

5.19 Pond Standards (PD)

PDS-01: The following standards pertain to the installation, expansion or alteration of ponds, and are intended to define the various types and their uses.

PDS-02: Definitions. For the purposes of this Section, the following terms shall have the following meanings:

- A. "Application" means all documents, forms and other information that the Department may require an Owner to complete or provide in order to assist the Department in determining whether a proposed pond complies with the terms of this Section or otherwise to assist the Department in the enforcement of this Section.
- B. "Department" means the Whitley County/Columbia City Joint Planning and Building Department. In performing its duties under this Section, the Department may consult with, and may rely on any opinions or conclusions of, the County Engineer.
- C. "Owner" means the owner(s) of the tract or parcel of land on which the pond is located or is to be located.
- D. "Site Plan" means all drawings, descriptions, plans and/or specifications for the proposed pond and the tract or property on which it is located that are requested by the Department in order to assist the Department in determining whether a proposed pond complies with the terms of this Section.

PDS-03: Permit Required. In any zoning district, no new pond shall be constructed and no existing pond shall be substantially altered or expanded without a permit issued by the Department. The Department shall issue a permit in accordance with the provisions of this Section only if:

- A. The owner (or its authorized agent) signs and files with the Department an Application, including a Site Plan, and pays the required fee to the Department.
- B. The Department determines that the pond will comply with the terms of this Section based on the completed Application and Site Plan, any inspections, and any other information available to the Department.

PDS-04: Expiration: Revocation of Permit. A permit shall be valid for one (1) year after the date of issuance. If no substantial work has occurred in connection with the permit after one (1) year, the permit shall be null and void and the Owner shall be required to apply for and obtain a new permit. A permit shall be subject to revocation by the Department as follows:

- A. In the event of a violation of this Section, as hereinafter provided.
- B. If the applicant makes any material misrepresentation in connection with the Application and the issuance of the permit.

- C. If (i) the permit was issued as the result of an error or oversight by the Department or the Department determines for any reason that, under the terms of this Section, the permit should not have been issued and (ii) no substantial work has occurred in connection with the permit.

PDS-05: Minimum Standards. All ponds, and all activity in connection with the construction, expansion and maintenance of any pond, shall comply with the following minimum standards and requirements:

- A. All ponds shall be constructed and maintained in compliance with the following set back requirements:
 - 1. No portion of the water constituting the pond shall encroach upon any area within fifty (50) feet from the right-of-way of any public road.
 - 2. No portion of the water constituting the pond shall encroach upon any area within twenty (20) feet from any boundary line of the Owner's property; provided, however, that this set back requirement shall not prevent a pond from being constructed on two or more tracts of property if: (A) the permit Application is signed by the owner(s) of all of the tracts of property on which the pond will be constructed or (B) the location of the pond, as shown on a subdivision plat, is approved by the Whitley County Plan Commission as part of the approval of a subdivision under the Whitley County Subdivision Ordinance.
 - 3. No fill shall be placed within the right-of-way of any public road. Within ten (10) feet of the right-of-way of any public road, no fill shall be placed above an elevation six (6) inches below the elevation at the edge of the road surface.
- B. No excavation shall occur and no fill shall be placed within seventy-five (75) feet of any regulated drain unless authorized by the Whitley County Drainage Board in accordance with the Indiana drainage statute.
- C. If the pond has an outlet, the outlet shall be subject to the following requirements:
 - 1. If the outlet opens into the Owner's property, the outlet opening must be located at least fifteen (15) feet from the Owner's property boundary line and at least twenty (20) feet away from the right-of-way of any public road. Compliance with this provision shall not relieve the Owner from any additional duties under Indiana law with respect to the discharge of such water onto an adjoining property.
 - 2. If the outlet opens into or connects to a county drain, the owner must obtain the prior approval of the County Surveyor or County Engineer in accordance with Indiana drainage statute.

3. If the outlet opens into or connects to an outlet on another tract or parcel, the Owner must prove to the satisfaction of the Department that the Owner has all easement rights necessary to access such outlet.
- D. The pond shall be constructed so as not to increase the volume of water that exits the tract under normal conditions. Fill areas shall not obstruct the flow of surface water onto the Owner's property from adjacent properties. The Owner shall be responsible for the repair, replacement or relocation of any tiles, open ditches or other drainage facilities to the extent necessary to maintain the amount of drainage through the parcel or tract that existed prior to the construction of the pond.
- E. All ponds shall be constructed and maintained so as to prevent any soil erosion or other condition that obstructs or damages or threatens to obstruct or damage any public drain or drainage related improvements. The Owner shall remove spoil and resurface and re-seed degraded open ditch banks.

PDS-06: Variances. The Board of Zoning Appeals may (but shall never be required to) grant a variance from the setback requirements set forth in this Section in accordance with and subject to the following limitations:

- A. A variance may only be granted with respect to the setback requirements set forth in this Section PDS-05 (A). No other standards set forth in this Section may be subject of a variance.
- B. The Board of Zoning Appeals shall approve a variance only if it finds: (i) the approval will not be injurious to the public health, safety or general welfare of the community; (II) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; (iii) the proposed pond cannot comply with the setback requirements due to unique feature(s) existing on the property and either natural or man-made features exist or could be provided which would allow the pond to achieve the purposes of the setback requirements; and (iv) the variance has been approved by the Whitley County Drainage Board.

PDS-07: Right of Entry. The Owner shall notify the Department when work commences on the construction of the pond. The Department (including any person acting on its behalf) may enter onto the property at any reasonable time for the purposes of inspecting the property and determining or enforcing compliance with the provisions of this Section. By applying for a permit as provided in this Section, an Owner consents to such entry.

PDS-08: Enforcement Official. The Executive Director (or the equivalent officer or employee) of the Department is hereby designated as the official authorized to make decisions and take action on behalf of the Department in connection with the enforcement of this Section.

PDS-09: Complaints. Any person who believes a violation of this Section has occurred may file a written complaint with the Department. The complaint shall describe the alleged violation sufficiently so that the Department can investigate the matter. The Department shall investigate and may take action upon such complaint as provided in this Section.

PDS-10: Common Nuisance. A violation of this Section is declared to be a common nuisance.

PDS-11: Notice of Violation. In the event of a violation of this Section, the Department shall send written notice to the Owner describing the nature of the violation and the action required to correct the violation ("Violation Notice"). The notice requirement shall be satisfied if the Department mails the Violation Notice by U.S. Certified Mail, Return Receipt Requested, to the address of the Owner as shown in the records of the office of the Whitley County Auditor. The Violation Notice shall state a date on or before which the violation must be corrected, which date shall not be earlier than ten (10) days from the date the notice is mailed.

PDS-12: Stop Work Orders. At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the Owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the Owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.

PDS-13: Remedies and Penalties. At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the Owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the Owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.

A. Revocation of Permits. The Department may revoke any permit issued for work on the property, including the permit for the pond. If a pond permit is revoked under this section, the Owner shall forfeit the right to obtain a pond permit for a period of five (5) years from the date of the revocation of the permit.

B. Civil Lawsuit. The Department may refer the matter to its attorney to file a lawsuit and to invoke any legal, equitable or special remedy for the enforcement of this Section, including the right to enjoin a person or entity from violating, or continuing to violate any provision of this Section and/or maintaining a common nuisance and the right to have the violation removed or abated.

C. Civil Penalty. The County shall have the right to recover from the Owner, in a civil action, a penalty in the amount of \$2,500.00 for each violation.

- D. Other Remedies. The Department may pursue any other applicable remedy or penalty provided by the ordinances of Whitley County, or by Indiana law, for the enforcement of this Section or the prosecution of the violation.