



CITY OF BLACK DIAMOND
May 31, 2012 Workstudy Agenda
25510 Lawson St., Black Diamond, Washington

Workstudies are meetings for Council to review upcoming and pertinent business of the City. Public testimony is only accepted at the discretion of the Council.

4:00 P.M. – CALL TO ORDER, ROLL CALL

4:00 P.M.

- 1.) Shoreline Master Plan - Mr. Nix

6:30 P.M.

- 2.) Community Facility District – Mr. Bacha, Mr. Reich and Mr. Williamson
- 3.) Adjournment



CITY OF BLACK DIAMOND

City Council Memorandum

TO: CITY OF BLACK DIAMOND CITY COUNCIL
FROM: AARON NIX, PARKS/NATURAL RESOURCES
SUBJECT: SHORELINE MASTER PROGRAM
DATE: MAY 31, 2012

HONORABLE COUNCIL MEMBERS,

Included in your work study packet is the culmination of almost three years worth of work in the development of a Draft Shoreline Management Program (SMP) for areas identified as Waters of the State of Washington within the jurisdictional limits of the City of Black Diamond (Washington Administrative Code 173-20). Lake Sawyer is considered Waters of the State as it is over the 20 acre minimum imposed by state law. I've included a focus sheet to help Council Members as we introduce this subject as background information and for your reference.

Shoreline management is a shared responsibility between the Department of Ecology and the City of Black Diamond. With the aide of a \$70,000 grant from the State of Washington and a private consultant, AHBL, staff worked on building a Shoreline Master Program with supporting materials (background information including a Public Participation Plan, Shoreline Inventory and Map Folio, Cumulative Impacts Analysis and Restoration Plan) required by the grant agreement and State law. These supporting materials are in Draft form and on the City's website under the Natural resources section of the webpage.

Currently, as mandated by WAC 173-26-160, Lake Sawyer is regulated by current King County standards developed in 1978 prior to annexation of the lake into the City of Black Diamond. King County has recently adopted an updated version of their Shoreline Management Program, submitted to the Department of Ecology in November of 2010, but it has yet to be approved by the Department and will not go into effect until Ecology approves it. This process will be the same for the City of Black Diamond as we move forward.

After staff/consultant began work on this project, a Citizen Advisory Committee was formed and aided in developing an initial Draft Shoreline Master Program that included

policies, provisions and regulations that constitute the City's Draft Shoreline Management Program. After review by the Department of Ecology, as required by contract, comments were provided by DOE and staff/consultant integrated changes as suggested by the Department.

The Planning Commission then began their review of this revised document (December 2011), held a public hearing and several work sessions, culminating in changes of their own, highlighted in yellow and included for your review. Chairperson Watson is slated to be here this afternoon and will be providing you with a report from the Planning Commission based on the Commission's recommendations. Staff/consultant has put together a Powerpoint presentation to introduce the subject about process, Shoreline Master Program contents/requirements and the approval process. If there are any questions prior to our meeting on the 31st, please do not hesitate to contact me. If additional research is needed by the Council prior to the meeting, please let me know and I'll do my best to get you that information ahead of time.

Thanks in advance for your time and I look forward to seeing you at the meeting.

Aaron Nix
City of Black Diamond
Parks/Natural Resources
360.886.5700



City of Black Diamond

Grant No. G1000014

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Shoreline Master Program DRAFT

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in part through a grant
from the Washington
Department of Ecology.



Acknowledgments

- City of Black Diamond Shoreline Ad Hoc Advisory Committee
- City of Black Diamond Planning Commission
- City of Black Diamond City Council

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Chapter 1 Introduction

A. History and Requirements of the Shoreline Management Act

Washington's **Shoreline Management Act** (Act) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The Act has three broad policies:

1. **Encourage water-dependent uses:** "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."
2. **Protect shoreline natural resources,** including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
3. **Promote public access:** "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

This Act recognizes that "shorelines are among the most valuable and fragile" of the state's resources. The Act, and the City of Black Diamond, recognize and protect private property rights along the shoreline, while aiming to preserve the quality of this unique resource for all state residents.

The primary purpose of the Act is to provide for the management and protection of the state's shoreline resources by planning for reasonable and appropriate uses. In order to protect the public interest in preserving these shorelines, the Act establishes a coordinated planning program between the state and local jurisdictions to use in addressing the types and effects of development occurring along the state's shorelines. By law, the City is responsible for the following:

1. Development of an inventory of the natural characteristics and land use patterns along shorelines covered by the act.
2. Preparation of a "Master Program" to determine the future of the shorelines.
3. Development of a permit system to further the goals and policies of both the act and the local Master Plan.
4. Development of a Restoration Plan that includes goals, policies and actions for restoration of impaired shoreline ecological functions.

B. Master Program Development and Public Participation

The City of Black Diamond (City) obtained a grant from the Washington Department of Ecology (Ecology) in 2009 to conduct a comprehensive Shoreline Master Program (SMP) update, pursuant to the Ecology SMP

Guidelines (Chapter 173-26 WAC). The first step of the update process was to inventory the City's shorelines as defined by the state's Shoreline Management Act (SMA) (RCW 90.58). The inventory describes existing biological and physical conditions. These conditions were then analyzed and characterized to create a baseline from which future development actions in the shoreline will be measured. Environmental designations were identified for the different shoreline reaches and goals, policies, and regulations for each were developed.

The SMA establishes a minimum 20 acre size threshold for regulation of lakes under the SMP. Lake Sawyer and its associated wetland area (i.e. Frog Lake) are the primary shorelines in the City of Black Diamond that are subject to the requirements of the SMA. In addition, a very small segment of Covington Creek (less than 200 feet) downstream of the Lake Sawyer weir and shorelands within 200 feet of Covington Creek are within the City limits of Black Diamond. All other streams and creeks in the City do not meet the 20 cubic feet per second mean annual flow threshold for regulation under the SMA.

The Guidelines require that the City demonstrate that its updated SMP yields "no net loss" in shoreline ecological functions relative to the baseline due to its implementation. Ideally, the SMP in combination with other City and regional efforts will ultimately produce a net improvement in shoreline ecological functions.

C. Purposes of the Shoreline Master Program

The purposes of this Master Program are:

1. To carry out the responsibilities required of the City of Black Diamond by the Washington State Shoreline Management Act (RCW 90.58).
2. To promote the public health, safety, and general welfare, by providing a guide and regulation for the future development of the shoreline resources of the City of Black Diamond.
3. To further, by adoption, the policies of RCW 90.58, and the goals of this Master Program, both which hereafter follow.
4. To comply with the Shoreline Master Program Guidelines (WAC Chapter 173-26), including a particular focus on including regulations and mitigation standards to ensure that development under the Shoreline Master Program will not cause a net loss of ecological functions.

D. Legislative Findings and Washington Shoreline Management Policies

"The Washington State Legislature finds the shorelines of the state are among the most valuable and fragile of its natural resources and there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines, necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and uplands adjacent thereto are in private ownership and that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is,

therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to ensure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in navigable water, will promote and enhance the public interest. This policy is intended to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the water of the state and its aquatic life, while generally protecting public rights of navigation and its associated activities.”

E. Shoreline Master Program Basics

The Black Diamond Shoreline Master Program is a planning document that outlines policies for the shoreline of the city and establishes regulations for development occurring in that area.

In order to preserve and enhance the Lake Sawyer shoreline of Black Diamond it is important that all development proposals relating to the shoreline area be evaluated in terms of the City's Shoreline Master Program, and that the City Shoreline Administrator be consulted. Some developments may be exempt from regulation, while others may need to stay within established guidelines, or may require a shoreline conditional use permit application or variance application; all proposals must comply with the policies and regulations established by the state Shoreline Management Act as expressed through this local Shoreline Master Program, regardless of whether a permit is required.

The Shoreline Management Act defines for local jurisdictions the content and goals that should be represented in the Shoreline Master Programs developed by each community; within these guidelines, it is left to each community to develop the specific regulations appropriate to that community. Under the Act, all shorelines of the state meeting the criteria established receive a given shoreline environmental designation. The purpose of the shoreline designation system is to ensure that all land use, development, or other activity occurring within the designated shoreline jurisdiction is appropriate for that area and provides consideration for the special requirements of that environment. Black Diamond has designated its Lake Sawyer shorelines under four shoreline environments: Aquatic, Natural, Urban Conservancy, and Shoreline Residential. These environments are described in Chapter 2: Shoreline Environments.

Persons proposing any shoreline development, land use, or other projects in the shoreline area must consult with the City of Black Diamond Shoreline Master Program Administrator (the City's Community Development Director) to determine how the proposal is addressed in the Master Program.

The City's Shoreline Administrator will determine if a proposal is exempt from a Shoreline Substantial Development Permit (i.e. qualifies for a Shoreline Exemption), as well as provide information on the permit application process.

Requests for shoreline variances, conditional use permits, and substantial development permits require review and recommendation by the City's Shoreline Administrator, with the decision being made by the Hearing

Examiner following a public hearing. Requests for shoreline conditional uses and variances also require final approval by the State of Washington Department of Ecology. A description of exempt projects, shoreline application procedures and criteria are discussed in Chapter 6: Administration.

A description and map (Figure 1) of the area within the jurisdiction of this Shoreline Master Program are presented in Chapter 2: Shoreline Environments.

F. Organization of this Shoreline Master Program

This Master Program is divided into seven Chapters:

Chapter 1: Introduction provides general background information on the state Shoreline Management Act; the development of the Shoreline Master Program in Black Diamond; and a general discussion of when and how a shoreline master program is used.

Chapter 2: Shoreline Environments defines and maps the shoreline jurisdiction in the City of Black Diamond and defines and maps the environment designations of all the shorelines of the state within the City of Black Diamond. Policies and regulations specific to the four designated shoreline environments (Aquatic, Natural, Urban Conservancy, and Shoreline Residential) are detailed in this chapter. Specific setback regulations, reduction incentives and dimensional and density standards for all Shoreline Environments are also listed.

Chapter 3: General Policies and Regulations sets forth the general policies and regulations that apply to uses, developments, and activities in all shoreline areas of Black Diamond.

Chapter 4: Specific Shoreline Use Policies and Regulations sets forth policies and regulations governing specific categories of uses and activities typically found in shoreline areas.

Chapter 5: Shoreline Modification Activity Regulations provides policies and regulations for those activities that modify the physical configuration or qualities of the shoreline area.

Chapter 6: Administration provides the system by which the Black Diamond Shoreline Master Program will be administered, and provides specific information on the application process and criteria used in evaluating requests for shoreline substantial development permits, conditional use permits, and variances.

Chapter 7: Definitions defines terms found in this document.

G. Relationship of this Shoreline Master Program to Other Plans

The permitting process for a shoreline development or use does not exempt an applicant from complying with any other local, state, regional or federal statutes or regulations which may also be applicable. In Black Diamond, other plans and policy documents that must be considered include the Black Diamond Comprehensive Plan and the adopted 2005 Department of Ecology Stormwater Management Manual for Western Washington.

Proposals must also comply with regulations developed by the City to implement its plans, such as the zoning code, as well as regulations relating to building construction and safety.

At the time of a permit application or of an initial inquiry, the City's Shoreline Administrator should inform the applicant of those regulations and statutes which may be applicable to the best of the administrator's knowledge; PROVIDED, that the final responsibility for complying with such other statutes and regulations shall rest with the property owner.

H. Title

This document shall be known and may be cited as the City of Black Diamond Shoreline Master Program. This document may refer to itself as "The Master Program."

Chapter 2 Shoreline Environments

A. Introduction to Shoreline Environment Designations

The basic intent of a shoreline environment designation is to preserve and enhance shoreline ecological functions and to encourage development that will enhance the present or desired future character of the shoreline. To accomplish this, shoreline segments are given an environment designation based on existing development patterns, biological capabilities and limitations, and the aspirations of the local citizenry.

Environment designations are categories that reflect the type of development that has or should take place in a given area. The Shoreline Master Program Guidelines recommend classifying shoreline environments using the following categories: “high-intensity,” “shoreline residential,” “urban conservancy,” “rural conservancy,” “natural,” and “aquatic.”

These categories represent a relative range of development, from high to low intensity land use:

- "High Intensity" is appropriate for areas of high intensity water oriented commercial, transportation, and industrial development. No areas in Black Diamond meet the criteria for this designation.
- "Shoreline Residential" is intended to accommodate residential development, and appropriate public access and recreational uses consistent with other elements of shoreline management.
- "Urban Conservancy" is a designation designed to protect and restore the ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed areas.
- "Rural Conservancy" is intended for areas outside of cities and urban growth areas that protect ecological functions and conserve existing natural resources and that support, or have the capability to support, agricultural and recreational uses. No areas in Black Diamond meet the criteria for this designation.
- "Natural" is intended to protect shorelines that remain relatively free of human influence or that include intact or minimally degraded shoreline functions that cannot support human use.
- And finally, "Aquatic" is a designation intended to protect, restore, and manage the areas waterward of the ordinary high water mark.

Additionally, local governments may establish an alternative environment designation(s), provided that it is consistent with the purposes and policies of the Shoreline Management Act and the Guidelines, including WAC 173-26-211(5). In addition to the shoreline environment designations established in the SMP Guidelines, the City of Black Diamond has adopted an alternative designation of “Shoreline Residential Limited” to guide shoreline management for an area with unique local conditions.

Once a shoreline segment has been given an environment designation, management policies are developed. These management policies are used as the basis for determining uses and activities that can be permitted in

each environment designation. Specific development standards are also established, which specify how and where permitted development can take place within each shoreline environment.

B. Need for Consistency

The Shoreline Management Act (SMA) requires that policies for lands adjacent to the shorelines be consistent with the SMA, implementing rules, and the local shoreline master program. Conversely, local comprehensive plans provide the underlying framework within which master program provisions should fit. The Growth Management Act (GMA) requires that shoreline master program policies be incorporated as an element of the comprehensive plan, and that all elements be internally consistent. In addition, under the GMA, all development regulations must be consistent with the comprehensive plan.

The Shoreline Guidelines identify three criteria for use in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) Provisions not precluding one another.

Comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criterion, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) Use compatibility.

Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent existing or potential future water oriented uses, especially water dependent uses, from being restricted on shoreline areas because of impacts to nearby non-water-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) Sufficient infrastructure.

Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

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C. City of Black Diamond Shoreline Environment Designations

This Master Program establishes five shoreline environments for the City of Black Diamond. These shoreline environments shall include the shorelines of the City of Black Diamond, including shorelands, surface waters, and bedlands.

These environments are derived from the Black Diamond Shoreline Analysis Report, the Black Diamond Comprehensive Plan, and the environments recommended by the Shoreline Management Act and the Shoreline Guidelines. Black Diamond's Shoreline Analysis Report provides an inventory of natural and built conditions within the City's shoreline jurisdiction. The conditions identified in the inventory have been compared with the recommended shoreline environments and the most appropriate environments were selected. The five (5) Black Diamond shoreline environment designations are:

1. Shoreline Residential,
2. Shoreline Residential Limited,
3. Urban Conservancy,
4. Natural, and
5. Aquatic.

These shoreline environments are illustrated for the City of Black Diamond in Figure 1 (Shoreline Management Environmental Designations), located at the end of the SMP, and described in the text below. Any undesignated shorelines are automatically assigned an Urban Conservancy environment designation. Each shoreline description includes a definition and statement of purpose, followed by designation criteria, management policies, and development standards specific to that Shoreline Environment. Shoreline development standards are summarized in Table I and regulations that apply throughout the SMP (except where specifically provided) are included at the end of this Chapter.

D. Policies and Regulations

1. Shoreline Residential Environment

a) Purpose

The Shoreline Residential environment designation is designed to provide for residential needs where the necessary facilities for development can be provided. An additional purpose is to provide appropriate public access and recreational uses.

b) Designation criteria

The Shoreline Residential environment designation is assigned to shoreline areas that are predominantly single-family residential development or are planned and platted for this purpose.

c) Designated Areas

Shoreline Residential areas include those areas adjacent to Lake Sawyer that are currently developed as low to moderate density residential uses and vacant properties zoned for single family use, where that use is anticipated to continue in the future.

d) Management policies

1. Residential activities are preferred over other land and resource consumptive development or uses.
2. Limited non-residential uses, such as parks, recreation facilities and home occupation businesses may be allowed, provided they are consistent with the residential character.
3. Development should be located, sited, designed and maintained to protect, enhance and be compatible with the shoreline environment.
4. Development regulations should require the preservation of ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
5. Low impact development (LID) techniques, such as minimizing impervious surfaces, infiltration of run-off, pervious pavers, and other techniques should be required where feasible.
6. Private property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through incentives, information and other assistance.

e) Regulations

Shoreline Use

Permitted, conditional and prohibited uses for the Shoreline Residential environment are listed in Chapter 4, Specific Shoreline Use Policies and Regulations, and summarized in Table I of that Chapter.

Development Standards

Shoreline-related development standards for the Shoreline Residential environment are summarized in Table I in Chapter 4.

2. Shoreline Residential Limited Environment

a) Purpose

The Shoreline Residential Limited environment designation recognizes the higher level of ecological function and sensitivity associated with specific islands located in Lake Sawyer, when compared to other shoreline areas that are developed or planned for residential development. This designation also recognizes the presence of existing residential and recreational uses in these areas and is designed to provide for development and/or redevelopment that is compatible with the protection of ecological functions at such time when appropriate facilities are provided, such as potable water, electricity and waste disposal that complies with King County and State Health Department regulations. In addition to residential and recreational uses, an additional purpose of this environment is to provide for ecological enhancement.

b) Designation criteria

The Shoreline Residential Limited environment designation is assigned to shoreline areas on specific islands within Lake Sawyer that do not currently have minimum urban facilities, such as potable water, electricity and waste disposal, but are currently developed as single-family residential and recreational uses or are small lots that are planned and platted for this purpose.

c) Designated Areas

Shoreline Residential Limited areas include all parcels on three specific islands within Lake Sawyer (see Figure 1) that are currently developed for recreational and seasonal residential uses and similar vacant properties on these islands that are platted and zoned for single family use, where that use is anticipated to continue in the future.

d) Management policies

1. Development should be located, sited, designed and maintained to protect, enhance and be compatible with the shoreline environment.
2. Residential and recreational uses are allowed and are preferred over other land consumptive uses, provided they meet applicable health, safety and building codes.
3. Further subdivision of property should not be allowed due to the ecological sensitivity of the small islands that comprise this shoreline environment.
4. New physical development is restricted until such time as urban services, such as potable water, electricity and sanitary waste disposal consistent with health department regulations, are provided.
5. Development regulations should require the preservation of ecological functions, taking into account the greater environmental limitations and sensitivity of the shoreline area on these small islands, the level of infrastructure and services available, and other comprehensive planning considerations.
6. Low impact development (LID) techniques, such as minimizing impervious surfaces, infiltration of run-off and pervious pavers, and other techniques should be required where feasible.
7. Private property owners should be encouraged to preserve and enhance native shoreline vegetation, utilized shared overwater structures and use environmentally friendly landscaping practices, through incentives, information and other assistance.

e) Regulations

Shoreline Use

Permitted, conditional and prohibited uses for the Shoreline Residential Limited environment are listed in Chapter 4, Specific Shoreline Use Policies and Regulations, and summarized in Table III of that Chapter.

Development Standards

Shoreline-related development standards for the Shoreline Residential Limited environment are summarized in Table I in Chapter 4.

3. Urban Conservancy Environment

a) Purpose

The purpose of the Urban Conservancy environment designation is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

b) Designation criteria

Areas designated Urban Conservancy are those areas where one or more of the following characteristics apply:

1. They are suitable for water-related or water-enjoyment uses,
2. They are open space, flood plain or other sensitive areas that should not be more intensively developed,
3. They have potential for ecological restoration,
4. They retain important ecological functions, even though partially developed, or
5. They have the potential for development that is compatible with ecological restoration.

c) Designated Areas

Urban Conservancy areas include shorelands within Lake Sawyer Boat Launch Park, portions of Lake Sawyer Regional Park that are not designated wetlands, as shown in Figure 1. This designation will preserve and enhance the ecological functions of publicly-owned properties and undeveloped portions of the shoreline, while retaining future options for passive and active shoreline recreation and public access. The publicly-owned Lake Sawyer Boat Launch and Lake Sawyer Regional Park offer potential for ecological restoration.

d) Management policies

1. Uses that preserve the natural character of the area or promote preservation of open space or sensitive lands should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
2. Water dependent recreation uses, such as a public access pier and boat launch, ~~recreational floats and boat launches~~, shall be at the highest priority, at Boat Launch Park, provided they can be located, designed, constructed, operated and mitigated in a manner that ensures no net loss of ecological function.
3. Water oriented recreation uses, such as viewing trails, benches, ~~and~~ shelters and non-motorized, low impact canoe and kayak launches, should be emphasized at Lake Sawyer Regional Park.
- 3-4. At all shoreline recreational facilities in the Urban Conservancy Environment, ~~and~~ non-water oriented uses should be minimized and allowed only as an accessory use; for example picnic areas, forest trails and small playground areas would be acceptable, but tennis courts and developed sports fields would not.

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- 4.5. Standards should be established for shoreline stabilization, vegetation conservation, water quality, and shoreline modifications to ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
- 5.6. Public access and public recreation objectives should be implemented whenever feasible and when significant ecological impacts can be mitigated.
- 6.7. Low impact development (LID) techniques, such as minimizing impervious surfaces, infiltration of run-off and pervious pavers, and other techniques should be required where feasible.

e) Regulations

Shoreline Use

Permitted, conditional and prohibited uses for the Urban Conservancy shoreline environment are listed in Chapter 4, Specific Shoreline Use Policies and Regulations, and summarized in Table III.

Development Standards

Shoreline-related development standards for the Urban Conservancy environment are summarized in Table I in Chapter 4.

4. Natural Environment

a) Purpose

The purpose of the Natural environment designation is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, include planning for restoration of degraded shoreline within this environment.

b) Designation Criteria

A Natural environment designation should be assigned to shoreline areas if any of the following characteristics apply:

1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be changed by human activity; or
2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

c) Designated Areas

The wetlands within Lake Sawyer Regional Park (i.e. Frog Lake) that are associated with Rock Creek fall within the Natural environment designation. These wetlands have high ecological function and/or are unable to support new development without significant adverse impacts to ecological function. In addition, the

small, undeveloped southernmost island in Lake Sayer (PIN #1021069040) is designated Natural (see Figure 1).

d) Management Policies

1. Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.
2. The following new uses should be prohibited in the Natural environment:
 - a. Commercial uses.
 - b. Industrial uses.
 - c. Non-water-oriented recreation.
 - d. Roads, utility corridors, and parking areas that can be located outside of shorelines.
 - e. Residential uses.
 - f. Commercial forestry.
 - g. Agricultural uses.

(Note: a complete list of permitted and conditional uses is contained in Chapter 4, Section (B)(1), Table I.)

3. Scientific, historical, cultural, educational research uses and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact in the area will result.
4. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed.
5. The subdivision of property should not be allowed.

e) Regulations

Shoreline Use

Permitted, conditional and prohibited uses for the Natural shoreline environment are listed in Chapter 4, Specific Shoreline Use Policies and Regulations, and summarized in Table III.

Development Standards

Shoreline-related development standards for the Natural environment are summarized in Chapter 4, Table I.

5. Aquatic Environment

a) Purpose

The purpose of the Aquatic environment designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

b) Designation criteria

Aquatic environment designation are assigned to areas waterward of the ordinary high-water mark.

c) Designated Areas

The Aquatic Environment is assigned to all areas within the shoreline jurisdiction waterward of the ordinary high water mark as shown in Figure 1.

d) Management policies

1. Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.
2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
3. To reduce the impacts of shoreline development and increase effective use of water resources, shared use of over-water facilities should be encouraged.
4. All developments and uses on waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
5. Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(c) as necessary to assure no net loss of ecological functions.
6. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

e) Regulations

Regulations and performance standards that apply to individual uses and developments are listed in Chapter 2, including a summary of allowed, conditional and permitted uses in Table III. Table I in Chapter 4 summarizes the development standards.

Chapter 3 General Shoreline Provisions

A. Introduction

Based on the general goals established for the Shoreline Master Program, the following policies and regulations apply to all uses, developments, and activities in the shoreline area of the City of Black Diamond. The intent of these provisions is to be inclusive, making them applicable to all environments, as well as particular shoreline uses and activities. Topics include the following:

- Archaeological and Historic Resources
- Environmental Impacts
- Environmentally Sensitive Areas
- Public Access
- Shoreline Vegetation Conservation
- Water Quality, Stormwater, and Non-Point Pollution

The regulations of this chapter are in addition to other adopted ordinances and rules. Where conflicts exist between regulations, those that provide more protection or detail more specific requirements for the shoreline area shall apply. These interlocking development regulations are intended to make shoreline development responsive to specific design needs and opportunities along the City's shorelines, protect the public's interest in the shorelines' recreational and aesthetic values and assure no net loss of ecological functions necessary to sustain shoreline natural resources.

These provisions address the elements of a SMP as required by RCW 90.58.100(2) and implement the governing principles of the Shoreline Master Program Guidelines as established in WAC 173-26-186.

B. Policies and Regulations

1. Universally Applicable Policies and Regulations

a) Applicability

The following provisions describe how this SMP is to be applied and the requirements for all shoreline uses and modifications in all shoreline environment designations.

b) Policies

1. The City should keep records of all project review actions within shoreline jurisdiction, including shoreline permits and letters of exemption.
2. The City should involve affected federal, state, and tribal governments in the review process of shoreline applications.
3. The City should periodically review shoreline conditions to determine whether or not other actions are necessary to protect and restore the ecology to ensure no net loss of ecological functions,

upgrade the visual qualities, and enhance residential and recreational uses on the City's shoreline. Specific issues to address in such evaluations include, but are not limited to:

- a. Water quality,
- b. Conservation of aquatic vegetation (control of noxious weeds and enhancement of vegetation that supports more desirable ecological and recreational conditions),
- c. Changing visual character as result of new residential development, including additions, and individual vegetation conservation practices (both along shoreline and in upland areas),
- d. Shoreline stabilization and modifications.

c) Regulations

1. All proposed shoreline uses and development, including those that do not require a shoreline permit, must conform to the Shoreline Management Act, Chapter 90.58 RCW, and to the policies and regulations of this SMP.
2. The "policies" listed in this SMP are intended to provide broad guidance and direction for the "regulations" applied by the City. The policies, taken together, constitute the Shoreline Element of the Black Diamond Comprehensive Plan.
3. If provisions within this SMP conflict, or where there is a conflict with other City policies and regulations, the provisions most directly implementing the objectives of the Shoreline Management Act, as determined by the Administrator, shall apply unless specifically stated otherwise.
4. Shoreline uses, modifications, and conditions listed as "prohibited" shall not be eligible for consideration as a shoreline variance or shoreline Conditional Use permit. See Chapter 4 for Shoreline Use regulations and Chapter 6 for exemptions, variances, Conditional Uses, and nonconforming uses.

2. Archaeological and Historic Resources

a) Applicability

The following provisions apply to archaeological and historic resources that are either recorded at the state historic preservation office and/or by local jurisdictions or have been inadvertently uncovered.

Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC and the provisions of this chapter.

b) Archaeological and Historic Resources Policies

1. Due to the limited and irreplaceable nature of archaeological and historic resources, prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Native American tribes, and the Department of Archaeology and Historic Preservation.
2. Ensure that new development is compatible with existing historic structures and cultural sites.

c) Archaeological and Historic Resources Regulations

1. Developers and property owners shall immediately stop work and notify the City, the Department of Archaeology and Historic Preservation (DAHP) and affected Native American tribes if archaeological resources are uncovered during excavation.
2. A site inspection or evaluation by a professional archaeologist in coordination with affected Native American tribes shall be required for all permits issued in areas documented to contain archaeological resources. Failure to comply with this requirement shall be considered a violation of the Shoreline Permit.
3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation, as deemed appropriate by the City, DAHP and affected Tribes. When the City determines that a site has significant archeological, natural scientific or historical value, a Shoreline Substantial Development Permit and/or any other permit authorizing development or land modification shall not be issued which would pose a threat to the site. The City may require that a site be redesigned or that development be postponed in such areas to allow investigation of public acquisition potential and/or retrieval and preservation of significant artifacts.
4. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The City shall notify the State Department of Ecology, the State Attorney General's Office and the State Historic Preservation Office of such a waiver in a timely manner.
5. Archaeological sites located both in and outside the shoreline jurisdiction are subject to RCW 27.44 (Indian Graves and Records) and RCW 27.53 (Archaeological Sites and Records) and shall comply with WAC 25-48, or its successor, as well as the provisions of this master program.
6. Identified historical or archaeological resources shall be considered in park, open space, public access and site planning with access to such areas designed and managed to give maximum protection to the resource and surrounding environment.
7. Clear interpretation of historic and archaeological features and natural areas shall be provided when appropriate, such as informational signs and displays.

3. Sensitive Areas

Environmentally sensitive areas in the shoreline jurisdiction are regulated by the Sensitive Areas Regulations, Ordinance No. 08-875, codified under Chapter 19.10 of the BDMC, which is herein incorporated into this SMP except as noted below.

Exceptions to the applicability of the Sensitive Areas Ordinance (SAO) in shoreline jurisdiction are provided below.

1. If provisions of the SAO and other parts of the SMP conflict, the requirement that most supports the provisions of the Shoreline Management Act as stated in RCW 90.58.020 shall apply, as determined by the Shoreline Administrator.

2. Provisions of the SAO that are not consistent with the Shoreline Management Act, Chapter 90.85 RCW, and supporting Washington Administrative Code chapters shall not apply in shoreline jurisdiction, as follows:
 - a. The provisions of the SAO do not extend shoreline jurisdiction beyond the limits specified in this SMP. For regulations addressing sensitive area buffer areas that are outside shoreline jurisdiction, see 19.10.230 of BDMC, Wetland buffers.
 - b. Provisions of the SAO that include a “reasonable use determination” shall not apply within shoreline jurisdiction. Specifically, BDMC sections 19.10.080(E) and 19.10.230(H).
 - c. Provisions of the SAO relating to building setbacks do not apply in the shoreline jurisdiction, specifically, section 19.10.160.
 - d. Provisions of the SAO relating to variance procedures and criteria do not apply in shoreline jurisdiction, specifically, section 19.10.190. Variance procedures and criteria have been established in this SMP, Chapter 6, Section G and in WAC 173-27-170.4. Environmental Impacts.
 - e. Provisions in BDMC section 19.10.210, 19.10.673 and where ever else they may occur in Chapter 19.10 relating to the use of the Washington State Wetland Identification and Delineation Manual do not apply. Identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements.
 - f. Provisions in BDMC 19.10.230(H)(d) allowing buffer averaging to not less than fifty percent of the standard width shall not apply. Buffer averaging shall be limited to 75% of the required width, and in no case shall be less than 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV wetlands.
 - g. Provisions in BDMC 19.10.235 relating to small isolated wetlands is hereby clarified: by definition, wetlands in shoreline jurisdiction are considered riparian and therefore are not isolated wetlands and are not exempted from mitigation requirements or other standards.
 - h. Provisions in BDMC section 19.10.240(D) related to mitigation replacement ratios for rehabilitation and enhancement shall not apply. Mitigation replacement ratios shall be as follows:

Wetland Category	Wetland Mitigation Type and Replacement Ratio*			
	Re-establishment	Creation	Rehabilitation	Enhancement Only
Category IV	1.5:1	1.5:1	3:1	6:1
Category III	2:1	2:1	4:1	8:1
Category II	3:1	3:1	6:1	12:1
Category I	6:1	6:1	8:1	Not allowed
Headwaters Wetlands	6:1	6:1	8:1	Not allowed
Core Wetland Complex	6:1	8:1	12:1	Not allowed

- i. Provisions in BDMC 19.10.325 pertaining to *Fish and Wildlife Habitat Conservation Area – Water Bodies - Buffers* do not apply to Lake Sawyer. Shoreline setbacks shall be regulated based on the provisions in Chapter 4, Section B.2 through 4 of this SMP. Vegetation management within shoreline setbacks shall be regulated based on the provisions in Chapter 3, Section B.7.c. Provisions in BDMS 19.10.325 pertaining to buffers for other fish and wildlife habitat conservation areas within shoreline jurisdiction, such as streams and wetlands, shall still apply.

4. Environmental Impacts

a) Applicability

The Shoreline Management Act is concerned with the environmental impacts that use and activity may have on the fragile shorelines of the state. Problems of degrading the shoreline and its waters with contaminants such as petroleum products, chemicals, metals, nutrients, solid or human waste, or soil sediments from erosion are all issues that are addressed.

b) Environmental Impact Policies

1. Protect shoreline process and ecological functions through regulatory and non-regulatory means that may include acquisition of key properties, conservation easements, regulation of development within the shoreline jurisdiction and incentives to encourage ecologically sound design.
2. Preserve the scenic aesthetic quality of shoreline areas and vistas to the greatest extent feasible.
3. Adverse impacts on the natural environment should be minimized during all phases of development (e.g. design, construction, operation, and management).
4. Shoreline developments that propose to enhance sensitive areas, natural characteristics, ecological resources and provide public access and recreational opportunities to the shoreline are consistent with the fundamental goals of this Master Program, and should be encouraged.

c) Environmental Impact Regulations

1. All shoreline uses and developments shall be located, designed, constructed and mitigated to result in no net loss of ecological functions necessary to sustain shoreline natural processes.
2. Where required, mitigation measures shall be applied in the following sequence listed in order of priority:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the magnitude of the action and its implementation by using appropriate technology or by taking steps to avoid or reduce impacts;
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations;
 - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

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- f. Monitoring the impact and compensation projects and taking appropriate corrective measures.
3. Solid waste, liquid waste and untreated effluent shall not be allowed to enter bodies of water or discharged onto the land.
4. The direct release of oil and hazardous materials or chemicals onto the land or into water is prohibited as provided in the City's adopted stormwater regulations.
5. All shoreline uses and activities shall utilize best management practices (BMPs) to minimize any increase in surface runoff and to control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. BMPs are identified in the City's adopted stormwater manual.
6. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.
7. Land clearing, grading, filling and alteration of natural drainage features and land forms shall be limited to the minimum necessary for development. When required by the Public Works Director, surface drainage systems or substantial earth modifications shall be designed by an engineer registered in the State of Washington. The Director may also require additional studies prepared by a qualified soils specialist. These designs shall seek to prevent maintenance problems, avoid adverse impacts to adjacent properties or shoreline features, and result in no net loss of shoreline ecological functions.
8. All shoreline uses and activities shall be located and designed to prevent or minimize the need for shoreline protection structures (bulkheading, riprap, etc.) and stabilization, landfills, groins, jetties, or substantial site regrades.
9. Identified significant short term, long term, or cumulative adverse environmental impacts lacking appropriate mitigation that is likely to achieve no net loss of ecological functions necessary to sustain shoreline processes shall be sufficient reason for permit denial.

5. Public Access

a) Applicability

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. There are a variety of types of potential public access, including, picnic areas, pathways and trails, promenades, boat launches, street ends, ingress and egress, and parking.

Existing developed public access to shorelines within the shoreline jurisdiction is limited to Lake Sawyer Boat Launch situated on the northwestern side of the lake, which includes a boat launch and picnic facilities. Lake Sawyer Regional Park is undeveloped park property located in the southeast corner of the lake.

b) Public Access Policies

1. Preserve and enhance shoreline access to Lake Sawyer primarily through the improvement of existing public access sites.

2. The level, type and design of public access should be commensurate with the degree of fragility of the shoreline. Environmentally sensitive areas should be conserved, access projects should incorporate enhancement and use should be directed to more suitable areas.
3. Future public access improvements should emphasize passive recreation and non-motorized activities due to the fragile nature of the lake and the current seasonal high levels of motorized use.
4. Physical access for swimming and non-motorized boating, passive recreation (such as interpretive trails) and habitat enhancement should be important objectives for the management of shoreline public access sites.
5. Ensure the development of upland areas such as parking facilities and play areas, as well as the development of in-water and nearshore structures, such as docks and swimming areas, are located and designed in ways that result in no net loss of ecological function. Upland non-water oriented recreational and accessory facilities should be located outside of the shoreline management area where feasible.
6. Access should be provided for a range of users including pedestrians, bicyclists, fishermen, boaters and people with disabilities to the greatest extent feasible.
7. Public access provisions should be required for all shoreline development and uses, except for a single family residence or residential projects containing four (4) dwelling units or less, water dependent uses, or where it is deemed inappropriate due to health, safety and environmental concerns.
8. Regulate the design, construction, and operation of permitted uses in the shoreline jurisdiction to minimize interference with the public's use of the water.
9. Improve access to Lake Sawyer through expanded non-motorized connections, including the integration of shoreline public access trails with other existing and planned regional trails and transit service where feasible.
10. Ensure existing and proposed recreational uses do not adversely affect the integrity and character of the shoreline, threaten fragile shoreline ecosystems, or impair or detract from the public's visual or physical access to the water.
11. Preservation and enhancement of the public's visual access to Lake Sawyer should be encouraged through the establishment of setbacks and height limits that ensure view corridors. Enhancement of views should not be construed to mean excess removal of vegetation.
12. Public access to Lake Sawyer does not include the right to enter upon or cross private property, except for dedicated easements.
13. Where appropriate, public access should be provided as close as possible to the water's edge without adversely affecting a sensitive shoreline environment.
14. Public access should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.
15. Public access facilities should be constructed of environmentally friendly materials, use low impact development techniques and support healthy natural processes, when feasible.

16. Plan for an integrated shoreline public access system that identifies specific public needs and opportunities to provide public access. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and parks/recreation. The planning process should also comply with all relevant legal limitations that protect private property rights.
17. At a minimum, public access planning should result in public access requirements for shoreline permits, recommended projects, and/or actions to be taken to develop access to shorelines on public property. Planning should identify a variety of shoreline circulation and access opportunities for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

c) Public Access Regulations

1. Except as provided in Regulations 2 and 3 below, public access shall be required to the extent allowed by law for all substantial developments and conditional uses when any of the following conditions are present:
 - a. The project is publicly funded or occurs on public lands, provided that such access would not result in a net loss of ecological function;
 - b. The proposed development would create or increase demand for public access to the shoreline, and the Shoreline Administrator determines that this demand is not fully met through private access, such as shared community access limited to residents of a subdivision, that would be included as part of the development;
 - c. The project adversely impacts existing public access by creating a physical or visual obstruction or discourages use of existing access;
 - d. The development interferes with public use of waters of the state; or
 - e. The proposed use is not water-dependent and is not a preferred use under the SMA. Preferred uses include single family residences, ports, shoreline recreational uses, water dependent industrial and commercial developments and other development that provide public access opportunities.
2. Public access shall not be required for single family residential development of four (4) or fewer lots.
3. Public access shall not be required where one or more of the following conditions apply:
 - f. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
 - g. Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;
 - h. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development or other constitutional or legal limitations preclude public access.
 - i. Unacceptable environmental harm will result from the public access which cannot be mitigated; or

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- j. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.
4. To meet any of the conditional in Regulation 3 above, the applicant must first demonstrate and the City must determine in its findings that all reasonable alternatives have been exhausted, including but not limited to:
- a. Regulating access by such means as limiting hours of use to daylight hours.
 - b. Designing separation of uses and activities, with such means as fences, terracing, hedges, and landscaping.
 - c. Providing access that is physically separated from the proposal, such as a nearby street end, an offsite viewpoint, or a trail system.
 - d. Sharing the cost of providing and maintaining public access between public and private entities.
5. Projects that meet the criteria in Regulation 4 above shall either build or make a proportional contribution to off-site public access facilities or improvements or, if approved by the shoreline administrator and agreed to by the applicant, make a payment in lieu to the local public access fund.
6. Non-water oriented recreational developments, uses, and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's visual or physical access to the water and the shorelines. In providing visual access to the shoreline, natural vegetation shall not be excessively removed either by clearing or by topping.
7. Public access sites shall be connected directly to the nearest public street through a parcel boundary, tract, or easement.
8. Public access sites shall be made barrier free for the physically disabled where feasible.
9. Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.
10. Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat, or short plat. Recording with the King County Recorder's Office shall occur at the time of permit approval (RCW 58.17.110; relating to subdivision approval).
11. The standard state approved logo and other approved signs that indicate the public's right of access and hours of access shall be constructed, installed, and maintained by the applicant in conspicuous locations at public access sites. Alternatively, where public access is prohibited, property owners may install signs indicating this, subject to size and location restrictions in a required permit.
12. Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.
13. Physical public access shall be designed to prevent significant impacts to sensitive natural systems.
14. Where public access is to be provided by a trail, the following requirements shall apply:

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- a. The trail shall be no greater than 10 feet in surface width, and in addition may include 1 foot gravel shoulders. Not including landscaping; no more than 8 feet of improved surface is preferable in most cases.
 - b. Pervious pavement should be used for public access within the shoreline management area unless the Shoreline Administrator determines that such use is not in the public interest because of safety, durability, aesthetic or functionality concerns.
 - c. Where feasible, the trail shall be placed at least 25 feet from the Ordinary High Water Mark.
 - d. Landscaping should be native and drought tolerant or site appropriate.
 - e. Other specific conditions described in an adopted trail or parks plan.
15. Whenever financially feasible and practical, the City shall require the use of building materials and technologies whose production and use result in reduced environmental impacts when developing public access to the shoreline. Porous pavements shall be used unless the applicant demonstrates to the satisfaction of the Shoreline Administrator that such materials would restrict accessibility, pose a safety hazard or are not sufficiently durable.

6. Restoration

a) Applicability

Restoration refers to the reestablishment or upgrading of impaired ecological shoreline processes or functions. The following goals and policies are intended to guide actions that are designed to achieve improvements in shoreline ecological functions over time in those areas of Lake Sawyer where they have been degraded. The overarching purpose is to achieve improvements over time when compared to the condition upon adoption of the master program, as detailed in the Shoreline Analysis Report. Restoration is distinct from mitigation measures necessary to achieve no net loss of shoreline functions and the City's commitment to plan for restoration will not be implemented through regulatory means.

b) System-Wide Restoration Policies

1. Reclaim and restore areas which are biologically and aesthetically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline. Improve the water quality of Lake Sawyer by managing the quality and quantity of stormwater in contributing systems, consistent with the City's adopted stormwater manual.
2. Increase quality, width and diversity of native vegetation in protected corridors adjacent to lake habitats to provide safe migration pathways for fish and wildlife, food, nest sites, shade, perches, and organic debris. Strive to control non-indigenous plants or weeds that are proven harmful to native vegetation or habitats.
3. Continue to work collaboratively with other jurisdictions and stakeholders to implement the WRIA 9 Plan.

4. Seek funding where possible for various restoration actions and programs from local sources and by working with other WRIA 9 jurisdictions and stakeholders to seek federal, state, grant and other funding opportunities.
5. Develop a public education plan to inform private property owners in the shoreline zone and in the remainder of the City about the effects of land management practices and other unregulated activities (such as vegetation removal, pesticide/herbicide use, car washing) on fish and wildlife habitats and water quality.
6. Where feasible, protect, enhance, and encourage the restoration of lake areas and wetlands throughout the contributing basin where functions have been lost or compromised.

c) Lake Sawyer Restoration Policies

1. Target the Lake Sawyer Boat Launch and Lake Sawyer Regional Park for restoration of shoreline natural resources and functions while ensuring continued public access to the shoreline.
2. Improve the health of lake shorelines by encouraging property owners to remove bulkheads and replace these features to the extent feasible with bioengineered stabilization solutions to improve aquatic habitat conditions.
3. Target the Lake Sawyer Boat Launch for habitat enhancements that are designed and sited to be compatible with the heavy active recreation use at this park. Opportunities include replacing the tethered trees functioning as shoreline stabilization with bioengineered shoreline stabilization, removal of excess impervious surface, improved drainage using infiltration and planting of native vegetation where appropriate.
4. Improve habitat conditions by increasing large woody debris recruitment potential through plantings of trees along the lake shore. Where feasible, install or encourage the installation of large woody debris to meet short-term needs.
5. Target single family residential properties with development incentives (such as setback reductions), outreach and information for homeowners who are willing to voluntarily remove bulkheads, plant native vegetation and encourage large woody debris recruitment.
6. Decrease the amount and impact of overwater and in-water structures along Lake Sawyer through minimization of structure size and use of more environmentally friendly materials, including grated decking.
7. Target Lake Sawyer Regional Park for the use of environmentally friendly materials and design during the future development of recreational facilities.
8. Preserve and restore native vegetation along the shoreline to the greatest extent feasible.
9. Continue to participate in lake-wide efforts at Lake Sawyer to reduce populations of non-native aquatic vegetation.

7. Vegetation Conservation (Clearing and Grading)

Vegetation within and adjacent to water bodies provides a valuable function for the health of aquatic ecosystems. Vegetation management involves both a passive and active management system. The intent of

both systems is to minimize habitat loss and the impact of invasive plants, erosion, sedimentation and flooding. "Passive" vegetation management deals with protection and enhancement of existing diverse native plant communities along all shorelines. "Active" vegetation management involves aquatic weed control as well as the restoration of altered or threatened shorelines using a technology called soil bioengineering. Soil bioengineering reestablishes native plant communities as a dynamic system that stabilizes the land from the effects of erosion.

a) Applicability

The following provisions apply to any activity, development, or use that results in the removal of or impact to shoreline vegetation, whether or not that activity requires a shoreline permit. Such activities include clearing, grading, grubbing, and trimming of vegetation. These provisions also apply to vegetation protection and enhancement activities. See Chapter 7 for definitions of "significant vegetation removal," "ecological functions," "clearing," "grading," and "restore."

b) Shoreline Vegetation Conservation Policies

1. Clearing and grading activities in shoreline areas should be limited to the minimum necessary to accommodate shoreline development and should result in the enhancement of vegetation over time to provide a greater level of ecological functions, human safety, and property protection.
2. Adverse environmental and shoreline impacts of clearing and grading should be avoided wherever possible through proper site planning, construction timing and practices, bank stabilization, soil bioengineering and use of erosion and drainage control best management practices (BMPs). Maintenance of drainage controls should be a high priority to ensure continuing, effective protection of habitat and water quality.
3. Provide incentives for the retention and planting of native vegetation, and discourage extensive lawns due to their limited erosion control value, limited water retention capacity, and associated chemical and fertilizer applications. Incentives could include additional flexibility with building setbacks from Lake Sawyer, a simplified permit process with recommended planting plans, and/or city participation in a pilot-project that promotes shoreline restoration.
4. In order to increase habitat and address other ecological functions within the shoreline environment such as wave attenuation, temperature regulation, and bank stabilization, encourage homeowners and property managers to leave diseased and fallen trees in place along the shoreline edge provided the trees are not a danger to public safety or private property.
5. Removal of non-hazardous mature trees and native vegetation within the required shoreline setback should be severely restricted regardless of lot size or use.
6. The City of Black Diamond should provide information to the public about environmentally appropriate vegetation management, landscaping for shoreline properties and alternatives to the use of pesticides and herbicides which impact water quality and aquatic habitat.
7. Where removal or destruction of aquatic vegetation is necessary, it should be done only to the extent necessary to allow water-dependent activities to continue. Removal or modification of aquatic vegetation should be conducted in a manner that minimizes adverse impacts to native plant

communities, and should include appropriate handling or disposal of weed materials and attached sediments.

8. Support the work of the King County Weed Watchers program and the efforts of volunteers to monitor noxious aquatic vegetation. Any future efforts by the City to monitor and control aquatic vegetation should seek the input and assistance of volunteers and King County staff assigned to this program.
9. The City should explore opportunities for the planting and enhancement of native vegetation at Lake Sawyer Park Regional Park and Boat Launch.

c) Shoreline Vegetation Conservation Regulations

1. All clearing and grading activities must adhere to BDMC Chapter 15.28 – Land Clearing and Grading Code and additional requirements provided in this SMP. Additional clearing and grading performance standards may be required as a condition of permit issuance to ensure the proposal will result in no net loss of shoreline ecological functions.
2. In all shoreline areas, land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development.
3. Any normal and routine maintenance of existing trees shall not be subject to these clearing and grading regulations, provided; that said maintenance does not involve removal of healthy trees and is not detrimental to the health of any trees.
4. Any significant placement of materials from off-site (other than surcharge or preload), or the substantial creation or raising of dry upland shall be considered fill and shall also comply with the fill provisions in Chapter 5.
5. Clearing and grading activities and related alteration of the natural landscape shall only be allowed in association with a permitted shoreline use or development with limited exceptions as set forth below:
 - a. Removal of noxious weeds as listed by the state in Chapter 16-750 WAC, provided such activity shall be conducted in a manner consistent with best management practices and the City of Black Diamond's engineering and stormwater design standards, native vegetation shall be promptly reestablished in the disturbed area and no net loss of shoreline ecological function is achieved.
 - b. Pruning consistent with accepted arboricultural practices that does not involve the removal of healthy trees and is not detrimental to the health of any trees, maintenance of existing ornamental landscapes and other activities allowed pursuant to these regulations, provided that said modification is conducted in a manner consistent with this Master Program and results in no net loss to ecological functions or critical fish and wildlife habitats.
 - c. Maintenance or restoration of view corridors provided that said activity is conducted in a manner consistent with this Master Program and results in no net loss to ecological functions or critical fish and wildlife habitat areas.
6. The City shall regulate tree removal and land clearing within the shoreline jurisdiction to protect ecological functions. The City shall require a report prepared by a qualified professional as part of

any substantial development permit or exemption that includes removal of significant trees or clearing of native vegetation. The report shall identify appropriate mitigation, performance assurances and maintenance and monitoring requirements necessary to assure no net loss of ecological function necessary to sustain shoreline processes.

7. Native understory vegetation and trees within the Urban Conservancy and Natural Environment and within shoreline setback areas in all environments shall be retained, unless necessary to provide water access, to provide limited view corridors or to mitigate a hazard to life or property. Where limited removals are allowed pursuant to the conditions provided above, vegetation shall be replaced to assure no net loss is achieved.
8. Within all other shoreline areas, tree removal shall be limited to the minimum necessary to accommodate proposed structures and uses or to mitigate a hazard to life or property, and significant trees shall be replaced at an appropriate ratio to assure no net loss is achieved.
9. Stabilization of exposed erosion-prone surfaces within the shoreline environment shall, wherever feasible, utilize soil bioengineering techniques.
10. Aquatic vegetation control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic vegetation control shall occur in compliance with all other applicable laws and standards, including Washington Department of Fish and Wildlife requirements. Control of aquatic vegetation by mechanical methods is exempt from the requirement to obtain a shoreline substantial development permit only if the bottom sediment or benthos is not disturbed in the process. It is assumed that mechanical removal of accumulated vegetation at a level closer than two (2) feet to the root level will disturb the bottom sediment and benthos layer.
11. The control of aquatic vegetation by derooting, rotovating or other methods which disturb the bottom sediment or benthos shall be considered development for which a shoreline substantial development permit is required.
12. The application of herbicides or pesticides in Lake Sawyer, wetlands, or ditches requires a permit from the Washington Department of Ecology and may require preparation of a SEPA checklist for review by other agencies. The individual(s) involved must obtain a pesticide applicator license from the Washington State Department of Agriculture.
13. The following standards apply to restoration of disturbed areas in the Shoreline Residential environment outside of the required shoreline setback, when no other specific mitigation is required for project impacts and no setback reduction is requested under Chapter 4, Section B.2 through 4.
 - a. Restoration of any shoreline that has been disturbed or degraded shall use native plant materials, unless such restoration occurs within a developed and maintained ornamental landscape, in which case noninvasive plant materials similar to that which most recently occurred on-site may be used.
 - b. If the proposed removal of native vegetation is intended for the development of non-native landscaping outside of the required setback area, ornamental species may be used for the revegetation, provided impacts are mitigated by planting native vegetation elsewhere on

the property. The required setback area shall be a priority location for mitigation plantings and mitigation plantings shall be subject to Regulation 18 below.

- c. Surfaces cleared of vegetation and not further developed must be replanted with native species or other species as approved by the City within one (1) year. Replanted areas shall be planned and maintained such that, within three (3) years time, 80% of required plantings survive and all areas of bare soil are vegetated or appropriately stabilized. Shoreline development subject to any permit action shall be conditioned to require compliance with this standard.
 - d. The Shoreline Administrator has discretion to require monitoring and the financial guarantees where it is determined to be necessary to ensure compliance with the Shoreline Master Program.
14. The following maintenance and monitoring standards apply when vegetation restoration or enhancement occurs within required shoreline setbacks, is associated with a setback reduction under Chapter 4, Section B.2 through 4; occurs within a wetland, stream or related buffer; a variance is requested; specific mitigation for project impacts is required; and/or when vegetation restoration occurs within the Shoreline Residential Limited, Urban Conservancy or Natural shoreline environments.
- a. Plant Maintenance and Monitoring. Five year maintenance and monitoring at a minimum shall be conducted to ensure the long-term survival and stability of required vegetation plantings. Such monitoring shall include, at a minimum:
 - i. Annual inspections of the plants,
 - ii. Replacement of dead riparian plants,
 - iii. Removal of exotic invasive species that may have become established,
 - iv. Photographic documentation of planting success,
 - v. Annual report to the Shoreline Administrator documenting the above requirements and identifying whether the criteria for success below has been achieved.
 - b. Criteria for Success. At the end of the fifth year of monitoring, required plantings shall be considered successful if the following performance standards, at a minimum, are met:
 - i. A minimum eighty percent (80%) survival rate of planted trees and shrubs within the planting area; and
 - ii. A minimum of fifty percent (50%) cover of desirable understory or emergent plant species.
 - iii. Additional standards for vegetative success, including (but not limited to) minimum survival standards following the first growing season may be required after consideration of the project application.
 - c. A contingency plan shall be established in the event that the mitigation plan is inadequate or fails.

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- d. Prior to issuance of any construction, grading, or building permit in the shoreline management area, the City may require that the permittee provide a financial guarantee in a form and amount approved by the City. This amount should equal one hundred twenty five percent (125%) of the estimated cost of the required plantings, or no less than two thousand dollars, unless a clear rationale for an alternative amount exists based on the specific details of the proposal.
- e. Prior to final issuance of a building permit or land use permit in the shoreline management area, a maintenance bond or other acceptable financial guarantee equal to a minimum of thirty percent (30%) of the replacement cost of the landscaping may be required. The bond or other suitable financial guarantee shall be maintained for a five (5) year period, at which point the Shoreline Administrator, or designee, will determine if the surety shall be released or extended to ensure the survival and maintenance of required shoreline plantings.

8. Water Quality, Stormwater, and Non-Point Pollution

a) Applicability

Water quality is affected in numerous ways by human occupation and development of shoreline areas. Typically the increase in impermeable surfaces as a result of development increases stormwater runoff volumes, causing higher peak stormwater discharges at higher velocities that can cause scouring and erosion of stream banks. Erosion increases suspended solids concentrations and turbidity in receiving waters, and can carry heavy metals, household wastes, excess nutrients, and other pollutants into these waters. Increased nitrogen and phosphorus enrichment results in algal growth that depresses levels of dissolved oxygen in receiving waters. The degradation of water quality adversely impacts wildlife habitat and public health.

Maintaining high water quality standards and restoring degraded systems has been mandated in RCW 90.58. In February of 2007, the City received its Western Washington Phase II Municipal Stormwater Permit from the Washington State Department of Ecology. Under this permit the City developed a Stormwater Management Program. The City has adopted the 2005 DOE Stormwater Drainage Manual which applies to all development activities within the City.

b) Water Quality, Stormwater, and Non-Point Pollution Policies

1. All shoreline uses and activities should be located, designed, constructed and maintained to mitigate adverse impacts to water quality, water quantity, or hydrology.
2. The City should require reasonable setbacks, buffers, and storm water storage basins and encourage low-impact development techniques and materials to achieve the objectives of the Shoreline Master Program.
3. Stormwater impacts should be addressed through the application of the Adopted Surface Water Design Manual and all applicable City stormwater regulations.
4. The City should require the use of Low Impact Development (LID) techniques to the maximum extent feasible. Incentives should be provided to encourage LID.

5. The City should provide general information to the public about the impacts of land and human activities on water quality, and encourage homeowners and property managers to use non-chemical weed and pest control solutions and natural fertilizers.
6. The City should work with the King County Health Department to ensure existing septic systems are working properly to prevent groundwater and surface water degradation through excessive inputs of nutrients (nitrogen and phosphorus) and hazardous microbes.
7. The City should work with local sewer districts to require connection to the sanitary sewer system when existing properties on septic systems are developed, redeveloped or substantially modified and a sanitary sewer system is available.

c) Water Quality, Stormwater, and Non-Point Pollution Regulations

1. All shoreline development, both during and after construction, shall minimize impacts related to surface runoff through control, treatment and release of surface water runoff such that there is no net loss of receiving water quality in the shoreline environment. Control measures include but are not limited to dikes, runoff intercepting ditches, catch basins, settling wet ponds, sedimentation ponds, oil/water separators, filtration systems, grassy swales, planted buffers, and dust controls.
2. Shoreline development and uses shall adhere to all required setbacks, buffers and standards for stormwater storage basins.
3. All shoreline development shall comply with the applicable requirements of the City's adopted Surface Water Design Manual and all applicable City stormwater regulations.
4. All shoreline development shall implement applicable Low Impact Development techniques to the maximum extent feasible, pursuant to the standards contained in the adopted Surface Water Design Manual and the Low Impact Development Technical Guidance Manual for Puget Sound or successor.
5. New residential development and property owners with failing septic systems that pose a risk to health or the environment shall be required to connect to public sewer if they are seeking a shoreline, building or site development permit and such connection can be made within 300 of the subject property.

Chapter 4 Shoreline Use Provisions

A. Introduction

As required by the Shoreline Management Act, this Master Program sets forth policies and regulations governing specific categories of uses and activities typically found in shoreline areas. The policies and regulations cover the following uses and activities: Agriculture, Aquaculture, Boating Facilities, Commercial Development, Forest Practices, Manufacturing, Mining, Parking (as a primary use), Recreational Facilities, Residential Development, Scientific, Historical, Cultural, or Educational Uses, Signage, Transportation, and Utilities. The policies and regulations, which provide basic criteria for evaluating shoreline permit applications, are used to implement the broader goals, policies and intent of the Shoreline Management Act and this Program.

The Shoreline Master Program for the City of Black Diamond contains limited provisions for economic development along the shoreline of Lake Sawyer. Lake Sawyer is substantially developed with residential uses, with little undeveloped shoreline remaining. As such, access to the water is primarily related to recreation and residential uses. Industrial uses of the shoreline are not allowed and the demand for commercial uses of the shoreline are limited.

B. Basic Shoreline Use and Development Standards

1. Permitted, Conditional and Prohibited Uses – Table I

KEY

P = Permitted Use

C = Conditional Use

X = Prohibited

SHORELINE USES	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC ¹
Agriculture (Accessory Use Only)	X	X	P	P	X
Aquaculture ¹	CX	CX	CX	CX	C

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¹ Please also see adjacent upland environment. Where a use would be located both in upland and overwater, the more restrictive standards apply.

SHORELINE USES	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC ²
Boating Facilities (Public, Commercial, or Serving 4 or More Residences)					
Marina (Public or Private)	X	X	X	X	X
Community Pier (Private Shared Use)	X	X	P	C ³	P
Public Pier	C	C	C	C	C
Boat Launch	X	P/X ⁴	X	X	C
Commercial Development (Accessory Use Only, e.g. home based business or park concession stand, please see use standards for additional restrictions)	X	C ⁵	P ⁶	X	X
Forest Practices	X	X	X	X	X
Manufacturing	X	X	X	X	X
Mining	X	X	X	X	X
Parking (As a Primary Use)	X	X	X	X	X

¹ Aquaculture shall be conditionally approved in all shoreline designations as long as the use meets the mandates of WAC 173.26.241(3)(b) and is limited to native species recovery only.

² Please also see adjacent upland environment. Where a use would be located both in upland and overwater, the more restrictive standards apply.

³ Only one community pier per island shall be allowed in the Shoreline Residential Limited environment. Community piers shall be conditioned to require the removal of any other private overwater structures on the applicants' properties.

⁴ Boat launches meeting the definition of Boating Facilities in state law are a permitted use at the existing Boat Launch Park and are not permitted elsewhere in the Urban Conservancy environment.

⁵ This use is subject to further zoning restrictions in the Black Diamond Municipal Code.

⁶ This use is subject to further zoning restrictions in the Black Diamond Municipal Code.

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Parking (As an Accessory Use)	X	C	P	X	X
SHORELINE USES	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC ¹
Recreational Facilities					
Water oriented	P	P	P	P	P ²
Non-water oriented (As a Primary Use)	X	X	X	X	X
Non-water oriented (As an Accessory Use)	C	C	P	P	X
Multi-use Trails	X	C	C	X	X
Minor Trails	P	P	P	P	X
Residential Development					
Single family	X	X	P	C	X
Multi-family	X	X	X	X	X
Scientific, Historical, Cultural, or Educational Uses	P	P	P	P	P
Transportation Facilities					
New Roads related to Permitted Shoreline Activities	X	X	C	X	X
Expansion of Existing Circulation Systems and driveways	X	C	P	X	X
Utilities (Primary)					
Solid Waste Disposal or Transfer Sites (excluding storage of recyclable materials)	X	X	X	X	X
Other	CX	C	C	C	C
Utilities (Accessory)					

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¹ Please also see adjacent upland environment. Where a use would be located both in upland and overwater, the more restrictive standards apply.

² Only water dependent uses are permitted in the Aquatic designation.

³ Utilities (Primary) may only be located in the natural designation buffer area and construction methods and utility installation only allowed if all ecological functions are re-established to pre-construction conditions.

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Local Public Water, Electric, Natural Gas Distribution, Public Sewer collection, Cable and Telephone Service, and Appurtenances	C	P	P	P	C
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2. Basic Development Standards – Table II

DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC
Maximum Height ¹	32 ft. (All Structures)	32 ft. (All Structures)	Primary Dwelling Unit: 32 ft. Accessory Building: No greater than primary dwelling unit or 26 feet, whichever is less	Primary Dwelling Unit: 32 ft. Accessory Building: No greater than primary dwelling unit or 26 feet, whichever is less	N/A ³
Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non- conforming single family homes.	100 ft.	100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement ⁵	40 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement	50 ft.(standard) may be reduced to 30 ft. (minimum) with enhancement	N/A ³
Maximum Impervious Surface Coverage ⁴	5%	10%	40% ⁵	30%	N/A ³
Maximum Building Coverage	5%	5%	30%	20%	N/A ³
Minimum lot width	N/A	N/A	60 ft. ¹	N/A	N/A ³

¹Please see Residential Subdivision Standards in Chapter 4, Section C.8.c.

DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC
<u>and</u> water frontage					
Minimum Lot Size	No further subdivision is allowed	No further subdivision is allowed	9,600 sq. ft ⁶ Subdivision of unsewered properties is prohibited.	No further subdivision is allowed.	N/A ³

¹ Development shall also be subject to the height limits established by the underlying zoning. The maximum basic height limitation for all principal and accessory buildings in the various zone districts shall not apply to cupolas that do not extend more than three feet above the roof line, flagpoles, transmission lines, residential antennas, and other similar structures as determined by the Director.

²The standard setback applies to all permanent and temporary primary and accessory structures unless specifically exempted below. Setbacks are measured landward, on a horizontal plane perpendicular to the shoreline. The setback may be reduced to the minimum setback indicated in Table II where the applicant agrees to implement voluntary enhancements as described in Sections B.3 and B.4 below, and the Shoreline Administrator determines the proposal is consistent with all other requirements of this SMP. Please see zoning regulations for interior lot setbacks and other requirements that apply to specific zones. Development associated with water dependent uses, shoreline access and ecological restoration such as overwater structures, shoreline stabilization, trails, stairs and similar appurtenances are not required to meet the minimum setback. However, where such development is approved within the minimum setback, the placement of structures and hard surfaces shall be limited to the minimum necessary for the feasible operation of the use.

³Not Applicable. Land-based standards do not apply in the Aquatic environment because only water dependent structures and development, such as docks, are allowed. Height of all structures shall be the minimum necessary for the proposed water dependent use.

⁴ The amount of impervious surface shall be the minimum necessary to provide for the intended use. The City will encourage practices that further minimize impervious surfaces and stormwater runoff, including use of best available technologies.

⁵ The City shall adopt administrative rules that allow partial credit for pervious pavements or infiltration systems that do not degrade ecological function, provided site coverage including both impervious surfaces and pervious pavements shall not constitute more than 50% of parcel area. The amount of credit and certification of allowable materials shall be determined by the City Engineer.

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⁶Minimum lot size refers to the minimum area needed for a new lot and is further restricted by other factors, including land needed for an on-site sewage system in those areas where sanitary sewers are not available.

3. Flexible Shoreline Setback Regulations

In addition to the specific requirements for particular uses, the following standards shall apply:

1. A standard setback shall be established from the ordinary high water mark for all lots within shoreline jurisdiction. The setback shall not apply to docks, piers, bridges and similar water dependent structures.
 - a. The forty (40) foot standard setback in the Shoreline Residential and the fifty (50) foot Shoreline Residential Limited Environments may be reduced down to a minimum of twenty-five (25) feet when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.
 - b. The one-hundred (100) foot setback within the Urban Conservancy environment may be reduced to a minimum of seventy-five (75) feet, when setback reduction impacts are mitigated using a combination of the mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.
 - c. No setback reduction is allowed in the Natural environment, where a one-hundred (100) foot setback shall be required.
 - d. At least one Water Related Action must be undertaken in order to achieve the full setback reduction allowed.
 - e. A maximum of 10 feet in cumulative setback reduction may be achieved under Upland Related Actions.

f. *Alternative Setback Averaging* – In instances of unique lot configurations, the Shoreline Administrator or his/her designee may allow modification either of the standard or mitigated shoreline setback, by allowing a partial reduced setback if a compensating increased setback for other portions of the development is provided. Modified setback averaging may only be allowed where a qualified professional demonstrates that all of the following conditions are met:

- i. Alternative setback averaging will not reduce shoreline functions or functional performance;
- ii. The total area contained in the setback area after averaging is no less than that which would otherwise be required; and all increases in setback dimension for averaging are generally parallel to the shoreline edge;
- iii. The setback depth at its narrowest point is not reduced to less than twenty-five feet;
- iv. Under no circumstances shall a structure encroach more than five feet beyond either the standard or mitigated setback.

2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration.

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3. All property owners who obtain approval for a reduction in the setback must record the final approved setback and corresponding conditions in a Notice on Title, and provide a copy of the Notice on Title to the Shoreline Administrator.
4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.
5. Mitigation of native vegetation as discussed below shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. Preparation of a revegetation plan shall be completed by a qualified professional and include a monitoring and maintenance program that shall, at a minimum, include the following:
 - a. The goals and objectives for the mitigation plan;
 - b. The criteria for assessing the mitigation;
 - c. A monitoring plan that includes annual progress reports submitted to the Shoreline Administrator and that lasts for a period sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and
 - d. A contingency plan.
5. Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject to further monitoring as necessary to ensure the success of requirement mitigation measures.
6. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.

4. Shoreline Setback Reduction Mechanisms – Table III

REDUCTION MECHANISM		REDUCTION ALLOWANCE
Water Related Actions		
1	Removal of existing bulkhead located at, below, or within 5 feet landward of the shoreline's ordinary high water mark (OHWM) and subsequent restoration of the shoreline to a natural or semi-natural state, including restoration of topography, beach/substrate composition and stabilization of disturbed soils with native vegetation.	<p>Bulkhead Removal on 75% of shoreline: 15 feet</p> <p>50% of shoreline: 10 feet</p> <p>25% of shoreline: 5 feet</p>
2	Restoration of natural shoreline conditions (e.g. no bulkhead or other unnatural shoreline features such as upland impervious surfaces or other structural alterations allowed) within 10 feet of the OHWM, including restoration of native vegetation. The reduction will only be granted if ecological functions would be improved relative to the existing condition.	10 feet
3	Existing hard structural stabilization at or near the ordinary high water mark is removed and new hard structural shoreline stabilization measures are setback from the OHWM between 2 ft. to 4 ft. based on feasibility and existing conditions and are sloped a maximum angle of 3 vertical: 1 horizontal to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.	5 feet
4	Soft structural shoreline stabilization measures are installed waterward of the OHWM on a site currently containing only hard stabilization. They shall include the use of gravels, cobbles, boulders and/or logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind and boat-driven waves and shall be graded to a maximum slope of 1 vertical: 4 horizontal	5 feet

REDUCTION MECHANISM		REDUCTION ALLOWANCE
5	Contribution to a City restoration fund, or bank, for offsite shoreline restoration and implementation of measures contained in the setback reduction mechanisms of the Water Related Actions, items 1 through 4, of Table III above. Amount shall be determined by the Shoreline Administrator based upon the approximate cost that would be required to accomplish the water-related, shoreline enhancement at the on-site area of improvement. The City must establish the fund or bank, including specific project locations and more specific operational rules, for this reduction mechanism to be available.	5-10 feet
Upland Related Actions		
6	Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 75 percent of the reduced (i.e. that portion remaining after reductions are applied) setback area. The remaining 25 percent of the setback area can be comprised of existing non-invasive, non-native vegetation. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 25 percent restoration area. (Note: this incentive cannot be used by any properties that currently have substantial multi-layered native vegetation in 75% of the setback area. The reduction will only be granted if ecological functions would be improved relative to the existing condition.)	10 feet
7	Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 25 percent of the reduced setback area. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 25 percent restoration area. (Note: this incentive cannot be used by any properties that currently have substantial multi-layered native vegetation in 25% of the setback area. The reduction will only be granted if ecological functions would be improved relative to the existing condition.)	5 feet
8	Installation of biofiltration/infiltration mechanisms such as rain gardens, bioswales, created and/or enhanced wetlands, infiltration facilities, ponds or other approved Low Impact Development techniques that treat the majority of surface water run-off from a site	5 feet

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REDUCTION MECHANISM		REDUCTION ALLOWANCE
	and exceed adopted stormwater requirements. (Note: stormwater ponds serving more than one property should be located outside of shoreline jurisdiction if possible).	
9	Installation of a “green” roof in accordance with the standards of the LEED Green Building Rating System.	5 feet
10	Installation of pervious material for entire length of a driveway or infiltration systems that do not degrade ecological function.	5 feet
11	Limiting total impervious surface, e.g. pathways or patios for water access and enjoyment, in the reduced setback area to less than 10.5 percent, provided the applicant complies with all other development requirements	5 feet
12	Reduction of 5 feet for impervious surface 10 percent less than the SMP standard and 10 feet for impervious coverage 20 percent less than the SMP standard	5-10 feet
13	For preparation of, and agreement to adhere to, a written shoreline vegetation management plan that includes appropriate limitations on the use of fertilizers, herbicides and pesticides to protect water quality. This plan must be approved by the City prior to implementation of the plan.	5 Feet
14	Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.	5 feet
15	Contribution to a City mitigation fund, or bank, for offsite vegetation restoration and implementation of other measures contained in setback reduction mechanisms 5 and 6 of Table III above. Amount shall be determined by the Shoreline Administrator based upon what the approximate cost would be to accomplish the vegetation enhancement work in the on-site setback area. The City must establish the fund or bank, including specific project locations and more specific operational rules, for this reduction mechanism to be available.	5-10feet
16	Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.	5 feet

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Any further reduction of shoreline setbacks beyond the minimum listed in this Chapter shall require a Shoreline Variance.

C. Shoreline Use Policies and Regulations

1. General Use Policies

a) Applicability

The following provisions are applicable to all uses occurring within the shoreline jurisdiction.

b) Policies

1. The following uses should be prohibited within the shoreline jurisdiction: Mining, Forestry, and Manufacturing.
2. When determining allowable uses and resolving use conflicts within the City's shoreline jurisdiction, apply the following preferences and priorities in the order listed below:
 - a. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
 - b. Reserve shoreline areas for water-dependent and associated water related uses.
 - c. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
 - d. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
 - e. Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act, including opportunities for ecological enhancements and public access improvements.
3. Proposed economic use of the shoreline should be consistent with Black Diamond's Comprehensive Plan.
4. New residential development should be designed to protect existing shoreline water views, promote public safety, and avoid adverse impacts to shoreline habitats.
5. All development and redevelopment activities within the City's shoreline jurisdiction should be designed to ensure public safety, enhance public access, protect existing shoreline and water views and achieve no net loss of shoreline ecological functions.
6. Require the use of Low Impact Development (LID) and encourage "Green Building" practices, such as those promulgated under the Leadership in Energy and Environmental Design (LEED) and Green Built programs, for new development within the shoreline jurisdiction.

7. Proposed shoreline uses should not infringe upon the rights of others or upon the rights of private ownership.
8. Encourage shoreline uses which enhance their specific areas or employ innovative features for purposes consistent with this program.
9. Encourage restoration of shoreline areas that have been degraded or diminished in ecological value and function as a result of past activities or catastrophic events.
10. Shoreline uses are allowed only if the underlying zoning allows the use.

2. Agriculture

Agriculture includes, but is not limited to, the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, or Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140; finfish in upland hatcheries, or livestock..

a) Policies

1. Agriculture should be prohibited in the Natural environment and permitted as an accessory use only in all other environments.
2. The creation of new agricultural lands by diking, draining, or filling marshes, and associated marshes, bogs, and swamps, or by removing native vegetation should be prohibited.
3. All agricultural activities should be setback from the shoreline according to the setbacks established for the shoreline environment in which the activity is occurring.
4. Appropriate management techniques should be utilized to prevent contamination of nearby water bodies and adverse effects on valuable plant, fish, and animal life by fertilizer and pesticide use and application. The use of chemical pesticides and fertilizers should be discouraged.
5. Significant new agricultural development should be conditioned with the requirement for ecological restoration to ensure no net loss of ecological functions. The City's Shoreline Administrator will consult the provisions of this SMP and determine the applicability and extent of ecological restoration. The extent of ecological restoration shall be that which is reasonable given the specific circumstances of an agricultural development.

b) Regulations

1. Agricultural development shall conform to applicable state and federal policies and regulations, provided they are consistent with the Shoreline Management Act and this SMP to ensure no net loss of ecological function.
2. All agricultural activities shall occur outside of the established shoreline setback area.
3. The removal of native vegetation to accommodate agricultural activities shall be prohibited.
4. A buffer of natural or planted permanent native vegetation not less than 25 feet in width, measured perpendicular to the shoreline, shall be maintained between areas of new development for crops, grazing, or other agricultural activity and adjacent waters, and associated wetlands. The City's

Shoreline Administrator shall determine the extent and composition of the buffer when the permit or letter of exemption is applied for.

5. Water withdrawals from SMP waterbodies for irrigation purposes shall be subject to Department of Ecology rules and regulations.
6. Manure lagoons, confinement lots, feeding operations, lot wastes, stockpiles of manure solids, aerial spraying, and storage of noxious chemicals are prohibited within the shoreline jurisdiction.
7. Any water discharge from agricultural activities into SMP water bodies shall be prohibited.

3. Aquaculture

Aquaculture is the farming of food fish, shellfish, or other aquatic plants and animals. This activity is of statewide interest. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. The technology associated with some forms of aquaculture is still in its formative stages and experimental. This shoreline master program recognizes the necessity of some latitude in the development of this use.

a) Policies

1. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions or significantly conflict with navigation and other water-dependent uses.
2. Aquaculture facilities should be designed and located such that they do not spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

b) Regulations

1. Aquaculture development shall conform to applicable state and federal policies and regulations, provided they are consistent with the Shoreline Management Act and this SMP to ensure no net loss of ecological function.
2. The applicant shall demonstrate that the proposed facility meets the requirements of Policy 2 above.
3. Impacts to ecological functions shall be mitigated in accordance with the sequence described in Chapter 3, Section 4(C)2.

4. Boating Facilities

a) Applicability

Boating facilities, including community piers, public piers, commercial launches and related facilities, and public or community boat launches, shall be subject to the policies and regulations of this Section, as well as those contained in Chapter 5, Section E, Overwater Structures. The following policies and regulations only apply to public, commercial or private moorage facilities serving more than four (4) single-family residences.

b) Policies

1. Boating facilities should be located, designed, and operated to ensure no net loss of ecological functions or other significant adverse impacts, and should, where feasible, enhance degraded and/or scarce shoreline features.
2. To the extent possible, boating facilities should be located in areas of low biological productivity.
3. Boating facilities should be located and designed so their structures and operations will be aesthetically compatible with the area visually affected and will not unreasonably impair shoreline views. However, the need to protect and restore functions and to provide for water-dependent uses carries higher priority than the protection of views.
4. Boating facilities should not unduly obstruct navigable waters and should consider adverse effects to recreational opportunities such as swimming, fishing and shoreline viewing.
5. Existing boating facilities for motorized craft may be modified and reconfigured, but any expansions that encourage additional motorized use of the lake are discouraged and should be mitigated to protect the lake from additional adverse impacts associated with intensive motorized use on a relatively small water body.

c) Regulations

1. New boating facilities shall be limited to private shared use pier facilities and public non-motorized facilities.
2. Boating facilities shall not significantly impact the rights of navigation on the waters of the state.
3. Existing boating facilities that accommodate motorized craft may be repaired, improved and reconfigured, however, they shall not be expanded to accommodate a greater number of users without a conditional use permit and mitigation measures to address the ongoing impacts of this use.
4. Location Standards.
 - a. New boating facilities shall not be permitted in areas where dredging will be required or where impacts to shoreline ecological functions and processes cannot be mitigated.
 - b. Boating facilities shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods or destructive storms.
 - c. Boating facilities shall be located to protect the public health, safety and welfare.
 - d. Boating facilities shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.
5. Facility Design.
 - a. All boating facilities shall be designed to avoid and minimize impacts. All impacts must be mitigated consistent with mitigation sequencing and no net loss requirements.
 - b. All boating facilities shall be the minimum size necessary to accommodate the anticipated demand. Specifically, the amount of overwater cover, the size and number of in-water

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structures, the waterward length of the facility, and the extent of any necessary associated shoreline stabilization or modification shall be minimized. Specific sizing of all boating facility components shall have the following limitations:

- i. Over-water facilities shall be no wider than 8 feet and no longer than 60 feet measured perpendicularly from the OHWM.
 - ii. Over-water facilities may be as long as 80 feet without a Shoreline Variance if the additional length is needed to reach 11 feet of moorage depth as measured from the OHWM. The extra length will not be allowed if the extension would interfere with navigation or other public uses of the water.
- c. Overwater components of all boating facilities shall allow transmission of light through the deck surface.

6. Site Design and Operation.

- a. Boating facilities shall be designed so that lawfully existing or planned public shoreline access is not blocked, obstructed nor made dangerous.
- b. Boating facilities shall provide physical and/or visual public or community access for as many water-oriented recreational uses as possible, commensurate with the scale of the proposal. Features for access could include, but are not limited to, walk-on access or fishing platforms.
- c. Public or community access areas shall provide space and facilities for physical and visual access to waterbodies, including feasible types of shore recreation.
- d. Accessory uses at boating facilities shall be limited to water-oriented uses or uses that support physical or visual shoreline access for substantial numbers of the general public. Accessory development may include, but is not limited to, parking, non-hazardous waste storage and treatment, stormwater management facilities, and utilities where these are necessary to support the water-oriented use.
- e. It is the applicant's responsibility to comply with all state agency policies and regulations, including all applicable health, safety and welfare requirements associated with the use.
- f. The traffic generated by such a facility must be safely and conveniently handled by the streets serving the proposed facility.
- g. No live-aboards or floating homes are allowed.
- h. Boating facilities must be limited to day moorage only.
- i. Covered moorage is prohibited.
- j. The perimeter of parking and other storage areas shall be landscaped to provide a visual and noise buffer between adjoining dissimilar uses or scenic areas.
- k. The facility must have provisions available for cleanup of accidental spills of contaminants.

7. Boat Launch

- a. Location Standards – Boat launches for non-motorized boats shall be sited so that they do not significantly damage fish and wildlife habitats and shall not occur in areas with native emergent vegetation. Removal of native upland vegetation shall be minimized to the greatest extent feasible.
- b. The design shall comply with all regulations as stipulated by state and federal agencies, affected tribes, or other agencies with jurisdiction.
- c. The applicant shall demonstrate that the proposed length of a boat launch is the minimum necessary to safely launch the intended craft. In no case shall the ramp extend beyond the point where the water depth is 6 feet below the OHWM, unless the City determines that a greater depth is needed for a public boat launch facility.
- d. Design Standards
 - i. Boat launches for non-motorized boats shall be constructed of materials which have the minimum ecological impact; typically gravel or similar natural material should be used to meet this requirement.
 - ii. Preferred launch ramp designs for motorized boats, in order of priority, are:
 1. Open grid designs with minimum coverage of lake substrate.
 2. Seasonal ramps that can be removed and stored upland.
 3. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in shoreline profile.

5. Commercial Development

a) Applicability

Commercial development means those uses that are involved in wholesale, retail, service and business trade.

b) Policies

1. New commercial uses should be prohibited as a primary use within the Lake Sawyer shoreline area.
2. Only limited accessory commercial development should be allowed in the Shoreline Residential and Urban Conservancy. Examples of limited accessory commercial uses are as follows:
 - a. Concession stands at recreation facilities,
 - b. Booths associates with festivals sponsored by the City,
 - c. Private parties, receptions and banquets, and
 - d. Boat rentals at recreation facilities.
3. Other than those commercial uses listed above, commercial vendors should not establish business facilities in shoreline jurisdiction. This prohibition does not preclude a vendor from being hired to provide services in connection with a permitted use.

4. Home occupations should be allowed within the Shoreline Residential environment provided they meet the applicable requirements of the zoning code.
5. Low Impact Development techniques should be incorporated into new development as feasible, pursuant to the City's adopted Surface Water Design Manual and the Low Impact Development Technical Guidance Manual for Puget Sound or successor.

c) Regulations

1. Commercial uses shall only be allowed as an accessory use in those shoreline environments where they are allowed pursuant to Table I in this Chapter.
2. Existing primary commercial recreation use at the Sunrise Resort property may continue and may be modified, subject to the requirements and limits for Nonconforming Uses in Chapter 6 and all other applicable SMP and zoning regulations.
3. Commercial uses in Shoreline Residential Environment shall be limited to home occupations within existing single family structures, pursuant to the requirements in the zoning code.
4. Any redevelopment or other modifications made to existing commercial development shall be designed to avoid or minimize ecological impacts, to protect human health and safety, and to avoid significant adverse impacts to surrounding uses and the shoreline's visual qualities, such as views to the waterfront and the natural appearance of the shoreline. To this end, the City's Shoreline Administrator may administratively adjust the project dimensions and setbacks (so long as they are not relaxed below minimum standards without a shoreline variance permit) or prescribe operation intensity and screening standards as deemed appropriate.
5. Low Impact Development (LID) techniques shall be incorporated where appropriate.

6. Parking

a) Applicability

Parking is the temporary storage of automobiles or other motorized vehicles. The following provisions apply only to parking that is accessory to a permitted shoreline use. Parking as a primary use and parking which serves a use not permitted in shoreline jurisdiction is prohibited.

b) Policies

1. Parking in shoreline areas should be minimized.
2. Parking facilities in shoreline areas should be located and designed to minimize adverse impacts including those related to stormwater runoff, water quality, visual qualities, public access, and vegetation and habitat maintenance, and shall result in no loss of ecological functions.
3. Parking in shoreline areas should not restrict access to the site by necessary public safety vehicles, utility vehicles, or other vehicles requiring access to shoreline properties.

c) Regulations

1. Parking as a primary use is prohibited in Shoreline jurisdiction.
2. Parking in shoreline areas must directly serve a permitted shoreline use.

3. Parking facilities shall provide adequate provisions to control surface water runoff to prevent it from contaminating water bodies.
4. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.
5. Exterior parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties. Exterior parking facilities for nonresidential uses shall be landscaped with vegetation in such a manner that plantings provide an effective “full-screen” within three years of project completion when viewed from adjacent areas within Shoreline jurisdiction.
6. New and reconstructed parking areas within the Urban Conservancy shoreline environment shall utilize Low Impact Development (LID) techniques as appropriate and as described in the most recent edition of the Low Impact Development Manual: Technical Guidance for Puget Sound.

7. Recreational Development

a) Applicability

Recreational uses include passive activities, such as walking, viewing and fishing. Recreational development also includes facilities for active uses, such as swimming, boating, and other outdoor recreation uses. This section applies to both public and private noncommercial shoreline recreational facilities (excluding private residences) in Black Diamond.

b) Policies

1. Recreational uses in the shoreline jurisdiction should be limited to water-oriented uses. Non-water-oriented recreational facilities may be allowed as an accessory use in limited circumstances where they support water oriented uses and do not displace water oriented uses.
2. Recreational uses and development should be managed and regulated to prevent the overall increase in motorized boat use and reduce the impacts of this use on the ecological health and residential character of Lake Sawyer. New recreational development should emphasize non-motorized water dependent and water related uses, such as fishing, swimming, picnic facilities, non-motorized hand carried boats, wildlife viewing and nature trails.
3. The City should explore additional controls on watercraft speeds and the large wake associated with certain types of watercraft. .
4. The coordination of local, state and federal recreation planning should be encouraged. Shoreline recreational developments should be consistent with the City’s park and recreation plans.
5. Recreational developments should be designed to preserve, enhance or create scenic views and vistas.
6. The use of existing publicly owned lands for public access and development of recreational opportunities should be encouraged. The use and improvement of existing public properties for recreation improvements should be given higher priority over the acquisition of additional sites.

7. Priority for land acquisition should be given to open space that provides wildlife habitat and offers opportunities for education and interpretation within shoreline jurisdiction.
8. Shoreline areas with a potential for providing recreation or public access opportunities should be identified and acquired by lease or purchase, or through partnerships with nonprofit and service organizations, and incorporated into the park and open space system.
9. Links between existing and future shoreline parks, recreation areas and public access points should be created with a non-motorized trail system using existing rights-of-way or through acquisition of easements and/or land.
10. Recreational activities should be designed to avoid conflict with private property rights, and to minimize and mitigate negative impacts on adjoining property.
11. Public access should not contribute to a net loss of shoreline ecological functions.

c) Regulations

1. All structures associated with a recreational use, except water dependent structures, such as docks and boardwalks, and appurtenances that provide access to the water for that use, shall maintain a standard setback of forty (40) feet in the Shoreline Residential Environment, fifty (50) feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 25 feet in the Shoreline Residential, 30 feet in the Shoreline Residential Limited Environment and 75 feet in the Urban Conservancy Environment using setback reduction mechanisms in Table II in this Chapter. Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.
2. Private and public recreation areas shall protect existing native vegetation in the shoreline area and restore vegetation impacted by development activities. Recreational use and development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial. The City may request necessary studies prepared by qualified professionals to determine compliance with this standard.
3. Water-dependent or water-related activities such as swimming, boating, and fishing, and activities that benefit from waterfront scenery such as picnicking, hiking and bicycling shall be emphasized in planning public and private (excluding residential) recreation sites in the shoreline corridor.
4. All recreational developments shall make adequate provisions for:
 - a. Public access to the shoreline;
 - b. Non-motorized and pedestrian access;
 - c. The prevention of trespass onto adjacent properties, including but not limited to landscaping and fencing;
 - d. Protection and restoration of environmentally sensitive areas and shoreline processes and functions;

- e. Signs indicating the publics' right of access to shoreline areas, installed and maintained in conspicuous locations at the point of access and the entrance; and
 - f. Buffering of such development from adjacent private property or natural area.
5. In approving shoreline recreational developments, the City shall ensure that the development will maintain, enhance or restore desirable shoreline features.
 6. Swimming areas shall be separated from boat launch areas.
 7. The construction of swimming facilities, piers, moorages, floats and launching facilities waterward of the OHWM shall be governed by the regulations relating to overwater structure construction in the Shoreline Modifications Section of this SMP.
 8. Public boat launching facilities may be developed, provided the traffic generated by such a facility can be safely and conveniently handled by the streets serving the proposed facility.
 9. Fragile and unique shoreline areas with valuable ecological functions, such as wildlife habitats, shall be used only for non-intensive recreation activities that do not involve the construction of structures.
 10. Recreation developments such as golf courses and playfields that require periodic use of fertilizers, pesticides or other chemicals, or that support high-intensity activities as a primary use, such as sporting events, shall be located outside of shoreline jurisdiction.
 11. A new or expanded shoreline recreational development must provide public access if feasible pursuant to Chapter 3, Section B(5)(d), Public Access.

8. Residential Development

a) Applicability

Residential development means one or more buildings, structures, lots, parcels, or portions thereof which are designed for and used or intended to be used to provide a place of abode for human beings, including single family residences and other detached dwellings together with accessory uses and structures normally applicable to residential uses located landward of the OHWM, including, but not limited to, swimming pools, garages, sheds, fences and saunas.

b) Policies

1. Residential development should be permitted only where there are adequate provisions for utilities, circulation and access.
2. New residential subdivisions should not be allowed unless sanitary sewer is provided.
3. Recognizing the single purpose, irreversible and space consumptive nature of shoreline residential development, new development should provide adequate setbacks and natural buffers from the water and ample open space among structures to protect natural features, preserve views and minimize use conflicts.

4. The City should provide development incentives, including reduced shoreline setbacks, to encourage the protection, enhancement and restoration of high functioning buffers and natural or semi-natural shorelines.
5. Residential development should be designed to preserve shoreline aesthetic characteristics, views, and minimize physical impacts to shoreline ecological functions.
6. Residential development should be designed so as to preserve existing shoreline vegetation, control erosion and protect water quality using best management practices and where possible, utilizing low impact development technologies.
7. The City encourages the use of joint-use piers and docks in lieu of individual piers and docks for each waterfront lot to protect the ecological functions of the lake.
8. The City encourages the use of alternative paving products for walkways, driveways, and patios, such as pervious pavers, as a mechanism for reducing impervious surfaces and surface water runoff.
- 8.9. Subdivisions should be designed to minimize impacts to shoreline ecological functions, including the use of common open space areas along the shoreline, retention of native vegetation and shared moorage and recreational facilities.
- 9.10. Development should, at a minimum, achieve no net loss of ecological functions necessary to sustain shoreline natural resources, even for exempt development.

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c) Regulations

1. Residential development is permitted subject to the policies and regulations for the specific Shoreline Environment (see Chapter 2, Table I), the standards of the underlying zoning regulations and the general regulations in Chapter 3 of this Shoreline Master Program.
2. Residential development shall be required to connect to public sewer if the property owner is seeking a building or site development permit or the property has a failing septic system that poses a risk to health or the environment, and such connection can be made within 300 of the subject property.
3. Special Subdivision Standards. The following requirements shall apply to residential short subdivisions that create more than ~~four~~ lots and all long subdivisions. These standards are in addition to those required under Title 17 and other sections of the Black Diamond Municipal Code.
 - a. New primary residential structures shall not be located within 100 feet of the Ordinary High Water Mark (OHWM).
 - b. Lot divisions subject to these provisions shall be designed to include a common open space tract encompassing all areas within 75 feet of the OHWM that are not part of a parent lot with a retained primary structure.
 - c. Vegetation removal within the required open space tract shall be the minimum necessary to facilitate water-oriented recreational uses. Structures within 50 feet of the OHWM located within the common open space tract shall be limited to overwater structures (e.g. joint use pier) and related access, such as a trail and stairs.

~~d.c.~~ Pruning consistent with accepted arboricultural practices shall be allowed within the open space tract to provide views of the water from and through the tract, but healthy native vegetation shall be retained consistent with Subsection b above.

~~d.~~ Public access may be required for subdivisions of more than four lots pursuant to the requirements of Chapter 3, Section B.5.c. The Shoreline Administrator may determine that shared community access limited to residents of the subdivision is sufficient where additional demand for public access created by the subdivision would be satisfied by such access and the proposal would not result in other conditions that adversely impact public access pursuant to Chapter 3, Section B.5.c.1.

~~f.e.~~ New lots created through the subdivision shall be required to connect to the public sanitary sewer.

4. Structures or other development accessory to residential uses are permitted in shoreline jurisdiction, if allowed under all other applicable standards in this SMP and subject to the provisions of the City's zoning code.
5. All additions to residential structures must comply with all standards in this SMP, including required shoreline setbacks established in Chapter 2, Table I.
6. Residential structures that are intentionally modified, replaced, repaired or enlarged are subject to the requirements in Chapter 6 (Administration – Nonconforming Use and Development Standards).
7. Residential structures that are modified, replaced or repaired following a catastrophic loss are subject to the requirements in Chapter 6 (Administration – Nonconforming Use and Development Standards).
8. Accessory uses and appurtenant structures not specifically addressed in the SMP shall be subject to the same regulations as primary residences.
9. In order to maintain visual access to the waterfront, fences within the required setback from the OHWM shall be:
 - a. No more than 42 inches when separating two residential lots and no more than 6 feet high when separating a residential lot from a park or commercial use, and
 - b. May not extend waterward of the OHWM.
10. To protect views and vistas maximum height limits have been established for each Shoreline Environment as indicated in Chapter 4, Table I, Summary of Shoreline Dimensional Standards.
11. Stormwater runoff for all new or expanded pavements or other impervious surfaces shall be directed to infiltration systems and other Low Impact Development techniques shall be incorporated into new development as feasible, in accordance with the City's adopted Surface Water Design Manual and the Low Impact Development Technical Guidance Manual for Puget Sound.
12. Residential development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial. The City may request necessary studies prepared by qualified professionals to determine compliance with this standard.

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9. Signs

a) Applicability

A sign is defined as a device of any material or medium, including structural component parts, which is used or intended to be used to attract attention to the subject matter for advertising, identification or informative purposes. The following provisions apply to any commercial or advertising sign directing attention to a business, professional service, community, site, facility, or entertainment, conducted or sold either on the premises.

b) Policies

1. Signs should be designed and placed so that they are compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses.
2. Signs should not block or otherwise interfere with visual access to the water or shorelines.
3. Outdoor advertising and billboards are not an appropriate use of the shoreline area within shoreline jurisdiction.

c) Regulations

1. Signs shall comply with the City's sign regulations.
2. Sign plans and designs shall be submitted for review and approval at the time of shoreline permit approval.
3. All signs shall be located and designed to minimize interference with vistas, viewpoints and visual access to the shoreline.
4. The following types of signs may be allowed in all shoreline environments:
 - a. Water navigational signs and highway signs necessary for operation, safety and direction.
 - b. Public information signs directly relating to a shoreline use or activity.
 - c. Off-premise, freestanding signs for community identification, information, or directional purposes.
 - d. National, site and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.
5. The following signs are prohibited:
 - a. Off-premises detached outdoor advertising signs.
 - b. Spinners, streamers, pennants, flashing lights, and other animated signs used for commercial purposes.
 - c. Signs placed on trees or other natural features.
 - d. Commercial signs for products, services, or facilities located off-site.

10. Transportation Facilities

a) Applicability

Transportation facilities are those structures and developments that aid in land, air, and water surface movement of people, goods, and services. They include roads and highways, bridges, bikeways, trails, heliports, and other related facilities. In Black Diamond, these uses account for a minimal percentage of the shoreline land inventory. However, the impact of these facilities on shorelines can be substantial.

b) Policies

1. Normal operation and maintenance of all roadways in shoreline jurisdiction should be exempt.
2. New road construction in the shoreline jurisdiction should be minimized, and allowed by conditional use only when related to and necessary for the support of permitted shoreline activities.
3. Expansion of existing roadways should be allowed by conditional use if such facilities are found to be in the public interest.
4. Joint use of transportation corridors within the shoreline jurisdiction for roads, utilities and motorized and non-motorized forms of transportation should be encouraged, where feasible.

c) Regulations

1. New road construction in shoreline jurisdiction shall be minimized and allowed only when related to and necessary for the support of permitted shoreline activities.
2. Transportation facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
3. Expansion of existing roadways within the shoreline jurisdiction shall be allowed only when the proponent demonstrates that:
 - a. No alternative route is feasible;
 - b. The roadway is constructed and maintained to cause the least possible adverse impact on the land and water environment; and
 - c. The roadway is found to be in the public interest.
4. Transportation and primary utility facilities shall be required to make joint use of rights-of-way, and to consolidate crossings of water bodies to minimize adverse impacts to the shoreline.
5. Developers of roads must be able to demonstrate that efforts have been made to coordinate with existing land use plans including the Shoreline Master Program and the City's Comprehensive Plan.
6. All debris and other waste materials from roadway construction shall be disposed of in such a way as to prevent their entry into any water body.
7. Road designs must provide safe pedestrian and non-motorized vehicular crossings where public access to shorelines is intended.

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8. Streets within shoreline jurisdiction shall be designed with the minimum pavement area required. Gravel and more innovative materials shall be used where feasible for pathways and road shoulders to minimize the amount of impermeable surfaces and help to maintain a more natural appearance and function.
9. The City shall give preference to mechanical means for roadside brush control on roads in shoreline jurisdiction rather than the use of herbicides.

11. Utilities (Primary)

a) Applicability

Utilities are services and facilities that produce, transmit, store, process or dispose of electric power, gas, water, sewage, and communications. Utilities in this SMP are divided into primary and accessory based on type and scale. The provisions of this section apply to primary use and activities such as solid waste handling and disposal, water transmission lines, sewage treatment facilities and mains, power generating or high voltage transmission facilities, gas distribution lines and storage facilities, stormwater mains and regional stormwater treatment facilities.

b) Policies

1. New primary utilities should be located outside of the SMA unless no other feasible option exists. Where allowed, they should utilize existing transportation and utility sites, rights-of-way and corridors whenever possible, rather than creating new corridors. Joint use of rights-of-way and corridors should be encouraged.
2. Solid waste disposal activities and facilities should be prohibited in shoreline areas. Short term storage of trash and recyclable materials associated with a permitted shoreline use is allowed, provided such activity occurs outside of the shoreline setback.
3. Primary utilities should avoid locating in environmentally sensitive areas unless no feasible alternatives exist.
4. Wherever primary utility facilities and corridors must be placed in a shoreline area, they should be located so as to protect scenic views. Whenever possible, such facilities should be placed underground or designed to minimize impacts on the aesthetic qualities of the shoreline area.

c) Regulations

1. Primary utilities shall be located outside of SMA jurisdiction unless no other feasible option exists.
2. Primary utilities shall be located landward of the ordinary high water mark unless such location is not feasible or would result in potentially greater environmental impacts.
3. Primary utility facilities shall avoid disturbance of unique and fragile areas, as well as wildlife spawning, nesting and rearing areas. Utility facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
4. Utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail

systems and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, **will not conflict with property rights (easement restrictions)**, endanger public health and safety or create a significant and disproportionate liability for the owner.

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5. Utility lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible and shall avoid duplication and construction of new corridors in all shoreline areas. Proposals for new corridors or water crossings must fully substantiate the infeasibility of existing routes.
6. Solid waste disposal sites and facilities are prohibited in the shoreline environment.
7. Where major facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy or obstruct scenic views.
8. Primary utility development shall provide screening of facilities from water bodies and adjacent properties. Screening, including landscaping and fencing, shall be designed to constitute a dense "full screen".
9. Clearing of vegetation for the installation or maintenance of utilities shall be kept to a minimum and upon project completion any disturbed areas shall be restored to their pre-project condition, **or if not feasible, then additional plantings will be required to attain no net loss in ecological function.**
10. The City shall hold public meetings prior to the issuance of a Substantial Development Permit for a major primary utility project in accordance with the administrative procedures outlined in this Master Program to allow for the greatest amount of public input to help guide utility-related decisions.

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12. Utilities (Accessory)

a) Applicability

Utilities have been split into accessory and primary with accessory meaning utilities that affect small-scale distribution services connected directly to the uses along the shoreline. For example, power distribution, telephone, cable, water and sewer service lines, stormwater collection and conveyance, are all considered as accessory utility uses. They are covered in this section because they concern all types of development and have the potential of impacting the ecological condition and visual quality of the shoreline and its waters.

b) Policies

1. Utilities are necessary to serve shoreline uses and should be properly installed to protect the shoreline and water from contamination and degradation.
2. Utility facilities and right-of-ways should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground, where feasible.
3. Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology, and minimizes conflicts with present and planned land uses.

c) Regulations

1. Utility developments shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail

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systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, or endanger public health and safety.

2. In shoreline areas, accessory utilities shall be placed underground unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, and existing corridors whenever possible.
3. Utility facilities shall be located and designed to avoid destruction of, or damage to, important wildlife areas, and other unique and fragile areas. Utility facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
4. Heating and cooling facilities for residential homes shall not be located in the Aquatic environment.
5. Clearing for the installation or maintenance of utilities shall be kept to a minimum, and upon project completion, any disturbed area shall be restored, to the greatest extent feasible, to pre-project conditions, including replanting with native species, or other species as approved by the City, and maintenance care. If the previous condition is identified as being undesirable for shoreline function, then landscaping and other improvements shall be undertaken.
6. The location and construction of outfalls shall comply with all appropriate federal, state, county and city regulations.
7. The City of Black Diamond shall maintain, enhance and restore public natural drainage systems to protect water quality, reduce flooding, reduce public costs and prevent associated environmental degradation for a no net loss of shoreline ecological functions.
8. New utility lines including electricity, communications, and fuel lines shall be located underground. Existing above ground lines shall be moved underground when properties are redeveloped or in conjunction with major system upgrades or replacements.
9. Utility development shall include public access to the shoreline, trail systems, and other forms of recreation, providing such uses will not unduly interfere with utility operations, endanger the public health, safety, and welfare, or create a significant and disproportionate liability for the owner.
10. Proposals for new utility corridors shall fully substantiate the infeasibility of existing routes.

Chapter 5 Shoreline Modification Provisions

A. Introduction

Shoreline modification activities are those actions that modify the physical configuration or qualities of the shoreline area. Shoreline modification activities are, by definition, undertaken in support of or in preparation for a permitted shoreline use. A single use may require several different shoreline modification activities.

Shoreline modification activity policies and regulations are intended to assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to prevent, reduce and mitigate the negative environmental impacts of proposed shoreline modifications consistent with the goals of the Shoreline Management Act. A proposed development must meet all of the regulations for both applicable uses and activities as well as the general and environment designation regulations.

This chapter has been divided into five sections: Clearing and Grading, Shoreline Stabilization, Dredging, Fill, and Overwater Structures.

B. Table of Shoreline Modification Activities

The shoreline modification table below determines whether a specific shoreline modification is allowed within each of the shoreline environments. See standards following the table for a full explanation of activities and required conditions for permitted activities.

The table should be interpreted as follows:

A. The letter "X" indicates the modification is not allowed.

B. The letter "P" indicates the modification may be allowed only if the underlying zoning allows the modification.

C. The letter "C" indicates the modification may be allowed subject to the shoreline conditional use review procedures specified in Chapter 6, and only if the underlying zoning allows the modification.

D. "N/A" indicates the shoreline modification is not applicable in the given environment.

d) **Table IV. Shoreline Modifications**

Shoreline Modification Activity	Natural	Urban Conservancy	Shoreline Residential Limited	Shoreline Residential	Aquatic
SHORELINE STABILIZATION					See adjacent upland environment
Beach Augmentation / Enhancement	X	C	P	P	
Soil Bio-engineering	C	P	P	P	
Structural stabilization	X	C	C	P	
Breakwaters, jetties, and groins	X	X	X	X	
Clearing and Grading	C	P	C	P	
Dredging	C	C	C	C	
Fill - landward of OHWM	C	C	C	P	
Fill – waterward of OHWM	C	C	C	C	
OVERWATER STRUCTURES <u>ACCESSORY TO RESIDENTIAL</u>					
Buoy	X	N/A	P	P	
Boathouse	X	N/A	X	X	
Joint Use Pier, Dock, Float, or Pile	X	N/A	P	P	
Non-Joint Use Pier, Dock, Float or Pile	X	N/A	C	P	
Overwater Walkway	X	N/A	X	X	
Boat Ramp	X	N/A	X	X	
Launching Rails	X	N/A	X	X	
Boat Lifts	X	N/A	C	P	
Boat Canopies	X	N/A	C	P	
Structural Moorage Covers	X	N/A	X	X	

Shoreline Modification Activity	Natural	Urban Conservancy	Shoreline Residential Limited	Shoreline Residential	Aquatic
<u>OVERWATER STRUCTURES NOT ACCESSORY TO RESIDENTIAL STRUCTURES:</u>					See Adjacent Upland Environment
Buoy	X	P	P	P	
Boathouse	X	X	X	X	
Joint Use or Public Pier, Dock, Float or Pile	X	P	C	P	
Non-Joint Use Pier, Dock, Float or Pile	X	X	C	C	
Overwater Walkway	C	C	X	X	
Boat Ramp	X	P/X ²	X	X	
Launching Rails	X	X	X	X	
Boat Lift	X	X	X	X	
Boat Canopies	X	X	X	X	
Structural Moorage Covers	X	X	X	X	

¹ Please see Chapter 4, Section (B)(1), Table I, for additional use regulations pertaining to Boating Facilities (commercial, public or private use serving more than 4 single family residences). Where the regulations contained in Table IV above conflict with those in Table I in Chapter 4, the more restrictive shall apply.

² Permitted use at the existing Boat Launch Park, not permitted at Lake Sawyer Regional Park.

C. Shoreline Stabilization

1. Applicability and Definitions

Shoreline stabilization includes actions taken to address erosion impacts to property caused by natural processes, such as current, flood, wake or wave action. These actions include all structural and nonstructural methods. "Hard" structural stabilization measures refer to those with solid, hard surfaces, such as concrete or boulder bulkheads, while "soft" structural measures rely on less rigid materials, such as bioengineered vegetation measures, anchored logs or beach enhancement. Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions. The means taken to reduce damage caused by erosion, accretion, and flooding must recognize the positive aspects of each of these processes in order to retain the benefits of these natural occurrences. Erosion does not occur without accretion (deposition and accumulation) of material eroded, such as formation of a beach or a sandbar. Likewise, accretion cannot occur unless material has been eroded.

Specific structural methods for stabilization include bulkheads, beach restoration and enhancement, soil bioengineering, and groins along Lake Sawyer. A key regulatory distinction in this SMP is made between new stabilization measures and the replacement of existing stabilization measures. New stabilization measures, by state definition, include the enlargement of existing structures. Some of these techniques are currently being used in Black Diamond as described below, or they are techniques that could be used to address local shoreline issues.

General policies and regulations addressing shoreline stabilization methods applicable to the City are presented in the following sections. Additional discussion of the individual stabilization methods, and policies and regulations specific to them, are provided following the general policies and regulations section.

a) Beach Restoration or Enhancement on Lake Sawyer

Beach enhancement is the alteration of exposed and submerged shorelines for the purpose of stabilization, recreational enhancement, and/or aquatic habitat creation or restoration using native or similar material. The materials used are dependent on the intended use. For recreational purposes, various grades of clean sand or pea gravel are often used to create a beach above the ordinary high water mark. Restoration or re-creation of a shore feature may require a rock and gravel matrix and/or creation of other materials appropriate for the intended use.

b) Soil Bioengineering

Soil bioengineering is the term given to the practice of using natural vegetative materials to stabilize shorelines and prevent erosion. This may include use of root systems, or other living plant material; fabric or other soil stabilization techniques; and limited rock toe protection, where appropriate. Soil bioengineering projects often include fisheries habitat enhancement measures such as anchored logs or root wads, in project design. Soil bioengineering techniques may be applied to shoreline areas and the upland areas away from the immediate shoreline.

The use of soil bioengineering as a shoreline stabilization technique is a viable and proven alternative to riprap, concrete and other structural solutions. It provides habitat while maintaining and preserving the natural character of the shoreline. Soil bioengineering is the preferred "best practices" choice when considering shoreline stabilization.

c) Bulkheads

Bulkheads are shoreline structures, either sloped or vertical, usually constructed parallel to the shore. The primary purpose they serve is to contain and prevent the loss of soil caused by erosion or wave action.

Bulkheads have historically been constructed of poured-in-place or precast concrete, concrete blocks, steel or aluminum sheet piling, wood or wood and structural steel combinations, and boulders. Bulkheads may be either thin structures penetrating deep into the ground or more massive structures resting on the surface.

Uses and activities related to bulkheads which are identified as separate use activities in this program, such as Fill and Residential Development, are subject to the regulations for those uses in addition to the standards for bulkheads established in this section.

d) Groins

Groins are barrier-type structures of rock, wooden piling or other materials constructed across the beach itself and extending into the water with the intent to obstruct sand and sediment carried by the littoral drift action along shorelines. Groins have limited applicability in Black Diamond's shoreline jurisdiction because of the relatively small size of Lake Sawyer.

NOTE: PERMIT EXEMPTIONS ARE DESCRIBED IN FULL IN CHAPTER 6 –ADMINISTRATION

2. Stabilization Policies and Regulations

a) Policies

1. Proposals for shoreline stabilization activities, including bulkheads should address the impact of these activities on the shoreline environment. This planning should consider off-site erosion, accretion, or damage that might occur as a result of shoreline stabilization structures or activities.
2. Explore a range of solutions to reduce the amount of bulkheads and shoreline armoring over time around Lake Sawyer and restore natural bank conditions. Alternative methods to typical shoreline armoring using native vegetation and other natural shoreline features should be the preferred method where feasible.
3. Non-structural stabilization measures are preferred over "soft" structural measures. Soft structural shoreline stabilization measures are strongly preferred over hard structural shoreline stabilization. Proposals for hard and soft structural solutions, including bulkheads, should be allowed only when it is demonstrated that nonstructural methods are not feasible. Hard structural shoreline stabilization measures should be allowed only when it is demonstrated that soft structural measures are not feasible.
4. Structural shoreline stabilization should be permitted only when it has been demonstrated that shoreline stabilization is necessary for the protection of existing legally established structures, primary uses and public improvements, and that there are no other feasible options to the proposed shoreline stabilization that have less impact on the shoreline environment.
5. Shoreline stabilization structures should be located, designed and constructed to minimize adverse impact on the property of others.
6. New development requiring bulkheads or similar protection should generally not be allowed. All new shoreline development should be located and designed to avoid or, if avoidance is not possible, minimize the need for shoreline modification activities.

7. Mitigation for shoreline stabilization should be provided to achieve no net loss of ecological functions necessary to sustain shoreline natural resources.

b) Regulations

General Shoreline Stabilization – Basic Requirements

1. Structural (soft and hard) solutions to reduce shoreline damage from erosion shall be allowed only after it is demonstrated through a geotechnical report prepared by a qualified professional that non-structural solutions would not provide sufficient protection to an allowed primary structure or a legally existing shoreline use. The geotechnical report shall evaluate the necessity of structural stabilization measures by estimating timeframes and rates of erosion (damage within 3 years), urgency of replacement, alternative solutions and other pertinent factors. Non-structural solutions include (but are not limited to) soil bioengineering, beach enhancement, alternative site designs, drainage improvements and increased building setbacks (for proposed structures).

General Shoreline Stabilization – New Development

2. New development, including the division of land into new parcels, shall be located and designed to eliminate the need for concurrent or future shoreline stabilization. New non-water dependent development that would require shoreline stabilization that would cause significant adverse impacts to adjacent or down-current properties is prohibited.
3. New development, including single-family residences, that includes structural shoreline stabilization will not be allowed unless all of the conditions below are met:
 - a. The need to protect the development from damage due to erosion caused by natural processes, such as currents and waves, and by manmade processes, such as boat wakes, is demonstrated through a geotechnical report prepared by a qualified professional.
 - b. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
 - c. Non-structural measures, such as placing the development farther from the shoreline, planting vegetation, low impact development measures, or installing on-site drainage improvements, are not feasible or not sufficient.
 - d. The stabilization structure will not result in a net loss of shoreline ecological functions.
4. New development on steep or unstable slopes shall be set back sufficiently to ensure that shoreline stabilization will not be needed during the life of the structure, as demonstrated by a geotechnical analysis prepared by a geotechnical engineer of related professional licensed and in good standing in the State of Washington.

General Shoreline Stabilization – New or Expanded Measures

5. New structural stabilization measures and enlargement of existing structural stabilization measures shall be limited to the minimum size necessary and shall be permitted only when it has been conclusively demonstrated through scientific analysis that shoreline stabilization is necessary to protect existing primary structures, ecological function restoration projects or hazardous substance

remediation projects from erosion, and that nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or not sufficient.

General Shoreline Stabilization – Replacement and Repair

6. An existing shoreline stabilization structure shall not be replaced with a similar structure unless there is a demonstrated need to protect legally established principal uses or structures from erosion caused by currents or waves and a nonstructural measure is not feasible.
7. Shoreline stabilization solutions developed to replace existing shoreline stabilization shall be placed along the same alignment as, or landward of, the shoreline stabilization being replaced, except as noted below and in Regulation 30 and 31 pertaining to bulkheads.
8. Where existing structural stabilization is replaced by non-structural shoreline stabilization using bioengineering techniques and results in a documented improvement of shoreline functions, such stabilization may be allowed waterward of the ordinary high-water mark subject to state and federal approvals.
9. A major repair of a hard shoreline stabilization structure shall be allowed when the existing primary structure is 10 feet or less from the OHWM. All other major repair proposals must include a written narrative prepared by a qualified geotechnical engineer that provides a demonstration of need. A major repair shall be defined as:
 - a. A repair needed to a portion of an existing stabilization structure that has collapsed, eroded away, or otherwise demonstrated loss of structural integrity, or in which the repair work involves modification of the toe rock or footing, and the repair is 50% or greater than the linear length of the shoreline stabilization measure; or
 - b. A repair to more than 75% of the linear length of the existing hard structural stabilization measure in which the repair work involves replacement of top or middle course rocks or other similar repair activities.
10. Minor repairs are repairs that do not meet the threshold established in regulation 9 above and shall be allowed without a demonstration of need.

General Shoreline Stabilization – Design Requirements

11. Professional design (as approved by the City) of all shoreline stabilization is required. All shoreline modification activities shall be in support of a permitted shoreline use that is in conformance with the provisions of this Master Program unless it can be demonstrated that such activities are necessary and in the public interest.
12. Shoreline stabilization and modification projects shall first avoid, and then minimize, adverse impacts to the environment to the greatest extent feasible, and where such impacts cannot be avoided, mitigation shall be provided to achieve no net loss of shoreline ecological functions. Alternative methods to typical shoreline armoring using native vegetation and other natural shoreline features shall be considered when replacing existing and constructing new shoreline stabilization solutions.
13. Shoreline stabilization should not be used to create new or newly usable land.

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14. Shoreline stabilization shall not significantly interfere with normal surface and/or subsurface drainage into the water body.
15. Shoreline stabilization shall be designed so as not to constitute a hazard to navigation and to not substantially interfere with visual access to the water.
16. Shoreline stabilization shall be designed so as not to cause a significant impact to adjacent properties, including the need for shoreline stabilization elsewhere.
17. All shoreline modification activities must comply with all other regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
18. Public access shall be required as part of publicly financed shoreline stabilization measures unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

Beach Enhancement

19. Beach enhancement along Lake Sawyer may be permitted when the applicant has demonstrated that the project will not detrimentally interrupt littoral processes, redirect waves, current, or sediment to other shorelines, or adversely affect adjacent properties or habitat and all other standards of the SMP, including mitigation sequencing and no net loss are followed. The Washington Department of Fish and Wildlife shall be consulted regarding proposed beach enhancement to obtain input on habitat present and proposed mitigation.
20. Beach enhancement is intended as a form of soft shoreline stabilization and any associated fill should be the minimum necessary to achieve the shoreline stabilization purpose. Beach enhancement is not intended to create additional dry land area. Beach enhancement is allowed as a permitted use, however, proposals which include more fill than necessary to achieve the stabilization purpose shall be subject to the requirements for Shoreline Fill in this Chapter, shall require a Conditional Use Permit and shall only be allowed in conjunction with a water-dependent or public use permitted by this Master Program, and for fisheries, aquaculture, or wildlife enhancement projects..
21. Beach restoration/enhancement activities shall not:
 - a. Extend waterward more than the minimum amount necessary to achieve the desired stabilization as determined by the Shoreline Administrator based on specific justification in the required geotechnical analysis.
 - b. Disturb shallow water fish/wildlife habitat without appropriate mitigation of the impacts, as determined by the Shoreline Administrator based on the recommendations of a qualified consultant.
22. The size and/or mix of new materials to be added to a beach shall be as similar as possible to that of the natural beach sediment, but large enough to resist normal current, wake, or wave action at the site.

23. The restored beach shall approximate, and may slightly exceed, the natural beach width, height, bulk or profile (but not as much as to create additional dry land).
24. Beach enhancement is prohibited within fish and/or wildlife spawning, nesting, or breeding habitat that would be adversely affected by it and also where littoral drift of the enhancement materials would adversely affect adjacent spawning grounds or other areas of biological significance.

Soil Bioengineering

20. All soil bioengineering projects shall use native plant materials appropriate to the specific area including trees, shrubs, and groundcovers, unless demonstrated infeasible for the particular site.
21. Unless Sensitive Area Regulations apply, all cleared areas shall be replanted immediately following construction and irrigated (if necessary) to ensure that within three (3) years all vegetation is one hundred (100) percent reestablished to achieve no net loss of ecological functions of the shoreline area. Areas that fail to adequately reestablish vegetation shall be replanted with approved plant materials until such time as the plantings are viable, or as otherwise specified for specific activities in this SMP or state or federal permits. Additional performance standards may be established by the Shoreline Administrator in administrative rules.
25. Bank stabilization in the form of a vegetated buffer zone shall be maintained (e.g., weeding, watering, dead plant replacement) for a minimum of three (3) years. The buffer zone shall exclude activities that could disturb the site. Where determined necessary by the Shoreline Administrator, fencing may be required to ensure protection of buffer plantings.
26. All construction and planting activities shall be scheduled to minimize impacts to water quality and fish and wildlife aquatic and upland habitat, and to optimize survival of new vegetation.

Breakwaters

27. Breakwaters, jetties, and groins shall not be permitted.

Bulkheads

28. Bulkhead design and development shall conform to all other applicable local, state, and federal agency regulations, including regulations for shoreline stabilization in this Chapter.
29. On shorelines where no other bulkheads are adjacent, the construction of a bulkhead shall tie in with the contours of the adjoining shorelines, as feasible, such that the proposed bulkhead would not cause erosion of the adjoining properties.
30. Bulkheads may tie in flush with existing bulkheads on adjoining properties, provided that the new bulkhead does not extend waterward of OHWM, except that which is necessary to make the connection to the adjoining bulkhead. In such circumstances, the remaining portion of the bulkhead shall be placed landward of the existing OHWM such that no net loss of lake occurs and the design complies with all other regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
31. Replacement bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety

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or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

32. Replacement bulkheads may be permitted if there is a demonstrated need to protect principal uses or structures from erosion caused by waves provided that:
 - a. The replacement bulkhead is designed, located, sized, and constructed to assure no net loss of ecological functions;
 - b. The existing bulkhead is removed; and
 - c. The proposal includes a report prepared by a geotechnical engineer or other qualified professional that evaluates the necessity of the bulkhead by estimating timeframes and rates of erosion, urgency of replacement (within 3 years), alternative solutions and other pertinent factors
33. When a bulkhead is required at a public access site, provisions for safe access to the water shall be incorporated into bulkhead design.
34. Stairs or other permitted structures may be built into a bulkhead, but shall not extend waterward of a bulkhead.
35. Fill behind bulkheads shall be limited to an average of one (1) cubic yard per running foot of bulkhead. Any filling in excess of this amount shall be considered a regulated activity subject to the policies and regulations in this SMP pertaining to fill activities and the requirement for obtaining a shoreline substantial development permit.

D. Dredging and Disposal

1. Applicability

Although these activities may occur separately from one another, they are often all parts of the same shoreline modification process and are, therefore, considered together in the following policies and regulations.

Dredging is the removal or displacement of earth or sediments such as gravel, sand, mud or silt and/or other materials or debris from any stream, or lake and associated shorelines, side channels, and wetlands. In a lake setting, dredging is normally done for specific purposes or uses such as deepening a navigational channel or obtaining bottom material. Excavations on beaches below the OHWM in lands covered by water constitutes dredging.

Dredge material is disposed of on land or into water bodies and may be intended for the purpose of creating new or additional lands for other uses. Dredge spoil varies from clean river sand to organic sludge. While some of this material is deposited on land, a significant portion is dumped, intentionally or unintentionally, back into the water or immediately adjacent to the water.

Of all activities on shorelines, dredging poses one of the greatest threats to water quality and aquatic life. In most cases, dredging occurs in shallow areas and may disturb the aquatic environment in the following ways: (1) temporary reduction of water clarity from suspended sediments, (2) loss of aquatic plants and animals by

direct removal or from the sedimentation of suspended materials, (3) alteration of the nutrient and oxygen levels of the water column, and (4) suspension of toxic materials from the sediments into the water column.

2. Dredging Policies and Regulations

a) Policies

1. When allowed, dredging and dredge material disposal should be limited to the minimum amount necessary.
2. In all cases, dredging operations should be planned and conducted to protect and maintain existing aquatic habitat and other shoreline uses, properties, and values. Proposals that include dredging should provide mitigation to achieve no net loss of shoreline ecological functions.
3. Dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill should not be allowed, except as part of a restoration or environmental cleanup project.
4. The City may impose limitations on dredging activities, such as limited operating hours, time periods, and requirements for buffer strips at the site.

b) Regulations

1. Dredging and disposal of dredge material shall avoid, and minimize significant ecological impact; impacts that cannot be avoided shall be mitigated to achieve no net loss of ecological processes and functions.
2. All dredging and dredge disposal shall conform to applicable state and federal policies and regulations, provided they are consistent with the Shoreline Management Act and this SMP to ensure no net loss of ecological function.
3. New development siting and design shall avoid the need for new and maintenance dredging.
4. Dredging may be permitted as a conditional use activity only:
 - a. When necessary to support a water-dependent use;
 - b. For expansion or alteration of public utility facilities;
 - c. As part of mitigation actions, environmental restoration and habitat enhancement projects;
 - d. When technical information demonstrates water circulation, littoral drift, aquatic life and water quality will not be substantially impaired;
 - e. When other solutions would result in greater environmental impact;
 - f. As part of an approved habitat improvement project;
 - g. If it improves water quality; and
 - h. When applicable permits of other local, state and federal agencies have been obtained.
5. Maintenance dredging associated with a water dependent use shall be restricted to maintaining the previously dredged and/or existing authorized location, depth and width.

6. Dredging for the primary purpose of obtaining fill or construction material is prohibited, except for projects associated with MTCA or CERCLA habitat restoration, or any other significant restoration effort approved by a shoreline CUP. When dredging is allowed for fill materials, placement of fill must be waterward of the OHWM.
7. Proposals for dredging and dredge disposal shall include details on all feasible mitigation measures to protect aquatic habitats. Dredging and dredge disposal shall not create a net loss of shoreline ecological functions.
8. Dredging material which will not subsequently cause violation of State Water Quality Standards may be used in permitted landfill projects.
9. Dredging operations shall be designed and scheduled to avoid impacts to fish, including impacts to fish rearing, feeding and spawning.
10. Depositing dredge materials in water areas shall be prohibited except where it is being used as part of a comprehensive ecological restoration project.
11. Dredging shall utilize techniques (such as hydraulic dredging instead of agitation dredging) that cause minimal dispersal and broadcast of bottom material.
12. Limitations may be imposed on dredging activities, such as limited operating hours, time periods, and requirements for buffer strips at the site.

E. Fill

1. Applicability

Fill is the placement of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

Fill is usually considered in locations where the water is shallow and where rooted vegetation often occurs. In their natural condition, these same areas provide valuable habitat for fish and wildlife feeding, breeding, and shelter. Biologically, the shallow vegetation areas tend to be highly productive portions of the lake. For these reasons, governmental agencies and scientific experts have generally sought to prohibit or restrict placement of fill in these areas.

The policies contained herein are intended to focus on the aspects of natural systems affected by dredging and the disposal of dredge material, man-made fill, cuts, excavations and site grading actions, while at the same time recognizing the community's needs.

Fill occurring on dry land landward of the OHWM which does not exceed a cost of five thousand seven hundred eighteen **(5,718) dollars or 250 cubic yards of material** (per WAC 173-27-040, may be adjusted annually by the State of Washington for inflation), does not require a shoreline substantial development permit, as noted elsewhere in this Master Program. This development, however, must comply with all other applicable policies and regulations as defined in this Master Program.

2. Fill Policies and Regulations

a) Policies

1. Shoreline fill should only be permitted as a conditional use in all shoreline environments.
2. Fills waterward of the OHWM should be restricted to the minimum necessary to support water-dependent uses, public access, cleanup and disposal of contaminated sediments as part of an interagency clean-up plan, disposal of dredged sediments in accordance with DNR rules, expansion or alteration of transportation facilities of statewide significance when no other alternatives are feasible, and for mitigation actions, environmental restoration, beach nourishment and enhancement projects, and only when other solutions would result in greater environmental impact.
3. Shoreline fills should be designed and located so that there will be no significant damage to existing ecological systems or natural resources, and no alteration of local currents, surface and subsurface drainage, or flood waters which would result in hazard to adjacent life, property, or natural resource systems.
4. Where permitted, fill coverage should be the minimum necessary to provide for the proposed use.
5. Fills should be permitted only when tied to a specific development proposal that is permitted by the master program.
6. In evaluating fill projects, factors such as current and potential public use of the shoreline and water surface area, water flow and drainage, water quality and habitat should be considered and protected to the maximum extent feasible. Further, the City should assess the overall value of the fill site in its present state versus the proposed shoreline use to be created to ensure consistency with the Shoreline Management Act and this Master Program.
7. The perimeter of fills should be designed to avoid or eliminate erosion and sedimentation impacts, both during initial fill activities and over time. Natural appearing and self-sustaining control methods are preferred over structural methods.
8. Replenishing sand and gravel on public and private beaches should be allowed, if it can be demonstrated that the proposal will result in no net loss of ecological functions.
9. Sanitary landfills should not be located in shoreline jurisdiction.

b) Regulations

1. Fill proposals must demonstrate, at a minimum, that they will result in no net loss of shoreline ecological functions.
2. Fills waterward of the OHWM (not including small scale beach enhancement intended as soft shoreline stabilization) in all environments and landward of the OHWM in the Natural Environment shall require a conditional use permit and shall be restricted to the minimum necessary to:
 - a. Support allowed water-dependent uses,

- b. Provide public access,
 - c. Allow for the remediation and disposal of contaminated sediments as part of an interagency clean-up plan,
 - d. Provide for the expansion or alteration of transportation facilities of statewide significance when no other alternatives are feasible, or
 - e. Accomplish mitigation actions, environmental restoration and enhancement projects, and only when other solutions would result in greater environmental impact.
3. Fills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area.
 4. All perimeters of fills shall be provided with vegetation, retaining walls, or other satisfactory mechanisms for erosion prevention and sediment capture.
 5. Fill shall be permitted only where it is demonstrated that the proposed action will not:
 - a. Result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat; or
 - b. Adversely alter natural drainage and circulation patterns, or significantly reduce flood water holding capabilities.
 - c. The Washington Department of Fish and Wildlife shall be consulted regarding any project where fill is proposed below the OHWM.
 6. Refuse disposal sites, solid waste disposal sites, or sanitary fills shall be prohibited within the shoreline jurisdiction.
 7. Any placement or removal of materials landward of the OHWM shall comply with the provisions of Vegetation Conservation (Clearing and Grading) of this SMP.
 8. All fill proposals shall conform to applicable state and federal policies and regulations, provided they are consistent with the Shoreline Management Act and this SMP to ensure no net loss of ecological function.

F. Overwater Structures and Launching Facilities

1. Applicability

Piers and docks are structures which abut the shoreline and are often used as a landing or moorage place for watercraft. Piers are built on fixed platforms supported by piles above the water, while docks float upon the water. Some piers may terminate in a float section that is connected by a ramp. Piers are the most common type of overwater structure on Lake Sawyer. Recreational floats are independent anchored off-shore platforms, used for water-dependent recreational activities such as swimming and diving. Mooring structures include moorage piles, buoys and boat lifts. Launching facilities include boat ramps and launching rails.

All of these types of facilities have positive and negative aspects. Floating docks generally have less of a visual impact than piers on pilings. However, in the nearshore, docks can interrupt littoral drift of sediments and

other suspended materials, and significantly shade the aquatic environment throughout their length. Pile piers can provide diverse habitat for both desirable and undesirable aquatic life. Excavated moorage involves dredging and will disturb bottom sediments and aquatic life. Docks and piers alike create impediments to boat traffic and fish travel. Pier construction requires regulation to protect navigation, to protect shoreline aesthetics, and to maintain the useable water surface and aquatic lands for life forms characteristic and important to those areas.

2. Policies and Regulations

a) Policies

1. New piers and docks should be allowed only for public access and water-dependent uses.
2. New piers and docks should be restricted to the minimum size necessary and permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent use.
3. Piers and docks should be discouraged where conflicts with recreational boaters and other recreational water activities would be created by their construction.
4. The further proliferation of single-purpose, single-owner piers and docks should be discouraged. Preference should be given to joint-use structures in shoreline areas unless the applicant demonstrates why a joint-use structure is not feasible.
5. Substantial additions or alterations to overwater structures, including renovations where the cost of the development exceeds fifty ~~(75)(50)~~ percent of the fair market value of the existing structure, should be in conformance with all policies and regulations set forth in this Master Program.
6. Preference should be given to fixed-pile piers elevated above the OHWM. Floating docks should be allowed if the applicant can demonstrate why a fixed pile pier is not feasible or will result in greater impacts.
7. Recreational floats should be allowed where they are intended to support public or private recreational uses, or in lieu of fixed piers adjacent to residential land uses.
8. Mooring buoys should be encouraged as a low-impact moorage option.
9. New covered moorage should not be allowed.
10. Overwater structures, including piers, should only be authorized after consideration of:
 - a. The effect such structures have on wildlife and aquatic life, water quality, scenic and aesthetic values, environmental sensitive resources, submerged lands, and submerged vegetation.
 - b. The effect such structures have on water circulation, recreational boating, sediment movement and littoral drift and shoreline access.
11. Overwater structures and mooring buoys should be designed to cause minimum interference with navigable waters and the public's safe use of the lake and shoreline.
12. Use of non-reflective materials in construction should be required.

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13. The proposed size of the structure and intensity of use or uses of any overwater structure should be compatible with the surrounding environment and land and water uses.

14. Boat ramps for motorized vessels should be limited to one public ramp at Boat Launch Park and all future boat ramp improvements should be consistent with mitigation sequencing and result in no net loss of shoreline ecological functions.

15. Lighting facilities should be limited to the minimum extent necessary to locate the pier or dock at night.

16. Lighting on piers, docks and floats shall avoid light spill over onto the water surface.

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b) Regulations

General

1. All new, reconstructed, repaired, or modified overwater structures must comply with all regulations contained in this SMP and all other regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
2. Mitigation shall be provided for all new, reconstructed, ~~repaired~~, or modified overwater structures to ensure no net loss of ecological function.
3. New piers and docks shall be allowed only for public access and water-dependent uses, which includes a structure associated with a single family residence provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the regulations contained in the this section.
4. Piers and docks may be permitted accessory to a development provided:
 - a. The applicant has demonstrated to the satisfaction of the Shoreline Administrator that a shared or joint-use pier is not feasible.
 - b. No more than one (1) pier/dock for each single-family residence or lot is permitted.
 - c. **On lots with less than sixty (60) feet of waterfront, joint use piers/docks shall be required, except as follows; when lots on either side of the subject lot have legal pre-existing piers or docks and the applicant demonstrates to the satisfaction of the Shoreline Administrator that a shared use agreement is not feasible. Only in this case may the lot with less than sixty (60) feet of waterfront be permitted an individual dock/pier.**
5. New piers and docks that are not accessory to single family residences shall be permitted only when intended for public use or when the applicant has demonstrated that a specific need exists to support the intended water-dependent use.
6. New residential development of more than two dwellings (e.g. short subdivision) shall provide a joint use or community moorage structure, rather than individual piers or docks.
7. Proposed overwater structures which do not comply with the dimensional standards contained in this chapter may only be approved if they obtain a variance.
8. Fixed pile piers elevated at least two (2) feet above the OHWM shall be preferred. Floating docks shall be allowed if floating elements are not located within the first thirty (30) feet of the shoreline

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measured waterward of the OHWM, unless the applicant can demonstrate why adherence to this restriction is not feasible and an alternative design would result in less ecological impact.

9. All float tubs shall be fully encapsulated and the decks shall be fully grated except for the float tubs, designed with a ramp section connecting to the upland and are prohibited from resting on the substrate. Floating docks are required to be designed to not ground during low water conditions.
10. All overwater structures shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe overwater structures shall be removed or repaired promptly by the owner.
11. Wooden components that will be in contact with water or over water shall not be treated or coated with herbicides, fungicides, paint, pentachlorophenol, arsenate, creosote, or similar toxic substances. Structures shall be made out of materials that have been approved by applicable state and federal agencies.
12. New Boat houses located over water or within the shoreline setback area are not permitted.
13. Covered moorage with a solid roof and structural elements is not permitted, however one boat canopy with a translucent covering and one boat lift per lot is permitted, except for joint use docks, where one boat lift and one canopy per ownership interest is permitted. Up to two lifts for personal watercraft shall also be permitted.
14. No portion of a deck of a pier shall, during the course of the normal fluctuations of the elevation of the water body, protrude more than six (6) feet above the OHWM.
15. No residential dwelling unit may be constructed on an overwater structure.

16. No pier, moorage, float, or overwater structure or device shall be located closer than fifteen feet from the side property line extended, except that such structures may abut property lines for the common use of adjacent property owners when mutually agreed to by the property owners in a contract recorded with King County Records, a copy which must accompany an application for a building permit or a shoreline permit.

17. All pier and dock lengths shall be minimized to the maximum extent feasible and comply with regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.

18. The length, width, and total area of moorage structures are provided in Table V below.

19. Table V: Dimensional Standards for Overwater Structures

Standard	Dock	Pier
Height above OHWM ¹	N/A	2 ft.
Maximum Length ²	The point at which 11 ft. of water depth is reached, not to exceed 60 ft. All measurements are based on the OHWM as determined	The point at which 11 ft. of water depth is reached, not to exceed 60 ft. All measurements are based on the OHWM as determined

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	in the field.	in the field.
Maximum Width ³	4 ft. required within the first 30 feet from the OHWM, 6 feet required elsewhere.	4 ft. required within the first 30 feet from the OHWM, 6 feet required elsewhere.
Maximum Surface Area ⁴	400 sq. ft. (single owner) 480 sq. ft. (joint-use) 600 sq. ft. (if public access provided)	480 sq. ft. (single owner) 600 sq. ft. (joint-use) 1000 sq. ft. (if public access provided)

1 No portion of a deck of a pier shall, during the course of the normal fluctuations of the elevation of the water body, protrude more than six (6) feet above the water surface.

2 The proposed length must be the minimum necessary to support the intended use. The total dock length includes approach ramp and floating element(s). A report prepared by a qualified professional that includes verifiable survey information demonstrating the average water depth is required for all docks or piers over forty (40) feet in length. Existing public piers may be repaired or replaced to their previous length. Piers or docks extending further waterward than adjacent piers or docks must demonstrate that they will not have an adverse impact on navigation.

3 Includes all walkways and additional fingers. The proposed width must be the minimum necessary to support the intended use. All pier and dock primary walkways or decks must incorporate materials and a design that allow adequate minimum of ~~40~~50% of light to transmit through the material. Floats must have a minimum 2-foot strip of grating down the center that allows ~~40~~50% of light to transmit through. The maximum width of a ramp connecting a pier to a float should be minimized to the maximum extent practical and shall also meet the light transmittal standard. An exception to the maximum width standard may be granted in order to meet the American's with Disabilities Act standards and considerations. A demonstration of need must be shown in order to allow this exception.

4 The proposed surface area of the overwater structure must be the minimum necessary to support the intended use. Maximum surface area includes all walkways, ramps, and additional fingers associated with the dock or pier, as well as any float associated with the property or properties (see additional standards for floats below). Joint-use docks and piers must be utilized by two or more residential property owners.

Recreational Floats

20 Recreational floats may be permitted, provided:

- A. One float per property is permitted.
 - a. The area of a recreational float shall be minimized to the maximum extent feasible and comply with regulations as stipulated by State and Federal agencies, local Tribes, or others

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that have jurisdiction. No recreational float shall have more than one hundred and fifty (150) square feet when associated with a private recreation land use, and four hundred (400) when associated with a public recreational land use. The float area shall count toward the maximum allowed surface area for overwater structures in Section F.2.b.18 (Table 5) of this Chapter.

- b. Distance waterward from the OHWM. Recreational floats must be in water with depths of 8 feet or more at the landward end of the float and may be located up to a maximum waterward distance of sixty (60) feet.
21. Recreational floats shall be designed and intended for swim use or other non-motorized use.
22. Recreational floats shall incorporate material that allows 40% of light to transmit through in a minimum 2 foot strip down the center.
23. Retrieval lines shall not float at or near the surface of the water.
24. Height. Recreational floats must be built so that the deck surface is one (1) foot above the water's surface and they must have reflectors for nighttime visibility.
25. All float tubs shall be fully encapsulated.

Boat Ramps

26. One boat ramp may be permitted for recreational uses at Boat Launch Park in the Urban Conservancy environment provided the applicant shall demonstrate that the proposed length of the ramp is the minimum necessary to safely launch the intended craft and comply with all regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
27. In no case shall the ramp extend beyond the point where the water depth is six (6) feet below the OHWM, unless the City determines that a greater depth is needed for a public boat launch facility.
28. Public boat ramps and commercial boat ramps are regulated as Boating Facilities and must comply with all policies and regulations in Chapter 4 of this SMP.
29. Boat ramps shall be separated from swim areas by a minimum of twenty-five (25) feet.
30. Preferred boat ramp designs, in order of priority, are:
 - a. Open grid designs with minimum coverage of lake substrates.
 - b. Seasonal ramps that can be removed and stored upland.
 - c. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in shoreline profile.
31. All boat launches shall comply with all regulations as stipulated by state and federal agencies, affected tribes, or others with jurisdiction.

Mooring Bouys

32. Moorage buoys installed for recreational purposes may be permitted provided they are consistent with this Program and can meet the following criteria:

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- a. The installation and use of moorage buoys shall comply with all applicable state and federal laws, regulations, permits and approvals.
- b. One mooring buoy per lot is permitted.
- c. Mooring buoys shall be located, spaced and oriented to not pose a hazard or obstruction to navigation, fishing, pleasure boating, or swimming activity.
- d. Mooring buoys and the swing path of attached boats shall not encroach onto adjacent properties, or into the water-ward extension of lot lines of adjacent properties, and shall not impede the ability of other property owners to access their property.
- e. Mooring buoys shall be located to avoid sensitive aquatic and nearshore habitat areas and shall not result in the degradation of water quality or habitat areas.
- f. Mooring buoys shall not be used for residential purposes (living on the boat).

Chapter 6 Administration

A. Purpose and Applicability

There is hereby established an administrative system designed to assign responsibilities for implementation of the Shoreline Master Program (SMP) and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this SMP are treated in a fair and equitable manner. All proposed shoreline uses and development, including those that do not require a shoreline permit, must conform to the Shoreline Management Act (SMA) and to the policies and regulations of this SMP. Where inconsistencies or conflicts with other sections of the Black Diamond Municipal Code occur, this section shall apply.

B. Program Administrator

1. The City's Community Development Director is hereby vested with:
 - a. Overall responsibility for administering the Shoreline Management Act (SMA) and this Shoreline Master Program (SMP) as the Shoreline Administrator;
 - b. Authority to approve, approve with conditions, or deny shoreline permit revisions in accordance with the policies and provisions of this SMP; and
 - c. Authority to grant statements of exemption from shoreline substantial development permits in accordance with the policies and provisions of this SMP.
2. The duties and responsibilities of the Shoreline Administrator shall include:
 - a. Preparing and using application forms deemed essential for the administration of this SMP.
 - b. Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this SMP.
 - c. Making administrative decisions and interpretations of the policies and regulations of this SMP and the SMA.
 - d. Collecting applicable fees, as established in the City's fee schedule.
 - e. Determining that all applications and necessary information and materials are provided.
 - f. Conducting field inspections, as necessary,
 - g. Reviewing, insofar as possible, all provided and related information deemed necessary for appropriate applications needs.
 - h. Determining if a shoreline substantial development permit, conditional use permit or variance permit is required.
 - i. Providing copies of permit applications to all relevant staff and agencies for review and comment.
 - j. Conducting a thorough review and analysis of shoreline exemption applications; reviewing other staff and agency comments; making written findings and conclusions; and approving, approving with conditions, or denying such exemptions.

- k. Submitting shoreline substantial development permit shoreline variance and conditional use permit applications and written recommendations and findings on such permits to the City's Hearing Examiner for their consideration and action.
- l. Submitting shoreline redesignation permit applications and written recommendations and findings on such permits to the Planning Commission for recommendation to the City Council.
- m. Assuring that proper notice is given to appropriate persons and the public for all hearings.
- n. Providing technical and administrative assistance to the City's Hearing Examiner, Planning Commission and City Council as required for effective and equitable implementation of this program and the Act.
- o. Investigating, developing, and proposing amendments to this SMP as deemed necessary to more effectively and equitably achieve its goals and policies.
- p. Enforcing and seeking remedies for alleged violations of this program, the provisions of the SMA and this SMP or of conditions of any approved shoreline permit issued by the City of Black Diamond. The Shoreline Administrator may delegate these enforcement duties to a designated representative.
- q. Acting as the primary liaison between local and state agencies in the administration of the SMA and this SMP.
- r. Forwarding shoreline permits to the Department of Ecology for filing or action.

C. Review Criteria for All Development

1. All proposed uses, activities and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, i.e. the Shoreline Management Act (SMA), its implementing rules and this master program, whether or not a permit is required.
2. No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the SMA and the SMP.
3. No permit shall be issued for any new or expanded building or structure of more than thirty-two feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.
4. A substantial development shall not be undertaken within the jurisdiction of the SMA unless a shoreline substantial development permit has been obtained and the appeal period has been completed and any appeals have been resolved and/or the applicant has been given permission to proceed by the proper authority.
5. The City may attach conditions to the approval of permits as necessary to ensure consistency of the project with the SMA and this SMP.

D. Exemptions

1. The following guidelines are to be used in determining whether or not a development proposal is exempt from the substantial shoreline development permit.
 - a. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.
 - b. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act (SMA) or this Shoreline Master Program (SMP), nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this SMP and the SMA. A development or use that is listed as a conditional use pursuant to this SMP or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this SMP, such development or use can only be authorized by approval of a variance.
 - c. The burden of proof that a development or use is exempt from the permit process is on the applicant.
 - d. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.
 - e. The City's Shoreline Administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the SMA and this SMP.
2. The following list outlines twelve (12) exemptions that shall not be considered substantial developments for the purpose of this SMP:
 - a. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred eighteen (\$5,xxx) dollars, if such development does not materially interfere with the normal public use of the water or "shorelines of statewide significance." The dollar threshold established in this subsection must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
 - b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction.. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

- c. Construction of a normal protective bulkhead common to single family residences. A "normal protective bulkhead" includes those structural and nonstructural developments installed at or near, and parallel to the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife;
- d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the Act or this Master Program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to the Act and this Master Program, obtained. All emergency construction shall be consistent with the policies of the Act and this Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
- e. Construction by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-two (32) feet above average grade level and meets all requirements of the City of Black Diamond having jurisdiction thereof, other than requirements imposed pursuant to the Act. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction authorized under this exemption shall be located landward of the ordinary high water mark and shall be subject to required setbacks.
- f. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair

market value exceeding two thousand five hundred dollars (\$2,500) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

- g. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface waters;
 - h. Any project with certification from the Governor pursuant to Chapter 80.50 RCW.
 - i. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - i. The activity does not interfere with the normal public use of the surface waters;
 - ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - iv. A private entity seeking development authorization under this section, first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions.
 - j. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under chapter 43.21C RCW;
 - k. Watershed restoration projects as defined in WAC 173-27-040(o)(i). The Shoreline Administrator shall review the projects for consistency with the SMP in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects.
 - l. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the requirements of WAC 173-27-040(p) apply. No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria identified in WAC 173-27-040(p) and that are reviewed and approved according to the provisions of this section.
5. Whenever a development falls within the exemption criteria outlined above and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the City's Shoreline Administrator shall prepare a Statement of Exemption, and transmit a copy to the applicant and the Washington State Department of Ecology. Exempt development as defined herein shall not require a substantial development permit, but may require a conditional use permit, variance and/or a Statement of Exemption.
6. Before determining that a proposal is exempt, the City's Shoreline Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the SMP and the SMA.

E. Permit Process

1. Applicants shall apply for shoreline substantial development, variance, and conditional use permits on forms provided by the City.
2. Shoreline substantial development permits, shoreline variance permits and shoreline conditional use permits are a Type 3 application and shall be processed and subject to the applicable regulations of Chapter 18.08 BDMC, as amended.
3. An applicant for a shoreline substantial development permit who wishes to request a variance and/or conditional use, shall submit the variance and/or conditional use application(s) and the substantial development permit application simultaneously.
4. Public notice. A notice of application shall be issued for all shoreline permit applications as provided for in Chapter 18.08 BDMC, as amended, excepting that the public comment period for the notice of application for a shoreline substantial development, conditional use or variance permit shall be not less than thirty (30) days, per WAC 173-27-110(2)(e).
5. Application review. The Administrator shall make decisions on shoreline exemptions, and recommendations on applications for conditional use and variance permits based upon: (1) the policies and procedures of the SMA and related sections of the Washington Administrative Code; and (2) this SMP.
6. Hearing Examiner action. The Hearing Examiner shall review an application for a shoreline substantial development permit, shoreline variance and shoreline conditional use permit and make decisions based upon: (1) this SMP; (2) the policies and procedures of the SMA and related sections of the Washington Administrative Code; (3) written and oral comments from interested persons; (4) reports from the Shoreline Administrator; and (5) Chapters 2.30 and 18.08 BDMC, as amended.
7. Filing with Department of Ecology. All applications for a permit or permit revision shall be submitted to the Department of Ecology, as required by WAC 173-27-130 or as subsequently amended. After City approval of a Conditional Use or variance permit, the City shall submit the permit to the Department of Ecology for the Department's approval, approval with conditions, or denial, as provided in WAC 173-27-200. The Department shall transmit its final decision to the City and the applicant within thirty (30) calendar days of the date of submittal by the City.
8. Hold on Construction. Each permit issued by the City shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of filing with the Department of Ecology, per WAC 173-27-190 or as subsequently amended. "Date of filing" of the City's final decision on substantial development permits differs from date of filing for a Conditional Use permit or variance. In the case of a substantial development permit, the date of filing is the date the City transmits its decision on the permit to the Department of Ecology. In the case of a variance or Conditional Use permit, the "date of filing" means the date the Department of Ecology's final order on the permit is transmitted to the City.

9. Duration of permits. Construction, or the use or activity, shall commence within two (2) years after approval of the permits. Authorization to conduct development activities shall terminate within five (5) years after the effective date of a shoreline permit. The Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one (1) year based on reasonable factors.
10. Compliance with permit conditions. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity. All uses and developments occurring within shoreline jurisdiction shall be compliant with 90.58 RCW.

F. Substantial Development Permits

1. A substantial development permit shall be granted only when the development proposed is consistent with:
 - a. The policies and procedures of the SMA;
 - b. Applicable state regulations; and
 - c. The provisions of this SMP.
2. Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

G. Variances

1. Purpose. The purpose of a variance is strictly limited to granting relief to specific bulk dimensional, or performance standards set forth in the SMP, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the SMP would impose unnecessary hardships on the applicant or thwart the SMA policies as stated in RCW 90.58.020. These provisions should be applied in a manner which, while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner. Construction pursuant to this permit shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
2. Criteria for Granting Variances
 - a. Variances for development that will be located landward of the ordinary high water mark and landward of any wetland may be authorized provided the applicant can demonstrate consistency with the following variance criteria as listed in WAC 173-27-170:
 - i. That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes, or significantly interferes with, reasonable use of the property.
 - ii. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the

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- application of the SMP and not, for example, from deed restrictions or the applicant's own actions.
 - iii. That the design of the project is compatible with other permitted activities within the area and with uses planned for the area under the Comprehensive Plan and SMP and will not cause adverse impacts to the shoreline environment.
 - iv. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.
 - v. That the variance requested is the minimum necessary to afford relief.
 - vi. That the public interest will suffer no substantial detrimental effect.
- b. Variances for a development and/or uses that will be located waterward of the ordinary high water mark or within any wetland may be authorized provided the applicant can demonstrate all of the following:
 - i. That the strict application of the bulk, dimensional, or performance standards set forth in the SMP precludes all reasonable use of the property.
 - ii. That the proposal is consistent with the criteria established under subsection (2)(a) through (d) of this section.
 - iii. That the public rights of navigation and use of the shorelines will not be adversely affected.
- c. In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
- d. Variances from the use regulations in Chapter 4, Table I of the SMP are prohibited.

H. Conditional Uses

1. Purpose. The purpose of a conditional use permit is to provide a system within the SMP which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City of Black Diamond or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMA and the SMP. Uses that are specifically prohibited by this SMP may not be authorized with the approval of a conditional use permit.
2. Criteria for Granting Shoreline Conditional Use Permits. Uses which are classified or set forth as conditional uses in the SMP may be authorized, provided the applicant demonstrate all of the following conditional use criteria as listed in WAC 173-27-160:
 - a. That the proposed use is consistent with the policies of RCW 90.58.020 and the SMP;
 - b. That the proposed use will not interfere with the normal public use of public shorelines;

- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this SMP;
 - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - e. That the public interest suffers no substantial detrimental effect.
3. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
 4. Other uses which are not classified or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the SMP.
 5. Uses which are specifically prohibited by the SMP may not be authorized.

I. Time Requirements of Permit

1. The time requirements of this section shall apply to all shoreline substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized by this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of this SMP and this chapter, the City may adopt different time limits from those set forth in section as a part of action on a substantial development permit.
2. Notwithstanding any other provision of the Black Diamond Municipal Code, construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, the Shoreline Administrator may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.
3. Authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.
4. The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in RCW 90.58.140 subsections (B) and (C) do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

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5. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired. Provided, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
6. The City shall notify the department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application

J. Nonconforming Use and Development Standards

1. Applicability

"Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program, or amendments thereto, but which does not conform to present regulations or standards of this Master Program. Standards for nonconforming use or development in the shoreline area are provided below. In the event of a conflict between the standards below and the standards contained in BDMC Chapter 18.68 or any other standard in the BDMC, the requirement that most supports the provisions of the Shoreline Management Act as stated in RCW 90.58.020 shall apply, as determined by the City.

2. Nonconforming Structures

- a. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. Modification, reconstruction or addition to a nonconforming structure, including increasing the height of a structure to the maximum allowed by zoning regulations, shall not be permitted, provided it does not increase the building footprint lying within the required setback area.
- b. If a nonconforming structure, waterward of the OHWM, is intentionally modified and the cost of the proposed structuredevelopment exceeds seventy-five (75)fifty (50) percent of the fair market value of the replacement cost of the original structure, it shall be required to meet all applicable standards in the SMP.
- c. If a nonconforming structure is unintentionally damaged by fire, explosion, or other casualty and/or natural disaster to an extent not exceeding seventy five (75) percent of the fair market value of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within twenty-four~~is~~ months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

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d. If a nonconforming structure is damaged by fire, explosion, or other casualty and/or natural disaster and the criteria in item c, are not met, the owner shall be required to revegetate the lot.

~~d.c.~~ A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

~~e.f.~~ A nonconforming structure which is moved any distance must be brought into conformance with the Master Program and the Act.

3. Nonconforming Use

- a. Uses that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses.
- b. A use which is listed as a conditional use, but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.
- c. A nonconforming use may be expanded or extended throughout the structure occupied by the original nonconforming use. The structure's usable floor area may only be increased pursuant to granting of a conditional use permit.
- d. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
 - i. No reasonable alternative conforming use is practical; and
 - ii. The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.
 - iii. In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.
- e. A nonconforming use may be re-established as a nonconformance, except that any nonconforming use that is discontinued for a period of one (1) year shall not be allowed to continue as the nonconforming use.

4. Nonconforming Lots

- a. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established prior to the effective date of the SMA or the SMP, but which does not conform to the present lot size standards, may be developed subject to the requirements of BDMC 18.68.060(C) and so long as such development conforms to all other requirements of the SMP and the SMA.

K. Appeal to the State Shoreline Hearings Board

Any person aggrieved by the granting or denying of a shoreline substantial development permit, variance, or conditional use permit, the upholding of an exemption appeal, or by the rescinding of a permit pursuant to the provisions of this Master Program, may seek review from the State of Washington Shorelines Hearing Board by filing a request for the same within twenty-one (21) days of receipt of the final order and by concurrently filing copies of such request with the Department of Ecology and the Attorney General's office. State Hearings Board regulations are provided in RCW 90.58.180 and Chapter 461-08 WAC. A copy of such appeal notice shall also be filed with the City of Black Diamond City Clerk.

L. Enforcement and Penalties

All provisions of this Master Program shall be enforced by the Shoreline Administrator and/or his designated representative. The enforcement procedures and penalties contained in WAC Chapter 173-27 and RCW Chapter 90.58 are hereby incorporated by reference.

M. Master Program Review

1. This Master Program shall be reviewed at regular intervals as required by state statute and amendments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations.
2. The City's established permit tracking system, aerial photos, reviewing of other available data, and field observations as feasible shall be used to periodically evaluate the effectiveness of the Shoreline Master Program in achieving no net loss of shoreline ecological functions with respect to both permitting and exemptions.
3. As part of any required SMP update, an evaluation report assessing the effectiveness of the SMP in achieving no net loss shall be prepared and considered in determining whether policies and regulations are adequate in achieving this requirement.
4. The SMP review and update process shall be consistent with the requirements of WAC 173-26 or its successor and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

N. Amendments to the Master Program

1. Any of the provisions of this SMP may be amended as provided for in RCW 90.58.120 and .200 and Chapter 173-26 WAC. Any amendments shall also be subject to the procedures in BDMC 18.08.
2. Amendments or revisions to the Master Program, as provided by law, do not become effective until approved by the Department of Ecology.

O. Severability

If any provisions of this SMP, or its application to any person or legal entity or parcel of land or circumstances, are held invalid, the remainder of the SMP, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

P. Conflict of Provisions

Should a conflict occur between the provisions of this SMP or between this SMP and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the City, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this SMP.

Chapter 7 Definitions

Accessory use or accessory structure - Any subordinate use, structure, or building or portion of a building located on the same lot as the main use or building.

Accretion - The growth of a beach by the addition of material transported by wind and/or water. Included are such shoreforms as barrier beaches, points, spits, and hooks.

Act - The Shoreline Management Act (Chapter 90.58 RCW and WAC Chapter 173-27).

Adjacent lands - Lands adjacent to the shorelines of the state (outside of shoreline jurisdiction)..

Administrator - See Shoreline Administrator.

Agriculture - The cultivation of the soil, production of crops, and/or raising of livestock, including incidental preparation of these products for human use. In all cases, the use of agriculture related terms shall be consistent with the specific meanings provided in WAC 173-26-020.

AKART - An acronym for "all known, available, and reasonable methods of prevention, control, and treatment" (WAC 173-201A-020). AKART represents the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution.

Anadromous fish - Species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to freshwater rivers and streams to procreate.

Appurtenance - A structure or development which is necessarily connected to the use and enjoyment of a single family residence and is located landward of the ordinary high water mark and also of the perimeter of any wetland. These can include, but are not limited to a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards (250) (except to construct a conventional drainfield) and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark) (see WAC 173-27-040(2)(g)).

Aquaculture - The commercial cultivation of fish, shellfish, and/or other aquatic animals or plants including the incidental preparation of these products for human use.

Aquascreens - A fiberglass screen used as a bottom barrier to limit and/or control aquatic plant growth. The screen is typically anchored to an area of the lake bottom and functions as a physical barrier to prevent plants from growing.

Archaeological - Having to do with the scientific study of material remains of past human life and activities.

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Associated Wetlands - Those wetlands that are in proximity to and either influence, or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act. Refer to WAC 173-27-030(1).

Average grade level - The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure; provided that in case of structures to be built over water, average grade level shall be the elevation of ordinary high water. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure (WAC 173-27-030(3)).

Baseline - The existing shoreline condition, in terms of both ecological function and shoreline use, established at the time this Shoreline Master Program is approved.

Best available science - Current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925.

BMPs - See Best Management Practices.

Beach - The zone of unconsolidated material that is moved by waves, wind and tidal currents, extending landward to the coastline.

Beach enhancement/restoration - Process of restoring a beach to a state more closely resembling a natural beach, using beach feeding, vegetation, drift sills and other nonintrusive means as applicable.

Beach feeding - Landfill deposited on land or in the water to be distributed by natural water processes for the purpose of supplementing beach material.

Benthic organism - Organisms that live in or on the bottom of a body of water.

Benthos - Benthos are living organisms associated with the bottom layer of aquatic systems, at the interface of the sediment (or substrate) and overlying water column. Benthos commonly refers to an assemblage of insects, worms, algae, plants and bacteria.

Berm - A linear mound or series of mounds of sand and/or gravel generally paralleling the water at or landward of the line of ordinary high tide. Also, a linear mound used to screen an adjacent activity, such as a parking lot.

Best Management Practices (BMPs) - A variety of behavioral, procedural, and structural measures that reduce the amount of contaminants in stormwater runoff and in receiving waters.

Bioengineering - see Soil bioengineering

Biofiltration system - A stormwater or other drainage treatment system that utilizes as a primary feature the ability of plant life to screen out and metabolize sediment and pollutants. Typically, these systems are designed to include grassy swales, retention ponds and other vegetative features.

Biota - The animals and plants that live in a particular location or region.

Boat launch or ramp - Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

Boat lift - A mechanical device that can hoist vessels out of the water for storage. These devices are usually located along a pier.

Boat rail or railway - A set of steel rails running from the upland area into the water upon which a cart or dolly can carry a boat to be launched.

Boathouse - A structure designed for storage of vessels located over water (not to be confused with "houseboats").

Boating Facility – A public moorage structure or a private moorage structure serving more than four residences.

Bog - A wet, spongy, poorly drained area which is usually rich in very specialized plants, contains a high percentage of organic remnants and residues and frequently is associated with a spring, seepage area, or other subsurface water source. A bog sometimes represents the final stage of the natural process of eutrophication by which lakes and other bodies of water are very slowly transformed into land areas.

Breakwater - An off-shore structure generally built parallel to the shore that may or may not be connected to land. Its primary purpose is to protect a harbor, moorage, or navigational activity from wave and wind action by creating a still-water area along the shore. A secondary purpose is to protect the shoreline from wave-caused erosion.

Bulkhead - A vertical or nearly vertical erosion protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund"); 1986 amendments are known as Superfund Amendments and Reauthorization Act or SARA.

CFR - Code of Federal Regulations.

CZMP - Coastal Zone Management Plan.

Certified engineer/biologist - see Professional engineer and Professional biologist.

Clean Water Act - The primary federal law providing water pollution prevention and control; previously known as the Federal Water Pollution Control Act. See 33 USC 1251 et seq.

City - The City of Black Diamond.

Clearing - The destruction or removal of vegetation ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

Commercial - Uses and facilities that are involved in wholesale or retail trade or business activities.

Comprehensive Plan - The document, including maps adopted by the city council that outlines the City's goals and policies relating to management of growth, and prepared in accordance with RCW 36.70A. The term also includes adopted subarea plans prepared in accordance with RCW 36.70A.

Conditional Use - A use, development, or substantial development that is classified as a conditional use or is not classified within the master program. Refer to WAC 173-27-030(4).

Conservation Easement - A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

Covered moorage - Boat moorage, with or without walls, that has a roof to protect the vessel.

Cumulative Impact - The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

DNS - Determination of Nonsignificance, under SEPA.

Degrade - To scale down in desirability or salability, to impair in respect to some physical property or to reduce in structure or function.

Department – The City of Black Diamond Department of Community Development.

Development - A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters of the state subject to Chapter 90.58 RCW at any state of water level (RCW 90.58.030(3d)).

Dock - A floating moorage structure.

Downdrift - The direction of movement of beach materials.

Dredge spoil - The material removed by dredging. Same as Dredge Material.

Dredging - Excavation or displacement of the bottom or shoreline of a water body. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes or for cleanup of polluted sediments.

Dwelling unit – a single unit providing complete, independent living facilities for one or more persons, not to exceed one family, and which includes permanent provisions for living, sleeping, eating, cooking and sanitation.

EIS - Environmental Impact Statement.

Ecological Functions - The work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Ecosystem-wide Processes - The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

Ecology (WDOE) - The Washington State Department of Ecology.

Ell – Terminal section of a pier which typically extends perpendicular to the pier walkway. These sections can be either on fixed-piles or floating docks and are typically wider than the pier walkway.

Emergency - An unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3eiii) and WAC 173-27-040(2d)).

Endangered Species Act (ESA) - A federal law intended to protect any fish or wildlife species that are threatened with extinction throughout all or a significant portion of its range.

Enhancement - Alteration of an existing resource to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from resource creation or restoration projects.

Environmental Impacts - The effects or consequences of actions on the natural and built environments. Environmental impacts include effects upon the elements of the environment listed in the State Environmental Policy Act (SEPA). Refer to WAC 197-11-600 and WAC 197-11-444.

Environment- See Shoreline Environment.

Erosion - The wearing away of land by the action of natural forces.

Excavated moorage slip - A boat mooring location that is man-made in that it requires dredging or excavation of excess sediment to afford access. May often involve dredging of the lake bottom waterward of the OHWM, or may include excavating a segment of the existing shoreline to enable moorage of a boat.

Excavation - The artificial movement of earth materials.

Fair market value - The open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. Also includes the fair market value of any donated, contributed or found labor, equipment or materials (WAC 173-27-030(8)).

Fill – The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

Finger Pier – A narrow extension to a fixed-pile pier, usually extending perpendicular to the pier walkway along with an ell to form an enclosed area for boat moorage.

Float - A floating structure that is moored, anchored, or otherwise secured in the water offshore and that may be associated with a fixed-pile pier, or a stand alone structure, such as platforms used for swimming and diving.

Floating Dock - A fixed structure floating upon a water body for the majority of its length and connected to shore.

Floating home - A structure designed and operated substantially as a permanently based over water residence. These are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semi-permanent anchorage/moorage facilities.

Floodplain - Synonymous with 100-year floodplain. The land area susceptible to being inundated by stream derived waters with a 1 percent chance of being equaled or exceeded in any given year. The limits of this area are based on flood regulation ordinance maps or a reasonable method that meets the objectives of the SMA (WAC 173-22-030(2)).

Floodway - means the area, as identified in a master program, that either: (i) has been established in Federal Emergency Management Agency (FEMA) flood insurance rate maps or floodway maps; or (ii) consists of those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

Geotechnical Report or Geotechnical Analysis - a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and

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recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Grading - The physical manipulation of the earth's surface and/or drainage pattern in preparation for an intended use or activity.

Grassy swale - A vegetated drainage channel that is designed to remove various pollutants from storm water runoff through biofiltration.

Groin - A barrier-type structure extending from, and usually perpendicular to, the backshore into a water body. Its purpose is to protect a shoreline and adjacent upland by influencing the movement of water and/or deposition of materials. This is accomplished by building or preserving an accretion beach on its updrift side by trapping littoral drift. A groin is relatively narrow in width but varies greatly in length. A groin is sometimes built in a series as a system and may be permeable or impermeable, high or low, and fixed or adjustable.

Hydraulic Project Approval (HPA) - The permit issued by the Washington State Departments of Fisheries or Wildlife pursuant to the State Hydraulic Code Chapter 75.20.100-140 RCW.

Habitat - The place or type of site where a plant or animal naturally or normally lives and grows.

Hearing Examiner - The Hearing Examiner of the City of Black Diamond.

Height - The distance measured from the average grade level to the highest point of a structure: provided, that television antennas, chimneys and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines: provided further, that temporary construction equipment is excluded in this calculation (WAC 173-27-030(9)).

Heliport - Any landing area or other facility owned and operated, and which is designed, used or intended to be used by private aircraft for landing or taking off of aircraft, including all associated or necessary buildings and open spaces.

Hoist - A device used for lifting or lowering a load by means of a drum or lift-wheel around which rope or chain wraps. It may be manually operated, electrically or pneumatically driven and may use chain, fiber or wire rope as its lifting medium.

Houseboat - A vessel, principally used as an over water residence. These are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel. Principal use as an overwater residence means

occupancy in a single location, for a period exceeding two months in any one calendar year. This definition includes liveaboard vessels.

Hydric soils - Generally, soils which are, or have had a history of being, wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of plants (WAC 173-22-030(5)).

Hydrophytes - Those plants capable of growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (WAC 173-22-030(5)).

Impervious surface - Any nonvertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas, but excluding landscaping and surface water retention/detention facilities.

In-kind replacement - To replace wetlands, habitat, biota or other organisms with substitute flora or fauna whose characteristics closely match those destroyed, displaced or degraded by an activity.

Interested party - Synonymous with "party of record", all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail (WAC 173-27-030(12)).

Lacustrine (also lacustrian) - Of, on, or pertaining to lakes.

Lake - A body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty (20) acres or greater in total area. A lake is bounded by the ordinary high water mark or, where a stream enters a lake, the extension of the elevation of the lake's ordinary high water mark within the stream (RCW 90.58.030(1d); WAC 173-20-030; WAC 173-22-030(4)).

Landfill - The creation of, or addition to, a dry upland area (landward of the OHWM) by the addition of rock, soil, gravels and earth or other material. Does not include solid or hazardous waste.

Landscaping - Vegetation ground cover including shrubs, trees, flower beds, grass and other similar plants and including tree bark and other materials which aid vegetative growth and maintenance.

Launching rail - See also Boat launch or ramp and Boat railway.

Launching ramp - See also Boat launch or ramp and Boat railway.

Liberal construction - A legal concept instructing parties interpreting a statute to give an expansive meaning to terms and provisions within the statute. The goal of liberal construction is to give full effect in implementing a statute's requirements. See RCW 90.58.900.

Littoral - Living on, or occurring on, the shore.

Littoral drift - The mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and currents.

May - “May” means the action is acceptable, provided it conforms to the provisions of this chapter.

Mitigation or Mitigation Sequencing - The process of avoiding, reducing, or compensating for the environmental impact(s) of a proposal. See WAC 197-11-768 and WAC 173-26-020 (30). Means the following sequence of steps listed in order of priority:

- a) Avoiding the impact all together by not taking a certain action or parts of an action;
- b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- d) Reducing or eliminating the impact over time by preservation and maintenance operations;
- e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- f) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

Moorage - Any device or structure used to secure a vessel for temporary anchorage, but which is not attached to the vessel (such as a pier or buoy).

Moorage Piles - Structural members that are driven into the lake bed to serve as a stationary moorage point. They are typically used for moorage of small boats in lieu of, a dock or pier. In some cases, moorage piles may also be associated with a dock or pier.

Mooring buoy - A floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

Multifamily dwelling (or residence) - A building containing two or more dwelling units, including but not limited to duplexes, apartments and condominiums.

Must - Means a mandate; the action is required.

National Environmental Policy Act (NEPA) - Requires federal agencies to consider environmental factors when making decisions, especially for development proposals of a significant scale. As part of the NEPA process, EISs are prepared and public comment is solicited.

Native plants - These are plants that occur naturally, and distribute and reproduce without aid. Native plants in western Washington are those that existed prior to intensive settlement that began in the 1850s.

Natural riparian habitat corridor - The streamside environment designed and maintained primarily for fisheries and wildlife habitat, water quality improvements and secondarily for flood control works.

NFIP - National Flood Insurance Program.

NOAA - National Oceanic and Atmospheric Administration.

Nonconforming use or development - A shoreline use or structure which was lawfully constructed or established prior to the effective date of the applicable SMA/SMP provision, and which no longer conforms to the applicable shoreline provisions (WAC 173-27-080).

Normal maintenance - Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2b))). See also Normal repair.

Normal protective bulkhead - Includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land (WAC 173-27-040(2)(c)).

Normal repair - To restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment (WAC 173-27-040(2b))). See also Normal maintenance.

Ordinary High Water Mark (OHWM) - That mark found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City: provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(b) and WAC 173-22-030(11).

Off-site replacement - To replace wetlands or other shoreline environmental resources away from the site on which a resource has been impacted by a regulated activity.

Oil separator - Specialized catch basins that are designed to trap oil and other materials lighter than water in the basin while allowing the water to escape through the drainage system. Commonly employed in parking lots and streets.

On-site replacement - To replace wetlands or other shoreline environmental resources at or adjacent to the site on which a resource has been impacted by a regulated activity.

Overwater structure - Any device or structure projecting over the ordinary high water mark, including, but not limited to piers, docks, floats, and moorage.

Permit (or Shoreline Permit) - See Shoreline Permit.

Pier - A fixed, pile-supported moorage structure.

Practicable alternative - An alternative available and capable of being carried out after taking into consideration short and long-term cost, options of project scale and phasing, existing technology and logistics in light of overall project purposes.

Priority Habitat - A habitat type with unique or significant value to one or more species. An area classified and mapped as such must have one or more of the following attributes:

- h. Comparatively high fish or wildlife density;
- i. Comparatively high fish or wildlife species diversity;
- j. Fish spawning habitat;
- k. Important wildlife habitat;
- l. Important fish or wildlife seasonal range;
- m. Important fish or wildlife movement corridor;
- n. Rearing and foraging habitat;
- o. Important marine mammal haul-out;
- p. Refugia habitat;
- q. Limited availability;
- r. High vulnerability to habitat alteration;
- s. Unique or dependent species; or
- t. Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands). May also be described by a successional stage (such as, old growth forests). Alternatively, a may consist of a specific habitat element (such as caves or snags) of key value to fish and wildlife. May contain priority and/or non-priority fish and wildlife.

Priority Species - Species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

(a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

Professional biologist - A specialist with education and training in the area of natural sciences concerned with the plants and animal life of a region.

Professional engineer - A person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering and is licensed by the state of Washington.

Properly Functioning Conditions (PFC) - Conditions that create and sustain natural habitat-affecting processes over the full range of environmental variation, and that support productivity at a viable population level of PTE species. PFC indicates a level of performance for a subset of the more broadly defined "ecological functions," reflecting what is necessary for the recovery of PTE species.

Proposed, Threatened, and Endangered (PTE) Species - Native species that are proposed to be listed or are listed in rule by the Washington State Department of Fish and Wildlife as threatened or endangered, or that are proposed to be listed as threatened or endangered or that are listed as threatened or endangered under the federal Endangered Species Act.

Public access - The ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Refer to WAC 173-26-221(4).

Public interest - The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected such as an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030(14)).

Public use - Means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis. Refer to WAC 332-30-106.

RCW - Revised Code of Washington.

RCW 90.58 - The Shoreline Management Act of 1971.

Recreational facilities - Facilities such as parks, trails, and pathways, whether public, private or commercial, that provide a means for relaxation, play, or amusement. For the purposes of this Master Program, recreational facilities are divided into two categories:

1. Water-dependent (i.e. – moorage facilities, fishing piers, recreational floats) and
2. Non-water-dependent (i.e. – sports fields, golf courses, and RV camping)

Recreational Float - A floating structure that is moored, anchored, or otherwise secured in the water off-shore and that is generally used for recreational purposes such as swimming.

Residential development - Development which is primarily devoted to or designed for use as a dwelling(s). Includes single family development, multi-family development and the creation of new residential lots through land division.

Restoration - "Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

Riparian - Of, on, or pertaining to the banks of a river, stream or lake.

Riprap - A layer, facing, or protective mound of stones placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

Rotovating - An aquatic vegetation harvesting technique that uses rototilling technology to uproot and remove plants.

Runoff - Water that is not absorbed into the soil but rather flows along the ground surface following the topography.

Shoreline Exemption - Certain specific developments are exempt from the definition of substantial developments and are therefore exempt from the substantial development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the Act and the local master program. Conditional use and/or variance permits may also still be required even though the activity does not need a substantial development permit (WAC 173-27-040). For a complete list of exemptions, see Chapter 6.

Sensitive Areas Ordinance, Black Diamond Municipal code 19.10 - This ordinance provides the goals, policies, and implementing regulations for protecting the designated critical areas of Black Diamond. The ordinance addresses environmentally sensitive area development controls; measures important for protecting and preserving these resources; preventing or mitigating cumulative adverse environmental impacts to critical areas; and serves to alert the public to the development limitations of critical areas.

SEPA - see State Environmental Policy Act

SEPA Checklist - A checklist required of some projects under SEPA to identify the probable significant adverse impacts on the quality of the environment, to reduce or avoid impacts from a proposal, and to aid the responsible governmental agency in deciding whether a full environmental impact statement (EIS) is required (WAC 197-11-960).

SMA - see Shoreline Management Act

SMP - see Shoreline Master Program

Sediment - The fine grained material deposited by water or wind.

Setback - A required open space, specified in shoreline master programs, measured horizontally upland from and perpendicular to the ordinary high water mark.

Shall - Means a mandate; the action must be done.

Shorelands or Shoreland Areas - Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous flood plain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of the Shoreline Management Act. In the City of Black Diamond it is limited to those areas within 200 feet of the ordinary high water mark of Lake Sawyer and any associated wetlands.

Shoreline Administrator - The City of Black Diamond Community Development Director or his/her designee, charged with the responsibility of administering the shoreline master program.

Shoreline environment designations - The categories of shorelines established by local shoreline master programs in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. See WAC 173-26-211.

Shoreline jurisdiction - The term describing all of the geographic areas covered by the SMA, related rules and the applicable master program. In the City of Black Diamond, this includes Lake Sawyer, those areas within 200 feet of the ordinary high water mark of Lake Sawyer and any associated wetlands. See definitions of Shorelines, Shorelines of the state, Shorelines of statewide significance, Shorelands, and Wetlands.

Shoreline Management Act (SMA) - Chapter 90.58 RCW, as amended. Washington's Shoreline Management Act was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The goal of the

SMA is to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

Shoreline Master Program (SMP) - The comprehensive use plan and related use regulations which are used by local governments to administer and enforce the permit system for shoreline management. Master programs are developed in accordance with the policies of the SMA, approved and adopted by both the state and the local government, and consistent with the rules (WACs) adopted by Ecology.

Shoreline Modification - Actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

Shoreline Permit - A substantial development, conditional use, revision, or variance permit or any combination thereof (WAC 173-27-030(13)).

Shoreline stabilization – Actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind or wave action. These actions include structural measures such as bulkheads and nonstructural methods such as soil bioengineering.

Shorelines - All of the water areas of the state, including reservoirs and their associated uplands, together with the lands underlying them, except those areas excluded under RCW 90.58.030(2)(d).

Shorelines Hearings Board - A state-level quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, enforcement penalty and appeals by local government. See RCW 90.58.170; 90.58.180.

Shorelines of Statewide Significance - A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where special preservationist policies apply and where greater planning authority is granted by the SMA. Permit review must acknowledge the use priorities for these areas established by the SMA. See RCW 90.58.020.

Shorelines of the State - Shorelines and Shorelines of Statewide Significance.

Should - Means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Master Program, against taking the action.

Sign - A board or other display containing words and/or symbols used to identify or advertise a place of business or to convey information. Excluded from this definition are signs required by law and the flags of national and state governments.

Single-family residence - A detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance (WAC 173-27-040(2g)).

Solid waste - All garbage, rubbish trash, refuse, debris, scrap, waste materials and discarded materials of all types, exclusive of hazardous wastes, and including any and all source-separated recyclable materials and yard waste.

Soil bioengineering - An applied science that combines structure, biological and ecological concepts to construct living structures that stabilizes the soil to control erosion, sedimentation and flooding using live plant materials as a main structural component.

State Environmental Policy Act (SPA) - Requires state agencies, local governments and other lead agencies to consider environmental factors when making most types of permit decisions, especially for development proposals of a significant scale. As part of the SEPA process, EISs may be required to be prepared and public comments solicited.

Stream - A naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than twenty cubic feet per second (cfs) and b) the water is contained within a channel (WAC 173-22-030(8)).

Structure - A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels (WAC 173-27-030(15)).

Substantial Development - Any development of which the total cost or fair market value exceeds five thousand seven hundred and eighteen dollars (\$5,xxx), or any development which materially interferes with the normal public use of the water or shorelines of the state unless it is one of the 12 exemptions identified in state law and in Chapter 6, Section D of this SMP. The dollar threshold established in this definition must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect (RCW 90.58.030(3)(e)). For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW [90.58.030](#) (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials. A list of activities and developments that shall not be considered substantial development is provided in Chapter 8 (WAC 173-27-040(2)(a)).

Terrestrial - Of or relating to land as distinct from air or water.

Upland - Generally described as the dry land area above and landward of the ordinary high water mark.

Utilities - Services and facilities that produce, transmit, store, process or dispose of electric power, gas, water, stormwater, sewage and communications.

Utilities, Accessory - Utilities comprised of small-scale distribution and collection facilities connected directly to development within the shoreline area. Examples include local power, telephone, cable, gas, water, sewer and stormwater service lines.

Utilities, Primary – Utilities comprised of trunk lines or mains that serve neighborhoods, areas and cities. Examples include solid waste handling and disposal sites, water transmission lines, sewage treatment facilities and mains, power generating or transmission facilities, gas storage and transmission facilities and stormwater mains and regional facilities.

Variance - A means to grant relief from the specific bulk, dimensional or performance standards specified in the master program, but not a means to vary a shoreline use. Variance permits must be specifically approved, approved with conditions, or denied by Ecology (See WAC 173-27-170).

WAC - Washington Administrative Code.

Water-dependent use - A use or a portion of a use which can not exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include moorage structures (including those associated with residential properties), marinas, aquaculture, float plane facilities and sewer outfalls.

Water-enjoyment use - a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. The use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-oriented use- Refers to any combination of water-dependent, water-related, and/or water enjoyment uses and serves as an all encompassing definition for priority uses under the SMA. Non-water-oriented serves to describe those uses which have little or no relationship to the shoreline and are not considered priority uses under the SMA. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, multifamily residential development, department stores and gas stations.

Water-related use- A use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- A. Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water or,
- B. The use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive and/or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the products cost, professional services serving primarily water-dependent activities and storage of water-transported foods. Examples of water-related uses may include warehousing of goods

transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

Water quality - The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through RCW 90.03.340.

Watershed restoration plan - A plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, and/or the Department of Transportation acting within or pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation , restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to 43.21C RCW, the State Environmental Policy Act.

Wetlands - Means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. May include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

Zoning - To designate by ordinance, including maps, areas of land reserved and regulated for specific land uses.

Shoreline Master Programs

Until about 40 years ago, development along Washington's shorelines tended to be piecemeal and uncoordinated. To improve and protect shoreline values and benefits, the state Legislature passed the state Shoreline Management Act in 1971. The public adopted the Act in a 1972 referendum vote.

To manage shoreline development and uses, the state law established a cooperative relationship between local governments and the Washington Department of Ecology (Ecology). The Shoreline Management Act applies to most streams, lakes greater than 20 acres, and marine waters as well as associated shorelands, wetlands, and floodplains. The law has three main purposes:

- Encourage reasonable and orderly development of shorelines, with an emphasis on water-dependent and related uses that control pollution and prevent damage to the natural environment.
- Protect the natural character of Washington shorelines, the land, vegetation, wildlife, and shoreline environment.
- Promote public access and provide opportunities to enjoy views and recreational activities in shoreline areas.

"Shoreline master programs" are the cornerstone for carrying out the Shoreline Management Act. Under state law, more than 260 towns, cities, and counties with shorelines covered by the Act must develop locally-tailored programs to guide shoreline use, development and public access.



Dungeness Spit in the Strait of Juan de Fuca.

Q: What do shoreline master programs do?

A: Shoreline master programs help local communities plan for the future. They are a combination of policies, regulations, and permits that guide shoreline use within a town, city or county. They balance shoreline development with environmental protection, and provide for access to public shores and waters.

Shoreline programs:

- Plan for water-dependent uses based on current conditions and long-term needs.
- Identify areas appropriate for public access.
- Maintain the current state of the natural environment into the future.
- Plan for restoration and preservation of shorelines where it makes sense.
- Balance statewide interests with local interests.

Q: Why are shoreline master programs important?

A: Shorelines are where the land and water meet. If we ever hope to restore and protect state shorelines – including Puget Sound – as we accommodate necessary new uses and development, we must be sure to manage these areas wisely. Whenever we build in our shorelines, we transform a unique and precious aspect of our natural environment. We clear native vegetation, build bulkheads, and put in driveways, roads, roofs and other impervious surfaces. These actions can have negative effects on our valuable fish and shellfish industries, nearby property owners, and other interests. Shoreline master programs establish each community's goals for its shoreline areas and implement policies and regulations to:

- Protect water quality for our marine waters, lakes and streams.
- Protect private property by siting new development safely away from flood, landslide, erosion hazard, and wetland areas.
- Help avoid or lessen environmental damage as shorelines are developed.
- Protect critical habitat as well as fish and wildlife.
- Promote recreational opportunities in shoreline areas.

Local Governments: Roles and responsibilities

Q: Why do local governments have to update their shoreline master programs?

A: In 2003, the state Legislature set up a timetable for local governments to update local shoreline master programs. Most haven't updated their programs



comprehensively since the mid 1970s. Since voters passed the Act in 1972, Washington's statewide population nearly doubled from 3.4 million to 6.5 million people. The old shoreline programs need to address current conditions, consider new science, and be aligned with current laws. An effective comprehensive update will reduce unsustainable development and provide shoreline land owners with a clearer set of standards.

Q: How does a community benefit from updating their shoreline program?

A: Each community is unique so the benefits from updating a shoreline program will be unique. Most communities benefit economically and legally because shoreline programs:

- Protect lives and property by directing development away from flood, landslide, and other hazard areas.
- Help towns, cities, and counties to realize their vision for future waterfront development and public access.
- Provide more certainty to the development community and water-dependent uses through shoreline building ordinances and permitting requirements.
- Avoid costly restoration of degraded shorelines in the future.

Q: What is the role of local governments in shoreline management?

A: Local governments are responsible for starting shoreline master program planning by deciding which areas are in shoreline jurisdiction, analyzing the present uses and long-term needs for shorelines, and locally adopting a shoreline master program. Local governments must consult with other agencies, tribal governments, and all individuals interested in developing their shoreline master programs. Once adopted, local government is the shoreline master program administrator. The local government reviews new development proposals and uses the permit system to decide what is consistent with state law and the local program.

Q: Is the public involved in developing shoreline master programs?

A: Yes. The Shoreline Management Act requires local governments to involve all interested parties in the creation or update of shoreline master programs, and provide public notice about permit decisions. Interested parties include shoreline property owners, developers, businesses, recreationists, environmental and conservation groups, Indian tribes, farmers and agricultural interests, tourists, other shoreline users, and local and state government agencies. Among the first steps a local government must take in a comprehensive update is developing a public participation plan and submitting it to Ecology for approval.

Q: Who approves local shoreline master programs?

A: Each local government approves its program after a period of public review and comment. Then the local government sends its approved program to Ecology, who reviews it for

consistency with state law. Ecology must approve the locally approved and submitted program before it takes effect. To ensure respect for private property rights, local and state legal authorities are required to review a shoreline program before formal adoption.

Q: Who pays to have a local shoreline program updated?

A: The Shoreline Management Act requires the state to provide “reasonable and adequate” funding for shoreline master program updates. Ecology gives legislative appropriations to local governments in the form of grants. For the current budget cycle (from July 1, 2011, through June 30, 2013), state lawmakers authorized \$7.5 million in grants to complete shoreline updates in jurisdictions throughout Puget Sound and begin updates in Benton, Cowlitz, Grant, Kittitas, Lewis, Skamania, Spokane, and Yakima counties.



Homes destroyed in 1997 Perkins Lane landslide on Magnolia Bluff in Seattle

Q: How is each grant amount determined?

A: Ecology determines each jurisdiction’s grant award based on a number of factors. The department considers past levels of funding provided to local jurisdictions for shoreline master program updates. Ecology also looks at:

- Miles of shoreline in each jurisdiction
- Number and complexity of kinds of shoreline (marine, streams and rivers, and lakes)
- Population
- Area
- Growth rate

Q: What if a local government can’t meet the update deadline set by the state legislature, or chooses not to update its shoreline master program?

A: Once a local government receives a grant from the state to help them update their shoreline program, they have three years to locally adopt and submit the updated program to Ecology for approval. Ecology is required by law to prepare and adopt an updated shoreline program for any town, city, or county that misses the deadline set by law. In that case, much of the opportunity for local determination of how to regulate shorelines would be reduced.

Guidelines, Funding and Review: Ecology's role

Q: What is Ecology's role in the shoreline master program process?

A: Lawmakers made Ecology responsible for ensuring local shoreline programs, when added together, protect the statewide public interest. Ecology does this by providing guidance to local governments about the essential elements a shoreline master program must contain, and reviewing and approving local programs. The agency may also join in appeals or lawsuits regarding the Shoreline Management Act or the guidelines that implement the Act. Finally, Ecology provides financial support, technical assistance, guidance materials, and regular training to support local governments.

Q: What is the purpose of Ecology's 2003 Shoreline Management Act guidelines?

A: The guidelines set minimum procedural and substantive standards for local governments updating their programs. The 2003 guidelines now in place resulted from a negotiated settlement between business interests, ports, environmental groups, shoreline user groups, cities and counties, Ecology, and the courts. Ecology and state Growth Management Hearings Boards use the guidelines to review and approve local shoreline program updates. Also in 2003, the state legislature provided funding and established a mandatory schedule for local shoreline program updates through 2014.

Q: What types of action can Ecology take when it receives an updated shoreline program?

A: After Ecology reviews the local program to determine if it complies with state requirements, the department can approve it as submitted by the local government, approve it with changes, or reject it. Once Ecology approves a local shoreline master program, it becomes part of the statewide shoreline "master" program. At that point, local governments are responsible for applying their locally-adopted shoreline policies and regulations to individual projects.

Q: Why is it important for local governments to get Ecology's approval?

A: The Legislature made Ecology responsible for ensuring statewide policies are upheld and implemented when local shoreline master programs are adopted. Under the Shorelines Management Act, a locally approved program must meet state guidelines. Once an updated program receives approval at the local and state levels, the state becomes a full partner in defending any legal challenges to the updated program.

Legal Issues

Q: Aren't requirements for shoreline vegetation buffers a "taking" of private property rights?

A: No. The U.S. Constitution allows state and local governments to limit private property activities provided it's for a legitimate public benefit and they do not deprive the landowner of all reasonable use of the property. For example, state and local governments can adopt regulations that prevent sediment from running off private property and entering a salmon-spawning stream. These regulations protect salmon, a public resource.

Buffers do not deprive landowners of all reasonable use of their property and, in fact, all property tends to benefit from reasonable setbacks and buffers. In those limited instances where the buffer precludes or significantly interferes with a reasonable use, the property owner may obtain a variance.

Q: Hasn't Whatcom County's Shoreline Master Program been challenged and overturned in court?

A: No. A local developer and the Building Industry Association of Whatcom County took Whatcom County and Ecology to court and lost on all issues except one. All other issues addressed by the Western Washington Growth Management Hearings Board, and in a separate Skagit County Superior Court case, were found in Whatcom County and Ecology's favor. The issue the Board found in the appellant's favor was "despite critical areas being originally approved through a county critical areas ordinance public process, they need to be revisited and justified if incorporated into an updated shoreline master program."

The Western Washington Growth Management Hearings Board ruled:

- Ecology's approval of the shoreline master program was valid as originally approved on August 8, 2009.
- The public process was proper and legally correct.
- The county's inventory and analysis supported the designation of all marine near shore areas, streams, and lakes as critical areas.
- The issue challenging the required 100 to 150 foot buffers was dismissed.

The Skagit County Superior Court found:

- The shoreline master program is not subject to certain statutory limitations on the regulation of development because shoreline master programs constitute state, not merely local, regulations.

Q: We keep hearing that “junk science” is being used, our property rights are being stolen, and that our land is being condemned. Is this true?

A: Unfortunately, some people are worried and angry at times based on misinformation about how buffer zones or shoreline regulations would affect their property values. Many claims have been made about how shoreline master programs will affect what people can and can't do on their property. The Shoreline Management Act requires local and state government to include the views of all interested persons in developing shoreline master program goals, policies, and regulations.

We encourage open and honest dialogue with all stakeholders to develop strong shoreline programs supported by the best, sound science. To ensure respect for private property rights, local and state legal authorities are required to review a shoreline program before being formally adopted by Ecology.

Scientific Information

Q: What kinds of information do local governments use to help modernize their shoreline master programs?

A: Ecology's 2003 guidelines require local governments to “make use of and, where applicable, incorporate all available scientific information.” This includes reports, documents and materials including:

- Inventory data.
- Technical assistance materials.
- Manuals and services from reliable, scientific sources.
- Aerial photography.
- Other applicable information.

Q: What is scientific information?

A: Common sources of scientific information include:

- **Monitoring data** collected periodically over time to determine a resource trend or evaluate a management program.
- **Inventory data** collected from an entire population, such as individuals in a plant or animal species, or an ecosystem area.
- **Survey data** collected from a statistical sample from a population or ecosystem.
- **Assessment**, which entails the inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.
- **Research data** collected and analyzed as part of a controlled experiment, or other appropriate methodology, to test a specific hypothesis.
- **Modeling** which entails the mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that can't be directly observed.



- **Synthesis**, which is a comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.

Q: How do we know if information is scientifically valid?

A: Scientific studies are generally expected to have the following characteristics:

- **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.
- **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.
- **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
- **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other existing pertinent information.
- In addition, for research and modeling, an **appropriate quantitative analysis** is essential. The data must be analyzed using appropriate statistical or quantitative methods.

Moreover, **peer review** is a vital characteristic of research, modeling and synthesis of scientific information. Publication in a peer reviewed or “refereed” scientific journal usually indicates the information has been appropriately peer-reviewed.

Q: How do I know if a paper or a report has been credibly peer-reviewed?

A: Scientific publications are evaluated through a peer-review process administered by a scientific journal, public agency, consulting research firm, or scientific non-profit entity. Before the document is published, other researchers with appropriate areas of expertise evaluate the quality of the research and provide written reviews – and the document is improved as a result of the process. The document must include a complete citation showing where, when and by whom it was published. An example of an appropriately cited article is:

Diefenderfer HL, SL Sargeant, RM Thom, AB Borde, PF Gayaldo, CA Curtis, BL Court, DM Pierce, and DS Robison. 2004. “Demonstration Dock Designed to Benefit Eelgrass Habitat Restoration (Washington).” *Ecological Restoration* 22(2):140-141.

Two examples of peer-reviewed scientific journals are: *Estuaries & Coasts*, the journal of the Coastal and Estuarine Research Federation, and *Ecological Applications*, a journal of the Ecological Society of America. An example of an Ecology report that has gone through a documented peer review process is our synthesis of information on wetlands. To see a copy go to: www.ecy.wa.gov/biblio/0506006.html.

Q: If a document contains a lot of numbers and statistics, does this mean it is credible science?

A: No. On the surface, it may be difficult to assess the quality of the methods and statistics reported in a document. Technical documents should always include a clear description of the methods used and undergo a rigorous review by other experts in the field. This ensures proper scientific methods, research procedures, and review protocols were used.

Q: Can local governments accept technical comments and information from the public that has not gone through a formal peer-review or publication process?

A: Yes. Local governments have a process for receiving all kinds of comments, including anecdotal information, from the public regarding local shoreline master program updates. Information, experience, and anecdotal evidence provided by interested parties may offer valuable information to supplement scientific information. However, non-scientific information shouldn't be used as a substitute for valid and available scientific information. Where information collected by or provided to local governments conflicts with other data or is inconsistent, the local government is obligated to base its shoreline master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

Q: Where can I get more background on the use of science in city and county shoreline master program updates?

A: See Ecology's shoreline master program guidelines: Washington Administrative Code 173-26-201 (2) Basic Concepts or <http://apps.leg.wa.gov/wac/default.aspx?cite=173-26&full=true#173-26-201>.

The state Department of Commerce also has guidelines for "best available science" for critical areas ordinances at: <http://apps.leg.wa.gov/wac/default.aspx?cite=365-195-905>.

Property Issues

Q: Won't buffers and other shoreline regulations decrease my property values?

A: Property values are relatively unaffected by buffers. Waterfront property has skyrocketed in value in the past 30 years despite shoreline buffers of 25 to 125 feet being in place for the same period. Protecting native vegetation along the shoreline actually enhances property values by:

- Stabilizing slopes.
- Screening adjacent development from view.
- Providing attractive landscaping and habitat.
- Blocking noise and glare from adjacent properties.

Q: Is it true if my house burns down I can't rebuild it in the same location?

A: No. While each local jurisdiction can modify their approach, single-family homes are "grandfathered" under the state Shoreline Management Act. This means if your house burns down, it can almost always be re-built in the same footprint. The only exception would be if the existing location was dangerous or unsafe for building such as in a floodway or on a failing bluff.

Q: Whatcom County updated its shoreline master program in 2008. Have property owners applying for improvements such as new additions and garages run into any problems?

A: Since Whatcom County adopted its updated shoreline program, the county has received more than 20 applications to make building improvements. These building permits received approval and were issued in a timely manner. No decisions have been appealed.

Q: Could updating the local shoreline master program require me to tear down my existing shoreline structure?

A: No. Shoreline programs are not retroactive. They only apply to development occurring after adoption.

Q: Will waterfront property owners still be able to protect their property with a bulkhead under an updated shoreline master program?

A: If property owners can clearly demonstrate a need exists, they can use an approach that has the least impact on the natural shoreline.

Q: Will homeowners face more limits on building new docks?

A: That depends on the local circumstances and the choices made locally about how a community wants its future shoreline to look. If new docks can be shown not to harm the natural shoreline they can be allowed.

Q: Could there be limits on repairing houses, barns, fences, bulkheads, docks or other structures?

A: Provisions in state law allow the repair and maintenance of existing, lawful constructed structures. State shoreline guidelines allow repair and maintenance of existing structures, subject to any building requirements imposed separately by local jurisdictions.

Bulkheads, Sea Walls and Armoring

Q: What is hard armoring? What are its impacts on the shoreline?

A: The natural character of shorelines and many organisms living there depend on a continuous and uninterrupted relationship between upland areas and the water. Beaches depend on erosion to supply sand and gravel. Hard armoring interrupts this natural relationship. Property owners use hard armoring to protect an owner's preference for how the waterfront edge should look or limit property loss by erosion. Armoring prevents the supply of new material for beach formation and disturbs other ecological functions.

Q: What is soft armoring? What are its impacts on the shoreline?

A: There are many ways to slow the rate of erosion that are less disruptive than hard armoring. Soft armoring approaches often use a combination of less rigid structural materials and native vegetation to stabilize the shoreline. Placing large logs or native vegetation along the shoreline, for example, can serve as a natural break for waves while simultaneously providing some habitat value.

No Net Loss and Restoration

Q: What is “no net loss” of ecological or environmental functions?

A: The new environmental protection standard for updated shoreline master programs is “no-net-loss of shoreline ecological functions.” While restoration of degraded areas is encouraged, this does not mean all shoreline areas are required to be made “pristine” or returned to pre-settlement conditions. Local governments are required to inventory current shoreline conditions – including identifying existing ecological processes and functions that influence physical and biological conditions. When a shoreline program is adopted, existing ecological conditions on the ground must be protected while development of shoreline areas is continued in accordance with adopted regulations. This is accomplished by avoiding or minimizing the introduction of impacts to ecological functions that result from new shoreline development.

Q: Do the new guidelines require restoration?

A: Local governments must plan for restoration in their shoreline master programs. Restoration is not a direct requirement for private development. Local government must consider its restoration needs, identify resources available to conduct restoration, prioritize restoration actions, and make sure development activities don't interfere with planned restoration efforts in the community and vice versa. A shoreline master program may include incentives for developers to invest in shoreline restoration.

Q: Why are some “conservancy” or “urban” shoreline areas being designated “natural?”

A: State guidelines establish criteria specifying that if an area meets those criteria, they should be designated as such. This is an important part of achieving the broad policy objective of “no net loss.”

Agricultural Issues

Q: How do Shoreline Master Programs apply to farms / agriculture?

A: A 2002 state law requires when local shoreline programs are updated, the new standards, setbacks and buffers do not apply retroactively to existing agricultural development. Updated shoreline program requirements will however apply to new agricultural activities located in shoreline areas and where agricultural activities are converted to other uses. Local governments will need to be aware of this requirement when updating their master programs. Agricultural interests represented in the negotiations agreed with this approach.

Other Shoreline-Related Issues

Q: Why are critical areas ordinances often incorporated into local shoreline program updates?

A: A recent state Supreme Court decision (*Futurewise v. Anacortes*) decided that the shoreline master program solely regulates the shorelines and critical areas covered by the program, once Ecology approves it. Many existing master programs contain buffer requirements but are based on outdated conditions and science. Rather than repeat the work local governments have already done developing their critical areas ordinances under the state Growth Management Act (GMA), relevant portions of existing critical areas ordinances may be placed in updated shoreline master programs under the Shoreline Management Act.

Q: What are differences between critical areas ordinances and shoreline master programs?

A: Local governments and Ecology implement the Shoreline Management Act using locally-tailored Shoreline Master Programs. Local governments implement critical areas ordinances under the authority of the state Growth Management Act. The two laws have many similar requirements for environmental protection but they are administered with different kinds of regulatory procedures. The two laws also have many similar and some different objectives for dealing with future land use and development. Integrating Growth Management and Shoreline Management Act goals, policies, and regulations is required but often difficult to accomplish.

Q: Do the rules surrounding “best available science” apply to shoreline master programs?

A: No. Current science is the basis for shoreline master programs while “best available science” is a term from the state Growth Management Act, and does not apply to shoreline master programs. Shoreline management requires use of the “most current, accurate and complete scientific and technical information” as the basis for decision making.

Q: What is Ecology’s role in developing and providing wetlands guidance to local governments?

A: Local governments implement the GMA. Ecology, however, has expertise in managing and protecting wetlands. We knew most local governments didn’t have the resources to develop a science-based standard for protecting wetlands. To help local governments meet GMA requirements without reinventing the wheel, Ecology got a federal grant in 2002 and spent three years crafting wetlands guidance. We scanned over 15,000 scientific articles and summarized another 1,000 related to protecting and managing wetlands. Ecology continues to provide this guidance and technical assistance, as applicable wetland regulations are updated all across the state.

Q: Where can I get more information?

A: There is an array of valuable information available at Ecology’s Shoreline Master Program Web site at <http://www.ecy.wa.gov/programs/sea/shorelines/smp/index.html>. The site includes:

- A citizen’s guide for shoreline master programs.
- Shoreline planners’ toolbox.
- Laws, rules, and legal cases related to shoreline management.
- Shoreline master program publications.

Contact information:

Peter Skowlund
(360) 407-6522
peter.skowlund@ecy.wa.gov

Curt Hart
(360) 407-6990
curt.hart@ecy.wa.gov

Special accommodations:

To ask about the availability of this document in a version for the visually impaired call the Shorelands and Environmental Assistance program at 360-407-6600. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

COMMUNITY FACILITIES DISTRICT

PROCEDURES FOR FORMATION

The following is a description of the statutory procedures governing the formation of a community facilities District that is located entirely within the incorporated boundaries of a City. These procedures were enacted in 2010 and are codified at RCW Ch. 36.145.

I. PURPOSE:

Community Facilities Districts are special taxing districts that may be created by cities and counties to provide financing for local improvements. The legislature found that inadequate community facilities and infrastructure exist to support growth that the legislature anticipates to occur over the next 20 years. It further found that current financing options were not adequate or flexible enough to fund these needed facilities and that voluntary landowner financing of such facilities should be authorized. Thus, the legislature enacted the CFD legislation with the specific purpose of creating a financing mechanism allowing property owners to finance needed public improvements.¹

II. FILING AND TRANSMITTAL OF A PETITION.

1. A petition is a request to form a CFD that,

- a. Statutory Requirements. Meets the requirements of RCW 36.145.020 (requirements for formation of the CFD by petition);
- b. Property Owners. Is made by 100% of the persons owning land within the District Boundaries; and
- c. Voluntary Agreement. Includes agreement for the landowners to voluntarily submit their land to assessments authorized under Ch. 36.145 RCW;

2. The petition must be filed with the County Auditor.² The petition must first be filed with the County Auditor by the applicant.

The County Auditor must confirm that the petition has been validly executed by 100% of the landowners within the proposed district boundaries.

¹ RCW 36.145.005.

² RCW 36.145.020(2)

The County Auditor has 30 days to determine compliance or non-compliance. Upon a determination of compliance, the County Auditor will have 10 days to transmit the petition with a certificate of sufficiency to the City.

The County Auditor has no statutory duty to determine if the petition is complete, i.e., if it meets the requirements of RCW 36.145.020.

3. Completeness of Petition. Ch 36.145 RCW does not include a specific process for determining whether or not a petition is complete. However, The CFD statute does include a hearing requirement and a right of appeal. Thus, issues related to the completeness of the petition can be raised at the time of the hearing and may be considered by the City Council in determining whether or not to approve the petition.

In determining the Completeness of the petition, the City Council may consider whether or not the Petition includes the following mandatory criteria:

Boundary Description. Does the petition designate and describe the boundaries of the district by metes and bounds or reference to United States townships, ranges, and legal subdivisions;

100% of all Property Owners. Is the petition executed by one hundred percent of all owners of private property located within the boundaries of the proposed district.

Authorize Assessments. Does the petition include a request by the property owners to subject their property to the assessments;

Assessments Stated in the Petition. Does the request to subject the property to assessments include a maximum amount the property owners may be subject to;

Authorized Assessments. Are the assessments described in the petition authorized under Chapter 36.145 RCW;

Certification. Does the petition include a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under Chapter 36.145 RCW to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

Explanation of Objective and Plan. Does the petition include a general explanation of the objective and plan of the district;

Description of Special Facilities. Does the petition describe the specific facilities that the district anticipates financing;

Declaration of Public Health, Welfare and Safety. Does the petition declare that the district will be conducive to public health, safety, and welfare;

Declaration of Benefit. Does the petition assert that the purpose for forming the district will be a benefit to the land located in the district;

Reimbursement Obligation. Is the petition accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

List of Representatives. Does the petition include a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors;

Property Information for Assessment. If the petition proposes a special assessment, does it include:

- i. A diagram showing each separate lot, tract, parcel of land, or other property in the district;
- ii. the acreage of the property;
- iii. the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor;
- iv. a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and
- v. a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

Security. Does the petition include an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district?

4. Cost Reimbursement. The statute provides at RCW 36.145.020(1)(g) that at least two of the petitioners must sign an obligation to agree to pay the costs of the formation process. These costs are different from and not included in the costs that may be funded by district revenue. Thus, these costs must be paid by the petitioners and not the district.

The statute does not delineate or categorize the costs that may be included as part of this obligation nor does it provide whether or not such costs must be advanced and paid up front or

are subject to reimbursement. However, because the statute uses the present tense and does not speak to this obligation as an obligation to reimburse those costs, it appears to be within the legislative intent to allow the City to require payment either through reimbursement of the City's costs or through an advance deposit and draw upon the deposit.

The Statute also does not specify any limit upon costs other than that they must be "costs of the formation process". Thus, Costs reasonably incurred by the City related to formation of the district appear to be within the scope of the payment obligation of the petitioners.

III. PUBLIC HEARING.³

1. Public Hearing Obligation. The City Council is required to hold a public hearing regarding the formation of the District.

2. Timing of Hearing. The hearing must be held no less than 30 and no more than 60 days from the date that the county certificate of sufficiency is issued.*

* The time begins from date of issuance and not receipt by the City.

* The following question may arise: “may the hearing be continued beyond the 60th day?” This is an open question; however, the statute uses the term “held” in reference to the hearing requirement. Held” is the past tense of “hold”; therefore, the reference to when the hearing must be conducted is in the past tense. By providing in the statute that the hearing must be “held” no later than 60 days after the certificate of sufficiency, the legislature appears to have intended that the hearing shall be commenced and completed prior to that time.

3. Hearing Notice⁴. The City is required to give public notice of the hearing. Notice must comply with the following:

- a. Description of Proposal. Notice of all public hearings must include a description of the proposal;
- b. Mailing. Notice must be mailed to all petitioners.
- c. Publication. Notice must be published once a week for three consecutive weeks in the official paper of the City, prior to the date set for the hearing.
- d. Posting Within the District. The notice must be posted for not less than fifteen days prior to the date of the hearing in each of three (3) public places within the boundaries of the proposed district;
- e. Posting in Public Places. The notice must be posted for not less than fifteen days prior to the date of the hearing in three (3) public places of the City.
- f. Time, Date and Location. All notices must contain the time, date, and place of the public hearing.

4. Hearing and Decision Making Process. The hearing and decision making process may generally be described as follows:

³ For purposes of this procedural outline, it is presumed that the formation of a community facilities district is a legislative process rather than a quasi-judicial process.

⁴ RCW 36.145.040.

- a. Who may give evidence? The statute contains no limitations upon who may give evidence. Thus, anyone opposing or supporting the petition may provide testimony or provide written evidence. The Council should establish time limits, as are customary, for other public legislative hearings.
- b. What evidence may be presented? Any evidence, written or oral, may be presented that the City Council deems material to formation of the district. The Council may establish rules governing the scope of what may be considered evidence material to formation of the District.
- c. What Evidence is Material? The statute does not define “materiality” but does describe the relevant decision criteria of the City Council. Evidence that relates to these decision criteria is clearly material to formation of the District. Further, as noted previously, evidence relating to the completeness of the petition would also be material.
- d. City Council Consideration of the Petition? The statute provides that the City Council “must” consider the petition at the time and place of the hearing. The meaning of this statutory obligation is not clear; however, it appears that the legislature intended that the Council commence its consideration of the petition at that time.

The statute also provides that the City Council may act on the petition at the public hearing, but is not required to. Thus, although the City Council must commence its consideration of the petition at the time of the hearing, it need not complete its consideration of the petition on the date of the hearing.

- e. Is there a time limit upon when the City Council Must Take Action? The statute provides that the City Council may not issue a decision later than thirty (30) days after the day of the public hearing.⁵ Thus, if the City Council takes action, it must do so within that time period.

The statute also provides that a district may not be formed unless the City Council makes the required findings set forth in RCW 36.145.060(1). Thus, it is clear that, if the City Council does not approve a resolution containing the required findings within the 30 day time period, the district cannot be lawfully formed.

- f. What Criteria Must the Council Consider? A petition for formation of the district may not be approved by the City Council unless it makes the following findings:
 - i. The petitioners will benefit from the proposed district. The statute does not specify or give context to what benefit must be conferred. However, if the

⁵ RCW 36.145.060

petition specifies that special assessments will be imposed, such assessments are required to provide special benefit to the District;

- ii. The formation of the district will be in the best interest of the City; and
 - iii. The formation of the District is consistent with the requirements of Washington's growth management act.
- g. What Standard Applies? The creation of a special purpose districts is a legislative act. When acting in its legislative capacity, the City Council has broad discretion. However, the City Council is constitutionally mandated to act in a reasonable manner and cannot act arbitrarily or capriciously.

The statute provides that the Council may approve the petition by resolution if it finds, in its "sole discretion" that the petition meets the foregoing criteria (see f above). Thus, the City Council is obligated to make a reasoned decision upon due consideration of the contents of the petition and the evidence submitted to the City Council. However, it is not obligated to grant the petition and has sole discretion to determine whether or not each of the criteria is met. Substantial deference is given to the City Council to determine how best to serve the public interest. If the City Council determines that one or more criteria are not met, the fact that the applicant or speaker may have a different opinion does not matter, as long as the City Council did not act arbitrarily or capriciously in making this determination or was unreasoning in its determination.

- h. What is the Process for Approval? The Council must adopt a resolution approving the petition within 30 days following the day of the public hearing.⁶ The resolution must meet the following requirements:
- i. Findings. It must include findings for each one of the mandatory elements set forth in (f) above (See, RCW 36.145.060(1));
 - ii. Content of Petition. The resolution must, conform to the terms and conditions contained in the petition, including the maximum amounts of special assessments set forth in the petition, and must designate the name and number of the community facilities district being formed.
 - iii. Filing with Auditor. Certified copies of the resolution must be filed with the County Auditor (or equivalent).
- i. Can the City Council Alter the Petition? The Statute provides no authority for the City Council to unilaterally amend or alter a petition. Further, it provides that the resolution approving the petition must conform to the terms and conditions

⁶ Presumably this means the day the public hearing closes if the hearing last more than one day.

contained in the petition.⁷ Thus, unless the petition is amended in accordance with the statutory process, the City Council can only approve, deny or take no action upon the petition as presented by the applicant.

The statute provides that a petition may be amended for any reason but only if it is signed by one hundred percent of the owners of the property within the district.⁸

- j. Is there a Right of Appeal? Yes.
- k. Who May Appeal? Any person who objects to formation of the district may appeal the final decision of the City Council to approve the petition. The statute does not provide that the appellant must be a person who objected at the time of the hearing. Thus, it appears that anyone may appeal.
- l. What Decision may be Appealed? The statute only provides for a right to appeal a decision of the City Council to approve formation of the district. Thus, failure to take action to approve the district or action denying approval is not subject to appeal. This limitation upon the right to appeal seems consistent with the fact that action to approve a petition is a legislative decision.
- m. What is the Time Period for Filing Appeal? An appeal must be filed in the Superior Court of the county in which the property is located within 30 days of the effective date of the resolution approving the petition. If an appeal is not timely filed, the district will be deemed validly constituted and its formation cannot thereafter be challenged.

⁷ RCW 36.145.060(3).

⁸ RCW 36.145.020(3).

IV. APPOINTMENT OF SUPERVISORS.

1. Formation of the District. The District is likely formed upon passage of the resolution approving formation. However, because there is a requirement for filing a certified copy of the resolution with the County Auditor, it may be that the District is not created unless and until this filing occurs. Because the statute is silent on this issue and does not explicitly state that this is a jurisdictional requirement, it is not absolutely clear at what point the district is formed.

2. Creation of Board of Supervisors. The District cannot take action until the five (5) member "Board of Supervisors" is duly constituted by the City Council.

3. Timing of Appointments. The statute provides that the board members must be appointed within sixty (60) days of the formation of the district.

4. How Appointed. Each of the five members must be natural persons and shall be appointed by the City Council. Three (3) of the members shall be appointed from among the members of the City Council and two (2) of the members shall be appointed from among the petitioner members or nominees identified in the petition.

The statute also provides that the City may, in the alternative, appoint qualified professionals with expertise in "municipal finance in lieu of one or more authorized appointments from among the members of the City Council. However, the statute appears to require that at least one City Council member remain on the Board. Note that only persons with expertise in municipal finance are qualified to serve on the Board in lieu of appointment of a City Council Member.

5. Term of Office. The term of each supervisor is three (3) years, and until a successor is appointed. Initial terms are limited to one (1) and two (2) year appointments respectively. Thus, for example, two council members and one petitioner member will have a one-year initial term and one council member one petition member will have a two-year initial term.

6. Vacancies in Office. Upon expiration of each term, the appointee may continue to serve as a supervisor until the new term is filled. Persons may only be appointed to a vacant position from those persons eligible to fill that position. In other words, the two petitioner appointments must be filled by petitioner nominees from the petition or successor property owners. The three council positions must be filled by council members or a qualified professional.

RESOLUTION NO. 11-770

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, AUTHORIZING THE FORMATION OF A COMMUNITY FACILITIES DISTRICT; ADOPTING FINDINGS IN SUPPORT THEREOF; SETTING FORTH THE AUTHORITY OF THE DISTRICT; GRANTING AUTHORITY TO IMPOSE SPECIAL ASSESSMENTS AND ISSUE BONDS; PROVIDING FOR THE COMPOSITION AND ORGANIZATION OF THE BOARD OF SUPERVISORS; RESERVING STATUTORY AND POLICE POWER AUTHORITY; AND LIMITING RECOURSE TO THE ASSETS, CREDIT AND SERVICES OF THE DISTRICT

WHEREAS, Black Diamond is a municipal corporation operating as a non-charter code city under the laws of the State of Washington and is authorized pursuant to RCW 35A.21.160 and 35A.11.030 to exercise all powers reserved to any city of any class and to exercise all powers of taxation in the manner provided by the general laws of the State; and

WHEREAS, in year 2010 the Washington State Legislature enacted Engrossed Substitute Senate Bill 6241 (codified at RCW Ch. 36.145) authorizing legislative authorities, such as the Black Diamond City Council, to form special taxing districts known as Community Facilities Districts ("CFD"), to provide an option for landowners to voluntarily finance local improvements through special assessments upon their property; and

WHEREAS, the legislature found that such legislation was necessary because inadequate community facilities and infrastructure exist to support growth over the next 20 years and current financing options were not adequate or flexible enough to fund these needed facilities; and

WHEREAS, chapter 36.145 RCW (the "CFD Statute") provides that the City Council may consider approval of formation of a CFD only after a petition meeting the requirements of the CFD Statute has been filed by 100% of the property owners owning land within the district, as certified by the County, and the City Council finds, within the time periods prescribed in the CFD Statute, that formation of the District meets the following requirements: (a) the petitioners will benefit from the proposed district; (b) the formation of the district will be in the best interest of the City; and (c) the formation of the District is consistent with the requirements of Washington's growth management act; and

WHEREAS, on October 26th, 2011 BD Village Partners, LP and YarrowBay Development LLC (hereafter the "Petitioners") submitted their petition (hereafter the "Petition") to King County Record and Licensing Services for certification of its petition for the formation of CFD No. 2011-1 (hereinafter "CFD No. 2011-1" or the "CFD") with its proposed district boundaries located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington; and

WHEREAS, on October 31, 2010 the Office of the King County Executive forwarded to the City of Black Diamond, its certificate of sufficiency of the Petition confirming, as required pursuant to RCW 36.14.020(2), that 100 percent of the owners of the properties located within the proposed district boundaries had executed the Petition; and

WHEREAS, the City is required by law to give notice of and conduct a public hearing regarding the formation of a CFD by no later than 60 days from the date a certificate of sufficiency is issued; and

WHEREAS, the City has provided notice of such hearing in conformance with the requirements of RCW 35.145.030 and 040, a true and correct copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the City Council conducted a public hearing regarding the formation of CFD No. 2011-1 on December 15th, 2011 at which time the City Council took public testimony and received evidence; and

WHEREAS, having considered the public testimony and evidence provided at the public hearing and subsequent thereto, and having considered the formation petition, the Special Benefit Apportionment Analysis prepared by David Taussig & Associates, Inc dated November 28, 2011, the independent analysis of the Taussig Report by Henderson, Young and Company, the additional written comments submitted by Henderson, Young and Company, the Petitioner and members of the public, and other relevant authorities and materials, and having been in all matter fully advised;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Incorporation of Recitals. The above stated recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. Findings and Conclusions. The City Council hereby makes the following findings and conclusions with respect to formation of CFD No. 2011-1:

A. The content of the Petition meets the statutory requirements for sufficiency of a petition for formation of a CFD, to-wit,

1. The Petition designates and describes the boundaries of the district;
2. The County has certified that the Petition has been executed by one hundred percent of all owners of private property located within the boundaries of the proposed district;
3. The Petition includes a request by the property owners to subject their property to the assessments;
4. The request to subject the property to assessments includes a maximum amount the property owners may be subject to;

5. The assessments described in the Petition are authorized under Chapter 36.145 RCW;

6. The Petition includes a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under Chapter 36.145 RCW to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

7. The Petition includes a general explanation of the objective and plan of the district;

8. The Petition describes the specific facilities that the district anticipates financing;

9. The Petition declares that the district will be conducive to public health, safety, and welfare;

10. The Petition asserts that the purpose for forming the district will be a benefit to the land located in the district;

11. The Petition is accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

12. The Petition includes a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors;

13. The petition proposes a special assessment, and includes, a diagram showing each separate lot, tract, parcel of land, or other property in the district, the acreage of the property, the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor, a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and, a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

14. The Petition includes an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district.

B. The City has published noticed of the public hearing in the form of the notice attached hereto as Exhibit "A" in Official newspaper of the City for three consecutive weeks prior to the date of the hearing and thus have met the statutory requirements for notice of the public hearing.

C. Formation of CFD No. 2011-1 is in the best interest of the City for the following reasons: The proposed Black diamond CFD No. 2011-1 will finance a portion of ten infrastructure improvements that will: improve public health, safety, and welfare by improving

traffic circulation and thereby reduce accidents; improve pedestrian safety; provide street lights thereby deterring crime and improving vehicular and pedestrian safety; facilitate the safe transmission of wastewater; mitigate flooding; provide for the transmission of stormwater; deliver potable water; and provide recreation and park improvements. In addition, the infrastructure improvements have benefits for the City, its residents and those who visit, drive through or recreate in the City.

Using a CFD to finance portions of these infrastructure improvements also creates the opportunity for Petitioner to use other sources of funding for beneficial improvements not being financed by CFD No. 2011-1. For example, the Petitioner has stated its intent to commit early funding of a satellite fire station when the CFD bonds for the ten infrastructure improvements have been sold.

Finally, the proposed CFD, through the application of assessments, will provide a secure, long-term financing source for portions of these ten infrastructure improvements thereby reducing the City's reliance on unsecured funds from a for-profit land developer.

D. CFD No. 2011-1 as proposed is consistent with the Growth Management Act, for the following reasons: First, the proposed CFD is an example of growth paying for infrastructure to support growth inside an urban growth area ("UGA"). Second, the infrastructure improvements are consistent with the GMA's planning goals as outlined in RCW 36.70A.020. Last, the infrastructure improvements are consistent with Black Diamond's Comprehensive Plan.

E. The Petitioners will benefit from the formation of the District, for the following reasons: CFD No. 2011-1 will provide Petitioner with a secure source of financing for ten infrastructure improvements necessary to move forward with The Villages and Laws Hills planned communities. In addition, according to the analysis submitted by Petitioners, the properties in the CFD boundaries, all of which are owned by Petitioners, will receive special benefits from the infrastructure improvements financed by the CFD.

Section 3. Approval of Petition and Formation of CFD No. 2011-1. Based upon the foregoing findings and conclusions and pursuant to its authority granted under RCW Ch. 36.145, the City Council does hereby approve the Petition for formation of CFD No. 2011-1 and thereby authorizes formation, upon the effective date of this resolution, of CFD No. 2011-1. Subject to the provisions of this resolution, CFD No. 2011-1 is vested with the corporate authority included under Article VII, section 9 of the state constitution to make local improvements by special assessment in accordance with chapter 36.145 RCW, and is further vested with all powers and authority granted to community facilities districts as an independently governed special purpose district pursuant to RCW Ch. 36.145, as now or hereinafter amended, including by way of example and not limitation, the power and authority to make those local improvements set forth in the Petition by special assessment, to issue revenue bonds in accordance with Chapter 39.46 RCW, to issue assessment bonds in accordance with chapter 35.45 RCW, to transfer to the City of Black Diamond without compensation, any property or assets of CFD No. 2011-1, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein.

Section 4. Incorporation of Petition. The Petition is attached hereto as Exhibit “B” and is incorporated as though fully set forth herein by this reference.

Section 5. Conformance with Petition - Limitations. The powers and authority of CFD No. 2011-1 are limited as follows:

A. **District Boundaries.** The District Boundaries are as set forth in Attachment 1 to the Petition.

B. **District Objectives, plan and facilities.** The authority granted to CFD No. 2011-1 is limited to those powers necessary to carry out the specific purposes authorized in chapter 36.145 RCW to carry out the specific objectives, plan and facilities identified in the Petition.

C. **Improvements.** CFD No. 2011-1 is not authorized to fund improvements not included within the scope of those improvements set forth in the Petition. CFD No. 2011-1 may only undertake such lawful projects and activities and engage in acts that are authorized in the Petition and chapter 36.145 RCW.

D. **Assessments.** Except as otherwise expressly provided under chapter 36.145 RCW, special assessment imposed and collected on property within the district may not exceed the amounts set forth in the Petition.

Section 6. No Recourse. CFD No. 2011-1 is not authorized to incur or create any liability that permits recourse by any contracting party or member of the public to or upon any assets, services, or credit of the City of Black Diamond and shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, officers, directors, agents, or employees for any loss or damage arising out of the City’s exercising its authority pursuant to chapter 36.145 RCW other applicable Law to form CFD NO. 2011-1.

Bonds and notes issued by CFD No. 2011-1 may be secured by the full faith and credit of the CFD No. 2011-1 or may be made payable solely out of certain revenues and receipts as may be designated in the proceedings under which the issuance of the bonds and notes are authorized. All bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets or credit of CFD No. 2011-1, and no creditor or other person shall have any recourse to the assets, credit, or services of the City thereby, unless the City shall expressly, in writing, guarantee such bonds or notes.

Section 7. No Waiver. The formation of CFD No. 2011-1, as authorized herein, is not intended, and shall not be construed, as a waiver of any right or authority of the City to require compliance by CFD No. 2011-1 with the City’s regulatory and land use permitting requirements and the City specifically reserves any such statutory and police power authority.

Section 8. Special Benefit – No Warranty. The City does not, by its approval of formation of CFD No. 2011-1, represent or warrant that property within the district boundaries will receive “benefit” or “special benefit” from improvement projects identified in the petition for purposes of the determination of benefit or special benefit required to impose special

assessments on property located inside the district. Such determination is solely within the power and authority of the Board of Supervisors of CFD No. 2011-1 acting on behalf of CFD No 2011-1.

Section 9. Assessment Roll. The City does not by its approval of formation of CFD No. 2011-1 intend, represent or warrant that such approval and formation shall, nor should it be construed to, constitute approval of the computation of the preliminary assessments presented in the Petition, approval of the preliminary assessment roll, or imposition a preliminary assessment upon property within the CFD boundaries. It is the City's sole and singular intent that this resolution shall authorize the formation of the CFD in conformance with the requirements of Chapter 35.145 RCW, and that the CFD, by and through its Board of Supervisors, shall have and retain the sole power and authority granted under Chapter 36.145 RCW to determine the lawful means and methods for computing and imposing assessments, determining the special assessment roll, conducting hearings and hearing objections thereto, approving, correcting, revising raising, lowering, changing or modifying the assessment roll or any part therefore, and imposing special assessments upon property within the boundaries of the CFD.

Section 10. Composition of Board of Supervisors. The City Council shall within sixty (60) days of the effective date of this resolution, meet to nominate and appoint members to the Board of Supervisors of CFD No. 2011-1 (the "Board"). The composition of the Board, its size and numbers, and the term and qualifications for member positions shall conform to the requirements of chapter 36.145 RCW. All appointments shall be confirmed by a vote of a majority of the City Council.

The Board shall have five (5) members and cannot take action until each of the five Board members is duly appointed. Each of the five members must be natural persons. Except as provided below, three (3) of the members shall be appointed from among the members of the City Council (hereafter referred to as "Council Positions") and two (2) of the members shall be appointed from among the petitioner members or nominees identified in the petition (hereinafter "Petitioner Positions"). The City may, in the alternative, appoint up to two qualified professionals with expertise in "municipal finance" in lieu of appointments from among the members of the City Council.

The term of each supervisor position shall be three (3) years. Initial terms are limited to one (1) and two (2) year appointments respectively. Thus, for example, two Council Positions and one Petitioner Position will have a one-year initial term and one Council Position and one Petitioner Position will have a two-year initial term.

All vacancies in a Council Position shall be filled by appointment of a member of the City Council not already serving on the Board or by appointment of a qualified professional. Vacancies in petitioner positions shall be filled by appointment from eligible persons listed in the Petition or from successor owners of property located within the boundaries of the approved district.

Supervisors shall serve without compensation, but may be reimbursed for their expenses as provided in Chapter 36.145 RCW.

A supervisor shall serve for the term designated and until his/her successor shall have been appointed and qualified; provided that, a Council Position filled by a person who is a member of the City Council shall become vacant at such time as the person filling that Council Position is no longer a member of the City Council. Any supervisor may be removed from his or her position by a majority vote of the City Council upon a finding of good cause. Upon removal of a person from a supervisor position, such person shall have no power of office.

Section 11. Organization. Upon appointment of Board members, the City Clerk shall cause notice of the first organizational meeting of the Board of Supervisors to be posted and published in the manner required by law, to be held in the Black Diamond City Council Chambers on the date of the next regular meeting of the City Council following final appointment of the Board members. At such meeting, the Board shall organize itself, nominate and appoint a chair, consider approval of a resolution authorizing an agreement to contract for support services to facilitate the management and administration of the CFD, consider approval of a motion to authorize the Chair to negotiate a cost reimbursement agreement with Petitioner to reimburse the CFD for the costs associated with the management and administration services contract, approve a schedule and location for regular meetings of the Board of Supervisors, and undertake any further actions as determined by the Board. The Board may adopt by-laws and rules and regulations that are consistent with this resolution, the Petition and chapter 36.145 RCW. In the absence of adoption of rules and procedures for the conduct of meetings of the Board of Supervisors, the Board meetings may be conducted in accordance with the most recent edition of *Roberts Rules of Order*.

The Chair, once appointed, shall preside over all meetings of the Board and shall be responsible for administration of all contracts of the Board and oversee the day to day operations of the CFD, under the direction of and in accordance with the policies and procedures of the Board of Supervisors. The Chair shall not be authorized to enter into or execute agreements, or take other action, on behalf of the CFD without prior approval of a majority of the Board of Supervisors by resolution or motion undertaken during an open public meeting.

Section 12. Quorum. Any resolution or motion authorizing or approving an action may only be passed by a vote representing a majority of the members of the Board of Supervisors.

Section 13. Deposit of public funds. All moneys belonging to or collected for the use of the CFD coming into the hands of any officer or supervisor thereof shall immediately be deposited with the treasurer or other legal depository to the credit of the CFD for the benefit of the funds to which they belong.

Section 14. Private use of public funds prohibited. The use of the funds of the CFD for any purpose not authorized by law by any officer or supervisor having the possession or control thereof is prohibited.

Section 15. Establishment and Maintenance of Records. The CFD shall establish and maintain records in accordance with applicable law, with respect to all matters connected with any projects or activities financed from funds derived directly or indirectly from special

assessments levied by the CFD or from bonds issued by the CFD. Except as otherwise provided by state or federal law, the CFD shall retain such records for a period of three years after completion of the project or activity funded.

Section 16. Reports and Information. The CFD, at such times and in such forms as may be required by the City, state law or by the State Auditor, shall furnish the City or such public agencies, such statements, records, reports, data, and information as may be requested pertaining to matters financed from funds derived directly or indirectly from special assessments levied by the CFD or from bonds issued by the CFD.

Section 17. Dissolution of CFD No 2011-1.

A. **Petition for Dissolution.** When all indebtedness of the CFD has been retired and anticipated responsibilities have been satisfied, a majority of the CFD Board of Supervisors, plus one, may voluntarily authorize by resolution the filing of a petition with the City requesting that the Black Diamond City Council dissolve the CFD. The Petition shall be signed and attested to by the Board Chair on behalf of the CFD and shall set forth the factual and legal basis supporting dissolution, which shall include: (1) the name and principal office of the CFD; (2) the debts, obligations and liabilities of the CFD, including any pending litigation or contingent liabilities, and the property and assets available to satisfy the same; (3) the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; (4) the property and assets of the CFD that will be remaining and unencumbered at the time of dissolution and the proposed disposition of said property and assets; (5) provision for retention of records of the CFD for the period established by the State Archivist retention schedule; and, (6) a list of persons, with their mailing addresses, to be notified prior to and upon completion of dissolution. This list shall identify by name and mailing address any persons known or reasonably anticipated to be creditors of the District or persons whose rights or property interests may otherwise be affected by dissolution of the CFD.

The Petition shall include an opinion by general legal counsel for the CFD verifying that the CFD has conducted its reasonable due diligence to ensure that the contents of the petition are true and correct and that the criteria set forth at Subsection D (2) – (4) below of this Section 17 have been satisfied.

The City shall review the petition and oversee the dissolution to protect the public interest and prevent impairment of obligation, or if so authorized or required by law, may authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes.

B. **Notice of Public Hearing.** Unless otherwise provided by law, within ninety (90) days of receipt of the voluntary petition for dissolution, the City Council shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the CFD. This notice shall be in addition to any other notice required by law to be published. The notice shall specify the action to be taken by the City Council pursuant to the petition and the proposed effective date of dissolution. Additional notice of the hearing may be given by mail, by posting within the

proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the City Council authorities shall hear objections from any person affected by the dissolution of the district.

C. Termination. Unless otherwise provided by law, the existence of the CFD may be terminated by the City, either (1) upon entry of judgment of a court of competent jurisdiction that shall have become final, which judgment annuls the existence of the CFD, or prohibits it from conducting all or a major portion of the activities for which it was formed, or permits recourse by creditors of the CFD or other persons to the assets, property, or credit of the City on account of any debts, obligations, or liabilities of the CFD, or (2) by resolution of the City Council upon voluntary petition by the CFD, at or after a public hearing held with notice as set forth above, and after affording a reasonable opportunity for persons affected by the dissolution to be heard and present evidence.

D. Findings. The City Council may not approve termination of the CFD by petition of the CFD, except upon a finding of the following:

1. The CFD has requested the same by resolution in accordance with the requirements herein;
2. The CFD has discontinued or completed its projects and activities for which it was formed;
3. Any and all obligations, bonds, notes, or other contracts of indebtedness of the CFD have been fully satisfied such that such bonds and contracts will not be impaired; and
4. That there is no pending litigation and that there are no pending claims or known contingent liabilities that would materially impaired by dissolution of the CFD.

Upon satisfactory completion of dissolution proceedings, the City Clerk shall give notice thereof to the Secretary of State, and to other persons designated by the CFD in its petition.

E. Disposition of Property and Assets. Upon termination of the existence of the CFD, all of the rights, assets, and property of the CFD shall pass to and be distributed as provided in the CFD petition and otherwise as provided below. Subject thereto, all of the rights, assets and property of the CFD shall be tendered to the entity first listed below, and if not applicable or not accepted, to the next listed entity in succession:

1. To the City;
2. To some other local municipal corporation that performs similar activities or functions for which the assets were acquired or devoted, or which covenants to use the same in a manner to fulfill the purposes of the Federal or Public Programs;

3. To the State of Washington for use in or application upon projects and activities or functions for which the assets were acquired or are devoted, or for accomplishment of purposes of the program involved; or

4. To a corporate fiduciary or other trustee, in trust for or use under the direction of any of the aforesaid entities for the purposes, projects and activities for which the assets were acquired or devoted;

All rights, property, and assets of the CFD upon transfer shall be vested in the entity receiving and accepting the same, together with any appurtenant obligations and liabilities.

Section 18. Open Public Meetings Act. All meetings of the Board of Supervisors shall be subject to the open public meetings act codified at chapter 42.30 RCW, as now or hereafter amended.

Section 19. Public Records. All records of CFD No. 2011-1 shall be subject to the public records act codified at RCW 42.56 RCW, as now or hereafter amended.

Section 20. Competitive Bidding. All public works and procurement contracts shall be subject to the competitive bidding, including without limitation bonding and retainage requirements, and prevailing wage requirements applicable to public corporations under applicable state and federal laws.

Section 21. Severability. Should any section, paragraph, sentence, clause or phrase of this resolution, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances unless the object and purpose of this resolution of materially impaired or such pre-emption, decision or declaration permits recourse against the City contrary to the provisions of Section 6 of this resolution.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS ____ DAY OF
_____, 20____.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Filed with the City Clerk:
Passed by the City Council:
Resolution No.:
Date Posted:

EXHIBIT A

(Notice of Public Hearing)

EXHIBIT B

(Copy of Formation Petition)

**CITY OF BLACK DIAMOND
WASHINGTON**

RESOLUTION NO. 11-779

**A RESOLUTION OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ADOPTING AND AUTHORIZING
EXECUTION OF AN INTERLOCAL AGREEMENT WITH
CFD NO. 2011-1**

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, Black Diamond is a municipal corporation operating under the laws of the state of Washington as a non-charter code city and is authorized to enter into interlocal agreements with other governmental units; and

WHEREAS, upon petition of BD Village Partners, LP, a Washington limited partnership and Yarrow Bay Development, LLC, a Washington limited liability company (collectively "**Petitioner**"), the Black Diamond City Council approved Resolution No. 11-770 (hereinafter the "**CFD Resolution**"), authorizing formation of CFD No. 2011-1 (hereinafter the "**CFD**") pursuant to RCW Ch. 36.145 as an independently governed special purpose district organized created for the purpose of making local improvements by special assessment in accordance with the CFD Resolution and Chapter 36.145 RCW; and

WHEREAS, the CFD is vested with all powers and authority granted to community facilities districts including the power and authority to enter into interlocal agreements pursuant to Chapter 39.34, to transfer property of the CFD to the City of Black Diamond without compensation, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein; and

WHEREAS, upon formation the CFD will require the assistance of the City to facilitate its day to day operations including, by way of example, providing meeting space, preparing and posting CFD public meeting notices, and providing administrative support; and

WHEREAS, the formation of the CFD will provide public benefit to the City of Black Diamond by providing a mechanism to fund the costs of public improvements through special assessments upon benefitted property which public improvements will be constructed by and through the CFD and will ultimately be transferred to the City pursuant to future agreements between the CFD and the City; and

WHEREAS, the City Council finds it in the best interests of the City to enter into an

Interlocal agreement with the CFD for the herein described purposes;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Interlocal Agreement with CFD No. 2011-1. The Mayor of the City of Black Diamond is hereby authorized to execute the Interlocal Agreement with the CFD No. 2011-1 in substantially the form of the Interlocal agreement on file with the City Clerk.

PASSED BY THE CITY COUNCIL AT A SPECIAL MEETING THEREOF ON THE
____ DAY OF _____, 20____.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

Approved as to form:

Chris Bacha
Kenyon Disend, PLLC,
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Resolution No.:
Date Posted:

**FIRST INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BLACK DIAMOND, WASHINGTON, AND
CFD NO. 2011-1**

This Interlocal agreement (the "**First Agreement**") between the City of Black Diamond, Washington ("**Black Diamond**"), and CFD No. 2011-1 ("**CFD**"), each of whom is organized as a Municipal Corporation under the laws of the state of Washington, is dated this ____ day of _____, 20__.

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, Black Diamond is a municipal corporation operating under the laws of the state of Washington as a non-charter code city and is authorized to enter into interlocal agreements with other governmental units; and

WHEREAS, upon petition of BD Village Partners, LP, a Washington limited partnership and Yarrow Bay Development, LLC, a Washington limited liability company (collectively "**Petitioner**"), the Black Diamond City Council approved Resolution No. *** (hereinafter the "**CFD Resolution**"), authorizing formation of CFD No. 2011-1 pursuant to RCW Ch. 36.145 as an independently governed special purpose district organized created for the purpose of making local improvements by special assessment in accordance with the CFD Resolution and Chapter 36.145 RCW; and

WHEREAS, the CFD is vested with all powers and authority granted to community facilities districts including the power and authority to enter into interlocal agreements pursuant to Chapter 39.34, to transfer property of the CFD to the City of Black Diamond without compensation, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein; and

WHEREAS, upon formation the CFD will require the assistance of the City to facilitate its day to day operations including, by way of example, providing meeting space, preparing and posting CFD public meeting notices, and providing administrative support; and

WHEREAS, the formation of the CFD will provide public benefit to the City of Black Diamond by providing a mechanism to fund the costs of public improvements through special assessments upon benefitted property which public improvements will be constructed by and through the CFD and will ultimately be transferred to the City pursuant to future agreements between the CFD and the City; and

WHEREAS the CFD and the City desire to enter into this Interlocal agreement for the herein described purposes;

NOW, THEREFORE, the parties have entered into this Agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by the Interlocal Cooperation Act.

1. Purpose and Interpretation. The CFD is a special purpose district that has been constituted in accordance with state law to provide a source of funding for the construction of public improvements as set forth in the CFD petition, the CFD Resolution and Chapter 36.145 RCW. The CFD has no employees and the members of its Board of Supervisors are either City Council Members serving in an ex officio capacity, municipal finance experts appointed by the City Council, or are nominees designated by Petitioner pursuant to Chapter 36.145 RCW. The CFD is authorized to impose special assessments upon property within the boundaries of the CFD that are benefitted by the public improvements. The public improvements funded by the special assessments and bond proceeds will ultimately be conveyed to the City and will provide special benefit to the property within the district and general benefit to surrounding properties and to the City. In order to make the most efficient use of public monies derived by the District from the special assessments and bond proceeds, to avoid duplication of effort and to coordinate the efforts of the CFD and the City, and to provide for the administration and operation of the CFD, the parties have entered into this First Agreement. The intent of this First Agreement is to put in place the necessary administrative support to provide for the operation and functioning of the day to day activities of the CFD and to provide for the reimbursement of the costs of such administrative support to the City. The Parties envision that future agreements between the CFD and the City may be approved to provide for the transfer of the public improvements to the City and to provide for other services to the CFD that may be necessary from time to time. The Parties further envision that the CFD may in the future enter into service agreements with other parties to supplement or replace some or all of the services being provided to the CFD by the City.

In the event of ambiguity or the need for guidance arises, this agreement shall be interpreted in accordance with the provisions of the CFD Resolution, Chapter 36.145 RCW, and the provisions of the Governmental Accounting Act and RCW 43.09.210, as the foregoing (or any of them) exist or shall hereafter be amended. In the event that any provision of this First Agreement is held to be in conflict with existing state statute or any future amendment thereof, such provisions shall be severable, and the remaining provisions of this agreement shall remain in full force and effect.

2. Obligations of the CFD. The CFD agrees to:

2.1 As soon as reasonably practicable after formation, authorize and approve a cost reimbursement agreement with Petitioner for the reimbursement of the CFD's cost obligations to the City under this First Agreement. Such cost reimbursement agreement shall be consistent with the terms and conditions of this First Agreement.

2.2 Convey to the City of Black Diamond, or other appropriate governmental entities, all future public infrastructure improvements funded by the CFD, free and clear of liens and encumbrances, in accordance with all lawful requirements and regulations applicable thereto and

in accordance with such agreements for conveyance of such public improvements as the parties mutually agree upon.

2.3 Hold public hearings as may be required by law prior to levying any special assessment and shall levy any special assessment only in accordance with applicable law.

2.4. Reimburse the City for its Direct Costs of services provided to the CFD pursuant to Section 4 of this First Agreement.

3. Undertakings of Black Diamond. Black Diamond shall:

3.1 Provide administrative staff and necessary related support to the CFD to the extent necessary to organize the CFD, to prepare and conduct meetings of the Board of Supervisors, and to facilitate in the administration of the day to day affairs of the CFD;

3.2 Provide for use of the City Council chambers for public meetings of the CFD Board of Supervisors and provide for use of other public facilities for CFD meeting space;

3.3 Prepare and post public notice of meetings of the CFD Board of Supervisors as directed by the CFD;

3.4 Act as the custodian of records of the CFD and maintain such records for and on behalf of the CFD for the period established by the State Archivist retention schedule;

3.5 Maintain financial records, kept in accordance with generally accepted accounting practice and governmental accounting requirements, as necessary to document that any and all funding received through the CFD is used only for the purposes authorized in the CFD Resolution and Chapter 36.145 RCW;

3.5 Maintain a webpage accessible through the City of Black Diamond's official Website to provide public information about the CFD and to provide facilitate public access to public records of the CFD and public notices for and on behalf of the CFD;

3.6 Record and maintain an official journal of the minutes of all proceedings public meetings of the CFD Board of Supervisors;

3.7 Assist the CFD in identifying and selecting qualified individuals to provide consulting services to the CFD and Board of Supervisors, including by way of example and not limitation, general legal counsel, bond counsel, public finance administration and accounting, construction management and administration, architectural and engineering firms, construction contractors, and other related professional consulting services;

3.6 Provide for advertising, publishing and mailing of notices required for imposition of special assessments;

3.7 Upon appointment by the CFD as the District Treasurer pursuant to the provisions of Chapter 36.145 RCW, the City of Black Diamond finance director shall act as the district treasurer and shall establish a community facilities district fund into which shall be paid all CFD revenues. The finance director, while acting as district treasurer shall have such authority as district treasurer as provided pursuant to Chapter 35.145 and may create such funds, subfunds, accounts, and subaccounts as set forth therein; and

3.8 Provide such invoices and records to CFD as set forth in Section 4 herein.

4. Reimbursement of Costs.

4.7.1. Petitioner shall pay for all Direct Costs the City incurs prior to the effective date of this Agreement and for the Direct Costs it incurs thereafter reasonably related to the services provided herein that are not already subject to re-imbursement from the Petitioner pursuant to the pre-formation cost re-imbursement agreement.

4.7.2 Within fourteen (14) days of execution of this Agreement, City shall provide Petitioner with a statement identifying the City's reimbursable costs incurred prior to execution of this First Agreement.

4.7.3 Within thirty (30) business days of full execution of this First Agreement, CFD shall deposit with the City the sum of five thousand dollars (\$5,000.00) (the "**Administrative Expenses Fund**"), which the City may draw upon to pay for the Direct Costs authorized for reimbursement by this First Agreement. If the balance of the Administrative Expenses Fund falls below \$1000.00, CFD shall, within thirty (30) days of receipt of written request from the City, deposit such additional amount of money into the Administrative Expenses Fund as the parties agree is reasonably necessary, but no less than \$2500.00, for the continuing reimbursement of Administrative Expenses under this Agreement. CFD shall be entitled to a refund from the City of any unencumbered amounts remaining in the Administrative Expenses Fund within thirty (30) days of termination of this First Agreement.

4.7.4 Upon request of the CFD, the City shall provide an itemized invoice detailing the Direct Costs of services provided to the CFD within fourteen (14) days of such request. Upon request of the CFD, City will provide CFD with a written statement of the balance of the Administrative Expenses Fund within fourteen (14) days of such request.

4.7.5. Any time CFD disputes an invoice, receipt, deposit or reimbursement request from the City, CFD shall make such disputed deposit in a timely manner, under protest, to the City according to the timeframes set forth in this Agreement. Following resolution of the dispute per the processes set forth in Paragraph 5, the City shall refund any over payment to CFD within thirty (30) days of final resolution. Nothing in this subsection (d) shall be construed as limiting CFD's ability to terminate this Agreement pursuant to the provisions of Paragraph 9.

4.7.6 "Direct Costs" shall mean and include all costs and expenses to the City directly related to the services provided under this First Agreement to include, without limitation:

4.7.6.1 All costs and expenses of materials, equipment, supplies, utilities, consumables, goods, bonds and other items used or incorporated in connection with and in furtherance of this First Agreement and any taxes, insurance, and interest expenses related thereto, including activity pricing for crews and equipment;

4.7.6.2 All costs and expenses of labor inclusive of payroll benefits, non productive time and overhead for each of the labor classifications of the employees providing services and determined in accordance with the City's normal accounting procedures; and

4.7.6.3 All cost and expenses to the City for any work by consultants or contractors providing services to the CFD under this First Agreement.

5. Dispute Resolution. The parties shall apply their best efforts to fairly resolve any disputes that may arise in regard to implementation of this First Agreement. In the event the parties cannot agree on terms for resolving a dispute within twenty-one (21) days, they may mutually select a neutral third party to help facilitate such resolution. If resolution cannot be reached within fourteen (14) days, they may agree to a schedule and process for continued efforts to resolve the dispute. Neither party shall file a lawsuit in court until they have completed at least one formal session of mediation or other alternative dispute resolution process.

6. Ownership. No joint property ownership is contemplated under the terms of this agreement.

7. No Joint Board. No provision is made for a joint board. The CFD shall exercise its function in accordance with the CFD Resolution (as the same exists or may hereafter be amended), using staff as provided by the City of Black Diamond, pursuant to this First Agreement, or using staff, consultants and services otherwise contracted for by the CFD.

8. Insurance; Indemnity.

8.1 The parties agree to participate in the Cities Insurance Authority of Washington ("CIAW") insurance pool in accord with their respective interlocal agreements with the AWC. The original charge or premium for the CFD will be borne by Black Diamond as a cost to be covered under Section 4 and shall be reimbursed with funds received from or through the CFD. In the event that either or both cease to participate in the CIAW pool, the party or parties agree to obtain comparable coverage.

8.2 The CFD agrees to indemnify, defend and hold harmless Black Diamond, its officers, agents and employees from any from and against any and all claims, losses, damages, liabilities, actions, judgments or execution of third parties of any kind or nature whatsoever, whether at law or in equity, including, but not limited to, reasonable attorney's fees and court costs, arising out of, relating to, resulting from, or arising out of the activities of the CFD, except to the extent the same is caused by the negligence of the City or other person to be indemnified under this Section.

9. Termination. This agreement shall terminate or expire as follows:

9.1 This agreement may be terminated by either party upon the provision of thirty (30) calendar days notice. A final reconciliation of costs, payment, and a current report of completed activities shall be completed by Black Diamond within such period following the notice by either party.

9.2 Unless sooner terminated by either party, this agreement shall expire on the date when the CFD is dissolved in accordance with provisions of the CFD Resolution or Chapter 36.145 RCW or other applicable law, as the same exists or is hereafter amended.

10. Effective Date. This First Agreement shall be posted by subject on the City of Black Diamond' website or other electronically retrievable public source as required by RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

CITY OF BLACK DIAMOND:

CFD NO. 2001-1:

Rebecca Olness, Mayor

_____, Chair

ATTEST

Brenda Martinez, City Clerk

APPROVED AS TO FORM

Chris Bacha
Kenyon Disend, PLLC,
City Attorney

**CFD NO. 2011-1
WASHINGTON**

RESOLUTION NO. 20-1**

**A RESOLUTION OF CFD NO. 2011-1, ADOPTING AND
AUTHORIZING EXECUTION OF AN INTERLOCAL
AGREEMENT WITH THE CITY OF BLACK DIAMOND
AND THE CIAW FOR THE PROVISION OF SERVICES
AND INSURANCE**

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, the CFD is an independently governed special purpose district vested with the authority pursuant to RCW 36.145.090(2)(j) to enter into agreements with any municipal corporation; and

WHEREAS, Black Diamond is a municipal corporation operating under the laws of the state of Washington as a non-charter code city and is authorized to enter into interlocal agreements with other governmental units; and

WHEREAS, the CFD requires the assistance of the City to facilitate its day to day operations including, by way of example, providing meeting space, preparing and posting CFD public meeting notices, and providing administrative support; and

WHEREAS, the City is willing to enter into an interlocal agreement with the CFD No. 2011-1 to provide such services; and

WHEREAS, the Governing Board of Supervisors of the CFD finds it in the best interests of the CFD to enter into such an agreement with the City and to become a member of the Cities Insurance Authority of Washington insurance pool;

NOW, THEREFORE, the CFD No. 2011-1 Board of Supervisors does hereby resolve as follows:

Section 1. Participation in the Cities Insurance Authority of Washington Insurance Pool. The CFD shall join the Cities Insurance Authority of Washington ("CIAW") insurance pool or such equivalent insurance pool. The Chair of the Governing Board of Supervisors of the CFD is hereby authorized to execute the interlocal agreement between the CIAW and the CFD.

Section 2. Interlocal Agreement with the City of Orting. The Chair of the CFD's Governing Board of Supervisors is hereby authorized to execute the Interlocal Agreement with the City of Orting in substantially the form of the interlocal agreement on file with the Black Diamond City Clerk and approved by the Black Diamond City Council.

PASSED BY THE BOARD AT A SPECIAL MEETING THEREOF ON THE ____ DAY
OF ____, 20__.

CFD NO. 2011-1

_____, Chair

ATTEST/AUTHENTICATED:

_____, Clerk

MEMORANDUM

TO: Chris Bacha, City Attorney
City of Black Diamond

FROM: Jay A. Reich

DATE: May 24, 2012

SUBJECT: City Liability and CFD Formation

I. Introduction and Summary Answer

You have asked us to review the potential liability of the City of Black Diamond (the “City”) arising from its establishment of a community facilities district (“CFD”) pursuant to Chapter 36.15 RCW (the “Statute”) and what actions the City could take (or refrain from taking) to mitigate any such risks. We conclude that the Statute outlines a clear path for the City to create a CFD and subsequently for the CFD to finance public improvements through property assessments. While there is no case law interpreting the provisions of the Statute, as long as the City exercises the discretion set forth in the Statute in an appropriate, nondiscriminatory manner and allows the CFD to exercise the authority set forth for it under the Statute, there is little risk of liability to the City. The City should be mindful of challenges that could potentially be brought against the City with regard to formation of the CFD and the development and financing of improvements by the CFD, but the likelihood of a successful challenge imposing unanticipated liability on the City should be remote.

II. Statutory Provisions

The Statute provides for the establishment of a CFD “to facilitate voluntary landowner financing of community facilities and local, subregional, and regional infrastructure.” RCW 36.145.005(4). It thus provides an alternative to a traditional local improvement district financing, in that there is no city guarantee fund to secure payments of assessments and it establishes a separate, independently governed, special purpose district with landowner representation to implement the development and financing of the public improvements. While the city conducts a public hearing on the petition from landowners to form a CFD and must make three specific findings of fact to create a CFD, it is the CFD itself that once constituted provides for the acquisition, construction and financing of the facilities, establishes the assessment methodology and levies the assessments.

Upon filing of a petition purporting to meet the requirements of the Statute (the "Petition") with the county auditor, the auditor is obligated to confirm whether the Petition has been validly executed by all of the owners of the property located within the proposed district. RCW 36.145.020(2). If the Petition is found sufficient as to its execution, the auditor transmits the Petition to the city and the city must hold a properly noticed public hearing within 60 days. RCW 36.145.030. The city will receive evidence it deems material that supports or opposes the formation of the district presumably including evidence that the Petition meets the requirement of the Statute. RCW 36.145.050. The city may ultimately approve formation of a CFD upon passage of a resolution conforming to the terms and conditions contained in the Petition and finding that: (a) the petitioners will benefit from the proposed district; (b) the formation of the district will be in the best interest of the city; and (c) the formation of the district is consistent with the requirements of the Growth Management Act. RCW 36.145.060. This final decision of the city to approve a petition for formation of a CFD may be appealed to the Superior Court of the applicable county. However, if no appeal is filed within thirty days from passage of the resolution, the city's decision is deemed valid, complete and final and the terms and conditions of the approved petition cannot be subsequently challenged or questioned. RCW 36.145.070.

III. Discussion

The Statute essentially has two parts, one outlining the process for establishing a CFD by the City and the other outlining the authority of a CFD to proceed with the development and financing of the public improvements proposed in the petition. The primary role for the City is to hold a public hearing on the formation of the CFD pursuant to a Petition and then to consider passage of a resolution making the three requisite findings to establish the CFD. The City's decision to establish a CFD is a legislative decision and as such the City has the authority to reject the Petition and the petitioners have no right to have a CFD formed. However, the authority of the City to reject a Petition is probably not without some bounds since the Statute has a limited purpose to provide a means to facilitate landowner financing of public improvements and the threshold for approval is set forth in the Statute in the form of three requisite findings. In the absence of case law interpreting the scope of this legislative authority, and in particular what was intended by formation being "in the best interest" of the City, it is difficult to establish specific boundaries for the City's discretion. However, it is likely that the City's consideration should be grounded in the scope of the proposed improvements and their financing to avoid a claim that the rejection of a Petition was an improper collateral attack on land use approvals and development regulations that may already be guiding decisions regarding the proposed development served by the improvements. For example, if a Petition identified a list of improvements but the assessment amount included in the Petition assumed that the City would finance a portion of those improvements, the City might conclude that the CFD as proposed is not in the best interest of the City and suggest a re-scoping of the improvements or assessment amount. On the other hand, the City cannot limit or condition the authority of the

CFD it forms, since the CFD is “independently governed” by “a board of supervisors.” RCW 36.145.090(1); RCW 36.145.080(1). Once the CFD is formed, the City’s discretion and responsibility with regard to the development and financing of the improvements through assessments largely ends.

Upon the termination of the appeal period, the role of the City in forming the CFD is complete, and it is the responsibility of the CFD to approve the projects and their financing, including the levying of assessments on specially benefitted property within the CFD. The board of supervisors of the CFD may determine that the actual costs of the improvements contained in the Petition exceed the amount of assessments set forth in the Petition, or certain improvements have become impractical or impossible. The consequences of these determinations, e.g. proceeding with some but not all of the improvements or phasing implementation, would presumably be within the discretion of the CFD consistent with the Petition upon which the CFD that was approved by the City was based. The Statute provides that the Petition may be amended by one hundred percent of the property owners within the proposed district, but it is not clear whether this amendment can be accomplished after formation. RCW 36.145.020.

It is important to note that the City retains all of its police powers with regard to land use and health and safety regulation, but this role would be the same if the improvements were privately constructed and financed without any City or CFD involvement. The CFD may contract with the City pursuant to the Statute to assist the CFD in carrying out the purposes of the Statute, but the scope of such contracts and the risks associated with them depend on the content of the contracts. RCW 36.145.090(2)(j). For example, the City could agree to supervise construction of improvements and acquire title to them, but the terms and conditions of such contracts between the City and the CFD, including allocating risk and requiring insurance, would need to be negotiated and addressed in the contracts. Clearly any challenges to the assessments would be addressed to the CFD. In addition any liability arising from construction of the improvements themselves would be the responsibility of the parties actually performing the work.

The critical point is that the liabilities of the CFD are not liabilities of the City absent some contractual arrangement under which the City agrees to assume liability. Most clearly, the bonds of the CFD issued to finance the improvements are not a debt or liability of the City unless the City, independent of the statute, agrees to provide additional security to help market the bonds. The Statute is explicit in this regard at RCW 36.145.130: “No bonds issued by or on behalf of a community facilities district are obligations of any city, town, county, or the state of Washington or any political subdivision thereof other than the district and the bonds shall so state.” There is no foreseeable need for the City to lend any credit support to the bonds of the CFD since it will be the credit of the landowners secured by the assessment liens that will be pledged to payment of the bonds.

The fact that the City appoints the members of the board of supervisors of the CFD or the fact that a majority of such board may also be members of the City Council should not in and of itself expose the City to liability. When City Councilmembers act in their capacity as members of the board of supervisors, they will need to comply with the responsibilities of such board including being subject to the Open Public Meetings Act. The Statute clearly contemplates Councilmembers acting as members of the board of supervisors, and there is no inherent conflict in those roles given the respective responsibilities of Councilmembers and members of the board of supervisors as set forth in the Statute. If the City through its Council were to assume the powers to be performed pursuant to Statute by the CFD, however, then the City might expose itself to the liabilities that the CFD would be exposed to, e.g. challenges to assessments or failure to abide by contracts where the CFD is a party. This risk should be reasonably mitigated by limiting the City role to the functions set forth in the Statute, allowing the CFD to perform the roles it has been clearly delegated and establishing procedures to insure that the two governing bodies are acting independently. Each member of the Council and the board, and particularly those who serve on both governing bodies, should be clear on where those responsibilities are located. Assuming that the City follows the direction of the Statute and does not impose its will on the independent CFD, then the actions of the CFD should not impose liability on the City.

IV. Conclusion

The Statute sets forth the responsibilities of the City in the formation of a CFD and the responsibilities of the CFD in the development and financing of improvements as contemplated by a Petition. On its face the Statute clearly distinguishes the roles of these two entities, though there is no case law that interprets the exact boundaries of these roles. The City Councilmembers and the members of the board of supervisors of the CFD need to understand that these roles are inherently limited by the purpose of the Statute, and each body must maintain these distinct roles to limit any exposure to liability arising from the action of the other on the theory that one is acting as the other's alter ego. So long as this fundamental principal of limited and distinct roles remains clear – including separate counsel, separate meetings, separate accounting - the risk of liability arising from role confusion should be remote.