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**PEND ORELLE COUNTY HEARING EXAMINER**

ADMINISTRATIVE APPEAL OF  
DETERMINATION OF  
NONSIGNIFICANCE AND  
ENVIRONMENTAL CHECKLIST FOR  
COMPREHENSIVE PLAN  
AMENDMENT CPU-18-001

**DECISION ON APPEAL OF  
COMPLIANCE WITH SEPA  
PROCEDURAL REQUIREMENTS**

APPELLANT: RESPONSIBLE GROWTH  
\* NE WASHINGTON  
  
FILE NO. CPU-18-001

**SUMMARY OF DECISION**

**Hearing Matter:** Open record hearing of the appeal challenging compliance by Pend Oreille County with the procedural requirements of SEPA regarding the issuance of a SEPA threshold Determination of Non-Significance (DNS), relative to the proposed Comprehensive Plan Amendment – CPU 18-001, which proposes to

“(i) delete the ‘Public Lands’ or PL zone from the Pend Oreille County Comprehensive Plan, Development Regulations and Table of Permitted Zoning Uses, (ii) amend the Pend Oreille County Table of Permitted Uses to establish a ‘Public/Institutional Uses,’ (iv) [sic] amend the Pend Oreille County Development Regulations to add a definition of ‘Public/Institutional Uses’, (v) amend the zoning and Future Land Use Map designation for those properties currently zoned and designated as ‘Public Lands’ consistent with the criteria found in Pend Oreille County Code Rural Lands Density Criteria Matrix set forth in Table 2.1 of the Pend Oreille County Comprehensive Plan.”

**Summary of Decision:** As more fully explained herein the appeal is denied.

**DECISION**

**A. Findings of Fact:**

Pend Oreille County submitted a Comprehensive Plan Amendment Application, dated September 4, 2018. The application (hereafter “Application for Amendments”) proposes the following amendments to the Comprehensive Plan and Pend Oreille County development regulations:

1 “(i) delete the ‘Public Lands’ or PL zone from the Pend Oreille County  
2 Comprehensive Plan, Development Regulations and Table of Permitted Zoning  
3 Uses, (ii) amend the Pend Oreille County Table of Permitted Uses to establish  
4 a ‘Public/Institutional Uses,’ (iv) [sic] amend the Pend Oreille County  
5 Development Regulations to add a definition of ‘Public/Institutional Uses,’ (v)  
6 amend the zoning and Future Land Use Map designation for those properties  
7 currently zoned and designated as ‘Public Lands’ consistent with the criteria  
8 found in Pend Oreille County Code Rural Lands Density Criteria Matrix set  
9 forth in Table 2.1 of the Pend Oreille County Comprehensive Plan.” Pend  
10 Oreille County Community Development Department file (hereinafter  
11 “Department File”.)

12 The Application for Amendments included a table illustrating the deletion of  
13 the “Public Lands” zone designation and identified the uses that would be allowed in  
14 the zoning designations across Pend Oreille County, including a new use identified as  
15 “Public/Institutional Uses”. Respondent’s Exhibit 3. A proposed zoning designation  
16 map, titled “PL Zone Redesignations” was also created and distributed by the  
17 Community Development Department as part of the Application for Amendments.  
18 Respondent’s Exhibit 12; Testimony of Greg Snow.

19 Pend Oreille County Community Development Department (the “Department”)  
20 prepared a SEPA Environmental Checklist, on behalf of Pend Oreille County on  
21 August 28, 2018. On January 8, 2019, the Pend Oreille County Planning Commission  
22 held a public meeting regarding the proposed Application for Amendments.  
23 Appellant’s Exhibit 16; Respondent’s Exhibit 11. At the Planning Commission  
meeting on January 8, 2019, public comment regarding the anticipated silicon  
smelter near the town of Newport, Washington, was limited by the Planning  
Commission Chair such that the anticipated silicon smelter would not be mentioned.  
Written comments were received and accepted following the meeting until January  
31, 2019 including comments regarding the anticipated smelter. Appellant’s Exhibit  
16; Prehearing Brief of Pend Oreille County, p. 14.

In total, the Department received approximately 230 written comments from  
the public and various agencies. A large number of the responses were form letters  
which were almost evenly divided between comments in support and comments in  
opposition to the Application for Amendments. Respondent’s Exhibits 4-1 through 4-  
230. Very few of the comments address the SEPA threshold determination, however  
three of the comment letters do raise SEPA concerns similar to those in Appellant’s  
Statement of Appeal. Respondent’s Exhibits 4-16, 4-177, and 4-193. A significant  
number of the comments in opposition to the Applications for Amendment allege that

1 the proposed action is merely a predetermined step in approving the anticipated  
2 smelter. Respondent's Exhibits 4-16 through 4-193.

3 Several facts regarding the Applications for Amendment and the SEPA DNS  
4 are not in dispute. Such as:

5 That as early as August 2016 Pend Oreille County has been aware of the  
6 interest by PacWestSilicon (aka Hi Test Sand, Inc.), a Canada based company, in  
7 developing a silicon smelter on property located roughly south of Newport,  
8 Washington. Appellant's Exhibit 10; see also Appellant's Exhibits 8, 9, and 11.

9 That Pend Oreille County took steps to prepare for the evaluation of any  
10 applications for permits etc. regarding the smelter, including the hiring of a  
11 consultant to assist in gathering information, applying for grant funding to finance  
12 the additional work that would be required in evaluating such a complex matter, and  
13 inviting the Washington State Department of Ecology to assume the Lead Agency  
14 role for the purposes of SEPA compliance when and if an application for permits etc.  
15 relative to the smelter should materialize. Appellant's Exhibits 10, 8, 9, 11, 12, 13,  
16 14, and 7. The Department of Ecology accepted that invitation to act as Lead Agency  
17 and communicated its intentions regarding a full and lawful SEPA review to  
18 PacWestSilicon via letter dated June 29, 2018. Appellant's Exhibit 7.

19 That Pend Oreille County, Appellants, Renata S. Moon M.D. et. al. and others,  
20 who are unidentified in the documents, have submitted scoping questions and  
21 concerns to the Department of Ecology relative to the preparation of an  
22 Environmental Impact Statement (EIS) regarding the anticipated silicon smelter.  
23 Appellant's Exhibits 18, 20, 24, and 27.

Based upon the information available to him at the time and a review of the  
Environmental Checklist, on May 1, 2019, the Responsible Official, Gregg Snow,  
Director of the Pend Oreille County Community Development Department, issued a  
Determination of Non-Significance for the above Application for Amendments.  
Respondent's Exhibit 6; Testimony of Gregg Snow. The timeliness of the DNS is not  
disputed.

Notices of the Application for Amendment and the Determination of Non-  
Significance were provided by Pend Oreille County. The timeliness and content of  
the notices regarding the Application for Amendment and the Determination of Non-  
Significance are not challenged in this appeal before the Hearing Examiner.

On May 14, 2019, Appellant, Responsible Growth \* NE Washington, timely  
filed an "Application for an Appeal of Decision" and an accompanying Statement of  
Appeal (hereafter "Application for Appeal") with the Pend Oreille County Community

1 Development Department. Application for an Appeal of Decision. Timely notice of  
2 hearing regarding the appeal was provided as required. Respondent's Exhibit 2.

3 Under Pend Oreille County Development Regulations (PCDR) xx.14.150, RCW  
4 43.21C.075, and WAC 197-11-680, the Hearing Examiner conducted an open public  
5 hearing on the Application for Appeal, on July 25, 2019, in the Pend Oreille County  
6 Commissioners Meeting Room, Newport, Washington, pursuant to Pend Oreille  
7 County Code (PCC) xx.14.150. The hearing was conducted in accordance with the  
8 Spokane County Hearing Examiner Ordinance, codified in SCC Chapter 1.46; and  
9 the Spokane County Hearing Examiner Rules of Procedure, which have been adopted  
10 by the Pend Oreille County Board of County Commissioners.

11 The Hearing Examiner takes notice of the Pend Oreille County Comprehensive  
12 Plan ("Comprehensive Plan"), the Pend Oreille County Development Regulations,  
13 other applicable regulations, statutes, and case law.

14 The record includes the electronic recording of the testimony and arguments  
15 presented at the open public hearing, the documents contained within the application  
16 file at the time of the hearing, the sign-in sheet for the hearing, all exhibits admitted  
17 at the hearing, and the pre-hearing and post hearing briefing of the respective  
18 parties to the appeal.

19 The following persons testified at the hearing, under an oath administered by  
20 the Hearing Examiner and/or attended the hearing:

21 Greg Snow  
22 Community Development  
23 Department  
PO Box 5066  
Newport, WA 99156-5066  
[gsnow@pendoreille.org](mailto:gsnow@pendoreille.org)

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Phyllis J Kardos  
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3 Sheryl Miller  
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5 Gretchen L. Koeing  
6 [k-pr@povn.com](mailto:k-pr@povn.com)

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7 Donica Teeples  
8 [treegirlteeples@gmail.com](mailto:treegirlteeples@gmail.com)

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11 Judith Loy  
12 [coaljudi@gmail.com](mailto:coaljudi@gmail.com)

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13 John Enders  
14 [Jmmendres@tds.net](mailto:Jmmendres@tds.net)

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15 Michael Naylor  
16 [mgnaylor79@gmail.com](mailto:mgnaylor79@gmail.com)

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17 Gayla Sweeney  
18 [gnersweeney@aol.com](mailto:gnersweeney@aol.com)

Rogen Castle  
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19 Jerry Person  
20 [perrsonjerryw@gmail.com](mailto:perrsonjerryw@gmail.com)

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21 Desiree Hood  
22 [dhood@rivervalleybeacon.com](mailto:dhood@rivervalleybeacon.com)

Don Gronning  
[minernews@povn.com](mailto:minernews@povn.com)

23 Carol Lamberson  
[Carollamberson1@gmail.com](mailto:Carollamberson1@gmail.com)

The following exhibits were submitted during the hearing:

Appellant Exhibits

- App. Exhibit 1: Table of Permitted Zoning Uses – Adopted Dec. 22, 2015 (1 page)
- App. Exhibit 2: Table of Proposed Zoning Uses – April 2018 (1 page)
- App. Exhibit 3: DNS for 18-CPU-003 and 18-CPU-004 (2 pp.)



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- App. Exhibit 4: Map of proposed smelter location (1 page)
  - App. Exhibit 5: Maps of Four HiTest Parcels (2 pp.)
  - App. Exhibit 6: Letter from PacWest to DOE\_6-5-2018 (5 pp.)
  - App. Exhibit 7: Ecology Response\_6-29-2018 (2 pp.)
  - App. Exhibit 8: Pend Oreille County Department of Commerce Grant Application (5 pp.)
  - App. Exhibit 9: Amendment to Grant Application (7 pp.)
  - App. Exhibit 10: Contract for Service 2016-23 (9 pp.)
  - App. Exhibit 11: October 3, 2017 Pend Oreille County Press Release (3 pp.)
  - App. Exhibit 12: October 10, 2017 Letter from county to DOE (2 pp.)
  - App. Exhibit 13: October 23, 2018 Letter from County to DOE, EIS Scoping (2 pp.)
  - App. Exhibit 14: October 23, 2018 Letter from County to DOE, Supplement to EIS Scoping (2 pp.)
  - App. Exhibit 15: Inland Article\_Enviro study on hold\_5-9-19 (5 pp.)
  - App. Exhibit 16: Cusick Planning Commission Meeting Transcript (4 pp.)
  - App. Exhibit 17: Renata Moon, MD – Resume (9 pp.)
  - App. Exhibit 18: Inland Physicians NW DOE Letter\_10-22-18 (6 pp.)
  - App. Exhibit 19: Inland Physicians NW DOE Letter\_5-14-19 (2 pp.)
  - App. Exhibit 20: Scoping Comments\_DOE Process/Workplace Exposure/Fertility Premature Births/Fetus/Heavy Metals/SIDS/Transportation/Transportation of Coal/Pediatric Lung Function/Diabetes Black Lung (62 pp.)
  - App. Exhibit 21: Mike Lithgow – Resume (1 page)
  - App. Exhibit 22: CPU-18-POC Comments\_5-22-19 (1 page)
  - App. Exhibit 23: Ken Merrill – Resume (2 pp.)
  - App. Exhibit 24: Smelter EIS Scoping Comments 10-25-18 (3 pp.)
  - App. Exhibit 25: PacWest Statewide Emission Table (1 page)
  - App. Exhibit 26: PacWest Newport Smelter Modeling Protocol 1-25-2019 (52 pp.)
  - App. Exhibit 27: Responsible Growth Scoping Questions (117 pp.)
  - App. Exhibit 28: Emails between Phyllis Kardos and Greg Snow (4 pp.)
- Respondent Exhibits
- Resp. Exhibit 1: Application for An Appeal of Decision and Statement of Appeal (22 pp.)

- 1 • Resp. Exhibit 2: Notice of Appeal Hearing (1 page)
- 2 • Resp. Exhibit 3: Pend Oreille County Comprehensive Plan Amendment
- 3 Application and Supplemental Application Information
- 4 w/SEPA Checklist Google Earth photocopy (30 pp.)
- 5 • Resp. Exhibit 4: Comments on The Application and SEPA Checklist
- 6 • (4-1 through 4-230)
- 7 • Resp. Exhibit 4-1: Email from Renata Moon to Greg Snow; Subject: Pend
- 8 Oreille County Rezoning and EIS – Dated: 05/14/2019)
- 9 (2 pp.)
- 10 • Resp. Exhibit 4-2: Letter to Grant Pfeifer, Regional Director Washington
- 11 State Department of Ecology – Dated: October 22,
- 12 2018 (6 pp.)
- 13 • Resp. Exhibit 4-3: Email from Anita King to Greg Snow; Subject: DNS
- 14 comment – Dated: 05/15/2019 (1 page)
- 15 • Resp. Exhibit 4-4: Letter to Greg Snow from Anita King – Dated:
- 16 05/15/2019 (1 page)
- 17 • Resp. Exhibit 4-5: Email from Gayle Schoepflin to Greg Snow; Subject:
- 18 County blanket rezoning amendment – Dated:
- 19 05/15/2019 (1 page)
- 20 • Resp. Exhibit 4-6: Email from Zach Welcher to Greg Snow; Subject:
- 21 Kalispel Tribe Comments on DNS for CPU-18-001 –
- 22 Dated: 05/15/2019 (1 page)
- 23 • Resp. Exhibit 4-7: Letter from Zack Welcker to Greg Snow; RE: Kalispel
- Tribe Comments on the DNS for CPU-18-001 – Dated:
- 05/15/2019 (1 page)
- Resp. Exhibit 4-8: Letter from Phyllis J. Kardos Responsible Growth \*NE
- Washington Opposition to the DNS on the Pend Oreille
- County Amendment CPU-18-001 – Dated: 05/13/2019
- (2 pp.)
- Resp. Exhibit 4-9: Email from Jerry Person to Greg Snow; Subject:
- Determination of Non-Significance
- “Public/Institutional Uses” – Dated: 05/13/2019
- (1 page)
- Resp. Exhibit 4-10: Email from L. Barnes to Greg Snow; Subject: Oppose
- the rezoning of public lands – Dated: 05/12/2019
- (1 page)
- Resp. Exhibit 4-11: Email from Judy Bell to Greg Snow; Subject: DNS
- Dated: 05/14/2019 (1 page)

- 1 • Resp. Exhibit 4-12: Email from Patricia Ruiz to Greg Snow; Subject:  
2 Opposition to Rezoning of Public Lands – Dated  
05/12/2019 (1 page)
- 3 • Resp. Exhibit 4-13: Email from Stevan Bennett to Greg Snow; Subject:  
4 determination of non significance – Dated:05/15/2019  
5 (1 page)
- 6 • Resp. Exhibit 4-14: Letter from Ted and Phyllis Kardos to Greg Snow –  
7 Dated 05/15/2019 (1 page)
- 8 • Resp. Exhibit 4-15: Email from Tim Anderson to Greg Snow; Subject:  
9 SEPA designation – Dated 05/15/2019 (1 page)
- 10 • Resp. Exhibit 4-16: Email from University Legal Assistance to Pend  
11 Oreille County Planning Commission; RE: Comments  
12 on Application CPU-18-POC – Dated 02/01/2019  
13 (6 pp.)
- 14 • Resp. Exhibit 4-17: Letter from Michael A. Miller; Recording Secretary  
15 Millwrights Local 96 to Greg Snow – Dated: 02/11/2019  
16 (1 page)
- 17 • Resp. Exhibit 4-18: Email from Ajay Rao CFO Conros Corporation to Greg  
18 Snow; Subject: Hi Test Silica – Dated: 01/22/2019  
19 (1 page)
- 20 • Resp. Exhibit 4-19: Email Alana Wallace to Greg Snow; Subject: Letter in  
21 support of produced of produced amended comp plan –  
22 Dated: 01/20/2019 (1 page)
- 23 • Resp. Exhibit 4-20: Letter from Amber Orr to Greg Snow – No Date  
(1 page)
- Resp. Exhibit 4-21: Email from Amel Dubarry to Greg Snow; Subject:  
Support for Amended Comp plan – Dated: 01/30/2019  
(1 page)
- Resp. Exhibit 4-22: Letter from Amy Sawyer to Greg Snow Letter from  
Amy Sawyer to Greg Snow – Dated: 01/30/2019  
(1 page)
- Resp. Exhibit 4-23: Email from Andrew Ross to Greg Snow; Subject:  
Support –Dated: 01/27/2019 (1 page)
- Resp. Exhibit 4-24: Email from Bart Brashers to Greg Snow; Subject:  
Amended Comp Plan – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-25: Letter from Ben Reng to Greg Snow – no Date  
(1 page)



- 1 • Resp. Exhibit 4-26: Email from Betty Wells to Greg Snow; Subject: Zoning  
Proposal – Dated: 01/29/2019 (1 page)
- 2 • Resp. Exhibit 4-27: Email from Beverly Samograd to Greg Snow; Subject:  
3 Amended Comp Plan – Dated: 01/19/2019 (1 page)
- 4 • Resp. Exhibit 4-28: Email from Bill Rosser to Greg Snow; Subject:  
Rezoning – Dated 01/23/2019 (1 page)
- 5 • Resp. Exhibit 4-29: Email from Bill White to Greg Snow; Subject: Support  
for Amended Comp Plan – Dated 01/30/2019 (1 page)
- 6 • Resp. Exhibit 4-30: Email from John R. Boyd to Greg Snow; No Subject –  
Dated: 01/20/2019 (1 page)
- 7 • Resp. Exhibit 4-31: Email from Bonnie Sheffler to Greg Snow; Subject:  
8 Amended Comp Plan Support – Dated: 01/18/2019  
(1 page)
- 9 • Resp. Exhibit 4-32: Email from Boyd Edgecumbe to Greg Snow; Subject:  
Letter to the County – Dated: 01/21/2019 (1 page)
- 10 • Resp. Exhibit 4-33: Email from Brady Mayson to Greg Snow; Subject:  
Amended Comp Plan – Dated: 01/19/2019 (1 page)
- 11 • Resp. Exhibit 4-34: Email from Brandon Crombeen to Greg Snow; Subject:  
12 Amended Comp Plan – Dated 01/20/2019  
(1 page)
- 13 • Resp. Exhibit 4-35: Email from Chad Lucyk to Greg Snow; Subject:  
Amended Comp Plan – Dated: 01/19/2019 (1 page)
- 14 • Resp. Exhibit 4-36: Letter from Charles Pack to Greg Snow – Dated  
01/30/2019 (1 page)
- 15 • Resp. Exhibit 4-37: Email from Charlie Xia to Greg Snow; Subject: Support  
for Amended Comp Plan – Dated: 01/30/2019 (1 page)
- 16 • Resp. Exhibit 4-38: Email from Christopher Atherly to Greg Snow; Subject:  
17 Support for Amended Comp Plan – Dated: 01/31/2019  
(1 page)
- 18 • Resp. Exhibit 4-39: Email from Chris Sacre to Greg Snow; Subject: Support  
for Amended Comp Plan – Dated: 01/23/2019 (1 page)
- 19 • Resp. Exhibit 4-40: Email from Chrstian Meador to Greg Snow; Subject:  
20 Comp Plan – Dated: 01/18/2019 (1 page)
- 21 • Resp. Exhibit 4-41: Email from Clint Mathews to Greg Snow; Subject:  
Support for industry in POC – Dated: 01/29/2019  
(1 page)
- 22 • Resp. Exhibit 4-42: Email from Craig Kalvin to Greg Snow; Subject:  
23 Proposed rezoning – Dated: 01/23/2019 (1 page)

- 1 • Resp. Exhibit 4-43: Email from Daniel Erbling to Greg Snow; Subject:  
2 support of the amended comp plan – Dated: 01/29/2019  
(1 page)
- 3 • Resp. Exhibit 4-44: Email from Daniel Parker to Greg Snow; Subject:  
4 Amended Comp Plan – Dated: 01/23/2019 (1 page)
- 5 • Resp. Exhibit 4-45: Email from Danny Lipinski to Greg Snow; Subject:  
6 Amended Comp Plan – Dated: 01/21/2019 (1 page)
- 7 • Resp. Exhibit 4-46: Email from David Sears to Greg Snow; Subject: Written  
8 Comment CPU 18-POC – Dated: 01/30/2019 (1 page)
- 9 • Resp. Exhibit 4-47: Email from Deanne Tymko to Greg Snow; Subject:  
10 Comp Plan – Dated: 01/30/2019 (1 page)
- 11 • Resp. Exhibit 4-48: Email from Dee Winje to Greg Snow; Subject: Rezoning  
12 amendment VOTE YES – Dated: 01/29/2019 (1 page)
- 13 • Resp. Exhibit 4-49: Email from Deidre Adriano to Greg Snow; Subject:  
14 Amended Comp Plan – Dated: 01/23/2019 (1 page)
- 15 • Resp. Exhibit 4-50: Email from Dena Carlson to Greg Snow; Subject:  
16 Amended Comp Plan – Dated: 01/24/2019 (1 page)
- 17 • Resp. Exhibit 4-51: Email from Dennis Carlson to Greg Snow; Subject:  
18 Support – Dated: 01/30/2019 (1 page)
- 19 • Resp. Exhibit 4-52: Email from Don Diego to Greg Snow; Subject: Proposed  
20 Amendment – Dated: 01/18/2019 (1 page)
- 21 • Resp. Exhibit 4-53: Email from Doug Haines to Greg Snow; Subject:  
22 Amended Comp Plan – Dated: 01/27/2019 (1 page)
- 23 • Resp. Exhibit 4-54: Email from Doug Howard to Greg Snow; Subject:  
Support of the Amended Comp. Plan – Dated:  
01/30/2019 (1 page)
- Resp. Exhibit 4-55: Email from Lisa Davidson to Greg Snow; Subject:  
Amendment – Dated: 01/19/2019 (1 page)
- Resp. Exhibit 4-56: Email from Teresa Berdusco to Greg Snow; Subject:  
Rezoning – Dated: 01/20/2019 (1 page)
- Resp. Exhibit 4-57: Email from Eric Russell to Greg Snow; Subject:  
Support of the Amended Comp Plan – Dated:  
01/29/2019 (1 page)
- Resp. Exhibit 4-58: Email from Esther Hart to Greg Snow; No Subject –  
Dated: 01/09/2019 (1 page)
- Resp. Exhibit 4-59: Email from Garry Bartsch to Greg Snow; Subject:  
Support for Amended Comp Plan – Dated: 01/31/2019  
(1 page)

- 1 • Resp. Exhibit 4-60: Letter from Gary Gentle to Greg Snow – Dated:  
01/30/2019 (1 page)
- 2 • Resp. Exhibit 4-61: Email from Geoff Meyer to Greg Snow; Subject: Comp  
3 Plan Letter – Dated 01/30/2019 (1 page)
- 4 • Resp. Exhibit 4-62: Letter from Geoff Meyer to Greg Snow – No Date  
(1 page)
- 5 • Resp. Exhibit 4-63: Letter from George P. Campbell to Greg Snow – Dated:  
01/29/2019 (1 page)
- 6 • Resp. Exhibit 4-64: Letter from Glen Vinet to Greg Snow – Dated:  
01/22/2019 (1 page)
- 7 • Resp. Exhibit 4-65: Email from Harry Marti to Greg Snow; Subject: Rez  
8 one – Dated: 01/30/2019 (1 page)
- 9 • Resp. Exhibit 4-66: Email from It’s Me to Greg Snow; Subject: Support for  
10 Amended Comp Plan – Dated: 01/31/2019 (1 page)
- 11 • Resp. Exhibit 4-67: Email from John Dayley to Greg Snow; No Subject –  
12 Dated: 01/18/2019 (1 page)
- 13 • Resp. Exhibit 4-68: Email from Jake Smith to Greg Snow; Subject: Support  
14 for Amended Comp Plan – Dated: 01/30/2019 (1 page)
- 15 • Resp. Exhibit 4-69: Email from James McLean to Greg Snow; Subject:  
16 Amended Comp Plan – Dated: 01/19/2019 (1 page)
- 17 • Resp. Exhibit 4-70: Email from Janine Terrano to Greg Snow; Subject:  
18 Recommend passage – Dated: 01/31/2019 (1 page)
- 19 • Resp. Exhibit 4-71: Email from Jason Samograd to Greg Snow; Subject:  
20 Letter of Support for Re-Zoning – Dated: 01/31/2019  
(1 page)
- 21 • Resp. Exhibit 4-72: Email from Jayson Tymko to Greg Snow; Subject:  
22 Support for Amended Comp Plan – Dated: 01/22/2019  
(1 page)
- 23 • Resp. Exhibit 4-73: Email from Jenni Seger to Greg Snow; No Subject –  
Dated: 02/02/2019 (1 page)
- Resp. Exhibit 4-74: Email from Jim May to Greg Snow; Subject: Support  
for PacWest Plant – Dated: 01/31/2019 (1 page)
- Resp. Exhibit 4-75: Email from Jim Ward to Greg Snow; No Subject –  
Dated: 01/31/2019 (1 page)
- Resp. Exhibit 4-76: Email from Jodi Reng to Greg Snow; Subject: Approval  
of Amended Comp Plan – Dated: 01/19/2019 (1 page)
- Resp. Exhibit 4-77: Email from Joe Hotchkiss to Greg Snow; Subject:  
Amended Comp Plan – Dated: 01/23/2019 (1 page)

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- Resp. Exhibit 4-78: Email from Joe Oliver to Greg Snow; Subject: Support of the Amended Comp Plan – Dated 01/29/2019 (1 page)
- Resp. Exhibit 4-79: Email from Joel Ecklund to Greg Snow; Subject: County Amend Plan – Dated: 01/18/2019 (1 page)
- Resp. Exhibit 4-80: Email from John Carlson to Greg Snow – Subject: Amended Comp Plan – Dated: 01/22/2019 (1 page)
- Resp. Exhibit 4-81: Email from John Carter to Greg Snow; Subject: Re zoning – Dated: 01/22/2019 (1 page)
- Resp. Exhibit 4-82: Letter from John Morse to Greg Snow – Dated: 01/22/2019 (1 page)
- Resp. Exhibit 4-83: Email from Jon Rossman to Greg Snow; Subject: Recommend Passage – Dated: 01/31/2019 (1 page)
- Resp. Exhibit 4-84: Email from Joseph Meehan to Greg Snow; Subject: Amended Comp Plan – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-85: Email from Judith Oliver to Greg Snow; Subject: Amended Comp Plan – Dated: 01/29/2019 (1 page)
- Resp. Exhibit 4-86: Email from Julian Scott to Greg Snow; Subject: Amended Comp Plan Support – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-87: Email from Julianne Weaver to Greg Snow; Subject: Support of the Amended Comp Plan – Dated: 01/29/2019 (1 page)
- Resp. Exhibit 4-88: Email from Kapoor Chandaria to Greg Snow; Subject: Amended Comp Plan – Dated: 01/27/2019 (1 page)
- Resp. Exhibit 4-89: Email from Karen Sheydwasser to Greg Snow; Subject: Support for Amended Comp Plan – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-90: Email from Kate Harkins to Greg Snow; Subject: Amended Comp Plan – Dated: 01/23/2019 (1 page)
- Resp. Exhibit 4-91: Email from Katie Reng to Greg Snow; No Subject – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-92: Email from Ken Brizel to Greg Snow; Subject: Support for Amended Comp Plan – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-93: Email from Ken Brown to Greg Snow; Subject: Support Amended Comp Plan – Dated: 01/23/2019 (1 page)

- 1           • Resp. Exhibit 4-94: Letter from Ken D. Brown – Business Manager  
2                           International Brotherhood of Electrical Workers Local  
                                  #73 to Greg Snow – Dated: 01/24/2019 (1 page)
- 3           • Resp. Exhibit 4-95: Email from Ken Savage to Greg Snow; Subject:  
4                           Amended Comp Plan – Dated: 01/24/2019 (1 page)
- 5           • Resp. Exhibit 4-96: Email from Kendra Houston to Greg Snow; Subject:  
6                           Amended Comp Plan – Dated: 01/22/2019 (1 page)
- 7           • Resp. Exhibit 4-97: Email from Kimberly Gentle to Greg Snow; Subject:  
8                           Approve Amended Comp Plan – Dated: 01/18/2019  
9                           (1 page)
- 10          • Resp. Exhibit 4-98: Letter from Kyra Mac Arthur to Greg Snow – Dated:  
11                          01-28-2019 (1 page)
- 12          • Resp. Exhibit 4-99: Email from Jayson Tymko to Greg Snow; Subject:  
13                          Comp plan – Dated 01/30/2019 (1 page)
- 14          • Resp. Exhibit 4-100: Email from Lee Winje to Greg Snow; Subject: Zoning  
15                          Amendment – Dated: 01/29/2019 (1 page)
- 16          • Resp. Exhibit 4-101: Email from Leroy Leland to Greg Snow; Subject:  
17                          Amended Comp Plan – Dated: 01/18/2019 (1 page)
- 18          • Resp. Exhibit 4-102: Email from Leslie Hickman Boyd to Greg Snow;  
19                          Subject: Support for the Amended Comp Plan – Dated:  
20                          01/20/2019 (1 page)
- 21          • Resp. Exhibit 4-103: Email from Linc A. Liberto to Greg Snow; Subject:  
22                          Amended Comp Plan – Dated:01/30/2019 (1 page)
- 23          • Resp. Exhibit 4-104: Letter from Luke Lafley to Greg Snow – Dated:  
                                  01/22/2019 (1 page)
- Resp. Exhibit 4-105: Email from Mariah Oliver to Greg Snow; Subject:  
                                  Support of the Amended Comp Plan – Dated:  
                                  01/29/2019 (1 page)
- Resp. Exhibit 4-106: Email from Mark Mackenzie to Greg Snow; Subject:  
                                  County’s proposed amendment – Dated: 01/21/2019  
                                  (1 page)
- Resp. Exhibit 4-107: Email from Martha Winje to Greg Snow; Subject:  
                                  Proposal – Dated: 01/18/2019 (1 page)
- Resp. Exhibit 4-108: Email from Beverly Samograd to Greg Snow; Subject:  
                                  Amended Comp Plan – Dated: 01/19/2019 (1 page)
- Resp. Exhibit 4-109: Letter from Mary L. Elswick to Greg Snow – Dated:  
                                  01/18/2019 (1 page)

- 1 • Resp. Exhibit 4-110: Email from Matthew Christenson to Greg Snow;  
2 Subject: Support for amended comp plan – Dated:  
3 01/30/2019 (1 page)
- 4 • Resp. Exhibit 4-111: Email from Matthew Zandi to Greg Snow; Subject:  
5 Support of the Amended Comp Plan – Dated:  
6 01/23/2019 (1 page)
- 7 • Resp. Exhibit 4-112: Email from Melanie Meyer to Greg Snow; Subject:  
8 Amended Comp Plan – Dated: 01/30/2019 (1 page)
- 9 • Resp. Exhibit 4-113: Letter from Michael Keefer – President, Lead  
10 Visionary Keefer Ecological Services Ltd. To Greg  
11 Snow – Dated: 01/28/2019 (1 page)
- 12 • Resp. Exhibit 4-114: Email from Michael Wilde to Greg Snow; Subject:  
13 Amended Comp Plan – Dated: 01/22/2019 (1 page)
- 14 • Resp. Exhibit 4-115: Email from Mike & Brenda Cruit to Greg Snow;  
15 Subject: Zoning Amendment – Dated 01/29/2019  
16 (1 page)
- 17 • Resp. Exhibit 4-116: Letter from Mike Foley – President of the Northeast  
18 Washington North Idaho Building and Construction  
19 Trades Council to Greg Snow – Dated: 01/22/2019  
20 (1 page)
- 21 • Resp. Exhibit 4-117: Email from Mike Welch to Greg Snow; Subject:  
22 Amended Comp Plan – Dated: 01/23/2019 (1 page)
- 23 • Resp. Exhibit 4-118: Email from Naomi Van Noland to Greg Snow; No  
Subject – Dated: 01/30/2019 (1 page)
- Resp. Exhibit 4-119: Email from Erik Jacobsen to Greg Snow; No Amended  
Comp Plan – Dated: 01/20/2019 (1 page)
- Resp. Exhibit 4-120: Email from Norm Smith to Greg Snow; Subject:  
Proposed Comp Plan Amendments – Dated: 01/22/2019  
(1 page)
- Resp. Exhibit 4-121: Email from Vickie O'Brien to Greg Snow; Subject:  
Smelter – Dated: 01/18/2019 (1 page)
- Resp. Exhibit 4-122: Email from Vickie O'Brien to Greg Snow; Subject:  
Smelter – Dated: 01/18/2019 (1 page)
- Resp. Exhibit 4-123: Email from Paul Verhesen to Greg Snow; Subject:  
Letter of Support for Re-Zoning – Dated: 01/22/2019  
(1 page)
- Resp. Exhibit 4-124: Email from Peter Florence to Greg Snow; Subject:  
Amended Comp Plan – Dated: 01/19/2019 (1 page)



- 1 • Resp. Exhibit 4-125: Letter from Richard and Vivian McCurdy to Greg  
Snow – No Date (1 page)
- 2 • Resp. Exhibit 4-126: Email from Richard Scheirer to Greg Snow; Subject:  
3 Amended Comp Plan – Dated: 01/23/2019 (1 page)
- 4 • Resp. Exhibit 4-127: Letter from Rob Owen to Greg Snow – Dated  
01/30/2019 (1 page)
- 5 • Resp. Exhibit 4-128: Letter from Robert Guy Lewis to Greg Snow – Dated:  
01/29/2019 (1 page)
- 6 • Resp. Exhibit 4-129: Email from Rodd Thorkelsson to Greg Snow; Subject:  
PW Silicon – Dated: 01/20/2019 (1 page)
- 7 • Resp. Exhibit 4-130: Email from Roland Nador to Greg Snow; Subject:  
8 Amended Comp Plan Support – Dated: 01/30/2019  
(1 page)
- 9 • Resp. Exhibit 4-131: Email from Ron Summer to Greg Snow; Subject:  
Support for Amended Comp Plan – Dated: 01/30/2019  
10 (1 page)
- 11 • Resp. Exhibit 4-132: Email from Ruthy Van Noland to Greg Snow; Subject:  
SMELTER – Dated: 01/30/2019 (1 page)
- 12 • Resp. Exhibit 4-133: Email from Ryan Assaly to Greg Snow; Subject:  
Amended Comp Plan – Dated: 01/20/2019 (1 page)
- 13 • Resp. Exhibit 4-134: Email from Sara Sheydwasser to Greg Snow; Subject:  
Support for Amended Comp Plan – Dated: 01/30/2019  
14 (1 page)
- 15 • Resp. Exhibit 4-135: Letter to Greg Snow – no named addressor and no date  
(1 page)
- 16 • Resp. Exhibit 4-136: Letter to Greg Snow from Scott Holstrom – Business  
Manager Laborers Local 238 – Dated: 01/22/2019  
17 (1 page)
- 18 • Resp. Exhibit 4-137: Email from Sean Crockett to Greg Snow; Subject:  
PWSilicon Letter of Support – Dated: 01/27/2019  
19 (1 page)
- 20 • Resp. Exhibit 4-138: Email from Shauna Rae Samograd to Greg Snow;  
Subject: Recognizing Letter of Support – Dated:  
01/30/2019 (1 page)
- 21 • Resp. Exhibit 4-139: Email from Steve Fisher to Greg Snow; Subject: County  
Amended Comp Plan – Dated: 01/21/2019  
22 (1 page)
- 23

- 1 • Resp. Exhibit 4-140: Email from Steve Trefethen to Greg Snow; Subject:  
2 Letter in support of produced amended comp plan –  
3 Dated: 01/29/2019 (1 page)
- 4 • Resp. Exhibit 4-141: Email from Storm Purdy; Director, Project  
5 Development Clark Builders Energy Resources;  
6 Subject: Support of the Amended Comp Plan – Dated:  
7 01/27/2019 (1 page)
- 8 • Resp. Exhibit 4-142: Email from Sue H. May to Greg Snow; Subject:  
9 PacWest Silicon Plant – Dated: 01/31/2019 (1 page)
- 10 • Resp. Exhibit 4-143: Email from Sunir Chandaria to Greg Snow; Subject:  
11 Amended Comp Plan – Dated: 01/22/2019 (1 page)
- 12 • Resp. Exhibit 4-144: Email from Edward Berdusco to Greg Snow; Subject:  
13 Rezoning – Dated: 01/20/2019 (1 page)
- 14 • Resp. Exhibit 4-145: Email from Terran Sandwith to Greg Snow; Subject:  
15 Rezoning – Dated: 01/30/2019 (1 page)
- 16 • Resp. Exhibit 4-146: Letter from Tim Edwards to Greg Snow – Dated:  
17 01/29/2018 (1 page)
- 18 • Resp. Exhibit 4-147: Email from Kyle Shoop to Greg Snow; Subject:  
19 MEMOLI Francesco – Dated: 01/25/2019 (1 page)
- 20 • Resp. Exhibit 4-148: Letter from Thomas Bovalina – President and CEO  
21 Tenova Inc. – Dated: 01/23/2019 (1 page)
- 22 • Resp. Exhibit 4-149: Email from Tony to Greg Snow; Subject: Rezoning  
23 amendment – Dated: 01/31/2019 (1 page)
- Resp. Exhibit 4-150: Email from tpelgrim@telus.net to Greg Snow; Subject:  
Support for Amended Comp Plan – Dated: 01/31/2019  
(1 page)
- Resp. Exhibit 4-151: Email from Tuan Truong to Greg Snow; Subject: HiTest  
letter of support – Dated: 01/28/2019 (1 page)
- Resp. Exhibit 4-152: Email from Virginia Wilson to Greg Snow; Subject:  
Rezone – Dated: 01/18/2019 (1 page)
- Resp. Exhibit 4-153: Email from Warren Sheydwasser to Greg Snow;  
Subject: Support for Amended Comp Plan – Dated:  
01/19/2019 (1 page)
- Resp. Exhibit 4-154: Email from Wendy Sandwith to Greg Snow; Subject:  
Rezoning – Dated: 01/23/2019 (1 page)
- Resp. Exhibit 4-155: Letter from William Mathews to Greg Snow – Dated:  
01/29/2019 (1 page)

- 1 • Resp. Exhibit 4-156: Email from Wilma Karst-Steinmetz to Greg Snow;  
2 Subject: Support for re-zoning – Dated: 01/30/2019  
(1 page)
- 3 • Resp. Exhibit 4-157: Email from Yan Zhu to Greg Snow; Subject: Amended  
4 Comp Plan – Dated: 01/23/2019 (1 page)
- 5 • Resp. Exhibit 4-158: Letter from Gayla Sweeney to Pend Oreille county  
6 Planning Commission – Dated: 12/15/2019 (4 pp.)
- 7 • Resp. Exhibit 4-159: Email from Carol and Al Gauper to Greg Snow;  
8 Subject: Pend Oreille County Plan – Dated: 01/29/2019  
(1 page)
- 9 • Resp. Exhibit 4-160: Letter from Andrea Forster to Greg Snow and the Pend  
10 Oreille County Planning Commission – Dated:  
11 01/29/2019 (1 page)
- 12 • Resp. Exhibit 4-161: Email from Andrea Holliman to Greg Snow; Subject:  
13 CPU-18-POC – Dated: 01/28/2019 (1 page)
- 14 • Resp. Exhibit 4-162: Letter from Anita King to Pend Oreille County  
15 Planning Commission and the Pend Oreille County  
16 Commissioners – Dated: 01/22/2019 (1 page)
- 17 • Resp. Exhibit 4-163: Letter from Anna Simsich to Greg Snow Planning  
18 Commission – Dated: 01/30/2019 (1 page)
- 19 • Resp. Exhibit 4-164: Letter from Anna Simsich to Grant Pfeifer – TITLE:  
20 SUSTAINABLE ECOLOGY COMMUNITY PROJECT  
21 – Dated: 10/22/2018 (2 pp.)
- 22 • Resp. Exhibit 4-165: Letter from Anne James to Greg Snow – Dated:  
23 01/31/2019 (2 pp.)
- Resp. Exhibit 4-166: Email from Ariel McGlothin to Greg Snow, Karen  
Skoog, Steve Kiss, Mike Manus; Subject: Re-Zoning  
proposal – Dated: 01/31/2019 (1 page)
- Resp. Exhibit 4-167: Email from Ariel McGlothin to Greg Snow; Karen  
Skoog; Steve Kiss; Mike Manus; No Subject – Dated:  
01/10/2019 (1 page)
- Resp. Exhibit 4-168: Email from Asante Christen to Greg Snow; Subject:  
Rezoning – Dated: 01/31/2019 (1 page)
- Resp. Exhibit 4-169: Letter from Debbie Barker to Greg Snow – Dated  
01/28/2019 (1 page)
- Resp. Exhibit 4-170: Email from Branka L. Vukic to Greg Snow; Subject: Re:  
Opposition to CPU-18-POC – Dated 01/30/2019  
(1 page)

- 1 • Resp. Exhibit 4-171: Email from Catherine Beaver to Greg Snow; Subject:  
2 Zoning and Comprehensive Plan Amendment  
Application CPU-18-POC – Dated: 01/29/2019 (2 pp.)
- 3 • Resp. Exhibit 4-172: Email from Dan and Chandra Griesemer to Karen  
4 Skoog; Steve Kiss; Mike Manus; Greg Snow; Subject:  
PO County Comp plan Public Opinion – Dated:  
5 01/29/2019 (1 page)
- 6 • Resp. Exhibit 4-173: Email from Charles Becker to Greg Snow; Subject:  
7 Opposing the adoption policy – Count this letter as 25  
8 people emailing you from my road/area alone – Dated:  
9 01/29/2019 (1 page)
- 10 • Resp. Exhibit 4-174: Email from Chris Bishop to Greg Snow; Karen Skoog;  
11 Steve Kiss; Mike Manus; Comprehensive Plan  
12 Amendment – Dated: 01/31/2019 (1 page)
- 13 • Resp. Exhibit 4-175: Email from Christine Buddrius to Greg Snow; Subject:  
14 Comprehensive Plan – Dated: 01/30/2019  
15 (1 page)
- 16 • Resp. Exhibit 4-176: Letter from Colleen Dalebroust to Pend Oreille County  
17 Planning commission and the Pend Oreille County  
18 Commissioners – Dated: 01/29/2019 (1 page)
- 19 • Resp. Exhibit 4-177: Letter and attachments from Kitty Klitzke – Spokane  
20 Program Director and Tim Trohimovich, AICP,  
21 Director of Planning & Law to Pend Oreille – Dated:  
22 01/07/2019 (7 pp.)
- 23 • Resp. Exhibit 4-178: Email from Dale Johnson to Greg Snow; Subject:  
Community Development – Dated: 01/29/2019  
(1 page)
- Resp. Exhibit 4-179: Email from Dan Wight to Greg Snow; Subject: POC  
Comprehensive Plan Amendment Application CPU-18-  
POC – Dated: 01/29/2019 (1 page)
- Resp. Exhibit 4-180: Letter from Diane R Schaff to Pend Oreille County  
Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/20/2019 (1 page)
- Resp. Exhibit 4-181: Email from John R & Dorothy McDaniel to Greg Snow  
– Subject: Pend Oreille County Rezone Plan – Dated:  
01/29/2019 (1 page)
- Resp. Exhibit 4-182: Email from Dory Kiere to Greg Snow; Subject: CPU-18-  
POC – Dated: 01/28/2019 (1 page)

- 1 • Resp. Exhibit 4-183: Letter from David Fredrickson to Pend Oreille County  
2 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/22/2019 (1 page)
- 3 • Resp. Exhibit 4-184: Email from Greg Decker to Greg Snow; Karren Skoog;  
4 Steve Kiss; Subject: CPU-18-POC opposition – Dated:  
01/29/2019 (1 page)
- 5 • Resp. Exhibit 4-185: Letter from Gayle and Judy Schoepflin to Pend Oreille  
6 Planning Commission – Dated: 01/29/2019 (1 page)
- 7 • Resp. Exhibit 4-186: Email from Jade C. Huguenot to Pend Oreille County  
8 Rezone Amendment Application Comments – Dated:  
01/30/2019 (1 page)
- 9 • Resp. Exhibit 4-187: Email from Janet Bocciardi to Greg Snow; Subject:  
10 Opposition to CPU-18-POC – Dated: 01/30/2019  
(1 page)
- 11 • Resp. Exhibit 4-188: Letter from Jennifer Munizza to Pend Oreille County  
12 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/27/2019 (1 page)
- 13 • Resp. Exhibit 4-189: Letter from Jerry Person to Planning Commission –  
14 Dated: 1/30/2019 (1 page)
- 15 • Resp. Exhibit 4-190: Letter from John Enders; Re: Pend Oreille County  
16 Comprehensive Plan Amendment Applications –  
01/30/2019 (2 pp.)
- 17 • Resp. Exhibit 4-191: Email from Judy Bell to Greg Snow; Karen Skoog;  
18 Steve Kiss; Mike Manus; Subject: Rezoning – Dated:  
01/10/2019 (1 page)
- 19 • Resp. Exhibit 4-192: Letter from Kaarsten Furman to Greg Snow – Dated:  
01/29/2019 (1 page)
- 20 • Resp. Exhibit 4-193: Email from Deane Osterman – Executive Director,  
21 Kalispel Natural Resources to Greg Snow; RE: Kalispel  
Tribe Comments on Application CPU-18-POC – Dated:  
01/29/2019 (2 pp.)
- 22 • Resp. Exhibit 4-194: Email from Kathy Galbreath to Greg Snow; Subject:  
Rezoning amendments – Dated: 01/30/2019 (1 page)
- 23 • Resp. Exhibit 4-195: Email from Linda Wolcott to Greg Snow; Subject:  
Newport Smelter – Dated: 01/15/2019 (1 page)
- Resp. Exhibit 4-196: Email from Lindsey Kull to Greg Snow; Subject: CPU-  
18.POC – Dated: 01/25/2019 (1 page)

- 1 • Resp. Exhibit 4-197: Letter from Mary C. Bell to Planning & Zoning Comm.  
– Dated: 01/28/2019 (1 page)
- 2 • Resp. Exhibit 4-198: Letter from Mary C. Bell to Greg Snow – Dated:  
3 01/28/2019 (1 page)
- 4 • Resp. Exhibit 4-199: Letter from Mary Sterling and Darrell Johnson to  
County Commissioners and the Pend Oreille  
5 Community Development Department – Dated:  
6 01/31/2019 (1 page)
- 7 • Resp. Exhibit 4-200: Email from Mary Upshaw to Greg Snow; Subject:  
Regarding CPU-18.POC – Dated: 01/29/2019 (1 page)
- 8 • Resp. Exhibit 4-201: Email from Mary Toutonghi to Greg Snow, Planning  
Commission; Subject: Pend Oreille County’s Rezone  
9 Plan – Dated: 01/28/2019 (1 page)
- 10 • Resp. Exhibit 4-202: Letter from Michelle Waylor to Pend Oreille County  
Planning Commission and the Pend Oreille County  
11 Comprehensive Plan Amendment Application CPU-18-  
12 POC. – Dated: 01/29/2019 (1 page)
- 13 • Resp. Exhibit 4-203: Email from Molly Phillips LICSW, CMHS to Greg  
Snow; Subject: Comprehensive plan amendment –  
14 Dated: 01/31/2019 (1 page)
- 15 • Resp. Exhibit 4-204: Email from Nancy Garth to Greg Snow; Karen Skoog; “,  
skiss” @pendoreille.org;” mmanus”@pendoreille.org ;  
16 Subject: Comprehensive Plan AMerdment Application  
CPU-18-POC. – Dated: 01/28/2019 (1 page)
- 17 • Resp. Exhibit 4-205: Letter from Michael Naylor to Pend Oreille County  
Planning Commission and the Pend Oreille County  
18 Commissioners – Dated: 01/11/2019 (9 pp.)
- 19 • Resp. Exhibit 4-206: Letter from Nikia Furman to Pend Oreille County  
Commissioners – Dated: 01/29/2019 (1 page)
- 20 • Resp. Exhibit 4-207: Email from Bill and Nola Hansen to Greg Snow;  
Subject: County Rezoning Plans – Dated: 01/28/2019  
21 (1 page)
- 22 • Resp. Exhibit 4-208: Email from Dick and Penny Sabath to Greg Snow;  
Subject: Pend Oreille County’s Rezone Plan – Dated:  
23 01/29/2019 (1 page)
- Resp. Exhibit 4-209: Email from Ray Pipella to Greg Snow; Subject: FW:  
Comment Period on county Rezone – Dated: 01/28/2019  
(1 page)



- 1 • Resp. Exhibit 4-210: Letter from Annette Hall to Pend Oreille County  
2 Planning Commission and Pend Oreille County  
Commissioners – Dated: 01/29/2019 (1 page)
- 3 • Resp. Exhibit 4-211: Letter from Morgan Hall to Pend Oreille county  
4 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/29/2019 (1 page)
- 5 • Resp. Exhibit 4-212: Letter from Rick Hall to Pend Oreille County Planning  
6 Commission and the Pend Oreille county  
Commissioners – Dated: 01/29/2019 (1 page)
- 7 • Resp. Exhibit 4-213: Email from Richard Gailbraith to Greg Snow; Subject:  
8 CPU-18-POC – Dated: 01/29/2019 (1 page)
- 9 • Resp. Exhibit 4-214: Letter from Rick Sweeney to Pend Oreille County  
10 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/28/2019 (1 page)
- 11 • Resp. Exhibit 4-215: Email from Roy and Jan Wood to Greg Snow; Karen  
12 Skoog; Steve Kiss; Mike Manus; Subject: Pend Oreille  
County Comprehensive Plan Amendment Application  
13 CPU-18-POC – Dated: 01/29/2019 (1 page)
- 14 • Resp. Exhibit 4-216: Letter from Roy and Jan Wood to Greg Snow;  
15 “Regarding the proposed approach to rezone of public  
lands” Dated: 01/29/2019 (1 page)
- 16 • Resp. Exhibit 4-217: Letter from Robert W. Schutte to Pend Oreille County  
17 Community Development Department; Re:  
Comprehensive Plan Amendment application by Pend  
18 Oreille County – Dated: 01/04/2019 (1 page)
- 19 • Resp. Exhibit 4-218: Email from Scott Vincent to Greg Snow; Subject: Pend  
20 Oreille County Comprehensive Plan Amendment  
Application CPU-18-POC – Dated: 01/28/2019  
21 (1 page)
- 22 • Resp. Exhibit 4-219: Email from Larry and Sherri Kull to Greg Snow;  
23 Subject: CPU-18.POC – Dated: 1/26/2019 (2 pp.)
- Resp. Exhibit 4-220: Letter from Thubten Santen to Pend Oreille County  
Planning Commission – Dated 01/31/2019 (2 pp.)
- Resp. Exhibit 4-221: Letter from Ed & Elly Styskel to Pend Oreille County  
Planning Commission; Re: Proposal to Eliminate  
County Public Lands Zone and Replace with  
Public/Institution Uses Zone – Dated: 01/04/2019  
(2 pp.)

- 1 • Resp. Exhibit 4-222: Email from Sue Bingham to Greg Snow; Subject:  
Planning Commission – Dated: 01/31/2019 (1 page)
- 2 • Resp. Exhibit 4-223: Letter from Susan Banks to Pend Oreille County  
3 Planning Commission and the Pend Oreille  
Commissioners – Dated: 01/29/2019 (1 page)
- 4 • Resp. Exhibit 4-224: Letter from Susan Brown to Pend Oreille County  
5 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/28/2019 (1 page)
- 6 • Resp. Exhibit 4-225: Email from Suzanne Jacobson to Greg Snow; Karen  
7 Skoog; Steve Kiss; Mike Manus; Subject: County  
Rezoning Proposal – Dated: 01/30/2019 (1 page)
- 8 • Resp. Exhibit 4-226: Letter from Tammy A Erickson to Pend Oreille County  
9 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/23/2019 (1 page)
- 10 • Resp. Exhibit 4-227: Email from Theresa Hiesener to Greg Snow; Subject:  
11 Fwd: CPU-18-POC – Dated: 01/19/2019 (2 pp.)
- 12 • Resp. Exhibit 4-228: Letter from Thomas Brown to Pend Oreille County  
13 Planning Commission and the Pend Oreille County  
Commissioners – Dated: 01/28/2019 (1 page)
- 14 • Resp. Exhibit 4-229: Email from Thomas Foster to Greg Snow; Karen Skoog;  
15 Steve Kiss; Mike Manus; Subject: Regarding: Pend  
16 Oreille County Comprehensive Plan Amendment  
Application CPU-18-POC – Dated: 01/28/2019 (1 page)
- 17 • Resp. Exhibit 4-230: Email from Wait Hughes to Greg Snow; Subject: Zoning  
18 – Dated: 01/28/2019 (1 page)
- 19 • Resp. Exhibit 5: Planning Commission Recommendation – 03/12/2019  
20 (3 pp.)
- 21 • Resp. Exhibit 6: Determination of Non-Significance – 05/01/2019  
22 (2 pp.)
- 23 • Resp. Exhibit 7: Appeal of SEPA Threshold Determination of  
Nonsignificance Presentation to the Hearing Examiner  
(12 pp.)
- Resp. Exhibit 8: Staff Report to the Board of County Commissioners –  
05/22/2019 (3 pp.)
- Resp. Exhibit 9: SEPA Environmental Checklist Dated for the Pend  
Oreille County Comprehensive Plan – 04/13/2005  
(17 pp.)

- 1 • Resp. Exhibit 10: Determination of Nonsignificance – Dated August 8,  
2 2005 for Pend Oreille County Comprehensive Plan  
(1 page)
- 3 • Resp. Exhibit 11: Thumb Drive: Audio Recording of the January 9, 2019  
4 Planning Commission Meeting
- 5 • Resp. Exhibit 12: Map: PL Zone Redesignations (1 page)

6 **B. Grounds for Appeal in Statement of Appeal:**

7 The grounds for appeal as stated in Appellant’s Statement of Appeal are:

- 8 a. The DNS and Checklist failed to Disclose or Consider Environmental  
9 Impacts of the Comprehensive Plan Amendment.
- 10 b. The DNS and Checklist failed to Disclose or Consider Development of the  
11 Proposed Newport Smelter.
- 12 c. The DNS and Checklist failed to Consider the Cumulative Effects of the  
13 Other Proposed Comprehensive Plan Amendments.
- 14 d. The Checklist lacks Basic Information about the Proposal.
- 15 e. The Planning Commission violated SEPA requirements for Public  
16 Participation.

17 The scope of this appeal (based upon the Application for Appeal) is limited  
18 solely to the compliance of the Determination of Non-Significance (DNS) process with  
19 the procedural requirements of the State Environmental Policy Act (RCW 43.21C)  
20 and the regulations adopted thereunder (WAC 197-11). WAC 197-11-680 (3)(iii). The  
21 substantive decision to issue the DNS is yet before the Pend Oreille County Board of  
22 County Commissioners, for an open record hearing before the Board. RCW  
23 43.21C.075; WAC 197-11-680 (3)(iii). The decision of the Board will then be  
appealable to the Growth Management Hearings Board. RCW 36.70A.280 (1)(a).

Any finding of fact above that is a conclusion of law is deemed a conclusion of law.

19 **C. Conclusions of Law and Analysis:**

20 **1. Standard of Review.**

21 If a determination of non-significance is issued by an agency, it must show  
22 that environmental factors were considered in a manner sufficient to amount to  
23 prima facie compliance with procedural requirements of SEPA. *Sisley v. San Juan  
County*, 89 Wn2d 78, 84, 569 P.2d 712 (1977).

1           The standard of review for an appeal of a SEPA threshold determination is  
2 whether the agency's action is clearly erroneous. *Norway Hill Pres. & Prot. Assn. v.*  
3 *King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976); *Sisley v. San Juan*  
4 *County, supra*; *Lands Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn.  
5 App. 787, 795, 309 P.3d 734 (2013). A decision is clearly erroneous if, after reviewing  
6 all the evidence, the trier of fact is left with the firm conviction that a mistake has  
7 been committed. *Lands Council v. Wash. State Parks & Recreation Comm'n, supra*,  
8 795. The decision of the agency issuing the threshold decision is to be given  
9 substantial weight. RCW 43.21C.090; *Norway Hill Pres. & Prot. Assn. v. King*  
10 *County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976); *Boehm v. City of Vancouver*,  
11 111 Wn. App. 711, 716, 47 P.3d 137 (2002).

## 8           **2. SEPA Procedural Requirements.**

9           The salient SEPA procedural requirements are:

10          **RCW 43.21C.031 - (1)** An environmental impact statement (the detailed  
11 statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for  
12 legislation and other major actions having a probable significant, adverse  
13 environmental impact.

14          **WAC 197-11-030 - (c)** Prepare environmental documents that are concise, clear,  
15 and to the point, and are supported by evidence that the necessary  
16 environmental analyses have been made.

17          (d) Initiate the SEPA process early in conjunction with other agency operations  
18 to avoid delay and duplication.

19          **WAC 197-11-055 - (2)** Timing of review of proposals. The lead agency shall  
20 prepare its threshold determination and environmental impact statement (EIS),  
21 if required, at the earliest possible point in the planning and decision-making  
22 process, when the principal features of a proposal and its environmental impacts  
23 can be reasonably identified.

(a) A proposal exists when an agency is presented with an application or has a  
goal and is actively preparing to make a decision on one or more alternative  
means of accomplishing that goal and the environmental effects can be  
meaningfully evaluated.

(i) The fact that proposals may require future agency approvals or  
environmental review shall not preclude current consideration, as long as  
proposed future activities are specific enough to allow some evaluation of their  
probable environmental impacts.

1 **WAC 197-11-060 - (2) The content of environmental review:**

2 (a) Depends on each particular proposal, on an agency's existing planning and  
3 decision-making processes, and on the time when alternatives and impacts can  
4 be most meaningfully evaluated;

5 (b) For the purpose of deciding whether an EIS is required, is specified in the  
6 environmental checklist, in WAC 197-11-330 and 197-11-444;

7 (3) Proposals.

8 (a) Agencies shall make certain that the proposal that is the subject of  
9 environmental review is properly defined.

10 (ii) A proposal by a lead agency or applicant may be put forward as an  
11 objective, as several alternative means of accomplishing a goal, or as a particular  
12 or preferred course of action.

13 (b) Proposals or parts of proposals that are related to each other closely enough  
14 to be, in effect, a single course of action shall be evaluated in the same  
15 environmental document. (Phased review is allowed under subsection (5)).  
16 Proposals or parts of proposals are closely related, and they shall be discussed in  
17 the same environmental document, if they:

18 (i) Cannot or will not proceed unless the other proposals (or parts of  
19 proposals) are implemented simultaneously with them; or

20 (ii) Are interdependent parts of a larger proposal and depend on the larger  
21 proposal as their justification or for their implementation.

22 (4) Impacts.

23 (a) SEPA's procedural provisions require the consideration of "environmental"  
impacts (see definition of "environment" in WAC 197-11-740 and of "impacts" in  
WAC 197-11-752), with attention to impacts that are likely, not merely  
speculative. (See definition of "probable" in WAC 197-11-782 and 197-11-080 on  
incomplete or unavailable information.)

(c) Agencies shall carefully consider the range of probable impacts, including  
short-term and long-term effects. Impacts shall include those that are likely to  
arise or exist over the lifetime of a proposal or, depending on the particular  
proposal, longer.

(d) A proposal's effects include direct and indirect impacts caused by a proposal.  
Impacts include those effects resulting from growth caused by a proposal, as well  
as the likelihood that the present proposal will serve as a precedent for future

1 actions. For example, adoption of a zoning ordinance will encourage or tend to  
2 cause particular types of projects or extension of sewer lines would tend to  
encourage development in previously unsewered areas.

3 (5) Phased review.

4 (a) Lead agencies shall determine the appropriate scope and level of detail of  
5 environmental review to coincide with meaningful points in their planning and  
6 decision-making processes. (See WAC 197-11-055 on timing of environmental  
review.)

7 (b) Environmental review may be phased. If used, phased review assists  
8 agencies and the public to focus on issues that are ready for decision and exclude  
9 from consideration issues already decided or not yet ready. Broader  
environmental documents may be followed by narrower documents, for example,  
that incorporate prior general discussion by reference and concentrate solely on  
the issues specific to that phase of the proposal.

10 (c) Phased review is appropriate when:

11 (i) The sequence is from a nonproject document to a document of narrower  
12 scope such as a site specific analysis (see, for example, WAC 197-11-443); or

13 (e) When a lead agency knows it is using phased review, it shall so state in its  
14 environmental document.

**WAC 197-11-080 - (3)** Agencies may proceed in the absence of vital information  
as follows:

15 (a) If information relevant to adverse impacts is essential to a reasoned choice  
16 among alternatives, but is not known, and the costs of obtaining it are  
exorbitant; or

17 (b) If information relevant to adverse impacts is important to the decision and  
18 the means to obtain it are speculative or not known;

19 Then the agency shall weigh the need for the action with the severity of possible  
20 adverse impacts which would occur if the agency were to decide to proceed in the  
21 face of uncertainty. If the agency proceeds, it shall generally indicate in the  
appropriate environmental documents its worst case analysis and the likelihood  
of occurrence, to the extent this information can reasonably be developed.

22 **WAC 197-11-310 - (1)** A threshold determination is required for any proposal  
23 which meets the definition of action and is not categorically exempt, subject to  
the limitations in WAC 197-11-600(3) concerning proposals for which a threshold  
determination has already been issued, or statutorily exempt as provided in



1 chapter 43.21C RCW. A threshold determination is not required for a planned  
2 action (refer to WAC 197-11-164 through 197-11-172).

3 (3) The responsible official shall make a threshold determination no later than  
4 ninety days after the application and supporting documentation are determined  
5 to be complete. The applicant may request an additional thirty days for the  
6 threshold determination (RCW 43.21C.033).

7 **WAC 197-11-330** - An EIS is required for proposals for legislation and other  
8 major actions significantly affecting the quality of the environment. The lead  
9 agency decides whether an EIS is required in the threshold determination  
10 process, as described below.

11 (1) In making a threshold determination, the responsible official shall:

12 (a) Review the environmental checklist, if used:

13 (i) Independently evaluating the responses of any applicant and indicating  
14 the result of its evaluation in the DS, in the DNS, or on the checklist; and

15 (ii) Conducting its initial review of the environmental checklist and any  
16 supporting documents without requiring additional information from the  
17 applicant.

18 (b) Determine if the proposal is likely to have a probable significant adverse  
19 environmental impact, based on the proposed action, the information in the  
20 checklist (WAC 197-11-960), and any additional information furnished under  
21 WAC 197-11-335 and 197-11-350; and

22 (c) Consider mitigation measures which an agency or the applicant will  
23 implement as part of the proposal, including any mitigation measures required  
by development regulations, comprehensive plans, or other existing  
environmental rules or laws.

(2) In making a threshold determination, the responsible official should  
determine whether:

(a) All or part of the proposal, alternatives, or impacts have been analyzed in a  
previously prepared environmental document, which can be adopted or  
incorporated by reference (see Part Six).

(b) Environmental analysis would be more useful or appropriate in the future in  
which case, the agency shall commit to timely, subsequent environmental review,  
consistent with WAC 197-11-055 through 197-11-070 and Part Six.

1 (3) In determining an impact's significance (WAC 197-11-794), the responsible  
2 official shall take into account the following, that:

3 (a) The same proposal may have a significant adverse impact in one location but  
4 not in another location;

5 (b) The absolute quantitative effects of a proposal are also important, and may  
6 result in a significant adverse impact regardless of the nature of the existing  
7 environment;

8 (c) Several marginal impacts when considered together may result in a  
9 significant adverse impact;

10 (d) For some proposals, it may be impossible to forecast the environmental  
11 impacts with precision, often because some variables cannot be predicted or  
12 values cannot be quantified.

13 (e) A proposal may to a significant degree:

14 (i) Adversely affect environmentally sensitive or special areas, such as loss  
15 or destruction of historic, scientific, and cultural resources, parks, prime  
16 farmlands, wetlands, wild and scenic rivers, or wilderness;

17 (ii) Adversely affect endangered or threatened species or their habitat;

18 (iii) Conflict with local, state, or federal laws or requirements for the  
19 protection of the environment; and

20 (iv) Establish a precedent for future actions with significant effects,  
21 involves unique and unknown risks to the environment, or may affect public  
22 health or safety.

23 (4) If after following WAC 197-11-080 and 197-11-335 the lead agency  
reasonably believes that a proposal may have a significant adverse impact, an  
EIS is required.

(5) A threshold determination shall not balance whether the beneficial aspects of  
a proposal outweigh its adverse impacts, but rather, shall consider whether a  
proposal has any probable significant adverse environmental impacts under the  
rules stated in this section. For example, proposals designed to improve the  
environment, such as sewage treatment plants or pollution control requirements,  
may also have significant adverse environmental impacts.

**WAC 197-11-335** - The lead agency shall make its threshold determination based  
upon information reasonably sufficient to evaluate the environmental impact of a  
proposal (WAC 197-11-055(2) and 197-11-060(3)). The lead agency may take one

1 or more of the following actions if, after reviewing the checklist, the agency  
2 concludes that there is insufficient information to make its threshold  
determination:

3 (1) Require an applicant to submit more information on subjects in the checklist;

4 (2) Make its own further study, including physical investigations on a proposed  
site;

5 (3) Consult with other agencies, requesting information on the proposal's  
6 potential impacts which lie within the other agencies' jurisdiction or expertise  
(agencies shall respond in accordance with WAC 197-11-550); or

7 (4) Decide that all or part of the action or its impacts are not sufficiently definite  
8 to allow environmental analysis and commit to timely, subsequent  
environmental analysis, consistent with WAC 197-11-055 through 197-11-070.

9 **WAC 197-11-340** - (1) If the responsible official determines there will be no  
10 probable significant adverse environmental impacts from a proposal, the lead  
11 agency shall prepare and issue a determination of nonsignificance (DNS)  
12 substantially in the form provided in WAC 197-11-970. If an agency adopts  
another environmental document in support of a threshold determination (Part  
Six), the notice of adoption (WAC 197-11-965) and the DNS shall be combined or  
13 attached to each other.

### 14 **3. Consideration of Environmental Impacts of Anticipated Silicon Smelter.**

15 Appellant alleges that “The DNS and Checklist failed to Disclose or Consider  
16 Development of the Proposed Newport Smelter.” Appellants Statement of Appeal.  
Appellant asks that the DNS issued relative to the Application for Amendments be  
17 reversed and a DS be ordered as a result of the anticipated smelter. Id.

18 Comments stating opposition to the Applications for Amendments almost  
19 universally characterize the Application for Amendments as an effort to facilitate a  
20 proposal for the development of a silicon smelter near the town of Newport,  
Washington. Respondent’s Exhibits 4-16 and 4-193. Of the approximately 230  
21 written comments responding to the notice of the proposed Application for  
Amendments only three address the SEPA threshold determination with any  
22 specificity. Respondent’s Exhibits 4-16, 4-177, and 4-193. Evidence in the record is  
abundant, including testimony at the hearing before the Hearing Examiner that, if  
23 the anticipated smelter is actually approved and built it is possible that such a  
development would bring with it a host of environmental impacts. Appellant’s

1 Exhibits 18, 19, 20, 24, 26, 27; Respondent's Exhibits 4-1, 4-2, 4-7, 4-8, 4-16, 4-177,  
2 and 4-205; Testimony of Dr. Renata S. Moon.

3 The record establishes that, in 2016, Pend Oreille County has been aware of  
4 PacWestSilicon's (aka Hi Test Sand, Inc.), a Canada based company, interest in  
5 developing a silicon smelter near Newport. Appellant's Exhibit 10; see also  
6 Appellant's Exhibits 8, 9, and 11. It is undisputed that in response to the interest in  
7 development of the smelter Pend Oreille County took steps to investigate possible  
8 environmental impacts and required permitting processes for the anticipated  
9 smelter (hiring a consultant and applying for grant funds relative to the cost of  
10 investigation and evaluation), including enlisting the Washington Department of  
11 Ecology to act as the Lead Agency for the purpose of conducting a SEPA compliant  
12 review in anticipation of a proposal for development of the silicon smelter.  
13 Appellant's Exhibits 12, 13, and 14. The Department of Ecology accepted  
14 responsibility to act as Lead Agency and communicated its intentions regarding a full  
15 and lawful SEPA review to PacWestSilicon via letter dated June 29, 2018.  
16 Appellant's Exhibit 7. A volume of scoping questions and concerns have already been  
17 submitted to the Department of Ecology regarding the anticipated smelter, including  
18 those from Pend Oreille County. Appellant's Exhibits 18, 20, 24, and 27.

19 Relative to the anticipated smelter, Appellant's request for an environmental  
20 determination of DS and preparation of an EIS is already in process and under  
21 consideration by the Washington Department of Ecology. Appellant's Exhibit 7.

22 The proposal under consideration in this appeal is the Application for  
23 Amendments. There has been no dispute that the DNS was timely issued. Thus, the  
Hearing Examiner concludes that the issuance of the DNS was timely. In the absence  
of a claim of violation, Pend Oreille County has met the requirements of WAC 197-  
11-055 regarding the Application for Amendments.

Pend Oreille County's actions regarding SEPA, as they are relevant to the  
impacts of the anticipated silicon smelter and relative to the Application for  
Amendments, are consistent with the procedural requirements of SEPA.

#### 4. Alleged SEPA Violation at Planning Commission Meeting.

Appellant alleges that Pend Oreille County violated SEPA requirements when  
its Planning Commission Chair allegedly restricted comment regarding the  
anticipated silicon smelter near the town of Newport, during the public comment  
portion of the Planning Commission meeting held on January 8, 2019. Appellant's  
Statement of Appeal. The Planning Commission Chair is alleged to have violated  
WAC 197-11-535 (1), which reads:

1 “If a public hearing on the proposal is held under some other requirement of  
2 law, such hearing shall be open to consideration of the environmental impact  
3 of the proposal, together with any environmental document that is available.  
4 This does not require extension of the comment periods for environmental  
5 documents.”

6 WAC 197-11-535.

7 In support of its allegation, Appellant provides excerpts from the transcript of  
8 the Planning Commission meeting on January 8, 2019. Appellant’s Exhibit 16. The  
9 excerpt submitted by the Appellant illustrates tension in the meeting between the  
10 persons who hoped to speak specifically about the anticipated smelter and the Chair  
11 of the Planning Commission. Appellant’s Exhibit 16. When the Planning Commission  
12 Chair attempted to keep the focus of the comments on the Comprehensive Plan  
13 amendments that were the subject of the meeting that evening, the persons making  
14 comments and the chair of the committee became argumentative. The excerpt at  
15 2:00:39 illustrates the Chair’s frustration and intent in limiting the comments to the  
16 specific subject of the meeting. Appellant’s Exhibit 16; see also Prehearing Brief of  
17 Pend Oreille County, p.13 – 14. During the January 8, 2019 meeting the Planning  
18 Commission extended the comment period for the meeting until January 31, 2019 for  
19 receipt of additional written comments. No mention is made regarding the restriction  
20 relative to the subject of the anticipated smelter. Prehearing Brief of Pend Oreille  
21 County, p. 14.

22 The Hearing Examiner finds that the efforts of the Planning Commission  
23 Chair in attempting to limit references to the anticipated smelter, during the  
24 Planning Commission meeting on January 8, 2019, was merely an attempt to  
25 maintain the focus of the meeting on the proposed Comprehensive Plan amendments  
26 that were before the Commission at that time. Further, although the Chair  
27 attempted to prevent references to the smelter during the meeting, the period for  
28 comment to the Planning Commission was extended from January 8, 2019 to  
29 January 31, 2019. In addition to the testimony at the Planning Commission meeting,  
30 there has been a significant amount of written comment submitted to Pend Oreille  
31 County regarding the anticipated smelter prior to the issuance of the threshold  
32 determination.

33 Although the Chair’s statements and the argumentative character of the  
34 testimony at the Planning Commission meeting was at least a frustration for the  
35 persons at the meeting, the attempted control of the subject of the meeting and the  
36 later extended comment period taken together do not amount to a violation of SEPA,  
37 WAC 197-11-535.

1                   **5. Compliance with SEPA Procedural Requirements for a DNS.**

2                   Appellant also alleges that Pend Oreille County failed - to consider probable  
3 environmental impacts of the Application for Amendments, - to consider cumulative  
4 effects of other proposed Amendments, and - to provide basic information about the  
5 Application for Amendments. Appellant specifically objects to Pend Oreille County's  
6 response to many of the questions in the environmental checklist with the statement:  
7 "This application is for a non-project action. Environmental elements for specific  
8 projects on specific properties will be identified at the time of land use application."  
9 Appellant's Statement of Appeal.

10                   Pend Oreille County responds by arguing that the environmental checklist  
11 cannot itself be appealed, that Pend Oreille County did in fact engage in a full  
12 environmental review as required by SEPA, that the Application for Amendments is  
13 a separate and distinct non-project action, and an EIS is not universally required for  
14 non-project actions such as a comprehensive plan amendments or zoning map  
15 amendments.

16                   There being no dispute among the parties regarding the timeliness of the  
17 threshold determination, the threshold determination of DNS is found to be timely.  
18 WAC 197-11-310.

19                   The record produced by Pend Oreille County in support of its threshold  
20 determination of DNS, relative to the Application for Amendments, must  
21 demonstrate that environmental factors were considered in a manner sufficient to  
22 amount to prima facie compliance with the procedural requirements of SEPA. *Sisley*  
23 *v. San Juan County*, 89 Wn.2d 78, 84 – 85, 569 P.2d 712 (1977). That record consists  
of all of the documents found in Respondent's Exhibits 1 – 12 (so far as the  
documents contained therein were produced and/or received by Pend Oreille County  
prior to issuance of the DNS), and Appellant's Exhibits 1 – 28 (also so far as the  
documents contained therein were produced and/or received by Pend Oreille County  
prior to issuance of the DNS); both are exhibits submitted during the hearing before  
the Hearing Examiner.

                  Respondent's Exhibit 4 – 16, a letter from University Legal Assistance, dated  
February 1, 2019, raised many of the issues that are identified in the Appellant's  
Statement of Appeal, including the alleged deficiency in the assertion that the non-  
project nature of the Application for Amendments allowed more specific SEPA review  
upon an application for a project level permit regarding any single parcel of property.  
Respondent's Exhibit 4 – 177, a letter from "futurewise" [sic], dated January 7, 2019,  
specifically raises the issue that the Applications for Amendments, if adopted, would  
allow outright a state prison to be built, allegedly without a SEPA review, on land



1 that is currently zoned as Public Land and would under the proposed change be  
2 zoned a rural or forest land zone. A letter from the Kalispel Tribe, dated January 29,  
3 2019 (Respondent's Exhibit 4 – 193) also generally alleges deficiencies in the  
4 environmental checklist.

5 In addition to the letters identified above, the record also contains a table of  
6 Permitted Zoning Uses – Adopted December 22, 2015 (Appellant's Exhibit 1), a table  
7 of Proposed Zoning Uses – April 2018 (Appellant's Exhibit 2), and a map of proposed  
8 changes to the zoning of lands currently zone Public Lands (Respondent's Exhibit 12)  
9 which documents compare and contrast the uses that would be allowed under  
10 adoption of the Application for Amendments and are not now allowed under the  
11 current zoning. Testimony from Greg Snow at the hearing was that the change in  
12 uses and the possible impacts of the proposed uses were considered by Pend Oreille  
13 County in arriving at its threshold determination of DNS. Mr. Snow also testified at  
14 the hearing that the map of proposed changes to the zoning (Respondent's Exhibit  
15 12) was produced, available for public review, and considered in reaching the  
16 threshold determination of DNS. The letters combined with the two tables and the  
17 map of the proposed change to zoning establish that Pend Oreille County was aware  
18 of the “new” allowed uses and the possible impacts if those uses were to be proposed  
19 as a result of adoption of the Application for Amendments.

20 The question remains, does the record demonstrate that environmental factors  
21 were considered in a manner sufficient to amount to prima facie compliance with the  
22 procedural requirements of SEPA? *Sisley v. San Juan County*, supra.

23 Agencies are to prepare environmental documents that are concise, to the  
point, and are supported by evidence that the necessary environmental analyses  
have been made. WAC 197-1-030 (c). An environmental review must begin by review  
and consideration of an environmental checklist. WAC 197-11-060 (2)(b); WAC 197-  
11-330 (1)(a). The record is clear that Pend Oreille County produced and relied upon  
an environmental checklist in arriving at its threshold determination of DNS.  
Respondent's Exhibit 6. The record also indicates that Pend Oreille County created  
and considered the environmental checklist, the Application for Amendments,  
including the proposed definition of “public/institutional uses” (Respondent's Exhibit  
3), and the map of proposed changes to the zoning of lands currently zoned Public  
Lands in its environmental review for its threshold determination. The Application  
for Amendments and the environmental checklist are succinct and were considered  
by Pend Oreille County in arriving at the threshold determination of DNS.

The proposed change to the Comprehensive Plan and the zoning regulations is  
a non-project action. Pend Oreille County states repeatedly that it intends to further

1 investigate environmental impacts of specific project proposals, if and when they are  
2 submitted.

3 The content of the environmental review depends on each particular proposal,  
4 on the agency's existing planning and decision-making processes, and on the time  
5 when alternative and impacts can be most meaningfully evaluated. WAC 197-11-060  
6 (2)(a). Phased review of proposals is appropriate when the sequence is from a non-  
7 project document to a document of narrower scope such as a site-specific analysis.  
8 WAC 197-11-060 (5)(c)(i). The timing of environmental review can be difficult to  
9 determine. If the review is too near the inception of the process it can become a  
10 useless hypothetical exercise as a more detailed and site-specific proposal is  
11 introduced. Postponing the environmental review can cause the decision to be  
12 delayed until the momentum to approve the proposal without adequate  
13 environmental review makes the environmental review ineffective. *Lands Council v.*  
14 *Wash. State Parks & Recreation Comm'n*, 176 Wn. App. 787, 803 – 804, 309 P.3d 734  
15 (2013). The responsible official should determine whether environmental analysis  
16 would be more useful or appropriate in the future in which case, the agency shall  
17 commit to timely, subsequent environmental review, consistent with WAC 197-11-  
18 055 through 197-11-070 and Part Six. WAC 197-11-330 (2)(b). A threshold  
19 determination shall not balance whether the beneficial aspects of a proposal  
20 outweigh its adverse impacts, but rather, whether a proposal has any probable  
21 significant adverse environmental impacts under the rules stated in WAC 197-11-  
22 330.

23 When considering a zoning action, such as in this case, a delay of full  
implementation of the environmental policies of SEPA until the development permit  
stage is allowed, provided that the municipality has the authority to implement those  
policies at the permit stage and so long as the environmental consequences of any  
development of the property are disclosed and considered at the time the zoning  
action is taken. *Ullock v. Bremerton*, 17 Wn. App. 573, 584 – 585, 565 P.2d 1179  
(1977) (quoting *Narrowsview Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 526 P.2d  
897 (1974)); *Hayden v. Port Townsend*, 93 Wn.2d 870, 879, 613 P.2d 1164 (1980).

Appellant argues that the environmental checklist and the DNS document are  
the only indication of what environmental impacts were considered by Pend Oreille  
County and that those documents do not indicate a thorough review of the maximum  
possible impacts that may result from the adoption of the proposed Application for  
Amendments. Appellant's Statement of Appeal. In contrast to Appellant's  
argument, consideration of the record as a whole reveals that University Legal  
Assistance, Futurewise, and the Kalispell Tribe all raised issues regarding the  
possible impacts to the properties affected if the proposed amendments were adopted.

1 Greg Snow testified at the hearing that Pend Oreille County did consider the possible  
2 impacts of the uses that would be allowed if the amendments were adopted, based  
3 upon the proposed new zoning designations of the affected properties. Environmental  
4 review under SEPA is required if and when specific development is proposed for the  
5 properties for which the proposed Application for Amendments would change the  
6 zoning designation. WAC 197-11-310 (1).

7 Pend Oreille County not only has the authority to implement the  
8 environmental policies of SEPA at the development permit stage relative to the  
9 properties affected by the proposed Application for Amendment, it is required to do  
10 so. Pend Oreille County did disclose and consider the land uses that would be  
11 allowed and the environmental consequences of those uses as part of the process for  
12 issuing the DNS in this matter.

13 The purpose of the threshold determination is for the responsible official to  
14 determine if the proposal is likely to have a probable significant adverse  
15 environmental impact, based on the proposed action, the information in the checklist,  
16 and any additional information necessary and available to the official. WAC 197-11-  
17 330 (1)(a) & (b). Agencies shall carefully consider the range of probable impacts,  
18 including short-term and long-term effects, which include direct and indirect impacts  
19 which result from the growth caused by the proposal. WAC 197-11-060 (4)(c) & (d).

20 The term significant, as defined in WAC 197-11-794 means a reasonable  
21 likelihood of more than a moderate adverse impact on environmental quality.  
22 Significance involves context and intensity and does not lend itself to a formula or  
23 quantifiable test. The context may vary with the physical setting. Intensity depends  
24 on the magnitude and duration of an impact. The severity of an impact should be  
25 weighed along with the likelihood of its occurrence. An impact may be significant if  
26 its chance of occurrence is not great, but the resulting environmental impact would  
27 be severe if it occurred. WAC 197-11-794<sup>1</sup>. SEPA's procedural provisions require the  
28 consideration of "environmental" impacts with attention to impacts that are likely,  
29 not merely speculative. (Emphasis in original) WAC 197-1-060 (4)(a). When  
30 considering a non-project action the agency conducting the environmental review  
31 must consider the maximum potential development under various zoning classes,  
32 however not every remote or speculative consequence need be considered. *Heritage  
33 Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr'gs Brd.*, 2 Wn. App.2d 737,  
34 753, 413 P.3d 590 (2018). The probability of significant impact is a determining

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<sup>1</sup> WAC 197-11-794 appears to be a regulatory clarification of previous case law; *Narrowsview Pres. Ass'n v. City of Tacoma*, 84 Wn.2d 416, 423, 526 P.2d 897 (1974); *ASARCO Inc. v. Air Quality Coal.*, 92 Wn.2d 685, 706, 601 P.2d 501 (1979).

1 factor in whether an EIS is required. *King County v. Wash. State Boundary Review*  
2 *Brd.*, 122 Wn.2d 648, 662 – 663, 860 P.2d 1024 (1993).

3 Appellant argues that Pend Oreille County must identify and review all  
4 impacts that may arise as a result of not only the adoption of the Application for  
5 Amendments and the maximum development that may occur as an allowed use  
6 under the new proposed zoning. Appellant’s Statement of Appeal. The WAC sections  
7 and case law cited immediately above are consistent with Appellant’s argument, but  
8 then the WAC and those cases go further and limit the required review to impacts  
9 that are “probable”, “significant” (taking into account the likelihood of occurrence),  
10 and “not remote or speculative”.

11 An agency may proceed in its environmental review and threshold  
12 determination in the absence of vital information if the information relevant to  
13 adverse impacts is important to the decision and the means to obtain it are  
14 speculative or not known. In such a case the agency shall generally indicate in the  
15 appropriate environmental document its worst case analysis and the likelihood of  
16 occurrence, to the extent this information can be reasonably developed. WAC 197-11-  
17 080 (3)(a) & (b).

18 Pend Oreille County is a rural and mostly undeveloped county. The zoning  
19 maps illustrate that although there has been growth in the county it has been slow  
20 and focused on residential development on large and often relatively isolated parcels.  
21 The consideration of the Application for Amendments must be done in the context of  
22 the reality that exists in Pend Oreille County. The record establishes that Pend  
23 Oreille County did consider the specific circumstances and information available to it  
in considering the issuance of the DNS, thus meeting that procedural requirement of  
SEPA.

When considering a zoning action, such as in this case, a delay of full  
implementation of the environmental policies of SEPA until the development permit  
stage is allowed, provided that the municipality has the authority to implement those  
policies at the permit stage and so long as the environmental consequences of any  
development of the property are disclosed and considered at the time the zoning  
action is taken. *Ullock v. Bremerton*, 17 Wn. App. 573, 584 – 585, 565 P.2d 1179  
(1977) (quoting *Narrowsview Preservation Ass’n v. Tacoma*, 84 Wn.2d 416, 526 P.2d  
897 (1974)); *Hayden v. Port Townsend*, 93 Wn.2d 870, 879, 613 P.2d 1164 (1980).

Proposals or parts of proposals are closely related, and they shall be discussed  
in the same environmental document, if they are interdependent parts of a larger  
proposal and depend on the larger proposal as their justification or for their  
implementation. WAC 197-11-060 (3)(b)(ii). The interdependence of proposals or



1 parts thereof relates to whether the two proposals are so closely related that  
2 completion of the first proposal would be futile without completion of the second  
3 proposal. *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 345 – 346, 552 P.2d 184  
(1976); *Boehm v. City of Vancouver*, 111 Wn. App. 711, 720. 47 P.3d 137 (2002).

4 The Application for Amendments is not interdependent with the anticipated  
5 smelter or the other uses for which the affected properties could be developed under  
6 the Application for Amendments. Regardless of whether any of the proposed allowed  
7 uses are ever formally proposed, the Application for Amendments stands on its own  
8 and is not futile in the absence of the anticipated smelter or any other use that may  
9 be proposed for the affected lands.

10 Although the environmental checklist is succinct and repeats the response that  
11 the proposed action is a non-project action – that further environmental review will  
12 be conducted at the time of submission of a project specific proposal. Taken as a  
13 whole the record establishes that information available to the responsible official is  
14 limited regarding the probability or likelihood of future development of the affected  
15 properties. It is impossible to predict if or when the affected properties would be  
16 liquidated by the current public titleholder, and that development would be proposed  
17 that would carry with it significant impacts. To attempt such a prediction would be  
18 speculative.

19 Appellant has failed to provide any evidence regarding the reasonable  
20 likelihood of the transfer of any of the properties, that would be affected by the  
21 adoption of the Application for Amendments, from the public entity that holds title to  
22 another entity or person who would then propose an allowed development of the land.  
23 They further fail to provide any evidence of the probability that the public entity  
holding title to the land would likely propose an allowed development of the land.  
Pend Oreille County is a rural county with approximately 65% of its land owned by  
public entities (and currently zoned as Public Lands due to its ownership).  
Appellant's Statement of Appeal.

Appellant alleges that Pend Oreille County failed to consider the cumulative  
effects of other comprehensive plan amendments in its issuance of the DNS for the  
Application for Amendments. Appellant's Statement for Appeal. Appellant's Exhibit  
3 indicates that a DNS was issued for two other comprehensive plan amendments on  
the same day as the DNS for the Application for Amendments. This establishes that  
Pend Oreille County was aware of those comprehensive plan amendments and  
considered them at the same time as the Application for Amendments.

1 The decision of the Pend Oreille County Community Development Department  
2 in issuing the DNS relative to the Application for Amendments shall be accorded  
great weight. RCW 43.21C.090.

3 Pend Oreille County has shown by the record before the Hearing Examiner  
4 that, in issuing the determination of non-significance, environmental factors were  
5 considered in a manner sufficient to amount to prima facie compliance with  
6 procedural requirements of SEPA. The Hearing Examiner concludes that, with  
7 regard to compliance with the procedural requirements of SEPA as found in Chapter  
43.21C of the Revised Code of Washington and Title 197, Chapter 11 of the  
Washington Administrative Code, taking the entire record as a whole the Hearing  
Examiner is not left with the firm conviction that a mistake has been committed.

8 Any conclusion of law above that is a finding of fact is deemed a finding of fact.

9  
10 DATED this 25<sup>th</sup> day of September, 2019

11 PEND OREILLE COUNTY  
12 HEARING EXAMINER



13 DAVID W. HUBERT

14 **NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

15 Pursuant to xx.92.070 PCDR, the decision of the Hearing Examiner on an  
16 application for appeal of an administrative decision is final and conclusive unless  
17 within twenty-one (21) calendar days from the issuance of the Examiner's decision, a  
party with standing files a land use petition in Superior Court of Pend Oreille County  
in accordance with the provisions of xx.14.150 PCDR.

18 On September 25, 2019 a copy of this decision will be mailed by first class mail  
19 to the Appellant, and by e-mail to other parties of record. The date of issuance of the  
Hearing Examiner's decision is September 30, 2019.

20 **THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT  
BY LAND USE PETITION IS October 21, 2019.**

21 The complete record in this matter, including this decision, is on file during  
22 the appeal period with the Pend Oreille County Community Development  
Department, 418 South Scott Avenue, Newport, WA 99156, (509) 447-4821. The file  
23 may be inspected Monday through Friday of each week, except holidays, between the



hours of 8:00 a.m. and 4:30 p.m. Copies of the documents in the record will be made available at the cost set by Pend Oreille County.

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