of eight feet in height.

9-17-6: PARKING:

A. General Requirements

1. Parking and Circulation Plan Required - Off-street parking and loading facilities shall be shown on a site plan for review. The plan submitted shall show a detailed functional parking arrangement and on-site circulation and shall be prepared at a scale of not less than one inch equals one hundred feet (1"=100').
2. Parking Area Limitations - A required parking area shall be used exclusively for parking of vehicles in operating condition and shall be used in conjunction with a permitted land use. No inoperable or unlicensed vehicle shall be parked or stored within a space which is required to meet the minimum number of spaces of this Section. Following approval, off-street parking facilities shall not be reduced or encroached upon in any manner unless provisions of this chapter have been met and approval for the change has been received.
3. Changes in Parking Facility - Whenever a use or building constructed or established after December 21, 1998 is enlarged in floor area, number of employees, number of dwelling units, seating capacity, or any other change that creates an increase in the need for additional parking spaces, a site plan shall be prepared and submitted to the Director for approval.
4. Access - All parking facilities shall be provided with safe and convenient access to a street. Ingress and egress to streets shall be provided only through approved driveways. Approaches onto a public road shall meet the requirements of the applicable Highway jurisdiction.

B. Parking Lot Design Standards

1. Number of Parking Spaces Required - The minimum number of off-street parking spaces required for each type of use, or similar use, shall be in accordance with the following list. Gross floor space shall be used where the number of spaces is based on a square footage type requirement. In determining the number of parking spaces required, fractions shall be rounded to the nearest whole number. If a specific use is not listed for parking standards, then the requirements for the closest similar use shall be used. If there is no similar use, then one space shall be required for every 200 square feet of gross floor space.

Manufactured Home Park: 2 per dwelling unit

Community Uses:

Auditoriums, churches, theaters:

Fixed Seating: 1 per 4 seats

No Fixed Seating: 1 per 150 square feet

Schools or higher educational facilities: 1 per classroom, 1 per office, and 1 per each 4 seats in the largest gathering room

Day care centers: 1 per 350 square feet

Hospitals: 1 per each bed

Libraries: 1 per 250 square feet

Nursing homes: 1 per 5 beds

Parks/Athletic fields: 30 spaces, and 50 per each playing field

Commercial:

Offices: 3 per 1000 square feet

Medical/Dental Clinics: 1 per 250 square feet

Retail sales, personal services: 1 per 250 square feet

Furniture and motor vehicle showrooms: 1 per 800 square feet

Hotels/Motels: 1 per rental unit, and 1 per each regular employee of the largest shift

Indoor Recreation, such as bowling alleys/skating rinks: 1 per 100 square feet

Restaurants/night clubs/bars: 1 per 250 square feet

Club/lodge: 1 per every 6 fixed seats or 1 for every 10 members, whichever is larger

Outdoor Recreation Activities (depending upon the activity):

1 per every cabin; or

1 per every equestrian stall; or

1 per every 100 square foot of floor space in the primary lodge or club; or

1 per every four tickets sold;

Research Park: 1 per 600 square feet

Industrial:

Manufacturing: 1 for every 2 employees on the largest shift

Warehouse and Wholesale: 1 per 800 square feet

Mining:

1 for every 2 employees on the largest shift

2. Location of Parking Facilities - Required off-street parking shall be either on the same lot or premises as the principal building or within three hundred feet (300') of the building. The 300 foot requirement shall be measured from the nearest point of the principal building to the nearest point of the parking facility. Off-street parking facilities for separate uses may be provided jointly when operating hours of users do not conflict and provided the total number of spaces is not less than the required spaces for each individual use. Off-site parking areas shall require approval as a conditional use permit.
3. Dimensions
 - a. Parking Lot Space Dimensions - Eight feet (8') in width by eighteen feet (18') in length. At the developer's option, 25 percent (25%) of the lot may be marked "compact only" with individual parking space dimensions of seven and one-half feet (7'2") in width by fifteen feet (15') in length.

- b. Aisle Width - Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking:

Parking Angle (degrees):	0°	30°	45°	60°	90°
Aisle Width (feet): One-Way Traffic	13'	12'	15'	18'	24'
Two-Way Traffic	19'	20'	21'	23'	24'

- c. Driveway Entrances and Exits - One-way traffic entrance and exit driveways for all uses except residential: fourteen feet (14'). Two-way traffic entrance and exit driveways used for all uses except residential: twenty-six feet (26').
4. Bicycle Parking - One bicycle parking space shall be provided for every ten (10) required auto parking spaces. Bicycle parking shall not obstruct vehicular or pedestrian circulation.
5. Parking for Physical Limitations - Where off-street parking is required for uses other than residential, handicapped parking spaces shall be provided on the ratio of one handicapped parking space per thirty-five (35) required auto parking spaces, and shall meet the following standards:
- a. The spaces shall be at least twelve feet (12') wide and twenty feet (20') long and shall be open on one side to allow wheelchair access.
 - b. Spaces shall be signed in accordance with *Idaho Code* §49-695.
 - c. Spaces shall be located on the shortest possible accessible circulation route to an accessible entrance to a building.
6. Construction Requirements
- a. Parking areas and access driveways shall be paved with plant mix asphalt concrete or traffic rated concrete unit pavers.
 - b. There shall be continuous curbing between parking areas and buildings and along both sides of the approach(es) across the road right-of-way. Curb cuts shall be allowed for driveways, access ways, walkways, and stormwater conveyance.
 - c. Where four (4) or more parking spaces are required, each parking space shall be designated by a three inch (3") painted line defining the side of each space for its entire length.
 - d. When off-street parking lots abut residential property, the site plan shall include a 50% sight obscuring fence not less than 6 feet in height and a 50% sight-obscuring vegetative screen along the entire boundary that is common to both the residential and parking lot areas.
7. Circulation Requirements
- a. All on-site traffic patterns shall be designated and clearly marked.
 - b. Circulation within an off-street parking lot shall be such that a vehicle shall not have to exit and re-enter the lot in order to reach another parking aisle, and a vehicle shall not exit the parking lot by backing into the street.
 - c. Turn-arounds shall be a minimum of twenty-four feet (24') in width.

8. Parking Lot Lighting - Lighting used to illuminate a parking lot shall be shown on the site plan, and shall be downward directed and shielded to prevent illumination at the property line greater than 0.2 footcandles.

C. Loading Requirements

1. All required loading areas shall be off-street and shall be located on the same lot as the building to be served.
2. A loading area shall be served by vehicular access to a street or alley.
3. All open loading areas shall be paved with plant mix asphalt concrete.
4. One loading area shall be required for each 10,000 square feet of building area. The loading area shall be a minimum of 12 feet wide, 35 feet in length.

CHAPTER 18
HIGHWAY 41 OVERLAY ACCESS MANAGEMENT

SECTIONS:

9-18-1	PURPOSE
9-18-2	GENERAL
9-18-3	APPLICABILITY
9-18-4	NEW APPROACHES
9-18-5	USE OF EXISTING APPROACHES
9-18-6	ADDITIONAL REQUIREMENTS
9-18-7	VARIANCE PROVISIONS

9-18-1: PURPOSE AND PLANNING AREA: The goals and intent behind this chapter are to improve safety conditions along the highway, reduce congestion and delays, provide property owners with safe access to the Highway, promote desirable land use development patterns, and make pedestrian and bicycle travel safer. Provisions of this chapter shall be used to manage and control access to Highway 41, and require that properties adjacent to the Highway utilize or obtain access on other public roads. This chapter is enacted pursuant to the following: *Idaho Code* Title 67, Chapter 65, Local Land Use Planning Act; the *Kootenai County Comprehensive Plan*; and the provisions of this title.

9-18-12: GENERAL: The permitted uses, the building site areas, setbacks, and all other regulations imposed by this title in any Zone shall continue to apply in areas subject to this chapter. In cases where there are conflicting provisions of this title, requirements of this chapter shall prevail.

9-18-3: APPLICABILITY: A zoning overlay district is hereby established for all unincorporated land in Kootenai County lying within 1,320 feet of the centerline of State Highway 41, South of Lancaster Avenue and North of Poleline Avenue, and as identified on the Kootenai County Zoning Map. If a parcel is partially or entirely within the 1,320 feet overlay, the rules of this chapter shall apply.

9-18-4: NEW APPROACHES: New approaches directly accessing onto Highway 41 within the overlay shall be allowed only in the following circumstances:

- A. Access to an individual residence (no common driveways) on parcels created prior to adoption of this chapter.
- B. Agricultural field access.
- C. When local fire districts require a secondary access to provide for emergency services, such access shall not be open for non-emergency uses and shall be maintained by the land owner as a closed access except during emergencies.

Approach permits shall be required by the Idaho Transportation Department and the local highway jurisdiction. Traffic counts, studies and improvements may be required by either the Idaho Transportation Department and/or the applicable Highway Jurisdiction.

9-18-5: USE OF EXISTING APPROACHES:

- A. Use of existing approaches onto Highway 41 within the overlay zone shall be allowed to continue provided:
 - 1. Existing use is lawful and properly permitted.
 - 2. Type of use does not change (For example - a residential use to a commercial use) or;

3. Intensity of Commercial or Industrial Use does not increase. For purposes of this chapter, an Increase of Intensity is defined as additional businesses or an increase in lot coverage greater than twenty-five per cent (25%) per year, and;
4. The number of parcels served by the approach does not change.
5. The approach was existing and legally permitted for the existing use from the Idaho Transportation Department or the local Highway Jurisdiction as of the effective date of Kootenai County Zoning Ordinance No. 274, November 30, 1998 .

9-18-6: ADDITIONAL REQUIREMENTS:

- A. All structures within this overlay zone shall be set back at least 150 feet from the centerline of the Highway. All other setback requirements of the underlying zone shall be met.
- B. All new subdivision and short plat developments shall obtain access to an existing public road other than Highway 41.
- C. If there is a change in the use, a change of use permit shall be required, reviewed and approved by the Department prior to the issuance of any new building permits.
- D. When the use is approved for change, the use of the existing approach shall cease and the approach shall be abandoned and removed. The property owner shall acquire access to an existing public road other than Highway 41 prior to any change of use. The access shall meet the requirements for location, design, right of way and standards of the local highway jurisdiction. Based on the specific project or specific use, the Post Falls Highway District may require dedication of the access road.
- E. Traffic counts, studies and improvements may be required by either the Idaho Transportation Department and/or the applicable Highway Jurisdiction.
- F. A circulation plan shall be required for any new building permit.
 1. Plans shall be designed to create a safe flow of vehicular and pedestrian circulation through the parcel.
 2. Plan shall be drawn to scale and include:
 - a. Identification of easements, new or existing roads.
 - b. Identification and overall design of parking lots, stormwater treatment, and sidewalks.

9-18-7: VARIANCE PROVISIONS: Requests for variances from any section of this chapter shall follow the standards and procedures as outlined in chapter 23 of this title .

**CHAPTER 19
SUPPLEMENTARY REGULATIONS**

SECTIONS:

9-19-1	SUPPLEMENTARY REGULATIONS; APPLICABILITY
9-19-2	VISIBILITY AT INTERSECTIONS
9-19-3	ACCESSORY BUILDINGS
9-19-4	ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT
9-19-5	EXCEPTIONS TO HEIGHT AND SETBACK REGULATIONS
9-19-6	PARKING, STORAGE, OR USE OF MAJOR RECREATIONAL EQUIPMENT
9-19-7	SIGNS
9-19-8	TEMPORARY HARDSHIP USE PERMIT

9-19-1: SUPPLEMENTARY REGULATIONS; APPLICABILITY: The Supplementary Regulations set forth in this chapter are applicable in all zones established by this title.

9-19-2: VISIBILITY AT INTERSECTIONS: On a corner lot, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one half (2 1/2) and ten (10) feet above the centerline grades of the intersecting streets of such corner lots and a line joining points along said street lines fifty (50) feet from the point of intersection.

9-19-3: ACCESSORY BUILDINGS: Accessory buildings shall not be erected in open space required by this title. Separate accessory buildings shall not be erected within six (6) feet of any other building.

9-19-4: ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT:

- A. In Commercial, Light Industrial, Industrial, Mining, and High Density Residential zones, more than one (1) structure housing a permitted principal use may be erected on a single lot, provided that the open space and other requirements of this title shall be met for each structure as though it were on an individual lot.
- B. In Agricultural, Agricultural Suburban, Restricted Residential and Rural zones, no more than one (1) structure housing a permitted residential use may be erected on a single lot, unless specified in the individual zone.

When a properly permitted manufactured home is replaced with another properly permitted manufactured home or residential structure, the manufactured home may be temporarily stored on site for up to 90 days, providing a) it is disconnected from all utilities, and b) it is placed on wheels and axles, and the running gear, including the tongue, are in place. Manufactured homes may not be converted to, or used as storage units.

9-19-5: EXCEPTIONS TO HEIGHT AND SETBACK REGULATIONS:

A. Exception to Height Requirements

Height limitations contained in this title, except those shown under section 9-16-3(A) of this title pertaining to the Airport District, do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

B. Exceptions to Setback Requirements

- I. The setback requirements as previously stated in this title shall not apply to:
 - a. Fences less than eight (8) feet in height and retaining walls;

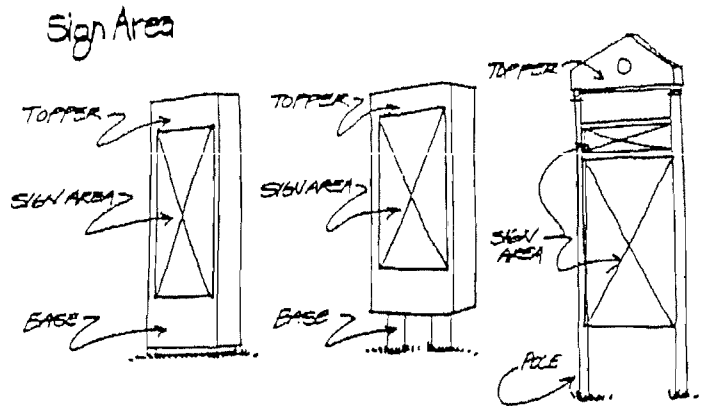
- b. Poured concrete structures on grade, such as patios and sidewalks;
- c. Platforms necessary for access from roadways to garages or for parking purposes and which are not enclosed;
- d. Stairways and walkways (which do not exceed four (4) feet in width) and stairway landings (which do not exceed six (6) feet in width or length), subject to the following setback requirements:
 - 1) Front and Rear Yard..... none
 - 2) Side Yard five (5) feet
- e. Eave projections which:
 - 1) Do not exceed two (2) feet or
 - 2) Are for the purpose of covering a stairway or walkway as previously defined and which shall not exceed the setback requirements contained in this section.

9-19-6: PARKING, STORAGE, OR USE OF MAJOR RECREATIONAL EQUIPMENT: For the purposes of this title, major recreational equipment is defined as including boats and boat trailers, travel trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. Major recreational equipment should be parked or stored in the off-street parking areas required in the individual zones. No major recreational equipment shall be parked or stored on any street or alley in a residential area to exceed twenty-four (24) hours.

9-19-7: SIGNS:

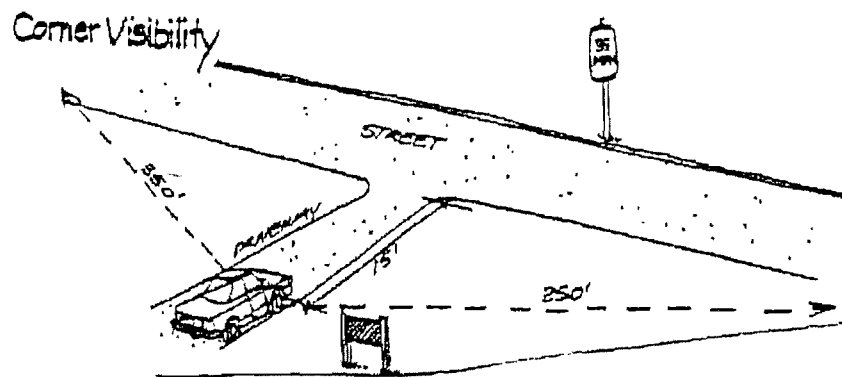
A. General Requirements

- 1. Property Line Setbacks. Signs may be installed up to, but not over, property lines. Signs may not be installed in easements.
- 2. Sign Area. The size of a sign face, in square feet, shall be measured so as to include the entire area within a continuous perimeter enclosing the extreme limits of the sign, including the background on which the lettering is placed. Such perimeter shall not include any structural elements which lie outside the limits of the sign and which do not form an integral part of the display. When a sign is painted on a building, the size of the sign shall be determined by the perimeter within which the lettering and/or artwork of the sign is inscribed.



3. Sign Height. The height of a sign shall be measured from the finished ground level adjacent to the sign, to the top of the sign, or to the highest point of the sign structure or frame, whichever is greater. On slopes, the height of the sign is measured at the mid-point of the sign.
4. Corner Visibility. No sign or display shall be permitted at the intersection of a road, alley or driveway, in a manner that obstructs the clear vision of any part of the road. If a sign is placed at the intersection of two roads, the sign must not interfere with the 50 foot corner visibility triangle described in section 9-19-2 of this chapter.

For signs located near a driveway entrance onto a road, a sight triangle based on the speed of traffic is used. At a point fifteen feet back from the edge of the road surface or curb, no sign may block the line of vision to a point equal to the speed limit times ten. For example, if the speed limit is 35 miles per hour, the exiting driver must be able to see the road and vehicles up to 350 feet away.



5. Sign Maintenance. All sign supports, braces, guys, anchors and other components shall be kept in good repair, and the faces of signs shall be neatly painted or posted at all times.
6. International Building Code. Signs shall be constructed in conformance with the currently adopted edition of the *International Building Code*. If a building permit is not required, no other permit is necessary, however the sign or display must meet the requirements of this title.

B. The following signs are permitted in all zoning districts:

1. Official notices required by a Court or other governmental authority.
2. Directional, warning, location, information, or traffic signs, located on public property and authorized by a governmental authority.
3. Signs that are oriented internally to a site and that are not directed toward other properties or roads. Examples include sponsorship signs at race tracks and sporting facilities.
4. Other signs authorized or required by law (for example no trespassing or handicap parking signs).
5. Signs that include only the name of a location, owner or occupant (for example signs depicting the name of a subdivision, ranch or property owner). The name of a business or other information may not be included on this sign.

C. Off-Premise Signs. With the following exception for temporary event signs, off-premise signs are not permitted in any zoning district.

With the permission of the property owner, off-premise, temporary event signs or banners are permitted in all zoning districts, for up 14 days during one calendar year, in connection with a single event which is not repeated during the year.

Note: Off-premise signs near State and Interstate highways may be subject to the requirements of Idaho Code Title 40, Chapter 19.

D. Prohibited Signs and Displays.

The following signs and displays are prohibited in all zoning districts:

1. Signs that create a hazard or dangerous distraction to vehicular traffic; that may be confused with or interfere with authorized railroad or traffic signs, signals or devices; that impair the vision of drivers or pedestrians; or that otherwise interfere with traffic visibility.
2. Signs that are not structurally sound, that may pose a hazard to people or property.
3. Roof signs.
4. Revolving signs or signs with moving parts.
5. Animated signs (both mechanically and electronically animated).
6. Signs with audible devices.
7. Flashing signs, lights or displays.
8. Signs advertising activities that are illegal.
9. Signs that are obscene or indecent.
10. Signs not specifically permitted by this title.

E. In Commercial, Light Industrial, and Industrial zoning districts, each legally created parcel of land may have the following on-premise signs and displays:

1. One pole sign, projecting sign, or banner sign, with the size and height of the sign not to exceed the dimensions shown in Table 19-1. This sign may be illuminated in conformance with the requirements of this section, and may include an electronic message center, providing the sign and message center together to not exceed the dimensions shown in Table 19-1.
2. One monument sign for each side of the parcel adjoining a public or private road, with the size of the sign not to exceed the dimensions shown in Table 19-1, and the height of the sign not to exceed 6 feet. Monument signs may be illuminated in conformance with the requirements of this section, and may include an electronic message center, providing the sign and message center together do not exceed the dimensions shown in Table 19-1.

Table 19-1
Maximum Sign Size and Height in Commercial,
Light Industrial, and Industrial Zoning Districts

Speed Limit ♦	Number of Traffic Lanes	Maximum Area of Sign Face ♣	Maximum Sign Height ♣
≤ 25 mph	2	25 sq. ft.	12 feet
≤ 25 mph	4	32 sq. ft.	12 feet
35 mph	2	32 sq. ft.	20 feet
35 mph	4	42 sq. ft.	20 feet
45 mph	2	75 sq. ft.	35 feet
45 mph	4	90 sq. ft.	35 feet
≥ 55 mph	2	150 sq. ft.	40 feet
≥ 55 mph	4	200 sq. ft.	40 feet

♦ For designated speed limits between the listed values use the standards for the next lower speed limit.

♣ Sign height measured to the top of the sign, or the top of the sign structure, whichever is greater. The maximum height for monument signs is 6 feet.

♣ Area to be determined by the dimensions of one side of a two faced sign (e.g. a 25 sq. ft. sign may have 25 sq. ft. of sign face on one side, and 25 sq. ft. of sign face on the opposite side).

3. Wall, awning, canopy or window signs, providing the signs do not cover more than 30% of the wall to which they are attached or inscribed. Wall, awning and canopy signs may be illuminated in conformance with the requirements of this section and may include an electronic message center. As an alternative, the size of these signs may be increased to 50% of the wall if a pole sign is not constructed on the parcel, and the signs are not internally lit (though indirect lighting is permitted).
4. One search light as part of an advertising display.

5. The following on-premise, unlighted, temporary signs and displays providing they are in place for no more than 28 days during one calendar year:
 - a. Banner signs.
 - b. Pennants or similar displays, individually or strung together.
 - c. Floating or blow up signs providing their height from the ground to the top of the sign does not exceed 50 feet.
 - d. Other portable or temporary signs, not to exceed 32 square feet in size and a height of 12 feet.
6. Real property for sale or under construction. On-premise, unlighted signs may be installed as necessary to advertise the sale of, or construction on real property. These signs shall not exceed thirty-two (32) square feet in size, and a height of twelve (12) feet.
7. Illuminated Signs. If allowed, illuminated signs in Commercial, Industrial and Light Industrial zoning districts must meet the following requirements:
 - a. Indirect, external lighting (e.g. lights shining on a sign) - the lights themselves must be concealed from view and directed/ shielded so the light shines only on the sign, with minimal projection beyond the sign.
 - b. Internal lighting - the sign must have a dark background with lighter lettering.

F. In Agricultural, Rural, Agricultural Suburban, Restricted Residential, Mining, and High Density Residential zoning districts, each legally created parcel of land may have the following on-premise signs:

- I. One pole or monument sign, with the size and height of the sign not to exceed the dimensions shown in Table 19-2. These signs may be indirectly illuminated (e.g. by lights shining on the sign), providing the lights are concealed from view and are directed and shielded so the light shines only on the sign, with minimal projection beyond the sign.

Table 19-2 25-2

Maximum Sign Size and Height in Agricultural, Rural, Agricultural Suburban, Restricted Residential, Mining, and High Density Residential Zoning Districts

Speed Limit	Type of Sign	Maximum Area of Sign Face*	Maximum Sign Height †
0-45 mph	Monument	16 sq. ft.	6 feet
0-45 mph	Pole	10 sq. ft.	6 feet
46+ mph	Monument	32 sq. ft.	6 feet
46-55 mph	Pole	16 sq. ft.	8 feet
56+ mph	Pole	32 sq. ft.	12 feet

♣ Sign height measured to the top of the sign, or the top of the sign structure, whichever is greater.

♣ Area to be determined by the dimensions of one side of a two faced sign (e.g. a 25 sq. ft. sign may have 25 sq. ft. of sign face on one side, and 25 sq. ft. of sign face on the opposite side).

2. One wall, awning, canopy, projecting or window sign providing it does not exceed 8 square feet in size. This sign may not be illuminated.
3. Unlighted, on-premise, portable or temporary signs providing they are displayed for no more than 28 days during one calendar year. These signs may not exceed 12 square feet in size and a height of 8 feet.
4. Real property for sale or under construction. On-premise, unlighted signs may be installed as necessary to advertise the sale of, or construction on real property. These signs shall not exceed twelve (12) square feet in size, and a height of eight (8) feet.
5. The following are prohibited in Agricultural, Rural, Agricultural Suburban, Restricted Residential, Mining, and High Density Residential zoning districts (in addition to the general prohibitions of this section):
 - a. Internal lighting of signs.
 - b. Electronic message centers.
 - c. Banner signs.
 - d. Pennants and similar displays, individually or strung together.
 - e. Floating or blow up signs.
 - f. Search lights.

9-19-8: TEMPORARY HARDSHIP USE PERMIT:

- A. Purpose - The Temporary Hardship Use Permit is established in order to provide procedures that will allow for the placement and use of a temporary dwelling upon a single lot that has an existing, primary single-family dwelling. The primary occupant of the temporary dwelling shall be the dependent person noted in the permit.
- B. Dependent Person - For purposes of this chapter, a dependent person shall mean a person who because of a physical or mental impairment is incapable of living independently and without daily care.
- C. Certification of Dependency - Written certification from a licensed physician stating the dependent person's incapacity to live independently shall be presented to the Administrator prior to commencing the application process for a temporary hardship use permit.
- D. Restrictions on Temporary Hardship Use:
 1. The Applicant for a temporary hardship use permit must be a holder of an interest in the property on which the temporary dwelling is located. The applicant shall also be a relative of the dependent person that will be occupying the temporary dwelling.

2. The lot on which the primary single-family residence exists and on which the temporary dwelling is to be permitted shall be a minimum of one (1) acre. No more than one (1) temporary dwelling shall be permitted per applicant, per single lot.
 3. The dependent person named in the application shall be the occupant of the temporary dwelling. When a dependent person no longer occupies the permitted dwelling, the temporary hardship use permit becomes null and void and the temporary dwelling shall be removed from the site.
 4. A Class A or Class B manufactured home may be used as the temporary dwelling. A manufactured home setting permit shall also be obtained from the Department prior to placing the housing unit on the site, and an occupancy permit shall be received from the Department prior to the manufactured home being occupied by the dependent person named in the permit.
 5. Structures, other than manufactured homes, which are to be used as the temporary dwelling, shall meet housing standards set forth in the *International Building Code* for a single-family dwelling. A building permit and occupancy permit shall be received from the Department prior to the structure being occupied by the dependent person.
 6. The temporary dwelling shall be connected to an approved sewage disposal system. Utility and service connections of any type shall be in accordance with the applicable utility or service provider's requirements.
 7. A temporary hardship use permit shall not be issued if covenants or plat dedications of the site restrict such use.
 8. A temporary hardship use permit shall be renewed every two (2) years unless otherwise released. It shall be the responsibility of the permit holder to ensure renewal has been obtained.
 9. A temporary hardship use permit is not transferable and shall terminate upon the sale or lease of the property on which the use is located.
- E. Application Procedures - Following the Administrator's acceptance of written certification from a licensed physician, an application for a temporary hardship use permit shall be filed with the Administrator and shall include the following information:
1. Name, address, and telephone number of the applicant.
 2. Name of the dependent person and his relationship to the applicant.
 3. A copy of the deed, or contract for sale, of the property on which the temporary dwelling will be located.
 4. A statement signed by the applicant that the temporary hardship use is not in conflict with restrictive covenants or plat dedications of the property.
 5. A letter from Panhandle Health District that the sewage disposal system for the temporary dwelling meets with their approval.
 6. Filing fees.

F. Approval Procedures

1. No later than fifteen (15) calendar days following acceptance of the application, the Administrator shall approve or deny the permit.
2. Upon approval of the permit, the Administrator shall issue a temporary hardship use permit to the applicant. The Administrator shall also provide the following information, in writing, to the applicant:
 - a. The date the permit must be renewed, if the dependent person's status remains the same as it did at the time of issuance of the permit.
 - b. A statement that when the dependent person ceases to occupy the temporary dwelling unit it shall be removed from the lot.
 - c. A statement that failure to renew the permit by the stated date, or failure to notify the Administrator when the dependent person ceases to occupy the temporary dwelling, will be considered a violation of the permit and subject to penalties.
 - d. A statement that the applicant must obtain the applicable building and occupancy permits prior to the dependent person occupying the dwelling.

G. Recording of Use - It shall be the responsibility of the Administrator to have notice of the temporary hardship use recorded with the County Clerk and Recorder's Office. Such notice shall include:

1. Name and address of applicant; legal description of the property on which the temporary use is located.
2. A statement that a temporary dwelling has been permitted under the terms of a temporary hardship use permit and that the temporary dwelling is for the occupancy of a dependent person.
3. A statement that the temporary use shall be discontinued upon the sale or lease of the property, or when the dependent person ceases to occupy the temporary dwelling.

H. Notice of Release. It shall be the responsibility of the Administrator to notify the County Clerk and Recorder's office upon termination of the temporary hardship use permit. A copy of the notice shall be sent to the property owner.

I. Appeals. Any person aggrieved by a decision of the Administrator may appeal such decision by following the procedures for appeals set forth in section 9-22-8 of this title (Hearing Appeals; Notice).

**CHAPTER 20
NONCONFORMING PARCELS, STRUCTURES AND USES**

SECTIONS:

9-20-1	GENERAL
9-20-2	NONCONFORMING STRUCTURES
9-20-3	NONCONFORMING USE OF STRUCTURES, LAND, OR STRUCTURES AND LAND IN COMBINATION
9-20-4	NONCONFORMING PARCELS OF LAND
9-20-5	ABATEMENT OF NUISANCES AND REMOVAL OF HAZARDS
9-20-6	CERTIFICATE OF NONCONFORMING USE

9-20-1: GENERAL: Within Kootenai County there exist parcels of land, structures and uses which were lawful prior to adoption of this title or previous applicable ordinances, but which no longer conform to the regulations for the zoning district in which they are located. It is the intent of this title to permit these nonconformities to continue until they are substantially destroyed, removed or brought into conformance with this title , providing the nonconformity is not enlarged or expanded.

Nonconformities shall be regulated according to the provisions of this chapter.

9-20-2: NONCONFORMING STRUCTURES:

- A. Nonconforming structures shall not be expanded or enlarged in a way that increases the nonconformity. For example, a home that does not meet the rear setback requirement to the property line may not construct a deck or addition to any portion of the house that further encroaches into that setback. An addition may, however, be constructed to the front of the house.
- B. When a nonconforming structure is damaged to the extent of more than 50% of the market value of the entire structure, it shall not be reconstructed except in conformity with this title. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.
- C. A nonconforming structure that is partially or totally removed, or relocated for any distance, cannot be replaced except in conformance with this title. A structure shall be considered to be partially removed when the market value of the entire structure is reduced more than 50%. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.
- D. Ordinary repairs and additions as permitted by subsection (A) of this section, may be performed on a nonconforming structure, including but not limited to repair or replacement of the roof, walls, fixtures, wiring, or plumbing, providing the cumulative value of the additions or repairs over a five (5) year period do not exceed 50% of the market value of the structure before the work began. The value of the proposed additions or repairs shall be determined using the Kootenai County Building and Planning Department's valuation for establishing Building Permit fees. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.

9-20-3: NONCONFORMING USE OF STRUCTURES, LAND, OR STRUCTURES AND LAND IN COMBINATION:

- A. The nonconforming use of a structure, land, or structure and land in combination, shall not be expanded beyond that which lawfully existed on the effective date of this title or previously adopted applicable ordinances. Criteria used to determine use and expansion shall include hours of operation, square footage of structures or area used, traffic generated, volume of goods handled, number of dwelling units and the *International Building*

Code classification of uses. A nonconforming use shall not be used as justification for expanding or adding structures or other nonconforming uses.

- B. Upon written request to, and approval by, the Director, a nonconforming use may be changed to another nonconforming use, providing the new use would result in the same or greater conformity to this title, and providing the previous use is permanently abandoned. Nonconforming uses must progress towards conformity. For example, a nonconforming business that produces noise and emissions could be replaced by another nonconforming business that is quieter and does not produce emissions. If a nonconforming use is replaced with a permitted use, nonconforming uses shall not thereafter be allowed.
- C. When any nonconforming use is discontinued for a period of twelve (12) consecutive months, any subsequent use shall conform to this title. Nonconforming uses that are discontinued are also governed by the requirements of *Idaho Code* §67-6538.
- D. When a structure housing a nonconforming use is damaged to the extent of more than 50% of the market value of the entire structure, it shall not be reconstructed or used, except in conformity with this title. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.
- E. Ordinary repairs may be performed on a structure housing a nonconforming use, including but not limited to, repair or replacement of the roof, walls, fixtures, wiring or plumbing, providing the repairs do not enable an expansion of the nonconforming use, and providing the cumulative value of the repairs over a five (5) year period does not exceed 50% of the market value of the structure before the work began. The value of the proposed repairs shall be determined using the Kootenai County Building and Planning Department's valuation for establishing building permit fees. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.
- F. A structure housing a nonconforming use that is removed may not be replaced unless the use and structure are in conformance with this title.

9-20-4: NONCONFORMING PARCELS OF LAND:

- A. A parcel of land shall not be modified in any manner that results in it becoming a nonconforming parcel, or that expands or enlarges an existing nonconformity.
- B. Upon written request to, and approval by the Director, a nonconforming parcel may be changed, providing the modification results in the same or greater conformity with this title. Nonconforming parcels must progress toward conformity. For example, the lot line of a lot that does not meet the minimum size could be adjusted to increase the size of the lot, but it could not be adjusted in a manner that would make the lot smaller.

9-20-5: ABATEMENT OF NUISANCES AND REMOVAL OF HAZARDS: Nothing in this chapter shall be deemed to restrict the power and duty of the County to abate public nuisances.

When a nonconforming structure or structure containing a nonconforming use becomes physically unsafe, or is found by the Kootenai County Board of Commissioners to be a detriment to the public health, safety or general welfare, the Board may order that such structure shall not thereafter be used, restored, repaired or rebuilt except in conformity with this title. Upon failure to carry out such order, the County may take steps as necessary to remove the structure or discontinue the use and assess the cost thereof against the property owner.

9-20-6: CERTIFICATE OF NONCONFORMING USE: Upon written request of the property owner, the Department shall evaluate a nonconforming use and, if appropriate, shall issue a Certificate of Nonconforming Use. As part of the request, the property owner or Applicant shall provide a completed application form, review and

inspection fees, and any supporting documentation required by the Department. Upon receipt of a complete application, the Director shall determine the nature and extent of the use and, if it is a legal, nonconforming use shall issue a Certificate documenting the same. Property owners are not required to obtain a Certificate of Nonconforming Use. When requested, the purpose of the Certificate is to verify and document the legal, nonconforming status of the use.

**CHAPTER 21
AMENDMENTS**

SECTIONS:

9-21-1	ORDINANCE AND MAP MAY BE AMENDED
9-21-2	AMENDMENT TO TEXT
9-21-3	CHANGE IN ZONING MAP--WHO MAY INITIATE ACTION
9-21-4	APPLICATION REQUIREMENTS FOR CHANGE IN ZONING MAP
9-21-5	AMENDMENTS TO BE IN ACCORDANCE WITH COMPREHENSIVE PLAN
9-21-6	PUBLIC HEARING REQUIRED BY BOARD OF COUNTY COMMISSIONERS – NOTICE
9-21-7	CLASSIFICATION OF NEW AND UNLISTED USES

9-21-1: ORDINANCE AND MAP MAY BE AMENDED: This title , including the Zoning Map, may be amended, supplemented, changed, or modified from time to time, but all proposed amendments shall be submitted first to the appropriate hearing body for its recommendations, which recommendations shall be submitted to the Board of County Commissioners for its consideration.

9-21-2: AMENDMENTS TO TEXT: An amendment to the text of this title may be initiated by the Planning Commission, or by the Board, or by any citizen or taxpayer of Kootenai County. The Board may hold a public hearing on any such amendment, and in the case of an amendment initiated by a citizen or taxpayer, shall collect a fee from such citizen or taxpayer equal to the cost of necessary legal advertisement and notice. Such amendment may be adopted, with or without modification, by ordinance of the Board, in accordance with the procedures specified herein.

9-21-3: CHANGE IN ZONING MAP - WHO MAY INITIATE ACTION: Any citizen of Kootenai County, or owner of property in Kootenai County, may appear before the appropriate hearing body and request that the hearing body initiate action to change the Zoning Map. The hearing body shall give due consideration to any and all such requests and may hold a formal public hearing to further consider the proposed change of the Zoning Map. The Hearing Examiner, Planning Commission or the Board may initiate action to change the Zoning Map.

9-21-4: APPLICATION REQUIREMENTS FOR CHANGE IN ZONING MAP: The owner or owners and/or contract buyers of any property or properties may petition, in writing, the hearing body and may submit application for a change in the Zoning Map. The hearing body shall give due consideration to any and all such requests and may hold a formal public hearing when considering the proposed change in the Zoning Map only after all requirements, as specified in this section , are met by the owner or owners requesting a change in the Zoning Map.

The application for a change of classification must show the following:

- A. The date the existing zoning became effective.
- B. The changed conditions which are alleged to warrant other or additional zoning.
- C. Facts to justify the change on the basis of advancing the public health, safety, and general welfare.
- D. The effect it will have on the value and character of adjacent property.
- E. The effect on the property owner or owners if the request is not granted.
- F. Such other information the hearing body shall require.
- G. The effect it will have on the Comprehensive Plan.

9-27-5: AMENDMENTS TO BE IN ACCORDANCE WITH COMPREHENSIVE PLAN: Before recommending an amendment to this title, it must be shown that such amendment is reasonably necessary, is in the best interest of the public, and is in accordance with the *Comprehensive Plan* adopted by the Board of County Commissioners. The hearing body shall consider the amendment at the first available regularly-scheduled public hearing.

9-27-6: PUBLIC HEARING REQUIRED BY BOARD OF COUNTY COMMISSIONERS – NOTICE:

- A. Amendments to this title or to the Zoning Map may be adopted only after a public hearing has been held in relation thereto before the Board of County Commissioners in which parties in interest and citizens shall have an opportunity to be heard. Notice complying with relevant provisions of the *Idaho Code* shall be provided.
- B. When notice is required to two hundred (200) or more property owners or purchasers of record, in lieu of mailed notice to surrounding property owners, the Director may stipulate that notice be posted at additional conspicuous locations along arterial and/or collector roads in the vicinity of the application site, that notice be posted at facilities operated by political subdivisions in the general vicinity, and that a one-quarter page advertisement in the official newspaper of the County be published of the proceedings.

9-21-7: CLASSIFICATION OF NEW AND UNLISTED USES: It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in Kootenai County. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

- A. The Administrator shall make a determination whether the requested use is similar to or a lesser form of a permitted or conditional use of the particular zone. If an affirmative determination is made, all performance standards, hearing requirements, and other provisions of this title or any other applicable ordinance shall be met. If determined that the request is a new or unlisted use, the Administrator shall refer the question to the Planning Commission requesting an interpretation as to the zoning classification into which such use should be placed. The referral of the use interpretation question shall be accompanied by a statement of facts, provided by the Applicant, listing the nature of the use, including but not limited to, whether it involves dwelling activity, sales, processing, type of product, storage, and amount or nature thereof, anticipated employment, and the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated.
- B. The Planning Commission shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various zones and determine the type of zone within which such use should be permitted.
- C. The Planning Commission shall transmit its findings and recommendations to the Board as to the classification proposed for any new or unlisted use.
- D. The Board shall consider the recommendations of the Planning Commission and amend this title as described in this section.

CHAPTER 22
ADMINISTRATION AND ENFORCEMENT

SECTIONS:

9-22-1	INTERPRETATION
9-22-2	PERMITS REQUIRED
9-22-3	ENFORCEMENT
9-22-4	VIOLATIONS
9-22-5	PENALTIES
9-22-6	ADMINISTRATIVE EXCEPTION
9-22-7	FEES SET BY RESOLUTION
9-22-8	HEARING APPEALS; NOTICE

9-22-1: INTERPRETATION: In the interpretation and application of the provisions of this title, the requirements will be held to be minimum requirements. This title is adopted in compliance with *Idaho Code* for the purpose of promoting the Health, Safety, and General Welfare of the citizens of Kootenai County and the State of Idaho.

When this title imposes a greater restriction upon the use of buildings or premises, or requires larger spaces than are imposed by other codes, laws, resolutions, rules and regulations, or covenants, the provisions of this title shall control. The provisions of this title shall be so interpreted as to carry out the purpose and intent of the zones as shown on the Official Zoning Maps on file in the Department, this title as adopted, and the *Kootenai County Comprehensive Plan*.

9-22-2: PERMITS REQUIRED: All permits for construction, alteration, or for occupancy, shall be processed in compliance with the current *Kootenai County Building Code Ordinance* and subsequent amendments.

- A. Building Permit – It shall be unlawful to construct, alter, move, demolish, repair, or use any building or structure within Kootenai County, except in compliance with this title and the *Kootenai County Building Code Ordinance*. The Director may attach specific conditions to any building permit related to planning functions and to ensure compliance with the requirements and intent of this title and the protection of public health and safety.
- B. Binding Site Plan Requirements. Each building permit application will be accompanied by an 8 ½ x 11 site plan, drawn to scale, depicting the following information:
1. North arrow, scale, date;
 2. Lot lines with dimensions and area;
 3. Distances to property lines from all structures;
 4. Existing and proposed easements, roads and road names;
 5. Utility locations (including well and septic);
 6. Location and setback from property lines of all existing and proposed structures;
 7. Location of driveways and parking areas;
 8. Location of lakes, ponds, wetlands, waterways and drainages;
 9. Location of any special setback and/or building envelope requirements.

The work authorized by the approved building permit shall comply with the site plan approved by the Department. The contractor or property owner shall clearly mark the property corners to facilitate the measurement of setbacks. If site inspection by Department personnel reveals that construction on-site is not in compliance with the approved site plan, work at the site shall cease until a new site plan is submitted to, and approved by, the Department.

C. Certificate of Occupancy

1. It shall be unlawful to use or occupy, or permit the use or occupancy, of any building or premises, or both, or part thereof thereafter created, erected, changed, converted, or wholly or partly altered, or enlarged in its use or structure until a Certificate of Occupancy shall have been issued therefore.
2. The request for a Certificate of Occupancy will state the proposed use of the building and/or the land, that the use conforms to the requirements of this title, and with any or all conditional provisions that may have been imposed, and shall be accompanied by approval signatures of those agencies having jurisdiction over the use or structure.
3. The Department will not issue a Certificate of Occupancy until all building permit requirements and/or conditions of approval have been met and all necessary agency signatures and approvals are obtained. The Department shall have the right to inspect the site prior to approval of the Certificate of Occupancy.

9-22-3: ENFORCEMENT: It shall be the duty of the Director or duly-authorized agents to enforce this title and other county ordinances. The Department shall not issue permits unless existing and intended structures, the parcel of land, and uses of the buildings and land, conform in all respects with the provisions of this title and other county ordinances.

Whenever any construction or site work is not in compliance with this title, specific Conditions of Approval, or other related laws, ordinances or requirements, the Director may issue a Notice of Zoning Ordinance Violation and order any work stopped by written notice. Such Notice of Zoning Ordinance Violation or Stop Work Notice shall be served on any persons engaged in doing or causing such work to be done, and persons shall forthwith stop such work until authorized by the Director to proceed.

In the event that a Notice of Zoning Ordinance Violation is issued, the Administrator shall additionally prepare and mail, via certified mail, a Notice of Zoning Ordinance Violation. The notification shall include:

1. The property owner and the legal description of the parcel.
2. The nature of the violation.
3. The remedial action that must be undertaken to resolve the violation.
4. The length of time allotted to resolve the violation.

The property owner shall have 45 days from the date the Notice of Zoning Ordinance Violation was mailed to resolve the violation. If resolution does not occur within those 45 days, the Notice of Zoning Ordinance Violation shall be filed in the County Recorder's Office and a copy mailed to the Owner, via certified mail.

The Notice of Zoning Ordinance Violation shall also advise the owner of the Notice of Zoning Ordinance Violation appeal process. The Administrator may consider a written appeal, submitted by the property owner, and received no later than 30 days after the Notice of Violation was mailed. The appeal shall be heard by the Kootenai County Board of Commissioners on a day specified by the Board. If the appeal is denied, the Board shall specify an exact number of

days to gain compliance with this title before the Notice of Violation is recorded. If the appeal is approved, the Board will specify actions to be taken by the Administrator to release the violation. The Board may elect to add or remove conditions of remedial action.

At such time the Violation is resolved, the owner shall pay the fee specified in the current adopted fee schedule and the Administrator shall file in the Office of the County Recorder a Release of Notice of Violation. The Release shall contain all of the information contained in the Notice of Violation, as well as the corrective action taken to resolve the violation. A copy of the Release shall be mailed to the owner, via certified mail.

Appeals of Stop Work Orders shall comply with provisions of section 9-22-8 of this chapter.

9-22-4: VIOLATIONS: Whenever a violation of this title occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Administrator. The Administrator shall properly record such complaint, immediately investigate, and take action thereon as provided by this title.

9-22-5: PENALTIES: The Prosecuting Attorney or other attorney who represents the County shall, in addition to taking whatever criminal action deemed necessary, take steps to civilly enjoin any violation of this title. Penalties for failure to comply with or violations of the provisions of this title shall be as follows:

Violation of any of the provisions of this title or failure to comply with any of its requirements shall constitute a misdemeanor punishable as set forth in section 1-4-1 of this code. Each day such violation continues shall be considered a separate offense. The landowner, tenant, subdivider, builder, or any other person who commits, participates in, assists in, or maintains such violation may be found guilty of a separate offense. Nothing herein contained shall prevent the Board or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this title or of the *Idaho Code*.

In addition to other actions that may be ordered by the Court, if the County prevails, the violator shall pay to the County a sum equal to two times the monetary gain associated with the violation, plus all reasonable expenses incurred in enforcing this title.

In cases where multiple individuals, firms, corporations or agents participated in violating this title, they shall be held jointly and severally liable for any remedies, penalties or payments.

9-22-6: ADMINISTRATIVE EXCEPTION: An Administrative Exception, not to exceed one (1) foot of any dimensional requirement pertinent to front, side, rear, and flanking streets setbacks may be granted by administrative action of the Administrator without public notice and without public hearing.

9-22-7: FEES SET BY RESOLUTION: The Board of County Commissioners shall adopt by resolution a fee schedule for the Department. Said schedule shall contain, but not be limited to, fees for zoning appeals and applications for variances, conditional use permits, zoning amendments, and planned unit developments. Fees for other applications, including those of other ordinances administered by the above Department may be added, as deemed necessary by the Board of County Commissioners.

9-22-8: HEARING APPEALS; NOTICE: Appeals concerning interpretation or administration of this title may be taken by any person aggrieved. Such appeals shall be filed within a reasonable time, not to exceed twenty-eight (28) days, by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Hearing Examiner all papers constituting the record upon which the action appealed was taken.

The Administrator shall schedule the appeal hearing on the first available hearing date and give legal public notice thereof, as well as due notice to the parties in interest. The Hearing Examiner shall issue a recommended decision on

the appeal within a reasonable time, which shall not exceed thirty (30) days following the hearing. At the hearing, any affected party may appear in person or by agent or attorney.

It is the intent of this title that all appeals involving interpretation and enforcement shall first be presented to the Hearing Examiner, whose recommendation shall be forwarded to the Board of Commissioners, and that recourse from the decision of the Board of Commissioners shall be to the courts as provided by law.

CHAPTER 23
CONDITIONAL USE, VARIANCE, AND SPECIAL NOTICE PERMIT PROCEDURES

SECTIONS:

9-23-1	CONDITIONAL USES
9-23-2	VARIANCES; CONDITIONS GOVERNING APPLICATIONS; PROCEDURES
9-23-3	PROCEDURES FOR GRANTING VARIANCES
9-23-4	SPECIAL NOTICE PERMITS

9-23-1: CONDITIONAL USES:

A. General Provisions:

1. The Board of County Commissioners will review the recommendations of the hearing body and act after receiving its recommendation.
2. A finding shall be made by the Board of County Commissioners that the conditional use proposed will be in conformance with the *Comprehensive Plan* and will be in the public interest.
3. Permits for conditional uses shall stipulate restrictions or conditions which may include but are not limited to: a definite time limit, provisions for front, side, and rear yard setbacks greater than the minimum standards, suitable landscaping, sight restrictions, or safeguards to uphold the spirit and intent of this title. Permits may be suspended or revoked by the Board of County Commissioners after a finding at a public hearing by the hearing body that a permittee has failed to comply with such restrictions or conditions.
4. Public Utility Complex Facilities, existing on January 3, 1973 (the date of adoption of Kootenai County Zoning Ordinance No. 11), are exempt from Conditional Use Permit requirements. Creation of new facilities, or expansion of existing facilities, must comply with the provisions of this title.
5. Conditional Use Permits approved without a time deadline shall expire after two (2) years from the date of signing the Order of Decision, if the use authorized by the permit has not been established. For Conditional Use Permits which were approved with no time deadlines prior to this amendment, expiration shall occur two (2) years from the date of this amendment if the use authorized by the permit has not been established.
6. Minor modifications of the permitted conditional use permit may be granted by the Director if it is determined that the changes would not constitute a substantial change to the findings and conclusions in the original approval and the proposed location, size, design and operating characteristics of the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity. If the Director finds that the modification request constitutes a substantial change, then the Applicant shall adhere to the procedures and standards delineated in subsection (B) of this section and in chapter 24 of this title (Conditional Use Permit Standards).

B. Procedures:

The Hearing Body shall be authorized to hear and make recommendations on only such requests for Conditional Uses as it is specifically authorized to pass on by the terms of this title ; to decide such questions as are involved in determining whether requests for Conditional Uses should be recommended; and to recommend approval of requests for Conditional Uses and with such conditions and safeguards as are

appropriate under this title , or to recommend denial of requests for Conditional Uses when not in harmony with the purpose and intent of this title . A Conditional Use shall not be approved unless and until:

1. A written application for a Conditional Use Permit is submitted indicating the chapter under which the Conditional Use is sought and stating the grounds on which it is requested;
2. Notice shall be provided as required by the *Idaho Code* for applications for Special Notice Permits;
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
4. The determination has been made that the granting of the Conditional Use Permit will not adversely affect the public interest and will be in general conformance with the *Comprehensive Plan*.

9-23-2: VARIANCES; CONDITIONS GOVERNING APPLICATIONS; PROCEDURES: To authorize upon appeal, in specific cases, such variance from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship.

A variance is a modification of the bulk and placement requirements of this title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other provision of this title affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.

No nonconforming use of neighboring land, structures, or buildings in the same zone, and no permitted or nonconforming use of lands, structures, or buildings, in other zones shall be considered grounds for the issuance of a variance.

9-23-3: PROCEDURES FOR GRANTING VARIANCES:

- A. Notice of public hearing shall be given as required by relevant *Idaho Code* provisions.
- B. The public hearing shall be held. Any party may appear in person or by agent or by attorney.
- C. The following findings shall be made:
 1. Whether or not the requirements of this section have been met by the applicant for a variance;
 2. Whether or not the reasons set forth in application justify the granting of a variance;
 3. That the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;
 4. That the granting of the variance will be in harmony with the general purpose and intent of this title, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- D. In recommending the granting of any variance, the hearing body may recommend appropriate conditions and safeguards in conformity with this title. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this title and punishable under Chapter 22 of this title.

9-23-4: SPECIAL NOTICE PERMITS:

A. Application Requirements. The following items constitute a complete application for a Special Notice Permit:

1. Application Form - completed application form with property owner's signatures or a notarized letter from the property owner(s), authorizing the Applicant to file a special notice permit.
2. Fees as adopted by Board Resolution.
3. Site Plan - drawn to scale showing North arrow, lot boundaries, location of all structures and utilities, the location, dimension and purpose of existing easements, the location of future structures and other relevant information regarding the site and the request.
4. Photographs - at least four (4) pictures of the site, taken at various angles, depicting the general character of the site accompanied by a map showing the location and orientation of the photographs.
5. Narrative - thoroughly describing the existing situation/operation and what is proposed now and in the future. The Narrative should explain why the request should be approved, how the proposal meets the applicable County ordinances, why it will be in the public interest and how it will affect the surrounding property owner(s) and the public.

B. Approval Process and Requirements

1. The Applicant shall schedule a pre-application meeting with a Planner to discuss the feasibility of the request and the application requirements.
2. The Applicant shall submit a complete application. Incomplete applications will not be processed.
3. If the application is complete, the County will forward it to other reviewing agencies and organizations with relevant expertise or jurisdiction, requesting their evaluation and response within 30 days. Agency responses should explain whether the proposal appears feasible and will meet the agency's requirements.
4. After all required agency letters are received, the Department will review the application and schedule it for a 30-day public comment period. The Department publishes a Notice of the Comment Period in the newspaper. In accordance with the notice requirements of Idaho Code §67-6509 and §67-6511, the Applicant mails the notice to property owners within 300 feet of the site (including any contiguous lots or parcels under the same ownership). Notices to adjacent property owners must be mailed in a timely manner so they are received by the adjacent property owners before the first day of the Public Comment Period. The Department will post a public notice of Special Notice Permit Application on the site on or before the first day of the Public Comment Period.
5. Any person may comment on the proposed application and submit written comments through mail or in person. Information submitted prior to the close of the Public Comment Period will become a part of the record on the application.
6. After the close of the Public Comment Period, the Director reviews the relevant evidence in the record, and the Director will issue an Order of Decision. The Order of Decision shall cite the applicable legal standards and state the evidence and conclusions on which the decision was based. If the decision is a denial, the Director must state the actions, if any, the Applicant could take to gain approval. The Applicant bears the burden of demonstrating compliance with the requirements. To approve a Special Notice Permit, the Director must make the following findings:

- a. The Applicant provided adequate information to determine compliance with the requirements.
- b. The proposal is in compliance with other county ordinances without variances (e.g. *Site Disturbance, Road Naming, Area of City Impact and Flood Damage Prevention Ordinances*).
- c. The proposal is compatible with existing homes, businesses and neighborhoods, and with the natural characteristics of the area.
- d. Negative environmental, social and economic impacts have been or will be mitigated. The proposal adequately addresses site constraints or hazards, including adequate space to construct a primary structure.
- e. Services and facilities for the proposal are available and adequate.
- f. Public notice and the processing of the application met the requirements set forth in this title and *Idaho Code*.

The Director shall make a decision within five (5) weeks of the close of the Public Comment Period. If the proposal meets these requirements, it shall be approved. If the proposal does not meet these requirements, or if insufficient information was provided to determine compliance, it may be denied. Conditions may be attached to the approval. The Director's decision may be appealed in accordance with Section 9-22-8 of this title.

7. In the event there is opposition specifically related to the compatibility of the request to the surrounding area, negative environmental, social or economic impacts, or the lack of available services or facilities submitted during the Public Comment Period, a public hearing with the Board of County Commissioners will be scheduled. Notice of public hearing shall follow the public notification requirements in *Idaho Code* §67-6509. The Applicant shall be responsible for the additional public notice.
8. The Board's decision shall be based on compatibility of the request with the surrounding area and the potential to cause an adverse affect on infrastructure, or the health, safety or welfare of the citizens of Kootenai County. The Board shall have the authority to impose additional reasonable conditions which would mitigate or eliminate any adverse affects.
9. The Board shall render its decision in writing within 30 days of the close of the public hearing. The Board shall outline the provisions and standards of this title used, the facts of the application, and such conclusions as support its decision. If the Board denies the application, it shall specify in its decision the actions, if any, which the Applicant could take to obtain approval.
10. Appeals of the Board's final decision shall be filed and taken pursuant to *Idaho Code* §67-6519.

[Moved to section 9-22-8 (Hearing Appeals; Notice)]

[Moved to Section 2 of the Ordinance (Repealer, Severability, Effective Date)]

CHAPTER 24
CONDITIONAL USE AND SPECIAL NOTICE PERMIT STANDARDS

SECTIONS:

- 9-24-1 SLAUGHTERHOUSE, RENDERING PLANT
- 9-24-2 GUN CLUBS, RIFLE RANGES, ARCHERY RANGES
- 9-24-3 GOLF COURSES AND DRIVING RANGES
- 9-24-4 COMMERCIAL FUR FARMS
- 9-24-5 COMMERCIAL RESORT
- 9-24-6 ZOO
- 9-24-7 AGRICULTURAL PRODUCTS SALES STORE
- 9-24-8 RENTAL WAREHOUSE
- 9-24-9 CLINICS OR HOSPITAL - ANIMALS OR
VETERINARY
- 9-24-10 AUTOMOBILE WRECKING YARD, JUNK YARD
- 9-24-11 SAWMILLS, SHINGLES OR PLANING MILLS, WOODWORKING USE
- 9-24-12 RETIREMENT, CONVALESCENT, SHELTER, AND NURSING HOMES - FOR 9
PERSONS OR MORE
- 9-24-13 RADIO AND TELEVISION TOWERS
- 9-24-14 AIRPORTS AND LANDING FIELDS
- 9-24-15 CEMENT, GYPSUM, OR ASPHALT PLANT - STORAGE AND
MANUFACTURING
- 9-24-16 EXPLOSIVE STORAGE AND MANUFACTURING
- 9-24-17 RACE TRACKS
- 9-24-18 FEED LOTS
- 9-24-19 PRIVATE RESORT (NON-PROFIT)
- 9-24-20 PRIVATELY-OWNED RECREATIONAL FACILITIES WHICH ARE OPEN TO
PUBLIC USE (WITH OR WITHOUT A MEMBERSHIP OR FEE) SUCH AS TENNIS
COURTS, RACQUET CLUBS, SOFTBALL FIELDS, BASEBALL FIELDS, AND
SOCCER FIELDS
- 9-24-21 ABOVE-GROUND BULK STORAGE OF OVER TWENTY THOUSAND (20,000)
GALLONS (PER SITE) OF PETROLEUM PRODUCTS
- 9-24-22 PUBLIC UTILITY COMPLEX FACILITY
- 9-24-23 WHOLESALE GREENHOUSE
- 9-24-24 RESTRICTED SURFACE MINING
- 9-24-25 DAY CARE CENTER
- 9-24-26 MANUFACTURED HOME PARKS

- 9-24-27 NONPROFIT PUBLIC OR PRIVATE COMMUNITY FACILITY
- 9-24-28 CHURCH
- 9-24-29 GRANGE HALL, LODGE
- 9-24-30 MINI-STORAGE
- 9-24-31 RESIDENTIAL CARE FACILITY
- 9-24-32 SPECIAL EVENTS LOCATION
- 9-24-33 ASPHALT OR CONCRETE BATCH PLANT
- 9-24-34 WIRELESS COMMUNICATION FACILITY (WCF)
- 9-24-35 SCHOOLS, PUBLIC OR PRIVATE
- 9-24-36 KENNELS, BOARDING
- 9-24-37 BOARDING STABLES
- 9-24-38 COMMERCIAL RIDING ARENA OR EQUINE TRAINING CENTER OR FACILITY
(MAY INCLUDE BOARDING STABLES)

9-24-1: SLAUGHTERHOUSE, RENDERING PLANT:

ZONES PERMITTED: Agricultural, Industrial, Light Industrial

- A. Minimum area - five (5) acres.
- B. All such facilities shall be designed and located with full consideration to their proximity to adjacent residential zones and uses and especially to the reduction of such nuisance factors as odors, dust, or fumes.
- C. All such uses shall be a minimum of one thousand (1,000) feet from any residential zone classification.
- D. Shall be five hundred (500) feet from any dwelling, except an owner's dwelling.
- E. On-site commercial, retail sales of products manufactured or processed on the site may be permitted with conditions.

9-24-2: GUN CLUBS, RIFLE RANGES, ARCHERY RANGES:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural

- A. Minimum area - ten (10) acres.
- B. Target areas shall be six hundred (600) feet from any existing dwelling and three hundred (300) feet from any property line.
- C. All facilities shall be designed and located with full consideration to the safety factors involved with such a use.
- D. Off-street parking for all patrons will be provided.
- E. A site plan shall be submitted with the application.

9-24-3: GOLF COURSES AND DRIVING RANGES:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, High Density Residential

- A. Minimum area - fifteen (15) acres.
- B. No commercial use other than those related to the sale or rental of golf equipment or associated food and beverage sales.
- C. Lighting shall be screened to produce no glare upon public rights-of-way or adjacent properties.
- D. The permit will be subject to approval of a traffic and development plan showing access, structures, and parking areas.

9-24-4: COMMERCIAL FUR FARMS:

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - twenty (20) acres

- B. All animals and runs will be housed in permanent buildings, not less than one hundred (100) feet from any dwelling other than the dwelling of the owner.
- C. The operator of such a use will maintain adequate housekeeping practices to prevent the creation of a nuisance.

9-24-5: COMMERCIAL RESORT:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Minimum area - five (5) acres
- B. Activities Permitted - Must be compatible with the recreational activities of a resort and may include outdoor facilities for swimming, boat launching, boat rentals, fishing, hunting, camping, picnicking, skiing, snowmobiling, lawn tennis, volleyball, badminton, golf, and horseback riding. Other outdoor activities not specified may be permitted only if the activities are a part of the operation of a resort.
- C. Limited Commercial Uses Permitted - May include: Convenience food store, restaurant, bar, retail fuel service, recreational vehicle park (see section 9-9-9 of this title, Performance Standards), motel, hotel, camping facility, laundry facility, retail sales shops for sporting equipment, souvenirs, and art and handcraft items.

Limited commercial use permitted in a commercial resort must meet the required setbacks and standards for uses in the appropriate zone. Limited commercial uses are permitted as accessory uses and are incidental to the overall operation of the resort.

- D. Prohibited Uses - General commercial wholesale and retail sales and services not associated with the activities of a commercial resort are prohibited.
- E. The Board of County Commissioners may attach such reasonable conditions as the record indicates may be necessary to visually screen, control dust, manage traffic, buffer adjoining uses, or to mitigate effects on water and air quality.

9-24-6: ZOO:

ZONES PERMITTED: Commercial, Rural.

- A. A detailed site plan showing proposed design and layout of the Zoo shall be submitted as a part of the application. Proposed parking areas, interior roads/walkways, lighting, buildings, landscaping, ingress/egress to the site, etc. shall be included in the site plan.
- B. The Zoo shall meet all requirements that may be imposed by Panhandle Health District regarding sanitary disposal.
- C. A detailed security plan shall be submitted as a part of the application.
- D. A detailed operation plan shall be included as a part of the application.
- E. All local, state, and federal permits and/or licenses pertaining to the keeping of mammals, birds, and/or reptiles for public display shall be obtained prior to commencing the operation of a Zoo and shall be included in the Board's approval as a condition for approval.

9-24-7: AGRICULTURAL PRODUCTS SALES STORE:

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - five (5) acres.
- B. No other commercial activity is permitted, such as sales of general farm machinery.
- C. Will contain provisions for processing and sales of agricultural products, such as grains, fertilizers, feeds, vegetables and fruits. Sales of such items and hand tools, and gardening products will be permitted.
- D. No processing activity is permitted that would employ more than five (5) persons.
- E. All buildings must be six hundred (600) feet from any dwelling other than the dwelling of the owner.
- F. Sight obscuring fencing will be required around any and all storage areas.

9-24-8: RENTAL WAREHOUSE:

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - five (5) acres.
- B. Security fencing, six (6) feet minimum height, around all structures.
- C. No outdoor storage or commercial sales of any kind.
- D. All lighting will be confined to the premises and will produce no glare on adjacent properties or rights-of-way.

9-24-9: ANIMAL CLINICS OR HOSPITAL, ANIMAL OR VETERINARY:

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - five (5) acres.
- B. All animals will be housed in permanent structures which can be physically enclosed during nighttime hours.
- C. All buildings and fenced running areas will be a minimum of three hundred (300) feet from any existing dwelling other than the dwelling of the owner.
- D. The operator of such a use will maintain adequate housekeeping practices to prevent the creation of a nuisance.

9-24-10: AUTOMOBILE WRECKING YARD, JUNK YARD:

ZONES PERMITTED: Agricultural, Light Industrial, Industrial, Rural

- A. Minimum area - as required by zone.
- B. A sight-obscuring fence must be constructed around the entire storage area a minimum of six (6) feet high and/or vegetative screening to ensure obscured visibility from neighboring properties and for the traveling public.

- C. No materials, parts, automobiles, or junk will be visible from any public right-of-way.
- D. A performance bond may be required for assurance of compliance with the provisions of this conditional use, said bond will be renewable every two (2) years after inspection of the premises determines the advisability of such a renewal.

9-24-11: SAWMILLS, SHINGLES OR PLANING MILLS, WOODWORKING USE:

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - ten (10) acres.
- B. All buildings must be located one thousand (1,000) feet from any residence, residential plat, or residential zone, other than the dwelling of the owner.
- C. All facilities must meet air quality standards applicable at the time of issuance of this permit.
- D. All facilities must meet the requirements and be approved by the appropriate fire district. Facilities will not be approved if not located in a fire district.
- E. All facilities will be designed and located on the site with full consideration given to their proximity to adjacent uses, their effect upon adjacent property, and to the reduction of noise, odor, dust and traffic.

9-24-12: RETIREMENT, CONVALESCENT, SHELTER, AND NURSING HOMES - FOR 9 PERSONS OR MORE:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Minimum area - three (3) acres.
- B. Adequate fencing around the entire complex must be provided.

9-24-13: RADIO AND TELEVISION TOWERS:

ZONES PERMITTED: Agricultural, Commercial, Light Industrial, Industrial, Rural

Minimum area shall be adequate to ensure that the tower will not adversely impact or damage neighboring property if a structural failure occurs.

9-24-14: AIRPORTS AND AIRSTRIPS:

ZONES PERMITTED: Agricultural, Rural

- A. The facilities shall be designed and located with full consideration given to the proximity of residential zones and to the safety considerations.
- B. The facilities must be located two thousand (2,000) feet from any adjoining residence not directly associated with the airstrip.
- C. Must meet all ITD and FAA aviation requirements.

9-24-15: CEMENT, GYPSUM, OR ASPHALT PLANT - STORAGE AND MANUFACTURING:

ZONES PERMITTED: Industrial

- A. Minimum lot area - five (5) acres.
- B. The operator of such a use shall furnish a suitable guarantee (bond) that the activity or process in question will not constitute a nuisance or be detrimental to the health, safety, comfort or welfare of persons residing in the area, working or passing by such a proposed use. Said guarantee will be renewed each two (2) years providing the operation is not in violation of this title.

9-24-16: EXPLOSIVE - STORAGE AND MANUFACTURING:

ZONES PERMITTED: Industrial, Rural

- A. Minimum area - ten (10) acres.
- B. The operator of such a use shall furnish a suitable guarantee (bond) that the activity or processing in question will not constitute a nuisance or be in any way detrimental to the health or safety of persons residing in the area, working, or passing by such a proposed use. Said guarantee will be renewed each two (2) years providing the operation is not in violation of this title.

9-24-17: RACE TRACKS:

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - twenty (20) acres.
- B. All uses will be a minimum of one thousand (1,000) feet from any residential zone.
- C. All uses and facilities will be designed and located with full consideration to their proximity to adjacent uses, especially to the reduction of nuisance factors, such as noise, smoke, and dust.
- D. One (1) parking space will be provided for each three (3) seating spaces and said parking area will be provided with a security type fence.

9-24-18: FEED LOTS:

ZONES PERMITTED: Agricultural

- A. Minimum area - fifteen (15) acres.
- B. All lots shall be fenced with a five (5) foot high fence.
- C. All lots shall be located more than one thousand (1,000) feet from any residential zone or five hundred (500) feet from any residence.
- D. All lots shall provide a minimum of two hundred (200) square feet of lot area per animal.

9-24-19: PRIVATE RESORT (NONPROFIT):

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Will contain provisions for private, nonprofit, outdoor recreational uses which will be limited to, but may include areas for group meetings, boating, camping, swimming, picnicking and may also include living facilities.
- B. Adequate access and parking will be required.
- C. All facilities will be adequately screened from adjacent residential uses.

9-24-20: PRIVATELY-OWNED RECREATIONAL FACILITIES, WHICH ARE OPEN TO PUBLIC USE (WITH OR WITHOUT A MEMBERSHIP OR FEE) SUCH AS TENNIS COURTS, RACQUET CLUBS, SOFTBALL FIELDS, BASEBALL FIELDS, AND SOCCER FIELDS:

ZONES PERMITTED: Agricultural Suburban, Restricted Residential, Rural

- A. Minimum area - two (2) acres.
- B. Permit will be subject to approval of a detailed site plan showing activity areas, traffic circulation, access, structures, parking areas, fencing, and landscaping.
- C. Lighting of the site shall be screened to produce no glare upon public rights-of-way or adjacent properties.
- D. No commercial uses other than those related to the sale or rental of equipment or associated food and beverage sales.

9-24-21: ABOVE-GROUND STORAGE OF OVER FIVE THOUSAND (5,000) GALLONS (PER SITE) OF PETROLEUM PRODUCTS:

ZONES PERMITTED: Light Industrial, Industrial

- A. Minimum area - five (5) acres.
- B. Setbacks for all petroleum storage facilities shall be in accordance with current fire and safety codes and shall not be less than fifty (50) feet from any property line.
- C. All such facilities shall be contained with a sight-obscuring fence not less than six (6) feet in height or sight obscuring evergreen trees or compact hedge not less than six (6) feet in height. All landscaping will require adequate sprinkling systems and proper maintenance.
- D. All such uses shall be located and/or designed with full consideration to their proximity to adjacent uses, their effect upon adjacent property, and to the reduction of inherent dangerous factors.
- E. All such facilities (including structure and storage tanks) within three hundred (300) feet of any residential zone shall have a maximum vertical height of forty (40) feet.
- F. All such facilities shall conform to the standards prescribed by the National Fire Protection Association, the American Petroleum Institute, and other authorities having jurisdiction, whichever regulations are more

restrictive. All such facilities shall also conform to the Kootenai County *Best Management Practices for Containing Critical Materials During Above Ground Storage and Handling*.

9-24-22: PUBLIC UTILITY COMPLEX FACILITY:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Commercial, Light Industrial, Industrial, Mining, Rural, High Density Residential

- A. Minimum area - None.
- B. Lot coverage by buildings shall not exceed thirty-five (35) percent of the total lot area.
- C. In considering applications the Hearing Examiner shall consider the public convenience and the necessity of the facility. The Hearing Examiner will also consider any adverse effect that the facility will have upon properties in the vicinity and may require such reasonable restrictions or conditions of development or protective improvements as to uphold the purpose and intent of this title and the *Comprehensive Plan*.
- D. Specified conditions, with respect to emissions of noise, particulate matter, or vibrations, may be prescribed differently from those required in a given zone, so as to be compatible with other applicable State and Federal standards.

9-24-23: WHOLESALE GREENHOUSE:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural

- A. Minimum area - as required by zone.
- B. Direct retail sales are allowed, but only to the extent that they are occasional and incidental. The following factors shall be considered in determining whether or not retail sales are occasional and incidental:
 - 1. Square footage devoted to retail sales shall not exceed five hundred (500) square feet.
 - 2. Retail sales shall be limited to products grown on the premises.
 - 3. Advertising for retail sales shall be ancillary to advertising for wholesale operations.
- C. Yard setbacks:
 - 1. Front Yard.....40 feet
 - 2. Side Yard..... 25 feet
 - 3. Rear Yard..... 25 feet
- D. Any outdoor storage areas shall be surrounded by sight-obscuring fences or densely planted shrubbery or trees, to a minimum height of six (6) feet.
- E. Drainage and runoff shall be controlled and contained on-site.

9-24-24: RESTRICTED SURFACE MINING:

- A. Zones Permitted - Restricted Surface Mining may be permitted with a conditional use permit in the Agricultural, Industrial, and Rural zones.

- B. All Surface Mining Operations, for which conditional use permit application is made in Kootenai County, shall meet the requirements of *Idaho Code* (Title 47, Chapter 15, Surface Mining), and the following requirements:
1. Applicants for a conditional use permit for surface mining shall submit a site plan(s) showing the following, where applicable:
 - (a) Boundaries of the proposed site.
 - (b) Location of the proposed mining operation on the site.
 - (c) All proposed and existing structures.
 - (d) All watercourses, streams, ponds, or lakes on the proposed site or within one thousand (1,000) feet of the boundaries of the site.
 - (e) All proposed and existing roads which would provide access to the proposed site.
 - (f) A topographic vicinity map showing the proposed site and its relationship to the surrounding area.
 - (g) Approximate location of all existing residential uses within one thousand (1,000) feet of the site boundaries.
- C. A conditional use permit for a surface mining operation may be granted for a period not to exceed five (5) years, and may be renewed for a period up to five (5) additional years. The quantity of excavated materials may also be limited as necessary to protect adjoining lands and natural resources. Extension requests shall be reviewed and approved, if justified, by the Board of County Commissioners.
- D. The mining site access road into a street shall meet the requirements of the appropriate highway district and such conditions as may be specified by the Board of County Commissioners.
- E. All surface mining conditional use Applicants will be required to submit rehabilitation plans to the State of Idaho and to Kootenai County. In addition to the requirements of the Rehabilitation Plan required by the State, the Rehabilitation Plan shall contain the following additional information:
1. A topographic map of affected area:
 - (a) Prior to excavation.
 - (b) After excavation is complete.
 2. How placement of overburden during the duration of the permit will be managed.
- F. The Board of County Commissioners may attach such reasonable conditions as the record indicates may be necessary to visually screen, control dust, manage traffic, buffer, air quality, and the visual environment surrounding the proposed surface mining activity.
- G. Even though a conditional use permit may be granted for surface mining activity, no overburden removal shall begin until all required State permits have been issued, and until all necessary documentation required for the County conditional use permit has been provided by the Applicant and approved by County administrative personnel.

9-24-25: DAY CARE CENTER, GROUP DAY CARE FACILITY:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. A site plan shall be submitted showing existing or proposed improvements, including fencing, playground area, etc.

B. Parking and/or traffic circulation plan shall be submitted. Traffic shall not cause congestion.

9-24-26: MANUFACTURED HOME PARKS:

ZONES PERMITTED: High Density Residential

A. Minimum area - not less than twelve thousand (12,000) square feet and with adequate access on a public street, when accompanied by a plan that incorporates the following:

1. A Manufactured Home Park shall provide stalls or spaces for each manufactured home unit of not less than two thousand five hundred (2,500) square feet.
2. Laundry and convenience related services may be provided for the use of the tenants of the park only.

B. Manufactured Home Parks shall be designed to the following standards:

1. Seventy (70) percent of each manufactured home stall or site shall be left in open space.
2. Each manufactured home shall be located at least twenty-five (25) feet from any park property line.
3. A manufactured home may not be located closer than twenty (20) feet from any other manufactured home or permanent building within the manufactured home park. A manufactured home accessory building shall not be closer than ten (10) feet from a manufactured home or building on an adjacent lot.
4. Each manufactured home lot within a manufactured home park shall have direct access to a park street. The park street shall consist of an unobstructed area of twenty (20) feet wide and shall be well-marked to provide for continuous traffic flow. The street system shall have direct connection to a public road.
5. Streets and walkways designed for the use of the manufactured home park residents shall be lighted during the hours of darkness.
6. Each manufactured home lot (site) shall be provided with utility connections, ground anchors, piers or pads, and stabilizing connections of sufficient size to properly accommodate the manufactured home placed on the site.
7. Water supplies for fire department operations shall be as required by the authority having jurisdiction. Where there are no such requirements, water supplies shall be adequate to permit the effective operation of minimum hose stream flows and duration of flows as required by NFPA Standard #501A for manufactured home parks, on any fire in a manufactured home or elsewhere in the manufactured home park. Hydrants shall be located within five hundred (500) feet of all manufactured home lots (sites) unless otherwise specified.

9-24-27: NONPROFIT PUBLIC OR PRIVATE COMMUNITY FACILITY:

ZONES PERMITTED: Agricultural, Rural.

A. As used in this Section, the term nonprofit public or private community facility is defined as a facility that includes property utilized by business leagues, boards of trade, or other associations of persons having some common business interest in agriculture, livestock production, or forestry, that is recognized by State and Federal Taxing authorities as nonprofit. The purpose of the nonprofit public or private community facility is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

- B. Any buildings constructed under this Section shall meet the following standards:
 - 1. One primary building shall be allowed on a parcel.
 - 2. Maximum building height shall not exceed 35 feet.
 - 3. Architectural design of the exterior of the building shall be similar and compatible with other existing primary buildings within the neighborhood.
 - 4. Open space and lot area requirements of the underlying zone shall be met.
- C. A detailed site plan of landscaped areas, on and off site parking areas, and lighting for site and signs shall be submitted for review and approval at the time of application. The Hearing Examiner shall review and make recommendations on the site plan.
- D. Lighting. Outdoor lighting shall be downward directed and shielded to prevent projection of the illumination beyond the subject site property lines.

9-24-28: CHURCH:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural

- A. Any buildings constructed under this Section shall meet the following standards:
 - 1. One primary building shall be allowed on a parcel.
 - 2. Maximum building height shall not exceed 35 feet.
 - 3. Architectural design of the exterior of the building shall be similar and compatible with other existing primary buildings within the neighborhood.
 - 4. Open space and lot area requirements of the underlying zone shall be met.
 - 5. A detailed site plan of landscaped areas, on and off site parking areas, and lighting for site and signs shall be submitted for review and approval at the time of application. The Hearing Examiner shall review and make recommendations on the site plan.
- B. Lighting. Outdoor lighting shall be downward directed and shielded to prevent projection of the illumination beyond the subject site property lines.

9-24-29: GRANGE HALL, LODGE:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural

- A. Any buildings constructed under this Section shall meet the following standards:
 - 1. One primary building shall be allowed on a parcel.
 - 2. Maximum building height shall not exceed 35 feet.

3. Architectural design of the exterior of the building shall be similar and compatible with other existing primary buildings within the neighborhood.
4. Open space and lot area requirements of the underlying zone shall be met.
5. A detailed site plan of landscaped areas, on and off site parking areas, and lighting for site and signs shall be submitted for review and approval at the time of application. The Hearing Examiner shall review and make recommendations on the site plan.

B. Lighting. Outdoor lighting shall be downward directed (except for signs) and shielded to prevent projection of the illumination beyond the subject site property lines.

9-24-30: MINI-STORAGE:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural.

- A. Minimum area - 5.00 acres.
- B. Security fencing, six feet minimum height, around entire storage area.
- C. No outdoor storage or commercial sales of any kind.
- D. All lighting shall be confined to the premises and shall be downward directed and shielded in a manner so as to produce no glare on adjacent properties or rights-of-way.

9-24-31: RESIDENTIAL CARE FACILITY:

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Minimum parcel area - 21,780 square feet, or the minimum lot size required by the zone, whichever is greater. For licensed group home facilities which were existing prior to adoption of this amendment and which will not be altered to accommodate the 9th resident, the minimum lot size shall not apply.
- B. Use is restricted to 9 residents, not including staff members.
- C. A minimum of 6 off-street parking spaces shall be provided.

9-24-32: SPECIAL EVENTS LOCATION:

ZONES PERMITTED - Agricultural, Commercial, Light Industrial, Industrial, Mining and Rural.

- A. Minimum area - The size of the site must be adequate to accommodate the event, attendees, and parking unless provisions have been made for off-site parking. Adequacy of the site shall be reasonably determined by the Hearing Examiner or Board.
- B. A detailed site plan and event description including but not limited to security, access, people management, traffic management, parking, waste control and disposition, litter control plans and any reasonable information requested by the Director shall be submitted to the Director with the application. Copies of the site plan and event descriptions shall be submitted to the Kootenai County Sheriff's Department, Panhandle Health District, Idaho Department of Transportation, the appropriate local highway district, the fire district, and any other agencies requested by the Director and opinion letters or letters of approval by each of these agencies shall be

submitted to the Director with the application. An application shall not be deemed complete without all applicable agency letters.

Lighting at the special event shall be downward directed and shielded and shall not exceed 0.2 foot candles at the property line.

- D. The Director or Board may impose such reasonable conditions as the record may indicate necessary to visually screen, control dust, reduce nuisance factors such as noise, manage traffic, buffer adjoining uses, mitigate affects on water or air quality, limit the duration of the permit, or otherwise provide for the health, safety, or general welfare of the event participants. Conditions may also include a requirement that agencies review plans for each event to be held at the location.
- E. One (1) parking space will be provided for each three (3) seating spaces and said parking area shall be restricted to a clearly designated area which has clearly delineated boundaries.
- F. Maximum noise threshold shall be 75 dBa as measured at the property lines.
- G. There shall be no parking or construction over existing drainfields.

9-24-33: ASPHALT OR CONCRETE BATCH PLANT:

ZONES PERMITTED: Mining, Rural

- A. Minimum lot area - five acres.
- B. The plant must be located within an existing mining zone or at a site with an approved and valid Conditional Use Permit for a Restricted Surface Mine. Non-conforming sites must be brought into compliance prior to issuance of any permit for an asphalt or concrete batch plant.
- C. The operation shall not constitute a nuisance or hazard.
- D. The plant must be located at least 500 feet from the closest residence, other than the residence of the owner.
- E. The plant must be setback at least 75 feet from any road right-of-way and 50 feet from any other property line.
- F. The County may require the posting of a performance bond to guarantee performance of conditions of approval.
- G. Conditions of approval may include, but are not limited to, duration of the permit, restrictions on hours of operation, limitations on machinery or methods of operations and approval of access requirements by appropriate road jurisdiction.

9-24-34: WIRELESS COMMUNICATION FACILITY (WCF):

ZONES PERMITTED: Agricultural, Commercial, Light Industrial, Industrial, Rural

THE FOLLOWING CONDITIONAL USE STANDARDS SHALL APPLY TO ALL NEW AND MODIFIED WCFs:

- A. The minimum lot size allowable shall be the minimum required for the zone in which the WCF is proposed to be located.

- B. All new transmission towers and siting areas shall be designed to structurally allow for a minimum collocation of three (3) additional providers.
- C. Setbacks shall be measured from the siting area fencing and shall be no less than one foot for every five feet of tower height, or the minimum setbacks for the zone in which it is located, whichever is greater. All WCFs shall be setback from any residential structure a minimum of 300 feet and a minimum of 150 feet from residential zones (Ag Sub, RR).
- D. No new WCF shall be constructed within a two-mile radius of an existing WCF.
- E. Maximum allowable tower height, including antennas, is 150 feet. The County may impose stricter height limitations due to obstruction of views or incompatibility with surrounding uses.
- F. Outdoor storage of any supplies or vehicles related to the use of the facility are prohibited.
- G. A landscape/design plan prepared by a landscape designer shall be required. The following standards shall apply:
 - 1. Existing vegetation at the siting area shall be preserved to the maximum extent possible. In all zones, landscaping shall be placed completely around the siting area except as required to access the facility. Such landscaping shall consist of native vegetation, placed densely enough so as to form a six (6) foot high, 100% sight obscuring screen of the siting area within three (3) years. Landscaping shall be compatible with other nearby landscaping and shall be kept healthy and well maintained.
 - 2. A chain link fence no less than six feet in height from the finished grade shall be constructed around each siting area. Access shall be by locked gate.
- H. All WCFs shall be of a stealth design, unless specifically waived by the Board of County Commissioners.
 - 1. If any antenna or tower is not operated for a continuous period of six months it shall be considered abandoned. The owner of such antenna or tower, or property owner, shall remove the same within ninety (90) days. If such antenna or tower is not removed within said ninety (90) days, the County may, at the property owner's expense, remove the antenna or tower and file a lien on the subject property for expenses incurred in removal. If the County is compelled to seek judicial authority to undertake such removal, the reasonable costs and attorney fees incurred by the County in the course of doing so shall constitute a charge against the owner.
- J. Transmission towers 60 feet high or less are exempt from collocation requirements and may be located within a two-mile radius of an existing tower. No lot shall contain multiple transmission towers.
- K. The WCF shall include a siting area that is large enough to accommodate four (4) providers with similar equipment.
- L. In case of a conflict with other legal requirements, the most restrictive shall apply to the extent that such requirements do not conflict with the 1996 Telecommunications Act.
- M. To provide the most efficient and cost effective emergency services, Public Safety Radio Services shall be exempt from Conditional Use Standards B, D, E, I, K, L and Application Requirements O, P, T. The County may, however, impose tower specific height limitations to ensure compatibility with surrounding uses, to preserve views, and to prevent towers from negatively affecting the public.

APPLICATION REQUIREMENTS

- N. Written verification from a licensed engineer that a structural analysis of the tower has been completed demonstrating the tower's ability to accommodate the collocation of three additional providers.
- O. Written verification that alternative sites within a radius of four (4) miles have been considered and have been determined to be technologically unfeasible or unavailable.
- P. A description of the need for the proposed facility at the proposed location and justification for site selection. The Applicant shall provide a radio frequency coverage plan.
- Q. A notarized statement from the property owner granting authorization to proceed with the conditional use permit.
- R. Proof of a duly recorded legal right of access to the site for the intended purpose. The County may restrict the location and number of access points to the property.
- S. A signed agreement stating a willingness to allow collocation on the proposed tower. This agreement shall also state that any future owners or operators will allow collocation on the tower.
- T. Documents demonstrating that the FAA has reviewed and approved the proposal.
- U. Only such lighting as required by the FAA is permitted. The FAA lighting requirement shall be met in the least obtrusive manner, as determined by the Director. Security lighting for the siting area is permitted as long as it is appropriately downward directed and shielded to prevent illumination at the siting area boundary to be no greater than 0.2 footcandles.
- V. A photo simulation (including elevations) of the proposed facility from selected properties and public rights of way as requested by the Director.
- W. A detailed site plan and letters of comment from agencies deemed applicable by the Director.
- X. The Director may waive some or all of the above application requirements for modifications to existing conditional use permits.

9-24-35: KENNELS, BOARDING:

- A. Shall adhere to the provisions of this title and to those contained in Title 5, Chapter 1 of this code.
- B. Adequate fencing shall be provided to restrain animals from running at large. At a minimum, the animals shall be enclosed within a six foot (6') fence or wall. Electronic fences shall not be used as the sole method of restraining animals. In residential districts, visual screening shall be required to buffer adjacent land uses.
- C. Five percent (5%) of the building floor area, excluding the kennel area, may be used for related retail sales.
- D. A grooming facility is allowed, but not to occupy more than thirty five percent (35%) of the building floor area, excluding the kennel area.

9-24-36: SCHOOLS, PUBLIC AND PRIVATE:

- A. The applicant shall provide written documentation that the facility meets the minimum site area guidelines as established by the Idaho state department of education.

- B. The Applicant shall provide written documentation that the facility meets the minimum site area for sewage disposal.
- C. Access shall be from a public road.
- D. No elementary, middle, or junior high schools shall abut a commercial or industrial district.
- E. No school shall be located in a floodplain or adjacent to a hazardous land use.
- F. All structures shall meet a minimum setback of forty feet (40') from any public street and thirty feet (30') from any other property line.

9-24-37: INDOOR COMMERCIAL RIDING ARENA OR EQUINE TRAINING CENTER OR FACILITY (INCLUDES BOARDING STABLES):

- A. The riding arena is for private use, but is enclosed within a structure that exceeds twenty four feet (24') in height and/or the total area of the structure exceeds two thousand (2,000) square feet.
- B. The riding arena can be rented by an individual or group.
- C. Spectator seating for more than fifty (50) people is provided at the arena.
- D. Retail sales accessory to the stable or riding arena are conducted on site.
- E. Group lessons are provided to the general public for a fee.
- F. All commercial riding arenas shall provide sufficient parking and turnaround areas for horse trailers. Such areas shall be designed to preclude vehicles from backing out into a roadway.
- G. The minimum property size for commercial riding arenas shall be five (5) acres.

[Moved to Section 2 of the Ordinance (Repealer, Severability, Effective Date) – see below]

SECTION 2. REPEALER, SEVERABILITY, EFFECTIVE DATE:

- A. **Repeal Of Existing Ordinances.** The provisions of this Ordinance serve to repeal and replace the portions of Kootenai County Zoning Ordinance Numbers 348, 357, 375 and 388 in conflict herewith.
- B. **Severability.** Should any section, clause, or provision of this Ordinance be declared by a court of appropriate jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part declared to be invalid. Any remaining provisions shall be read to give effect to the spirit of this Ordinance prior to removal of the provisions declared invalid.
- C. **Effective Date.** 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*.

DATED this 24th of May 2007

KOOTENAI COUNTY
BOARD OF COMMISSIONERS

[Signature]
Elmer R. Currie, Chairman

[Signature]
Richard A. Piazza, Commissioner

ATTEST:
DANIEL J. ENGLISH, CLERK

[Signature]
By Deputy Clerk and Recorder
Publication Date: May 30, 2007

W. Todd Tondee, Commissioner



STATE OF IDAHO }
COUNTY OF KOOTENAI } ss.

SEP 21 2009

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF
THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE

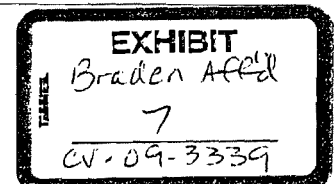
DANIEL J. ENGLISH in commissioners proceedings
Clerk/Recorder By [Signature] Deputy

Table Of Contents

IDAPA 41 - PUBLIC HEALTH DISTRICTS

41.01.01 - Rules of Idaho Public Health District #1

000. Legal Authority.	3
001. Title And Scope.	3
002. Written Interpretations.	3
003. Administrative Appeals.	3
004. Office -- Office Hours -- Mailing Address -- Street Address.	3
005. Public Records.	4
006. -- 009. (Reserved).	4
010. Definitions.	4
011. -- 099. (Reserved).	4
100. Water Quality Control.	4
101. -- 109. (Reserved).	6
110. Sewage Disposal On The Rathdrum Prairie In Kootenai County, Idaho.	6
111. -- 199. (Reserved).	8
200. Open Water Protection.	8
201. -- 299. (Reserved).	8
300. Land Quality Control.	8
301. -- 399. (Reserved).	10
400. Critical Materials At Fixed Facilities On The Rathdrum Prairie In Kootenai County, Idaho.	10
401. -- 499. (Reserved).	14
500. Contaminant Management In The Bunker Hill Superfund Site, Shoshone County, Idaho.	14
501. -- 509. (Reserved).	16
510. The Bunker Hill Superfund Site; Application Of Regulations.	16
511. Contaminant Management Rules In The Bunker Hill Superfund Site Operable Unit #3 Institutional Controls Administrative Area, Shoshone And Kootenai Counties, Idaho	18
512. Application Of Regulations; Institutional Controls Administrative Area.	21
513. -- 519. (Reserved).	23
520. Permit Application And Administration.	23
521. Inspection.	25
522. Permit Revocation Or Stop Work Order.	25
523. Record Of Compliance.	26
524. -- 529. (Reserved).	26
530. Contractor Licensing.	26
531. Licenses For Public Utilities And Government Entities.	27
532. -- 539. (Reserved).	27
540. Performance Of Work.	27
541. Performance Standards.	27
542. Approval Of Alternative Standards.	27
543. Owner And Applicant Responsibility For Claims And Liabilities.	27
544. -- 899. (Reserved).	28



900. Administrative Procedures, Exceptions, Penalties.	28
901. Appeal To The Board.	29
902. Violation And Enforcement.	30
903. -- 999. (Reserved).	30

IDAPA 41
TITLE 01
CHAPTER 01

IDAPA 41 - PUBLIC HEALTH DISTRICTS

41.01.01 - RULES OF IDAHO PUBLIC HEALTH DISTRICT #1

000. LEGAL AUTHORITY.

The rules and standards set forth hereinafter shall be known as the Environmental Code of Panhandle Health District 1. This Code shall supersede and replace any county sanitary codes in existence prior to July 1, 1971. This Code is adopted pursuant to the authority granted to the District Board of Health under Chapter 4, Title 39, Idaho Code, and in the manner required in Chapter 52, Title 67, Idaho Code. The provisions of the Code are supplementary, and should be interpreted in a manner consistent with Chapter 1, Title 39, Idaho Code and any state or federal laws which establish exclusivity or primacy in a field of rule for another public entity as a matter of law. (7-1-93)

01. Conflict. In the event of any conflict between city or county ordinances or heretofore existing rules of county health boards and departments and this Code, the respective provision which more completely protects public health or the environment, shall prevail. Nothing in this Code shall be deemed to prevent the enforcement of any standard, or rule relating to air, water, or health quality now existing or hereinafter adopted by the State Board of Health and Welfare or any interested agency of the federal government. Nothing in this Code shall be deemed to conflict with the enactment by any city or county in the District of any ordinance or rule placing additional restrictions or limitations which contribute to enhancement of water, air, land, or health quality. Where the provisions of this Code conflict with state or federal statutes or rules which preempt regulation of a particular subject or application of this Code in a particular manner, the preemptive state rule or federal regulation shall prevail to the extent that application of the conflicting rules cannot be accommodated. (7-1-93)

02. Policy. This Environmental Health Code is based on the recognition that pollution of the air, land, and waters of this district constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and other aquatic life, and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air, land, and water. It is the duty of the Board to establish the quality standards of the environment in the interest of health, individual and community alike, and to prevent the outbreak and spread of dangerous and infectious disease. (7-1-93)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 41.01.01, "Rules of Idaho Public Health District #1." (3-27-07)

02. Scope. These rules shall govern issues concerning the mission of Idaho Public Health District #1 as established by the Idaho Legislature, in particular addressing matters of local concern in order to protect public health and the environment in the counties that comprise the District. (3-27-07)

002. WRITTEN INTERPRETATIONS.

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available for public inspection and copying at cost in the principal place of business of this agency. (3-27-07)

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-27-07)

004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

01. **Office Hours.** The main office of the District is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. (3-27-07)

02. **Mailing and Street Address.** The District's mailing/street address is: Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835. (3-27-07)

005. PUBLIC RECORDS.

Subject to Idaho Code provisions and applicable Federal statutes and regulations, official documents of the Panhandle Health District may be examined after filing of proper written request filed in the office of the Director at the address above. Among others, health-related and personnel-related records are generally not subject to public disclosure. Additional public records information may be obtained by contacting the Director's office. (3-27-07)

006. -- 009. (RESERVED).

010. DEFINITIONS.

The terms used in this Code shall be interpreted consistent with the definitions set forth in this section. The Board may, by rule, provide such other definitions as may be necessary to clarify this Code or to supplement definitions established by state laws or rules. (7-1-93)

01. **Board.** The Board of Panhandle Health District 1. (7-1-93)

02. **Code.** Environmental Health Code of Panhandle Health District 1, including the several sections which follow and the entire series of rules now and hereinafter adopted by the Board and by the State Board of Health and Welfare. (7-1-93)

03. **Floathouse.** A watercraft that is not self-propelled and with a dwelling place on it for habitation by human beings, whether said habitat is seasonal, itinerant, temporary, or permanent; and whether the floathouse is attached to land, floating free in the water, or tied to a fixed structure. (7-1-93)

04. **Health Officer.** As used in this Code shall mean the Director of Panhandle Health District 1, or any agent or employee thereof whose duties include enforcement of any provision of this Code. (7-1-93)

05. **Public Sewage Treatment Facility.** Any sewage collection and treatment system with more than two (2) individual service connections. (7-1-93)

06. **Variance.** A grant of relief from the literal application of a Panhandle Health District 1 rule upon a showing that undue hardship, related to unique characteristics of a site, would result from literal adherence to such rule. (7-1-93)

011. -- 099. (RESERVED).

100. WATER QUALITY CONTROL.

01. **Sewage and Waste Disposal -- Political Subdivisions.** Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board shall have authority to enforce the provisions of sewage management plan agreements. (7-1-93)

02. **Sewage and Waste Disposal -- Public Sewage Treatment.** All public sewage treatment facilities shall be constructed and operated in accordance with applicable state and federal laws. All public sewage treatment facilities constructed after the effective date of this rule shall be owned, operated, or maintained by a political subdivision of the state of Idaho, as defined in Idaho Code or by such entity as may be deemed acceptable by the Board. All public sewage treatment facilities incorporating subsurface disposal in the design must include two (2) disposal fields, each sized for the design loading and capable of being alternately loaded; in addition, a third acceptable site, large enough to install an additional replacement field, must be available. (7-1-93)

03. **Sewage and Waste Disposal -- Private Sewage Disposal.** No residence, place of business, or

other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer. (7-1-93)

a. This rule shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within two-hundred (200) feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer. (7-1-93)

b. The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of Environmental Quality Rules for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule. (3-27-07)

c. No drywells or drainfields deeper than four (4) feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code. (7-1-93)

d. No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until inspected and approved. (7-1-93)

04. Sewage and Waste Disposal -- Septage Disposal Site. It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of Panhandle Health District 1 without first having been issued a registration permit by the Health Officer. (7-1-93)

a. Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules governing sewage disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect. (7-1-93)

b. Any person engaged in the business of removing and transporting sewage shall comply with all applicable rules governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable rules hereinafter adopted. (7-1-93)

c. All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three-hundred (300) feet from a property line, nor closer than one quarter (1/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these rules may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and approved by the Health Officer prior to the issuance of a permit. (7-1-93)

05. Sewage and Waste Disposal -- Prohibited Conditions. (7-1-93)

a. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. (7-1-93)

b. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause

damage to any public or private property. (7-1-93)

c. Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain. (7-1-93)

06. Sewage and Waste Disposal. Expansion or Replacement of a Structure with Existing Waste Disposal System (Vested Rights). (3-27-07)

a. The square footage of habitable space will be used to determine a vested right for expansion or replacement of a structure with an existing wastewater system. (3-27-07)

b. An increase in square footage of habitable space by more than ten percent (10%) when replacing or remodeling an existing structure with an existing wastewater system will require a septic system that meets current standards. (3-27-07)

c. An application for a subsurface sewage disposal repair permit is required for all remodeling or replacement of an existing structure served by a sewage disposal system which fails to have both a septic permit and an approved final inspection. The sewage disposal system must be upgraded to current standards if possible. If this is not possible, the sewage disposal system must be upgraded to the best possible system given the constraints of the property. The remodeled or replacement structure will be limited to no more than one hundred ten percent (110%) of the original structure's square footage of habitable space. An alternative system may be required. (3-27-07)

d. If a system has ceased to receive wastewater for one year or more, the system is considered abandoned. The abandoned site must be inspected to determine if it is in compliance with current regulations. If system is in compliance with current regulations, it can be used for the current approved habitable space. If system is not in compliance with current regulations, a repair permit will be required, and the system must be upgraded to current standards if possible. If current standards cannot be met, the best possible system given the constraints of the property must be installed. This may require the use of an alternative system. Once the system has been upgraded, it can be connected to. If the upgrade cannot meet current standards, the dwelling will be limited to no more than one hundred ten percent (110%) of the current approved habitable space. (3-27-07)

07. Sewage and Waste Disposal. Authorization to Connect to an Installed System. (3-27-07)

a. This applies to connection to an approved drainfield installation that has never received wastewater flows. (3-27-07)

b. Application must be made, and an authorization to connect permit issued, to determine that the site has not been compromised and continues to meet the standards under which the original permit was issued. A fee for such inspection may be set by the Board. From July 1, 2007, and thereafter, no permit shall be issued for a septic system separate from a concurrent request for a permit to establish a specific use and structure to be served by the requested septic system. (3-27-07)

101. -- 109. (RESERVED).

110. SEWAGE DISPOSAL ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

The Board has determined that extensive use of subsurface wastewater disposal on the Rathdrum Prairie presents a threat to the public health by contamination of the Rathdrum Aquifer, which is a drinking water source. It is the intent of the Board to adopt rules to govern subsurface sewage disposal on the Rathdrum Prairie. (7-1-93)

01. Title. These rules, within this Section, shall be known and cited as the "Rathdrum Prairie Sewage Disposal Rules." (7-1-93)

02. Scope. The provisions of this Section shall apply to subsurface sewage disposal systems installed on the Rathdrum Prairie. (7-1-93)

03. Definitions. The following definitions shall apply to the Rathdrum Prairie sections of these rules.

(7-1-93)

a. Sewage Loading. The total liquid volume of sewage produced on any given parcel of land and expressed as gallons/day. (7-1-93)

b. Dwelling Equivalent. The total sewage loading from a single family dwelling. When applied to structures or facilities other than housing units, a dwelling equivalent shall be equal to two-hundred and fifty (250) gallons per day or shall be equal to twenty (20) persons using a non-residential facility on forty (40) hour per week basis, with no wastewater generation except from restrooms. (7-1-93)

c. Rathdrum Prairie. That area of land situated in Kootenai County and more particularly defined by the USGS map describing the boundaries of the Rathdrum Prairie Aquifer identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93-523) (Federal Register, Vol. 43, No. 28 -Thursday, February 9, 1978). (7-1-93)

d. Approved Subdivision. A legally platted parcel of land that has been signed and approved by the Panhandle Health District 1 as meeting the requirements of the Code. (7-1-93)

e. Sewage Management Plan. A method of action, procedure, or arrangement approved by the Panhandle Health District 1 describing how collection, treatment, and disposal of sewage shall be addressed within the boundaries of a political subdivision and shall include a map of the area affected by the Sewage Management Plan. (7-1-93)

04. Subsurface Sewage Disposal Systems. (7-1-93)

a. All installations of subsurface sewage disposal systems must be made in compliance with the Code and the rules of the Idaho Department of Environmental Quality. (3-27-07)

b. A subsurface sewage disposal system for one (1) dwelling equivalent may be installed without requirements other than Subsection 110.04.a., if the system is on a single parcel of land of five (5) acres or larger in surface area and the total loading for that parcel does not exceed one (1) dwelling equivalent per five (5) acres, except where one (1) system is replacing another. Every parcel of land created after December 20, 1977, except as otherwise permitted by these rules, shall maintain the dwelling equivalent(s) allowed for the original parcel of land. (7-1-93)

c. No subsurface sewage disposal system shall be installed on any parcel of land of less than (5) five acres in surface area except under the following conditions: (7-1-93)

i. The parcel of land is located within the boundaries of a public sewer district or municipality where the governing board has adopted a Sewage Management Plan approved by the Board which will result in the construction and operation of, or connection to, a central sewage treatment plant. The Sewage Management Plan area must be entirely within the boundaries of the municipality, and the Sewage Management Plan must include a map delineating the boundaries of the Sewage Management Plan Area; (7-1-93)

ii. Parcels of land less than five (5) acres in size and acquired or established prior to December 20, 1977, will be permitted for a subsurface sewage disposal system for a single-dwelling equivalent, provided such parcels meet all other rules governing individual and subsurface sewage disposal systems; or (7-1-93)

iii. Where one (1) subsurface sewage disposal system is replacing another with no increase in sewage loading. (7-1-93)

d. On all developments subject to the provisions of Subsection 110.04.c.iii., the subsurface sewage disposal system shall have the dry or wet sewer system with necessary laterals installed within the development. All installations shall be done in coordination with local government planning, and approved by the state Department of Environmental Quality where applicable. (7-1-93)

e. Upon notification by the Health Officer the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on his parcel of land and shall connect the

building sewer from the buildings to a collection and treatment system whenever it becomes available for service to his parcel. (7-1-93)

111. -- 199. (RESERVED).

200. OPEN WATER PROTECTION.

01. Boats and Houseboats. (7-1-93)

a. It is unlawful for any boat, motorboat, floathouse, sailboat, or any other kind of boat containing wastewater facilities to be on the waters of any stream, river, or lake in Panhandle Health District 1 unless such wastewater facilities shall be sealed to prevent a discharge into any waters. The method of sealing such wastewater facilities shall be subject to the approval of Panhandle Health District 1. (7-1-93)

b. Any person authorized by the Health Officer or any law enforcement person may stop and board any boat on the said waters and examine the wastewater facilities on such boats to see that such facilities are properly closed and sealed. (7-1-93)

c. It shall be unlawful for any person to throw overboard, dump, or otherwise dispose of or discharge, or cause, permit, or suffer to be discharged, any garbage, refuse, rubbish, waste, or sewage from any boat into or upon the waters of any stream, river, lake, or other body of water within the boundaries of Panhandle Health District 1. (7-1-93)

d. If any watercraft located upon the waters of this District is found to have a marine toilet which is not in compliance with the requirements of this section, the Health Officer shall have the following alternative or cumulative powers to: (7-1-93)

i. Cause the marine toilet to be locked and sealed to prevent usage; (7-1-93)

ii. Require such watercraft to be removed from the waters of Panhandle Health District 1 until the marine toilets are made to conform with the requirements of this Code. (7-1-93)

02. Public and Private Marinas. (7-1-93)

a. Any marinas, whether public or private, providing moorage for vessels equipped with on-board wastewater facilities shall provide sewage waste disposal facilities. These facilities shall consist of a pump station that is capable of adequately cleaning waste retention tanks on the largest boat that could reasonably use the moorage. Such plans must be approved by the Department of Environmental Quality. (3-27-07)

b. All marinas, whether public or private, must provide shore-based toilet facilities for their users. (7-1-93)

03. Floathouses. (7-1-93)

a. All floathouses must have approved wastewater facilities. (7-1-93)

b. All discharges from all floathouses, whether old or new, regardless of source, are prohibited. (7-1-93)

c. All floathouses must obtain a sewage permit from Panhandle Health District 1. (7-1-93)

d. The cost of the permit shall be set in the fee schedule. (7-1-93)

201. -- 299. (RESERVED).

300. LAND QUALITY CONTROL.

01. **Solid Waste Collection.** It shall be unlawful for any person, private franchisee, or contract collector haulers to engage in the business of collection, transporting, hauling, or conveying any refuse over the roads, highways, streets, or alleys of Panhandle Health District 1, or to dump or dispose of the same unless and until each person obtains an annual permit from Panhandle Health District 1. (7-1-93)
02. **Animals and Fowl.** (7-1-93)
- a. Every pen, yard, kennel, coop, warren, stable, or other enclosure or structure wherein animals or fowl are kept shall be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odor. (7-1-93)
- b. No manure shall be allowed to accumulate such that it will be a source of flies or fly breeding, or a source of noxious or offensive odors, dangerous to health, or an unhealthy nuisance. (7-1-93)
- c. No person owning or controlling the possession of horses, mules, cattle, sheep, goats, hogs, or other animals shall willfully or negligently keep or maintain such animal(s) in enclosures or permit such animal regularly to graze so as to constitute a public health hazard and/or a hazard to water quality. (7-1-93)
03. **Subdivisions.** (7-1-93)
- a. All plats as defined in Title 50, Chapter 13, Idaho Code or local subdivision ordinance, shall bear a sanitary restriction in compliance with Sections 50-1326 to 50-1329, Idaho Code. The Health Officer shall be the delegate of the State Board of Environmental Quality authorized to provide the certificate required in Section 50-1326, Idaho Code. (3-27-07)
- b. Every person or corporation intending to file any plat with the office of any County Recorder in the District shall first present a copy of the proposed plat to the Health Officer and shall submit a written application for a permit, accompanied by fee as set in the fee schedule. Said application shall state the proposed method of water supply and sewage disposal for each site intended for sale in said plat. The Health Officer may require such additional information as he feels necessary to determine whether the sanitary restriction is satisfied. (7-1-93)
- c. The Health Officer may require that a plat be served by a public water or sewer system prior to providing a certificate of approval in accordance with Section 50-1325, Idaho Code. (7-1-93)
- d. In geographic locations where the cost of sewer facilities is presently economically prohibitive, and apparently will remain economically prohibitive during the next ten (10) years, the Health Officer may issue a certificate of approval when the following conditions are satisfied: (7-1-93)
- i. Soil studies, such as a study of test borings, indicate that proper treatment and disposal can be achieved as determined by the Health Officer; (7-1-93)
- ii. Groundwater, even under the most extreme conditions, will not be closer than six (6) feet from the ground surface; (7-1-93)
- iii. The sewage disposal area has not been filled with more than two (2) feet of material within two (2) years of the date when the permit is requested; (7-1-93)
- iv. At least two (2) drainfield systems can be provided within each lot. (7-1-93)
- e. Nothing in this section shall be deemed to waive or modify in any respect any of the other rules of this Code. Approval of a plat shall not bar or stop the Health Officer at any later time from enforcing any of the rules of this Code. (7-1-93)
- f. All plats shall bear the signature of the Health Officer or his representative before filing. (7-1-93)
04. **Vector Control.** The Health Officer may require the control or eradication of any rodent, insect, or other arthropod on public or private property which is known to be a vector of human disease when the vector is

present in sufficient numbers to represent a health hazard or public nuisance. (7-1-93)

301. -- 399. (RESERVED).

400. CRITICAL MATERIALS AT FIXED FACILITIES ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

01. Purpose and Intent. The purpose and intent of this section is to provide agencies that are currently involved with emergency planning and emergency response duties and businesses with duties to report their handling of chemicals and other potentially hazardous materials, with a mechanism to meet the mandate of existing rules by facilitating channels of communication. It is also intended to aid in protection of the Rathdrum Prairie Aquifer in Kootenai County, designated as a sole source aquifer by the United States of America, from potential sources of contamination from materials handling and storage at facilities located over or adjacent to the Aquifer. The rules strive to achieve such protection through proper use of secondary containment systems at Fixed Facilities that use, store, manufacture or handle Critical Materials. Reporting these chemicals to the concerned agencies will facilitate coordination among industry, government agencies and response personnel so that they may more successfully meet the requirements of the following: (7-1-93)

- a. Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA III). (7-1-93)
- b. The International Fire Code. (3-27-07)
- c. The International Building Code. (3-27-07)
- d. Local building, planning and zoning codes applicable to lands which overlie the Aquifer. (7-1-93)
- e. Any applicable rules administered by any other state, federal or local agency which has jurisdiction over matters related to Critical Materials. (7-1-93)

02. Definitions. The following terms shall be construed throughout this Section in a manner consistent with the following definitions: (7-1-93)

- a. Container. Any vessel used to hold critical materials. A single container is one not connected to any other container by way of valves, piping, etc. (7-1-93)
- b. Critical Material. Any liquid, semi-liquid, flowable, or water soluble solid that is listed on the most current Superfund Amendments and Reauthorization Act, Title III (SARA III) List of Lists published by the Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. or is required by the U.S. Occupational Safety and Health Administration to have a material safety data sheet (MSDS). (7-1-93)
- c. Critical Materials Compliance Certificate (CMCC). A certificate indicating compliance with the reporting and secondary containment requirements of this rule. (7-1-93)
- d. Critical Materials Use Activity. Any undertaking that involves the use, storage, manufacture or handling of Critical Materials at a Fixed Facility above the secondary containment quantity set forth in this rule, or incorporated into this rule by reference. (7-1-93)
- e. Director. The Director of Panhandle Health District 1 or his designee. (7-1-93)
- f. Fixed Facility. Any established land use, building, dwelling, structure or site upon which or wherein a Critical Material Use Activity is conducted. (7-1-93)
- g. Key Box. A durable, locked box that holds keys firefighters or other emergency personnel may use to gain entry into a structure. The key box shall be a type approved by the local fire chief pursuant to Section 10.209 of the Uniform Fire Code. (7-1-93)
- h. Local Emergency Planning Committee (LEPC). A standing committee established by the Office of

the Governor through the State Emergency Response Commission (SERC) to fulfill Emergency Planning and Community Right to Know requirements pursuant to SARA III. (7-1-93)

i. Material Safety Data Sheets (MSDS). Documentation required by OSHA to provide a description of the characteristics and potential hazards of a wide range of substances that are potentially Critical Materials. (7-1-93)

j. NFPA 704. The National Fire Protection Association's placarding system used to identify the health hazard, flammability, reactivity and potential to react with water of a particular substance. (7-1-93)

k. Secondary Containment Quantity. The quantity of a Critical Material that requires compliance with this rule. For those Critical Materials specifically listed in the SARA III List of Lists (or as otherwise noted) the following quantities of qualifying substances shall be subject to this rule: (7-1-93)

i. SARA Section 302 Extremely Hazardous Substances - ten (10) pounds in the aggregate, exclusive of solvent or other medium or, one hundred (100) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

ii. CERCLA Hazardous Substances (listed in 40 CFR 302, Table 302.4) - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

iii. SARA Section 313 Toxic Chemicals - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

iv. SARA Section 311 and 312 Chemicals (Not listed in the List of Lists) for which OSHA MSDS must be developed pursuant to OSHA Hazard Communication Standards - five thousand (5000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

l. Secondary Containment System. Site improvements and/or development criteria that are designed to isolate and prevent Critical Materials from entering the soil or surface or ground waters. (7-1-93)

m. Rathdrum Prairie Aquifer (Aquifer). The underground water source identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93- 523) (Federal Register, Vol. 43, No. 28 - Thursday, February 9, 1978). (7-1-93)

03. Applicability. (7-1-93)

a. This rule shall apply to any person, firm, corporation, or government agency owning, operating, or proposing to locate, establish, or operate a Fixed Facility over the Aquifer or within a recognized Aquifer recharge area in Kootenai County, Idaho. Any Fixed Facility so located shall comply with the requirements of this rule prior to initiation of operation or engaging in any Critical Materials Use Activity, if established after the effective date of this rule. Fixed Facilities in operation or engaging in Critical Materials Use Activity on or before September 18, 1990 shall attain compliance by the threshold dates established herein. Every owner or operator of a Fixed Facility shall be required to show compliance with this rule by obtaining a Critical Materials Compliance Certificate appropriate for current operations. (7-1-93)

b. The following activities shall require a new application to the Panhandle Health District I to determine compliance with this rule: (7-1-93)

i. Establishing a new use that could qualify as a Fixed Facility. (3-27-07)

ii. Remodeling, operating changes, or expansion of an existing Fixed Facility which would modify the type or quantity of Critical Materials Use Activity. (7-1-93)

iii. Changes in the location or method of use, storage, manufacture or handling of Critical Materials in

any Fixed Facility. (7-1-93)

iv. A change in ownership or addition of new Critical Materials meeting the quantity thresholds established by this rule at a Fixed Facility. (7-1-93)

c. Any CMCC granted is specific to that action and the application filed therefore. Subsequent actions, meeting the criteria set by Subsection 400.03.b., shall require separate plan reviews and approvals to obtain compliance. (7-1-93)

d. Fixed Facilities in existence prior to September 18, 1990, shall comply with reporting requirements established herein on or before one (1) year from September 18, 1990, and shall implement secondary containment systems, on or before three (3) years from September 18, 1990. Upon proper showing by an applicant that good cause exists, the director may authorize a compliance agreement which allows the applicant up to one (1) additional year to install secondary containment systems. (7-1-93)

e. All businesses over the Rathdrum Prairie Aquifer in Kootenai County are subject to inspection in order to determine if they are governed by this rule. (3-27-07)

04. Application Requirements of Fixed Facilities Engaged in Critical Materials Use Activities.
Each applicant for a Critical Materials Compliance Certificate must provide. (7-1-93)

a. Sufficient information to allow the Director to determine the type, quantity, and physical state of all Critical Materials that are used, stored, manufactured, or handled at the Fixed Facility location. The Director may require the applicant to provide a complete list of Critical Materials present at the Fixed Facility. (7-1-93)

b. Sufficient information about the Fixed Facility to allow classification in accordance with the Standard Industrial Classification system of the U.S. Department of Commerce. (7-1-93)

c. Building plans and site development drawings showing compliance with the secondary containment requirements established by this rule. Such plans shall also provide confirmation that the secondary containment methods are compatible with the materials to be contained and that Critical Materials at the Fixed Facility are isolated from storm water or other surface waters on the site. The Director may require that any such plans be certified by a licensed engineer. The required building and/or site plans shall show at least the following: (7-1-93)

i. Location of Critical Materials in buildings and other designated site areas. (7-1-93)

ii. Location of Key Box if required by the local fire chief. (7-1-93)

iii. Location of NFPA 704 placards if required by the local fire chief. (7-1-93)

d. Proof of contact and resultant acknowledgment from the agencies named below which have codes, standards, and/or rules which must be met by the applicant with respect to handling of Critical Materials. The Director will designate the agencies needing contact for each Fixed Facility based upon information provided by the applicant. (7-1-93)

i. Local Fire Department. (7-1-93)

ii. Local Emergency Planning Committee. (7-1-93)

iii. Kootenai County Department of Planning and Zoning. (7-1-93)

iv. Kootenai County Building Department. (7-1-93)

v. Applicable City Building Department. (7-1-93)

vi. Applicable City Planning and Zoning Department. (7-1-93)

- vii. Bureau of Pesticides, Department of Agriculture. (7-1-93)
- ix. Department of Environmental Quality. (7-1-93)
- x. Idaho Department of Water Resources. (7-1-93)
- e. An opportunity for Panhandle Health District 1 to perform an inspection to assure compliance with secondary containment criteria previously approved through the plan review. If approved, and the agency review and reporting checklist (Subsection 400.04.d.) has been completed, a CMCC will be issued. The Director may delegate site inspection duties to officials of a cooperating agency. (7-1-93)
- f. Payment of the review fee for CMCC issuance established by Resolution of the Board in order to reimburse costs of administering the Critical Materials program. (7-1-93)
- 05. Performance Standards for Fixed Facilities.** Each Fixed Facility, as defined in this rule, shall conform to the following performance standards: (7-1-93)
- a. Shall construct and maintain a secondary containment system for all Critical Materials. Said secondary containment system shall be designed to prevent infiltration of any Critical Materials into the ground in the event that they are released from their original storage containers. (7-1-93)
- b. The secondary containment system and methods must be non-reactive and resistant to the materials to be contained and must isolate the Critical Materials at the Fixed Facility from storm water, other surface waters on the site, and from reactive critical materials present in the same Fixed Facility. (7-1-93)
- c. Secondary containment systems must be sized to contain at least one-hundred and ten percent (110%) of the volume of the largest container, or ten percent (10%) of the aggregate volume of all containers, whichever is greater, in any containment area within a Fixed Facility. (7-1-93)
- d. The owner or operator of any Fixed Facility shall report the presence of any Critical Materials Use Activities to the responsible local, state, and federal agencies as required by statutes, rules, and provisions of this rule. (7-1-93)
- e. Any spilling, leaking, emitting, discharging, escaping, or leaching of any Critical Material into the secondary containment system or the environment must be reported to Panhandle Health District 1 or the local fire department immediately upon discovery of the release. (7-1-93)
- f. Should conflict arise among the applications of local, state rules, and federal regulations regarding Critical Materials Use Activities, the rule that provides the greatest degree of protection to the Aquifer shall prevail, except where legal preemption of regulatory authority by state or federal agencies may require application of a different standard of protection. (7-1-93)
- g. Each Fixed Facility shall be subject to biennial inspection to verify continued compliance with these rules. A fee for such inspection may be set by the Board. (3-27-07)
- 06. Violation.** Any owner or operator of a Fixed Facility shall be deemed to have violated this rule if: (7-1-93)
- a. A Fixed Facility is operated or if Critical Materials Use Activities are conducted on any site without first procuring a Critical Materials Compliance Certificate or if changes are made to Critical Materials Use Activities at a Fixed Facility as set forth in Section 400.03.b. without reapplying for a CMCC for the Fixed Facility. (7-1-93)
- b. An owner or operator of a Fixed Facility submits knowingly false or incomplete reports to the Panhandle Health District or other responsible agencies or officials concerning the nature or quantity of Critical Materials present at a Fixed Facility governed by this rule. (7-1-93)

e. An owner or operator fails to implement or maintain secondary containment of Critical Materials at a Fixed Facility as required by this rule. (7-1-93)

d. An owner or operator fails to comply with time and reporting standards for any Critical Materials Use Activities or fails to report any discharge of Critical Materials into the secondary containment system required by this rule. (7-1-93)

401. -- 499. (RESERVED).

500. CONTAMINANT MANAGEMENT IN THE BUNKER HILL SUPERFUND SITE, SHOSHONE COUNTY, IDAHO.

01. **Legal Authority.** The Idaho Legislature has given the Board of Health of the District the authority to promulgate rules governing contaminant management pursuant to Section 39-416, Idaho Code. (3-20-97)

02. **Purpose.** The purpose of these rules is to ensure that activities involving excavations, building development, construction and renovation and grading within the Bunker Hill Superfund Site provide for the installation and maintenance of Barriers and implementation of other Contaminant management standards to preclude the migration of, and particularly, human exposure to Contaminants within the Site as necessary to protect the public health and the environment. It is imperative that redevelopment and future development proceed in a manner which minimizes the release of Contaminants into the air or water to minimize exposure to workers, Site residents and the communities. Further, it is the purpose of these rules to complement existing land use authorities and permitting processes, and to provide a screening process to determine whether proposed activities are subject to these rules. (3-20-97)

03. **Written Interpretations.** This agency may have written statements and standards which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. If available, written statements and standards can be inspected and copied at cost at the Panhandle Health District Office, 114 West Riverside Avenue, Kellogg, Idaho. (3-20-97)

04. **Administrative Appeals.** Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-20-97)

05. **Definitions.** The following terms shall be construed throughout these rules in a manner consistent with these definitions: (3-20-97)

a. **Applicant.** Any person, contractor, public utility, government or other entity that is required to apply for an ICP Permit. (3-20-97)

b. **Barrier.** Any physical structure, material or mechanism which breaks the pathway between contaminants and human receptors, including but not limited to walls, floors, ceilings, soil, asphalt, concrete, fences, control over access, or other structure or covering which separates contaminants from contact with people or keeps contaminants in place. (3-20-97)

c. **Board.** The Board of Health of the District. (3-20-97)

d. **B.O.P. Barrier Option Plan,** which will be provided by an Applicant when required; such plans shall set forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work. (3-20-97)

e. **Building Renovation.** Construction activity to be performed on any structure involving any ceiling or insulation removal or disturbance of soil in basements or crawl spaces. (3-20-97)

f. **Contaminants.** Soil or other materials containing, or likely to contain, lead in excess of the levels established in Section 510 of these rules. (3-20-97)

- g. Director. The Director of the District. (3-20-97)
 - h. Disposal. The placement of Contaminants into an authorized permanent repository. (3-20-97)
 - i. District or PHD. The Idaho Public Health District No. 1 (also the Panhandle Health District). (3-20-97)
 - j. Excavation. Any digging, breaching or disruption of a soil or other protective Barrier which may expose Contaminants to the environment. (3-20-97)
 - k. Hearing Officer. A lawyer, engineer or other professional trained in conducting hearings, appointed by the Board for purposes of conducting hearings authorized by these rules. (3-20-97)
 - l. ICP. The Institutional Controls Program for the Site. (3-20-97)
 - m. ICP Permit. The Contaminant management authorization for projects subject to these rules. (3-20-97)
 - n. Large Project. A project within the Site where one (1) cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects also include, but are not limited to, new building construction, demolition of existing buildings and construction of subdivisions and planned unit developments (PUD's) (and the infrastructure necessary to serve them) and construction within and maintenance of rights-of-way. (3-20-97)
 - o. Owner. Any person, partnership, or corporation having ownership, title, or dominion over property for which an ICP permit is sought. (3-20-97)
 - p. Record of Compliance. The record maintained by the District pursuant to Section 011 of these rules for Small Projects. (3-20-97)
 - q. Site. The Area within the boundaries of the Bunker Hill Superfund Site Allocation Map dated December 10, 1993 attached as Appendix 1 to these rules. (3-20-97)
 - r. Small Project. A project where less than one (1) cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation. (3-20-97)
 - s. Working Day. Monday through Friday, but shall not include any holiday recognized as such by the state of Idaho. (3-20-97)
- 06. Statement of Intent.** It is the intent of Idaho Public Health District No. 1 (the 'District') to work with local governments, the state of Idaho, the United States Environmental Protection Agency and private parties in managing Contaminants within the regulated area by way of an Institutional Controls Program (herein referred to as the ICP). These rules establish standards for Barrier installation and maintenance, and other Contaminant management practices. These rules govern management of Contaminants by: (3-20-97)
- a. Requiring ICP permits and requiring barriers for certain construction and excavation activities; (3-20-97)
 - b. Licensing contractors, utilities, and government entities which may disrupt or install Barriers, or otherwise disturb Contaminants; (3-20-97)
 - c. Adopting performance standards; (3-20-97)
 - d. Inspecting for project compliance as required; (3-20-97)
 - e. Regulating the movement and disposal of Contaminants; (3-20-97)

f. Making it unlawful to knowingly disrupt a barrier in a fashion likely to expose persons to contaminants. (3-20-97)

07. **Additional Provisions by District.** In conjunction with these Rules it is the intent of the District to provide, as needed: (3-20-97)

a. Technical assistance and testing; (3-20-97)

b. Health screening and intervention; (3-20-97)

c. That there will be a readily available repository for Contaminants; (3-20-97)

d. Clean soil to restore Barriers for Small Projects; (3-20-97)

e. Disposal containers to assist in removing contaminated soil for Small Projects and transport and disposal of such soil; (3-20-97)

f. Health and safety information and education to licensees and the public; (3-20-97)

g. Plastic, gravel and use of vacuums for interior projects; (3-20-97)

h. A database tracking system to assist the public, lenders, and potential purchasers of property within the Site; and (3-20-97)

i. Guidelines for managing Contaminants. (3-20-97)

501. -- 509. (RESERVED).

510. THE BUNKER HILL SUPERFUND SITE; APPLICATION OF REGULATIONS.

These rules shall apply to the Bunker Hill Superfund Site in Shoshone County, Idaho, more particularly as shown on the Bunker Hill Superfund Site Allocation Map identified as Appendix 1 to these rules. These rules shall not apply to operations undertaken at the direction of, under the supervision of, and subject to inspection by, the United States Environmental Protection Agency. (3-20-97)

01. **Standards Adopted.** (3-20-97)

a. All Barriers now or hereinafter constructed within the Site shall be maintained and protected. (3-20-97)

b. Except as otherwise provided in this section, Contaminant management is required in connection with any Large or Small Project or Building Renovation involving the breaching or disturbance of a Barrier or the disturbance or migration of Contaminants exceeding one thousand (1000) ppm lead. (3-20-97)

c. No new PUD or subdivision shall be occupied where the average concentration of Contaminants exceeds three hundred fifty (350) ppm lead or a single lot exceeds one thousand (1000) ppm lead without Contaminant management on any portion of the property that exceeds these levels. (3-20-97)

d. As necessary to protect public health and the environment, PHD may impose Contaminant management requirements, other than Barrier installations, on projects where soils exhibit lead concentrations in excess of three hundred fifty (350) ppm lead, particularly where a property has been remediated with either six (6) or twelve (12) inches of clean fill but Contaminants in the three hundred fifty to one thousand (350 - 1000) ppm lead range remain below the six (6) or twelve (12) inch depth and those Contaminants may be disturbed by a Large or Small Project. (3-20-97)

e. No person shall conduct, except in accordance with these rules, any activity within the Site which breaches a Barrier, may breach a Barrier, or disturbs the same, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust,

excavation, transport, disposal, remodeling, demolition, or run-on or run-off from stormwater or in any other manner. (3-20-97)

02. Barriers; Construction and Maintenance Required. (3-20-97)

a. Barriers are required as necessary to attain the standards described in Section 510. Temporary Barriers also may be required to prevent the migration of Contaminants during construction activities. (3-20-97)

b. Types of acceptable Barriers for specific uses and activities are set forth in Appendices 2, 3, and 4. (3-20-97)

c. All twelve (12) inch permanent permeable exterior Barriers required to be installed under the ICP which overlay soils having lead levels in excess of one thousand (1000) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead. Permanent impermeable Barriers such as concrete and asphaltic concrete do not require delineators. (3-20-97)

d. The minimum Barrier requirements for residential properties and other properties that are frequently used by children (zero (0) to twelve (12) years) and/or pregnant women are as follows: (3-20-97)

i. All soil which contains lead in excess of one thousand (1000) ppm and lies within twelve inches (12") of the final grade shall be removed, replaced, or covered as appropriate with clean earthen material such that, after all work is completed, the soil remaining in the top twelve inches (12") has less than one thousand (1000) ppm lead. Replacement material must meet the requirements listed in Section 008.06. Acceptable soil removal and Barrier thicknesses for these properties are set forth in Appendix 5. (3-20-97)

ii. Any such property with unrestricted access to an adjacent property not meeting the requirements of Subsection 510.02.a. shall restrict access to such adjacent property. (3-20-97)

e. The minimum Barrier requirements for properties that are not frequently used by children (zero (0) to twelve (12) years) and/or pregnant women are as follows: (3-20-97)

i. All soil which contains lead in excess of one thousand (1000) ppm and lies within six inches (6") of the final grade shall be removed, replaced, or covered as appropriate with clean earthen material such that, after all work is completed, the soil remaining in the top six inches (6") has less than one thousand (1000) ppm lead, and the replacement material meets the requirements listed in Section 510.02.f. (3-20-97)

ii. Acceptable soil removal and Barrier thicknesses for these properties are set forth in Appendix 6. (3-20-97)

g. No earthen materials containing, on average, more than one hundred (100) ppm of lead or arsenic, nor more than five (5) ppm of cadmium, with no individual sample containing more than one hundred fifty (150) ppm of lead, shall be utilized for a Barrier. (3-20-97)

h. Should any inconsistency exist between the wording of these rules and the wording in any appendix, the wording in the rule shall supercede the wording in the appendix. (3-20-97)

03. ICP Permits Required. (3-20-97)

a. ICP Permits shall be required for: (3-20-97)

i. Large projects; (3-20-97)

ii. Building renovations. (3-20-97)

b. A permit is required for a change in use of property which has Contaminants located thereon to a use which requires an additional or more substantial Barrier; constructing or establishing such additional Barriers

shall be required, unless waived by the District. (3-20-97)

c. A single annual permit covering a specific list of projects may be obtained from the District by entities eligible under Section 015 at the beginning of each year's construction season. (3-20-97)

511. CONTAMINANT MANAGEMENT RULES IN THE BUNKER HILL SUPERFUND SITE OPERABLE UNIT #3 INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA, SHOSHONE AND KOOTENAI COUNTIES, IDAHO

01. Purpose. The purpose of these Rules is to ensure that activities associated with excavation and grading such as infrastructure development and maintenance; building construction and renovation; and land development, redevelopment and/or modification within the Institutional Controls Administrative Area of the Bunker Hill Superfund Site Operable Unit #3 (OU-3) provide for the construction and maintenance of Contaminant Barriers and implementation of other Contaminant management requirements to preclude the release and migration of Contaminants as necessary to protect the public health and the environment. It is imperative that current and future development and construction activities proceed in a manner which minimizes the release of Contaminants into the environment to minimize exposure to Area residents, communities, to workers involved in Area project work, and to environmental receptors. Further, it is the purpose of these Rules to complement existing land use regulations and permitting processes, and to provide a screening process to determine whether proposed activities are subject to these Rules. These Rules will rely upon procedures and provisions applicable to the Institutional Controls Program set forth in Section 500 of these rules. Differences identified in Sections 511 and 512 of these rules, shall be deemed applicable only to the lands encompassed by OU-3. (3-27-07)

02. Implementation Policy and Standards. Implementation policy and standards which pertain to the interpretation and enforcement of these Rules or to the documentation of compliance with these Rules have been developed by PHD and are available for inspection and/or copying at cost at the PHD office, 114 West Riverside Avenue, Kellogg, Idaho. (3-27-07)

03. Administrative Appeals. Persons may be entitled to appeal final PHD actions authorized under this chapter, pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-27-07)

04. Definitions. The following terms shall be construed throughout Sections 511 and 512 of these rules, in a manner consistent with these definitions: (3-27-07)

a. **Agricultural Land.** Land used for pasturing animals or for cultivation and production of agricultural crops including conservation reserve activities. (3-27-07)

b. **Applicant.** Any person, contractor, public utility, government or other entity that is required to apply for an Institutional Controls Program (ICP) Permit. (3-27-07)

c. **Access Restrictions.** Physical barriers such as fences, barricades, curbs, barrier rocks, trenches, etc. that provide restricted access by vehicles, pedestrians, and animals to contaminated areas. (3-27-07)

d. **Barrier.** Any physical structure, material or mechanism which acts to break the pathway between Contaminants and human receptors, including but not limited to soil, crushed aggregate/gravel, asphalt and Portland cement concrete, fences, access restrictions, or other structure or covering which separates Contaminants from contact with people or keeps Contaminants in place. (3-27-07)

e. **Board.** The Board of Health of the Idaho Public Health District No. 1. (3-27-07)

f. **B.O.P. Barrier Option Plan,** a plan which will be provided by an Applicant, when required, that sets forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work. (3-27-07)

g. **Building Construction.** Construction activity to be performed for any new structure involving disturbance of soil in excess of one cubic yard. (3-27-07)

- h. Building Renovation. Construction activity to be performed on any existing structure involving ceiling or insulation removal, work in dirt crawl spaces or basements, or disturbance of soil in excess of one cubic yard. (3-27-07)
- i. CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act. (3-27-07)
- j. Commercial Property. Retail, wholesale and secondhand businesses; public and common use areas; public buildings; and undeveloped properties accessed by a maintained road or street and zoned for commercial development as of the date of promulgation of these Rules. (3-27-07)
 - i. Type I. Commercial Property predominantly used by Sensitive Populations (e.g. daycare facilities, municipal parks, playgrounds, etc.) (3-27-07)
 - ii. Type II. All other Commercial Property. (3-27-07)
- k. Contaminants. Soil or other material containing, or likely to contain, concentrations of lead equal to or greater than one thousand (1000) ppm or concentrations of arsenic equal to or greater than one hundred (100) ppm. (3-27-07)
- l. Developed Recreation Area. Commercial and public recreation areas containing constructed features such as boat ramps, picnic areas, and campgrounds outside the city limits of incorporated communities in the Coeur d'Alene River corridor as defined in Subsection 512.0.5.s. of these rules. The Developed Recreation Areas of the Trail of the Coeur d'Alenes includes all constructed trail surfaces, stop and views, oases (rest stops) and trailheads, exclusive of all undeveloped areas within the trail right of way. (3-27-07)
- m. Director. The Director of the Idaho Public Health District No. 1. (3-27-07)
- n. Disposal. The placement of Contaminants into an authorized repository. (3-27-07)
- o. Environmental Office. PHD office in Kellogg, ID. (3-27-07)
- p. Excavation – Any digging, breaching or disruption of soil not including cultivation of Agricultural Lands and gardens or mining activities regulated under other state and federal programs which may release or expose Contaminants to the environment. (3-27-07)
- q. Health Officer. The Director or designee. (3-27-07)
- r. Hearing Officer. An attorney, engineer or other professional trained in conducting hearings, appointed by the Board for purposes of conducting hearings authorized by these Rules. (3-27-07)
- s. Institutional Controls Administrative Area. The Area designated by the Administrative Area Map in Appendix 2 which includes areas of mining, milling, and smelting related contamination in the South Fork of the Coeur d'Alene River corridor from its headwaters to the confluence with the North Fork Coeur d'Alene River and from the confluence of the North and South Fork to the mouth of the River and its confluence with Coeur d'Alene Lake including adjacent floodplains, tributaries, and fill areas. The Area also includes the Trail of the Coeur d'Alenes inside and outside the administrative boundary indicated on the map in Appendix 2 except that portion within the exterior boundaries of the Coeur d'Alene Indian Reservation. The Area does not include any area within OU-1 and OU-2 (Box) which has a separate ICP, or any other area excluded under this rule. The Area also includes areas in the Coeur d'Alene River corridor, as defined above, outside the administrative boundary indicated on the map in Appendix 2 where testing has verified that Contaminants related to mining, milling, and smelting have come to lie and remediation is required. (3-27-07)
- t. ICP. The Institutional Controls Program for the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. (3-27-07)
- u. ICP Permit. The Contaminant management authorization for projects subject to these Rules.

(3-27-07)

v. Infrastructure. Facilities such as trails, roads, streets, highways, bridges; storm water, drinking water, and wastewater systems; flood prevention systems including dikes and levees; and utilities including electrical power and natural gas systems. (3-27-07)

w. Large Project. A project where one cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects include, but are not limited to, infrastructure construction and maintenance, building construction, renovation, and demolition, land development or any change in the use of land that may result in the release or migration of Contaminants. (3-27-07)

x. Owner. Any person, partnership, or corporation having ownership, title, or dominion over property for which an ICP permit is required. (3-27-07)

y. PHD. The Idaho Public Health District No. 1 (also the Panhandle Health District). (3-27-07)

z. PUD. Planned Unit Development. (3-27-07)

aa. Record of Compliance. The record maintained by the PHD pursuant to Section 523 of these rules for Small Projects. (3-27-07)

bb. Release. Any excavation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing of Contaminants into the environment. (3-27-07)

cc. Residential Property. Property used by private individuals or families as a residence, and undeveloped properties accessed by a maintained road or street and zoned for residential development as of the date of promulgation of these Rules. (3-27-07)

dd. Sensitive Populations. Pregnant women and children up to twelve (12) years old. (3-27-07)

ee. Small Project. A project where less than one (1) cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation. (3-27-07)

ff. Trail of the Coeur d'Alenes. All Developed Recreation Areas and undeveloped areas within the former Union Pacific Railroad Mullan and Wallace Branch right of way. (3-27-07)

gg. Working day. Monday through Friday, but shall not include any legal holiday recognized as such by the State of Idaho. (3-27-07)

05. Statement of Intent. It is the intent of the PHD to work with local governments, the State of Idaho, the United States Environmental Protection Agency, Federal Land Management Agencies (Bureau of Land Management, USDA Forest Service), Coeur d'Alene Tribe, and private parties in managing Contaminants within the regulated Institutional Controls Administrative Area by way of an ICP. These Rules establish standards for Barrier construction and maintenance, and other Contaminant management practices. These Rules do not address financial liability for Contaminant management resulting from a failure of a CERCLA remedy due to a natural disaster. These Rules govern management of Contaminants by: (3-27-07)

a. Requiring ICP permits and requiring barriers for certain construction and excavation activities; (3-27-07)

b. Licensing contractors, utilities, and state and local government entities which may disrupt or construct Barriers, or otherwise disturb Contaminants; (3-27-07)

c. Adopting performance standards; (3-27-07)

d. Inspecting for project compliance as required; (3-27-07)

- e. Regulating the movement and disposal of Contaminants; (3-27-07)
 - f. Making it unlawful to knowingly disrupt a barrier in a fashion likely to expose persons or the environment to Contaminants; (3-27-07)
 - g. Maintaining records of ICP activities. (3-27-07)
- 06. Additional Provisions by PHD.** In conjunction with these Rules it is the intent of the PHD to provide, depending on project size and complexity and at the discretion of PHD: (3-27-07)
- a. Technical assistance and soil testing; (3-27-07)
 - b. Health screening and intervention; (3-27-07)
 - c. Readily available repositories for disposal of Contaminants; (3-27-07)
 - d. Clean material to restore Barriers for Small Projects; (3-27-07)
 - e. Disposal containers for Small Projects to assist in removal, transportation and disposal of contaminated soil; (3-27-07)
 - f. Health and safety information and education to licensees and the public; (3-27-07)
 - g. Sheet plastic, crushed aggregate and gravel, or other items as appropriate; (3-27-07)
 - h. A database tracking system to assist the public, lenders, and prospective purchasers of property within the Institutional Controls Administrative Area; (3-27-07)
 - i. Guidelines for managing Contaminants. (3-27-07)

512. APPLICATION OF REGULATIONS; INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA. These Rules shall apply to the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. These Rules shall not apply to the direct operations of the United States Environmental Protection Agency including directing, supervising, and inspecting project work or on lands owned or otherwise under the jurisdiction, custody and control of the Coeur d'Alene Tribe or the Federal Land Management Agencies such as the USDA Forest Service and the Bureau of Land Management. These Rules shall not apply to the Union Pacific Railroad or its contractors when conducting activities within the Trail of the Coeur d'Alenes pursuant to the requirements of the Consent Degree entered August 25, 2000 by the United States District Court for the District of Idaho (Case Nos. 91-0342 and 99-606). (3-27-07)

01. Standards Adopted. (3-27-07)

a. Except as otherwise provided in Section 512 of these rules, contaminant management is required on all properties within the Institutional Controls Administrative Area including properties that have been remediated; properties tested and scheduled for remediation; properties not yet tested; and properties testing below action levels in the top eighteen (18) inches where Large or Small Projects may disturb Contaminants below eighteen (18) inches in excess of one thousand (1000) ppm lead or one hundred (100) ppm arsenic. Contaminant management may include testing of untested areas by the Applicant; testing of deep soils (below eighteen (18) inches) by the Applicant where a project may result in deep excavations; and replacement and repair of remediation Barriers in accordance with Subsection 512.02 of these rules; or other management activities. Contaminant Management on Residential Properties and Commercial Properties existing as of the date of promulgation of these Rules and requiring remediation, but not yet remediated will not require construction of final barriers in accordance with Subsection 512.02 of these rules, by the owner, but may require dust, erosion, health and safety and temporary cap controls to prevent further migration onto lands of others. Final barrier construction will be the responsibility of the state of Idaho and United States Environmental Protection Agency if needed. Applicant performed soil testing will be conducted consistent with sampling and analytic procedures developed by PHD. (3-27-07)

b. Developed Recreation Areas with surface soil containing lead concentrations greater than seven hundred (700) ppm lead and one hundred (100) ppm arsenic shall be capped pursuant to Subsection 512.02.c. of these rules. (3-27-07)

c. Agricultural and undeveloped land within the Institutional Controls Administrative Area are exempt from these Rules unless excavation and grading activities such as soil transport off site or development by the owner or his/her agents on these lands is likely to result in the release or migration of Contaminants from these lands to adjacent non-agricultural or undeveloped areas. (3-27-07)

d. All Barriers existing or hereinafter constructed shall be maintained and protected to original construction specifications. (3-27-07)

e. No new PUD or subdivision containing concentrations of Contaminants exceeding one thousand (1000) ppm lead or one hundred (100) ppm arsenic shall be developed without Contaminant management. (3-27-07)

f. No person shall conduct, except in accordance with these Rules, any activity within the Institutional Controls Administrative Area which breaches a Barrier, may breach a Barrier, or disturbs the same, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, renovation, demolition, or run-on or run-off from stormwater or in any other manner on properties tested and requiring remediation and on properties not yet tested within the Institutional Controls Administrative Area (3-27-07)

02. Barriers; Construction and Maintenance Required. (3-27-07)

a. The minimum Barrier construction requirements for Residential and Type I Commercial Properties are as follows: (3-27-07)

i. All soil which contains lead equal to or in excess of one thousand (1000) ppm or arsenic equal to or in excess of one hundred (100) ppm and lies within twelve (12) inches of the final grade shall be removed and replaced with replacement material meeting the requirements of Subsection 512.02.d. of these rules. (3-27-07)

ii. Any such property with unrestricted access to an adjacent property not meeting the requirements of Subsection 512.01.a. of these rules, shall restrict access to such adjacent property. (3-27-07)

b. The minimum Barrier construction requirement for Type II Commercial Properties is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. (3-27-07)

c. The minimum Barrier construction requirement for Developed Recreation Areas is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. (3-27-07)

d. All twelve (12) inch deep Barriers of soil or crushed rock/gravel required pursuant to the ICP which overlay soils having concentrations of lead equal to or greater than one thousand (1000) ppm or arsenic concentrations equal to or greater than one hundred (100) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead and one hundred (100) ppm arsenic. Cap Barriers such as Portland cement and asphalt concrete do not require delineators. (3-27-07)

e. Soil and crushed aggregate/gravel imported for barrier material shall contain less than one hundred (100) ppm lead, thirty five (35) ppm arsenic and five (5) ppm cadmium based on average of backfill sampling results. No single sample of replacement materials shall exceed one hundred fifty (150) ppm lead or forty five (45) ppm arsenic. (3-27-07)

f. Barriers shall be maintained and repaired to original construction specifications. (3-27-07)

g. Contaminated waste material generated in the construction, maintenance and repair of Barriers

shall be disposed of in designated repositories or as directed by PHD. (3-27-07)

03. ICP Permits Required. (3-27-07)

a. Permits shall be required for Large Projects and Building Renovations. (3-27-07)

b. A permit is required for a project which changes the use of a property containing Contaminants. A new Barrier or additional or more substantial Barrier may be required unless waived by the PHD. (3-27-07)

c. A single annual permit covering a specific list of projects may be obtained from the PHD by entities eligible under Section 531 of these rules, at the beginning of each year's construction season. (3-27-07)

513. -- 519. (RESERVED).

520. PERMIT APPLICATION AND ADMINISTRATION.

01. **Application for ICP Permit.** Application for an ICP Permit shall be made in writing at the Kellogg office of the District. Application shall be on forms provided by the District. (3-20-97)

02. **Required Applicant Information.** All Applicants shall provide the following information when applying for an ICP Permit with the District: (3-20-97)

a. Name, address and telephone number of the Applicant and the property owner. (3-20-97)

b. Location of the work and whether the work is being done on private or public property, or both. (3-20-97)

c. Description of work. The description must include methods of handling or storing, and transporting contaminated materials. A site plan may be required by the District if one has not been provided pursuant to the permit process. (3-20-97)

d. Dates work will be started and completed. (3-20-97)

e. Such other information as the District shall require. (3-20-97)

03. **District Requirements for Projects.** If the work is to be performed within the jurisdiction of a city or county government which has not adopted standards and a permitting process consistent with these rules, the District may require, as appropriate for a particular project, the following: (3-20-97)

a. Large Projects: (3-20-97)

i. Name, signature, license number, seal and address of engineer, geologist, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto; (3-27-07)

ii. Copies of other government authorizations, permits or permit applications (i.e. County or City) and the supporting documents and materials pertaining thereto; (3-27-07)

iii. A key map showing location of tract with reference to surrounding properties including owners, streets and city boundaries; (3-20-97)

iv. Existing and/or proposed zoning; (3-20-97)

v. North arrow and scale; (3-20-97)

vi. Site plan showing dimensions, boundaries, existing and/or proposed structures; (3-20-97)

- vii. Date of current property survey; (3-20-97)
- viii. Standardized sheet size; (3-20-97)
- ix. Copies of existing and/or proposed restrictions or covenants; (3-20-97)
- x. List of ordinance variances required or requested (PHD or local government); (3-20-97)
- xi. Requested or obtained design waivers or exceptions; (3-20-97)
- xii. Payment of fee; (3-20-97)
- xiii. Identification of surrounding water courses, flood plains (floodway and one hundred (100) year floodplain), wetlands, and environmentally sensitive areas on-site and within two hundred (200) feet; (3-20-97)
- xiv. Soil information as required to determine levels of contamination; (3-20-97)
- xv. Location and description of all existing Barriers on-site and bordering the site; (3-20-97)
- xvi. Barrier Option Plan, as required; (3-20-97)
- xvii. Existing rights-of-way and/or easements on and adjacent to the tract (i.e. streets, utilities); (3-20-97)
- xviii. Existing and proposed contour intervals based on U.S.G.S. datum, contours to extend fifty (50) feet beyond the project site borders (additional distance may be required in the case of subdivisions, PUD's and special use permit situations), contour intervals shall be as follows: for sites with slopes of less than three percent (3%) - one (1) foot intervals; for sites with slopes of three percent (3%) to ten percent (10%) - two (2) foot intervals; for sites with slopes over ten percent (10%) - five (5) foot intervals; (3-27-07)
- xix. Existing system of site drainage and of any larger tract or basin of which the site is a part; (3-20-97)
- xx. Drainage calculations; (3-20-97)
- xxi. Existing and proposed utility infrastructure locations; (3-20-97)
- xxii. Locations of existing and/or proposed activities on-site (i.e. lawn, garden, landscaping areas, pathways, driveways, storage areas, structure locations, etc.); (3-20-97)
- xxiii. Soil erosion and sedimentation control plan if surface is to be disturbed; (3-20-97)
- xxiv. Dust control plan if surface is to be disturbed; (3-20-97)
- xxv. Plan for transporting Contaminants, means for transportation, proposed disposal site, and proposed route; (3-20-97)
- xxvi. Access control plan for construction period; (3-20-97)
- xxvii. Construction schedule; (3-20-97)
- xxviii. Contractor bonding information; (3-20-97)
- xxix. Health and safety plan. (3-20-97)
- b. Building Renovations: (3-20-97)

- i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect or contractor, as applicable, involved in preparation of the application or any materials or documents pertaining thereto; (3-27-07)
- ii. Type of contaminated material to be handled (i.e. soil, insulation etc.); (3-20-97)
- iii. Dust control plan; (3-20-97)
- iv. Access control plan; (3-20-97)
- v. Worker precautions (health and safety plan); (3-20-97)
- vi. Transportation information, including means, method of containment of material, and proposed disposal site; (3-20-97)
- vii. Contractor bonding information; (3-20-97)
- viii. Construction schedule. (3-20-97)

04. Use of Discretion on Requirements by District. The District may, at its own discretion, waive certain application requirements or information, or require additional or alternative actions or information, depending upon the type and extent of the project and conditions encountered. In no instance shall a waiver violate the intent of this rule and/or the Record of Decision for the relevant Operable Unit. (3-27-07)

05. Site Inspection or Waiver When Permit Required. Work which requires a permit shall not commence until a site inspection has been made or waived by the District and a permit has been issued. (3-20-97)

06. Time Specifications. The permit shall provide that all work be completed and the permit shall be void if work is not commenced and completed within the times specified for the type and kind of permit as approved by Resolution of the Board. An extension of time may be granted by the District upon a showing of good cause. (3-20-97)

07. Other Inspections and Requirements. All permits granted pursuant to this Rule remain subject to such other inspections and requirements prescribed by state or local governments. (3-20-97)

08. Work Involving Public Right-of-Way. If the permit involves work within any public right-of-way, the appropriate agencies must be notified of the work by the entity receiving the permit. (3-27-07)

521. INSPECTION.

The Applicant shall notify the District by telephone when work is completed. Applicants shall call for inspection in accordance with the terms of the permit; forty-eight (48) hours notice (excluding weekends and holidays) to PHD shall be provided. The inspector shall note approval of the work in writing and shall enter same in the database tracking system, or shall note reasons for disapproval and steps which must be taken to complete the work. Upon completion of the work to the District's satisfaction, the District's final approval shall be noted in the database tracking system. Such entry shall constitute the Record of Compliance for such project. All work governed by these regulations shall be subject to inspection by the District or its designated agents and it shall be unlawful to obstruct or hinder any official, inspector or designated agent making an inspection. The District may obtain an inspection warrant if access to the property is refused. The District reserves the right to waive the inspection requirement. (3-20-97)

522. PERMIT REVOCATION OR STOP WORK ORDER

Any Permit may be revoked or a Stop Work Order may be issued, without notice by the District, for non-compliance with or violation of any of the provisions of this chapter or any requirement or limitation of the Permit. If a Permit is revoked, the District may take such steps as are necessary to eliminate any danger from contamination, including completion of work by the District. The Applicant, contractor and/or Owner may be required to pay all costs and expenses for abatement of any danger and/or completion of the project, including legal fees incurred by the District to obtain compliance. The District will endeavor to provide written notice, but reserves the right to act summarily to

protect public health and the environment. (3-27-07)

523. RECORD OF COMPLIANCE.

A Record of Compliance for Small Projects which documents compliance with the performance standards established by these rules will be entered into the database tracking system based upon an inspection requested of PHD by the property owner or tenant. The Record signifies the property owner or tenant was informed of and provided with applicable performance standards and guidelines and materially complied with the same. (3-27-07)

524. -- 529. (RESERVED).

530. CONTRACTOR LICENSING.

01. License Required. Any contractor performing Large Projects, Building Renovation or transportation or disposal of Contaminants within the Site or the Institutional Controls Administrative Area which is likely to expose the contractor, workers or others to Contaminants, must be licensed by the District. There will be no charge for a contractor's license. It shall be unlawful for a contractor to work on a project requiring an ICP permit without a current contractor's license issued by PHD. A contractor's license will not be required of an owner working on his or her own property. (3-27-07)

02. Training. In order to obtain a contractor's license from the District, the Contractor must have those supervisors involved in activities dealing with Contaminants participate in training approved by the District and pass an annual examination focusing on the reasons for, and methods of, controlling Contaminants. The purpose of the examination is to assure that all of the Contractor's employees are aware of and observe the procedures and standards that will protect themselves and the public from the Contaminants. The District will create and administer the test. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. (3-20-97)

03. Bonding. Any contractor whose license has been revoked by the District within the past three (3) years must, as a condition of reinstatement and maintaining the status of a licensed contractor, be bonded in the minimum amount of two-thousand dollars (\$2000). Said bond shall be at least five percent (5%) of the cost of any contract the contractor is engaged in whichever is greater. Said bond shall be in a form approved by the District and must be suitable to insure payment for completion of Barrier work not completed by the Contractor. A cash deposit or other security acceptable to the District may be utilized in lieu of a bond. The District may establish a bonding program for all contractors, if deemed necessary to carry out these Rules. (3-27-07)

04. Suspension or Revocation of License. (3-20-97)

a. Upon a showing that a licensee has violated any provision of these Rules, or has violated any other health or building code within the boundaries of the Site or Institutional Controls Administrative Area, suspension or revocation of license may be imposed. Suspension may be made by any District health officer. Revocation may be made by the Director upon recommendation of the District health officer. Notification of suspension or revocation must be in writing. No suspension may be made for more than thirty (30) days without approval of the Director. Revocation of license may be made by the Director upon a showing of good cause. (3-27-07)

b. Appeal. Suspension or revocation may be appealed by the licensee to the Board in writing within thirty (30) days of receipt of notice of suspension or revocation. Appeal shall stay the suspension or revocation unless the Director makes a finding that such stay is likely to present a health risk to a person or persons. Appeals shall follow the procedures set forth in Section 020 of these rules. (3-20-97)

c. Any decision by the Board pertaining to a suspension or revocation of a license shall be made only after a licensee has been accorded an opportunity for hearing at which the licensee has a right to appear and be heard, to be represented by counsel, to testify, to present evidence, to call witnesses and to rebut any evidence presented. A transcribable recording of all such hearings shall be made and retained for at least six (6) months. Such hearing may be conducted by a hearing officer designated by the Board or by the Board itself. (3-20-97)

d. If a license is revoked, the contractor may, upon payment of any cleanup or remediation costs

related to past work, reapply for reinstatement of license after one (1) year, however, a contractor whose license has been revoked may not obtain a new license under a different corporate or partnership status until this provision is satisfied. (3-20-97)

531. LICENSES FOR PUBLIC UTILITIES AND GOVERNMENT ENTITIES.

Upon a demonstration that supervisory employees of a public utility or government entity (city, county, special purpose district, or state of Idaho) have participated in an education program approved by, or provided by, the District, a utility company or government entity may receive an annual license which will allow their employees to perform excavation and grading operations without obtaining individual ICP permits. This license may be granted by the District and will require that the utility comply with performance standards and all other regulations contained herein or adopted by Resolution of the Board. All supervisory employees involved in and responsible for excavation and grading operations shall have participated in a District approved education program. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. Entities licensed under this section shall maintain a log of all excavations and grading operations on a form approved by the District. Such logs shall be forwarded to the District on a regular basis determined by the District. All licensees shall telephone the Shoshone or Kootenai County one-call locating service, as appropriate, prior to any excavation or grading operations. Licenses shall be renewed annually upon a showing that the utility or government entity has operated in compliance with this rule. This license may also be revoked as provided in Subsection 530.04. (3-27-07)

532. -- 539. (RESERVED).

540. PERFORMANCE OF WORK.

01. Completion of Work. All work done pursuant to an ICP Permit shall be completed in a neat and workmanlike manner and so scheduled as to cause the minimum interference with traffic or public use (if applicable) and a minimum dispersal of Contaminants. (3-20-97)

02. Work Delayed by Applicant. If the work is unduly delayed by the Applicant, and if the public interest reasonably so demands, the District shall have the authority, upon twenty-four (24) hours' written notice to the Applicant, to complete the work to the extent that the Barrier is restored and any hazardous material covered or removed. The actual cost of such work by the District (including legal fees), plus fifteen percent (15%) as an overhead charge, shall be charged to and paid by, the Applicant and/or the Owner. (3-27-07)

541. PERFORMANCE STANDARDS.

The Board will adopt, and from time to time amend, performance standards by Resolution; said standards shall ensure that work is performed in a safe and responsible manner and specify how work will be completed. Said standards shall be applicable to, but not be limited to, the following: materials handling; dust control; erosion/runoff control; disposal; transportation; barrier construction; demolition; renovation; grading; and subdivision development. Performance standards so adopted shall not amend any standard adopted within these rules, and these rules shall apply should any conflict arise between a rule and a performance standard. (3-20-97)

542. APPROVAL OF ALTERNATIVE STANDARDS.

Any person aggrieved by the substantive requirements of these rules or the performance standards, may appeal these requirements by providing a written request for approval of an alternative standard. The appeal shall be accompanied by an engineering report indicating why the appealing party should be relieved of the requirement for compliance or why the requested alternate standard is appropriate. At the Applicant's expense, the District may consult with its own engineer to confirm the applicability of these rules to the proposed project. The District health officer may approve an alternate standard where such approval does not jeopardize the public welfare or existing Barriers. The decision of the District health officer shall be in writing, stating the reasons therefor. (3-27-07)

543. OWNER AND APPLICANT RESPONSIBILITY FOR CLAIMS AND LIABILITIES.

Both the Owner and the Applicant shall be responsible to ensure that all rules contained herein are complied with. Applicant shall be responsible for all claims and liabilities arising out of work performed by the Applicant under the ICP Permit or arising out of the Applicant's failure to perform obligations with respect to these regulations. Owner shall be responsible for all claims and liabilities for work done by the Owner with or without a permit and for work done at the direction of the owner without a permit. Owner shall remain responsible to complete the project or restore

the premises to a safe condition to the satisfaction of the District should the Applicant fail to complete or restore it. (3-20-97)

544. -- 899. (RESERVED).

900. ADMINISTRATIVE PROCEDURES, EXCEPTIONS, PENALTIES.

01. **Responsibility of Permit Applicant.** It shall be the responsibility of any person applying for, or required to apply for, a permit required by this Code, to show affirmatively, by all reasonable means, that his undertaking complies with this Code or with any related rules, statutes, or ordinances. (7-1-93)

02. **Permit Revocation.** Any permit or permission, actual or implied, granted by the Health Officer or his predecessors may be revoked, for cause, by written notice sent to the permit holder or his agent. Any person, association, or corporation who continues to act under such permit or permission actual or implied, more than ten days after the sending or delivery of notice of revocation shall be presumed to be in violation of this code and subject to the penalties provided herein. (7-1-93)

03. **Variance Standards.** A variance may be granted only upon an affirmative showing by an applicant that a unique and undue hardship is caused by a physical characteristic of a site that is not of the applicant's making and that approval of the variance would not be contrary to the public interest or to the purposes of the Code. (3-27-07)

04. **Variance Procedures.** (7-1-93)

a. An applicant for a variance shall obtain a Variance Application Form from Panhandle Health District 1 and, after completing the application form, shall return the application to the Environmental Office. The Variance Application shall require the applicant to provide, in addition to information required by the application form itself, the following: (7-1-93)

i. An accurate site plan showing development of the site in question, present and proposed, depicting all features relevant to the variance request. The Director, or his designee, shall identify information necessary to proper processing of the request if information other than that normally required must be supplied. The applicant shall describe the current and proposed use of the site in question. (7-1-93)

ii. A narrative statement addressing the efforts, including consideration of design alternatives, which the applicant has undertaken to comply with the rule from which a variance is sought. (7-1-93)

iii. A narrative statement explaining the nature of the hardship, if any, imposed by literal compliance with the rule in question. (7-1-93)

iv. A narrative statement explaining the effects of the requested variance on the interests of adjoining landowners and/or of the public at large. (7-1-93)

v. A narrative statement detailing what use could be made of the site in question if the requested variance were not granted. (7-1-93)

b. The completed Variance Application shall be returned to the Environmental Office accompanied by an initial filing fee as established by the Board. The completed application shall be submitted to the Panhandle Health District 1 Hearing Officer who shall determine whether, on its face, it sets forth a colorable claim for a variance from the Code. If the Hearing Officer determines that the application does not set forth a colorable claim for variance, he shall return the application to the applicant with a written explanation of the action taken. Said initial determination and the accompanying explanation shall be forwarded to the Board which shall act upon the Hearing Officer's initial determination by affirming it or remanding it to the Hearing Officer for further proceedings. (3-27-07)

c. If the Hearing Officer determines that the application presents a colorable claim for a variance, he shall return the application to the Environmental Office with instructions to prepare a notice of public hearing concerning the requested variance. The applicant shall pay an additional processing fee if the Hearing Officer makes

such a finding. Said fee may be adjusted as with all other Panhandle Health District 1 fees in accordance with a sliding scale coordinated with Federal poverty standards. (3-27-07)

d. The Environmental Office staff shall notify the applicant that his application has passed the initial screening and that the names and mailing addresses, on self-adhesive labels, of all owners of land located within three hundred (300) feet of the external boundaries of the site in question must be provided. Said names shall be provided or checked by a land title company or other business whose commercial purpose it is to provide such information. The applicant shall be solely responsible for the accuracy of such information. (7-1-93)

e. Using the mailing list provided by the applicant, notice of public hearing shall be sent by first class mail and posted on the site in question in a conspicuous manner. The Environmental Office shall maintain records verifying completion of the notification process. Mailing and posting shall be accomplished at least fifteen (15) days prior to the date of the hearing established by the Hearing Officer. (7-1-93)

f. Upon the appointed date, the Hearing Officer shall conduct a public hearing concerning the variance request. The applicant, Panhandle Health District 1 staff, interested members of the public, and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record in order that they may be associated with the taped record of the hearing. (7-1-93)

g. Upon completion of the hearing and compilation of the record in each application, the Hearing officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer may recommend that the application be approved, be approved with conditions, or that the application be disapproved. His recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. (7-1-93)

h. At its next regular meeting, or as soon as the application can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing by the Board. The Board may accept the recommendation of the Hearing Officer, may reverse the recommendation, or may modify the recommended decision for reasons to be found in the record. If the Board modifies or reverses the Hearing Officer's recommendation it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearings to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of Section 39-418, Idaho Code. (7-1-93)

901. APPEAL TO THE BOARD.

Any person, association, public or private agency or corporation aggrieved by application of a provision of these rules or by a decision of the Health Officer or the District may appeal to the Board pursuant to the provisions of Chapter 52, Title 67, and Chapter 4, Title 39, Idaho Code, and the following procedures: (3-20-97)

01. **Filing Appeal.** Any potentially affected party seeking relief under these rules must file such appeal or request to the Board in writing at the office of the District in the county where regulated activity is undertaken within thirty (30) days of the Health Officer's or District's decision, or of such other action from which relief is sought. The appeal must set forth the reasons for appeal and request a hearing, if one is desired. If a hearing is not requested, the decision will be made based on the records of the District, the information in the appeal or request for relief, and any other written information filed with the Board by the Health Officer or District. A copy of any document filed with the Board shall be sent to the other party immediately. (3-27-07)

02. **Appeals Forwarded to Hearing Officer.** All appeals shall be forwarded to a Hearing Officer for evaluation. If a hearing has been requested, the Hearing Officer shall designate a time and place for hearing and provide Notice to the appealing party and the Health Officer or District. (3-20-97)

03. **Hearings.** If hearing is requested, the Hearing Officer shall, upon the appointed date for hearing, conduct a hearing concerning the appeal or request for relief. The appealing party, District staff, interested members

of the public and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record. (3-20-97)

04. Completion of Hearing and Compilation of Record. Upon completion of the hearing and compilation of the record, the Hearing Officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer's recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. (3-20-97)

05. Board Review of Hearing Recommendations. At its next regular meeting, or as soon as the recommendation can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing from the Board. The Board may accept the recommendation of the Hearing Officer, reverse the recommendation, or may modify the recommended decision for reasons found in the record. If the Board modifies or reverses the Hearing Officer's recommendation, it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearing to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action, adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of section 39-418, Idaho Code. (3-20-97)

902. VIOLATION AND ENFORCEMENT.

Violation of any provision of these rules shall be subject to the following enforcement procedures: (3-20-97)

01. Violation of Rules. Any person, association, or corporation, or the officers thereof, violating any of the provisions of these rules shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. (3-20-97)

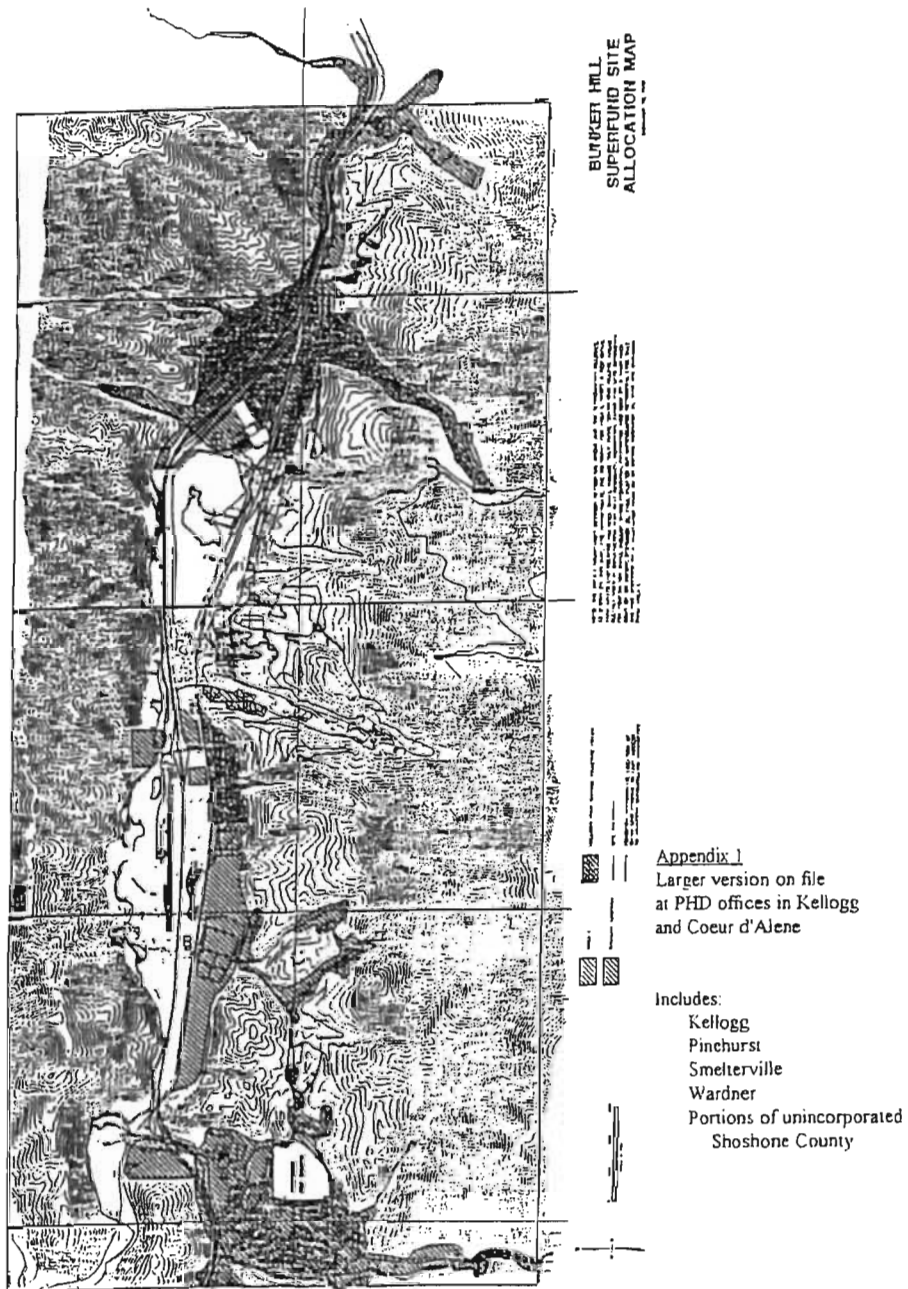
02. Liability of Violator. In addition to fine and imprisonment, any person, association, or corporation, or the officers thereof found to be in violation of these rules shall be liable, by civil action or restitution, for any expense incurred by the District in enforcing this act, or in removing or terminating any nuisance or health hazard. (3-27-07)

03. Other Action. Any person, association, or corporation, or the officers thereof shall additionally be subject to civil court action, including an injunction or restraining order, and to such penalties, costs, or fees as may be necessary to compel compliance. (3-20-97)

04. Successive Days in Violation. Each successive day in violation shall be considered a separate offense and shall be subject to individual penalties for each separate offense. (3-27-07)

903. -- 999. (RESERVED).

APPENDIX 1



APPENDIX 2

APPLICABILITY OF BARRIER TYPES TO SITE USE ACTIVITIES: RESIDENTIAL
 APPENDIX 2

Barrier Type	SITE USE ACTIVITIES														
	Building Footprint		Landscaping			Vehicular Areas					Active Public Use Areas			Open Areas	
	Exposed	Sealed w/Crawl Space	Produce & Vegetable Gardening	Flower/Shrub Bed	Lawn Areas	Parking/Loading Areas	Residential Streets	Rural Roads	Road Shoulders	Driveways	Walkways	Parks & School Yards	Public Outdoor Play/Equip	Outdoor Storage	Vacant Lots
12" Soil Cap	X	X		X	X					X	X	X	X	X	X
24" Soil Cap	X	X	X	X	X					X	X	X	X	X	X
12" Soil Cap w/ Sod & Grass	X	X		X	X					X	X	X	X	X	X
24" Soil Cap w/ Sod & Grass	X	X	X	X	X					X	X	X	X	X	X
12" Compacted Gravel	X	X				X			X	X	X	X	X	X	X
Synthetic Membranes Tyvek & Plastic		X													
Chip Seal on 12" Compacted Gravel Base						X	X	X	X	X	X	X	X	X	X
Lignosite Spray on 12" Compacted Gravel Base						X	X	X	X	X		X			X
Asphaltic Concrete	X	X				X	X	X	X	X	X	X	X	X	X
Concrete	X	X				X	X	X	X	X	X	X	X	X	X
12" Sand Cap				X											

APPENDIX 3

APPLICABILITY OF BARRIER TYPES TO SITE USE ACTIVITIES: COMMERCIAL
 APPENDIX 3

Barrier Type	SITE USE ACTIVITIES													
	Building Footprints		Landscaping		Vehicular Areas					Active Public Use Areas			Open Areas	
	Exposed	Sealed w/Crawl Space	Flower/Shrub Bed	Lawn Areas	Parking/Loading Areas	Streets	Rural Roads	Alleys & Road Shoulders	Outdoor Storage	Driveways	Walkways	Accessible to Children	Public Outdoor Play/Equip	Vacant Lots
12" Soil Cap	X		X	X							X	X		X
24" Soil Cap	X		X	X							X	X	X	X
12" Soil Cap w/ Sod & Grass	X		X	X								X	X	X
24" Soil Cap w/ Sod & Grass	X		X	X						X	X	X	X	X
6" Compacted Gravel w/ Restricted Access	X	X			X					X	X			X
12" Compacted Gravel	X	X								X				X
6" Clay Cap w/ Restricted Access	X	X									X	X		X
Synthetic Membranes Tyvek & Plastic		X												X
Chip Seal on 12" Compacted Gravel Base	X													X
Lignosite Spray on 12" Compacted Gravel Base	X						X	X	X		X	X	X	X
Asphaltic Concrete	X				X	X	X	X	X	X	X	X	X	X
Concrete	X	X			X	X	X	X	X	X	X	X	X	X
12" Sand Cap			X											X

* Commercial classification of vehicular areas is subject to vehicle weight and trip volume.

APPENDIX 4

APPLICABILITY OF BARRIER TYPES TO SITE USE ACTIVITIES: INDUSTRIAL

APPENDIX 4

Barrier Type	SITE USE ACTIVITIES													
	Building Footprints		Landscaping		Parking/ Loading Areas	Vehicular Areas*					Active Public Use Areas		Open Areas	
	Exposed	Sealed w/Crawl Space	Flower/ Shrub Bed	Lawn Areas		Streets	Rural Roads	Alleys & Road Shoulders	Driveways	Outdoor Storage	Walkway s	Accessibl e to Children	Public Outdoor Play/Equip	Vacant Lots
12" Soil Cap	X		X	X							X	X	X	
24" Soil Cap	X		X	X							X	X	X	
12" Soil Cap w/ Sod & Grass	X		X	X							X	X	X	
24" Soil Cap w/ Sod & Grass	X		X	X							X	X	X	
6" Compacted Gravel w/ Restricted Access	X	X											X	
12" Compacted Gravel	X	X				X		X	X	X	X	X	X	
6" Clay Cap w/ Restricted Access	X												X	
Synthetic Membranes Tyvek & Plastic		X												
Chip Seal on 12" Compacted Gravel Base	X					X			X	X	X	X	X	
Lignosite Spray on 12" Compacted Gravel Base	X					X			X			X	X	
Asphaltic Concrete	X				X	X	X	X	X	X	X	X	X	
Concrete	X	X			X	X	X	X	X	X	X	X	X	
12" Sand Cap			X											

* Industrial classification of vehicular areas is subject to vehicle weight and trip volume.

APPENDIX 5

If the soil interval tests out equal to or greater than 1000 ppm lead		The soil interval tests out less than 1000 ppm lead		The minimum soil removal and replacement depth is
0 - 1"	AND	1 - 6", 6 - 12"	THEN	6"
1 - 6"		0 - 1", 6 - 12"		6"
6 - 12"		0 - 1", 1 - 6"		12"
12 - 18"		0 - 1", 1 - 6", 6 - 12"		No Action
0 - 1", 1 - 6"		6 - 12"		6"
0 - 1", 6 - 12"		1 - 6"		12"
1 - 6", 6 - 12"		0 - 1"		12"
None		0 - 1", 1 - 6", 6 - 12"		No Action

APPENDIX 6

If the soil interval tests out equal to or greater than 1000 ppm lead		The soil interval tests out less than 1000 ppm lead		The minimum soil removal and replacement depth is
0 - 1"	AND	1 - 6"	THEN	6"
1 - 6"		0 - 1"		6"
6 - 12"		0 - 1", 1 - 6"		No Action
None		0 - 1", 1 - 6"		No Action

APPENDIX 7

If the soil interval tests out equal to or greater than 1000 ppm lead		The soil interval tests out less than 1000 ppm lead		The minimum soil removal and replacement depth is
0 - 1"	AND	1 - 6"	THEN	6"
1 - 6"		0 - 1"		6"
6 - 12"		0 - 1", 1 - 6"		No Action
None		0 - 1", 1 - 6"		No Action

Subject Index

- A**
- Additional Provisions by District, Contaminant Management in the Bunker Hill Superfund Site 16
 - Additional Provisions by PHD, Contaminant Management Rules in the Bunker Hill Superfund Site Operable Unit #3 21
 - Administrative Appeals, Contaminant Management Rules in the Bunker Hill Superfund Site Operable Unit #3 18
 - Administrative Procedures, Exceptions, Penalties, & Enforcement 28
 - Animals & Fowl, Land Quality Control 9
 - Appeal To The Board 29
 - Applicability, Critical Materials at Fixed Facilities on the Rathdrum Prairie 11
 - Application Of Regulations 16
 - Application Of Regulations, Institutional Controls Administrative Area 21
 - Application Requirements of Fixed Facilities Engaged in Critical Materials Use Activities, Rathdrum Prairie 12
 - Application for ICP Permit, Permit Application & Administration 23
 - Approval Of Alternative Standards 27
- B**
- Barriers, Construction & Maintenance Required, Application of Regulations, Institutional Controls Administrative Area 22
 - Barriers, Construction & Maintenance Required, The Bunker Hill Superfund Site, Application of Regulations 17
 - Board Review of Hearing Recommendations, Appeal to the Board 30
 - Boats & Houseboats, Open Water Protection 8
 - Bonding, Contractor Licensing 26
- C**
- Code 4
 - Conflict 3
 - Contaminant Management In The Bunker Hill Superfund Site, Shoshone County, Idaho 14
 - Contaminant Management Rules In The Bunker Hill Superfund Site Operable Unit #3 Institutional Controls Administrative Area, Shoshone & Kootenai Counties, Idaho 18
 - Contractor Licensing 26
 - Critical Materials At Fixed Facilities On The Rathdrum Prairie In Kootenai County, Idaho 10
- D**
- Definitions, Contaminant Management Rules in the Bunker Hill Superfund Site Operable Unit #3 18
 - Definitions, Contaminant Management in the Bunker Hill Superfund Site 14
 - Definitions, IDAPA 41.01.01, Rules Of Panhandle Health District 1 4
 - Definitions, Rathdrum Prairie 6
 - Definitions, Section 400, Critical Materials at Fixed Facilities on the Rathdrum Prairie 10
 - District Requirements for Projects, Permit Application & Administration 23
- F**
- Filing Appeal, Appeal to the Board 29
 - Floathouse 4
 - Floathouses, Open Water Protection, Open Water Protection 8
- H**
- Health Officer 4
- I**
- ICP Permits Required, Application of Regulations, Institutional Controls Administrative Area 23
 - ICP Permits Required, The Bunker Hill Superfund Site, Application of Regulations 17
 - Implementation Policy & Standards, Contaminant Management Rules in the Bunker Hill Superfund Site Operable Unit #3 18
 - Inspection 25
- L**
- Land Quality Control 8
 - Legal Authority, Contaminant Management in the Bunker Hill Superfund Site 14
 - Liability of Violator, Violation & Enforcement 30
 - License Required, Contractor Licensing 26
 - Licenses For Public Utilities & Government Entities 27
- O**
- Open Water Protection 8
 - Owner & Applicant Responsibility For Claims & Liabilities 27
- P**
- Performance Of Work 27
 - Performance Standards 27
 - Performance Standards for Fixed Facilities, Critical Materials at Fixed Facilities on the Rathdrum Prairie 13
 - Permit Application & Administration 23
 - Permit Revocation Or Stop Work Order 25
 - Permit Revocation, Administrative Procedures, Exceptions, Penalties, & Enforcement 28
 - Policy 3
 - Public & Private Marinas, Open Water Protection 8
 - Public Sewage Treatment Facility 4
 - Purpose & Intent, Critical Materials at Fixed Facilities on the Rathdrum Prairie 10
 - Purpose, Contaminant Management Rules in the Bunker Hill Superfund Site Operable Unit #3 18
 - Purpose, Contaminant Management in the Bunker Hill Superfund Site 14
- R**
- Record Of Compliance 26
 - Required Applicant Information, Permit Application & Administration 23
- S**
- Sewage & Waste Disposal -- Political Subdivisions, Water Quality Control 4
 - Sewage & Waste Disposal -- Private Sewage Disposal, Water Quality Control 4
 - Sewage & Waste Disposal -- Prohibited Conditions, Water Quality Control 5
 - Sewage & Waste Disposal -- Public Sewage Treatment, Water Quality Control 4
 - Sewage & Waste Disposal -- Septage Disposal Site, Water Quality Control 5
 - Sewage Disposal On The Rathdrum Prairie In Kootenai County, Idaho 6
 - Site Inspection or Waiver When Permit Required, Permit Application & Administration 25
 - Solid Waste Collection, Land Quality Control 9
 - Standards Adopted, Application of Regulations, Institutional Controls Administrative Area 21

Standards Adopted, The Bunker Hill
Superfund Site. Application of
Regulations 16

Statement of Intent, Contaminant
Management Rules in the Bunker Hill
Superfund Site Operable Unit #3 20

Statement of Intent, Contaminant
Management in the Bunker Hill
Superfund Site 15

Subdivisions, Land Quality Control 9

Subsurface Sewage Disposal Systems,
Rathdrum Prairie 7

Successive Days in Violation. Violation
& Enforcement 30

Suspension or Revocation of License,
Contractor Licensing 26

T

The Bunker Hill Superfund Site 16

Training, Contractor Licensing 26

U

Use of Discretion on Requirements by
District, Permit Application &
Administration 25

V

Variance Procedures, Administrative
Procedures, Exceptions, Penalties, &
Enforcement 28

Variance Standards, Administrative
Procedures, Exceptions, Penalties, &
Enforcement 28

Vector Control, Land Quality
Control 9

Violation & Enforcement 30

Violation, Critical Materials at Fixed
Facilities on the Rathdrum
Prairie 13

W

Water Quality Control 4

Work Delayed by Applicant,
Performance of Work 27

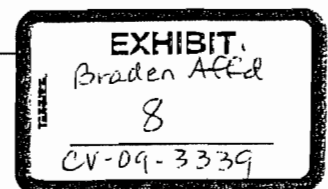
Work Involving Public Right-of-Way,
Permit Application &
Administration 25

Written Interpretations, Contaminant
Management in the Bunker Hill
Superfund Site 14

Table of Contents

58.01.03 - Individual/Subsurface Sewage Disposal Rules

000. (Reserved).	2
001. Legal Authority.	2
002. Title, Scope, Conflict And Responsibilities.	2
003. Definitions.	2
004. General Requirements.	5
005. Permit And Permit Application.	6
006. Installer's Registration Permit.	9
007. Septic Tanks Design And Construction Standards.	10
008. Standard Subsurface Disposal Facility Design And Construction.	15
009. Other Components.	19
010. Variances.	19
011. Inspections.	20
012. Violations And Penalties.	21
013. Large Soil Absorption System Design And Construction.	21
014. -- 995. (Reserved).	23
996. Administrative Provisions.	23
997. Confidentiality Of Records.	23
998. Inclusive Gender And Number.	23
999. Severability.	24



IDAPA 58
TITLE 01
CHAPTER 03

58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES

000. (RESERVED).

001. LEGAL AUTHORITY.

Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code, grants authority to the Board of Environmental Quality to adopt rules and standards to protect the environment and the health of the State, for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits. Title 39, Chapter 1, Idaho Code, grants to the Director the authority to issue pollution source permits; charges the Director to enforce all laws, rules, regulations, and standards relating to environmental protection and health, and those relating to the storage, handling and transportation of solids, liquids and gases which may cause or contribute to water pollution, and authorizes the Department of Environmental Quality to review for approval the plans and specifications for all proposed waste treatment facilities prior to their construction. (5-7-93)

002. TITLE, SCOPE, CONFLICT AND RESPONSIBILITIES.

01. **Title.** These rules shall be known as Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." (5-7-93)

02. **Scope.** The provisions of these rules establish limitations on the construction and use of individual and subsurface sewage disposal systems and establish the requirements for obtaining an installation permit and an installer's registration permit. These rules apply to every individual and every subsurface blackwaste and wastewater treatment system in Idaho. (5-7-93)

03. **Conflict of Rules, Standards, and Ordinances.** In any case where a provision of these rules is found to be in conflict with a provision of any state or local zoning, building, fire, safety, or health regulation, standard or ordinance, the provision which, in the judgment of the Director, establishes the higher standard for the promotion and protection of the health and safety of the people, shall prevail. (5-7-93)

04. **Responsibilities.** (7-1-93)

- a. Every owner of real property is jointly and individually responsible for: (10-1-90)
- i. Storing, treating, and disposing of blackwaste and wastewater generated on that property. (10-1-90)
 - ii. Connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility. (10-1-90)
 - iii. Obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems. (10-1-90)
 - iv. Abandonment of an individual or subsurface sewage disposal system. (10-1-90)

b. Each engineer, building contractor, individual or subsurface system installer, excavator, plumber, supplier, and every other person, who for compensation shall design, construct, abandon, or provide any system or part thereof, is jointly and individually responsible for compliance with each of these rules that are relevant to that service or product. (5-7-93)

003. DEFINITIONS.

For the purposes of these rules, the following definitions apply. (5-7-93)

01. **Abandoned System.** A system which has ceased to receive blackwaste or wastewater due to diversion of those wastes to another treatment system or due to termination of waste flow. (10-1-90)

02. **Alternative System.** Any system for which the Department has issued design guidelines or which the Director judges to be a simple modification of a standard system. (10-1-90)
03. **Authorized or Approved.** The state of being sanctioned or acceptable to the Director as stated in a written document. (10-1-90)
04. **Blackwaste.** Human body waste, specifically excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. (10-1-90)
05. **Blackwater.** A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. (10-1-90)
06. **Board.** Idaho State Board Of Environmental Quality. (10-1-90)
07. **Building Sewer.** The extension of the building drain beginning five (5) feet outside the inner face of the building wall. (10-1-90)
08. **Central System.** Any system which receives blackwaste or wastewater in volumes exceeding twenty-five hundred (2,500) gallons per day; any system which receives blackwaste or wastewater from more than two (2) dwelling units or more than two (2) buildings under separate ownership. (10-1-90)
09. **Construct.** To make, form, excavate, alter, expand, repair, or install a system, and, their derivations. (5-7-93)
10. **Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee or authorized agent. (10-1-90)
11. **Existing System.** Any system which was installed prior to the effective date of these rules. (5-7-93)
12. **Expand.** To enlarge any nonfailing system. (10-1-90)
13. **Failing System.** Any system which exhibits one (1) or more of the following characteristics: (10-1-90)
- a. The system does not meet the intent of these rules as stated in Subsection 004.01. (5-7-93)
 - b. The system fails to accept blackwaste and wastewater. (10-1-90)
 - c. The system discharges blackwaste or wastewater into the waters of the State or onto the ground surface. (10-1-90)
14. **Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (5-7-93)
15. **High Groundwater Level -- Normal, Seasonal.** High ground water level may be established by the presence of low chroma mottles, actual ground water monitoring or historic records. (5-7-93)
- a. The normal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of six (6) weeks a year. (5-7-93)
 - b. The seasonal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of one (1) week a year. (5-7-93)
16. **High Water Mark.** The line which the water impresses on the soil by covering it for sufficient periods of time to prevent the growth of terrestrial vegetation. (10-1-90)

17. **Individual System.** Any standard, alternative or subsurface system which is not a central system. (10-1-90)
18. **Install.** To excavate or to put in place a system or a component of a system. (10-1-90)
19. **Installer.** Any person, corporation, or firm engaged in the business of excavation for, or the construction of individual or subsurface sewage disposal systems in the State. (10-1-90)
20. **Large Soil Absorption System.** A large soil absorption system is a subsurface sewage disposal system designed to receive two thousand five hundred (2,500) gallons of wastewater or more per day, including where the total wastewater flow from the entire proposed project exceeds two thousand five hundred (2,500) gallons per day but the flow is separated into absorption modules which receive less than two thousand five hundred (2,500) gallons per day. (5-7-93)
21. **Limiting Layer.** A characteristic subsurface layer or material which will severely limit the capability of the soil to treat or absorb wastewater including, but not limited to, water tables, fractured bedrock, fissured bedrock, excessively permeable material and relatively impermeable material. (10-1-90)
22. **Mottling.** Irregular areas of different color in the soil that vary in contrast, density, number and size. Mottling generally indicates poor aeration and impeded drainage. (5-7-93)
23. **New System.** A system which is or might be authorized or approved on or after the effective date of these rules. (5-7-93)
24. **Nondischarging System.** Any system which is designed and constructed to prevent the discharge of blackwaste or wastewater. (10-1-90)
25. **Permit.** An individual or subsurface system installation permit or installer's registration permit. (10-1-90)
26. **Pollutants.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a public nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational, aesthetic, or other beneficial uses. (10-1-90)
27. **Public System.** Any system owned by a county, city, special service district, or other governmental entity or Indian tribe having the authority to dispose of blackwaste or wastewater; a municipal wastewater treatment facility. (10-1-90)
28. **Repair.** To remake, reform, replace, or enlarge a failing system or any component thereof as is necessary to restore proper operation. (10-1-90)
29. **Scarp.** The side of a hill, canyon, ditch, river bank, roadcut or other geological feature characterized by a slope of forty-five (45) degrees or more from the horizontal. (10-1-90)
30. **Sewage.** Sewage has the same meaning as wastewater. (10-1-90)
31. **Soil Texture.** The relative proportion of sand, silt, and clay particles in a mass of soil. (10-1-90)
32. **Standard System.** Any system recognized by the Board through the adoption of design and construction regulations. (10-1-90)
33. **Subsurface System.** Any system with a point of discharge beneath the earth's surface. (10-1-90)
34. **Surface Water - Intermittent, Permanent, Temporary.** (7-1-93)
 - a. Any waters of the State which flow or are contained in natural or man-made depressions in the

earth's surface. This includes, but is not limited to, lakes, streams, canals, and ditches. (10-1-90)

b. An intermittent surface water exists continuously for a period of more than two (2) months but not more than six (6) months a year. (10-1-90)

c. A permanent surface water exists continuously for a period of more than six (6) months a year. (10-1-90)

d. A temporary surface water exists continuously for a period of less than two (2) months a year. (10-1-90)

35. **System.** Beginning at the point of entry physically connected piping, treatment devices, receptacles, structures, or areas of land designed, used or dedicated to convey, store, stabilize, neutralize, treat, or dispose of blackwaste or wastewater. (10-1-90)

36. **Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, grey water or commercial or industrial pollutants; and sewage. (10-1-90)

37. **Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, which flow through or border upon the state of Idaho. (10-1-90)

38. **Water Table.** The surface of an aquifer. (10-1-90)

004. GENERAL REQUIREMENTS.

01. **Intent of Rules.** The Board, in order to protect the health, safety, and environment of the people of the state of Idaho establishes these rules governing the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. These rules are intended to insure that blackwastes and wastewater generated in the state of Idaho are safely contained and treated and that blackwaste and wastewater contained in or discharged from each system: (5-7-93)

a. Are not accessible to insects, rodents, or other wild or domestic animals; (10-1-90)

b. Are not accessible to individuals; (10-1-90)

c. Do not give rise to a public nuisance due to odor or unsightly appearance; (10-1-90)

d. Do not injure or interfere with existing or potential beneficial uses of the waters of the State. (10-1-90)

02. **Compliance with Intent Required.** The Director shall not authorize or approve any system if, in the opinion of the Director, the system will not be (is not) in compliance with the intent of these rules. (5-7-93)

03. **System Limitations.** Cooling water, backwash or backflush water, hot tub or spa water, air conditioning water, water softener brine, groundwater, oil, or roof drainage cannot be discharged into any system unless that discharge is approved by the Director. (10-1-90)

04. **Increased Flows.** Unless authorized by the Director, no person shall provide for or connect additional blackwaste or wastewater sources to any system if the resulting flow or volume would exceed the design flow of the system. (10-1-90)

05. **Failing System.** The owner of any failing system shall obtain a permit and cause the failing system's repair: (10-1-90)

- a. As soon as practical after the owner becomes aware of its failure; or (10-1-90)
- b. As directed in proper notice from the Director. (10-1-90)

06. Subsurface System Replacement Area. An area of land which is suitable in all respects for the complete replacement of a new subsurface system disposal field shall be reserved as a replacement area. This area will be kept vacant, free of vehicular traffic and free of any soil modification which would negatively affect its use as a replacement disposal field construction site. (10-1-90)

07. Technical Guidance Committee. The Director shall appoint a Technical Guidance Committee composed of three (3) representatives from the seven (7) Health Districts, one (1) representative from the Department of Environmental Quality, one (1) professional engineer licensed in the state of Idaho and one (1) licensed installer. Initially two (2) committee members shall be appointed to each of one (1), two (2) and three (3) year terms. Appointments to vacancies thereafter shall be to three (3) year terms. (12-31-91)

08. Duties of the Technical Guidance Committee. The Committee shall maintain a technical guidance manual which shall be used in the design, construction, alteration, operation, and maintenance of conventional systems, their components and alternatives. The Committee shall review variances at the request of the Director and provide recommendations on such variances. (10-1-90)

09. Technical Guidance Manual for Individual and Subsurface Alternative Sewage Disposal. The manual maintained by the Technical Guidance Committee shall provide state-of-the-art technical guidance on alternative sewage disposal components and systems, soil type determination methodology and other information pertinent to the best management practices of individual and subsurface sewage disposal. (10-1-90)

10. Alternative System. If a standard system as described in these rules cannot be installed on a parcel of land, an alternative system may be permitted if that system is in accordance with the recommendations of the Technical Guidance Committee and is approved by the Director. (5-7-93)

005. PERMIT AND PERMIT APPLICATION.

01. Permit Required. Except as specified in Subsection 005.02 it shall be unlawful for any person to cause or to perform the modification, repair or construction of any individual or subsurface sewage disposal system within the state of Idaho unless there is a valid installation permit authorizing that activity. (12-31-91)

02. Exceptions to Permit Requirement. The activities listed in this subsection may be lawfully performed in the absence of a valid installation permit. They are, however, subject to all other relevant rules and regulations. (10-1-90)

a. Portable nondischarging systems may be installed where needed as temporary blackwater or wastewater systems if they are properly maintained and if they are of a design which has been approved by the Director. (10-1-90)

b. Individual and subsurface systems may be repaired when needed as a result of clogged or broken solid piping or of malfunctions in an electrical or mechanical system. Such repair may not expand the system unless authorized by the Director. (10-1-90)

03. Permit Application. The owner of the system or the owner's authorized representative shall make application to the Director in writing and in a manner or form prescribed by the Director. (10-1-90)

04. Contents of Application. A permit application will be used to help determine if the proposed construction will be in conformance with applicable rules and regulations. Information required in the application may include, but is not limited to: (10-1-90)

- a. The name and address of the owner of the system and of the applicant, if different; (10-1-90)

- b. The legal description of the parcel of land; (10-1-90)
- c. The type of establishment served; (10-1-90)
- d. The maximum number of persons served, number of bedrooms, or other appropriate measure of wastewater flow; (10-1-90)
- e. The type of system; (10-1-90)
- f. The construction activity (new construction, enlargement, repair); (10-1-90)
- g. A scaled or dimensioned plot plan including, if needed, adjacent properties illustrating: (10-1-90)
- i. The location and size of all existing and proposed wastewater systems including disposal field replacement areas; (10-1-90)
- ii. The location of all existing water supply system features; (10-1-90)
- iii. The location of all surface waters; (10-1-90)
- iv. The location of scarps, cuts, and rock outcrops; (10-1-90)
- v. Land elevations, surface contours, and ground slopes between features of interest; (10-1-90)
- vi. Property lines, easements, and rights-of-way; and (10-1-90)
- vii. Location and size of buildings and structures. (7-1-93)
- h. The plans and specifications of the proposed system which include: (10-1-90)
- i. Diagrams of all system facilities which are to be made or fabricated at the site; (10-1-90)
- ii. The manufacturer's name and identification of any component approved pursuant to Sections 007 and 009; and (12-31-91)
- iii. List of materials. (10-1-90)
- i. Soil description and profile, groundwater data, percolation or permeability test results and/or a site evaluation report; (10-1-90)
- j. The nature and quantity of blackwaste and wastewater which the system is to receive including the basis for that estimate; (10-1-90)
- k. Proposed operation, maintenance, and monitoring procedures to insure the system's performance and failure detection; (10-1-90)
- l. Copies of legal documents relating to access and to responsibilities for operation, maintenance, and monitoring; (10-1-90)
- m. A statement from the local zoning or building authority indicating that the proposed system would not be contrary to local ordinances; (10-1-90)
- n. The signature of the owner of the proposed system and, if different, of the applicant; and (10-1-90)
- o. Any other information, document, or condition that may be required by the Director to substantiate that the proposed system will comply with applicable rules and regulations. (10-1-90)

05. Basis for Permit Application Denial. The Director may deny a permit application if in the Director's judgment: (10-1-90)

- a. The application is incomplete, inaccurate, or misleading; (10-1-90)
- b. The system as proposed is not in compliance with applicable rules and regulations; (10-1-90)
- c. The system as proposed would, when put into use, be considered a failing system; (10-1-90)
- d. The design and description of a public system was not made by a professional engineer; (10-1-90)
- e. Public or central wastewater treatment facilities are reasonably accessible. (10-1-90)

06. Notice of Denial. Upon denial of an application the Director shall notify the applicant of the reason for denial. (10-1-90)

07. Issuance of Permit. When, in the opinion of the Director the system as proposed will be in conformance with applicable rules and regulations, the Director shall issue an "Individual and Subsurface System Installation Permit". (10-1-90)

08. Application and Permit Valid for One Year. Unless otherwise stated on the application or permit, it shall become invalid if the authorized construction or activity is not completed and approved within one (1) year of the date of issuance. (10-1-90)

09. Permit Renewal. At the discretion of the Director, a permit may be renewed one (1) or more times upon request by the applicant or owner provided that the request is received by the Director prior to the permit's date of expiration. (10-1-90)

10. Immediate Effect of the Permit. A valid permit authorizes the construction of an individual or subsurface system and requires that the construction be conducted in compliance with plans, specifications, and conditions contained in the approved permit application. Any deviation from the plans, specifications, and conditions is prohibited unless it is approved in advance by the Director. (10-1-90)

11. Cottage Site Facility Certification. A valid permit shall constitute certification and approval for the purposes of Section 39-3611, Idaho Code. (10-1-90)

12. Existing Installation Permits. Individual and subsurface sewage disposal installation permits or other lot-specific approvals for systems issued prior to February 7, 1978, pursuant to Idaho Code Title 39, Chapter 1 and Title 39, Chapter 36, will become invalid one (1) year after written notice is given by the Director notifying the owner or holder of such a permit or approval that the permit or approval will no longer be valid unless construction or installation of the system provided for in the permit or approval is commenced within one (1) year after giving of the notice. This provision does not apply to certificates filed to satisfy a sanitary restriction pursuant to Section 50-1326, Idaho Code. (10-1-90)

13. Abandonment May Be Required. The Director may require as a condition for issuing a permit that the system be abandoned by a specified date or under specific predetermined circumstances. The date or circumstances will be established before the issuance of the permit and be contained in the permit application. These conditions may relate to a specific date, dwelling density, completion of a municipal system or other circumstances relative to the availability of central sewerage system services. (10-1-90)

14. Operation, Maintenance and Monitoring. The Director may require as a condition of issuing a permit, that specific operation, maintenance, and monitoring procedures be observed. Those procedures will be contained in the permit application. (10-1-90)

15. As-Built Plans and Specifications. The Director may require as a condition of issuing a permit, that complete and accurate record drawings and specifications depicting the actual construction be submitted to the Director within thirty (30) days after the completion of the construction. Alternately, if the construction proceeded in

compliance with the approved plans and specifications, a statement to that effect may be submitted. (10-1-90)

16. Permit Fee. All applications shall be accompanied by payment of the fee specified in Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, Subsections 110 through 110.02, "Rules Governing Fees for Health Operating Permits, Licenses, and Inspection Services". (5-7-93)

006. INSTALLER'S REGISTRATION PERMIT.

01. Permit Required. Every installer shall secure from the Director, an installer's registration permit. Two (2) types of installer permits are available: (5-7-93)

a. A standard and basic alternative system installer's registration permit is required to install all individual systems not listed under Subsection 006.01.b. (5-7-93)

b. A complex alternative system installer's registration permit is required to install evapotranspiration systems, extended treatment systems, lagoon systems, large soil absorption systems, pressure distribution systems, intermittent sand filter, in-trench sand filter, sand mound or other systems as may be specified by the Director. (5-7-93)

02. Examination. The initial issuance of the installer's permit shall be based on the completion of an examination, with a passing score of seventy (70) or more, of the applicant's knowledge of the principles set forth in this chapter and the applicable sections of the Technical Guidance Manual. The examination will be prepared, administered and graded by the Director. (5-7-93)

03. Permits Required Annually. Registration permits expire annually on the first (1st) day of January and all permits issued thereafter will be issued for the balance of the calendar year. Additionally, at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, be attended every three (3) years. (5-7-93)

04. Contents of Application. Applications for permits shall be in writing, shall be signed by the applicant or by an officer or authorized agent of a corporation, shall contain the name and address of the applicant, shall indicate whether the permit is to be for installation of standard and basic alternative systems or for installation of standard, basic and complex alternative systems, and shall contain the expiration date of the bond required by Subsection 006.05. (5-7-93)

05. Bond Required. At the time of application, all applicants shall deliver to the Director a bond in a form approved by the Director in sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit to be approved by the Director guaranteeing the faithful performance of all work undertaken under the provisions of the installer's registration permit. Any person who suffers damage as the result of the negligent or wrongful acts of the registrant or by his failure to competently perform any of the work agreed to be done under the terms of the registration permit shall, in addition to other legal remedies, have a right of action in his own name on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems. (5-7-93)

06. Exemption. An installer's permit shall not be required for: (10-1-90)

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor as provided in Title 54, Chapter 19, Idaho Code, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (5-7-93)

b. An owner installing his own standard or basic alternative system. (5-7-93)

07. **Application Fee.** All applications shall be accompanied by payment of the fee specified in Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, Section 120, "Rules Governing Fees for Health Operating Permits, Licenses, and Inspection Services". (5-7-93)

08. **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit. (5-7-93)

007. SEPTIC TANKS DESIGN AND CONSTRUCTION STANDARDS.

01. **Materials.** New septic tanks will be constructed of concrete, or other materials approved by the Director. Steel tanks are unacceptable. (10-1-90)

02. **Construction Requirements.** All septic tanks will be water tight, constructed of sound, durable materials and not subject to excessive corrosion, decay, frost damage or cracking. (10-1-90)

03. **Concrete Septic Tanks.** New concrete septic tanks will at a minimum meet the following requirements: (10-1-90)

a. The walls and floor must be at least two and one-half (2 1/2) inches thick if adequately reinforced and at least six (6) inches thick if not reinforced. (10-1-90)

b. Concrete lids or covers must be at least three (3) inches thick and adequately reinforced. (10-1-90)

c. The floor and at least a six (6) inch vertical portion of the walls of a poured tank must be poured at the same time (monolithic pour). (10-1-90)

d. Wall sections poured separately must have interlocking joints on joining edge. (10-1-90)

e. All concrete outlet baffles must be finished with an asphalt or other protective coating. (10-1-90)

04. **Horizontal Dimension Limit.** No interior horizontal dimension of a septic tank or compartment may be less than two (2) feet. (10-1-90)

05. **Liquid Depth.** The liquid depth shall be at least two and one-half (2 1/2) feet but not greater than five (5) feet. (10-1-90)

06. **Manufactured Tank Markings.** Septic tanks manufactured in accordance with a specified design approved by the Director, will be legibly and indelibly marked with the manufacturer's name or trademark, total liquid capacity and shall indicate the tank's inlet and outlet. (10-1-90)

07. **Minimum Tank Capacities.** (7-1-93)

a. Tanks serving one (1) or two (2) single dwelling units:

MINIMUM CAPACITY PER DWELLING UNIT	
Number of Bedrooms	Minimum Liquid Capacity (Gallons)
1 or 2	900
3 or 4	1,000

For each bedroom over four (4) add two hundred fifty (250) gallons. (10-1-90)

b. Tanks serving all other flows. Septic tank capacity shall be equal to two (2) times the average daily

flow as determined from Subsection 007.08. The minimum tank capacity shall be seven hundred and fifty (750) gallons. (12-31-91)

08. Wastewater Flows from Various Establishments in Gallons per Day.

ESTABLISHMENTS	
Single Family Dwelling and Mobile Homes, 3 bedroom. Add/subtract 50 gallons/bedroom	250/Unit
MULTIPLE RESIDENTIAL	
Hotel: With Private Baths Without Private Baths	60/Bedspace 40/Bedspace
Motel: With Kitchenette	40/Bedspace 60/Bedspace
Boarding House: Add for each nonresident	150/Bedspace 25
Rooming House/Bunk House Staff Resident Nonresident	40/Resident 40/Staff 15/Staff
Apartments	250/Unit
INSTITUTIONAL	
Assembly Hall/Meeting House	2/Seat
Church: With Kitchen	3/Seat 7/Seat
Hospital: Kitchen only Laundry only	250/Bedspace 25/Bedspace 40/Bedspace
Nursing Home/Rest Home	125/Bedspace
Day School: Without Showers With Showers With Cafeteria, add Staff-Resident Nonresident	20/Student 25/Student 3/Student 40/Staff 20/Staff
FOOD SERVICE	
Conventional Service: Toilet & Kitchen Wastes Kitchen Wastes	13/Meal 3.3/Meal
Take Out or Single Service	2/Meal
Dining Hall: Toilet & Kitchen Wastes Kitchen Wastes	8/Meal 3.3/Meal
Drinking Establishment	2/Person

ESTABLISHMENTS	
Food Service Employee	15/Employee
COMMERCIAL AND INDUSTRIAL	
Bowling Alley	125/Lane
Laundry - Self Service	50/Wash
Public Transportation Terminal	5/Fare
Service Station	10/Vehicle
Car Wash:	50/Vehicle
1st Bay	1000
Additional Bays	500 each
Shopping Center (No food/laundry)	1/Pkg. Sp.
Theaters (including Concession Stand):	
Auditorium	5/Seat
Drive-in	10/Space
Offices	20/Employee
Factories:	
No Showers	25/Employee
With Showers	35/Employee
Add for Cafeteria	5/Employee
Stores	2/Employee
Public Restrooms	
SEASONAL AND RECREATIONAL	
Fairground (Peak Daily Attend)	1/Person
Stadium	2/Seat
Swimming Pool:	
Toilet & Shower Wastes	10/Person
Parks & Camps (Day Use):	
Toilet & Shower Wastes	15/Person
Roadside Rest Area:	
Toilet & Shower Wastes	10/Person
Toilet Waste	5/Person
Overnight Accommodation:	
Central Toilet	25/Person
Central Toilet & Shower	35/Person
Designated Camp Area:	
Toilet & Shower Wastes	90/Space
Toilet Wastes	65/Space
Seasonal Camp	50/Space
Luxury Cabin	75/Person
Travel Trailer Park with Sewer & Water Hook-up	125/Space

ESTABLISHMENTS	
Construction Camp	50/Person
Resort Camps	50/Person
Luxury Camps	100/Person
Country Clubs Resident Member Add for Nonresident Member	100/Member 25/Person
Public Restrooms: Toilet Wastes Toilet & Shower Wastes	5/Person 15/Person

(10-1-90)

09. **Total Volume.** The total volume of a septic tank will at a minimum be one hundred fifteen percent (115%) of its liquid capacity. (10-1-90)

10. **Inlets.** (7-1-93)

a. The inlet into the tank will be at least four (4) inches in diameter and enter the tank three (3) inches above the liquid level. (10-1-90)

b. The inlet of the septic tank and each compartment will be submerged by means of a vented tee or baffle. (10-1-90)

c. Vented tees or baffles will extend above the liquid level seven (7) inches or more but not closer than one (1) inch to the top of the tank. (10-1-90)

d. Tees should not extend horizontally into the tank beyond two (2) times the diameter of the inlet. (10-1-90)

11. **Outlets.** (7-1-93)

a. The outlet of the tank will be at least four (4) inches in diameter. (10-1-90)

b. The outlet of the septic tank and each compartment will be submerged by means of a vented tee or baffle. (10-1-90)

c. Vented tees and baffles will extend above the liquid level seven (7) inches or more above the liquid level but no closer than one (1) inch to the inside top of the tank. (10-1-90)

d. Tees and baffles will extend below the liquid level to a depth where forty percent (40%) of the tank's liquid volume is above the bottom of the tee or baffle. For vertical walled rectangular tanks, this point is at forty percent (40%) of the liquid depth. In horizontal cylindrical tanks this point is about thirty-five percent (35%) of the liquid depth. (10-1-90)

e. Tees and baffles should not extend horizontally into the tank beyond two (2) times the diameter of the outlet. (10-1-90)

12. **Scum Storage.** A septic tank will provide an air space above the liquid level which will be equal to or greater than fifteen percent (15%) of the tank's liquid capacity. For horizontal cylindrical tanks, this condition is met when the bottom of the outlet port is located at nineteen percent (19%) of the tank's diameter when measured from the inside top of the tank. (10-1-90)

13. **Manholes.** Access to each septic tank or compartment shall be provided by a manhole twenty (20)

inches in minimum dimension or a removable cover of equivalent size. Each manhole cover will be provided with a corrosion resistant strap or handle to facilitate removal. (10-1-90)

14. **Inspection Ports.** An inspection port measuring at least eight (8) inches in its minimum dimension will be placed above each inlet and outlet. Manholes may be substituted for inspection ports. (10-1-90)

15. **Split Flows.** The wastewater from a single building sewer or sewer line may not be divided and discharged into more than one (1) septic tank or compartment. (10-1-90)

16. **Multiple Tank or Compartment Capacity.** Multiple septic tanks or compartmented septic tanks connected in series may be used so long as the sum of their liquid capacities is at least equal to the minimum tank capacity computed in Subsection 007.07 and the initial tank or compartment has a liquid capacity of more than one-half (1/2) but no more than two-thirds (2/3) of the total liquid capacity of the septic tank facility. (12-31-91)

17. **Minimum Separation Distances Between Septic Tanks and Features of Concern.**

Features of Concern	Minimum Distance to Septic Tank in Feet	
Well or Spring or Suction Line	Public Water	100
	Other	50
Water Distribution Line	Public Water	25
	Other	10
Permanent or Intermittent Surface Water		50
Temporary Surface Water		25
Downslope Cut or Scarp		25
Dwelling Foundation or Building		5
Property Line		5
Seasonal High Water Level (Vertically from Top of Tank)		2

(10-1-90)

18. **Installation of Manufactured Tanks.** If written installation instructions are provided by the manufacturer of a septic tank, those instructions relative to the stability and integrity of the tank are to be followed unless otherwise specified in the installation permit of these rules. (5-7-93)

19. **Manhole Extension.** If the top of the septic tank is to be located more than twenty-four (24) inches below the finished grade, manholes will be extended to within eighteen (18) inches of the finished grade. (10-1-90)

20. **Sectional Tanks.** Sectional tanks will be joined in a manner that will insure that the tank is watertight. (10-1-90)

21. **Inlet and Outlet Piping.** Unless otherwise specified in the installation permit, piping to and from a septic tank or dosing chamber, to points three (3) feet beyond the tank excavation shall be of a material approved by the Director. The following materials are required: (5-7-93)

a. ABS schedule forty (40) or material of equal or greater strength piping shall be used to span the excavations for the septic tank and dosing chamber. (5-7-93)

b. ASTM-D-3033 or 3034 plastic pipe may be used to span the septic tank and dosing chamber if the excavation is compacted with fill material. (5-7-93)

- i. The fill material must be granular, clean and compacted to ninety percent (90%) standard proctor density. (5-7-93)
- ii. Placement of ASTM-D-3033 or 3034 on undisturbed earth is suitable, but in no installation shall there be less than twelve (12) inches of cover over the pipe. (5-7-93)
- 22. **Effluent Pipe Separation Distances.** Effluent pipes shall not be installed closer than fifty (50) feet from a well. (5-7-93)
- 23. **Septic Tank Abandonment.** Responsibility of properly abandoning a septic tank shall remain with the property owner. Septic tanks shall be abandoned in accordance with the following: (5-7-93)
 - a. Disconnection of the inlet and outlet piping; (5-7-93)
 - b. Pumping of the scum and septage with approved disposal; (5-7-93)
 - c. Filling the septic tank with earthen materials; or (5-7-93)
 - d. Physically destroying the septic tank or removing the septic tank from the ground. (5-7-93)

008. STANDARD SUBSURFACE DISPOSAL FACILITY DESIGN AND CONSTRUCTION.

01. **Standard Drainfield.** A drainfield consisting of an effluent sewer, one (1) or more aggregate filled trenches and a gravity flow wastewater distribution system. These standards will be the basis of acceptable design and configuration. Overall dimensions of a specific facility will depend upon site characteristics and the volume of wastewater. (10-1-90)

02. **Site Suitability.** The area in which a standard drainfield is to be constructed must meet the conditions stated in this subsection: (10-1-90)

- a. Slope. The natural slope of the site will not exceed twenty percent (20%). (10-1-90)
- b. Soil types. Suitable soil types must be present at depths corresponding with the sidewalls of the proposed drainfield and at depths which will be between the bottom of the proposed drainfield and any limiting soil layer (effective soil depth).

Design Soil Group	Soil Textural Classification	USDA Field Test Textural Classification	
Unsuitable	Gravel	10 Mesh	
	Coarse Sand	10-35 Mesh	Sand
A	Medium Sand	35-60 Mesh	Sand
	Fine Sand	65-140 Mesh	Sand
	Loamy Sand		Sand
B	Very Fine Sand	140-270 Mesh	Sand
	Sandy Loam		Sandy Loam
	Very Fine Loamy Sand		Sandy Loam
	Loam		
C	Silt Loam		Silt Loam
	Silt		Silt Loam

Design Soil Group	Soil Textural Classification	USDA Field Test Textural Classification
	Clay Loam	Clay Loam
	Sandy Clay Loam	Clay Loam
	Silty Clay Loam	Clay Loam
Unsuitable	Sandy Clay	Clay
	Silty Clay	Clay
	Clay	Clay
	Clay soils with high shrink/swell potential	Clay
	Organic mucks	
	Claypan, Duripan,	
	Hardpan	

(10-1-90)

c. Effective Soil Depths. Effective soil depths, in feet, below the bottom of the drainfield must be equal to or greater than those values listed in the following table.

EFFECTIVE SOIL DEPTHS TABLE			
Site Conditions	Design	Soil	Group
Limiting Layer	A	B	C
Impermeable Layer	4	4	4
Fractured Bedrock, Fissured Bedrock or Extremely Permeable Material	6	4	3
Normal High Groundwater Level	6	4	3
Seasonal High Groundwater Level	1	1	1

(5-7-93)

d. Separation Distances. The drainfield must be located so that the separation distances given be maintained or exceeded according to the following Table:

Feature of Interest	Soil Types All	A	B	C
Public Water Supply	100			
All Other Domestic Water Supplies including Springs and Suction Lines	100			
Water Distribution Lines:				
Pressure	25			
Suction	100			

Feature of Interest	Soil Types All	A	B	C
Permanent or Intermittent Surface Water other than Irrigation Canals & Ditches		300	200	100
Temporary Surface Water and Irrigation Canals and Ditches	50			
Downslope Cut or Scarp: Impermeable Layer Above Base		75	50	50
Impermeable Layer Below Base		50	25	25
Building Foundations: Crawl Space or Slab	10			
Basement	20			
Property Line	5			

(5-7-93)

03. **Subsurface Disposal Facility Sizing.** The size of a subsurface disposal system will be determined by the following procedures: (10-1-90)

a. Daily flow estimates should be determined in the same manner as are flow estimates for septic tank sizing in Subsection 007.08. (5-7-93)

b. The total required absorption area is obtained by dividing the estimated daily flow by a value below.

Design Soil Group	A	B	C
Absorption Area - Gallons/Square Foot/Day	1.0	0.5	0.2

(10-1-90)

c. **Required Area.** The size of an acceptable site must be large enough to construct two (2) complete drainfields in which each are sized to receive one hundred percent (100%) of the design wastewater flow. (10-1-90)

04. **Standard Subsurface Disposal Facility Specifications.** The following table presents additional design specifications for new subsurface sewage disposal facilities.

SUBSURFACE DISPOSAL FACILITY TABLE	
Item	All Soil Groups
Length of Individual Distribution Laterals	100 Feet Maximum
Grade of Distribution Laterals and Trench Bottoms	Level
Width of Trenches	1 Foot Minimum 6 Feet Maximum
Depth of Trenches	2 Feet Minimum 4 Feet Maximum
Total Square Feet of Trench	1500 Sq.ft. Max.
Undisturbed Earth Between Trenches	6 Feet Minimum

SUBSURFACE DISPOSAL FACILITY TABLE	
Item	All Soil Groups
Undisturbed Earth Between Septic Tank and Trenches	6 Feet Minimum
Depth of Aggregate:	
Total	12 In. Minimum
Over Distribution Laterals	2 In. Minimum
Under Distribution Laterals	6 In. Minimum
Depth of Soil Over Top of Aggregate	12 In. Minimum

(10-1-90)

05. **Wastewater Distribution.** Systems shall be installed to maintain equal or serial effluent distribution. (10-1-90)

06. **Excavation.** Trenches will not be excavated during the period of high soil moisture content when that moisture promotes smearing and compaction of the soil. (10-1-90)

07. **Soil Barrier.** The aggregate will be covered throughout with untreated building paper, a synthetic filter fabric (geotextile), a three (3) inch layer of straw or other acceptable permeable material. (10-1-90)

08. **Aggregate.** The trench aggregate shall be crushed rock, gravel, or other acceptable, durable and inert material which is, free of fines, and has an effective diameter from one-half (1/2) to two and one-half (2 1/2) inches. (10-1-90)

09. **Impermeable Surface Barrier.** No treatment area trench or replacement area shall be covered by an impermeable surface barrier, such as tar paper, asphalt or tarmac or be used for parking or driving on or in any way compacted and shall be adequately protected from such activities. (5-7-93)

10. **Standard Absorption Bed.** Absorption bed disposal facilities may be considered when a site is suitable for a standard subsurface disposal facility except that it is not large enough. (10-1-90)

a. **General Requirements.** Except as specified in this section, rules and regulations applicable to a standard subsurface disposal system are applicable to an absorption bed facility. (10-1-90)

b. **Slope Limitation.** Sites with slopes in excess of eight percent (8%) are not suitable for absorption bed facilities. (10-1-90)

c. **Vehicular Traffic.** Rubber tired vehicles must not be driven on the bottom surface of any bed excavation. (10-1-90)

d. **Distribution Lateral Spacing.** Distribution laterals within a bed must be spaced on not greater than six (6) feet centers nor may any sidewall be more than three (3) feet from a distribution lateral. (10-1-90)

11. **Seepage Pit.** Seepage pit disposal facilities may be used on a case by case basis within the boundaries of District Health Department Seven when an applicant can demonstrate to the district director's satisfaction that the soils and depth to ground water are sufficient to prevent ground water contamination. The district director shall document all such cases. (4-2-91)L

a. **General Requirements.** Except as specified in Subsection 008.11.b., rules and regulations applicable to a standard subsurface disposal system are applicable to a seepage pit. (12-31-91)

b. **Other conditions for approval, sizing and construction** will be as provided for in the seepage pit section of the Technical Guidance Manual for Individual and Subsurface Sewage Disposal, except that the site size

restriction in condition two (2) of the Conditions for Approval will not apply. (10-1-90)

12. Failing Subsurface Sewage Disposal System. If the Director determines that the public's health is at risk from a failed septic system and that the replacement of a failing subsurface sewage disposal system cannot meet the current rules and regulations, then the replacement system must meet the intent of the rules and regulations by utilizing a standard subsurface sewage disposal design or alternative system design as specified by the Director. (5-7-93)

009. OTHER COMPONENTS.

01. Design Approval Required. Commercially manufactured blackwaste and wastewater treatment and storage components may not be used in the construction of a system unless their design is approved by the Director. (10-1-90)

02. Plan and Specification Submittal. Plans and specifications for all commercially manufactured individual and subsurface treatment and storage components will be submitted to the Director for approval. Plans and specifications will show or include as requested by the Director, detailed construction drawings, capacities, structural calculations, list of materials, evidence of stability and durability, manufacturers installation, operation and maintenance instructions, and other relevant information. (10-1-90)

03. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated or maintained. (10-1-90)

04. Notice of Design Disapproval. If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of the disapproval and the reason for that action. (5-7-93)

010. VARIANCES.

01. Technical Allowance. The Director may make a minor technical allowance to the dimensional or construction requirements of these rules for a standard system if: (5-7-93)

a. The allowance will not affect adjacent property owners or the public at large; (10-1-90)

b. The allowance will not violate the conditions of Subsection 004.01; and (12-31-91)

c. The allowance will not be in conflict with any other rule, regulation, standard, or ordinance. (10-1-90)

d. The allowance to a dimensional requirement is not more than ten percent (10%) of the requirements of these rules unless otherwise provided for in the Technical Guidance Manual. (5-7-93)

02. Petition for Variance. If a petition of variance to these rules is desired, a request for a variance may be filed with the Director. The petition shall contain the following: (10-1-90)

a. A concise statement of the facts upon which the variance is requested including a description of the intended use of the property, the estimates of the quantity of blackwaste or wastewater to be discharged, and a description of the existing site conditions; (10-1-90)

b. A concise statement of why the petitioner believes that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship, and of the injury that the grant of the variance would impose on the public; and (10-1-90)

c. A clear statement of the precise extent of the relief sought. (10-1-90)

03. Public Notice. At the time of filing a petition evidence shall also be submitted that: (10-1-90)

- a. A notice has appeared in the local newspaper advising the public of the request for variance; (10-1-90)
- b. All property owners within three hundred (300) feet of the affected site have been notified; and (10-1-90)
- c. Such notices to the public have been made fifteen (15) days prior to the filing of the petition. (10-1-90)

04. Objections to Petition. Any person may file with the Department, within twenty-one (21) days after the filing of the petition, a written objection to the grant of the variance. A copy of such objection shall be provided by the Department to the petitioner. (10-1-90)

05. Investigation and Decision. After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Director shall, within sixty (60) days after the filing of the petition, make a decision as to the disposition of the petition. The decision, a copy of which shall be served on the petitioner, shall include: (10-1-90)

- a. A description of the efforts made by the Director to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained; (10-1-90)
- b. A statement of the degree to which, if at all, the Director disagrees with the facts as alleged in the petition; (10-1-90)
- c. Allegations of any other facts believed relevant to the disposition of the petition; and (10-1-90)
- d. The Director's decision. (10-1-90)

06. Limitations on Decision. No technical allowance or variance shall be granted unless: (10-1-90)

- a. Adequate proof is shown by the petitioner that compliance would impose an arbitrary or unreasonable hardship; (10-1-90)
- b. The technical allowance or variance rendered is consistent with the recommendations of the Technical Guidance Committee or the Technical Guidance Manual in use at the time of the petition; and (10-1-90)
- c. The Director has determined that the approval of the technical allowance or variance will not have an adverse impact on the public health or the environment. (10-1-90)

011. INSPECTIONS.

01. One or More Inspections Required. Such inspection as are necessary to determine compliance with any requirement or provision of these rules shall be required by the Director. (5-7-93)

02. Duty to Uncover. The permittee shall, at the request of the Director, uncover or make available for inspection any portion or component of an individual or subsurface sewage disposal system which was covered or concealed in violation of these rules. (5-7-93)

03. Advance Notice by Permittee. If an inspection requires some type of preparation, such as test hole excavation or partial construction of the system, the applicant or permittee will notify the Director at least forty-eight (48) hours in advance, excluding weekends and holidays, before the time preparation will be completed. (10-1-90)

04. Substantiating Receipts and Delivery Slips. The permittee shall upon request by the Director provide copies of receipts, delivery slips or other similar documents to substantiate the origin, quality, or quantity of materials used in the construction of any individual or subsurface system. (10-1-90)

012. VIOLATIONS AND PENALTIES.

01. **Failure to Comply.** All individual and subsurface sewage disposal systems shall be constructed and installed according to these rules. Failure by any person to comply with the permitting, licensing, approval, installation, or variance provisions of these rules shall be deemed a violation of these rules. (5-7-93)

02. **System Operation.** No person shall discharge pollutants into the underground water of the state of Idaho through an individual or subsurface sewage disposal system unless in accordance with the provisions of these rules. (5-7-93)

03. **Violation a Misdemeanor.** Pursuant to Section 39-117, Idaho Code, any person who willfully or negligently violates any of the provisions of these rules shall be guilty of a misdemeanor. (5-7-93)

013. LARGE SOIL ABSORPTION SYSTEM DESIGN AND CONSTRUCTION.

01. **Site Investigation.** A site investigation for a large soil absorption system by a soil scientist and/or hydrogeologist may be required by the Director for review and approval and shall be coordinated with the Director. Soil and site investigations shall conclude that the effluent will not adversely impact or harm the waters of the State. (5-7-93)

02. **Installation Permit Plans.** Installation permit application plans, as outlined in Subsection 005.04, for a large soil absorption system submitted for approval shall include provisions for inspections of the work during construction by the design engineer or his designee and/or by the Director. (5-7-93)

03. **Module Size.** The maximum size of any subsurface sewage disposal module shall be ten thousand (10,000) gallons per day. Developments with greater than ten thousand (10,000) gallons per day flow shall divide the system into absorption modules designed for ten thousand (10,000) gallons per day or less. (5-7-93)

04. **Standard Large Soil Absorption System Design Specifications.** (5-7-93)

a. All design elements and applications rates shall be arrived at by sound engineering practice and shall be provided by a professional engineer licensed by the state of Idaho and specializing in environmental or sanitary engineering. (5-7-93)

b. Within thirty (30) days of system installation completion the design engineer shall provide either as-built plans or a certificate that the system has been installed in substantial compliance with the installation permit application plans. (5-7-93)

c. **Effective Soil Depths.** Effective soil depths, in feet, below the bottom of the absorption module to the site conditions must be equal to or greater than the following table:

TABLE -- EFFECTIVE SOIL DEPTHS			
Site Conditions	Design	Soil	Group
Limiting Layer	A	B	C
Impermeable Layer	8	8	8
Fractured Bedrock, Fissured Bedrock or Extremely Permeable Material	12	8	6
Normal High Groundwater Level	12	8	6
Seasonal High Groundwater Level	2	2	2

(5-7-93)

d. Separation Distances. The disposal area absorption module must be located so that the following separation distances given, in feet, are maintained or exceeded as outlined in the following table:

TABLE -- SEPARATION DISTANCES			
Feature of Interest	Design	Soil	Group
	A	B	C
All Domestic Water Supplies			
Sewage Volume - 2,500-5,000 GPD	250	200	150
Sewage Volume - 5,000-10,000 GPD	300	250	200
Property Lines			
Sewage Volume - 2,500-5,000 GPD	50	50	50
Sewage Volume - 5,000-10,000 GPD	75	75	75
Building Foundations - Basements			
Sewage Volume - 2,500-5,000 GPD	50	50	50
Sewage Volume - 5,000-10,000 GPD	75	75	75
Downslope Cut or Scarp			
Impermeable Layer - Below Base	100	50	50
Separation Distance - Between Modules	12	12	12

(5-7-93)

e. No large soil absorption system shall be installed above a downslope scarp or cut unless it can be demonstrated that the installation will not result in effluent surfacing at the cut or scarp. (5-7-93)

f. A minimum of two (2) disposal systems will be installed, each sized to accept the daily design flow, and a replacement area equal to the size of one (1) disposal system will be reserved. (5-7-93)

g. The vertical and horizontal hydraulic limits of the receiving soils shall be established and flows shall not exceed such limits so as to avoid hydraulically overloading any absorption module and replacement area. (5-7-93)

h. The distribution system must be pressurized with a duplex dosing system. (5-7-93)

i. A geotextile filter fabric shall cover the aggregate. (5-7-93)

j. An in-line effluent filter between an extended treatment system or lagoon system and the large soil absorption area shall be installed. (5-7-93)

k. Observation pipes shall be installed to the bottom of the drainrock throughout the drainfield. (5-7-93)

l. Pneumatic tired machinery travel over the excavated infiltrative surface is prohibited. (5-7-93)

m. The drainfield disposal area shall be constructed to allow for surface drainage and to prevent ponding of surface water. Before the system is put into operation the absorption module disposal area shall be seeded with typical lawn grasses and/or other appropriate shallow rooted vegetation. (5-7-93)

05. **Large Septic Tanks.** Large Septic Tanks shall be constructed according to Section 007, except as outlined in this Subsection: (5-7-93)

- a. Length to width ratios shall be maintained at least at a three to one (3:1) ratio. (5-7-93)
- b. Tank inlet shall allow for even distribution of the influent across the width of the tank. (5-7-93)
- c. The width to liquid depth ratio shall be between one to one (1:1) and two and one-quarter to one (2.25:1). (5-7-93)

06. **Monitoring and Reporting.** Before an installation permit is issued, a monitoring and reporting plan shall be approved by the Director and shall contain the following minimum criteria: (5-7-93)

- a. Monthly recording and inspection for ponding in all observation pipes. (5-7-93)
- b. Monthly recording of influent flows based on lapse time meter and/or event meter of the dosing system. (5-7-93)
- c. Monthly recording of groundwater elevation measurements at all monitoring wells if high seasonal groundwater is within fifteen (15) feet of the ground surface. (5-7-93)
- d. Semi-annual groundwater monitoring at all monitoring wells. (5-7-93)
- e. Monitoring shall conform to the requirements of all federal, state, and local rules and regulations. (5-7-93)
- f. An annual "Large Soil Absorption System Report" shall be filed with the Director no later than January 31 of each year for the last twelve (12) month period and shall include section on operation, maintenance and monthly and annual monitoring data. (5-7-93)

07. **Operation and Maintenance.** Before an installation permit is issued, an operation and maintenance plan shall be approved by the Director and shall contain the following minimum criteria: (5-7-93)

- a. Annual or more frequent rotation of the disposal systems, and whenever ponding is noted. (5-7-93)
- b. A detailed operation and maintenance manual, fully describing and locating all elements of the system and outlining maintenance procedures needed for operation of the system and who will be responsible for system maintenance, shall be submitted to the Director prior to system use. (5-7-93)
- c. A maintenance entity shall be specified to provide continued operation and maintenance. Approval of the entity shall be made by the Director prior to issuance of an installation permit. (5-7-93)

014. -- 995. (RESERVED).

996. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

997. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality." (3-15-02)

998. INCLUSIVE GENDER AND NUMBER.

For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate. (12-31-91)

999. SEVERABILITY.

The rules of this manual are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the manual.

(5-7-93)

Subject Index

- A**
Abandoned System 2
Abandonment May be Required, Permit & Permit Application 8
Advance Notice by Permittee, Inspections 20
Aggregate, Subsurface Treatment & Distribution Design & Construction 18
Alternative System 3, 6
Application & Permit Valid for One Year, Permit & Permit Application 8
Application Fee, Installer's Registration Permit 10
As-Built Plans & Specifications, Permit & Permit Application 8
Authorized or Approved 3
- B**
Basis for Permit Application Denial, Permit & Permit Application 8
Blackwaste 3
Blackwater 3
Board 3
Bond Required, Installer's Registration Permit 9
Building Sewer 3
- C**
Central System 3
Compliance With Intent Required 5
Concrete Septic Tanks, Septic Tanks Design & Construction Standards 10
Conflict of Rules, Standards, & Ordinances 2
Construct 3
Construction Requirements, Septic Tanks Design & Construction Standards 10
Contents of Application, Installer's Registration Permits 9
Contents of Application, Permit & Permit Application 6
Cottage Site Facility Certification, Permit & Permit Application 8
- D**
Definitions, IDAPA 58.01.03, Individual/Subsurface Sewage Disposal Rules 2
Design Approval Required 19
Director 3
Duties of the Technical Guidance Committee 6
Duty to Uncover, Inspections 20
- E**
Effect of Design Approval 19
Effluent Pipe Separation Distances, Septic Tanks Design & Construction Standards 15
Examination, Installer's Registration Permit 9
Excavation, Subsurface Treatment & Distribution Design & Construction 18
Exceptions to Permit Requirement, Permit & Permit Application 6
Expand 3
- F**
Failing Subsurface Disposal System 19
Failing System 3, 5
- G**
General Requirements 5
Ground Water 3
Grounds for Revocation, Installer's Registration Permit 10
- H**
High Groundwater Level - Normal Seasonal 3
High Water Mark 3
Horizontal Dimension Limit, Septic Tanks Design & Construction Standards 10
- I**
Immediate Effect of the Permit, Permit & Permit Application 8
Impermeable Surface Barrier, Subsurface Treatment & Distribution Design & Construction 18
Increased Flows 5
Individual System 4
Inlet & Outlet Piping, Septic Tanks Design & Construction Standards 14
Inlets, Septic Tanks Design & Construction Standards 13
Inspection Ports, Septic Tanks Design & Construction Standards 14
Inspections 20
Install 4
Installation Permit Plans, Large Soil Absorption System Design & Construction 21
Installation of Manufactured Tanks, Septic Tanks Design & Construction Standards 14
Installer 4
Installer's Registration Permit 9
- Intent of Rules 5
Investigation & Decision, Variances 20
Issuance of Permit, Permit & Permit Application 8
- L**
Large Septic Tanks, Large Soil Absorption System Design & Construction 23
Large Soil Absorption System 4
Large Soil Absorption System Design & Construction 21
Limitations on Decision, Variances 20
Limiting Layer 4
Liquid Depth, Septic Tanks Design & Construction Standards 10
- M**
Manhole Extension, Septic Tanks Design & Construction Standards 14
Manholes, Septic Tanks Design & Construction Standards 13
Manufactured Tank Markings, Septic Tanks Design & Construction Standards 10
Materials, Septic Tanks Design & Construction Standards 10
Minimum Separation Distances Between Septic Tanks & Features of Concern, Septic Tanks Design & Construction Standards 14
Minimum Septic Tank Capacities, Septic Tanks Design & Construction Standards 10
Module Size, Large Soil Absorption System Design & Construction 21
Monitoring & Reporting, Large Soil Absorption System Design & Construction 23
Mottling 4
Multiple Tank or Compartment Capacity, Septic Tanks Design & Construction Standards 14
- N**
New System 4
Nondischarging System 4
Notice of Denial, Permit & Permit Application 8
Notice of Design Disapproval 19
- O**
Objections to Petition, Variances 20
One or More Inspections Required 20
Operation & Maintenance, Large Soil Absorption System Design &

Construction 23
 Operation, Maintenance & Monitoring,
 Permit & Permit Application 8
 Other Components 19
 Outlets, Septic Tanks Design &
 Construction Standards 13

P

Permit 4
 Permit & Permit Application 6
 Permit Application 6
 Permit Fee, Permit & Permit
 Application 9
 Permit Renewal, Permit & Permit
 Application 8
 Permit Required, Installer's
 Registration Permit 9
 Permit Required, Permit & Permit
 Application 6
 Permits Required Annually, Installer's
 Registration Permit 9
 Petition for Variance 19
 Plan & Specification Submittal 19
 Pollutants 4
 Public Notice, Variances 19
 Public System 4

R

Repair 4

S

Scarp 4
 Scum Storage, Septic Tanks Design &
 Construction Standards 13
 Sectional Tanks, Septic Tanks Design &
 Construction Standards 14
 Seepage Pit, Subsurface Treatment &
 Distribution Design &
 Construction 18
 Septic Tank Abandonment, Septic
 Tanks Design & Construction
 Standards 15
 Septic Tanks Design & Construction
 Standards 10
 Sewage 4
 Site Investigation, Large Soil
 Absorption System Design &
 Construction 21
 Site Suitability, Subsurface Treatment
 & Distribution Design &
 Construction 15
 Soil Barrier, Subsurface Treatment &
 Distribution Design &
 Construction 18
 Soil Texture 4
 Split Flows, Septic Tanks Design &
 Construction Standards 14
 Standard Absorption Bed, Subsurface

Treatment & Distribution Design &
 Construction 18
 Standard Drainfield, Subsurface
 Treatment & Distribution Design &
 Construction 15
 Standard Large Soil Absorption System
 Design Specifications 21
 Standard Subsurface Treatment &
 Distribution Facility Design &
 Construction 15
 Standard Subsurface Treatment &
 Distribution Facility
 Specifications 17
 Standard System 4
 Substantiating Receipts & Delivery
 Slips, Inspections 20
 Subsurface System 4
 Subsurface System Replacement
 Area 6
 Subsurface Treatment & Distribution
 Facility Sizing 17
 Surface Water - Intermittent,
 Permanent, Temporary 4
 System 5
 System Limitations 5

T

Technical Allowance, Variances 19
 Technical Guidance Committee 6
 Technical Guidance Manual for
 Individual & Subsurface Alternative
 Sewage Disposal 6
 Total Volume, Septic Tanks Design &
 Construction Standards 13

V

Variances 19
 Violations & Penalties 21

W

Wastewater 5
 Wastewater Distribution, Subsurface
 Treatment & Distribution Design &
 Construction 18
 Wastewater Flows From Various
 Establishments in Gallons Per Day,
 Septic Tanks Design & Construction
 Standards 11
 Water Table 5
 Waters of the State 5

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2010 NOV 19 PM 3:33

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

AFFIDAVIT OF TOM WILSON

STATE OF IDAHO }
 }ss.
COUNTY OF KOOTENAI }

TOM WILSON, being first duly sworn under oath deposes and says:

1. I am over the age of 18 years. I make this affidavit of my own personal
knowledge, and I am competent to testify to the matters set forth herein.

2. My wife, Eileen Wilson, and I reside at 2414 E. Homestead Loop, Hayden, Idaho 83835. Our property is adjacent to the property owned by Peggy Harriman which is the subject of this matter (hereinafter "the Subject Property"). The south side of our property adjoins the north end of the Harriman property. We moved to our property in April of 1998 and have resided there continuously ever since.

3. We are well acquainted with Peggy Harriman and Terry Saylor, who we believe is Ms. Harriman's husband. Both Ms. Harriman and Mr. Saylor reside on the Subject Property.

4. In the late 1990s we noticed that roads and campsites had been cleared on the western portion of the Subject Property, and that electricity, water and sewer hookups had been installed in this portion of the Subject Property. However, until August of 2007, we did not ever notice any recreational vehicles (RVs) using the property as a campsite, and the areas which had been cleared for campsites had become overgrown.

5. The Subject Property has continued to be used as an RV park in 2008 and 2009. Although it is used the most during the summer, I have noticed RVs on the property throughout the year.

6. We took several photographs of the Subject Property from our back (south) property line during the summer of 2008 & 2009. True and correct copies of these photographs which I took in 2008 & 2009 are attached as **Exhibits 1 through 8** to this Affidavit, and are incorporated by reference herein. Exhibit 1 shows a drywell culvert which I saw on the property. Exhibits 2 through 6 show RVs with sewage hoses hooked up to sewer hookups on the site.

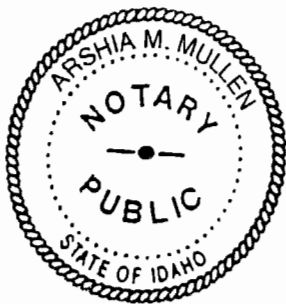
7. On August 6, 2009, Eileen and I met with Civil Deputy Prosecuting Attorney Pat Braden to discuss the situation and show him the RV park firsthand. We walked to the back of our property and could clearly see the RV park. At that time, I saw several RVs parked on the Subject Property and people walking around the property. It appeared to be full at that time.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 23rd day of September, 2009.

Thomas J Wilson
Tom Wilson

SUBSCRIBED AND SWORN before me this 23rd day of September, 2009.

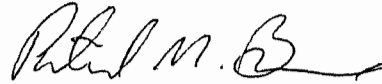


Arshia M. Mullen
Notary Public for the State of Idaho
Residing at Coeur d'Alene ID
My Commission Expires May 29, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2010, I caused to be served a true and complete copy of the foregoing via first class mail, postage prepaid, to:

Peggy Harriman-Sayler
Terry Sayler
P.O. Box 2585
Hayden, ID 83835



Patrick M. Braden

F 00 PY

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2010 NOV 19 PM 3: 32

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

**MOTION FOR SUMMARY
JUDGMENT**

COME NOW the Plaintiffs, KOOTENAI COUNTY, a political subdivision of the
State of Idaho, and PANHANDLE HEALTH DISTRICT NO. 1, a public health district
duly established pursuant to Title 39, Chapter 4, Idaho Code, by and through their
attorney of record, Patrick M. Braden, Civil Deputy Prosecuting Attorney, and pursuant

MOTION FOR SUMMARY JUDGMENT – 1

H:\Building And Planning\Code Enforcement Cases\Harriman-Saylor - CV-09-3339\MSJ\Motion For Summary

Judgment.DOCX

to Rule 56 of the Idaho Rules of Civil Procedure, move this Honorable Court for an Order granting summary judgment in favor of Plaintiffs Kootenai County and Panhandle Health District No. 1, on the grounds and for the reason that there are no genuine issues of material fact which exist to preclude summary judgment, and Plaintiffs Kootenai County and Panhandle Health District No. 1 are entitled to summary judgment as a matter of law. This motion is supported by the papers and pleadings on file herein, the Memorandum filed contemporaneously herewith, and the following affidavits:

Affidavit of Eileen Wilson, filed 9/22/09

Affidavit of Sandra Forstrom, filed 9/22/09

Affidavit of Dennis Lacy, filed 9/22/09

Affidavit of Shane Harmon, filed 9/22/09

Affidavit of Kristina Keating, filed 9/22/09

Affidavit of Patrick M. Braden, filed 9/22/09

Affidavit of Sandra Forstrom in Support of Motion for Contempt, filed 8/17/10

Affidavit of Roxanne Webb in Support of Motion for Summary Judgment, filed contemporaneously herewith

Affidavit of Tom Wilson, filed contemporaneously herewith

Oral argument is respectfully requested.

Dated this 10th day of November, 2010.

Kootenai County Prosecuting Attorney



Patrick M. Braden, Civil Deputy
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2010, I served a true and complete copy of the foregoing by U.S. mail, postage prepaid, addressed to:

Peggy Harriman
Terry Saylor
P.O. Box 2585
Hayden, ID 83835



Patrick M. Braden

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2010 NOV 19 PM 3: 32

CLERK DISTRICT COURT

DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

**MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

COME NOW the Plaintiffs, KOOTENAI COUNTY, a political subdivision of the State of Idaho, and PANHANDLE HEALTH DISTRICT NO. 1, a public health district duly established pursuant to Title 39, Chapter 4, Idaho Code, by and through their attorney of record, Patrick M. Braden, Civil Deputy Prosecuting Attorney, and pursuant to Rule 56 of

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

H:\Building and Planning\Code Enforcement Cases\Harriman-Saylor - CV-09-3339\MSJ\Memorandum in Support of MSJ.docx

the Idaho Rules of Civil Procedure, provide this memorandum in support of their Motion for Summary Judgment filed contemporaneously herewith.

MATERIAL FACTS

A. Introduction

The real property which is the subject of this action is located in Kootenai County, Idaho, and legally described as Tax No. 14055, a portion of Government Lot 3, Section 19, Township 52 North, Range 3 West Boise Meridian, Kootenai County, Idaho (hereinafter referred to as the "Subject Property"). The Kootenai County Assessor has assigned Parcel Identification Number 52N03W-19-5550 and Alternate Identification Number (AIN) 172324 to the Subject Property. A map depicting the location of the Subject Property, with the Subject Property highlighted, is attached as Exhibit "B" to the Complaint previously filed in this matter. The Subject Property is located in the Rural zone. *Affidavit of Sandra Forstrom, p. 2; Affidavit of Dennis Lacy, p. 2.*

Defendant PEGGY HARRIMAN (a/k/a Peggy Harriman-Saylor) is the owner of the real property described above. *Affidavit of Patrick M. Braden, Exhibits 1-5.* Defendant TERRY SAYLER is the husband of Defendant PEGGY HARRIMAN and is one of the operators of the business located on the Subject Property. The Defendants will be hereinafter referred to collectively as "Defendants."

B. Violations of County Ordinances

In 1999, the County first received complaints that Defendants were operating a recreational vehicle (RV) park on the Subject Property. *Affidavit of Sandra Forstrom, p. 3.* When Dennis Lacy, a Code Compliance Officer/Code Inspector with the Kootenai County Building and Planning Department (hereinafter referred to as "the Department"), inspected

the property on June 22, 2005, however, he found that the property was not being used as an RV park at that time. In fact, it appeared that the property had not been used as an RV park for a considerable amount of time prior to that. *Affidavit of Dennis Lacy, p. 3 & Exhibits 1-5.* On January 10, 2007, Shane Harmon, a Residential Appraiser III with the Kootenai County Assessor's Office, visited the property and observed several campsites which contained electrical, water and sewer hookups. *Affidavit of Shane Harmon, p. 2-3 & Exhibits 1-12.*

The Department again started to receive complaints regarding an RV park on the subject property again in 2007. *Affidavit of Sandra Forstrom, p. 3.* On September 11, 2007, Lacy viewed the Subject Property again, this time from a neighboring property with the consent of the neighboring property owner. At that time, he observed that the campsite areas had been cleared of vegetation and had picnic tables, and that they still contained electrical and water hookups. He also observed an RV in one of the sites. Based on those observations, he determined that the Subject Property was being used as an RV park at that time. *Affidavit of Dennis Lacy, p. 3-4 & Exhibits 6-22.*

On August 1, 2008, Sandra Forstrom, a Code Enforcement Officer with the Department, viewed the Subject Property from a neighboring property to the north with the consent of the property owner. She observed numerous RVs on the Subject Property at that time. She also observed that these RVs were parked in campsites which contained electrical, water and sewer hookups which were being used. Based on these observations, she determined that the Subject Property was being used as an RV park. She posted a Notice of Violation at the front of the property at that time, as no conditional

use permit (CUP) had been issued for the RV park. *Affidavit of Sandra Forstrom, p. 3-4 & Exhibits 1-10.*

Eileen and Tom Wilson have owned the property to the north of the Subject Property since April of 1998. They first observed the operation of the Subject Property as an RV park in August of 2007. While they have observed the most use in the summer, they have observed RVs in the park throughout the year. They have seen the Subject Property being used as an RV park on a continuous basis, in 2007, 2008 and 2009. They have observed sewer hookups located on the Subject Property being used by RVs, and have observed conditions which could easily pose a fire hazard which could spread to their property. They have seen campers from the RV park trespass on their property, and she has had to pick up garbage which campers have deposited on their property. *Affidavit of Eileen Wilson, p. 2-4; Affidavit of Tom Wilson, p. 2-3.*

Beginning on July 15, 2010, Kootenai County code enforcement staff received complaints from several neighbors who stated that they had observed that people were once again camping in RVs on the Subject Property. Thus, on July 19, 2010, Ms. Forstrom viewed the Subject Property from Cedar Grove Lane and from a neighboring property to the north with the consent of the property owner. At that time, she observed several RVs parked in various campsites on the Subject Property, and took four photographs. She determined that Defendants were once again using the Subject Property as an RV park. *Affidavit of Sandra Forstrom in Support of Motion for Contempt, p. 3-4 & Exhibit 1.*

On July 29, 2010, Ms. Forstrom received a telephone call from a neighbor who stated that there were more RVs which had moved onto the Subject Property. Later that

day, she viewed the Subject Property from a neighboring property to the north with the consent of the property owner. At that time she again observed seven RVs on site, one fifth wheel hauler, and two vehicles parked in various campsites on the Subject Property. Six of the RVs, the fifth wheeler hauler, and the two vehicles were located on the north side of parcel, while the other RV was parked in the easternmost driveway. While viewing the Subject Property, Ms. Forstrom took twelve photographs. She again determined that Defendants were continuing to use the Subject Property as an RV park. No CUP has been issued for the operation of an RV park on the Subject Property, nor has one been applied for. *Affidavit of Sandra Forstrom in Support of Motion for Contempt, p. 3-4 & Exhibit 2.*

The County has also cited Defendants for violations of the Zoning Ordinance and the Kootenai County Building Code Ordinance, Title 7, Chapter 1, Kootenai County Code, and building codes adopted thereby, pertaining to a building containing space for a second residence and a bathroom/shower facility associated with the RV park. The violation was for a second residence on the property and for a commercial use without a CUP. In addition, this building was erected or placed on its current site without the appropriate permit, and has been occupied and/or used without a certificate of occupancy issued by the County. *Affidavit of Roxanne Webb, p. 3-5.*

C. Violations of Panhandle Health District Regulations

The District issued a permit for an individual subsurface sewage disposal system for the Subject Property (Permit No. 94-28-50531) in 1994 which is still valid. The system subject to this permit, however, is allowed to serve only one (1) single family residence with a maximum of three (3) bedrooms. *Affidavit of Kristina Keating, p. 2 & Exhibit 1.* The

District also issued a permit for an subsurface sewage disposal system for twenty-eight (28) RV sites on the Subject Property (Permit No. 99-28-0008). However, the system contemplated in this permit was never installed or approved by the District. Therefore, this permit expired in May of 2000. *Affidavit of Kristina Keating, p. 3 & Exhibit 2.*

Nevertheless, a site inspection in September of 2007 by Kristina Keating, a Senior Environmental Health Specialist with the District, revealed several sewer hookups within the RV park and a building with restrooms and showers. At that time, no valid permit had been issued by the District for the subsurface sewage disposal system serving these facilities and the second residence on the Subject Property. *Affidavit of Kristina Keating, p. 3.*

On September 19, 2007, Ms. Keating sent Defendants a letter notifying them that this subsurface sewage disposal system was being operated in violation of the District's Environmental Health Code and/or the Individual Sewage Disposal Rules of the Idaho Department of Environmental Quality (DEQ). It further stated that the "[f]ailure to correct this potential violation may result in a Notice of Violation, and notification of the Kootenai County Prosecuting Attorney." *Affidavit of Kristina Keating, p. 3-4 & Exhibit 3.* On September 5, 2008, Ms. Keating issued a Notice of Violation for the subsurface sewage disposal system serving the RV Park, the bathroom/shower building and the second residence on the Subject Property. *Affidavit of Kristina Keating, p. 4 & Exhibit 4.*

On December 17, 2008, Nancy Stricklin, legal counsel for the District, sent Defendants a letter notifying them that "you must immediately stop using the non-permitted septic system/systems. Your continued use of the non-permitted system is a public health hazard." This letter indicated that the District would be willing to enter into a

Consent Order regarding this system pursuant to Idaho Code § 39-108 on or before December 30, 2008, and warned that if she failed to enter into a Consent Order by that date, "this matter will be forwarded to the appropriate prosecutorial agency for enforcement." *Affidavit of Kristina Keating, p. 4-5 & Exhibit 5.*

The condition of the Subject Property has not materially changed since the original Notice of Violation was issued with respect to the unpermitted septic system set forth above. To date, no Consent Order has been entered into between Defendants and the District. *Affidavit of Kristina Keating, p. 5.*

STANDARD OF REVIEW

I. Standard of Review

The Idaho Court of Appeals has recently set forth the standard of review of motions for summary judgment brought under Rule 56 of the Idaho Rules of Civil Procedure as follows:

We first note that summary judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ... When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion.

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f).

Nelson v. Anderson Lumber Co., 140 Idaho 702, 706-07, 99 P.3d 1092, 1096-97 (Ct. App. 2004) (citations omitted). The *Nelson* Court then went even further, quoting the definitive United States Supreme Court case on summary judgments:

The United States Supreme Court, in interpreting Federal Rule of Civil Procedure 56(c), which is identical in all relevant aspects to I.R.C.P. 56(c), stated:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265, 273-74 (1986) (citations omitted). The language and reasoning of *Celotex* has been adopted in Idaho.

Id. at 707, 99 P.3d at 1097.

ARGUMENT

- I. **Summary judgment is appropriate because the operation of a recreational vehicle (RV) park on the Subject Property without a conditional use permit (CUP) from Kootenai County is a violation of the Zoning Ordinance.**

Section 9-13-7 of the Kootenai County Zoning Ordinance, Title 9, Kootenai County Code (hereinafter referred to as the "Zoning Ordinance") prohibits commercial uses of property located within the Rural zone, except as specifically permitted under Section 9-13-5 of the Zoning Ordinance, or as specifically permitted with a duly approved conditional

use permit under Section 9-13-9 of the Zoning Ordinance.¹ In addition, the definition of “uses, prohibited” in section 9-2-2 of the Zoning Ordinance prohibits “[t]hose uses not specifically enumerated as permitted uses.”

Section 9-13-9 of the Zoning Ordinance permits the use of property located within the Rural zone as a commercial resort upon the issuance of, and subject to the conditions placed on, a duly approved conditional use permit. A “commercial resort” is defined in section 9-2-2 of the Zoning Ordinance as “[a] privately-owned, outdoor recreation area, operated for profit” which “may include permanent facilities for overnight or seasonal living, camping areas, recreational vehicle parks, and limited commercial activities associated with convenience goods and services that serve to enhance the primary recreational use or activity.” Commercial resorts which operate lawfully pursuant to a duly issued CUP must comply with the standards set forth in section 9-24-5 of the Zoning Ordinance, and with the terms and conditions contained in the permit.

Here, the affidavits that have been filed in this case clearly show that an RV park has operated continuously since August of 2007 on the Subject Property after a prior period of inactivity. *Affidavit of Sandra Forstrom, p. 2-4 & Exhibits 1-10; Affidavit of Dennis Lacy, p. 2-4 & Exhibits 1-5 (inactive in 2005), Exhibits 6-22 (active in 2007); Affidavit of Sandra Forstrom in Support of Motion for Contempt, p. 2-4 & Exhibits 1-2; Affidavit of Roxanne Webb, p. 5 & Exhibit A.* Such operation is unlawful because it is a conditional use requiring the issuance of a CUP, but in fact no CUP has been issued by

¹ A copy of the Kootenai County Zoning Ordinance, as enacted by adoption of Ordinance No. 401, is attached as Exhibit 6 to the Affidavit of Patrick M. Braden previously filed on September 22, 2009 in this action. The Zoning Ordinance has been amended three times since the adoption of Ordinance No. 401; however, those amendments are not germane to this matter.

the County for this use. See *Affidavit of Sandra Forstrom*, p. 3-4; *Affidavit of Roxanne Webb*, p. 5-6.

Because no genuine issue of material fact exists as to whether the RV park and associated bathroom/shower facility located on the subject property are being operated in violation of County ordinance provisions, Plaintiff Kootenai County is entitled to judgment as a matter of law as to this issue. Therefore, the Court should enter summary judgment in favor of the County accordingly. It should then enter an injunction permanently restraining the continuance of the unlawful operation of the RV park and associated bathroom/shower facility on the subject property unless the County subsequently approves the necessary permits, including, without limitation, a CUP for the RV park and any associated building and/or site disturbance permits which may be necessary for such operation.

II. Summary judgment is appropriate because Defendants erected or moved a building on the Subject Property without the appropriate permit from Kootenai County, and are occupying this building without a Certificate of Occupancy from Kootenai County.

In order to construct, alter, move, demolish, repair, or use any building or structure within the unincorporated area of Kootenai County, a duly issued building permit is required under both the zoning ordinance and building code ordinance in effect at any given time. This has been the case for a number of years. See *Affidavit of Roxanne Webb*, p. 4 & Exhibits B-F; see also *Affidavit of Patrick M. Braden*, Exhibit 6. Similarly, a duly issued certificate of occupancy is, and has long been, required before a building or structure may be used or occupied. See *Affidavit of Roxanne Webb*, p. 4 & Exhibits B-F; see also *Affidavit of Patrick M. Braden*, Exhibit 6.

Permits issued by a governmental entity, including building permits, are vested under and governed by the regulations in place at the time of permit issuance. *Chisholm v. Twin Falls County*, 139 Idaho 131, 134-35, 75 P.3d 185, 188-89 (2003). Therefore, it is important to examine the dates on which building permits were issued for structures on the Subject Property, the ordinances in effect at that time, and the work covered (and not covered) under those permits.

The records of the Department regarding this matter contain records of various visits to the Subject Property by staff from both the Kootenai County Building and Planning Department and the Kootenai County Assessor's Office, including photographs of the buildings located on the property. These records and photographs indicate that there is a building located on the Subject Property which is being used in part as a residence and in part as a bathroom/shower facility in conjunction with the recreational vehicle (RV) park being operated on the property. *See Affidavit of Roxanne Webb, p. 3 & Exhibit A.*

Department records also show that Building Permit No. 23493 was issued for a single family residence with an existing foundation on the subject property on July 27, 1994, and that a certificate of occupancy (CO) was issued for that residence. These records also show that Building Permit No. 28746 was issued for additions and/or alterations of that single family residence on March 23, 1998. *See Affidavit of Roxanne Webb, p. 3 & Exhibit A.* Although Department records originally did not show that any final inspection had been performed, Defendant Terry Saylor provided Roxanne Webb, employed as a Planner I/Code Enforcement in the Department, with satisfactory proof that these additions and/or alterations did pass a final inspection after the Complaint was filed in this matter. Ms. Webb then determined that no CO was required in conjunction with

Building Permit No. 28746. However, when Ms. Webb discussed this matter with Mr. Saylor, he stated that the building containing the bathroom/shower facility and space for a second residence had been moved from its original site to its current site at the same time as the single family residence was constructed pursuant to Permit Nos. 23493 and 28746. *Affidavit of Roxanne Webb, p. 3.*

Section 28.02 of the Zoning Ordinance in effect at that time, Ordinance No. 159, as amended through Ordinance No. 259, and all subsequently enacted zoning ordinances have provided that “[i]t shall be unlawful to construct, alter, move, demolish, repair, or use any building or structure within Kootenai County, except in compliance with Kootenai County Building Code Ordinance No. 90 and subsequent amendments.” Section 28.02 of Ordinance No. 159 states that “[i]t shall be unlawful to use or occupy, or permit the use or occupancy, of any building or premises, or both, or part thereof thereafter created, erected, changed, converted, or wholly or partly altered, or enlarged in its use or structure until a Certificate of Occupancy shall have been issued therefor.” *See Affidavit of Roxanne Webb, Exhibits B (Ordinance No. 159) and C (Ordinance No. 259).*

In addition, section 4.0 of Ordinance No. 137A, adopted December 3, 1991, and all subsequent building code ordinances have required the issuance of a building permit before any of those listed actions may be performed. Section 10.0 of Ordinance No. 137A and section 9.0 of Ordinance No. 221, the building code ordinances in effect around the time in which the second residence/bathroom/shower building was moved, each required a moving permit before an existing structure could be moved to another site. *See Affidavit of Roxanne Webb, Exhibits D (Ordinance No. 137A), E (Ordinance No. 221A), and F (Ordinance No. 409).*

The Department has no record of the issuance of a building permit authorizing construction associated with the second residence/bathroom/shower building on the current site, or authorizing the moving of that building to the current site. Nothing on the face of either Permit No. 23493 or Permit No. 28746 indicates that it covered either construction or placement of this building on the current site. Furthermore, the Department has no record of any issuance of a certificate of occupancy authorizing the occupation and use of this building. *See Affidavit of Roxanne Webb, p. 4-5.*

Because no genuine issue of material fact exists as to whether the RV park and second residence/bathroom/shower building located on the Subject Property are being operated in violation of County zoning and building code ordinance provisions, Plaintiff Kootenai County is entitled to judgment as a matter of law as to this issue. Therefore, the Court should enter summary judgment in favor of the County accordingly. It should then enter an injunction permanently restraining the occupancy and use of this building unless the County subsequently approves the necessary building permit and issues a certificate of occupancy for this building.

III. Summary judgment is appropriate because the utilization of a subsurface sewage disposal system on the Subject Property without a permit from Panhandle Health District (PHD) is a violation of PHD's Environmental Health Code.

Idaho Code §§ 39-414 and 39-419 provide public health districts with the authority to administer and enforce all state and district health laws, regulations and standards, and to bring a civil action for damages, civil penalties, and/or equitable relief arising from any violation of any provision of public health laws, or of any lawful notice, order, standard, rule, regulation, or ordinance issued pursuant thereto. Pursuant to Idaho Code § 39-416, the Subject Property is subject to the Rules of Idaho Public Health District #1, also known

as the Environmental Health Code of Panhandle Health District, IDAPA 41.01.01 (hereinafter "Environmental Health Code"), and the Individual/Subsurface Sewage Disposal Rules promulgated by the Idaho Department of Environmental Quality (DEQ), IDAPA 58.01.03 (hereinafter "Individual Sewage Disposal Rules").²

Rule 100.03 of the Environmental Health Code governs the permitting and installation of private sewage disposal systems within the District. This Rule provides that "[n]o residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer," and that "[n]o dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents."

Rule 002.04 of the Individual Sewage Disposal Rules provides that owners of real property are responsible for storing, treating, and disposing of sewage and wastewater generated on that property, connecting all plumbing fixtures on that property that discharge wastewater to an approved wastewater system or facility, and obtaining necessary permits and approvals for installation of individual or subsurface sewage and wastewater disposal systems. Rule 005.01 of the Individual Sewage Disposal Rules provides that, with certain exceptions not germane to this matter, it is unlawful for any person to cause or to perform the modification, repair or construction of any individual or

² True and correct copies of the Environmental Health Code and the Individual Sewage Disposal Rules are attached as Exhibit 7 and Exhibit 8, respectively, to the Affidavit of Patrick M. Braden previously filed on September 22, 2009 in this action.

subsurface sewage disposal system within the state of Idaho unless there is a valid installation permit authorizing that activity.

The Affidavit of Kristina Keating previously filed on September 22, 2009 in this action shows that while the District did issue a permit for a subsurface sewage disposal system for twenty-eight (28) RV sites on the Subject Property (Permit No. 99-28-0008), the system contemplated in this permit was never installed or approved by the District. Therefore, this permit expired in May of 2000. *Affidavit of Kristina Keating, p. 3 & Exhibit 2.* Nevertheless, a site inspection in September of 2007 by Kristina Keating, a Senior Environmental Health Specialist with the District, revealed that several sewer hookups within the RV park had in fact been installed without inspection or approval by the District, and that there was a building with restrooms and showers nearby. *Affidavit of Kristina Keating, p. 3.* Therefore, the continued operation of the septic system serving the RV park, a building containing restrooms and showers, and a second residence on the Subject Property without a permit issued by the District is a violation of Rules 100.03 and 110 of the Environmental Health Code, and of Rules 002.04 and 005.01 of the Individual Sewage Disposal Rules. *See Affidavit of Kristina Keating, p. 3-5.*

Because no genuine issue of material fact exists as to whether the subsurface sewage disposal system serving the RV park associated bathroom/shower facility located on the subject property are being operated in violation of District and DEQ regulations, Plaintiff Panhandle Health District #1 is entitled to judgment as a matter of law on this issue. Therefore, the Court should enter summary judgment in favor of the District accordingly. It should then enter an injunction permanently restraining the continued

operation of this subsurface sewage disposal system on the subject property unless the District grants subsequent approval for such operation.

IV. Summary judgment is appropriate because the condition of the Subject Property constitutes a public nuisance.

The purpose of a CUP is set forth in the definition of "conditional use" contained in section 9-2-2 of the Zoning Ordinance. CUPs ensure that certain land uses are "permitted to locate only after review and ... [are subject to] a special degree of control to make such use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities and facilities." K.C.C. § 9-2-2, definition of "conditional use." Commercial resorts, which may include RV parks and camping facilities, are a conditional use in the Rural zone; therefore, it is possible to lawfully operate an RV park on land located in this zone, so long as the applicable performance standards contained in the Zoning Ordinance are met, the use is compatible with other permitted uses in the same vicinity and zone, the requirements of other jurisdictional agencies are met, and any site-specific conditions reasonably related to the proposed operation which are set forth in the CUP are met. See K.C.C. § 9-9-9, 9-17-1 *et seq.*, 9-24-5.

The CUP process and the performance standards in the Zoning Ordinance which apply to commercial resorts in general, and RV parks specifically, regulate such things as noise, dust, stormwater runoff, landscape and/or fencing buffers, allowable associated uses, access to and from the property, management of traffic, and parking. These standards are intended to protect not only neighboring properties, but the general public as well – including customers of the RV park. Here, no CUP has been issued or apply for, yet the RV park has operated nonetheless, without the benefit of performance standards

which ensure that the RV park is operated in a manner such that it does not become a nuisance to the neighborhood. *See also Affidavit of Eileen Wilson, p. 2-4 & Exhibits 1-5; Affidavit of Tom Wilson, p. 2-3.*

Perhaps even more importantly, the continued operation of the septic system serving the RV park and the bathroom/shower facility on the Subject Property not only violates District and DEQ regulations, but also constitutes a public health hazard because of the potential for pollution of the Spokane Valley/Rathdrum Prairie Aquifer (hereinafter referred to as "the Aquifer") due to the location of the Subject Property over a recharge area for the Aquifer, the sole source of drinking water for over 500,000 people in two states. *See Affidavit of Kristina Keating, p. 5.* To allow this activity to continue unabated would be in derogation of the District's right – and duty – to protect the public from activities which, without these agencies' oversight, constitute a public nuisance.

Because of the undisputed lack of a CUP from the County and its associated performance standards designed to protect neighbors and the public, and the undisputed lack of approval of the septic system by the District, along with the evidence of activities associated with the RV park as set forth in the Wilsons' affidavits, there is no genuine issue of material fact that the continued operation of the RV park, the associated bathroom/shower facility, and the septic system which serves them, constitute a public nuisance as defined in Idaho Code §§ 52-101 and 52-102. The only sure way to ensure that this nuisance is abated is for the Court to grant judgment as a matter of law in favor of the County and the District as to this issue, and to then enter a permanent injunction restraining these activities unless Defendants are able to obtain the appropriate permits and/or approvals from the County and the District for these operations.

CONCLUSION

There is no genuine issue of material fact as to whether Defendants are operating an RV park and an associated bathroom/shower facility on the Subject Property without a CUP as required in the rural zone of unincorporated Kootenai County. There is also no genuine issue of material fact as to whether the building containing the bathroom/shower facility and a second residence has been constructed and/or moved on the Subject Property without a duly issued building or moving permit, and there is also no genuine issue of material fact that no certificate of occupancy has been issued for this building. In addition, there is no genuine issue of material fact as to whether Defendants have operated a subsurface sewage disposal system on the Subject Property without a duly issued permit from Panhandle Health District. Because of the lack of any genuine issue of material fact, and based on the law cited above, each Plaintiff in this action is entitled to judgment as a matter of law.

Therefore, for the reasons stated above, Plaintiff respectfully requests that the Court grant the County's Motion for Summary Judgment in favor of Plaintiff and against Defendants in this matter, and that the Court enter a judgment and order as follows:

1. That Defendants be required to remedy the violations of the Zoning Ordinance as determined by the Director of the Department, or his or her designee, including, without limitation, ceasing and desisting from using the Subject Property as an RV park or obtaining a conditional use permit for such use;
2. That Defendants be required to remedy the violations of the Building Ordinance and Zoning Ordinance related to building permits and certificates of occupancy for the building containing the second residence and the bathroom/shower facility, as determined by the Director of the Department, or his or her designee, including, without limitation, obtaining a building permit and certificate of occupancy for this structure;
3. That Defendants be required to remedy the violations of the Environmental Health Code and the Individual Sewage Disposal Rules, as determined by the Director of the District, or his or her designee, including, without limitation, ceasing and

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 18

H:\Building and Planning\Code Enforcement Cases\Harriman-Saylor - CV-09-3339\MSJ\Memorandum in Support of MSJ.docx

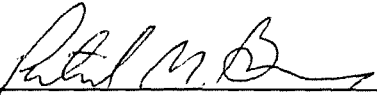
desisting from using any individual subsurface sewage disposal system on the Subject Property except as permitted under the terms and conditions of Permit No. 94-28-50531, or obtaining a permit for any individual subsurface sewage disposal system on the Subject Property not currently permitted pursuant to Permit No. 94-28-50531;

4. That the District be awarded a civil penalty in an amount not to exceed one thousand dollars (\$1,000) per day, up to a maximum of ten thousand dollars (\$10,000), for any violation of the Environmental Health Code and/or the Individual Sewage Disposal Rules which the Court finds to have been committed by the Defendants, or either of them;
5. That Defendants be enjoined from further violating the provisions of the Zoning Ordinance, the Building Code Ordinance and building codes adopted thereby, the Environmental Health Code, and the Individual Sewage Disposal Rules on the Subject Property;
6. That Defendants be required to permanently abate the nuisance on the Subject Property and permanently enjoining the Defendants from further violations of the applicable provisions of Idaho Code on the Subject Property;
7. That the County and District, respectively, and their employees, contractors, and/or agents, be vested with authority to enter the Subject Property to enforce, and/or abate any violation of, any judgment entered in this action within their respective jurisdiction should Defendants fail to do so within a reasonable period after entry of such judgment, which period shall be no less than ninety (90) days;
8. That in the event it becomes necessary for the County or the District to enter the Subject Property to enforce, and/or abate any violation of, any judgment entered in this action, that the Sheriff be required to provide deputies such as would be sufficient to keep the peace during the period of such entry.

In order to enable the Court to enter final judgment in this matter, Plaintiffs hereby stipulate and agree that any and all claims raised in the Complaint filed in this action which have not been addressed in this memorandum shall be deemed to be hereby withdrawn.

RESPECTFULLY SUBMITTED this 19th day of November, 2010.

Kootenai County Prosecuting Attorney



Patrick M. Braden, Civil Deputy
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2010, I served a true and complete copy of the foregoing by U.S. mail, postage prepaid, addressed to:

Peggy Harriman
Terry Saylor
P.O. Box 2585
Hayden, ID 83835



Patrick M. Braden

FILE

Barry McHugh
Kootenai County Prosecuting Attorney
By: Patrick M. Braden, ISB #6020
Civil Deputy Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Telephone: (208) 446-1620
Fax: (208) 446-1621

Attorney for Plaintiffs

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2010 DEC 15 PM 4:47

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KOOTENAI COUNTY, a political
subdivision of the State of Idaho, and
PANHANDLE HEALTH DISTRICT NO. 1,
a public health district duly established
pursuant to Title 39, Chapter 4, Idaho
Code,

Plaintiff,

vs.

PEGGY HARRIMAN and TERRY
SAYLOR,

Defendants.

Case No. **CV-09-3339**

**REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

COME NOW the Plaintiffs, KOOTENAI COUNTY, a political subdivision of the State of Idaho, and PANHANDLE HEALTH DISTRICT NO. 1, a public health district duly established pursuant to Title 39, Chapter 4, Idaho Code, by and through their attorney of record, Patrick M. Braden, Civil Deputy Prosecuting Attorney, and pursuant

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

H:\Building and Planning\Code Enforcement Cases\Harriman-Saylor - CV-09-3339\MSJ\Reply Memorandum in Support of MSJ.docx

to Rule 56 of the Idaho Rules of Civil Procedure, provide this reply memorandum in support of their Motion for Summary Judgment filed on November 19, 2010.

ARGUMENT

I. Defendants' response to Plaintiffs' Motion for Summary Judgment, and affidavit in support thereof, are untimely, and the failure to timely file a response has prejudiced Plaintiffs' ability to reply thereto.

When a motion for summary judgment and a supporting brief and affidavits have been timely filed, I.R.C.P. 56(c) requires the non-moving party to file and serve an answering brief and any opposing affidavits at least fourteen (14) days prior to the hearing on the motion. In this case, with the hearing on Plaintiffs' motion for summary judgment set from Wednesday, December 22, Defendants' brief and affidavits were to be filed and served on or before Wednesday, December 8. In fact, Defendants had not served any responsive brief or affidavits on the undersigned as of that date.

Defendants did file and serve "Defendants Response to Motion for Summary Judgment" and an "Affidavit of Defendants in Support to Stop Summary Judgment, and Submit Evidence" (hereinafter referred to as Defendants' Affidavit") on Tuesday, December 14, one day before Plaintiffs' reply brief was due. See I.R.C.P. 56(c). This has prejudiced Plaintiffs' ability to fully and timely respond to these responses. Therefore, the Court should strike these untimely responses, and grant summary judgment in favor of Plaintiffs.

II. Summary judgment is appropriate because Defendants have failed to show that there is a genuine issue for trial as to unpermitted building located on the Subject Property.

Defendants' Affidavit contends that the bathroom/residence building adjacent to the RV park on the west side of the Subject Property was in fact permitted under

Building Permit No. 28746. In support of this contention, they have submitted documentation associated with this permit, including a copy of the permit showing that a final inspection had been performed. *Defendants' Affidavit, Exhibit G.*

As indicated in Plaintiffs' Memorandum in Support of Motion for Summary Judgment (hereinafter referred to as Plaintiffs' Opening Brief), Plaintiffs do not dispute that Permit No. 28746 authorized work on Defendants' primary single family residence, and that a final inspection of that work had indeed been performed. However, as Roxanne Webb testified in her affidavit, there is nothing on the face of that permit, any of the documents associated with that permit, or any other County records that ever authorized work on the bathroom/residence building. She further testified that at the time that permit was issued, the Building Ordinance then in effect required the issuance of a moving permit before a structure could be moved from its original location, and that no such permit had ever been issued for that structure. *See Affidavit of Roxanne Webb, p. 3-5.* A copy of that ordinance is attached as Exhibit "D" to Ms. Webb's affidavit; subsequently enacted building ordinances are attached as Exhibits "E" and "F" to that affidavit.

Defendants have not submitted any competent testimony which would tend to rebut Ms. Webb's testimony, and have instead merely submitted conclusory statements regarding their interpretation of the scope of Permit No. 28746, which are not supported by any competent testimony, nor by anything on the face of that permit or supporting documents. Therefore, Defendants have failed to submit any testimony made on personal knowledge, or setting forth facts such as would be admissible in evidence, in opposition to the affidavits submitted by Plaintiffs in support of their motion for summary

judgment. I.R.C.P. 56(e). Accordingly, Defendants have failed to carry their burden to set forth specific facts showing that there is a genuine issue for trial. *Id.* Thus, the Court should grant summary judgment in favor of Plaintiff Kootenai County on this issue.

III. Summary judgment is appropriate because Defendants have failed to show that there is a genuine issue for trial as to the unpermitted wastewater disposal system located on the Subject Property.

Defendants' Affidavit also contains documentation and photographs regarding a permit issued by Plaintiff Panhandle Health District (Permit No. 99-28-0008) for a subsurface sewage disposal (septic) system to serve the RV park and adjacent bathroom/residence building, and the subsequent installation of a septic system serving the RV park and adjacent bathroom/residence building. *Defendants' Affidavit, Exhibit E.* It is undisputed that the District issued this permit; however, Defendants' own evidence shows that the system depicted in the plans submitted by Defendants were not acceptable to the District. *Id.* The face of the permit indicates that the system to be installed pursuant to the permit is subject to final inspection and approval, and that it expires after one year. *Id.*

The Affidavit of Kristina Keating filed in this matter on September 22, 2009, however, provides the rest of the story. She testified that the permit in question was indeed issued, but that the system contemplated in the permit was never installed or approved by the District. *Affidavit of Kristina Keating, p. 3.* Therefore, that permit expired in May of 2000. *Id.* Although she also testified that a site inspection in September of 2007 revealed the presence of a septic system serving the RV park and nearby bathrooms, showers, and residence, she made clear that the system actually

installed was not authorized under Permit No. 99-28-0008 or any other permit issued by the District. *Id.* p. 3-5.

Again, Defendants have not submitted any competent testimony which would tend to rebut Ms. Keating's testimony, and have instead merely submitted conclusory statements regarding their interpretation of the validity and scope of Permit No. 99-28-0008, which are not supported by any competent testimony, nor by anything on the face of that permit or supporting documents. Therefore, Defendants have failed to submit any testimony made on personal knowledge, or setting forth facts such as would be admissible in evidence, in opposition to the affidavits submitted by Plaintiffs in support of their motion for summary judgment. I.R.C.P. 56(e). Accordingly, Defendants have failed to carry their burden to set forth specific facts showing that there is a genuine issue for trial. *Id.* Thus, the Court should grant summary judgment in favor of Plaintiff Panhandle Health District on this issue.

IV. Summary judgment is appropriate because Defendants have failed to show that there is a genuine issue for trial as to whether the RV park being operated on the Subject Property is a lawful nonconforming use.

Defendants' main contention is that the RV park located on the Subject Property is in fact a "campground" or "dude ranch" which was established in 1999, and was allowed under the Kootenai County Zoning Ordinance in effect at that time, Ordinance No. 159. Thus, they argue, the RV park should be regarded as a nonconforming use of the Subject Property. However, for the reasons stated below, Defendants cannot show that they lawfully established an RV park on the Subject Property at any time after 1990, because even then such a use required a conditional use permit (CUP) in order to be lawfully operated in the Rural zone. Even if such use were found to be initially lawfully

established, there is no competent evidence that such use continued between 1999 and 2007, while there is competent evidence that such use in fact had been discontinued prior to its resumption in 2007.

- A. Defendants have failed to prove that the RV park is a lawful, nonconforming use.

Ordinance No. 159 was the version of the Kootenai County Zoning Ordinance which was enacted in August of 1990. *Affidavit of Roxanne Webb, Exhibit B.* It was subsequently amended in October of 1997 by enactment of Ordinance No. 259. *Affidavit of Roxanne Webb, Exhibit C.* Ordinance No. 159 defined "recreational vehicle park" as follows:

RECREATIONAL VEHICLE PARK – A parcel of land upon which three (3) or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles, or tents, as temporary living quarters for recreation, camping, or vacation purposes.

Affidavit of Roxanne Webb, Exhibit B, p. 10. Ordinance No. 159 defined "commercial resort" as follows:

COMMERCIAL RESORT – A privately-owned, outdoor recreation area, operated for profit. A commercial resort may include permanent facilities for overnight or seasonal living, camping areas, recreational vehicle parks, and limited commercial activities associated with convenience goods and services that serve to enhance the primary recreational use or activity.

Id., Exhibit B, p. 4 (emphasis added). Ordinance No. 259 did not change these definitions. The only place in Ordinance No. 159 and Ordinance No. 259 in which "recreational vehicle parks" are specifically called out as an allowed use is in the Commercial zone (and, by reference, in the Light Industrial zone as well). *Id., Exhibit B, p. 30-33.* They could also be permitted as part of a "commercial resort" in various

zones, including the Rural zone, upon issuance of a conditional use permit (CUP) by the Board of County Commissioners. *Id.*, Exhibit B, p. 45-48, Exhibit C, p. 12.

Defendants, however, are apparently arguing that a use which so obviously falls within the definition of "recreational vehicle park" is really a "dude ranch" or a "campground," both of which were allowed under Ordinance No. 159 and Ordinance No. 259. Neither of these terms were defined in either ordinance. Nevertheless, these ordinances clearly treated "recreational vehicle parks" separately from "dude ranches" and "campgrounds," setting forth two zones in which the former would be permitted without further land use approvals, and other zones in which they could be approved in conjunction with a CUP for a commercial resort.

Conversely, to treat the latter terms as being inclusive of RV parks would serve to defeat the intent of these ordinances to require approval of an RV park through the CUP process as a commercial resort. Dude ranches would presumably include activities associated with ranches, such as horseback riding, roping, etc. – none of which are in evidence here. Campgrounds would allow camping activities to be performed using equipment other than RVs, and without associated amenities such as electricity, water, and sewage disposal hookups, all of which have been installed (whether lawfully or not) here.

The fact that a site disturbance permit had been issued to enable the improvement of land for a campground does not change this analysis. First of all, the permit allowed only excavation and grading activities associated, admittedly, with a campground. It did not, however, authorize the construction of an RV park. As can be seen in the photographs submitted by Defendants, an RV park – not just a mere

campground – was in fact constructed, including all of the aforementioned hookups. In addition, a site disturbance permit alone cannot authorize a use where a CUP is required under the Zoning Ordinance in effect at that time.

In sum, the evidence submitted by the parties shows that Defendants constructed an RV park, which required (and still requires) a CUP, rather than a mere campground, which as an "outright" permitted use at that time was what was authorized to be constructed under Site Disturbance Permit No. 28790. Because no CUP has ever been issued for a commercial resort on the Subject Property which would allow for the construction of an RV park, Defendants were in violation of the applicable provisions of the Zoning Ordinance at the time this use was established. Accordingly, Defendants have failed that there is a genuine issue for trial in this regard, and the Court should grant summary judgment in favor of Plaintiff Kootenai County on this issue.

- B. Even if Defendants had previously established a use allowed under the Zoning Ordinance in effect at that time, the use was later discontinued, and any later resumption of that use is not a lawful nonconforming use.

Defendants have attempted to raise a genuine issue for trial with statements regarding the use of the Subject Property since 1999. Defendants contend that they have continued to use the property as a dude ranch or campground since 1999, when the site improvements were constructed, and that therefore, they should be entitled to have this use recognized as a nonconforming use.

A "nonconforming use" is a use of land which lawfully existed prior to the enactment of a zoning ordinance and which is maintained after the effective date of the ordinance even though not in compliance with use restrictions. *Baxter v. City of Preston*, 115 Idaho 607, 608-09, 768 P.2d 1340, 1341-42 (1989). The right to maintain

a nonconforming use is rooted in the Due Process Clause of the United States and Idaho Constitutions. *Id.* at 609, 768 P.2d at 1342. However, “[t]his right (often termed a “grandfather right” in lay parlance) simply protects the owner from abrupt termination of what had been a lawful condition or activity on the property. The protection does not extend beyond this purpose.” *Bastian v. City of Twin Falls*, 104 Idaho 307, 309, 658 P.2d 978, 980 (Ct. App. 1983). “The owner of a nonconforming use may lose the protected grandfather right if the use is enlarged or expanded in violation of a valid zoning ordinance.” *Baxter*, 115 Idaho at 609, 768 P.2d at 1342. Thus, the party asserting that a nonconforming use is lawful must show what the use was as of the date of the ordinance rendering such use unlawful, and that such use has not been expanded or enlarged since the effective date of such ordinance. Kootenai County Code § 9-20-3; *Baxter*, 115 Idaho at 609-10, 768 P.2d at 1342-43; *Bastian*, 104 Idaho at 309, 658 P.2d at 980.

In this case, Defendants’ argument is not sufficiently supported with evidence. Even if the Court were to find that Defendants did lawfully establish a dude ranch or campground on the Subject Property in 1999 or prior to that year, Defendants have failed to submit any competent evidence showing that the property was being continuously used in this manner after it was initially established, or that the property was used at all as a dude ranch or campground (or even as an RV park) prior to 2007, when the uncontroverted evidence shows that the property began to be used as an RV park. The only evidence of such use – letters purportedly from former campers – is hearsay, and thus should not be considered. Even assuming these letters were admissible, however, they merely indicate use by three people during the relevant time

period, do not indicate whether or not they paid to stay there, and do not even indicate that they stayed there at the same time!

Conversely, there is competent evidence that the Subject Property was not being used as a campground, dude ranch, or RV park, until August of 2007, when whatever use may have occurred prior to that time was radically expanded into a full-blown RV park. Neighbors Tom and Eileen Wilson reside immediately north of the Subject Property and have continuously resided there since 1998. They both have testified that they did not observe camping activity on the Subject Property until August of 2007, and that the RV park area had become overgrown. *Affidavit of Eileen Wilson, p. 2; Affidavit of Tom Wilson, p. 2.* Dennis Lacy, at the time a code compliance officer with the Kootenai County Building and Planning Department, inspected the property on June 22, 2005. At that time, no one was camping on the property, and he also observed that the RV park area had become overgrown with grasses and weeds. *Affidavit of Dennis Lacy, p. 3.* He took five photographs depicting the condition of the property at that time. *Id., Exhibits 1-5.* These photographs contrast starkly with the photographs of the newly completed RV park from 1999 which Defendants have submitted in opposition to this motion.

Thus, the evidence in the record shows that while the infrastructure for the RV park on the Subject Property was completed in 1999, it fell into disuse for an extended period of time, extinguishing any previously established nonconforming use. Alternatively, any incidental use of the property for camping (such as hosting one or two campers at a time) was radically expanded from in 2007 and has continued through 2010. Such expansion would represent an unlawful expansion of a prior nonconforming

use, and is thus not entitled to the protections associated with nonconforming uses. Either way, there is no genuine issue of material fact present, and Plaintiff Kootenai County is entitled to judgment as a matter of law. Accordingly, the Court should grant summary judgment in favor of the County on this issue.

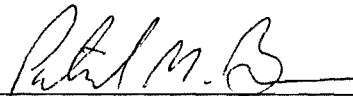
CONCLUSION

Defendants have failed to meet their burden of submitting evidence such as would be admissible at trial showing that there is a genuine issue for trial on any issue raised in Plaintiffs' opening brief and supporting affidavits in support of their motion for summary judgment. Therefore, no genuine issue of fact exists as to any of these issues, and each Plaintiff in this action is entitled to judgment as a matter of law in this matter.

Therefore, for the reasons stated above, Plaintiff respectfully requests that the Court grant the Plaintiffs' Motion for Summary Judgment in favor of Plaintiffs and against Defendants in this matter as set forth in Plaintiffs' opening Memorandum in Support of Motion for Summary Judgment.

RESPECTFULLY SUBMITTED this 15th day of December, 2010.

Kootenai County Prosecuting Attorney

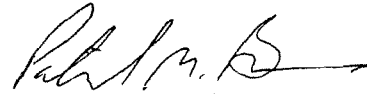


Patrick M. Braden, Civil Deputy
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2010, I served a true and complete copy of the foregoing by U.S. mail, postage prepaid, addressed to:

Peggy Harriman
Terry Saylor
P.O. Box 2585
Hayden, ID 83835



Patrick M. Braden

Chambers copy to:
Hon. Benjamin Simpson
via hand delivery
(PMB)