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**PEND ORELLE COUNTY HEARING EXAMINER**

APPEAL OF SEPA THRESHOLD  
DETERMINATION OF DNS RE:  
COMPREHENSIVE PLAN UPDATE,  
ENVIRONMENTALLY SENSITIVE  
AREAS REGULATIONS, AND ZONING  
MAP  
  
APPELLANT: RESPONSIBLE GROWTH  
RG\* NE WASHINGTON  
  
RESPONDENT: PEND OREILLE  
COUNTY

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION ON APPEAL OF SEPA  
THRESHOLD DETERMINATION**

**I. SUMMARY OF DECISION**

**Hearing Matter:** Open record hearing of the appeal of the SEPA Threshold Determination of DNS regarding the proposed Pend Oreille County Comprehensive Plan Update, and amendments to the Pend Oreille County Environmentally Sensitive Areas regulations and Pend Oreille County Zoning Map.

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

**II. FINDINGS OF FACT**

**A. Procedural Matters.**

As early as 2019, Pend Oreille County began the process of adopting an update to the Pend Oreille County Comprehensive Plan, and amendments to the Pend Oreille County Development Regulations, including Chapter xx.36 Environmentally Sensitive Areas, and the Pend Oreille County Zoning Map. The additions, deletions, and revisions to the Comprehensive Plan and the Development Regulations are not identified in detail in the pleadings, arguments, or testimony of witnesses in this matter. See Resp. Exhibit 3, Draft Pend Oreille County Comprehensive Plan dated February 2021; Resp. Exhibit 4, Draft Pend Oreille County Zoning Map dated February 2021; Resp. Exhibit 5, Draft Pend Oreille County Development Regulations dated April 2021; Resp. Exhibit 6, Draft Pend Oreille County 2020 Table of Permitted Zoning Uses; and Resp. Exhibit 12, pp. 3 – 5. The proposed amendment to the Zoning Map is described as removing the zone designation of “Public Land” or “PL” from the designated zones and re-designating currently zoned PL lands as either Natural Resource Lands or another zone designation pursuant to Pend Oreille

1 County Development Regulations. Resp. Exhibit 12, p. 3, paragraph 11. Relative to  
2 the proposed Comprehensive Plan update, and amendments to the Development  
3 Regulations and the Zoning Map, a SEPA Threshold Determination of DNS was  
4 issued by the Pend Oreille County Community Development Department on April 23,  
5 2021. Resp. Exhibit 10. The issuance of the DNS was based upon a SEPA  
6 Environmental Checklist (Checklist) prepared by Pend Oreille County Community  
7 Development Department and dated February 09, 2021. Resp. Exhibit 12.

8 On May 10, 2021, Appellant, Responsible Growth \* NE Washington, timely  
9 filed an "Application for an Appeal of Decision" and an accompanying Statement of  
10 Appeal (hereafter "Application for Appeal") with the Pend Oreille County Community  
11 Development Department. Resp. Exhibit 1. Timely notice of hearing regarding the  
12 appeal was provided as required. Resp. Exhibit 2.

13 Under Pend Oreille County Development Regulations (PCDR) xx.14.150, RCW  
14 43.21C.075, and WAC 197-11-680, the Hearing Examiner conducted an open public  
15 hearing on the Application for Appeal, on December 2, 2021, via the internet  
16 conferencing platform, ZOOM, pursuant to Pend Oreille County Code (PCC)  
17 xx.14.150. The hearing was conducted in accordance with the Spokane County  
18 Hearing Examiner Ordinance, codified in SCC Chapter 1.46; and the Spokane  
19 County Hearing Examiner Rules of Procedure, which have been adopted by the Pend  
20 Oreille County Board of County Commissioners.

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

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

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

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Zachary Griefen	David Bricklin
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Ben Floyd  
Address not given

Bob Eugene  
Address not given

Tracy Morgan  
Address not given

The following exhibits were submitted during the hearing:

Appellant Exhibits

- App. Exhibit 1: BND\_Doc01\_20200519-Final-Draft-NR-Memo-with-Figures-reduced (20 pp.)
- App. Exhibit 2: BND\_Doc02\_2018 09 04 Application CPU-18-POC (30 pp.)
- App. Exhibit 3: BND\_Doc03\_February-2021-Mapfolio-reduced-size-1 (18 pp.)

- 1 • App. Exhibit 4: BND\_Doc04\_Future-Land-Use-N-Mid-S-Dec-11-2020  
(4 pp.)
- 2 • App. Exhibit 5: BND\_Doc05\_DRAFT-ZONING-MAP (4 pp.)
- 3 • App. Exhibit 6: BND\_Doc06\_CusikUskUGAPlan (34 pp.)
- 4 • App. Exhibit 7: BND\_Doc07\_ZoningChangePL\_to\_other\_1 (1 page.)
- 5 • App. Exhibit 8: BND\_Doc08\_ZoningChangesToIndustrial\_9  
(1 page.)
- 6 • App. Exhibit 9: BND\_Doc09\_ZoningChangesCusickArea  
(1 page)
- 7 • App. Exhibit 10: BND\_Doc10\_ZoningPL\_NWI (1 page.)
- 8 • App. Exhibit 11: BND\_Doc11\_ZoningChangesToCommercial  
(1 page.)
- 9 • App. Exhibit 12: Octo BND\_Doc12\_RG NEW 2015 vs 2020 TOPU  
comparison. (2 pp.)
- 10 • App. Exhibit 13: BND\_Doc13\_Redlined Chapter XX.64 Subdivisions  
(22 pp.)
- 11 • App. Exhibit 14: BND\_Doc14\_PKardos LLS matrix property owners  
breakdown (9 pp.)
- 12 • App. Exhibit 15: BND\_Doc15\_Redlined Chapter XX.36 Environmentally  
Sensitive Areas (67 pp.)
- 13 • App. Exhibit 16: BND\_Doc16\_waves-of-change (1 page.)
- 14 • App. Exhibit 17: BND\_Doc17\_FutureWise Comments on Comp Plan Feb  
2021 and the Draft Zoning Regulations May 10 2021  
(7 pp.)
- 15 • App. Exhibit 18: BND\_Doc18\_Riparian Ecosystems\_Volume 1\_Science  
Synsthesis and Manangement Implications (WFDW  
2020) (304 pp.)
- 16 • App. Exhibit 19: BND\_Doc19\_ZoningChangesPL\_Pvt\_CountytoLess  
(1 page.)
- 17 • App. Exhibit 20: BND\_Doc20\_STATEMENT OF ED STYSKEL IN  
SUPPORT OF APPEAL (12 pp.)
- 18 • App. Exhibit 21: BND\_Doc21\_Cesar Stoddard email to Tracy Morgan  
(3 pp.)
- 19 • App. Exhibit 22: BND\_Doc22\_W.L. Myers -Potential Impacts to Select  
Wildlife from Rezoning in Pend Oreille County,  
Washington (10 pp.)
- 20 • App. Exhibit 23: BND\_Doc23\_FPAConversionsCombined (63 pp.)
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- 1       • App. Exhibit 24:       BND\_Doc24\_Bead Lake subdivision  
WA\_Newport\_aeria43 (1 page.)
- 2       • App. Exhibit 25:       BND\_Doc25\_LLC Fixl & Gibbs (LLS-19-002)  
(8 pp.)
- 3       • App. Exhibit 26:       BND\_Doc26\_Notice of Decision\_Fixl-Gibbs Large Lot  
4       Segregation (LLS-19-002) (1 page.)
- 5       • App. Exhibit 27:       BND\_Doc27\_Forest ServiceStimson Land Exchange  
Map (1 page.)
- 6       • App. Exhibit 28:       BND\_Doc28\_2021 04 19 SEPA checklist (20 pp.)
- 7       • App. Exhibit 29:       BND\_Doc29\_PK\_ChantryLotPostClearing (1 page.)
- 8       • App. Exhibit 30:       BND\_Doc30\_2021 February Pend-Oreille-Comp-Plan-  
Draft-2020211-Clean (195 pp.)
- 9       • App. Exhibit 31:       BND\_Doc31\_Bull Trout Recovery area POC (84 pp.)
- 10      • App. Exhibit 32:       BND\_Doc32\_WAC 222-16-010 (17 pp.)
- 11      • App. Exhibit 33:       BND\_Doc33\_ZoningPlusSurfaceWaterProtectionArea  
(1 page.)
- 12      • App. Exhibit 34:       BND\_Doc34\_PROPOSED DEV REGS DRAFT-Full-  
Document-2020-Dev-Regs-Clean-Copy (237 pp.)
- 13      • App. Exhibit 35:       BND\_Doc35\_Stevens County Title 13 - Critical Areas  
Ordinance (1 page.)
- 14      • App. Exhibit 36:       BND\_Doc36\_May 4 2015 Pend Oreille County  
Commissioners minutes (6 pp.)
- 15      • App. Exhibit 37:       BND\_Doc37\_August 2008 DOE - Water Resources in  
the Pend Oreille River Watershed (WRIA 62) (3 pp.)
- 16      • App. Exhibit 38:       BND\_Doc38\_2005 WIRA 62 Watershed Plan (163 pp.)
- 17      • App. Exhibit 39:       BND\_Doc39\_DOE -WRIA 55 Little Spokane Watershed  
Water Availability (8 pp.)
- 18      • App. Exhibit 40:       BND\_Doc40\_2020 WRIA 55 Watershed Plan  
Addendum (443 pp.)
- 19      • App. Exhibit 41:       BND\_Doc41\_ESSB 6091-Streamflow Restoration  
Recommendations for Water Use Estimates (9 pp.)
- 20      • App. Exhibit 42:       BND\_Doc42\_Public Records Request for new home  
construction (1 page.)
- 21      • App. Exhibit 43:       BND\_Doc43\_InfluxofNewResidents  
BringsChangingVibetoWesternCities (11 pp.)
- 22      • App. Exhibit 44:       BND\_Doc44\_2020-nar-real-estate-economic-summit-  
lawrence-yun-presentation-slides (21 pp.)
- 23      • App. Exhibit 45:       BND\_Doc45\_Hydrologic-Critical-Areas (1 page.)

- 1       • App. Exhibit 46:       BND\_Doc46\_WashingtonStateWellhead  
ProtectionGuidance (111 pp.)
- 2       • App. Exhibit 47:       BND\_Doc47\_FwdPendOreilleCountyPRR-  
CUPsandSEPAchecklists (4 pp.)
- 3       • App. Exhibit 48:       BND\_Doc48\_EWU-Aquifer Recharge Maps associated  
with Evaluation (page 1.)
- 4       • App. Exhibit 49:       BND\_Doc49\_EWU-Evaluation of Groundwater  
Pollution Susceptibility in Pend Oreille County (94 pp.)
- 5       • App. Exhibit 50:       BND\_Doc50\_Redlined Chapter XX.72 Variances  
(1 page.)
- 6       • App. Exhibit 51:       BND\_Doc51\_Redlined Chapter XX.74 Reasonable Use  
Exception (2 pp.)
- 7       • App. Exhibit 52:       BND\_Doc52\_Fw\_ PRR - P. Kardo habitat and species  
list (5 pp.)
- 8       • App. Exhibit 53:       BND\_Doc53\_2018 POC Hazard Mitigation Plan  
UpdateApp. Exhibit 55 (381 pp.)
- 9       • App. Exhibit 54:       BND\_Doc54\_PK\_PrivateRoad1 (1 page.)
- 10      • App. Exhibit 55:       BND\_Doc55\_PK\_PrivateRoad2 (1 page.)
- 11      • App. Exhibit 56:       BND\_Doc56\_Greg-Snow-Slides (13 pp.)
- 12      • App. Exhibit 57:       BND\_Doc57\_2020 May Pend-Oreille-Comp-Plan-Draft-  
2020520 (Track Changes) (125 pp.)
- 13      • App. Exhibit 58:       BND\_Doc58\_Frequently Flooded Areas TM 2021(3 pp.)
- 14      • App. Exhibit 59:       BND\_Doc59\_gms-climate-planning-2008 (145 pp.)
- 15      • App. Exhibit 60:       BND\_Doc60\_Water supply impacts - Washington State  
Department of Ecology (2 pp.)
- 16      • App. Exhibit 61:       BND\_Doc61\_Little Spokane River (23 pp.)

**Respondent Exhibits**

- 17      • Resp. Exhibit 1:       Application for An Appeal of Decision and Statement of  
Appeal (8 pp.)
- 18      • Resp. Exhibit 2:       Notice of Appeal Hearing (1 page)
- 19      • Resp. Exhibit 3:       Draft Pend Oreille County Comprehensive Plan dated  
February 2021 (195 pp.)
- 20      • Resp. Exhibit 4:       Draft Pend Oreille County Zoning Map dated February  
2021 (4 pp.)
- 21      • Resp. Exhibit 5:       Draft Pend Oreille County Development Regulations  
Dated April 12, 2021 (237 pp.)
- 22      • Resp. Exhibit 6:       Draft Pend Oreille County 2020 Table of Permitted  
Zoning Uses (1 page.)



- 1       • Resp. Exhibit 7:       Final Draft Pend Oreille County Resource Lands  
Review Memo dated May 19, 2020 (20 pp.)
- 2       • Resp. Exhibit 8:       Chapter-XX.36 – Environmentally Sensitive Areas  
(78pp.)
- 3       • Resp. Exhibit 9:       Comments on The Amendment and SEPA Checklist  
(160 pp.)
- 4       • Resp. Exhibit 10:      Determination of Non-Significance Dated April 23, 2021  
(1 page)
- 5       • Resp. Exhibit 11:      Pend Oreille County Presentation to Hearing Examiner  
(12 pp.)
- 6       • Resp. Exhibit 12:      SEPA Environmental Checklist Dated April 19, 2021  
For the Pend Oreille County Comprehensive Plan  
(20 pp.)
- 7       • Resp. Exhibit 13:      Pend Oreille County 2020 Comprehensive Plan Update  
– Comment Response Matrix (February 2021 Version)  
(29 pp.)
- 8       • Resp. Exhibit 14:      Audio Recording of The April 13, 2021 Planning  
Commission Meeting
- 9       • Resp. Exhibit 15:      Audio Recording of The May 11, 2021 Planning  
Commission Meeting

13       In support of its allegations of error the Appellant provided exhibits containing  
14       environmental studies and information allegedly not considered or ignored by the  
15       Community Development Department. Witnesses offered by the Appellant also  
16       testified of environmental impacts allegedly not considered or ignored. Testimony of  
17       Ed Styskel; Testimony of Woody Meyers; Testimony of Terry Morgan, etc.

18       The Checklist indicates that in addition to the Checklist a Resource Lands  
19       Review (Resp. Exhibit 7), best available science documentation prepared for Stevens  
20       County (Anchor QEA, 2021), and guidance documents from the Washington State  
21       Department of Ecology related to wetlands provision and other critical areas were  
22       used in creating the proposed updates. Resp. Exhibit 12, p. 2, paragraph 8. Soil types  
23       and character within Pend Oreille County were considered in preparation of the  
24       Checklist by consideration of and reference to the Soil Survey of Pend Oreille County  
25       Area, Washington<sup>1</sup>, and the U.S. Department of Agriculture National Resources

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22       <sup>1</sup> Soil Survey of Pend Oreille County Area, Washington, prepared for the National Resource  
23       Conservation Service by N.Donaldson, J. Defrancesco, M. Haagen, D. Barron, and R. Coleman,  
24       October 1992.

1 Conservation Service Web Soil Survey<sup>2</sup>. Resp. Exhibit 12, p.6, paragraph 1. c.  
2 Sensitive plant types and noxious weeds and invasive species within Pend Oreille  
3 County were identified and considered by reference to the 2019 Washington Vascular  
4 Plant Species of Special Concern Washington Natural Heritage Program, July 2019,  
5 of the Washington State Department of Natural Resources and via the internet  
6 <https://pendoreilleco.org/wp-content/uploads/2019/01/2019-Weed-List-W.pdf>. Resp.  
7 Exhibit 12, p.9, paragraph 4 and p. 10, paragraph e.

8 Numerous responses to questions put by the Checklist are responded to with  
9 the following or similar statements: “Not applicable, non-project action. Impacts of  
10 specific projects will be addressed by project-level SEPA review, if required.” Resp.  
11 Exhibit 12. Several of the questions put by the Supplemental sheet for nonproject  
12 actions, Section D. of the Checklist, refer generally to development regulations and/or  
13 comprehensive plan goals and policies intended to address potential environmental  
14 impacts relative to the proposed Comprehensive Plan update and amendments to the  
15 Development Regulations and Zoning Map. Resp. Exhibit 12, pp. 18 – 19.

16 The proposed Comprehensive Plan Update would eliminate the land use  
17 classification of “Public Land” and reclassify properties currently classified as such as  
18 either “Rural Land” (R5, R10, R20, or R40) or “Natural Resource Land” (NR).  
19 Appellant’s Exhibit 12. In addition to the elimination of the “Public Lands”  
20 classification in the Comprehensive Plan the proposed amendment to the Zoning  
21 Map would eliminate the zone designation of “Public Land”, combine the zone  
22 designations of “Natural Resource Lands” NR20 and NR 40 into a single designation  
23 of “Natural Resource” without distinction between 20 acre parcels or 40 acre parcels,  
and add two new zone designations, “Commercial” and “Industrial”. Three new land  
uses are added to the identified uses in the zoning matrix; “Apartment House (3)”,  
“Industrial (Heavy)”, and “Industrial (Light)”. Appellant’s Exhibit 12. A comparison  
of the current zoning designation matrix with the proposed matrix indicates several  
uses currently prohibited in the “Public Land” zone are allowed either outright or as  
a conditional use in the newly proposed zone designations. Appellant’s Exhibit 12.

It is undisputed in the record that uses previously prohibited in the “Public  
Land” zone that are now allowed in the redesignated zones, for example uses such as  
residential, commercial, industrial, master planned resorts, recreational vehicle  
parks, etc., without limitation by development regulations or environmental  
regulations may present an environmental impact on the land identified within the  
newly proposed zones. Appellant argues that the possible impacts of development on

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<sup>2</sup> <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>



1 lands previously zoned as PL will be significant adverse environmental impacts.  
2 Appellant's witness, Ed Styskel testified that even the presence of domesticated dogs  
3 and cats (assumedly in conjunction with residential development) present an impact  
4 on the natural environment and wildlife and fish. Testimony of Ed Styskel. Mr.  
5 Styskel asserts that domesticated cats are most destructive to animal habitat. Id.

6 Appellant fails to provide any evidence in the record regarding the probability  
7 of development that would be allowed if the Comprehensive Plan update, development  
8 regulations amendments, and zoning map amendments were adopted. Neither does  
9 the Appellant provide any evidence of whether and to what extent the alleged  
10 environmental impacts would be mitigated by the currently existing or proposed  
11 amended environmental regulations.

12 Pend Oreille County also provides no evidence in the record relative to the  
13 probability of future development of the lands for which the zone designation is  
14 proposed to change from PL zoned land. The record contains no information  
15 regarding the likelihood or when in the future such development may be expected to  
16 occur. Although it is possible to assume that properties lying near currently  
17 developed properties may be ripe for development sooner than more remote areas,  
18 the record does not indicate any consideration of the probability of future  
19 development.

20 Mr. Ben Floyd did testify that environmental regulations, Comprehensive Plan  
21 goals and policies, and development regulations and codes are expected to adequately  
22 mitigate possible environmental impacts such that the possible impacts would not  
23 amount to significant adverse impacts, however his testimony did not expand or  
explain where or to what impacts the regulations etc. would apply. Testimony of Ben  
Floyd. The Checklist and evidence in the record is lacking of the correlation between  
possible impacts relative to the proposed update and amendments and the mitigation  
of environmental impacts by the environmental regulations etc.

Appellant alleges that the Community Development Department erred in  
issuing the DNS in this matter by failing to obtain and consider information  
reasonably sufficient to evaluate the environmental impact of the proposal, in  
violation of WAC 197-11-335. Notice of Appeal by Responsible Growth\*Northeast  
Washington.

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

1 III. CONCLUSIONS OF LAW AND ANALISYS

2 A. Standard and Scope of Review:

3 On appeal, an agency that issues a determination of non-significance must  
4 show that environmental factors were considered in a manner sufficient to amount to  
prima facie compliance with procedural requirements of SEPA. *Sisley v. San Juan  
County*, 89 Wn2d 78, 84, 569 P.2d 712 (1977).

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

12 The scope of this appeal is limited to determining whether the record of a  
13 negative threshold determination by the Department demonstrates that  
14 environmental factors were considered in a manner sufficient to amount to prima  
15 facie compliance with the procedural requirements of SEPA, meaning that the  
determination was based upon information reasonably sufficient to determine the  
environmental impact of a proposal. Decision Re: Hearing Examiner Authority to  
Hear SEPA Appeals, p. 3.

16 B. SEPA Procedural Requirements:

17 A SEPA threshold determination must be based upon information reasonably  
18 sufficient to evaluate the environmental impacts of the proposed action, in this case  
19 the proposed Comprehensive Plan update, Development Regulations, and Zoning  
20 Map amendments. WAC 197-11-040(4)(c). An environmental review must begin by  
21 review and consideration of an environmental checklist. WAC 197-11-060 (2)(b);  
22 WAC 197-11-330 (1)(a). To determine whether an Environmental Impact State will be  
23 necessary a threshold determination is made by the lead agency for the  
environmental review. In making a threshold determination, the responsible official  
shall consider any mitigation measures required by development regulations,  
comprehensive plans, or other existing environmental rules or laws. WAC 197-11-  
330. A Determination fo Non Significance (DNS) may be issued if the lead agency  
finds that the proposed action will not have a probable significant, adverse

1 environmental impact. RCW 43.21C.031; WAC 197-11-330; WAC 197-11-340. To  
2 defeat the appeal in this matter, the record produced by Pend Oreille County in  
3 support of its threshold determination of DNS, relative to the Application for  
4 Amendments, must demonstrate that environmental factors were considered in a  
5 manner sufficient to amount to prima facie compliance with the procedural  
6 requirements of SEPA. *Sisley v. San Juan County*, 89 Wn.2d 78, 84 – 85, 569 P.2d  
7 712 (1977).

8 The proposed Comprehensive Plan update and proposed regulation and map  
9 amendments are a non-project action. The Checklist repeatedly states that further  
10 investigation into environmental impacts upon the impacted lands will be conducted  
11 upon submission of specific project proposals in the future. See the Checklist.

12 The content of the environmental review depends on each particular proposal,  
13 on the agency's existing planning and decision-making processes, and on the time  
14 when alternatives and impacts can be most meaningfully evaluated. WAC 197-11-  
15 060 (2)(a). Phased review of proposals is appropriate when the sequence is from a  
16 non-project document to a document of narrower scope such as a site-specific  
17 analysis. WAC 197-11-060 (5)(c)(i). The timing of environmental review can be  
18 difficult to determine, however postponing the environmental review too long or  
19 failing to recognize that future land use proposals may be exempt from  
20 environmental review could result in the loss of opportunity for said review. *Lands*  
21 *Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn. App. 787, 803 – 804,  
22 309 P.3d 734 (2013). The responsible official must determine when environmental  
23 analysis will be most effective in providing sufficient information to the decision  
maker to make an informed decision regarding whether to adopt the proposal or not.  
WAC 197-11-330 (2)(b). A threshold determination shall not balance whether the  
beneficial aspects of a proposal outweigh its adverse impacts, but rather, whether a  
proposal has any probable significant adverse environmental impacts under the rules  
stated in WAC 197-11-330.

18 When considering an amendment to zoning designations, such as in this case,  
19 a delay of full implementation of the environmental policies of SEPA until the  
20 development permit stage is allowed, provided that the municipality has the  
21 authority to implement those policies at the permit stage and so long as the  
22 environmental consequences of any development of the property are disclosed and  
23 considered at the time the zoning amendments are adopted. *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). A DNS may be issued upon a finding that the

1 proposed action will not have a *probable significant*, adverse environmental impact.  
(Emphasis added) RCW 43.21C.031; WAC 197-11-330; WAC 197-11-340.

2 In his testimony Mr. Greg Snow stated that it was his opinion that it could not  
3 be known when or to what extent any specific parcel of property would be developed  
4 and thus, a more detailed environmental review would not be possible at this stage of  
5 Comprehensive Plan update and amendments to development regulations. Mr.  
6 Snow's logic is understandable, however SEPA regulations require an environmental  
7 review that is reasonable based upon the information available at the time of SEPA  
8 review. WAC 97-11-330; see also *Ullock v. Bremerton*, 17 Wn. App. 573, 584 – 585,  
9 565 P.2d 1179 (1977); *Hayden v. Port Townsend*, 93 Wn.2d 870, 879, 613 P.2d 1164  
10 (1980). Even lacking information about a specific proposed development, the lead  
11 agency should review what mitigation measures are required by development  
12 regulations, comprehensive plans, or other existing environmental rules or laws that  
13 would control future development of a given site. WAC 197-11-330. Applied to this  
14 matter, Pend Oreille County should identify and recognize what development would  
15 be allowed in the various zone designations under the Comprehensive Plan update  
16 and regulations amendments, consider the applicable codes and regulations that  
17 control development of those areas and what mitigation measures those codes and  
18 regulations require in the protection of the environment, and then evaluate as much  
19 as possible the probability that development will occur and what environmental  
20 impacts are expected to occur in light of that evaluation.

21 Upon a more thorough review or evaluation it may be found that the  
22 probability of development in remote areas of the county is very low and that the  
23 applicable codes and regulations are adequate to mitigate possible environmental  
impacts. It may also be true that further evaluation would reveal a higher probability  
of development in areas such as near the Diamond Lake Community or the Town of  
Cusick. Evidence of the required evaluation is not provided in the record before the  
Hearing Examiner.

Failure to consider the mitigation measures required by development  
regulations, comprehensive plans, or other existing environmental rules or laws in  
conformance with WAC 197-11-330, and failure to evaluate what probable significant  
environmental impacts may occur as a result of adoption of the proposed legislative  
action is clearly erroneous.

Based upon the failure to comply with WAC 197-11-330 as described above,  
the SEPA Threshold Determination in this matter should be rescinded and a new  
threshold determination process should be conducted in compliance with the  
requirements of RCW 43.21C and WAC 197-11 et. seq.

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

DATED this 25<sup>th</sup> day of January, 2022

PEND OREILLE COUNTY  
HEARING EXAMINER

  
\_\_\_\_\_  
DAVID W. HUBERT

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

Pursuant to xx.92.070 PCDR, the decision of the Hearing Examiner on an application for appeal of an administrative decision is final and conclusive unless 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.

On January 26, 2022, a copy of this decision will be mailed by first class mail to the Appellant, and by e-mail to other parties of record. The date of issuance of the Hearing Examiner’s decision is January 31, 2022.

**THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT BY LAND USE PETITION IS FEBRUARY 21, 2022.**

The complete record in this matter, including this decision, is on file during the appeal period with the Pend Oreille County Community Development Department, 418 South Scott Avenue, Newport, WA 99156, (509) 447-4821. The file 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.