

City Update

For weeks ending: April 25 and May 2

City Council	Mayor & City Administrator
<p><u>Position 1:</u> Deady No report.</p> <p><u>Position 2:</u> Morgan Apr 26 – BD Library Time (met with two citizens) May 3 – BD Library Time (met with three citizens)</p> <p><u>Position 3:</u> Edelman No report.</p> <p><u>Position 4:</u> Benson Apr 22 – Attended special finance committee mtg Apr 23 – Attended SE King County Transportation mtg Apr 24 – Attended Finance Committee mtg May 2 – Attended Public Works Committee mtg</p> <p><u>Position 5:</u> Taylor No report.</p>	<p><u>Mayor's Activities</u></p> <p><u>City Administrator's Activities</u></p>

Council Commissions, Boards & Committees

- Budget, Finance and Administration Committee. Meeting date: Next meeting: May 8, 2014 and May 22, 2014
Meeting time: 4:00 PM Staff support: May Miller.
- Planning and Community Service Committee. Meeting date: No meeting. (Meets the first Wednesday of the month.) Meeting time: 1:30. Staff support: Stacey Welsh.
- Cemetery and Parks Committee. Meeting date: January 9, 2014. Meeting time: 10:00 AM. Staff support: Aaron Nix.
- Public Works Committee. Meeting date: _____, 2014. Meeting time: _____. Staff support: Seth Boettcher.
- Public Safety Committee. Meeting date: _____, 2014. Meeting time: _____. Staff support: Chief Kiblinger.

Community Development Activities

- Performed 35 inspections
- Received applications for: 1 mechanical permit, 1 commercial alteration, 1 single family addition, 1 single family alteration, 1 code enforcement case, 1 Shoreline Exemption and 1 accessory building permit.
- Completed 4 permit reviews

Planning Commission:

- Special Meeting held 4-29-14, public hearing on Bryant PBRS application.

	2014	2013
Pre-application Conferences Held	1	7
Preliminary Plats Approved	0	0
(Number of Residential Lots)	-	-
Multi-family units approved	0	0
New Single Family Residential Permits Issued	2	8
New Commercial Square Footage Approved	0	0
Tenant Improvement Permits Issued	1	3
Sign Permits Issued	0	2
Public Hearings Held	1	1

Status of Active Capital Improvement Projects

Springs Project: Reviewed the Springs Alternatives Analysis with the Water Supply Facility Funding Agreement Partners. Administration has reviewed the Study and a recommendation is now moving forward to the Public Works Committee. Next steps are a design contract and call letter to the funding partners for the next phase of design

Old Lawson Pump Station: Permitting and preparations are being made for installation week of April 30th

Abrams Guard Rail: The design and bid documents are 90%. The State Environmental Protection Act checklist was submitted 2/12/14. Letters from the Army Corp and Fish and Wildlife state that the project is exempt from their permit requirements. The timing of the project will be discussed further at the Public Works Committee of the Council.

½ Mil Tank Painting: Council approved a contract with RH2 on February 6th, 2014. Base flow data relayed to RH2. Fire flow test was run on Botts Drive.

Old Sewer Lagoon Decommissioning: Met with Department of Ecology to review reclamation ideas. Preliminary Reclamation plan has been submitted to the Department of Ecology and additional forms, testing and details requested.

Reflective Sign Installation: Installation at 100%. The last sign shipment has just come in.

Downtown Water Main Project: This project is in the environmental review process administered directly by King County Development Block Grant administration staff. A grant agreement is expected to be delivered to the City for the project in July.

Roberts Drive Reconstruction at Rock Creek Bridge: General information discussed at 2/10/14 Public Works committee meeting. Meeting was held with Yarrow Bay for coordination of survey information and coordination of utility crossings. Additional time is needed to make utility decisions but without delaying a June 2015 construction start.

Lawson Street Sidewalk Project: Preliminary design is under review. Staff is expecting to bid the project in June. The Public Works Committee will review the status in more detail at the May 2nd committee meeting

SR 169 / North Commercial Storm Pond (D2): Contract with Parametrix approved by Council on February 6th, 2014. Parametrix contract is on hold until the Landau wetland study is complete. The Landau report is expected very soon.

Morganville Sewer Pump Station Reconstruction: New pumps are on order.

Council Chambers Remodel: Staff is preparing an itemized project budget

CIP Project #Ginder Creek Trail (P2): Staff met the consultant out onsite on Wednesday, April 23, 2014 as they began field work on identifying the wetland and stream corridor edges. The initial, draft report will be completed by the end of April, with the final report due to City staff by May 15, 2014. The draft report will be shared with the Parks/Cemetery Committee for their May 15, 2014 meeting.

General Administrative Activities

- Pet licenses issued: _3____; _23____ year-to-date; website updates 18; 119 year-to-date; ; Business licenses issued: 3; 334 year-to-date; passports processed _37_; _360____ year-to-date. Lake Sawyer parking permits issued: 1 ; 8 .
- Received submittals from _____ for _____ services.
- Other:

Events on the Horizon

- See City calendar at <http://www.ci.blackdiamond.wa.us/calendar.html>
- See Maple Valley Black Diamond Chamber of Commerce calendar at <http://www.maplevalleychamber.org/schedule/calendar/maple-valley-featured-events>
- See Enumclaw School District calendar at: www.enumclaw.wednet.edu
- See Black Diamond Historical Society calendar at <http://www.blackdiamondmuseum.org/calendar.htm>
- See Black Diamond Community Center calendar at <http://www.blackdiamondcc.org/community/community.html>

Adopted Council 2013 Priorities

W2 – Reservoir Painting & Maintenance
10-year plan for asbestos pipe replacement
D2 – North Commercial & State Route 169 Stormwater Pond Design
P2 – Ginder Creek Trail Restoration
F1 & F2 – Fire Engine Replacement
T6 – Rock Creek Bridge
L3 – Police Radio Replacement



CITY OF BLACK DIAMOND
May 15, 2014 Regular Business Meeting Agenda - Revised
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PRESENTATIONS:

Lake Sawyer Community Club; Lake Sawyer Park Foundation

PUBLIC HEARINGS:

- 1) **AB14-046** – Resolution Regarding Bryant Public Benefit Rating System (PBRs) Ms. Welsh

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

UNFINISHED BUSINESS:

NEW BUSINESS:

- 2) **AB14-047**– Ordinance Relating to the Authority of the Planning Commission and amending Black Diamond Municipal Code 2.24.020 Ms. Morris
- 3) **AB14-048** – Resolution Accepting Required and Recommended Changes to Shoreline Master Program Mr. Nix
- 4) **AB14-049** – Resolution Authorizing the Mayor to Execute a Public Works Trust Fund Loan Application Mr. Boettcher
- 5) **AB14-050** – Resolution Revising Council Rules of Procedures in its Entirety Councilmember Edelman
- 9) **AB14-051** – Resolution Approving Second Addendum with Ogden, Murphy, Wallace Ms. Morris

DEPARTMENT REPORTS:

MAYOR’S REPORT:

COUNCIL REPORTS:

A. Council Standing Committees

- Budget, Finance, Administration Committee – Councilmember Benson, Chair
- Planning and Community Service Committee – Councilmember Edelman, Chair
- Public Safety Committee – Councilmember Taylor, Chair
- Cemetery and Parks Committee – Councilmember Dedy, Chair
- Public Works Committee – Councilmember Taylor, Chair

B. Regional Committees

- Public Issues Committee (PIC) – Councilmember Edelman
- Growth Management Planning Council (GMPC) – Councilmember Deady
- Water Resource Inventory Area Committee (WRIA 9) – Councilmember Morgan
- South County Area Transportation Board SCATBd) – Councilmember Benson
- South East Area Transportation Solutions (SEATS) Coalition – Councilmember Benson
- Mental Illness and Drug Dependency Oversight Committee – Councilmember Benson

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 6) **Claim Checks** – May 15, 2014, No. 40891 through No. 40948 in the amount of \$396,772.75
- 7) **Payroll Checks** – April 30, 2014, No. 18304 through No. 18325(18305 void) and ACH Pay in the amount of \$270,829.43
- 8) **Minutes** – Council Minutes of May 1, 2014

EXECUTIVE SESSION: To discuss with special legal counsel potential litigation to which the city and/or an officer acting in an official capacity is likely to become a party is requested pursuant to the authority of RCW 42.30.110(1)(i). “Litigation” includes the “legal risks of a proposed action” pursuant to RCW 42.30.110(1)(i)(C) and also to discuss with the City Attorney potential litigation on another matter. There will be no action taken following the session.

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: PUBLIC HEARING -- Bryant Public Benefit Rating System Application, to consider an application for classification and real property assessment under Current Use Assessment Statute RCW 84.34. Resolution No. 14-945, authorizing the City Council to approve the Bryant Public Benefit Rating System Application PLN14-0001	Agenda Date: May 15, 2014	
	AB14-046	
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	X
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Cost Impact (see also Fiscal Note):	Parks/Natural Resources – Aaron Nix
Fund Source:	Police – Chief Kiblinger	
Timeline: King County Council action in June	Public Works – Seth Boettcher	
	Court Administrator – Stephanie Metcalf	
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
Attachments: Public Hearing Notice, Resolution No. 14-945, Bryant PBRS Application, King County Staff Report, King County aerial photo, Comp Plan page 5-7, tax information spreadsheet, RCW 84.34.037, comment letters, Planning Commission staff memos (March 5, April 4, April 23, April 28)		
SUMMARY STATEMENT: This item came to the City from King County, the Bryant PBRS (Public Benefit Rating System) Application (King County file no. #E13CT042BD/City file no. PLN14-0001). Mr. Bryant has filed an application with King County for a property tax reduction which also requires consideration by the Black Diamond City Council per RCW 84.34.037. The Council is required to conduct a public hearing on the application by Darrell Bryant for property located at 25022 Roberts Drive, Black Diamond, WA 98010; Section Township Range: NW-14-21-06, SW-11-21-06, NE-15-21-06; SIZE: 57.77 acres; REQUEST: Public Benefit Rating System; Tax parcels #112106-9104, 112106-9037, 152106-9052, 152106-9058, 152106-9060, 142106-9006. The Planning Commission conducted a public hearing on April 29, 2014 and recommends to the City Council approval of the application. Staff from King County will be in attendance to provide their recommendation regarding the properties' eligibility for the program. The City Council is to consider the application with regard to RCW 84.34.037(2). The PBRS application involves Council action and is the subject of the Resolution. The King County Council will hold a hearing on the application in June 2014. Both granting authorities must act on the application by July 1, 2014 in order for the reduction to take effect for the 2015 tax year. If it is the Council's desire to act at the May 15 th meeting, a Resolution is prepared. In the alternative, staff is ready to receive Council direction to bring this Resolution back for action on another date and/or		

prepare a different Resolution.

FISCAL NOTE (Finance Department): King County sets values and Property Tax rates vary from year to year. King County has estimated an 80% reduction in land value due to the application. This may result in a reduction in the Black Diamond portion of Property Tax of approximately \$2,300 a year for the Bryant reclassification.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: **Discussion by the Planning & Community Services Committee at their May 8, 2014 meeting.**

RECOMMENDED ACTION: **Conduct the public hearing.** (Possible:) **MOTION to approve Resolution 14-945, authorizing the City Council to approve the Bryant Public Benefit Rating System Application PLN14-0001.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 15, 2014		

RESOLUTION NO. 14-945

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE CITY COUNCIL TO APPROVE THE
BRYANT PUBLIC BENEFIT RATING SYSTEM
APPLICATION PLN14-0001**

WHEREAS, Darrell Bryant submitted an application with King County for the Public Benefit Rating System; and

WHEREAS, evaluation and recommendation is required by the City Council per RCW 84.34.037; and

WHEREAS, the Planning Commission conducted a public hearing on April 29, 2014, and made a recommendation of approval to the City Council; and

WHEREAS, the City Council conducted a public hearing on May 15, 2014; and

WHEREAS, King County staff recommends approval subject to conditions;

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

Section 1. The Mayor is hereby authorized to execute the approval of Public Benefit Rating System application PLN14-0001.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15th DAY OF MAY, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND
NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Black Diamond City Council will be conducting a public hearing on the Bryant Public Benefit Rating System (PBRs) Application. The hearing will take place on Thursday, May 15, 2014 at 7:00 p.m. at the Black Diamond City Council Chambers, 25510 Lawson Street, Black Diamond, WA. The purpose of the Hearing is to consider an application for classification and real property assessment under Current Use Assessment Statute RCW 84.34, listed hereafter;

E13CT042BD/PLN14-0001 – Application by Darrell Bryant for property located at 25022 Roberts Drive, Black Diamond, WA 98010; STR: NW-14-21-06, SW-11-21-06, NE-15-21-06; SIZE: 57.77 acres; REQUEST: Public Benefit Rating System; Tax Parcel#112106-9104, 112106-9037, 152106-9052, 152106-9058, 152106-9060, 142106-9006.

Written comments may be submitted to the Clerk's office at 24301 Roberts Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on May 15, 2014, otherwise they must be submitted at the hearing. Information is also available on the City's website www.ci.blackdiamond.wa.us under "Public Notices". For further information, contact Stacey Welsh, Community Development Director, (360) 886-5700 or swelsh@ci.blackdiamond.wa.us.

Dated this 22nd day of April, 2014
Brenda L. Martinez
City Clerk

Stacey Welsh

From: Aaron Nix
Sent: Thursday, May 01, 2014 3:35 PM
To: Craig Goodwin; G Bort
Cc: Erika Morgan; Stacey Welsh
Subject: RE: TestimonyBryantPropertyOpenSpace

Thank you all. I'm forwarding onto our CD Director. She has stated that this will be included and/or made part of the public hearing/record with regard to this issue.

Best,

Aaron Nix

City of Black Diamond
360.886.5700 Office
anix@ci.blackdiamond.wa.us

◆ | Please consider the environment before printing

NOTICE OF PUBLIC DISCLOSURE: This e-mail is public domain. Any correspondence from or to this e-mail account may be a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

From: Craig Goodwin [<mailto:craig.goodwin99@gmail.com>]
Sent: Thursday, May 01, 2014 3:22 PM
To: G Bort
Cc: Aaron Nix; Erika Morgan
Subject: Re: TestimonyBryantPropertyOpenSpace

Mr. Nix - Thanks much for including me on the communication of this important matter. May it be recorded that I fully support Mr. Bryant's application for open space according to his application dated April 29, 2004. Should you require more information, please let me know. Thank you.
Craig

On Thu, May 1, 2014 at 8:59 AM, G Bort <gbortles@gmail.com> wrote:
Mr Nix and Councilwoman Morgan,

Attached FYI is testimony in favor of open space request of Mr. Bryant under Public Benefit Rating System.
Gil Bortleson



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

MEMORANDUM

Date: March 5, 2014
To: Planning Commission
From: Stacey Welsh, Community Development Director
Re: Worksession on the Public Benefit Rating System (Bryant Application)

This is an item that is new to the Commission. According to materials provided by King County, "the Public Benefit Rating System (PBRs) offers an incentive to preserve open space on private property in King County by providing a tax reduction. A participating property is assessed at a "current use" value, which is lower than the "highest and best use" assessment value that would otherwise apply to the property."

Mr. Darrell Bryant has filed an application with King County for a tax reduction which also requires consideration by the Black Diamond City Council per RCW 84.34.037(1), since the property is within the city limits and not unincorporated King County.

The Bryant PBRs application must be processed in the same manner in which an amendment to the City's Comprehensive Plan is processed. It does not have to be done in the normal June-December annual amendment cycle timeframe, and it is not an actual Comprehensive Plan Amendment. It is just the Comprehensive Plan Amendment *process* that must be followed, which involves taking the PBRs application to the Planning Commission and having a public hearing with required notification. The Planning Commission then makes a recommendation to the City Council, who in turn holds a hearing and makes a final decision for the City on the PBRs application. At that point, things proceed through the PBRs process for a hearing and decision by the King County Council.

The reason the PBRs application must be processed in this way is because the Bryant property is specifically discussed in the City's Comprehensive Plan. In 2012, at the owner's request, text was added to the Comprehensive Plan to address the existing airstrip and future expansion plans.

At this time, staff is asking the Commission to review the application materials and provide staff with any questions you have. Both King County (and City) staff will be present at next month's meeting and can provide responses to questions at that time.

Next steps

Staff recommends the item proceed to public hearing for your April meeting.



**CITY OF BLACK DIAMOND
PLANNING COMMISSION**
25510 Lawson Street, Black Diamond, Washington

MEMORANDUM

Date: April 4, 2014
To: Planning Commission
From: Stacey Welsh, Community Development Director
Re: Worksession on the Public Benefit Rating System (Bryant Application)

This is a follow up worksession to the one conducted at your March meeting. At your last meeting, the Commission reviewed the Bryant PBRs application materials and provided staff with questions. Responses to the questions were obtained primarily from King County staff and are listed below:

- 1) What is the minimum acreage required to be included in the PBRs program?
 - a. *There is no minimum, although many resource categories do have acreage requirements for credit to be awarded.*
- 2) What are the zoning and Comprehensive Plan designations of the properties?

Parcel	Zoning	Comp Plan
1121069104	Community Commercial	Community Commercial
1121069037	Community Commercial	Community Commercial
1521069052	Medium Density Residential & Neighborhood Center	Medium Density Residential & Neighborhood Commercial
1521069058	Neighborhood Center	Neighborhood Commercial
1521069060	Neighborhood Center	Neighborhood Commercial
1421069006	Medium Density Residential	Medium Density Residential

- 3) What is the financial impact of pulling out of the PBRs program early?
 - a. *Remember, there is no 'end date' to enrollment but there are financial impacts for a landowner to consider if the property (or a portion of) is ever withdrawn or removed from the program. They are as follows:
Participation in PBRs begins with the recording of an open space agreement signed by the land owner(s) and King County. There is no set end date to a property's enrollment in the program. However, if a change of use occurs on the enrolled land that disqualifies it or a participant no longer wishes to take part in the program, all or a portion of enrolled area of the property can be removed or withdrawn. In this case, the owner would be responsible for paying a compensating tax, which is calculated by determining the difference between the amount of tax paid as open space and the amount that would have been paid for*

those years had the land not been in the program (the savings) for up to a maximum of seven years, plus interest and a 20% penalty. If the land has been in the program for ten years or more and the owner has given two years written notice of withdrawal to the Dept. of Assessments, the 20% penalty is excused.

- 4) For open space properties, please explain what other programs there are to reduce a tax bill.
 - a. There are four Current Use Taxation Programs in King County:
 - i. **The Public Benefit Rating System (PBRs)**: PBRs enrollment and associated tax savings are based on a point system. Points are awarded for each PBRs resource category a property qualifies for (such as protecting buffers to streams and wetlands, ground water protection, preserving significant wildlife habitat, conserving farmland and native forestland, preserving historic landmarks and more). The total points awarded for a property's PBRs resources translate into a 50% to 90% reduction in the land assessed value for the portion of the property enrolled.
 - ii. **Timber Land**: program enrollment requires a property have between five and twenty acres of manageable forestland, and be zoned RA, F or A. Land participating in this program must be devoted primarily to the growth, harvest, and management of forest crops for commercial purposes and must be managed according to an approved forest stewardship plan.
 - iii. **Farm and Agricultural Land**: for land used for the production of livestock or agricultural commodities for commercial purposes. There are financial requirements for enrollment, which are dependent on the size of the land and the gross annual revenue received for the land for three out of the past five years (please refer to RCW **84.34.020** for more details).
 - iv. **Forestland**: this program is similar to Timber Land but is for property containing more than twenty acres of eligible forestland primarily devoted to the growth and harvest of timber (please refer to RCW **84.33** and the Washington State Department of Revenue's **Designated Forestland publication** for more details). Wendy Morse at the Dept. of Assessments administers the farm and Forestland programs – 206-263-2374.
- 5) What is the difference between the forestland program and PBRs?
 - a. See the response to question #4, above.
- 6) On what date did parcel #9006 enter the forestland program?
 - a. 2/10/1981, King County recording number for agreement: 198103030319.
- 7) How many other cities have this sort of taxation within their city limits?
 - a. Almost all. Most come from the City of Seattle. The Bryant application is one of five city applications this year alone (other cities being Redmond, Kirkland, Newcastle and Carnation).

Next steps

This Bryant application is scheduled for a public hearing at your Special Meeting on April 29th. Both King County and City staff will be present at the public hearing. King County staff will present their recommendation on the application and can provide responses to any additional questions at that time.



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

MEMORANDUM

Date: April 23, 2014
To: Planning Commission
From: Stacey Welsh, Community Development Director
Re: Public Hearing on the Public Benefit Rating System (Bryant Application)

The Commission has conducted two work sessions on the Bryant PBRs Application. The application is scheduled for a public hearing at the Special Meeting on April 29th. Both King County and City staff will be present at the public hearing. King County staff will present their staff recommendation on the application and City staff will present information as well.

Mr. Darrell Bryant has filed an application with King County for a tax reduction which also requires consideration by the Black Diamond City Council per RCW 84.34.037(1), since the property is within the city limits and not unincorporated King County.

The Bryant PBRs application must be processed in the same manner in which an amendment to the City's Comprehensive Plan is processed. It does not have to be done in the normal June-December annual amendment cycle timeframe, and it is not an actual Comprehensive Plan Amendment. It is just the Comprehensive Plan Amendment *process* that must be followed, which involves taking the PBRs application to the Planning Commission and having a public hearing with required notification. The Planning Commission then makes a recommendation to the City Council, who in turn holds a hearing and makes a final decision for the City on the PBRs application. At that point, things proceed through the PBRs process for a hearing and decision by the King County Council.

The reason the PBRs application must be processed in this way is because the Bryant property is specifically discussed in the City's Comprehensive Plan. In 2012, at the owner's request, text was added to the Comprehensive Plan to address the existing airstrip and future expansion plans.

Recommended Action:

Commission to conduct a public hearing and make a recommendation to the City Council on the Bryant PBRs application.

Attachments: 1) Public Hearing Notice; 2) Bryant PBRs application; 3) King County staff report; 4) King County aerial photo 5) Comp Plan page 5-7; 6) Tax information spreadsheet



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

MEMORANDUM

Date: April 28, 2014
To: Planning Commission
From: Stacey Welsh, Community Development Director
Re: Public Benefit Rating System (Bryant Application)

At the April 22, 2014 worksession the Commission continued to discuss the Bryant PBRs application. Responses to the questions posed on April 22nd are listed below:

- 1) Are these properties sending or receiving areas on the City's Transfer of Development Rights (TDR) map?

Parcel	TDR Sending Area	TDR Receiving Area
1121069104	-	-
1121069037	-	-
1521069052	<i>majority of property</i>	<i>small portion of property</i>
1521069058	<i>portion of property</i>	-
1521069060	<i>portion of property</i>	-
1421069006	<i>small portion of property</i>	<i>majority of property</i>

- 2) Have the Palmer properties located to the north taken advantage of any tax programs?
- a. *There are multiple Palmer owned properties located directly north of the Bryant properties. Parcel #1021069111 is designated forest land per RCW 84.33; it is a Palmer parcel located adjacent and to the north of Bryant parcel #1521069052.*
 - i. **(Forestland:** *this program is similar to Timber Land but is for property containing more than twenty acres of eligible forestland primarily devoted to the growth and harvest of timber (please refer to RCW 84.33).)*
- 3) How would property in a special tax program be affected by future redevelopment of Roberts Drive? How would an LID be impacted if these properties were not involved?
- a. *In general, if the Bryant property(ies) were to develop in the future, then they may be required to provide road frontage improvements (curb, gutter, sidewalk, streetlights, etc.). Alternatively, if a Local Improvement District (LID) is formed, then a property owner's contribution is based on the amount of frontage no matter if they are a developing property or not. (An LID is a special assessment district in which improvements will specially benefit primarily the property owners in the district. An LID must be approved by the City Council.)*



King County

Water and Land Resources Division

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 600

Seattle, WA 98104-3855

206-296-6519 Fax 206-296-0192

TTY Relay: 711

2014-01-29 10:10 AM

FEB 03 2014

2014-01-29 10:10 AM

January 29, 2014

Stacey Welsh, Community Development Director

City of Black Diamond

PO Box 599

Black Diamond, WA 98010

RE: Public Benefit Rating System Applications - Files #E13CT042BD (Bryant)

Dear Ms. Welsh:

Enclosed please find a copy of the Bryant application to Public Benefit Rating System (PBRs). This application is being forwarded to you as required by the Revised Code of Washington (RCW 84.34.037) for an evaluation and recommendation by the City of Black Diamond.

For a property located within an incorporated area, RCW 84.34.037(1) states an application for PBRs "shall be acted upon [after a public hearing] by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications." Historically this approval process has been achieved by separate hearings by both the city and county councils.

For a property enrolling in PBRs, the hearing process and the other steps listed below must occur.

- ☐ Review of the application by county and city staff
- ☐ Conduct scheduled site visit for resource/property analysis
- ☐ Prepare report/recommendation (applicant, city and assessor receive a copy)
- ☐ Present report and comments at scheduled public hearing held before the city council
- ☐ Present report and comments at scheduled public hearing held before the Metropolitan King County Council Physical Environment committee (*approval from both Granting Authorities is needed to enroll a property located within a city*)
- ☐ Open Space Taxation Agreement prepared by PBRs staff
- ☐ Agreement signed by Chair of County Council and sent to landowner(s) for signature
- ☐ Agreement recorded by the Department of Assessments with the King County Records, Elections and Licensing Services Division (copy sent to owner and city)

Stacey Welsh
January 29, 2014
Page 2

This approval process must be completed within six months and I look forward to working with the city throughout the process.

Thank you for the assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Bernstein', with a long horizontal flourish extending to the right.

Bill Bernstein
(206) 477-4643
PBRS Program Lead
Rural and Regional Services Section

Enclosures

cc: Aaron Nix, MPA

FEB 03 2014

PUBLIC BENEFIT RATING SYSTEM

Application

Open Space Land Classification For Property Within King County, Washington
In Accordance With RCW 84.34 and K.C.C. 20.36

Original Application AND 4 Copies of All Documents Must Be Submitted To:
King County Water and Land Resources Division, Rural and Regional Services Section
201 South Jackson Street, Suite 600, Seattle, WA 98104-3855

1. NAME of APPLICANT: Darrell R. Bryant
Day Phone: 425-255-3478 Evening Phone: 206-246-4139 Email: darrellb@bryant-motors.com
2. MAILING ADDRESS of APPLICANT: 25022 Roberts Drive
Black Diamond, WA 98010
3. PROPERTY ADDRESS: 25022 Roberts Drive
Black Diamond, WA 98010

Is the property located in an incorporated city? Yes XX City: Blk. Diamond No
From what road is the property accessed? Roberts Drive
4. PROPERTY HISTORY: Is the property presently participating in a current use assessment program (RCW 84.34 or RCW 84.33)? Yes No XX
5. APPLICANT'S INTEREST in PROPERTY: Owner Yes XX No
Purchasing through contract Yes XX No
Other Explain
6. PARCEL NUMBER and ACREAGE:

<u>Tax Assessor Parcel #</u>	<u>Total Acres in Parcel</u>	<u>Acres Requested for PBRS</u>
a. <u>See Attached Sheet</u>	<u> </u>	<u> </u>
b. <u> </u>	<u> </u>	<u> </u>
c. <u> </u>	<u> </u>	<u> </u>
TOTAL	<u> </u>	<u> </u>

County use only:

Date Received 12/30/13^{MO}

File NO.

E13CT042BD

AFFIRMATION

As owner(s) of the land described above, I hereby indicate by my signature that I am aware of the potential tax liability involved when the land ceases to be classified under the provisions of Chapter 84.34 RCW. I also declare under the penalties for false swearing that this application and any accompanying documents have been examined by me and to the best of my knowledge it is a true, correct, and complete statement.

The agreement to tax according to use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Darrell R. Bryant

Print Name

Darrell R Bryant
Signature

Print Name

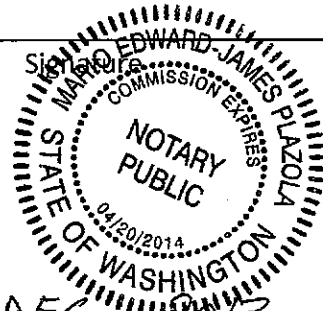
State of Washington

County of KING

Subscribed and affirmed to before me this 27TH day of DEC, 2013

[Signature]
Notary's Signature

04/20/2014
My Appointment Expires



Statement Of Additional Tax, Interest, And Penalty Due Upon Removal Of Classification

1. Upon removal of classification, an additional tax shall be imposed which shall be due and payable to the county treasurer 30 days after removal or upon sale or transfer, unless the new owner has signed the Notice of Continuance. The additional tax shall be the sum of the following:
 - (a) The difference between the property tax paid as "Open Space Land" and the amount of property tax otherwise due and payable for the last seven years had the land not been so classified; plus
 - (b) Interest upon the amounts of the difference (a), paid at the same statutory rate charged on delinquent property taxes.

6. Parcel:	112106-9037	112106-9104	142106-9006
Total acreage:	4.17	12.68	32.70
Requested PBRs:	1.37	9.51	32.70
Home site/excluded area:	3.62	2.10	0.80
Recommended PBRs:	0.55	10.58	31.90

	152106-9052	152106-9058	152106-9060
Total acreage:	13.84	0.21	1.09
Requested PBRs:	13.84	0.21	0.54
Home site/excluded area:	0.00	0.00	0.40
Recommended PBRs:	13.84	0.21	0.69

NOTE: The attached map (2012 aerial photo) outlines in yellow the parcels' boundaries and in blue the areas proposed to be *excluded* from PBRs. The portion recommended for enrollment (57.77 acres) is the entire property (64.69 acres) less the excluded areas as measured (6.92 acres). In the event the Assessor's official parcel size is revised, PBRs acreage should be administratively adjusted to reflect that change.

December 27, 2013

To: Mr. Bill Bernstein
PBRS & Timber Land Programs
201 South Jackson Street Suite 600
Seattle, WA 98104

RE: Bryant Property PBRS Report

Dear Mr. Bernstein,

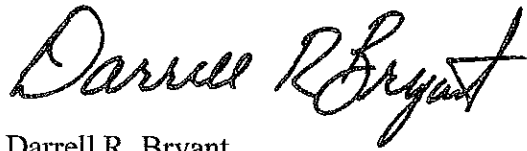
Enclosed please find an original and four copies of the PBRS Application And Signature Pages you requested with updated information and Notarization. Also please note below the following discrepancies I have found with the King County PBRS report you sent to the City of Black Diamond last year. Please review these corrections and incorporate them into an updated report. Let me know if you have any questions or need further explanation on anything below.

- 1) Under Section "B" Facts, item #2 Line #3 indicates there is a business office on Parcel -9037. There has never been any kind of business office on this parcel or either adjacent parcel. The fact is, we have never conducted any business other than personal on this property.
- 2) Under "Historic landmark or archaeological site" heading on Page 7 you state that even though the property is within 250 feet of the Cemetery, that it provides no aesthetic value. That would not be correct as the roads and development are below eye level from the Cemetery site while our Forest Tree Line is clearly visible from same which actually gives the appearance of a forested area looking Westward. I ask that we be awarded points here.
- 3) Under "Rural Open Space" on page 7, you state that the property must be located in a "Rural Area" for this point category. I am sure you are aware that there can be "rural areas" located within any city boundary, and in fact our land, as well as the parcels located directly North and West of us are also undeveloped. The character of this area meets the definition of the word rural. In fact, the entire character of the City of Black Diamond is rural. You can ask anyone currently on the council, even the current Mayor and they will tell you the same. I ask that you award us points on this category as well.

- 4) Under Bonus Catagories, "Environmental Education Access" on page 8, I have been in contact with the local Boyscout Weeblos troop for Black Diamond, and they are going to help plant some trees right after the first of the year. Also the Maple Valley Scout Troop is putting together a plan for a Vegetable Garden/ Community Pea Patch on parcel -9060 to begin very soon as well as some tree planting and an educational walk through the forest Kristi McClelland has agreed to lead us on sometime near February 2014. I therefore ask points be awarded for this category as well.

Please consider these requests for changes to your report.

Sincerely,

A handwritten signature in black ink that reads "Darrell R. Bryant". The signature is written in a cursive style with a large, stylized 'D' and 'B'.

Darrell R. Bryant
25022 Roberts Drive
Black Diamond, WA 98010
(425)-255-3478 Office
(206)-786-2576 Cell

Public Benefit Rating System

RESOURCE INFORMATION



King County

Department of Natural Resources and Parks
Water and Land Resources Division

COMMUNITY DEVELOP.

FEB 03 2004

RECEIVED

PUBLIC BENEFIT RATING SYSTEM

Program Definitions and Eligibility Requirements

The Public Benefit Rating System (PBRs) offers an incentive to preserve open space on private property in King County by providing a tax reduction. A participating property is assessed at a "current use" value, which is lower than the "highest and best use" assessment value that would otherwise apply to the property (see King County Code, Chapter 20.36).

PBRs is based on a point system. Points are assigned to each qualifying resource and bonus category as described in this document. The total points awarded for a property's PBRs resources translate into a 50% to 90% reduction in **land assessed value for the portion of the property participating** (see Valuation Schedule on page 16).

The area used for your home, landscaping, driveway, and other personal uses does not qualify for PBRs and is referred to as the excluded area. It is acceptable to exclude an area for a future home and/or potential use/development. The area that meets an open space resource requirement and enrolls is referred to as the participating area. To qualify for PBRs, **the participating area must contain an identified open space resource and must have the potential for use or development that will be restricted by enrollment in the program.**

SECTION I. PROGRAM REQUIREMENTS

To be eligible for open space classification under the public benefit rating system (K.C.C. 20.36), property must contain one or more qualifying open space resources and have at least five points. Each property applying for open space classification under PBRs shall be evaluated by the King County Department of Natural Resources and Parks (the department) for the presence of each open space resource category. The following open space resources and bonus categories are each eligible for the points indicated (definitions begin on page 5).

Open Space Resources

1. Public recreation area - five points
2. Aquifer protection area - five points
3. Buffer to public and current use classified land – three points
4. Equestrian-pedestrian-bicycle trail linkage – thirty-five points
5. Active trail linkage – fifteen or twenty-five points
6. Farm and agricultural conservation land - five points
7. Forest stewardship land - five points
8. Historic landmark or archaeological site: buffer to designated site - three points
9. Historic landmark or archaeological site: designated site - five points
10. Historic landmark or archaeological site: eligible site - three points
11. Rural open space – five points
12. Rural stewardship land – five points
13. Scenic resource, viewpoint or view corridor - five points
14. Significant plant or ecological site - five points
15. Significant wildlife or salmonid habitat - five points

16. Special animal site - three points
17. Surface water quality buffer - five points
18. Urban open space - five points
19. Watershed protection area – five points

Bonus Categories

1. Resource restoration - five points
2. Additional surface water quality buffer – three or five points
3. Contiguous parcels under separate ownership – minimal 2 points
4. Conservation easement or historic preservation easement – fifteen points
5. Public access
 - a. Unlimited public access – five points
 - b. Limited public access because of resource sensitivity – five points
 - c. Environmental education access - three points
 - d. Seasonally limited public access - three points
 - e. None or members only - zero points
6. Easement and access – thirty-five points

Evaluation and approval of open space resource applications

A property may achieve a maximum of a ninety-percent reduction in assessed value of that portion of the land enrolled in the public benefit rating system through the rating system and the bonus categories. Portions of a property may qualify for open space designation. A plant community where native plants are dominant that does not independently contain a qualifying open space resource can participate if it is contiguous to and provides a benefit to a portion of the property being awarded credit for a qualifying open space priority resource. The department shall evaluate a property for which open space classification is sought under this chapter for the presence of open space resource categories. Adjacent parcels of land with the same open space resources, owned by one or more landowners, may be eligible for consideration as a single parcel if open space classification is sought under the same application, except for property pursuing credit for the farm and agricultural conservation land category, which must be owned by the same owner or held under the same ownership. For the purpose of determining buffer measurements under this chapter, the width is the distance perpendicular to the edge of the resource and the length of the buffer is parallel to the resource. The entire buffer width may be averaged to qualify for a resource category.

Open Space Resource Verification

Pursuant to state law, the presence or occurrence of an eligible open space resource shall be verified by reference to a recognized source, such as:

- the natural heritage data base (web address, <http://www.dnr.wa.gov/nhp/>);
- the state office of historic preservation (web address, <http://www.dahp.wa.gov/>);
- state, national, county or city registers of historic places;
- parks and recreation studies;
- studies by the state Department of Fish and Wildlife or Department of Natural Resources; or
- reference to a map developed by the county or other recognized authority.

Alternatively, the existence of the resource may be verified using the best available source, such as a recognized expert in the particular resource being reviewed.

When more than one reasonable interpretation can be supported by the text of this chapter, the department is authorized to make a determination relating to the open space resource definitions and eligibility standards in accordance with the purpose and intent of this chapter. The department is authorized to calculate the appropriate area of land to receive credit for a particular priority resource to support the assessor's determination of the accompanying tax reduction for each priority resource.

Management of the Open Space Resource

Management or preservation of the open space resources is a condition for acceptance into the program. Each open space resource must be maintained in the same or better condition as it was when approved for enrollment. The property owner shall not engage in any activity that reduces the value of the open space resource, unless that activity is required for public safety and is conducted lawfully under appropriate permits. As a condition of enrollment into the program, the department may require the development of a plan acceptable to the department to restore any property whose open space resources are degraded. In addition, if an existing approved plan for farm and agricultural conservation land, forest stewardship land, rural stewardship land or resource restoration category has a management schedule or management goals that are out of date or otherwise require change, the owner is responsible for revising the plan. Any such revisions to the plan must be reviewed and accepted by the department.

Other Conditions

The county's acceptance of property into the public benefit rating system may be based on specific conditions of use or requirements being met, including, but not limited to, the granting of easements.

Ineligible Lands

Except as otherwise provided in this chapter, the following properties or areas are not eligible for open space classification:

- Improvements or structures situated upon eligible open space land;
- Properties that do not contain a qualifying open space priority resource;
- Open space areas protected by a native growth, forest retention or other covenant that is required as part of a development process or subdivision, or required by zoning or other land use regulation, except such an area would be eligible if its participation provides further public benefit and there is enrollment of at least ten percent additional open space beyond that restricted or required by applicable covenant or regulation. The additional acreage provided must be acceptable to the department and feature a plant community where native plants are dominant or that will be dominant following the implementation of an approved farm management, forest stewardship, resource restoration or rural stewardship plan;
- Any portion of a property that is dominated by or whose resource value is compromised by invasive plant species, unless the department has received a resource restoration,

rural stewardship, farm management or forest stewardship plan and determined that the plan addresses the invasive plant species concern and that the plan is being implemented; and

- Homesite and other areas developed for residential or personal use, such as garden, landscaping and driveway, except for historic resources.

Monitoring Participating Land

The department may monitor the participating portion of the property to evaluate its current use and the continuing compliance with the conditions under which open space classification was granted. Monitoring may include scheduled, physical inspections of the property.

An owner of property enrolled in the program may be required to submit a monitoring report on an annual or less frequent basis as requested by program staff. This report must include a brief description of how the property still qualifies for each awarded resource category. It must also include photographs from established points on the property and any observations by the owner. The owner must submit this report to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.

An owner of property receiving credit for farm and agricultural conservation land, forest stewardship land, or rural stewardship land, all of which require a stewardship or management plan, must annually provide a monitoring report that describes progress of implementing the plan. The owner must submit this report, which must include a brief description of activities taken to implement the plan and photographs from established points on the property, to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.

Failure by the owner to meet the conditions of the approval or to maintain the uses of the property that were the basis for the original approval shall be grounds for the department to reevaluate the property under the public benefit rating system. If the reevaluation shows the property or a portion of the property is no longer eligible to participate in the program because it does not qualify for any public benefit rating system category as originally approved, the county shall take action to remove the current use classification and determine the amount of deferred taxes, interest and penalty owed by the landowner. An appeal by the landowner from such a determination may be filed as provided for in K.C.C. 20.36.130.B. If the reevaluation shows the property or a portion thereof is no longer eligible as approved but that the property still qualifies for one or more public benefit rating system resource categories, then the overall credit award shall be adjusted to reflect the reevaluation. The new credit award may result in a current use assessment at a lower percentage of market value than was originally approved.

Participation Period

Once a property is enrolled in PBRS, it remains in the program until:

- The participating land is withdrawn or removed;
- A change of use occurs that disqualifies some or all of the participating land; or

- The property is sold and a new owner has not agreed to continue in the program by signing and filing a notice of continuance

Financial Considerations upon Withdrawal or Removal

As required by Washington state law, in most cases, the landowner will have to pay the difference between the amount of tax paid as open space and the amount that would have been paid for those years had the land not been in the program for up to a maximum of seven years, plus interest and a 20% penalty. If the land has been in the program for ten years or more and the owner has given two years written notice of withdrawal to the Assessor, the 20% penalty is excused (please refer to RCW 84.34.070 and 84.34.108).

Current Use Assessment Valuation Schedule

Property enrolled in the current use assessment program for open space has the assessed value of the land set at the "current use" value rather than the usual method of establishing market value based on highest and best use of the land. This current use value will be expressed as a percentage of market value based on the public benefit rating of the property (see Valuation Schedule on page 16). Buildings and other improvements to the land shall continue to be assessed at market value.

SECTION II. OPEN SPACE RESOURCES – definitions and eligibility.

A. To be eligible for open space classification under the public benefit rating system, property must contain one or more qualifying open space resources and have at least five points as determined under this section. The department shall review each application and recommend award of credit for current use of property that is the subject of the application. In making such a recommendation, the department shall utilize the point system described in subsections B. and C. of this section.

B. The following open space resources are each eligible for the points indicated:

1. Public recreation area - five points.

For the purposes of this subsection B.1, "public recreation area" means land devoted to providing active or passive recreation use or that complements or substitutes for recreation facilities characteristically provided by public agencies. Use of motorized vehicles is prohibited on land receiving tax reduction for this category, except for golf carts on golf courses, for maintenance or for medical, public safety or police emergencies. To be eligible as a public recreation area, the facilities must be open to the general public or to specific public user groups, such as youth, senior citizens or people with disabilities. A property must be identified by the responsible agency within whose jurisdiction the property is located as meeting the definition of public recreation area. If a property meets the definition of public recreation area, the property owner must use best practices, if any, that are defined in K.C.C. chapter 21A.06. If a fee is charged for use, it must be comparable to the fee charged by a like public facility;

2. Aquifer protection area - five points.

For the purposes of this subsection B.2, "aquifer protection area" means property that has a plant community in which native plants are dominant and that includes an area designated as a critical aquifer recharge area under K.C.C. chapter 21A.24 or applicable city critical aquifer recharge area regulations. To be eligible as an aquifer protection area, at least fifty percent of the enrolling open space area or a minimum of one acre of open space shall be designated as a critical aquifer recharge area. If the enrolling open space area does not have a plant community in which native plants are dominant, a plan for revegetation must be submitted and approved by the department, and be implemented according to the plan's proposed schedule of activities; *(information for this category can be found at <http://www.kingcounty.gov/operations/GIS/Maps/iMAP.aspx> - use mapset labeled Sensitive Areas)*

3. Buffer to public or current use classified land - three points.

For the purposes of this subsection B.3, "buffer to public or current use classified land" means land that has a plant community in which native plants are dominant or has other natural features, such as streams or wetlands, and that is adjacent and provides a buffer to a publicly owned park, trail, forest, land legally required to remain in a natural state or a state or federal highway or is adjacent to and provides a buffer to a property participating in a current use taxation program under chapter 84.33 or 84.34 RCW. The buffer shall be no less than fifty feet in length and fifty feet in width. Public roads may separate the public land, or land in private ownership classified under chapter 84.33 or 84.34 RCW, from the buffering land, if the entire buffer is at least as wide and long as the adjacent section of the road easement. Landscaping or other nonnative vegetation shall not separate the public land or land enrolled under chapter 84.33 or 84.34 RCW from the native vegetation buffer. The department may grant an exception to the native vegetation requirement for property along parkways with historic designation, upon review and recommendation of the historic preservation officer of King County or the local jurisdiction in which the property is located. Eligibility for this exception does not extend to a property where plantings are required or existing plant communities are protected under local zoning codes, development mitigation requirements or other local regulations; *(information for public land can be found at <http://www.kingcounty.gov/operations/GIS/Maps/iMAP.aspx> - use mapset labeled King County Parks)*

4. Equestrian-pedestrian-bicycle trail linkage - thirty-five points.

For the purposes of this subsection B.4, "equestrian-pedestrian-bicycle trail linkage" means land in private ownership that the property owner allows the public to use as an off-road trail linkage for equestrian, pedestrian or other nonmotorized uses or that provides a trail link from a public right-of-way to a trail system. Use of motorized vehicles is prohibited on trails receiving a tax reduction for this category, except for maintenance or for medical, public safety or police emergencies. Public access is required only on that portion of the property containing the trail. The landowner may impose reasonable restrictions on access that are mutually agreed to by the landowner and the department, such as limiting use to daylight hours. To be eligible as an equestrian-pedestrian-bicycle trail linkage, the owner

shall provide a trail easement to an appropriate public or private entity acceptable to the department. The easement shall be recorded with the records and licensing services division. In addition to the area covered by the trail easement, adjacent land used as pasture, barn or stable area and any corral or paddock may be included, if an approved and implemented farm management plan is provided. Land necessary to provide a buffer from the trail to other nonequestrian uses, land that contributes to the aesthetics of the trail, such as a forest, and land set aside and marked for off road parking for trail users may also be included as land eligible for current use taxation. Those portions of private roads, driveways or sidewalks open to the public for this purpose may also qualify. Fencing and gates are not allowed in the trail easement area, except those that are parallel to the trail or linkage;

5. Active trail linkage - fifteen or twenty-five points.

For the purposes of this subsection B.5., "active trail linkage" means land in private ownership through which the owner agrees to allow nonmotorized public passage, for the purpose of providing a connection between trails within the county's regional trails system and local or regional attractions or points of interest, for trail users including equestrians, pedestrians, bicyclists and other users. For the purposes of this subsection B.5., "local or regional attractions or points of interest" include other trails, parks, waterways or other recreational and open space attractions, retail centers, arts and cultural facilities, transportation facilities, residential concentrations or similar destinations. To be eligible as an active trail linkage, the linkage must be open to passage by the general public and the property owner must enter into an agreement with the county consistent with applicable parks and recreation division policies to grant public access. To receive twenty-five points, the property owner must enter into an agreement with the county regarding improvement of the trail, including trail pavement and maintenance. To receive fifteen points, the property owner must agree to allow a soft-surface, nonpaved trail. The parks and recreation division is authorized to develop criteria for determining the highest priority linkages for which it will enter into agreements with property owners.

6. Farm and agricultural conservation land - five points.

For the purposes of this subsection B.6, "farm and agricultural conservation land" means land previously classified as farm and agricultural land under RCW 84.34.020 that no longer meets the criteria of farm and agricultural land, or traditional farmland not classified under chapter 84.34 RCW that has not been irrevocably devoted to a use inconsistent with agricultural uses and has a high potential for returning to commercial agriculture. To be eligible as farm and agricultural conservation land, the property must be used for farm and agricultural activities or have a high probability of returning to agriculture and the property owner must commit to return the property to farm or agricultural activities by implementing a farm management plan. An applicant must have an approved farm management plan in accordance with K.C.C. 21A.24.051 that is acceptable to the department and that is being implemented according to its proposed schedule of activities before receiving credit for this category. Farm and agricultural activities must occur on at least one acre of the property. Eligible land must be zoned to allow agricultural uses and be owned by the same owner or held under the same ownership. Land receiving credit for this

category shall not receive credit for the category "contiguous parcels under separate ownership"; *(information regarding a farm management plan can be found at http://www.kingcd.org/pro_far_far.htm)*

7. Forest stewardship land - five points.

For the purposes of this subsection B.7, "forest stewardship land" means property that is managed according to an approved forest stewardship plan and that is not enrolled in the timberland program under chapter 84.34 RCW or the forestland program under chapter 84.33 RCW. To be eligible as forest stewardship land, the property must contain at least four acres of contiguous forestland, which may include land undergoing reforestation, according to the approved plan. The owner shall have and implement a forest stewardship plan approved by the department. The forest stewardship plan may emphasize forest retention, harvesting or a combination of both. Land receiving credit for this category shall not receive credit for the resource restoration category or the rural stewardship land category; *(information regarding a forest stewardship plan can be found at <http://www.kingcounty.gov/environment/waterandland/forestry/landownerhelp.aspx>)*

8. Historic landmark or archeological site: buffer to a designated site - three points.

For the purposes of this subsection B.8, "historic landmark or archaeological site: buffer to a designated site" means property adjacent to land constituting or containing a designated county or local historic landmark or archeological site, as determined by the historic preservation officer of King County or other jurisdiction in which the property is located that manages a certified local government program. To be eligible as a historic landmark or archeological site: buffer to a designated site, a property must have a plant community in which native plants are dominant and be adjacent to or in the immediate vicinity of and provide a significant buffer for a designated landmark or archaeological site listed on the county or other certified local government list or register of historic places or landmarks. For the purposes of this subsection B.8, "significant buffer" means land and plant communities that provide physical, visual, noise or other barriers and separation from adverse effects to the historic resources due to adjacent land use;

9. Historic landmark or archeological site: designated site - five points.

For the purposes of this subsection B.9, "historic landmark or archaeological site: designated site" means land that constitutes or upon which is situated a historic landmark designated by King County or other certified local government program. Historic landmarks include buildings, structures, districts or sites of significance in the county's historic or prehistoric heritage, such as Native American settlements, trails, pioneer settlements, farmsteads, roads, industrial works, bridges, burial sites, prehistoric and historic archaeological sites or traditional cultural properties. To be eligible as a historic landmark or archeological site: designated site, a property must be listed on a county or other certified local government list or register of historic places or landmarks for which there is local regulatory protection. Eligible property may include property that contributes to the historic character within designated historic districts, as defined by the historic preservation

officer of King County or other certified local government jurisdiction. The King County historic preservation officer shall make the determination on eligibility;

10. Historic landmark or archeological site: eligible site - three points.

For the purposes of this subsection B.10, "historic landmark or archaeological site: eligible site" means land that constitutes or upon which is situated a historic property that has the potential of being designated by a certified local government jurisdiction, including buildings, structures, districts or sites of significance in the county's historic or prehistoric heritage, such as Native American settlements, pioneer settlements, farmsteads, roads, industrial works, bridges, burial sites, prehistoric and historic archaeological sites or traditional cultural properties. An eligible property must be determined by the historic preservation officer of King County or other certified local government program in the jurisdiction in which the property is located to be eligible for designation and listing on the county or other local register of historic places or landmarks for which there is local regulatory protection. Eligible property may include contributing property within designated historic districts. Property listed on the state or national Registers of Historic Places may qualify under this category;

11. Rural open space - five points.

For the purposes of this subsection B.11, "rural open space" means an area of ten or more contiguous acres of open space located outside of the urban growth area as identified in the King County Comprehensive Plan that:

- a. has a plant community in which native plants are dominant; or
- b. is former open farmland, woodlots, scrublands or other lands that are in the process of being replanted with native vegetation for which the property owner is implementing an approved farm management, forest stewardship, rural stewardship or resource restoration plan acceptable to the department;

12. Rural stewardship land - five points.

For the purposes of this subsection B.12, "rural stewardship land" means lands zoned RA (rural area), A (agriculture) or F (forest), that has an implemented rural stewardship plan as provided in K.C.C. chapter 21A.24 that is acceptable to the department. On RA-zoned property, the approved rural stewardship plan shall meet the goals and standards of K.C.C. 21A.24.055. For A- and F-zoned properties, credit for this category is allowed if the plan meets the goals of K.C.C. 21A.24.055 D. through G. A rural stewardship plan includes, but is not limited to, identification of critical areas, location of structures and significant features, site-specific best management practices, a schedule for implementation and a plan for monitoring as provided in K.C.C. 21A.24.055. To be eligible as rural stewardship land, the open space must be at least one acre and feature a plant community in which native plants are dominant or be in the process of restoration, reforestation or enhancement of native vegetation. Land receiving credit for this category shall not receive credit for the resource restoration or the forest stewardship land category;

13. Scenic resource, viewpoint or view corridor - five points.

- a. For the purposes of this subsection B.13, "scenic resource" means an area of ten or more enrolling acres of natural or recognized cultural features visually significant to the aesthetic character of the county. A site eligible as a scenic resource must be significant to the identity of the local area and must be visible to a significant number of the general public from public rights-of-way, must be of sufficient size to substantially preserve the scenic resource value and must enroll at least ten acres of open space.
- b. For the purposes of this subsection B.13, a "viewpoint" means a property that provides a view of an area visually significant to the aesthetic character of the county. To be eligible as a viewpoint, a site must provide a view of a scenic natural or recognized cultural resource in King County or other visually significant area and allows unlimited public access and be identified by a permanent sign readily visible from a road or other public right-of-way.
- c. For the purposes of this subsection B.13, a "view corridor" means a property that contributes to the aesthetics of a recognized view corridor critical to maintaining a public view of a visually significant scenic natural or recognized cultural resource. A site eligible as a view corridor must contain at least one acre of open space that contributes to a view corridor visible to the public that provides views of a scenic natural resource area or recognized cultural resource significant to the local area. Recognized cultural areas must be found significant by the King County historic preservation officer or equivalent officer of another certified local government program and must contain significant inventoried or designated historic properties. Eligibility is subject to determination by the department or applicable jurisdiction;

14. Significant plant or ecological site - five points.

For the purposes of this subsection B.14, "significant plant or ecological site" means an area that meets criteria for Element Occurrence established under the Washington Natural Heritage Program authorized by chapter 79.70 RCW. An Element Occurrence is a particular, on-the-ground observation of a rare species or ecosystem. An eligible site must be listed as an Element Occurrence by the Washington Natural Heritage Program as of the date of the application or be identified as a property that meets the criteria for an Element Occurrence. The identification must be confirmed by a qualified expert acceptable to the department. The department will notify the Washington Natural Heritage Program of any verified element occurrence on an enrolling property. Commercial nurseries, arboretums or other maintained garden sites with native or nonnative plantings are ineligible for this category; *(information for this category can be found at <http://www1.dnr.wa.gov/nhp/refdesk/index.html> - use Rare Plants tab and Communities tab)*

15. Significant wildlife or salmonid habitat - five points.

- a. For the purposes of this subsection B.15, "significant wildlife or salmonid habitat" means:
 - (1) an area used by animal species listed as endangered, threatened, sensitive or candidate by the Washington state Department of Fish and Wildlife or Department of Natural Resources as of the date of the application, or used by

- species of local significance that are listed by the King County Comprehensive Plan or a local jurisdiction;
- (2) an area where the species listed in subsection B.15.a.(1) of this section are potentially found with sufficient frequency for critical ecological processes to occur such as reproduction, nesting, rearing, wintering, feeding or resting;
 - (3) a site that meets the criteria for priority habitats as defined by the Washington state Department of Fish and Wildlife that is so listed by the King County Comprehensive Plan or the local jurisdiction in which the property is located; or
 - (4) a site that meets criteria for a wildlife habitat conservation area as defined by the department or a local jurisdiction.
- b. To be eligible as significant wildlife or salmonid habitat, the department or by expert determination acceptable to the department must verify that qualified species are present on the property or that the land fulfills the functions described in subsection B.15.a. of this section. To receive credit for salmonid habitat, the owner must provide a buffer at least fifteen percent greater in width than required by any applicable regulation. Property consisting mainly of disturbed or fragmented open space determined by the department as having minimal wildlife habitat significance is ineligible for this category; *(information for this category can be found at <http://www1.dnr.wa.gov/nhp/refdesk/index.html> - use tab labeled Rare Animals)*

16. Special animal site - three points.

For the purposes of this subsection B.16, "special animal site" means a site that includes a wildlife habitat network identified by the King County Comprehensive Plan or individual jurisdictions through the Growth Management Act, chapter 36.70A RCW, or urban natural area as identified by the Washington state Department of Fish and Wildlife's priority habitats and species project as of the date of the application. To be eligible as a special animal site, the property must be identified by King County or local or state jurisdiction or by expert verification acceptable to the department or local jurisdiction. Property consisting mainly of disturbed or fragmented open space determined by the department to have minimal wildlife habitat significance is ineligible for this category; *(information for this category can be found at <http://www.kingcounty.gov/operations/GIS/Maps/iMAP.aspx> - use mapset labeled Sensitive Areas, then see Wildlife Network layer)*

17. Surface water quality buffer - five points.

For the purposes of this subsection B.17, "surface water quality buffer" means an undisturbed area that has a plant community in which native plants are dominant adjacent to a lake, pond, stream, shoreline, wetland or marine waters, that provides buffers beyond that required by any applicable regulation. To be eligible as surface water quality buffer, the buffer must be at least fifty percent wider than the buffer required by any applicable regulation and longer than twenty-five feet. The qualifying buffer area must be preserved from clearing and intrusion by domestic animals and protected from grazing or use by livestock;

18. Urban open space - five points.

- a. For the purposes of this subsection B.18, "urban open space" means land located within the boundaries of a city or within the urban growth area that has a plant community in which native plants are dominant and that under the applicable zoning is eligible for more intensive development or use. To be eligible as urban open space, the enrolling area must be at least one acre, or be at least one-half acre if the land meets one of the following criteria:
- (1) the land conserves and enhances natural or scenic resources;
 - (2) the land protects streams or water supply;
 - (3) the land promotes conservation of soils, wetlands, beaches or tidal marshes;
 - (4) the land enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;
 - (5) the land enhances recreation opportunities to the general public; or
 - (6) the land preserves visual quality along highways, roads, and streets or scenic vistas.
- b. Owners of noncontiguous properties that together meet the minimum acreage requirement of subsection B.18.a. of this section may jointly apply under this category if each property is closer than seventy-five feet to one other property in the application and if each property contains an enrolling open space area at least as large as the minimum zoned lot size; and

19. Watershed protection area - five points.

For the purposes of this subsection B.19, "watershed protection area" means property contributing to the forest cover that provides run-off reduction and groundwater protection. To be eligible as watershed protection area, the property must consist of contiguous native forest or be in the process of reforestation. The enrolling forested area must consist of additional forest cover beyond that required by county or applicable local government regulation and must be at least one acre or sixty-five percent of the property acreage, whichever is greater. If reforestation or improvements to the forest health are necessary, the property owner shall provide and implement a forest stewardship, resource restoration or rural stewardship plan that addresses this need and is acceptable to the department.

C. Property qualifying for an open space category in subsection B. of this section may receive credit for additional points as follows:

1. Resource restoration - five points.

For the purposes of this subsection C.1, "resource restoration" means restoration of an enrolling area benefiting an area in an open space resource category. Emphasis shall be placed on restoration of anadromous fish rearing habitat, riparian zones, migration corridors and wildlife, upland, stream and wetland habitats. To be eligible as resource restoration, the owner must provide and implement a restoration plan developed in cooperation with the Soil Conservation Service, the state Department of Fisheries and Wildlife, King County or other appropriate local or county agency that is acceptable to the department. Historic

resource restoration must be approved by the King County historic preservation officer or officer of another certified local government and must be accompanied by a long-term maintenance plan. For resource restoration credit, the owner shall provide to the department a yearly monitoring report for at least five years following enrollment in the public benefit rating system program. The report shall describe the progress and success of the restoration project and shall include photographs to document the success. Land receiving credit for this category shall not receive credit for the forest stewardship land category or the rural stewardship land category;

2. Additional surface water quality buffer - three or five points.

For the purposes of this subsection C.2, "additional surface water quality buffer" means an undisturbed area of native vegetation adjacent to a lake, pond, stream, wetland or marine water providing a buffer width of at least twice that required by regulation. To be eligible as additional surface water quality buffer, the property must qualify for the surface water quality buffer category in subsection B. of this section. Three points are awarded for additional buffers no less than two times the buffer width required by any applicable regulation. Five points are awarded for additional buffers no less than three times the buffer width required by any applicable regulation;

3. Contiguous parcels under separate ownership - two points per participating owner above one owner. The points under this subsection C.3. accrue to all of the owners of a single application. However, the withdrawal of a participating property by an owner results in the loss of two points to the total credit awarded for each of the remaining owners under this subsection C.3. For the purposes of this subsection C.3, "contiguous parcels" means either:

- a. enrolling parcels abut each other without any significant natural or manmade barrier separating them; or
- b. enrolling parcels abut a publicly owned open space but not necessarily abut each other without any significant natural or manmade barriers separating the publicly owned open space and the parcels seeking open space classification. Contiguous parcels of land with the same qualifying public benefit rating system resources are eligible for treatment as a single parcel if open space classification is sought under the same application except as otherwise prohibited by the farm and agricultural conservation land category. Award of this category requires a single application by multiple owners and parcels with identical qualifying public benefit rating system resources. Treatment as contiguous parcels shall include the requirement to pay only a single application fee and the requirement that the total area of all parcels combined must equal or exceed any required minimum area, rather than each parcel being required to meet the minimum area. Individual parcels may be withdrawn from open space classification consistent with all applicable rules and regulations without affecting the continued eligibility of all other parcels accepted under the same application, but the combined area of the parcels remaining in open space classification must still qualify for their original enrolling public benefit rating system category or categories. To be eligible as contiguous parcels under separate ownership, the property must include two or more parcels under different ownership.

The owners of each parcel included in the application must agree to identical terms and conditions for enrollment in the program;

4. **Conservation easement or historic preservation easement** - fifteen points.

For the purposes of this subsection C.4, "conservation easement or historic preservation easement" means land on which an easement is voluntarily placed that restricts, in perpetuity, further potential development or other uses of the property. The granting of this conservation easement or historic preservation easement provides additional value through permanent protection of a resource. These easements are typically donated or sold to a government or nonprofit organization, such as a land trust or conservancy. To be eligible as conservation easement or historic preservation easement, the easement must be approved by the department and be recorded with the records and licensing services division. The easement shall be conveyed to the county or to an organization acceptable to the department. In addition, historic preservation easements shall also be approved by the historic preservation officer of King County or officer of another certified local government jurisdiction in which the property is located. An easement required by zoning, subdivision conditions or other land use regulation is not eligible unless an additional substantive easement area is provided beyond that otherwise required;

5. **Public access** - points depend on type and frequency of access allowed.

For the purposes of this subsection C.5, "public access " means the general public is allowed access on an ongoing basis for uses such as, but not limited to, recreation, education or training. Access must be allowed on only the portion of the property that is designated for public access. The landowner may impose reasonable restrictions on access, such as limiting use to daylight hours, that are mutually agreed to by the landowner and the department. No physical barriers may limit reasonable public access or negatively affect an open space resource. To be eligible for public access at one of the levels described in a. through d. of this subsection C.5, a property owner shall demonstrate that the property is open to public access and is used by the public. Public access points for historic properties shall be approved by the historic preservation officer of King County or officer of another certified local government jurisdiction in which the property is located. The property owner may be required to furnish and maintain signage according to county specifications.

a. **Unlimited public access** - five points.

Year-round access by the general public is allowed on the enrolled parcel without special arrangements with the property owner.

b. **Limited public access because of resource sensitivity** - five points.

Access may be reasonably limited by the property owner on the enrolled parcel due to the sensitive nature of the resource, with access provided only to appropriate user groups. The access allowed shall generally be for an educational, scientific or research purpose and may require special arrangements with the owner.

c. **Environmental education access** - three points.

The landowner enters into an agreement with a school, an organization with a 26 U.S.C. Sec. 501(c)(3) tax status, or, with the agreement of the department, other community organization that allows membership by the general public to provide

environmental education on the enrolled parcel to its members or the public at large. The landowner and the department must mutually agree that the enrolled parcel has value for environmental education purposes.

d. Seasonally limited public access - three points.

Access by the public is allowed on the enrolled parcel, without special arrangements with the property owner, during only part of the year based on seasonal conditions, as mutually agreed to by the landowner and the department.

e. None or members-only - zero points.

No public access is allowed or the access is allowed only by members of the organization using or owning the land; and

6. Easement and access - thirty five points.

For the purposes of this subsection C.6, "easement and access" means that the property has at least one qualifying open space resource, unlimited public access or limited public access due to resource sensitivity, and a conservation easement or historic preservation easement in perpetuity in a form and with conditions acceptable to the department. To be eligible a property must receive credit for an open space category and for the conservation easement or historic easement in perpetuity category. The owner must agree to allow public access to the portion of the property designated for public access in the easement. An easement required by zoning, subdivision conditions or other land use regulation is not eligible, unless there is additional easement area beyond that required. Credit for this category cannot overlap with the equestrian-pedestrian-bicycle trail linkage category.

SECTION III. CURRENT USE ASSESSMENT VALUATION SCHEDULE

Property enrolled in the Public Benefit Rating System program for open space has the assessed value of the portion of land participating set at the "current use" value rather than the market value, which is based on highest and best use of the land. This current use value will be expressed as a percentage of market value based on the public benefit rating of the property. Buildings, other improvements to the land and excluded portions of a property shall continue to be assessed at market value.

Public Benefit Rating	Tax Reduction	Current Use Value
0 - 4 points	0 %	100 % of Market Value
5 - 10 points	50 %	50 % of Market Value
11 - 15 points	60 %	40 % of Market Value
16 - 20 points	70 %	30 % of Market Value
21 - 34 points	80 %	20 % of Market Value
35 - 52 points	90 %	10 % of Market Value

When estimating the actual effect on your property's valuation and your tax bill, please remember that your land's assessment will be reduced **only on the portion of your property enrolled** as open space/current use land. Your property will still be assessed at "highest and best use" rates for your residence and other improvements and any portion of the land not participating in PBRS.

This document is derived from King County Code, Chapter 20.36:

http://your.kingcounty.gov/mkcc/clerk/code/23_Title_20.pdf

Other related documents include; the Revised Code of Washington (RCW), Chapter 84.34, Washington Administrative Code (WAC), Chapter 458-30:

<http://apps.leg.wa.gov/rcw/default.aspx?cite=84.34> and

<http://apps.leg.wa.gov/wac/default.aspx?cite=458-30>

The PBRS web address: <http://www.kingcounty.gov/incentives> or
<http://www.kingcounty.gov/environment/stewardship/sustainable-building/resource-protection-incentives.aspx>

Open Space Taxation Act

COMMUNITY DEVELOP.

JUNE 2012

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The information and instructions in this publication are to be used when applying for assessment on the basis of current use under the "open space laws," chapter 84.34 RCW and chapter 458-30 WAC.



What is the Open Space Taxation Act?

The Open Space Taxation Act, enacted in 1970, allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use. The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.

Lands qualifying for current use classification

The law provides three classifications:

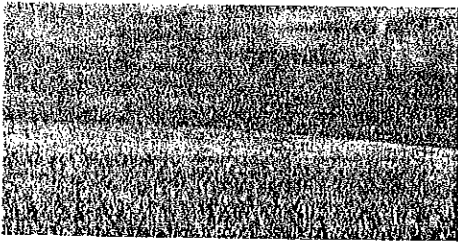
Open space land

Farm and agricultural land

Timber land

Open space land is defined as any of the following:

1. Any land area designated as open space land by an official comprehensive land use plan adopted by any city or county and zoned accordingly.
2. Any land area in which the preservation in its present use would:
 - a. Conserve and enhance natural or scenic resources.
 - b. Protect streams or water supply.
 - c. Promote conservation of soils, wetlands, beaches or tidal marshes. (As a condition of granting open space classification, the legislative body may not require public access on land classified for the purpose of promoting conservation of wetlands.)
 - d. Enhance the value to the public of neighbouring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space.
 - e. Enhance recreation opportunities.
 - f. Preserve historic sites.
 - g. Preserve visual quality along highway, road, and street corridors or scenic vistas.
 - h. Retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative authority granting the open space classification.
3. Any land meeting the definition of "farm and agricultural conservation land," which means either:
 - a. Land previously classified under farm and agriculture classification that no longer meets the criteria and is reclassified under open space land; or
 - b. "Traditional farmland," not classified, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.



Farm and agricultural land is defined as any of the following:

1. Any parcel of land that is 20 or more acres, or multiple parcels of land that are contiguous and total 20 or more acres, and are:
 - a. Devoted primarily to the production of livestock or agricultural commodities for commercial purposes.
 - b. Enrolled in the federal conservation reserve program (CRP) or its successor administered by the United States Department of Agriculture.
2. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has produced a gross income equivalent to:
 - a. Prior to January 1, 1993, \$100 or more per acre per year for three of the five calendar years preceding the date of application for classification.
 - b. On or after January 1, 1993, \$200 or more per acre per year for three of the five calendar years preceding the date of application for classification.
3. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has standing crops with an expectation of harvest within:
 - a. Seven years and a demonstrable investment in the production of those crops equivalent to \$100 or more per acre in the current or previous calendar year.
 - b. Fifteen years for short rotation hardwoods and a demonstrable investment in the production of those crops equivalent to \$100 or more per acre in the current or previous calendar year.
4. For parcels of land five acres or more but less than 20 acres, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs.
5. Any parcel of land less than five acres devoted primarily to agricultural uses and has produced a gross income of:
 - a. Prior to January 1, 1993, \$1,000 or more per year for three of the five calendar years preceding the date of application for classification.
 - b. On or after January 1, 1993, \$1,500 or more per year for three of the five calendar years preceding the date of application for classification.
6. "Farm and agricultural land" also includes any of the following:
 - a. Incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.
 - b. Land on which appurtenances necessary for production, preparation, or sale of agricultural products exist in conjunction with the lands producing such products.
 - c. Any non-contiguous parcel one to five acres, that is an integral part of the farming operation.
 - d. Land on which housing for employees or the principal place of residence of the farm operator or owner is sited provided the use of the housing or residence is integral to the use of the classified land for agricultural purposes and provided that the classified parcel(s) is 20 or more acres.
 - e. Land that is used primarily for equestrian-related activities including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed. Depending on the number of classified acres, the land may be subject to minimum income requirements.

Timber land is defined as the following:

Any parcel of land five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than 10 percent of the land may be used for such incidental uses.

It also includes the land which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

Who may apply?

An owner or contract purchaser may apply for current use assessment under the open space law. However, all owners or contract purchasers must sign the application for classification, and any resulting agreement.

When may I apply?

Applications may be made for classification at any time during the year from January 1 through December 31. Current use valuation assessment begins on January 1 in the year following the year the application was filed.

Where do I get the application?

Application forms for the farm and agriculture land classification are available from the county assessor's office. Application forms for the open space and timber land classifications are available from either the county assessor's office or by contacting the county legislative authority. Application forms are also available on the Department of Revenue's web site at dor.wa.gov.

Where do I file the application?

An application for open space classification is filed with the county legislative authority.

An application for farm and agricultural land classification is filed with the assessor of the county where the property is located.

An application for timber land classification is filed with the county legislative authority. Timber land applications require that a timber management plan also be filed.

Is there an application fee?

The city or county legislative authority may, at their discretion, establish a processing fee to accompany each application. This fee must be in an amount that reasonably covers the processing costs of the application.

What happens after I file my application for the open space classification?

Applications for classification or reclassification as "open space land" are made to the appropriate agency or official called the "granting authority." If the land is located in the county's unincorporated area, the county legislative authority is the granting authority on the application. If the land is located within an incorporated area of the county, the application is acted upon by a joint county/city legislative authority consisting of three members of the county legislative authority and three members of the city legislative authority.

If the application is subject to a comprehensive plan that has been adopted by any city or county it shall be processed in the same manner in which an amendment to the comprehensive plan is processed. If the application is not subject to a comprehensive land use plan, a public hearing on the application will be conducted, but a notice announcing the hearing must be published at least 10 days prior to the hearing.

The granting authority either approves or rejects the application in whole or in part within six months of receiving the application. In determining whether an application made for classification or reclassification should be approved or denied, the granting authority may consider the benefits to the general welfare of preserving the current use of the property.

They may require that certain conditions be met including but not limited to the granting of easements.

If the application is approved, in whole or in part, the granting authority will, within five days of the approval date, send an Open Space Taxation Agreement to the applicant for signature showing the land classification and conditions imposed. The applicant may accept or reject the agreement. If the applicant accepts, he or she must sign and return the agreement to the granting authority within 30 days after receipt.

The approval or denial of the application for classification or reclassification is a legislative determination and is reviewable only for arbitrary and capricious actions. Appeal can be made only to the superior court of the county where the application was filed.

Within 10 days of receiving notice of classification of the land from the granting authority, the assessor submits the notice to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

Current use valuation will begin on January 1 of the year following the year the application was filed. The criteria for classification continue to apply after classification has been granted.

How does a public benefit rating system work?

If the county legislative authority has established a public benefit rating system (PBRs) for the open space classification, the criteria contained within the rating system govern the eligibility of the lands described in each application filed for that classification and the current use valuation of that land.

When a county creates or amends a PBRs, all classified open space land will be rated under the new system. A parcel that no longer qualifies for classification will not be removed from classification, but will be rated according to the PBRs. Within 30 days after receiving notification of the new value established by the PBRs, the owner may request removal of classification of the parcel without imposition of additional tax, interest, and penalty.

What happens after I file my application for farm and agricultural land classification?

The assessor will act on each application for classification or reclassification of farm and agricultural land with due regard to all relevant evidence, and may approve the application in whole or in part. Upon application for classification or reclassification, the assessor may require applicants to provide data regarding the use of such land, including the productivity of typical crops, sales receipts, federal income tax returns, other related income and expense data, and any other information relevant to the application.

The application will be considered approved unless the assessor notifies the applicant in writing prior to May 1 of the year following the year the application was made.

Within 10 days of the approval, the assessor submits the notice of approval to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

What is an "advisory committee"?

The county legislative authority must appoint a five member committee representing the active farming community within the county. This committee will serve in an advisory capacity to the assessor in implementing assessment guidelines as established by the Department of Revenue for the assessment of open space, farm and agricultural lands, and timber lands.

How do I appeal a denial of my farm and agricultural land application?

The owner may appeal the assessor's denial to the board of equalization in the county where the property is located. The appeal must be filed with the board on or before July 1 of the year of the determination or within 30 days after the mailing of the notice of denial, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

What happens after I file my application for timber land classification?

Applications for current use timber land classification or reclassification are made to the county legislative authority. A timber management plan is required at the time of application or when a sale or transfer of timber land occurs and a notice of continuance is signed.

The application is acted upon after a public hearing in a manner similar to open space land classification within six months of receiving the application.

Approval or denial of an application is a legislative determination and is reviewable only for arbitrary and capricious action. Appeal can be made only to the superior court of the county where the application was filed.

The application form requires information about forest management, restocking, fire protection, insect and disease control, weed control, and any other summary of experience and activity that supports the growth and harvest of timber for commercial purposes.



Are there additional requirements once the application for classification or reclassification has been approved?

The owner of classified land must continue to meet the criteria established for classification, or the assessor may remove the land from the current use classification.

How is the value of classified land determined?

The assessor is required to maintain two values for each parcel that is classified. The first is the value that would be placed on the land if it was not classified. This is commonly referred to as the "fair market value." The second is the current use land value based on its present use, not potential use, as classified by the granting authority.

Open space land located within a county that has adopted a public benefit rating system will be valued according to the criteria of the rating system.

In the absence of a rating system, the valuation will be no less than the lowest per acre value of classified farm and agricultural land in the county.

In determining the current use value of farm and agricultural land, the assessor considers the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years. This earning or productive capacity is the "net cash rental" and is capitalized by a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes.

Timber land is valued according to a schedule prepared by the Department of Revenue for the Timber Tax law, chapter 84.33 RCW.



When are taxes due on classified lands?

Land which is classified as open space, farm and agricultural, or timber land is assessed at its current use value and placed on the assessment rolls in the year following the year of application. Taxes on classified land are due and payable in the year following the year the land was valued at its current use and placed on the assessment rolls.

How long does the classification last?

The land continues in current use classification until a request for removal is made by the owner, the use of land no longer complies, or the ownership has changed and the new owner has not signed a Notice of Continuance. The notice of removal is recorded with the county auditor in the same manner as the recording of state tax liens on real property. Additional tax, interest, and penalties will apply if the land is removed and the removal does not meet one of the exceptions listed in RCW 84.34.108(6).

How do I withdraw from classification?

If intending to withdraw all or a portion of the land from classification after 10 years, the owner must give the county assessor two years prior notice. This notice can be filed after the eighth assessment year of the initial 10-year classification period. If a portion of a parcel is removed from classification, the remaining portion must meet the requirements of original classification unless the remaining parcel has different income criteria.

What happens after I file a request to withdraw?

Upon receipt of a request for withdrawal, the assessor notifies the granting authority that originally approved the classification, and, when two years have elapsed, the assessor withdraws the land from classification. The land withdrawn from classification is subject to an additional tax equal to the difference between the tax paid on the current use value and the tax that would have been paid on that land had it not been classified. The additional tax is payable for the last seven years, plus interest at the same rate as charged on delinquent property taxes.

What happens if the classified land is sold or transferred?

When classified land is sold or transferred, the seller or transferor becomes liable at the time of sale for the additional tax, interest, and penalty unless the new owner(s) signs the Notice of Continuance which is attached to or shown on the real estate excise tax affidavit. The county auditor cannot accept an instrument of conveyance on any classified land unless the Notice of Continuance has been signed or the additional tax, interest, and penalty has been paid. The assessor determines if the land qualifies for continued classification.

What if I want to change the use of my classified property?

An owner changing the use of land from a classified use must notify the county assessor within 60 days of this action. The assessor will remove the land from classified status and impose an additional tax equal to the difference between the tax paid on the current use value and the tax that would have been paid on that land had it not been classified. The additional tax is payable for the last seven years, plus interest at the same rate as charged on delinquent property taxes, plus a penalty of 20 percent of the total amount.

How are taxes assessed if my property is classified for only part of a year?

Assessed valuation before and after removal of classification will be listed and allocated according to that part of the year to which each assessed valuation applies.

If the assessor removes my land from classification, may I appeal?

Within 30 days after the land is removed from classification, the assessor must notify the owner in writing explaining the reasons for removal. The owner may file an appeal of the removal from classification to the county board of equalization on or before July 1 of the year of the determination, or within 30 days of the date the notice was mailed by the assessor, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

Upon removal from classification, what taxes are due?

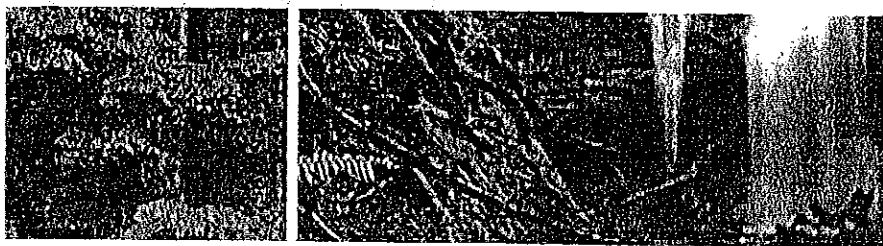
At the time the land is removed from classification, it becomes subject to any additional tax, applicable interest, and penalty that are due and payable to the county treasurer within 30 days after the owner is notified.

What if the additional taxes are not paid?

Any additional tax, applicable interest, and penalty become a lien on the land at the time the land is removed from classification. This lien has priority over any other encumbrance on the land. Such a lien may be foreclosed upon expiration of the same period after delinquency in the same manner as delinquent real property taxes.

What is done with the additional tax, interest, and penalty I pay on classified land?

Upon collection, the additional tax is distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. The applicable interest and penalties are distributed to the county's current expense fund.





Under what circumstances can my property be removed from classification without additional tax, interest, and penalty?

The additional tax, applicable interest, and penalty are not imposed if the removal from classification results solely from one of these actions:

1. Land is transferred to a government entity in exchange for other land located within the state of Washington.
2. Land is taken through the exercise of the power of eminent domain; or land is sold or transferred to an entity having the power of eminent domain after receiving notification in writing or by other official action that they anticipated such action.
3. Land use changes because of a natural disaster.
4. The present use of the land is disallowed because of an official action by an agency of the state, county, or city.
5. Land is transferred to a church that qualifies for an exemption under RCW 84.36.020.
6. Property interests are acquired by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for conservation purposes.
7. Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f), on which housing for employees and/or principal place of residence is sited.
8. Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.
9. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
10. The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040.
11. The sale or transfer of land within two years after the death of an owner who held at least a 50 percent interest in the land if the land has been assessed and valued as designated forest land under chapter 84.33 RCW, or classified under chapter 84.34 RCW continuously since 1993.
12. Removal of land because it was classified in error, by the granting authority, through no fault of the owner.

How do I change the classification of my property?

Land may be reclassified, upon request by the owner, subject to all applicable qualifications for each classification, without additional tax, interest, and penalty for the following:

1. Land classified as farm and agricultural land may be reclassified to timber land; timber land may be reclassified to farm and agricultural land.
2. Land classified as either farm and agricultural land or timber land under chapter 84.34 RCW, or forest land under chapter 84.33 RCW may be reclassified to open space land.
3. Land classified as farm and agricultural land or timber land may be reclassified to forest land under chapter 84.33 RCW.
4. Land previously classified as farm and agricultural land may be reclassified to open space land as "farm and agricultural conservation land" and subsequently be reclassified back to farm and agricultural land.

Applications for reclassification are acted upon in the same manner as approvals for initial classification. The county assessor approves all applications for farm and agricultural classifications and reclassifications. The granting authority approves all land classifications or reclassifications for timber land and open space land. Land less than 20 acres being reclassified into farm and agricultural land from open space "farm and agricultural conservation land," timber land, or forest land may have the income requirements deferred for a period of up to five years from the date of the reclassification.

**Is supporting information
required for continued
classification?**

The assessor may require the owner of classified land to submit data regarding the use of the land, productivity of typical crops, income and expense data, and similar information regarding continued eligibility.

Laws and Rules

It is helpful to read the complete laws, Revised Code of Washington, chapter 84.33 and 84.34 (RCW) and rules, Washington Administrative Code, chapter 458-30 (WAC) to understand requirements of the classifications and the tax liabilities incurred.

Need More Information?

Requirements and the manner for making the application for current use is available at the county assessor's office.

For general information contact:

- Department of Revenue,
Property Tax Division
P. O. Box 47471
Olympia, Washington 98504-7471
(360) 534-1400
- Website dor.wa.gov
- Telephone Information Center
1-800-647-7706
- To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715.
- Teletype (TTY) users please call 1-800-451-7985.



Current Use Taxation Programs

Current Use Taxation in King County

There are four current use taxation programs in King County that offer an incentive (a property tax reduction) to landowners to voluntarily preserve open space, farmland or forestland on their property.

Once enrolled, a participating property is assessed at a "current use" value, which is lower than the "highest and best use" assessment value that would otherwise apply to the property. These programs encourage the conservation of natural resources in King County by conserving its land and water resources, which include important wildlife habitat, wetland and streams, working forests and productive farmlands.



[Interactive map](#) of PBRS and Timber Land participating parcels

Two of these programs, the **Public Benefit Rating System** (also known as **Open Space**) and the **Timber Land** program are administered by the Department of Natural Resources and Parks. The **Forestland** and the **Farm and Agricultural** land programs are administered by the Department of Assessments. Enrollment in any of these programs requires the filing of an application and subsequent approval. While all four programs have an annual deadline of **December 31st** to apply, each program has different requirements and criteria for enrollment.

Public Benefit Rating System & Timber Land Programs

Department of Natural Resources and Parks

The Public Benefit Rating System (PBRS) and Timber Land programs encourage voluntary resource conservation on private property. Each is guided by different program objectives, requirements and criteria for enrollment; PBRS is better suited for landowners wanting to protect or restore open space resources on their property, Timber Land focuses on the sustainable management of commercial timber stands. There are over 1,405 landowners and 14,260 acres currently participating in these two programs.



document.

The Public Benefit Rating System (PBRS): PBRS enrollment and associated tax savings are based on a point system. Points are awarded for each PBRS resource category a property qualifies for (such as protecting buffers to streams and wetlands, ground water protection, preserving significant wildlife habitat, conserving farmland and native forestland, preserving historic landmarks and more). The total points awarded for a property's PBRS resources translate into a 50% to 90% reduction in the land assessed value for the portion of the property enrolled. For more information on each qualifying resource category and program specifics, please refer to the Resource Information

Timber Land: program enrollment requires a property have between five and twenty acres of manageable forestland, and be zoned RA, F or A. Land participating in this program must be devoted primarily to the growth, harvest, and management of forest crops for commercial purposes and must be managed according to an approved forest stewardship plan. For more

Related information

- [Forestry services and information](#)
- [Tax incentives for rural residents](#)
- [Property services](#)
- [Sustainable building](#)

Related agencies

- [Water and Land Resources Division](#)
- [Dept. of Natural Resources and Parks](#)

information on how to obtain a forest stewardship plan, please refer to the county's [Forest Stewardship Planning webpage](#).

Questions?

Bill Bernstein

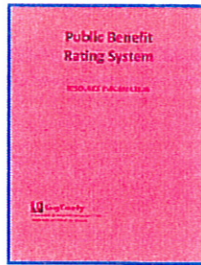
PBRS and Timber Land Coordinator
206-477-4643

Megan O'Brian

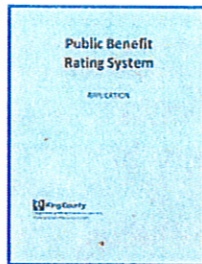
Program Analyst
206-477-4788

Want to Apply?

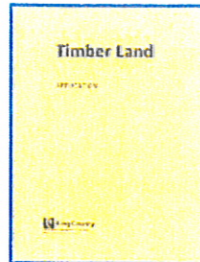
PBRS Application Materials and Timber Land Application



Also known as "Open Space" Resource Information



Also known as "Open Space" Application



COMMUNITY DEVELOPMENT

FEB 03 2014

RECEIVED

Farm and Agricultural Lands & Designated Forest Land Programs Department of Assessments

For landowners who own revenue generating farm property or larger commercial forests, there are two programs that also offer financial incentives similar to PBRS and Timber Land.

Farm and Agricultural Land: for land used for the production of livestock or agricultural commodities for commercial purposes. There are financial requirements for enrollment, which are dependent on the size of the land and the gross annual revenue received for the land for three out of the past five years (please refer to RCW [84.34.020](#) for more details).



Forestland: this program is similar to Timber Land but is for property containing more than twenty acres of eligible forestland primarily devoted to the growth and harvest of timber (please refer to RCW [84.33](#) and the Washington State Department of Revenue's [Designated Forestland publication](#) for more details).

Questions?

Wendy Morse

King County Assessor's Office,
Forestland and Farm and Agriculture
206-263-2374

Want to Apply?

Farm and Agricultural Land and Designated Forest Land Applications



Farm and Agricultural Land Application



Designated Forest Application - Same Ownership



Designated Forest Application - Multiple Ownership

**KING COUNTY
DEPARTMENT OF NATURAL RESOURCES AND PARKS
WATER AND LAND RESOURCES DIVISION**

**Report to the City of Black Diamond for Property
Enrollment in the Public Benefit Rating System (PBRs)
April 22, 2014**

APPLICANT: Darrell Bryant

File No. E13CT042BD

A. GENERAL INFORMATION:

1. Owners: Darrell Bryant and Marie Fieldhouse
25022 Roberts Drive
Black Diamond, WA 98010
2. Property location: 25022 Roberts Drive
Black Diamond, WA 98010
3. Zoning: MDR8, CC and NC
4. STR: SW-11-21-06 and NE-15-21-06
5. PBRs categories requested by applicant or *suggested by staff*:

Open space resources

**Buffer to public or current use classified land*

**Forest stewardship land*

Historic landmark or archaeological site: buffer to designated site

Rural open space

**Significant wildlife or salmonid habitat*

Surface water quality buffer

**Watershed protection area*

**Urban open space*

Bonus categories

Additional surface water quality buffer

Environmental education access

NOTE: *Staff recommends award of credit for these PBRs categories.

6. Parcel:	112106-9037	112106-9104	142106-9006
Total acreage:	4.17	12.68	32.70
Requested PBRs:	1.37	9.51	32.70
Home site/excluded area:	3.62	1.37	0.50
Recommended PBRs:	0.55	11.31	32.20
	152106-9052	152106-9058	152106-9060
Total acreage:	13.84	0.21	1.09
Requested PBRs:	13.84	0.21	0.54
Home site/excluded area:	0.00	0.00	0.40
Recommended PBRs:	13.84	0.21	0.69

NOTE: The attached map (2013 aerial photo) outlines in yellow the parcels' boundaries and in blue the areas proposed to be *excluded* from PBRs. The portion recommended for enrollment (58.80 acres) is the entire property (64.69 acres) less the excluded areas as measured (5.89 acres). In the event the Assessor's official parcel size is revised, PBRs acreage should be administratively adjusted to reflect that change.

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned MDR8, MPD, R4, R6, CC, IND and NC.
2. Development of the subject property and resource characteristics of open space area: Parcel -9037 contains a single family residence with associated landscaping and parking, a large shop/aircraft hanger, a detached garage, additional outbuildings and parking/equipment storage areas, a portion of airport runway and a water runoff retention pond. Additional portions of the airport runway are also located along the eastern boundary line of parcel -9006 and -9104 and there's an area of maintained grass at the southern end of parcel -9060. The enrolling open space portion of the property is primarily a mix of coniferous and deciduous forest with some native understory, but there are significant areas within parcels -9037, -9104 and eastern sections of -9006 that are heavily impacted by invasive plant species, mainly Himalayan blackberry and some Japanese knotweed. There is also a portion of a large open water wetland located within the western half of parcel -9052.

NOTE: The owners have committed to restoring/reforesting all areas that are proposed to participate in PBRs, which includes the control and eradication of invasive species noted above as well as the removal of all storage debris and vehicles, via the implantation of an approved forest stewardship plan. This restoration and reforestation work must occur as planned for those impacted areas to remain enrolled in PBRs.

3. Site use: A portion of the property (within parcels -9037, -9006 and -9104) is used as an airport and single family residence with the majority being undeveloped open space.
4. Access: The property is accessed from Roberts Drive.
5. Appraised value for 2014 (Based on Assessor's information dated 4/22/2014):

<u>Parcel #112106-9037</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$179,000.00	\$445,000.00	\$624,000.00
Tax applied	\$2,378.16	\$5,913.13	\$8,291.29
<u>Parcel #112106-9104</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$552,300.00	\$0	\$552,300.00
Tax applied	\$7,338.59	\$0	\$7,338.59
<u>Parcel #142106-9006</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$4,125.00*	\$0	\$4,125.00
Tax applied	\$54.81	\$0	\$54.81
<u>Parcel #152106-9052</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$188,000.00	\$0	\$188,000.00
Tax applied	\$2,498.02	\$0	\$2,498.02
<u>Parcel #152106-9058</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$1,000.00	\$0	\$1,000.00
Tax applied	\$13.29	\$0	\$13.29
<u>Parcel #152106-9060</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$166,100.00	\$1,000.00	\$167,100.00
Tax applied	\$2,206.94	\$13.37	\$2,220.31

NOTE: *Parcel -9006 is currently participating in the forestland program (RCW 84.33). The Department of Assessments is not required to maintain an assessed land value for property participating in this program and therefore, that value is not provided. Like the forestland program, participation in PBRs reduces the **appraised value of the land** for the **portion** of the property enrolled resulting in a lower taxable land value.

C. REQUIREMENTS SPECIFIED BY KING COUNTY CODE (KCC):

KCC 20.36.010 Purpose and intent.

It is in the best interest of the county to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest

crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the county and its citizens.

It is the intent of this chapter to implement RCW Chapter 84.34, as amended, by establishing procedures, rules and fees for the consideration of applications for public benefit rating system assessed valuation on "open space land" and for current use assessment on "farm and agricultural land" and "timber land" as those lands are defined in RCW 84.34.020. The provisions of RCW chapter 84.34, and the regulations adopted thereunder shall govern the matters not expressly covered in this chapter.

KCC 20.36.100 Public benefit rating system for open space land – definitions and eligibility.

- A. To be eligible for open space classification under the public benefit rating system, property must contain one or more qualifying open space resources and have at least five points as determined under this section. The department will review each application and recommend award of credit for current use of property that is the subject of the application. In making such recommendation, the department will utilize the point system described in section B. and C. below.
- B. The following open space resources are each eligible for the points indicated:
 - 1. Public recreation area – five points
 - 2. Aquifer protection area – five points
 - 3. Buffer to public or current use classified land – three points
 - 4. Equestrian-pedestrian-bicycle trail linkage – thirty-five points
 - 5. Active trail linkage – fifteen or twenty-five points
 - 6. Farm and agricultural conservation land – five points
 - 7. Forest stewardship land – five points
 - 8. Historic landmark or archaeological site: buffer to a designated site – three points
 - 9. Historic landmark or archaeological site: designated site – five points
 - 10. Historic landmark or archaeological site: eligible site – three points
 - 11. Rural open space – five points
 - 12. Rural stewardship land – five points
 - 13. Scenic resource, viewpoint, or view corridor – five points
 - 14. Significant plant or ecological site – five points
 - 15. Significant wildlife or salmonid habitat – five points
 - 16. Special animal site – three points
 - 17. Surface water quality buffer – five points
 - 18. Urban open space – five points
 - 19. Watershed protection area – five points
- C. Property qualifying for an open space category in subsection B. of this section may receive credit for additional points as follows:
 - 1. Resource restoration - five points
 - 2. Additional surface water quality buffer - three or five points
 - 3. Contiguous parcels under separate ownership - two points
 - 4. Conservation easement of historic easement – fifteen points
 - 5. Public access - points dependent on level of access

- a. Unlimited public access - five points
- b. Limited public access - sensitive areas - five points
- c. Environmental education access – three points
- d. Seasonal limited public access - three points
- e. None or members only – zero points
- 6. Easement and access – thirty-five points

D. 2012 COMPREHENSIVE PLAN POLICIES AND TEXT:

E-101 In addition to its regulatory authority, King County should use incentives to protect and restore the natural environment whenever practicable. Incentives should be monitored to determine their effectiveness in terms of protecting natural resources.

NOTE: Monitoring of participating lands is the responsibility of both department PBRs staff and the landowner. This issue is addressed in the Resource Information document (page 4) and detailed below in Recommendation #B11.

E-106 The protection of lands where development would pose hazards to health, property, important ecological functions or environmental quality shall be achieved through acquisition, enhancement, incentive programs and appropriate regulations. The following critical areas are particularly susceptible and shall be protected:

- a. Floodways of 100-year floodplains;
- b. Slopes with a grade of 40 percent or more or landslide hazards that cannot be mitigated;
- c. Wetlands and their protective buffers;
- d. Aquatic areas, including streams, lakes, marine shorelines and their protective buffers;
- e. Channel migration hazard areas;
- f. Critical Aquifer Recharge Areas;
- g. Fish and Wildlife Habitat Conservation Areas; and
- h. Volcanic hazard areas.

E-421 Terrestrial and aquatic habitats should be conserved and enhanced to protect and improve conditions for fish and wildlife.

NOTE: PBRs is an incentive program provided to encourage voluntary protection of open space resources and maintain high quality resource lands.

E-429 King County should provide incentives for private landowners who are seeking to remove invasive plants and noxious weeds and replace them with native plants.

NOTE: Participation in PBRs requires landowners address invasive plant and noxious weed control and removal within enrolled portions of a property. Replacement with native vegetation is also encouraged via the implementation of approved forest stewardship, rural stewardship or resource restoration plans.

E-443 The county should promote voluntary wildlife habitat enhancement projects by private individuals and businesses through educational, active stewardship, and incentive programs.

E-476 King County should identify upland areas of native vegetation that connect wetlands to upland habitats and that connect upland habitats to each other. The county should seek protection of these areas through acquisition, stewardship plans, and incentive programs such as the Public Benefit Rating System and the Transfer of Development Rights Program.

E-504 King County should protect native plant communities by encouraging management and control of nonnative invasive plants, including aquatic plants. Environmentally sound methods of vegetation control should be used to control noxious weeds.

NOTE: Lands participating in PBRS provide valuable resource protection and promote the preservation or enhancement of native vegetation. Addressing nonnative vegetation (invasive plant species), through control and eradication is a PBRS requirement.

E-449 The county shall promote retention of forest cover and significant trees using a mix of regulations, incentives, and technical assistance.

R-605 Well-managed forestry and agriculture practices are encouraged because of their multiple benefits, including natural resource protection.

NOTE: The implementation of an approved forest stewardship, farm management or rural stewardship plan benefits natural resources, such as wildlife habitat, stream buffers and groundwater protection, as well as fosters the preservation of sustainable resources.

E. PBRS CATEGORIES REQUESTED and DEPARTMENT RECOMMENDATIONS:

Open space resources

- Buffer to public or current use classified land

Although credit for this category was not requested, the property is south and adjacent to a property (parcel #102106-9111) participating in the Forest land program (RCW 84.33). The enrolling open space area is providing a buffer of native vegetation of more than 50 feet to this adjacent land, which exceeds the category's requirement. Credit for this category is recommended.

- Forest stewardship land

The property contains approximately 52 acres of contiguous forest. The owners have provided a forest stewardship plan that has been approved by a county forester. Credit for this category is recommended, which requires implementation of the approved plan and the associated restoration/reforestation activities as detailed in the plan. Award of this category may allow forestry activities to occur in the participating open space area. It is

the landowner's responsibility to apply for and receive the necessary approvals from the applicable state and local governmental agencies for forestry activities that require a permit or approval, such as clearing and grading.

- Historic landmark or archaeological site: buffer to designated site
The property is located approximately 250 feet north of the Black Diamond Cemetery, a designated historic landmark recognized by King County. To be eligible for this category, the property must have a plant community in which native plants are dominant and be adjacent to or in the immediate vicinity of and provide a significant buffer for the county recognized landmark. While the enrolling property is natively vegetated open space, the cemetery is not adjacent to the property and is instead separated by two public roads and residential development. Because of the distance between the properties, it is the determination of PBRs and Historic Preservation Program staff that the enrolling property is not providing aesthetic value or resource benefit to this landmark as intended by award of this category. Credit for this category is not recommended.
- Rural open space
To be eligible for this category a property must be located in the rural area and be enrolling at least 10 acres of native vegetation. Although the property does contain more than ten acres of native vegetation, it is located in the City of Black Diamond and not in the rural area. Credit for this category cannot be recommended.
- Significant wildlife or salmonid habitat
The property contains habitat for numerous wildlife species, including foraging and nesting habitat for the pileated woodpecker, which is listed as a species of concern by the Washington Department of Fish and Wildlife. Upon conducting a site visit, program staff observed evidence of pileated woodpecker activity and determined the forest on the property is of sufficient age and diversity to support the species regular use of the property. Award of this category is consistent with habitat as defined by KCC 20.36.100, section B.15.a(2). Credit for this category is recommended.
- Surface water quality buffer
As determined by the City of Black Diamond, the property contains a portion of Category I wetland within the western half of parcel -9052 that also extends south and east impacting parcels -9006 and -9058 and -9060. As required by the City of Black Diamond's code, Chapter 19.10.130, the buffer width required for this category of wetland is 190 feet. In order to be eligible for this PBRs category, the participating land must provide an average buffer greater than 1.5 times that required or 285 feet in this case. Although the owners are providing a buffer of native vegetation to the east of this wetland, it is unclear where the edge of the wetland begins. Program staff therefore cannot determine whether or not a qualifying buffer of native vegetation is being provided and a wetland delineation would be needed to support award of this category. The owners do not intend to pursue a wetland delineation, and therefore credit for this category cannot be recommended.
- Urban open space
The property is located within the City of Black Diamond. The enrolling forested portion of the property is more than one acre in size and is natively vegetated. Credit for this category is recommended.

- Watershed protection area

In order to be eligible for this category, the enrolling area must consist of additional native forest cover beyond that required and be at least 65% of the property acreage. Except for the excluded areas and portion of open water wetland on parcel 9052, the property is entirely forested, although some restoration and reforestation work needs to be done to improve overall health and diversity of the enrolling areas. By voluntarily enrolling the property in PBRS and not pursuing development or land use that might be allowed under current zoning regulation, the owners are directly contributing to the preservation of forest and open spaces within the city limits, which supports the city's open space goals as described in Chapter 5, Section 5.6 of the City of Black Diamond's Comprehensive Plan and Chapter 19.30 of the city's Municipal Code. Retention of this large urban forest will surpass this category's requirement and promote wildlife habitat, stabilize and enrich existing soils and slow runoff from precipitation, as well as provide many other resource benefits to the surrounding area and City. The 52 acres of enrolling forest represents 80% of the property, which exceeds category requirements and provides valuable watershed protection benefits. Credit for this category is recommended.

Bonus categories

- Additional surface water quality buffer

As determined by the City of Black Diamond, the property contains a portion of Category I wetland within the western half of parcel -9052 that also extends south and east impacting parcels -9006 and -9058 and -9060. As required by the City of Black Diamond's code, Chapter 19.10.130, the buffer width required for this category of wetland is 190 feet. In order to be eligible for this category, the participating land must provide a buffer greater than two times that required (or 380 ft) for three points to be awarded or provide a buffer greater than three times that required (or 570 feet) for five points to be awarded. Although the owners are providing a buffer of native vegetation to the east of this wetland, it is unclear where the edge of the wetland begins. Program staff therefore cannot determine whether or not a qualifying buffer of native vegetation is being provided and a wetland delineation would be needed to support award of this category. The owners do not intend to pursue a wetland delineation, and therefore credit for this category cannot be recommended.

- Environmental education access

The owners feel the property could offer valuable environmental education opportunities to the public in the future, particularly with regard to the diverse wetland complex within western portion of the property. The owners also are exploring the possibility of establishing a community garden on part of parcel -9060. At this time however, it is unclear whether or not public access will occur in the immediate future or on a regular basis and the owners have decided not to pursue award of credit for this category at this time. Credit for this category is not recommended.

NOTE: It is important to note that enrollment in the PBRS program requires the control and removal of invasive plant species. This issue is addressed in the Resource Information document (page 3) and below in Recommendation #B7.

CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS:

1. Approval of the subject request would be consistent with the specific purpose and intent of KCC 20.36.010.
2. Approval of the subject request would be consistent with policy E-101 of the King County Comprehensive Plan.
3. Of the points recommended, the subject request meets the mandatory criteria of KCC 20.36.100 as indicated:

Open space resources

- | | |
|---|---|
| • Buffer to public or current use classified land | 3 |
| • Forest stewardship land | 5 |
| • Historic landmark or archeological site:
buffer to a designated site | 0 |
| • Rural open space | 0 |
| • Significant wildlife or salmonid habitat | 5 |
| • Surface water quality buffer | 0 |
| • Watershed protection area | 5 |
| • Urban open space | 5 |

Bonus categories

- | | |
|---|---|
| • Additional surface water quality buffer | 0 |
| • Environmental educational access | 0 |

TOTAL 23 points

PUBLIC BENEFIT RATING

For the purpose of taxation, 23 points result in 20% of market value and an 80% reduction in taxable value for the portion of land enrolled.

B. RECOMMENDATION:

APPROVE the request for current use taxation "Open space" classification with a Public Benefit Rating of 23 points, subject to the following requirements:

Requirements for Property Enrolled in the Public Benefit Rating System Current Use Taxation Program

1. Compliance with these requirements is necessary to continue to receive the tax benefits from the King County Public Benefit Rating System (PBRs) current use taxation program for the property enrolled in the program (Property). Failure to abide by these requirements can result in removal of current use designation and subject the property

owner (Owner) to the penalty, tax, and interest provisions of RCW 84.34 and assessment at true and fair value. The County Assessor and the King County Rural and Regional Services Section or its successor may re-evaluate the Property to determine whether removal of the open space designation is appropriate. Removal shall follow the process in RCW 84.34.108.

2. Revisions to these requirements may only occur upon mutual written approval of the Owner and granting authority. These conditions shall apply so long as the Property retains its open space designation. If a conservation easement acceptable to and approved by the City of Black Diamond and King County is granted by the Owner or the Owner's successors in interest to the Department of Natural Resources and Parks, King County or a grantee approved by King County, these requirements may be superseded by the terms of such easement, upon written approval by King County.
3. The open space classification for this Property will continue so long as it meets the open space purposes for which it was initially approved. Classification as open space will be removed upon a determination by King County that the Property no longer meets the open space purposes for which it was initially approved. A change in circumstances which diminishes the extent of public benefit from that approved by the City of Black Diamond and King County Council in the open space taxation agreement will be cause for removal of the current use assessment classification. It is the Owner's responsibility to notify the Assessor and the King County Rural and Regional Services Section or its successor of a change in circumstance with regard to the Property.
4. When a portion of the open space Property is withdrawn or removed from the program, the King County Rural and Regional Services Section or its successor and the Assessor shall re-evaluate the remaining Property to determine whether it may continue to qualify under the program. If the remaining portion meets the criteria for priority resources, it may continue under current use taxation.
5. Except as provided for in sections 6, 7 and 10 below, no alteration of the open space land or resources shall occur without prior approval by the City of Black Diamond the King County Rural and Regional Services Section or its successor. **Any unapproved alteration may constitute a departure from an approved open space use and be deemed a change of use, and subject the Property to the additional tax, interest, and penalty provisions of RCW 84.34.080.** "Alteration" means any human-induced action that adversely impacts the existing condition of the open space Property or resources including but not limited to the following: *(Walking, horseback riding, passive recreation or actions taken in conjunction with a resource restoration plan, or other similar approved activities are permitted.)*
 - a. erecting structures;
 - b. grading;
 - c. filling;
 - d. dredging;
 - e. channelizing;
 - f. modifying land or hydrology for surface water management purposes;

- g. cutting, pruning, limbing or topping, clearing, planting, introducing, relocating or removing vegetation, however, selective cutting may be permitted for firewood;
 - h. applying herbicides or pesticides or any hazardous or toxic substance;
 - i. discharging pollutants excepting stormwater;
 - j. paving, construction, application of gravel;
 - k. storing of equipment, household supplies, play equipment, or compost;
 - l. engaging in any other activity that adversely impacts the existing vegetation, hydrology, wildlife, wildlife habitat, or other open space resources.
6. Notwithstanding the provisions of Section 5 trees posing a hazard to structures or major roads may be removed. Any trees removed must be replaced.
7. If an area of the Property becomes or has become infested with noxious weeds, the Owner may be required to submit a control and enhancement plan to the City of Black Diamond and the King County Rural and Regional Services Section or its successor in order to remove such weeds. If an area of the Property becomes or has become invaded by non-native species, the Owner may be required to submit, or may voluntarily submit, an enhancement plan to the King County Rural and Regional Services Section or its successor, in order to replace such species with native species or other appropriate vegetation.
8. There shall be no motorized vehicle driving or parking allowed on the open space Property, except for the purpose of forestry and in areas of the Property being used as forest stewardship land.
9. Grazing of livestock is prohibited on the open space Property.
10. For land designated as forest stewardship land, activities that are consistent with forestry uses and that are consistent with an approved Forest Stewardship Plan for the Property shall be permitted as long as those activities do not cause a significant adverse impact to the resource values of other awarded categories.
11. An owner of property receiving credit for farm and agricultural conservation land, forest stewardship land, or rural stewardship land, all of which require a stewardship or management plan, must annually provide a monitoring report that describes progress of implementing the plan. The owner must submit this report, which must include a brief description of activities taken to implement the plan and photographs from established points on the property, to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.
12. Enrollment in PBRs does not exempt the Owner from obtaining any required permit or approval for activity or use on the Property.

TRANSMITTED to the parties listed hereafter:

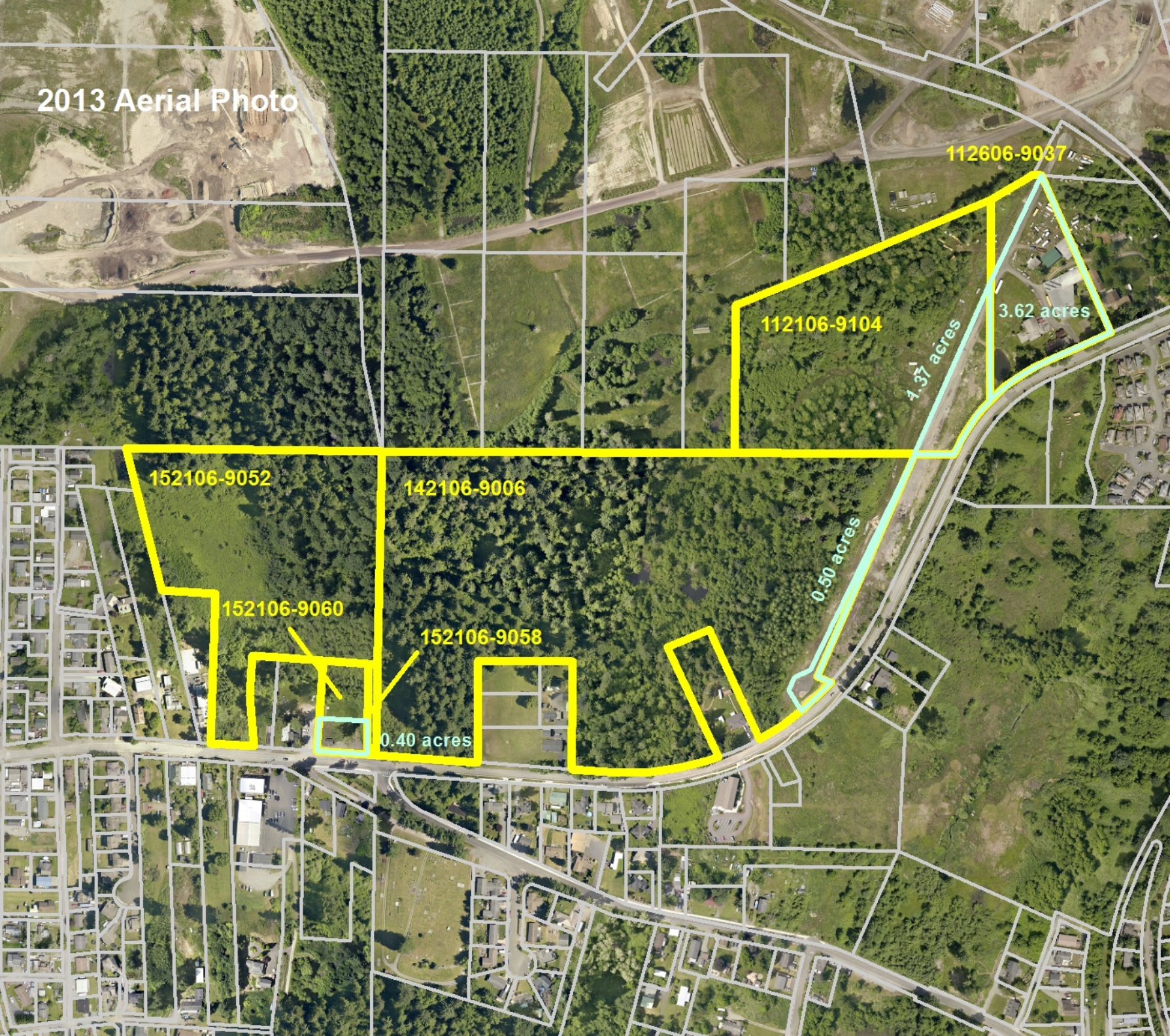
Darrell Bryant, applicant

Stacey Welsh, Community Development Director, City of Black Diamond

Wendy Morse, King County Department of Assessments

Charlie Sundberg, King County Historic Preservation Program

2013 Aerial Photo



112606-9037

112106-9104

1.37 acres

3.62 acres

152106-9052

142106-9006

0.50 acres

152106-9060

152106-9058

0.40 acres

The small commercial area at Morganville encompasses the Dinner House restaurant, a small garden nursery, and office uses.

Currently, the City has relatively little vacant land designated for commercial use. However, commercial uses are also permitted, and likely to occur, in future Master Planned Communities to provide jobs and services for local residents.

Industrial

Two areas within the City are currently zoned for industrial use: along the south side of Roberts Drive at Morganville, which contains Anesthesia Equipment Supply, the City's only industrial use, and office space; and the area west of SR 169, north of Roberts Drive. For the past 100 years, the latter area has been used for mineral extraction, processing activities, and associated industrial uses (an auto wrecking yard, a meat market, fuel supply station, truck and equipment repair facilities and several storage warehouses). The area is currently available for redevelopment.

Bryant Airstrip

For over four decades, a privately-owned airstrip has been operated by the Bryant family on their property located on the north side of Roberts Drive, west of its intersection with SR-169. Historically, the airstrip has had only minimal use. However, both the potential and interest exists to expand the scope of the airstrip to include the installation of hangars, a fueling facility and a helipad. Currently, the airstrip is considered to be a legal nonconforming use, as it is situated such that it crosses through three distinct land use categories and zone districts (Industrial, Community Commercial and Medium Density Residential). The City should consider zoning and other land use regulation amendments as may be necessary to evaluate the potential expansion of its operations.

5.2.3. A New Direction

The community's vision is for the City to guide and manage growth carefully and creatively, in a manner which protects its sensitive areas and treasured places (e.g., historical structures and sites) and retains open spaces that form the natural beauty of the City. Given the abundance of these features throughout the City, future development is likely to occur in numerous "villages" separated by these features. New development can be accommodated within this framework and landscape.

Preparation of the Land Use Element considered and identified areas that are appropriate for development and those which should be protected as sensitive areas and open space. The result is a comprehensive pattern of greenbelts and buffers shaped through a variety of policies, regulations, and incentive programs, such as transfer of development rights (TDR)—i.e., providing development "credits" for

Bryant PBRS Tax Information

Tax Parcel #	Total Acres in Parcel	Acres Requested for PBRS	King County recommended PBRS acreage	Taxable Land Value*	Taxable Imps Value*	Taxable Total Value*	Property Taxes*	Portion of property taxes City receives*	Zoning	Comp Plan
1121069104	12.68	9.51	11.31	\$552,300	\$0	\$552,300	\$7,347	\$1,450	CC	CC
1121069037	4.17	1.37	0.55	\$179,000	\$445,000	\$624,000	\$8,299	\$1,638	CC	CC
1521069052	13.84	13.84	13.84	\$188,000	\$0	\$188,000	\$2,507	\$493	MDR8/NC	MDR/NC
1521069058	0.21	0.21	0.21	\$1,000	\$0	\$1,000	\$20	\$3	NC	NC
1521069060	1.09	0.54	0.69	\$166,100	\$1,000	\$167,100	\$2,228	\$439	NC	NC
1421069006	32.7	32.7	32.2	\$4,125	\$0	\$4,125	\$56	\$11	MDR8	MDR
Total:	64.69	58.17	58.8	\$1,090,525	\$446,000	\$1,536,525	\$20,457	\$4,033		
*Amounts per King County for tax year 2014 for full parcel acreage and improvements.										
							<u>Zoning</u>			
						CC	Community Commercial			
						MDR8	Medium Density Residential			
						NC	Neighborhood Center			
							<u>Comprehensive Plan</u>			
						CC	Community Commercial			
Prepared by COBD staff						MDR	Medium Density Residential			
						NC	Neighborhood Commercial			

RCW 84.34.037

Applications for current use classification — To whom made — Factors — Review.

(1) Applications for classification or reclassification under RCW 84.34.020(1) shall be made to the county legislative authority. An application made for classification or reclassification of land under RCW 84.34.020(1) (b) and (c) which is in an area subject to a comprehensive plan shall be acted upon in the same manner in which an amendment to the comprehensive plan is processed. Application made for classification of land which is in an area not subject to a comprehensive plan shall be acted upon after a public hearing and after notice of the hearing shall have been given by one publication in a newspaper of general circulation in the area at least ten days before the hearing: PROVIDED, That applications for classification of land in an incorporated area shall be acted upon by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications.

(2) In determining whether an application made for classification or reclassification under RCW 84.34.020(1) (b) and (c) should be approved or disapproved, the granting authority may take cognizance of the benefits to the general welfare of preserving the current use of the property which is the subject of application, and shall consider:

(a) The resulting revenue loss or tax shift;

(b) Whether granting the application for land applying under RCW 84.34.020(1)(b) will (i) conserve or enhance natural, cultural, or scenic resources, (ii) protect streams, stream corridors, wetlands, natural shorelines and aquifers, (iii) protect soil resources and unique or critical wildlife and native plant habitat, (iv) promote conservation principles by example or by offering educational opportunities, (v) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, (vi) enhance recreation opportunities, (vii) preserve historic and archaeological sites, (viii) preserve visual quality along highway, road, and street corridors or scenic vistas, (ix) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property; and

(c) Whether granting the application for land applying under RCW 84.34.020(1)(c) will (i) either preserve land previously classified under RCW 84.34.020(2) or preserve land that is traditional farmland and not classified under chapter 84.33 or 84.34 RCW, (ii) preserve land with a potential for returning to commercial agriculture, and (iii) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of property.

(3) If a public benefit rating system is adopted under RCW 84.34.055, the county legislative authority shall rate property for which application for classification has been made under RCW 84.34.020(1) (b) and (c) according to the public benefit rating system in determining whether an application should be approved or disapproved, but when such a system is adopted, open space properties then classified under this chapter which do not qualify under the system shall not be removed from classification but may be rated according to the public benefit rating system.

(4) The granting authority may approve the application with respect to only part of the land which is the subject of the application. If any part of the application is denied, the applicant may withdraw the entire application. The granting authority in approving in part or whole an application for land classified or reclassified pursuant to RCW 84.34.020(1) may also require that certain conditions be met, including

but not limited to the granting of easements. As a condition of granting open space classification, the legislative body may not require public access on land classified under RCW 84.34.020(1)(b)(iii) for the purpose of promoting conservation of wetlands.

(5) The granting or denial of the application for current use classification or reclassification is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

[2009 c 350 § 13; 1992 c 69 § 6; 1985 c 393 § 1; 1984 c 111 § 1; 1973 1st ex.s. c 212 § 5.]

*Submitted to PC
4-29-14*

**BEFORE THE BLACK DIAMOND PLANNING COMMISSION
REGARDING BRYANT PROPERTY APPLICATION FOR OPEN SPACE
UNDER THE KING COUNTY'S PUBLIC BENEFIT RATING SYSTEM (PBRS)**

APRIL 29, 2014

This testimony is in favor of the Bryant application to place certain lands on designated parcels in open space within the City of Black Diamond. Open space in and around the City is at the heart of the Comprehensive Plan vision and the rural-by- design concept promoted by the City.

Mr. Bryant volunteering and wanting to protect and restore open space land on his private property through the PBRS program should be considered a laudable action for the community betterment, especially considering its location along Roberts Drive making it vulnerable to development. For the portion of Mr. Bryant's multi-parcel property that qualifies for PBRS enrollment points, the City stands to retain the benefits of storm-water control enhancement, wildlife protection, and community aesthetics. At a time when the community has clearly expressed concern about too much development, helping to conserve this natural space would be a logical step in being responsive to the people's concerns.

Community aesthetics of the property as a greenway along Roberts Drive is a positive value to the City. It is a finding of the county that open space properties provide a benefit to the surface and storm water management system by the retention of property in an undeveloped state (King County, Title 9, Surface Water Management). In addition, the Bryant parcels as open space would have a positive affect of protecting wildlife communities with forest, wetland, and meadow habitats on the property.

According to Randall Arendt author of the book Rural-by-Design endorsed by the City of Black Diamond in the Comprehensive Plan, encouraging open-space design can provide economic benefits by increasing the desire of homeowners to locate where open space amenities exist. The Black Diamond Comprehensive Plan (Chapter 5-7) states, "While every square foot of land has value to home owners, not every square foot has to be built upon to achieve that value."

Respectfully submitted,

Gil Bortleson, 23831 SE Green Valley Road, Auburn, WA 98010; PO Box 288, Black Diamond, WA. 98010

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-047 Ordinance No. 14-1028, relating to the authority of the Planning Commission and amending BDMC 2.24.020.	Agenda Date: May 15, 2014	
	AB14-047	
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note):	Police – Chief Kiblinger	
Fund Source:	Public Works – Seth Boettcher	
Timeline:	Court Administrator – Stephanie Metcalf	
Agenda Placement: <input type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Ordinance No. 14-1028		
SUMMARY STATEMENT: The City Attorney will be addressing this matter, which is before the Council in response to a discussion at the May 1, 2014 meeting. FISCAL NOTE (Finance Department):		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: n/a		
RECOMMENDED ACTION: MOTION to approve Ordinance No. 14-1028, relating to the authority of the Planning Commission, defining the types of actions for which the Planning Commission will hold hearings and make recommendations to the City Council as those relating to legislative comprehensive plan and development regulation amendments, instead of limiting such action to the placement of codes in particular titles of the municipal code, amending Black Diamond Municipal Code Section 2.24.020 and establishing an effective date.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
May 15, 2014		

ORDINANCE NO. 14-1028

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO THE AUTHORITY OF THE PLANNING COMMISSION, DEFINING THE TYPES OF ACTIONS FOR WHICH THE PLANNING COMMISSION WILL HOLD HEARINGS AND MAKE RECOMMENDATIONS TO THE CITY COUNCIL AS THOSE RELATING TO LEGISLATIVE COMPREHENSIVE PLAN AND DEVELOPMENT REGULATION AMENDMENTS, INSTEAD OF LIMITING SUCH ACTION TO THE PLACEMENT OF CODES IN PARTICULAR TITLES OF THE MUNICIPAL CODE, AMENDING BLACK DIAMOND MUNICIPAL CODE SECTION 2.24.020 AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Black Diamond Planning Commission's authority, as expressed in Black Diamond Municipal Code Section 2.24.020 is defined substantively as "matters relating to the City's comprehensive plan and land use regulations, including additional and amendments thereto;" and

WHEREAS, said authority in BDMC Section 2.24.020 is also defined as extending to "reviewing and making a recommendation to the city council regarding proposed amendments to all or any portion of Titles 16, 17, 18 or 19 of the municipal code," even though there are provisions in Titles 16, 17, 18 or 19 which do not relate to the City's comprehensive plan and land use regulations; and

WHEREAS, the City Council desires to define the scope of the Planning Commission's authority to eliminate confusion and to ensure that the Planning Commission's schedule is not unduly burdened with unnecessary reviews of ordinances in Titles 16, 17, 18 or 19 of the BDMC; and

WHEREAS, the SEPA Responsible Official has determined that adoption of this Ordinance is exempt from SEPA under WAC 197-11-800(19) as relating solely to procedure; and

WHEREAS, on May 15, 2014, the City Council considered this Ordinance during its regular meeting and adopted it;

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

Section 1. Section 2.24.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

2.24.020 Powers and duties.

A. The planning commission shall perform the function of a planning agency as set forth in chapter 35A.63 RCW, provided, certain land use matters may be referred to the city's hearing examiner as elsewhere provided by the Black Diamond Municipal Code. The planning commission shall be an advisory body to the city council. The planning commission will hold public hearings and make recommendations to the city council on zoning code text and development regulation amendments, area-wide rezones, adoption of comprehensive plan and any other plan amendments. "Development regulations" are defined as "controls placed on development of land use activities by the city including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, PUD ordinances, subdivision ordinances, binding site plan ordinances, together with any amendments thereto."
~~On matters relating to the city's comprehensive plan and land use regulations, including additions and amendments thereto, and shall be specifically responsible for reviewing and making a recommendation to the city council regarding proposed amendments to all or any portion of Titles 16, 17, 18 or 19 of the municipal code, or potential annexation of lands into the city limits and the zoning to be assigned thereto.~~

B. The planning commission shall review such other matters and take such further action as the city council may direct from time to time by motion, resolution or ordinance.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Black Diamond and attested by the City Clerk in authentication of such passage on this 15th day of May, 2014.

APPROVED by the Mayor this 15th day of May, 2014.

Mayor, Dave Gordon

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

PUBLISHED: _____

POSTED: _____

EFFECTIVE DATE: _____

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-047 Resolution No. 14-946, acceptance of the Department of Ecology's required and recommended changes to the City's Draft Shoreline Master Program and a few language changes, reviewed by the Department and included within Appendix A.	Agenda Date: May 15, 2014	
	AB14-048	
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	X
Cost Impact (see also Fiscal Note): N/A		
Fund Source: N/A		
Timeline: N/A		
	Court Administrator – Stephanie Metcalf	
Agenda Placement: <input type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-946, Appendix A and background materials for Council's review.		
SUMMARY STATEMENT: The City Council gave preliminary approval of the City's Draft Shoreline Master Program and back-up materials through Resolution 12-829. The Department of Ecology reviewed these materials and provided both required and recommended changes to these materials received on August 5 th of 2013. The Mayor directed staff, in congruence with the Council's direction on this issue, to work with the Department of Ecology in identifying acceptable alternatives to the few regulation challenges brought forward by citizens of the community. This work has now been completed and Ecology suggested that the City approve these agreed to modifications via a new Resolution, in supplying the Department a formal response. Once approved by the City Council, these modifications then fall to the Department of Ecology for their approval. Once approved by the Department of Ecology, these rules go into effect 14 days following the Department's final action. Staff is preparing an Ordinance, modifying City Code, based on Ecology's approval and be brought forward to the Council as soon as Staff can reasonably get the issue on the Council's agenda.		
FISCAL NOTE (Finance Department): <i>No impact to City Finances at this point, but may slightly increase future Capital improvement costs for projects around the lake due to increased permitting and design costs for these projects.</i>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Complete Committee changes as required at their April 2, 2014 meeting and final preparations made for City Council approval.		
RECOMMENDED ACTION: MOTION adopt Resolution No. 14-946 accepting the required and recommended changes to the Council's approved Shoreline Master Program and materials (Resolution 12-829) sent from the Department of Ecology in August of 2013, with Ecology reviewed modifications, as identified within Appendix A.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 15, 2014		

RESOLUTION NO. 14-946

A RESOLUTION OF THE CITY COUNCIL OF BLACK DIAMOND, WASHINGTON, ACCEPTING A MAJORITY, WITH A FEW, APPROVED MODIFICATIONS, OF THE DEPARTMENT OF ECOLOGYS REQUIRED AND RECOMMENDED CHANGES TO THE CITY'S SUBMITTED SHORELINE MASTER PROGRAM WITH THE PASSAGE OF RESOLUTION 12-829

WHEREAS, the people of the State of Washington enacted the Shoreline Management Act by a vote of the people in 1971; and

WHEREAS, the State of Washington Shoreline Management Act (RCW 90.58), adopted in 1972, recognizes that "shorelines are among the most valuable and fragile" resources of the State, and that to protect the public interest in preserving these shorelines, the State and local governments must establish a coordinated planning program to address the types and effects of development occurring along the State's shorelines; and

WHEREAS, the broad policies of the Shoreline Management Act are to encourage water-dependent uses, protect shoreline natural areas and promote public access; and

WHEREAS, the City of Black Diamond adopted its own version of a Shoreline Master Program in 1978, but did not identify, at the time, Shorelines of Statewide Significance within its corporate borders; and

WHEREAS, the shorelines and outlying areas of Lake Sawyer were incorporated into the City limits of the City of Black Diamond in 1998 and the then established goals, policies and regulations of King County's Shoreline Master Program continue to be implemented in accordance with WAC 173-26-160; and

WHEREAS, the Shoreline Management Act requires all local governments, including the City of Black Diamond, to: 1) develop and inventory the natural characteristics and land use patterns along shorelines covered by the Act; 2) prepare a "Shoreline Master Program" to determine the future of the shorelines; 3) develop specific goals, policies and recommendations for protection of such shoreline resources; 4) develop a permit system with development standards for all shoreline uses within existing shoreline designations that further the goals and policies of both the Act and the local Shoreline Master Program; and 5) develop a Restoration Plan for the long-term restoration of impaired shoreline ecological functions; and

WHEREAS, the City of Black Diamond received a grant to update its Shoreline Master Program from the Department of Ecology in June, 2008 in the amount of \$60,000 and was further awarded an additional \$10,000 in 2012 in order to complete the updated Shoreline

Master Program; and

WHEREAS, the City and it's Consultant, AHBL Inc., produced a Public Participation Plan that included: 1) a Visioning Workshop that was advertised and held on September 21, 2010, 2) the formation of and receipt of input from a Citizen Advisory Committee over a period of 6 months; 3) significant communication of the process to the public through newsletter articles, postings on the City's webpage, postings on the Lake Sawyer Community Club's website and comprehensive email distribution list, and two mass mailings advising the public of the Shoreline Master Program Update; and 4) phone calls and email outreach by City staff with property owners surrounding the lake; and

WHEREAS, the City's Responsible Official issued a Determination of Non-Significance on the proposed Shoreline Master Program on March 2, 2012; and

WHEREAS, the Black Diamond Planning Commission held four work sessions to discuss the contents of the SMP Update and held two nights of formal public hearings on March 13 and March 27, 2012, where eleven individuals provided public testimony and twenty-four individuals provided written comment; and

WHEREAS, the Black Diamond Planning Commission considered the written and verbal testimony provided, held two additional work sessions on May 8 and June 12, 2012, and made certain modifications to the proposed SMP Update and proposed shoreline regulations to reflect such testimony; and

WHEREAS, on June 12, 2012, the Black Diamond Planning Commission recommended unanimously that the Black Diamond City Council adopt the proposed SMP update; and

WHEREAS, the Black Diamond City Council held one work session to discuss the contents of the SMP Update on May 31, 2012, and a formal public hearing on June 21, 2012, where one individual provided public testimony and one individual provided written comment; and

WHEREAS, the Black Diamond City Council considered written and verbal testimony provided, held one additional work session on July 19, 2012, and made certain modifications to the proposed SMP Update and proposed shoreline regulations to reflect such testimony; and

WHEREAS, the City Council granted preliminary approval of the Draft Shoreline Master Program and supporting materials with the passage of Resolution 12-829 to the Washington State Department of Ecology for review and approval; and

WHEREAS, the Department of Ecology reviewed these materials and submitted both required and recommended changes to the Draft Shoreline Master Program, received by the City on August 5, 2013, addressed to then Mayor Rebecca Olness; and

WHEREAS, the Black Diamond City Council offered some alternatives to 6 (six) of the recommended and required changes with the passage of Resolution 13-884 on August 21, 2013, directing the Mayor to offer these changes to the Department of Ecology for their consideration; and

WHEREAS, the Department of Ecology continued to work with City of Black Diamond Staff in reaching consensus on certain modifications to the Department's required and recommended changes and suggested that a new Resolution be drafted approving the Department's required and recommended changes, along with the agreed to modifications as outlined in Appendix A;

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

Section 1. The Black Diamond City Council directs the Mayor to forward the acceptance of the Department of Ecology's recommended and required changes, with a couple agreed to changes, shown within Appendix A of this Resolution.

Section 2. The City Clerk is authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, numbering, section/subsection numbers and any references thereto.

Section 3. Upon final action by the Department of Ecology, as mandated within RCW 90.58.090(7), these amendments to the Shoreline Mater Program go in effect 14 (fourteen) calendar days from Ecology's final action.

Passed by the City Council on this 15th day of May, 2014.

Mayor Dave Gordon

ATTEST:

Brenda L. Martinez, City Clerk

Resolution No. 14-946

Page 3 of 3

Black Diamond Response:

Ecology Required Changes

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
1	Ch.1.E ¶ 3	Environment Designations	Black Diamond has designated its Lake Sawyer shorelines under four <u>five</u> shoreline environments: Aquatic, Natural, Urban Conservancy, <u>Shoreline Residential Limited</u> and Shoreline Residential.	The City of Black Diamond City Council accepts this change.	WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited. Ecology Final Action: tbd.
2	Ch. 3.B.5.c.3	Public Access	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 <u>Where</u> constitutional or legal limitations preclude public access.	The City of Black Diamond City Council accepts this change.	Exceptions to public access standards are limited to those found in WAC 173-26-221 (4)(d)(iii). Ecology Final Action: tbd.
Vegetation Conservation					
3	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	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.	The City of Black Diamond City Council accepts this change.	The SMP allows the unmitigated removal of unhealthy non-hazardous trees. This is in conflict with WAC 173-26-221(5) (c), Shoreline vegetation conservation, WAC 173-26-201 (2) (e)), Environmental impact Mitigation, and the provisions of WAC 173-26-186(8), as they relate to a finding of no net loss of shoreline ecological functions. The importance of vegetation in urban areas is addressed in the guidelines and the City's Inventory and Analysis. The Guidelines highlight the relative importance of vegetation in WAC 173-26-201(3)(d)(viii): While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Specific to Black Diamond, the City's Inventory and Characterization creates lists of recommendations for shoreline management. Chapter 7.1.2 states: “Conservation of existing native vegetation during land development and ongoing use is critical to maintaining the ecological processes and natural functions of shoreline areas” and “The removal of mature trees and native vegetation should be regulated in a manner that provides protection that is equal to or greater than current Sensitive Area Regulations.” The Inventory and Characterization language above is supported by the concept of Mitigation Sequencing, WAC 173-26-201(2) (e), by first avoiding, then minimizing and mitigating for impacts. Further, the SMP itself contains

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
					<p>policy language supporting the preservation of existing vegetation. Policy 5 states "Removal of non-hazardous mature trees and native vegetation within the required shoreline setback should be severely restricted regardless of lot size or use." Policy 1 supports the concept of mitigation sequencing. It reads: “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.”</p> <p>Allowing the unmitigated removal of unhealthy non-hazardous trees cannot be supported based on the analysis provided. Mitigation is required on a project by project basis which will provide equal or greater functions.</p> <p>Ecology Final Action: tbd.</p>
4	Ch. 3.B.7.c.5 Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	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.	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #3</p> <p>Ecology Final Action: tbd.</p>
5	Ch. 3.B.7.c.13 Shoreline Vegetation Conservation Regulations	Maintenance and monitoring	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 18-14 below.	The City of Black Diamond City Council accepts this change.	<p>Pursuant to WAC 173-26-221(5)(c), vegetation conservation standards required. By referencing ‘Regulation 18’, which does not exist, this regulation would avoid maintenance and monitoring standards. This appears to be an oversight as previous drafts of the SMP were properly referenced.</p> <p>Ecology Final Action: tbd.</p>
6	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Hazardous tree removal	<u>15. Hazardous trees may be removed when determined by a member of the American Society of Consulting Arborists or similar professional organization in accordance with the International Society of Arboriculture method found in “2011 Tree Risk Assessment (part 9),” in its most recent or adopted form. If a hazardous tree is removed it shall be mitigated to result in no net loss of shoreline ecological functions.</u>	The City of Black Diamond City Council accepts this change.	<p>The SMP doesn’t allow tree removal within the shoreline setback except to mitigate hazard. To ensure consistency with WAC 173-26-201(2)(e), the application of hazardous tree standards must be defined.</p> <p>See also rational for required change #2</p> <p>Ecology Final Action: tbd.</p>
7	Ch. 4.C.8.c.3 Residential Development	Vegetation Conservation Standards	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 <u>non-hazardous</u> healthy native vegetation shall be retained consistent with Subsection b above.	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #3</p> <p>Ecology Final Action: tbd.</p>
8	Ch. 7 Definitions	Significant Tree	<u>Significant Tree – Means any tree that is at least six inches diameter at breast height. A tree growing multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree planted that is planted to fulfill requirements of this chapter shall be considered significant, regardless of size.</u>	The City of Black Diamond City Council accepts this change.	<p>WAC 173-26-221 (5) requires vegetation conservation standards in SMP’s. This includes definitions. Although the term ‘Significant Tree’ is defined in BDMC, that section of code could change resulting in unaccounted impacts within Shoreline Jurisdiction.</p> <p>See also rational for required change #3</p>

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)						CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
										Ecology Final Action: tbd.
Shoreline Setbacks										
9	Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	The City of Black Diamond City Council accepts this change.	Ecology has reviewed the City’s Cumulative Impact Assessment (AHBL, September 2012), but did not find conclusions or technical references supporting the proposed buffers, and their ability to contain sediment, nitrogen, nitrate or phosphorus from 40-feet down to 25-feet from the lakes edge. Further, the City’s Cumulative Impact Assessment provides the following conclusion related to the impact of new development: “Development of the 11 existing vacant lots, as well as new lots from subdivision, including associated construction of new overwater structures and shoreline armoring, has the potential to further degrade ecological function. As described in Chapter 2, impervious cover in Segment A is estimated at approximately 25-30%, and construction of new residences and expansion of existing homes could potentially increase this coverage up to the maximum allowed. (AHBL, 2012; 39)” Therefore, Ecology requires the noted change to limit development to a minimum of 50-feet upland of the OHWM to minimize potential impacts related to the decline in buffer effectiveness consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(e)) and No Net Loss (WAC 173-26-186(8)) SMP-Guidelines requirements. Ecology Final Action: tbd.
			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 50 ft. (standard) may be reduced to 25ft. (minimum) with enhancement	50 ft.(standard) may be reduced to 25 ft. (minimum) with enhancement	N/A ³		
10	Ch. 4.B.3.1 Flexible Shoreline Setback Regulations	Setback Standards	a. The forty (40) <u>fifty (50)</u> 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.						The City of Black Diamond City Council accepts this change.	See rational for #9 Ecology Final Action: tbd.
11	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	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 fifty (50) feet in the Shoreline Residential Environment, forty (40) <u>fifty (50)</u> 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 25feet 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						The City of Black Diamond City Council accepts this change.	Pursuant to WAC 173-26-020, a boardwalk is not considered a water-dependent use. See also rational for #9 Ecology Final Action: tbd.

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			and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.														
12	Ch. 4.C.8.c.3 Residential Development	Setback Standards	f. <u>New primary residential structures shall not be located within 100 feet of the Ordinary High Water Mark (OHWM).</u>						The City of Black Diamond City Council accepts this change.	The Cumulative Impacts Analysis was performed under a development scenario where the minimum rear lot setback is 25 feet and an additional 75 foot public space running parallel to OHWM for large lot subdivision. Given that the 25 foot rear lot setback is only found in BDMC, and not within the SMP, it then becomes essential in terms of meeting no net loss, as required by WAC 173-26-186(8), to include a provision maintaining the setback provided in the Cumulative Impacts Analysis. Ecology Final Action: tbd.							
Flexible Shoreline Setback Regulations																	
13	Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	<table><tr><td>DEVELOPMENT STANDARD</td><td>NATURAL</td><td>URBAN CONSERVANCY</td><td>SHORELINE RESIDENTIAL</td><td>SHORELINE RESIDENTIAL LIMITED</td><td>AQUATIC</td></tr><tr><td>Shoreline Setback (from OHWM)² Please also see Regulation #2 related to non-conforming single family homes.</td><td>100 ft.</td><td>100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement⁵</td><td>40 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement</td><td>50 ft.(standard) may be reduced to 25 ft. (minimum) with enhancement</td><td>N/A³</td></tr></table> <p>...</p> <p>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.</p>	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	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 25 ft. (minimum) with enhancement	N/A ³	The City of Black Diamond City Council accepts this change.	Pursuant to WAC 173-26-201(3)(d)(i) it must be shown that the minimum setback (with buffer enhancement) will adequately protect water quality, habitat, and other shoreline ecological functions. Ecology provided feedback to the City, citing concerns related to impacts and inadequate protection of shoreline ecological functions associated with the proposed flexible shoreline buffer/setbacks in an email send on 8/19/2011 and the Checklist. Ecology has reviewed the City’s Final Shoreline Analysis Report (OTAK AHBL, 2010) and Final Cumulative Impacts Analysis (AHBL 2012), but did not find an analysis supporting small enhanced buffers. The impacts of future development under this scenario have not been shown to meet no net loss of shoreline ecological functions pursuant to WAC 173-26-201(2)(e). The following changes must be incorporated to ensure adequate protections under the required setbacks. Ecology Final Action: tbd.
DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC												
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 25 ft. (minimum) with enhancement	N/A ³												

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
14	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	<p>1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40)-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.</p>	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #13</p> <p>Ecology Final Action: tbd.</p>
15	Ch. 4.B.3 Flexible Shoreline Setback Regulations	Flexible setbacks	<p>3. Flexible Shoreline Setback Regulations</p> <p>In addition to the specific requirements for particular uses, the following standards shall apply:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>c.—No setback reduction is allowed in the Natural environment, where a one hundred (100) foot setback shall be required.</p> <p>d.—At least one Water Related Action or 25 feet of reduction allowance from selected Upland Related reduction mechanisms in Table III must be undertaken in order to achieve the full setback reduction allowed.</p> <p>e.—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:</p> <p>i. Alternative setback averaging will not reduce shoreline functions or functional performance;</p> <p>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</p>	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #13</p> <p>Ecology Final Action: tbd.</p>

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			<p>are generally parallel to the shoreline edge;</p> <p>iii. The setback depth at its narrowest point is not reduced to less than twenty-five feet;</p> <p>iv. Under no circumstances shall a structure encroach more than five feet beyond either the standard or mitigated setback.</p> <p>2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration.</p> <p>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.</p> <p>4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.</p> <p>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:</p> <p>a. The goals and objectives for the mitigation plan;</p> <p>b. The criteria for assessing the mitigation;</p> <p>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</p> <p>d. A contingency plan.</p> <p>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.</p> <p>6. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p>												
16	Ch. 4.B.4 Shoreline Setback Reduction Mechanisms – Table III	Flexible setbacks	<table><tr><th colspan="2">REDUCTION MECHANISM</th><th>REDUCTION ALLOWANCE</th></tr><tr><td colspan="3">Water Related Actions</td></tr><tr><td>1</td><td>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.</td><td>Bulkhead Removal on 75% of shoreline: 15 feet 50% of shoreline: 10 feet</td></tr></table>		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.	Bulkhead Removal on 75% of shoreline: 15 feet 50% of shoreline: 10 feet	The City of Black Diamond City Council accepts this change.	See rational for required change #13 Ecology Final Action: tbd.
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.	Bulkhead Removal on 75% of shoreline: 15 feet 50% of shoreline: 10 feet													

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					25% of shoreline: 5 feet		
			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		
			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 applicant selected water related, shoreline enhancement at the on-site area of improvement. The City shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available.	5-15 feet		
			6	Contribution to a City restoration fund, or bank, for offsite shoreline restoration in the City owned parks on Lake Sawyer. Amount shall be determined based upon the cost per frontage foot shown below times the number of frontage feet on the applicant’s parcel as shown in the current King County property tax assessment database. The City shall establish the restoration cost per foot for the three setback reductions below to make this reduction mechanism available. Setback Reduction of 5 ft. = \$XXX per foot of frontage at the on-site location. Setback Reduction of 10 ft. = \$YYY per foot of frontage at the on-site location Setback Reduction of 15 ft. = \$ZZZ per foot of frontage at the on-site location.	5-15 feet		
			Upland Related Actions				

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			7	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	
			8	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	
			9	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 and exceed adopted stormwater requirements. (Note: stormwater ponds serving more than one property should be located outside of shoreline jurisdiction if possible).	5 feet	
			10	Installation of a “green” roof in accordance with the standards of the LEED Green Building Rating System.	5 feet	
			11	Installation of pervious material for entire length of a driveway or infiltration systems that do not degrade ecological function.	5 feet	
			12	Limiting total impervious surface, e.g. pathways or patios for water access and enjoyment, in the reduced setback area to less than 10 percent, provided the applicant complies with all other development requirements	5 feet	
			13	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	
			14	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	
			15	Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.	5 feet	

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			<div><div>16</div><div>Contribution to a City mitigation fund, or bank, for offsite vegetation restoration and implementation of other measures contained in setback reduction mechanisms 6 and 7 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 shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available.</div></div>	5-10 feet						
			<div><div>17</div><div>Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.</div></div>	5 feet						
Environment Designations										
17	Figure 1 Shoreline Environment Designation Map	Environment Designations	The Environment designations of the areas depicted on the attached map shall be changed from ‘Residential’ to ‘Urban Conservancy’.						The City of Black Diamond City Council accepts this change.	WAC 173-26-211 provides purpose, management policies, and environment designation criteria. The areas depicted on the attached map do not meet the designation criteria for the Residential environment (WAC 173-26-211(5)(f)(iii), but rather fit the designation criteria for Urban Conservancy (WAC 173-26-211(5)(e)(iii). Those areas identified shall be changed to the Urban Conservancy designation. Additional changes are needed throughout the SMP to ensure consistency with the purpose and management policies of WAC 173-26-211(5)(e). Ecology Final Action: tbd.
18	Ch.2.D.3.c Designated Areas	Environment Designations	Urban Conservancy areas include shorelands within Lake Sawyer Boat Launch Park, portions of Lake Sawyer Regional Park that are not designated wetlands and large unplatted lots, 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, limited residential development and public access. The publicly-owned Lake Sawyer Boat Launch and Lake Sawyer Regional Park offer potential for ecological restoration.						The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.
19	Ch.3.B.7.c Shoreline Vegetation Conservation Regulations	Environment Designations	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.						The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.
20	Ch.4.B.1 Table I	Environment Designations							The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.
			SHORELINE USES	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC ¹		
			Community Pier (Private Shared Use)	X	X-P	P	C ³	P		
									
			Single Family	X	X-P ²	P	C	X		

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

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			<div>....</div> <table><tr><td>New Roads related to Permitted Shoreline Activities</td><td>X</td><td>XC</td><td>C</td><td>X</td><td>X</td><td></td></tr></table> <div>⁵This use is subject to further zoning restrictions in the Black Diamond Municipal Code.</div>							New Roads related to Permitted Shoreline Activities	X	XC	C	X	X								
New Roads related to Permitted Shoreline Activities	X	XC	C	X	X																		
21	Ch.4.B.2 Table II	Environment Designations	<table><tr><td>DEVELOPMENT STANDARD</td><td>NATURAL</td><td>URBAN CONSERVANCY</td><td>SHORELINE RESIDENTIAL</td><td>SHORELINE RESIDENTIAL LIMITED</td><td>AQUATIC</td></tr><tr><td>Minimum lot width <u>and</u> water frontage</td><td>N/A</td><td>N/A 60 ft. ²</td><td>60 ft. ²</td><td>N/A</td><td>N/A ³</td></tr><tr><td>Minimum Lot Size</td><td>No further subdivision is allowed</td><td>No further subdivision is allowed 9,600 sq. ft. ^{6,7} <u>Subdivision of unsewered properties is prohibited</u></td><td>9,600 sq. ft. ⁶ Subdivision of unsewered properties is prohibited.</td><td>No further subdivision is allowed.</td><td>N/A ³</td></tr></table> <div>² Subdivision is subject to further zoning restrictions in the Black Diamond Municipal Code.</div>	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	Minimum lot width <u>and</u> water frontage	N/A	N/A 60 ft. ²	60 ft. ²	N/A	N/A ³	Minimum Lot Size	No further subdivision is allowed	No further subdivision is allowed 9,600 sq. ft. ^{6,7} <u>Subdivision of unsewered properties is prohibited</u>	9,600 sq. ft. ⁶ Subdivision of unsewered properties is prohibited.	No further subdivision is allowed.	N/A ³	The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.
DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC																		
Minimum lot width <u>and</u> water frontage	N/A	N/A 60 ft. ²	60 ft. ²	N/A	N/A ³																		
Minimum Lot Size	No further subdivision is allowed	No further subdivision is allowed 9,600 sq. ft. ^{6,7} <u>Subdivision of unsewered properties is prohibited</u>	9,600 sq. ft. ⁶ Subdivision of unsewered properties is prohibited.	No further subdivision is allowed.	N/A ³																		
22	Ch. 1.E ¶ 3	Environment Designations	Black Diamond has designated its Lake Sawyer shorelines under four <u>five</u> shoreline environments: Aquatic, Natural, Urban Conservancy, <u>Shoreline Residential Limited</u> and Shoreline Residential.							The City of Black Diamond City Council accepts this change.	WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited. Ecology Final Action: tbd.												

References

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Department of Ecology. 2011. Shoreline Master Program Handbook; Chapter 11, Vegetation Conservation, Buffers and Setbacks. Accessed at: <http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Chapter11.pdf>

²Please see Residential Subdivision Standards in Chapter 4, Section C.8.c.

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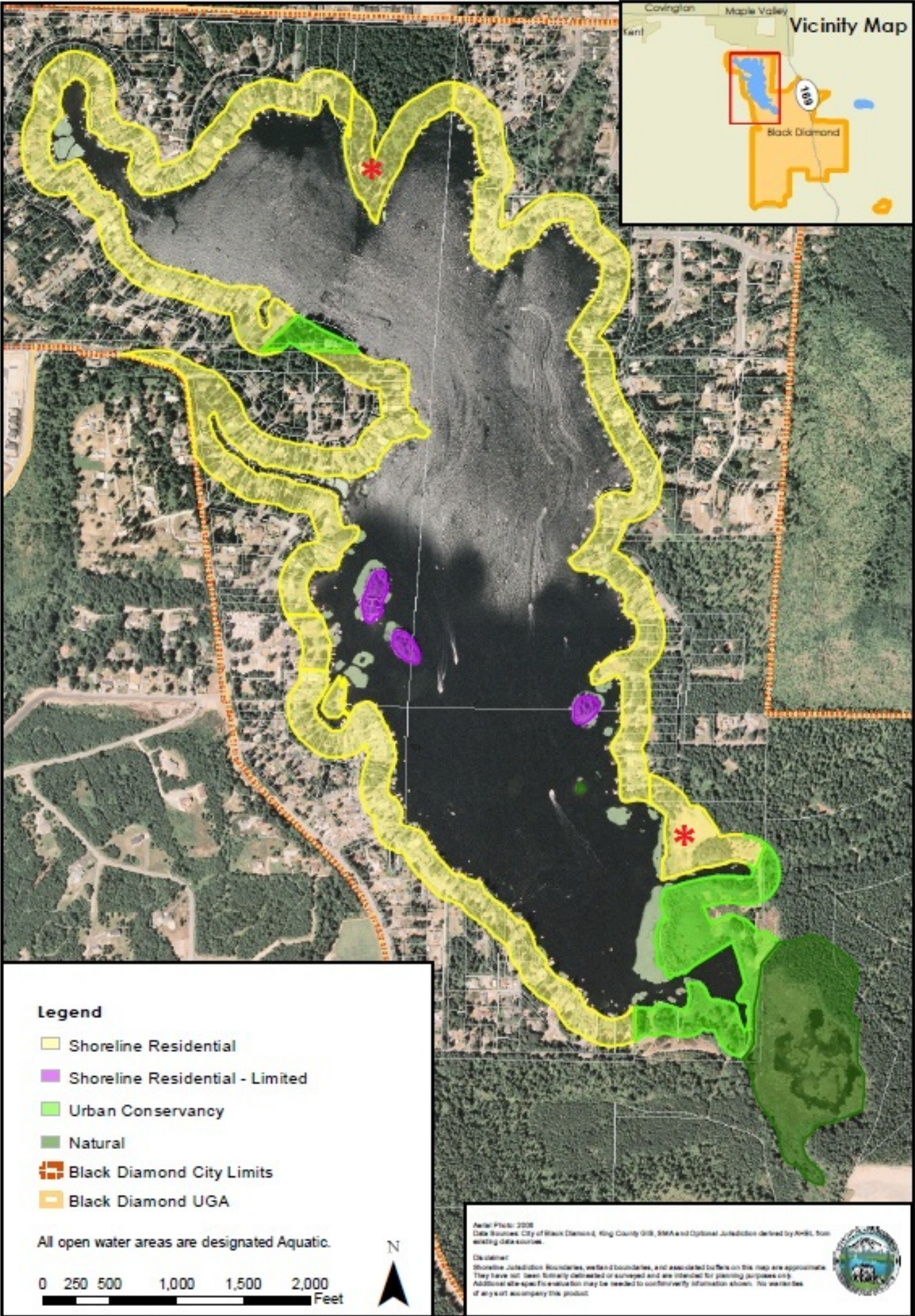
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Required Change # 17
Parcels noted with Red Asterisk shall be designated Urban Conservancy.

City of Black Diamond
Shoreline Master Program
LAKE SAWYER

FIGURE 1
Shoreline Environment Designations



Black Diamond Response:

Ecology Recommended Changes

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
1	Table of Contents	Referencing	<u>Chapter 7 Definitions</u>	The City of Black Diamond City Council accepts this change.	The Table of Contents references all chapters and sections in the SMP with the exception of Chapter 7. For ease of use, <i>Chapter 7 Definitions</i> should be added to the Table of Contents. Ecology Final Action: tbd.
2	Ch. 2.D.2.a	Spelling	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 regualtions <u>regulations</u> .	The City of Black Diamond City Council accepts this change.	Spelling error. Ecology Final Action: tbd.
3	Ch. 3.B.5.c.3	Subsection titles	f. a. <u>a.</u> Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means; g. b. <u>b.</u> Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions; h. c. <u>c.</u> 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. d. <u>d.</u> Unacceptable environmental harm will result from the public access which cannot be mitigated; or j. e. <u>e.</u> Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.	The City of Black Diamond City Council accepts this change.	The section references appear out of order. For consistency and ease of use, consider labeling as indicated. Ecology Final Action: tbd.
4	Ch. 4.C.11.b Utilities (Primary)	References	1. New primary utilities should be located outside of the SMA <u>jurisdiction</u> 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.	The City of Black Diamond City Council accepts this change.	The section references appear out of order. For consistency and ease of use, consider labeling as indicated. Ecology Final Action: tbd.

Page | 2
City of Black Diamond Recommended Changes

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
7	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40)-feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. <u>This setback may be reduced down to 30 feet in the Shoreline Residential, 25 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.</u> -Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. <u>Any further setback reduction shall require approval of a shoreline variance application.</u>	The City of Black Diamond City Council accepts this change.	See rational in #6 Ecology Final Action: tbd.
8	Ch. 4.B.	Flexible Shoreline Setback Regulations	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. <u>The fifty(50) foot standard setback in the Shoreline Residential and Shoreline Residential Limited Environments may be reduced down to a minimum of thirty (30) and twenty-five (25) feet respectively 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.</u> b. <u>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.</u> c. <u>No setback reduction is allowed in the Natural environment, where a one-hundred (100) foot setback shall be required.</u> d. <u>Reductions are cumulative and must be utilized in the following priority order: 1 or 2, 3, 4, 5, or 6 if a bulkhead is present. After reductions 1-2 and 3-6, then reductions 7-10 may be utilized in any order.</u> e. <u>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:</u> 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	The City of Black Diamond City Council accepts this change. A Scribner’s error is present as there are two paragraphs identified as #5. The new numbering should be 1-7, eliminating the two #5’s.	See rational in #6 Ecology Final Action: tbd.

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			<p>twenty-five feet;</p> <p>iv. Under no circumstances shall a structure encroach<u>encroach</u> more than five feet beyond <u>either</u> the standard <u>or mitigated</u> setback.</p> <p>2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration.</p> <p>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.</p> <p>4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.</p> <p>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:</p> <p>a. The goals and objectives for the mitigation plan;</p> <p>b. The criteria for assessing the mitigation;</p> <p>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</p> <p>d. A contingency plan.</p> <p>56. 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.</p> <p>67. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p>				
9	Ch. 4.B.4 Shoreline Setback Reduction Mechanisms – Table III	Flexible setbacks	<u>REDUCTION MECHANISM</u>	<u>REDUCTION ALLOWANCE</u>		The City of Black Diamond City Council accepts these additions and asks the Department to consider the addition of one additional setback reduction mechanism that addresses water quality impairment, particular to Lake Sawyer (1991 TMDL for Phosphorus).	See rational in #6 Ecology Final Action: tbd.
			<u>1</u>	<u>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 75 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</u>	<u>10 feet</u>		
						Setback reduction #11 to be included within Ch. 4.B.4, Shoreline Setback Reduction Mechanisms – Table III. For a 5’ reduction -	
						The preparation of, and agreement to adhere to by the property owner, a written and City approved shoreline vegetation management plan that includes limitations on the use of fertilizer, herbicides, pesticides and the appropriate disposal of yard waste to help enhance and protect water quality. This setback reduction mechanism will only be considered in conjunction with setback reduction mechanisms 1, 2, 4 or 9 and if approved, the property	

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				<u>improved relative to the existing condition.)</u>		owner is required to place a notice of this on the property title.	
			<u>2</u>	<u>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.)</u>	<u>5 feet</u>		
			<u>3</u>	<u>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.</u>	<u>Bulkhead Removal on 75% of shoreline: 15 feet</u> <u>50% of shoreline: 10 feet</u> <u>25% of shoreline: 5 feet</u>		
			<u>4</u>	<u>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.</u>	<u>10 feet</u>		
			<u>5</u>	<u>Existing hard structural stabilization at or near the ordinary high water mark is removed and new soft 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.</u>	<u>10 feet</u>		
			<u>6</u>	<u>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</u>	<u>5feet</u>		
			<u>7</u>	<u>Installation of a “green” roof in accordance with the standards of the LEED Green Building Rating System.</u>	<u>5 feet</u>		

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			<u>8</u>	<u>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</u>	<u>5-10 feet</u>		
			<u>9</u>	<u>Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.</u>	<u>5 feet</u>		
			<u>10</u>	<u>Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.</u>	<u>5 feet</u>		
10	Ch. 4.B	Alternative Setback Systems	<p><u>5. Shallow lot exception.</u></p> <p><u>1. Where a lot has the following conditions, the setback requirements set forth in Table II shall not apply and the minimum setback between the closet point of building and structures from the ordinary high water line shall be 25 feet.</u></p> <p><u>a. The depth of the lot is less than 160 feet; and</u></p> <p><u>b. The upland area of the lot is 9,600 square feet or less; and</u></p> <p><u>c. Sewer services are provided through an onsite sewer system and public sewer connections cannot be made within 300 feet of the subject property.</u></p> <p><u>2. For the purposes of this provision, the depth of the lot shall be determined by:</u></p> <p><u>a. Measuring the distance of a horizontal line drawn midway between the side property lines between the ordinary high water line and the front lot line; and</u></p> <p><u>b. If the lot is irregular in shape, or has fewer than two side lot lines, the midway will be determined in the most reasonable manner based on the lot lines that intersect the ordinary high water line.</u></p> <p><u>3. Restoration of native vegetation shall be provided (and preservation of existing trees and native vegetation) in at least 50 percent of the reduced setback area. Native vegetation restoration shall be located immediately adjacent to the OHWM and may contain breaks for shoreline access.</u></p>			The City of Black Diamond City Council accepts this change, but requests the consideration of extending the maximum lot length dimension from 160 feet to 190 feet based on the attached rationale and justification (See below). Lot sizes meeting these criteria have been identified and are shown below in the table.	Given the number of small lots that lack access to the public sewer system, there is a need to have a streamlined approach to reduce the required setback. The proposed recommended language will allow those constrained lots the ability to develop, while providing mitigation. <i>Ecology Final Action: tbd.</i>
Administration							
11	Ch. 6.J.4 Nonconforming Lots	Nonconforming lot development criteria	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(A) and so long as such development conforms to all other requirements of the SMP and the SMA.			The City of Black Diamond City Council accepts this change, but suggests that it should reference all of 18.68.060 Nonconforming lots of Record and not just 18.68.060 (A).	For ease of use and consistent application, consider the change indicated. <i>Ecology Final Action: tbd.</i>

1. The City requests to modify the DOE's recommended change #10, that adds paragraph 4.B.5 Alternative Setback Systems "Shallow lot exception," to extend the lot depth criteria from 160' to 190', based on the rationale and justification below:

Rationale:

Analysis of Lake Sawyer parcels indicates that there are a few 50 foot wide lots that have between 160 and 190 feet of length and no public sewer available that would therefore require a Variance to be able to develop or redevelop their property. This proposed increase in allowed lot length for this exception will prevent the need for an expensive Variance process.

Justification:

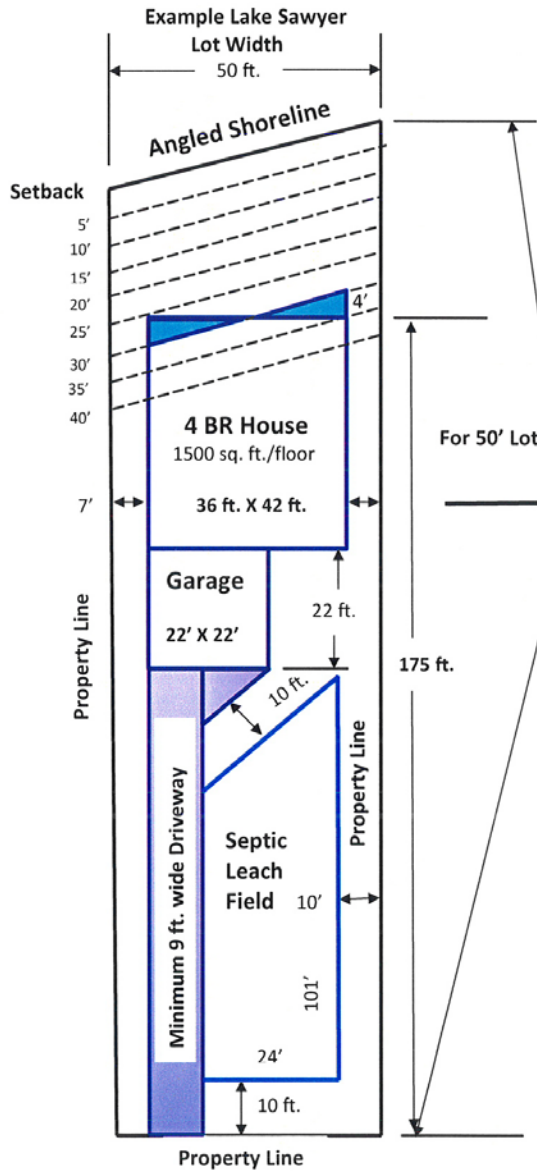
Very few lots on Lake Sawyer are currently served by public sewers and therefore require an onsite septic system. Most of the soils surrounding Lake Sawyer are quite porous and are referred to as Type 1 soils for septic system design. According to the King County Board of Health this requires use of a sand filter design with associated design requirements found in King County Code Chapter 13. These design requirements have been used in the illustration on the next page to determine the required size of the septic system leach fields commensurate with King County setback requirements.

The illustration on the next page is drawn for a typical Lake Sawyer lot width of 50 ft. The intent of this graphic is to illustrate the amount of space and lot length required for a 3 or 4 bedroom home with attached garage and driveway as well as for the space required to provide for an onsite sewer septic system. The septic leach field has been drawn according to King County Code with the required number of lineal feet of total trench length, and separation widths, for both the primary and reserve system. Note in the illustration that to meet the space requirements for a typical 4 bedroom home of 1,500 sq. ft. per floor, 175 feet of lot length would be required for the leach field, a small garage, and the two-story house. With full mitigation and a minimum 30 ft. setback from the shoreline that would require a lot length of 205 feet.

If the garage shown in the illustration was incorporated into the house with a 484 sq. ft. reduction in living area, the required lot length could be reduced by 22 ft. to 183 feet. However, there are more than a handful of lots on Lake Sawyer of 45 ft. width and a few as narrow as 40 feet. A 45 ft. wide lot would require a lot length for this example of 193 feet and a 40 ft. wide lot would need to be about 202 feet long to accommodate this 2,516 sq. ft. home. For a 3 bedroom home with smaller septic system dimensions the minimum lot length requirement would vary from 171 ft. to 194 ft.

The table on page 3 shows the number of lots on Lake Sawyer with less than 9,600 sq. ft. of area that are 50 feet or less in width plus a couple more that are greater than 50 ft. wide. Some of these properties might not be able to provide sufficient length and area to support even a 3 bedroom home with a new septic system. But, there are a handful of properties, highlighted in yellow, that are less than 9,600 sq. ft. in area that should be accommodated with a "shallow lot exception" having depth (length) greater than the 160 feet recommended by the DOE. An increase to 190 ft. is requested to help accommodate these properties so that an expensive Variance doesn't have to be sought and processed when these properties are developed or redeveloped.

**Minimum Lot length Requirements for a 50 ft. Wide Lot
with 4 BR Home Requiring Septic System
(Example shown is for 30 ft. setback with "Alternative Setback Averaging")**

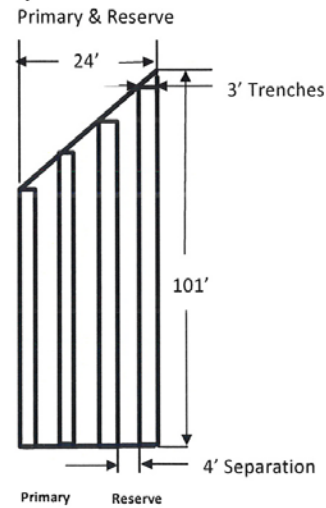


Per King Co. Dep't of Health Code-Chap. 13

- 4 BR home = 570 (3 X 150 + 120) gal./day dose
- Type 1 Soil will take 1 gal/sq. ft. per day
- 570 gal/day/1 gal/sq. ft./day = 570 sq. ft.
- Primary + Reserve = 1,140 sq. ft.
- Sand Filter Design Required
- Maximum Trench Individual Width = 3 ft.
- Minimum Trench Separations = 4 ft.
- Property & Structure Setbacks = 10 ft.
- Dimensions = 7.5 ft. X 76 ft. + 2 ft. perimeter
- Dimensions Required for Primary & Reserve
 - 24 ft. X 101 ft. (see diagram below)

205 ft.-235 ft. (175' + 30' to 50') on straight shoreline & up to (175' + 25' to 50' + 10') on long side due to angled shoreline)

Septic Leach Field



Properties with constrained lot width & depth for New Home with Septic System

	<u>Parcel No.</u>	<u>Width (ft)</u>	<u>Area (sq. ft.)</u>	<u>Description of Current Dwelling Unit</u>	<u>Ave. Lot Depth</u>
1	4067600340	50	7,900	Very small 940 sq. ft. home built in 1940	158 ft.
2	1021069020	50	9,075	Very small 1,030 sq. ft. home built 1923	183 ft.
3	4391600030	40	5,800	Small home built 1939	145 ft.
4	4391600035	45	7,020	Small home built 1934 & Renovated 1978	156 ft.
5	4392200140	50	9,415	House built 1947 & Renovated 1986	188 ft.
6	4392200165	49	6,567	Small 850 sq. ft. cabin built 1940	134 ft.
7	4391600015	45	8,036	Small 1,520 sq. ft. home built 1924 & Renovated 1992	179 ft.
8	4391600040	45	6,662	Very small 640 sq. ft. cabin built 1938	148 ft.
9	4391600045	45	6,542	Home built 1953 & Renovated 1981	145 ft.
10	4391600050	45	5,925	Small 1,020 sq. ft. home built 1924 & Renovated 1979	132 ft.
11	4391600060	40	5,381	Home built 1967	134 ft.
12	4391600065	45	6,862	Very small 520 sq. ft. home built 1924 & Renovated 1980	152 ft.
13	4391600070	45	6,755	Home built 1965 & Renovated 2005	150 ft.
14	4391600090	45	7,935	Small 1,730 sq. ft. home built 1985	176 ft.
15	4391600085	40	8,756	Small 1,400 sq. ft. home built 1961	218 ft.
16	321069032	46	9,148	Vacant Lot	199 ft.
Greater than 50 ft. width					
1	4392200095	57	8,839	Home built 1924 and Renovated in 1965	155 ft.
2	4392200090	56	8,473	Home built 1987	151 ft.

Shallow lot exception of more than 160 feet required

Brenda Martinez

From: Burcar, Joe (ECY) <jobu461@ECY.WA.GOV>
Sent: Tuesday, May 06, 2014 2:02 PM
To: Aaron Nix
Cc: Stockdale, Erik (ECY)
Subject: RE: Black Diamond Resolution and Appendices Changes
Attachments: Resolution_14_xxx_Appendix_A1(jb-response).docx; Resolution_14_xxx_Appendix_A2(JB-feedback).docx

Hi Aaron,

I looked through these documents this morning and attempted to answer your questions by inserting "comments" into the two attached documents. In general, I think I confirmed most of your assumptions and do not see any red-flags.

I will not be able to route this version for headquarters review with such a short turn-around, but since the City is accepting all the "required changes", I am confident our agency will support the updated resolution. Some of the alternatives to the "recommended changes" are a bit complex, but again I feel comfortable with our dialogue on the issues and do not expect any other concerns through our final review.

Thanks again for your hard-work on this and feel free to give me a call if you want to discuss any of these items further.

Best regards,

-Joe

Joe Burcar | Senior Shoreline Planner | Department of Ecology | 425-649-7145 | Joe.Burcar@ecy.wa.gov



From: Aaron Nix [<mailto:ANix@ci.blackdiamond.wa.us>]
Sent: Tuesday, May 06, 2014 7:30 AM
To: Burcar, Joe (ECY)
Subject: Black Diamond Resolution and Appendices Changes
Importance: High

Good Morning Joe,

I'm looking to get these materials finished and ready for publication as we discussed. Included is the resolution for the acceptance of the recommended/required changes as we discussed, but I've included a couple questions for you/clarifications on things that have come up from my review. This also includes a clarification within the required changes. Could you please take a look at this materials and let me know your thoughts? Again, I'm shooting for our May 15th Council meeting in order to get this Resolution passed. My deadline for materials is tomorrow at 5:00 pm. If you need more time, please let me know. Do you need to run anything past headquarters on this?

Finally, a question has come up with regard to clean-up items on the supporting documents to our SMP. When is the appropriate time to do those?

Joe, thanks for your help. We're almost there.

Aaron Nix
City of Black Diamond

360.886.5700 Office
anix@ci.blackdiamond.wa.us

◆ | Please consider the environment before printing

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Black Diamond Response:

Ecology Recommended Changes

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3	Ch. 3.B.5.c.3	Subsection titles	f. a. ___ Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means; g. b. Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions; h. c. ___ 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. d. ___ Unacceptable environmental harm will result from the public access which cannot be mitigated; or j. e. ___ Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.	The City of Black Diamond City Council accepts this change.	The section references appear out of order. For consistency and ease of use, consider labeling as indicated. Ecology Final Action: tbd.
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ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)						CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
Flexible Shoreline Setbacks										
5	Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	The City of Black Diamond City Council accepts this change and asks that the footnote (#5) for Urban Conservancy/Shoreline setback box be removed as this reference does not correlate to this issue, rather, it is intended and already included within the Shoreline Residential/Maximum Impervious Surface Coverage box (40%).	Beginning with early versions of the SMP there has been an incentive based setback reduction system integrated into the SMP. There appears to be strong community support for such a system. The city proposed system was not consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(e)) and No Net Loss (WAC 173-26-186(8)), and was required to be removed by required changes #12-15. This recommended change imbeds the principles of WAC 173-26-201(2)(e) while prioritizing enhancement consistent with the Final Cumulative Impacts Analysis (AHBL 2012) and Final Shoreline Analysis Report (OTAK AHBL, 2010). This recommended change is also consistent with RCW 90.58 and No Net Loss (WAC 173-26-186(8)). Ecology Final Action: tbd.
			Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non-conforming single family homes.	100 ft	100 ft. (standard) <u>may be reduced to</u> <u>75 ft. (minimum) with enhancement</u> ⁵	50 ft. (standard) <u>may be reduced to</u> <u>30 ft. (minimum) with enhancement</u>	50 ft.(standard) <u>may be reduced to</u> <u>25 ft. (minimum) with enhancement</u>	N/A ³		
			... ² The 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. <u>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.</u> 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 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.							
6	Ch. 4.B.3	Off-site mitigation	56. 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. 67. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success. <u>8. Off-Site Mitigation. The City may provide a fund for off-site mitigation. If such a fund is created, the Shoreline Administrator or designee shall assess charges to new development when impacts to shoreline ecological functions cannot be fully mitigated on site. Charges assessed shall be of sufficient value to ensure off-site mitigation results in no net loss of shoreline ecological functions over time. Expenditures from such a fund shall be in accordance with the Black Diamond Restoration Plan.</u>						The City of Black Diamond City Council accepts this change, but offers these minor, wording changes, if agreeable to the Department. 8. Off-Site Mitigation. The City may provide a fund for off-site mitigation within other properties along Lake Sawyer . If such a fund is created, the Shoreline Administrator or designee shall assess charges to development when impacts to shoreline ecological functions cannot be fully mitigated on site and in accordance with the mitigation sequencing requirements within WAC 173-26-201-2-e . Charges assessed shall be sufficient to ensure off-site mitigation results in no net loss of shoreline ecological functions over time. Expenditures from such a fund shall be in accordance with the Black Diamond Restoration Plan.	There is both public and city interest in a mitigation fund. A version of a mitigation fund was included in the original submittal but was not kept due to conflicts with WAC 173-26-201(2)(e). Consistent with WAC 173-26-201(2)(e) (i)(b), this recommended change has been incorporated. Numbering changes have been included to ensure consistent application. Ecology Final Action: tbd.

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				Joe, question? If someone goes through our setback reduction mechanisms and finds that they cannot utilize some of them in order to reach minimum setback (i.e 50 feet down to only 35 feet). Once mitigation sequencing requirements have been meet, they will be able to mitigate offsite in order to realize that remaining 5 foot reduction, correct? Based on this, shouldn't the emphasis be placed on upland mitigation as within the regional park as this is the impact that will happen on the effected site? Does it make sense them to say that in our statement above as it would be easier to administratively calculate costs? Meaning, I'm not sure that I can deem adequate upland impacts to shoreline armoring improvements within the regional park. Is that correlation covered under the initial study done by the City in creating the bank?	
7	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40)-feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. <u>This setback may be reduced down to 30 feet in the Shoreline Residential, 25 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.</u> -Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. <u>Any further setback reduction shall require approval of a shoreline variance application.</u>	The City of Black Diamond City Council accepts this change.	See rational in #6 Ecology Final Action: tbd.
8	Ch. 4.B.	Flexible Shoreline Setback Regulations	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. <u>The fifty(50) foot standard setback in the Shoreline Residential and Shoreline Residential Limited Environments may be reduced down to a minimum of thirty (30) and twenty-five (25) feet respectively 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.</u> b. <u>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.</u> c. <u>No setback reduction is allowed in the Natural environment, where a one-hundred (100) foot setback shall be required.</u> d. <u>Reductions are cumulative and must be utilized in the following priority order: 1 or 2, 3, 4, 5, or 6 if a bulkhead is present. After reductions 1-2 and 3-6, then</u>	The City of Black Diamond City Council accepts this change. A Scribner's error is present as there are two paragraphs identified as #5. The new numbering should be 1-7, eliminating the two #5's.	See rational in #6 Ecology Final Action: tbd.

Comment [JB1]: Yes, both the setback reduction provisions and the concept of mitigation sequencing require prioritization of the enhancements, so off-site mitigation would need to be done in combination or after one of the primary enhancements (i.e., bulkhead removal or veg. enhancement) .

Comment [JB2]: I am not sure I understand your question, but if you are suggesting that the park mitigation would enhance similar functions to those impacted by the reduced setback, then yes – I would agree that this (specific) off-site option could be prioritized or identified.

Consistent with mitigation sequencing, after impacts have been “avoided” and “minimized” the maximum extent, in-kind “mitigation” should be prioritized.

Comment [JB3]: Yes, out of kind mitigation is difficult to quantify and administer. When/if “in-kind” mitigation is not available or feasible, I would suggest that you look at other “restoration opportunities” identified in either your shoreline Characterization report or Restoration Plan. You also might want to consider requiring a proponent to prepare an assessment to characterize the nature of the impact (site-level based on existing conditions) and then depends on a professional to recommend an equivalent amount/form of mitigation based on priorities provided in the City’s Restoration plan.

Comment [JB4]: Good catch, I made the change in this draft, which you should feel free to add to your resolution.

Also, feel free to add other Scribner errors that you are aware of.

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			<p><u>reductions 7-10 may be utilized in any order.</u></p> <p><u>e.</u> Alternative Setback Averaging – In instances of unique lot configurations, the Shoreline Administrator <u>Administrator</u> or his/her designee may allow modification <u>either</u> of the standard <u>or mitigated</u> 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:</p> <ul style="list-style-type: none">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 <u>parallel</u> 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 <u>encroach</u> more than five feet beyond <u>either</u> the standard <u>or mitigated</u> setback. <p>2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration.</p> <p>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.</p> <p>4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.</p> <p>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:</p> <ul style="list-style-type: none">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; andd. A contingency plan. <p>56. 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.</p> <p>67. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p>			
9	Ch. 4.B.4 Shoreline	Flexible setbacks	<u>REDUCTION</u>	<u>REDUCTION ALLOWANCE</u>	The City of Black Diamond City Council accepts these additions and asks the Department to consider the addition of one additional	See rational in #6

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	Setback Reduction Mechanisms – Table III		MECHANISM			setback reduction mechanism that addresses water quality impairment, particular to Lake Sawyer (1991 TMDL for Phosphorus). Setback reduction #11 to be included within Ch. 4.B.4, Shoreline Setback Reduction Mechanisms – Table III. For a 5’ reduction - The preparation of, and agreement to adhere to by the property owner, a written and City approved shoreline vegetation management plan that includes limitations on the use of fertilizer, herbicides, pesticides and the appropriate disposal of yard waste to help enhance and protect water quality. This setback reduction mechanism will only be considered in conjunction with setback reduction mechanisms 1, 2, 5 4 instead of 5 may be more appropriate here?, or 9 and if approved, the property owner is required to place a notice of this on the property title.	Ecology Final Action: tbd.
			<u>1</u>	<u>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 75 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.)</u>	<u>10 feet</u>		
			<u>2</u>	<u>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.)</u>	<u>5 feet</u>		
			<u>3</u>	<u>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.</u>	<u>Bulkhead Removal on 75% of shoreline: 15 feet</u> <u>50% of shoreline: 10 feet</u> <u>25% of shoreline: 5 feet</u>		
			<u>4</u>	<u>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.</u>	<u>10 feet</u>		
			<u>5</u>	<u>Existing hard structural stabilization at or near the ordinary high water mark is removed and new soft structural shoreline stabilization measures are</u>	<u>10 feet</u>		

Comment [JB5]: It seems like both #4 and #5 would potentially be relevant. The main point of my previous feedback, was to make sure that the veg management not be done alone, but be done in combination with another enhancement that provides physical improvements consistent with no net loss recommendations (identified in the Characterization or Cumulative Impact Analysis) for the lake.

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				<u>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.</u>			
			6	<u>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</u>	5feet		
			7	<u>Installation of a “green” roof in accordance with the standards of the LEED Green Building Rating System.</u>	5 feet		
			8	<u>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</u>	5-10 feet		
			9	<u>Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.</u>	5 feet		
			10	<u>Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.</u>	5 feet		
10	Ch. 4.B	Alternative Setback Systems	<u>5. Shallow lot exception.</u> <u>1. Where a lot has the following conditions, the setback requirements set forth in Table II shall not apply and the minimum setback between the closet point of building and structures from the ordinary high water line shall be 25 feet.</u> <u>a. The depth of the lot is less than 160 feet; and</u> <u>b. The upland area of the lot is 9,600 square feet or less; and</u> <u>c. Sewer services are provided through an onsite sewer system and public sewer connections cannot be made within 300 feet of the subject property.</u> <u>2. For the purposes of this provision, the depth of the lot shall be determined by:</u> <u>a. Measuring the distance of a horizontal line drawn midway between the side property lines between the ordinary high water line and the front lot line; and</u> <u>b. If the lot is irregular in shape, or has fewer than two side lot lines, the midway will be determined in the most reasonable manner based on the lot lines that intersect the ordinary high water line.</u> <u>3. Restoration of native vegetation shall be provided (and preservation of existing trees and native vegetation) in at least 50 percent of the reduced setback area. Native vegetation restoration shall be located immediately adjacent to the OHWM and may contain breaks for shoreline access.</u>			The City of Black Diamond City Council accepts this change, but requests the consideration of extending the maximum lot length dimension from 160 feet to <u>190 feet</u> based on the attached rationale and justification (See below).	Given the number of small lots that lack access to the public sewer system, there is a need to have a streamlined approach to reduce the required setback. The proposed recommended language will allow those constrained lots the ability to develop, while providing mitigation. <u>Ecology Final Action: tbd.</u>

Comment [JB6]: It would be helpful for you to generally characterize the development scenario requiring the larger 190’ dimension. My assumption is that the lot size, septic space and general structure size common to Lake Sawyer would require a minimum 190-foot deep lot, prior to being considered a “constrained lot”.

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Administration					
11	Ch. 6.J.4 Nonconforming Lots	Nonconforming lot development criteria	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(A €) and so long as such development conforms to all other requirements of the SMP and the SMA.	The City of Black Diamond City Council accepts this change, but suggests that it should reference all of 18.68.060 Nonconforming lots of Record and not just 18.68.060 (A).	For ease of use and consistent application, consider the change indicated. <i>Ecology Final Action: tbd.</i>

Comment [JB7]: This looks pretty straight forward.

1. The City requests to modify the DOE's recommended change #10, that adds paragraph 4.B.5 Alternative Setback Systems "Shallow lot exception," to extend the lot depth criteria from 160' to 190', based on the rationale and justification below:

Rationale:

Analysis of Lake Sawyer parcels indicates that there are a few 50 foot wide lots that have between 160 and 190 feet of length and no public sewer available that would therefore require a Variance to be able to develop or redevelop their property. This proposed increase in allowed lot length for this exception will prevent the need for an expensive Variance process.

Justification:

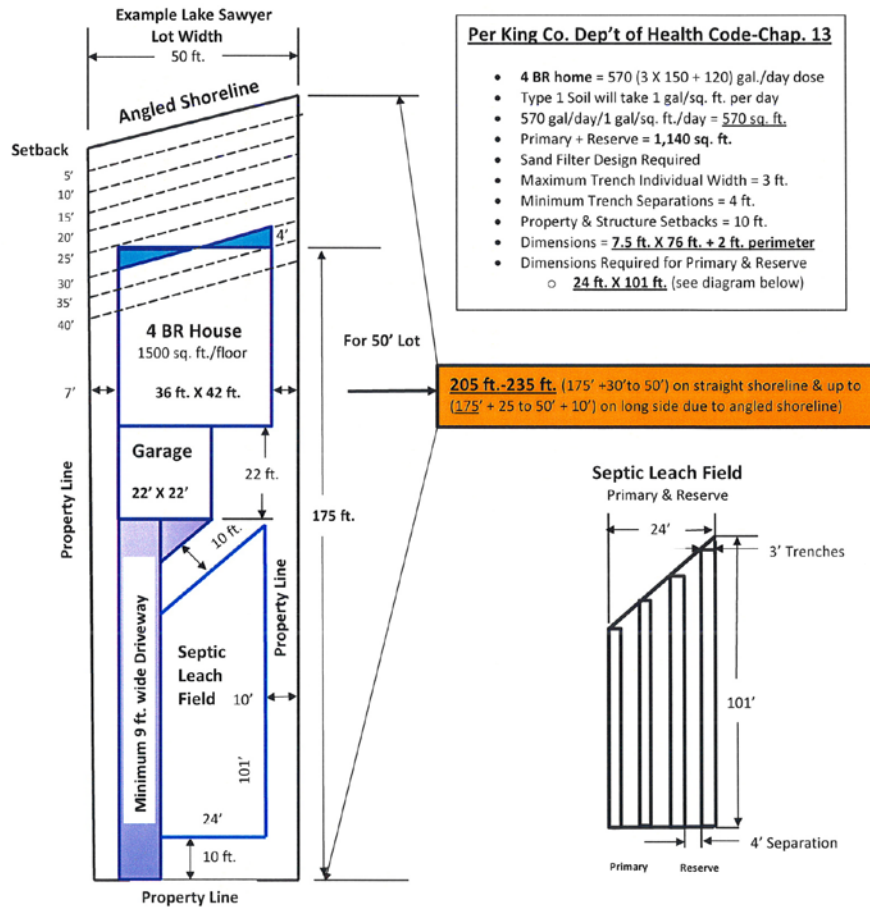
Very few lots on Lake Sawyer are currently served by public sewers and therefore require an onsite septic system. Most of the soils surrounding Lake Sawyer are quite porous and are referred to as Type 1 soils for septic system design. According to the King County Board of Health this requires use of a sand filter design with associated design requirements found in King County Code Chapter 13. These design requirements have been used in the illustration on the next page to determine the required size of the septic system leach fields commensurate with King County setback requirements.

The illustration on the next page is drawn for a typical Lake Sawyer lot width of 50 ft. The intent of this graphic is to illustrate the amount of space and lot length required for a 3 or 4 bedroom home with attached garage and driveway as well as for the space required to provide for an onsite sewer septic system. The septic leach field has been drawn according to King County Code with the required number of lineal feet of total trench length, and separation widths, for both the primary and reserve system. Note in the illustration that to meet the space requirements for a typical 4 bedroom home of 1,500 sq. ft. per floor, 175 feet of lot length would be required for the leach field, a small garage, and the two-story house. With full mitigation and a minimum 30 ft. setback from the shoreline that would require a lot length of 205 feet.

If the garage shown in the illustration was incorporated into the house with a 484 sq. ft. reduction in living area, the required lot length could be reduced by 22 ft. to 183 feet. However, there are more than a handful of lots on Lake Sawyer of 45 ft. width and a few as narrow as 40 feet. A 45 ft. wide lot would require a lot length for this example of 193 feet and a 40 ft. wide lot would need to be about 202 feet long to accommodate this 2,516 sq. ft. home. For a 3 bedroom home with smaller septic system dimensions the minimum lot length requirement would vary from 171 ft. to 194 ft.

The table on page 3 shows the number of lots on Lake Sawyer with less than 9,600 sq. ft. of area that are 50 feet or less in width plus a couple more that are greater than 50 ft. wide. Some of these properties might not be able to provide sufficient length and area to support even a 3 bedroom home with a new septic system. But, there are a handful of properties, highlighted in yellow, that are less than 9,600 sq. ft. in area that should be accommodated with a "shallow lot exception" having depth (length) greater than the 160 feet recommended by the DOE. An increase to 190 ft. is requested to help accommodate these properties so that an expensive Variance doesn't have to be sought and processed when these properties are developed or redeveloped.

**Minimum Lot length Requirements for a 50 ft. Wide Lot
with 4 BR Home Requiring Septic System
(Example shown is for 30 ft. setback with "Alternative Setback Averaging")**



Properties with constrained lot width & depth for New Home with Septic System

	<u>Parcel No.</u>	<u>Width (ft)</u>	<u>Area (sq. ft.)</u>	<u>Description of Current Dwelling Unit</u>	<u>Ave. Lot Depth</u>
1	4067600340	50	7,900	Very small 940 sq. ft. home built in 1940	158 ft.
2	1021069020	50	9,075	Very small 1,030 sq. ft. home built 1923	183 ft.
3	4391600030	40	5,800	Small home built 1939	145 ft.
4	4391600035	45	7,020	Small home built 1934 & Renovated 1978	156 ft.
5	4392200140	50	9,415	House built 1947 & Renovated 1986	188 ft.
6	4392200165	49	6,567	Small 850 sq. ft. cabin built 1940	134 ft.
7	4391600015	45	8,036	Small 1,520 sq. ft. home built 1924 & Renovated 1992	179 ft.
8	4391600040	45	6,662	Very small 640 sq. ft. cabin built 1938	148 ft.
9	4391600045	45	6,542	Home built 1953 & Renovated 1981	145 ft.
10	4391600050	45	5,925	Small 1,020 sq. ft. home built 1924 & Renovated 1979	132 ft.
11	4391600060	40	5,381	Home built 1967	134 ft.
12	4391600065	45	6,862	Very small 520 sq. ft. home built 1924 & Renovated 1980	152 ft.
13	4391600070	45	6,755	Home built 1965 & Renovated 2005	150 ft.
14	4391600090	45	7,935	Small 1,730 sq. ft. home built 1985	176 ft.
15	4391600085	40	8,756	Small 1,400 sq. ft. home built 1961	218 ft.
16	321069032	46	9,148	Vacant Lot	199 ft.
Greater than 50 ft. width					
1	4392200095	57	8,839	Home built 1924 and Renovated in 1965	155 ft.
2	4392200090	56	8,473	Home built 1987	151 ft.

Shallow lot exception of more than 160 feet required

Black Diamond Response:

Ecology Required Changes

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

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1	Ch. 1.E ¶ 3	Environment Designations	Black Diamond has designated its Lake Sawyer shorelines under four <u>five</u> shoreline environments: Aquatic, Natural, Urban Conservancy, <u>Shoreline Residential Limited</u> and Shoreline Residential.	The City of Black Diamond City Council accepts this change.	WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited. Ecology Final Action: tbd.
2	Ch. 3.B.5.c.3	Public Access	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 <u>Where</u> constitutional or legal limitations preclude public access.	The City of Black Diamond City Council accepts this change.	Exceptions to public access standards are limited to those found in WAC 173-26-221 (4)(d)(iii). Ecology Final Action: tbd.
Vegetation Conservation					
3	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	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.	The City of Black Diamond City Council accepts this change.	The SMP allows the unmitigated removal of unhealthy non-hazardous trees. This is in conflict with WAC 173-26-221(5) (c), Shoreline vegetation conservation, WAC 173-26-201 (2) (e)), Environmental impact Mitigation, and the provisions of WAC 173-26-186(8), as they relate to a finding of no net loss of shoreline ecological functions. The importance of vegetation in urban areas is addressed in the guidelines and the City's Inventory and Analysis. The Guidelines highlight the relative importance of vegetation in WAC 173-26-201(3)(d)(viii): While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Specific to Black Diamond, the City's Inventory and Characterization creates lists of recommendations for shoreline management. Chapter 7.1.2 states: “Conservation of existing native vegetation during land development and ongoing use is critical to maintaining the ecological processes and natural functions of shoreline areas” and “The removal of mature trees and native vegetation should be regulated in a manner that provides protection that is equal to or greater than current Sensitive Area Regulations.” The Inventory and Characterization language above is supported by the concept of Mitigation Sequencing, WAC 173-26-201(2) (e), by first avoiding, then minimizing and mitigating for impacts. Further, the SMP itself contains

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					<p>policy language supporting the preservation of existing vegetation. Policy 5 states "Removal of non-hazardous mature trees and native vegetation within the required shoreline setback should be severely restricted regardless of lot size or use." Policy 1 supports the concept of mitigation sequencing. It reads: “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.”</p> <p>Allowing the unmitigated removal of unhealthy non-hazardous trees cannot be supported based on the analysis provided. Mitigation is required on a project by project basis which will provide equal or greater functions.</p> <p>Ecology Final Action: tbd.</p>
4	Ch. 3.B.7.c.5 Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	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.	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #3</p> <p>Ecology Final Action: tbd.</p>
5	Ch. 3.B.7.c.13 Shoreline Vegetation Conservation Regulations	Maintenance and monitoring	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 <u>14</u> below.	The City of Black Diamond City Council accepts this change.	<p>Pursuant to WAC 173-26-221(5)(c), vegetation conservation standards required. By referencing ‘Regulation 18’, which does not exist, this regulation would avoid maintenance and monitoring standards. This appears to be an oversight as previous drafts of the SMP were properly referenced.</p> <p>Ecology Final Action: tbd.</p>
6	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Hazardous tree removal	<u>15. Hazardous trees may be removed when determined by a member of the American Society of Consulting Arborists or similar professional organization in accordance with the International Society of Arboriculture method found in “2011 Tree Risk Assessment (part 9),” in its most recent or adopted form. If a hazardous tree is removed it shall be mitigated to result in no net loss of shoreline ecological functions.</u>	The City of Black Diamond City Council accepts this change.	<p>The SMP doesn’t allow tree removal within the shoreline setback except to mitigate hazard. To ensure consistency with WAC 173-26-201(2)(e), the application of hazardous tree standards must be defined.</p> <p>See also rational for required change #2</p> <p>Ecology Final Action: tbd.</p>
7	Ch. 4.C.8.c.3 Residential Development	Vegetation Conservation Standards	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 non-hazardous healthy native vegetation shall be retained consistent with Subsection b above.	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #3</p> <p>Ecology Final Action: tbd.</p>
8	Ch. 7 Definitions	Significant Tree	<u>Significant Tree – Means any tree that is at least six inches diameter at breast height. A tree growing multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree planted that is planted to fulfill requirements of this chapter shall be considered significant, regardless of size.</u>	The City of Black Diamond City Council accepts this change.	<p>WAC 173-26-221 (5) requires vegetation conservation standards in SMP’s. This includes definitions. Although the term ‘Significant Tree’ is defined in BDMC, that section of code could change resulting in unaccounted impacts within Shoreline Jurisdiction.</p> <p>See also rational for required change #3</p>

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)						CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
										Ecology Final Action: tbd.
Shoreline Setbacks										
9	Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	The City of Black Diamond City Council accepts this change.	Ecology has reviewed the City’s Cumulative Impact Assessment (AHBL, September 2012), but did not find conclusions or technical references supporting the proposed buffers, and their ability to contain sediment, nitrogen, nitrate or phosphorus from 40-feet down to 25-feet from the lakes edge. Further, the City’s Cumulative Impact Assessment provides the following conclusion related to the impact of new development: “Development of the 11 existing vacant lots, as well as new lots from subdivision, including associated construction of new overwater structures and shoreline armoring, has the potential to further degrade ecological function. As described in Chapter 2, impervious cover in Segment A is estimated at approximately 25-30%, and construction of new residences and expansion of existing homes could potentially increase this coverage up to the maximum allowed. (AHBL, 2012; 39)” Therefore, Ecology requires the noted change to limit development to a minimum of 50-feet upland of the OHWM to minimize potential impacts related to the decline in buffer effectiveness consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(e)) and No Net Loss (WAC 173-26-186(8)) SMP-Guidelines requirements. Ecology Final Action: tbd.
			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 <u>50</u> ft. (standard) may be reduced to 25ft. (minimum) with enhancement	50 ft.(standard) may be reduced to 25 ft. (minimum) with enhancement	N/A ³		
10	Ch. 4.B.3.1 Flexible Shoreline Setback Regulations	Setback Standards	a. The forty (40) <u>fifty (50)</u> 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.						The City of Black Diamond City Council accepts this change.	See rational for #9 Ecology Final Action: tbd.
11	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	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 fifty (50) feet in the Shoreline Residential Environment, forty (40) <u>fifty (50)</u> 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 25feet 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						The City of Black Diamond City Council accepts this change.	Pursuant to WAC 173-26-020, a boardwalk is not considered a water-dependent use. See also rational for #9 Ecology Final Action: tbd.

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)						CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>										
			and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.																	
12	Ch. 4.C.8.c.3 Residential Development	Setback Standards	f. <u>New primary residential structures shall not be located within 100 feet of the Ordinary High Water Mark (OHWM).</u>						The City of Black Diamond City Council accepts this change. Joe, just confirming. The standard setback is 100’ for primary building structures, but with applying mitigation through the setback reduction mechanisms; this can be reduced to 75’, right? Otherwise, this addition appears to conflict with recommended items #5, 7 and 8.	The Cumulative Impacts Analysis was performed under a development scenario where the minimum rear lot setback is 25 feet and an additional 75 foot public space running parallel to OHWM for large lot subdivision. Given that the 25 foot rear lot setback is only found in BDMC, and not within the SMP, it then becomes essential in terms of meeting no net loss, as required by WAC 173-26-186(8), to include a provision maintaining the setback provided in the Cumulative Impacts Analysis. Ecology Final Action: tbd.										
Flexible Shoreline Setback Regulations																				
13	Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	<table><tr><th>DEVELOPMENT STANDARD</th><th>NATURAL</th><th>URBAN CONSERVANCY</th><th>SHORELINE RESIDENTIAL</th><th>SHORELINE RESIDENTIAL LIMITED</th><th>AQUATIC</th></tr><tr><td>Shoreline Setback (from OHWM)² Please also see Regulation #2 related to non-conforming single family homes.</td><td>100 ft</td><td>100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement⁵</td><td>40 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement</td><td>50 ft.(standard) may be reduced to 25 ft. (minimum) with enhancement</td><td>N/A³</td></tr></table>	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	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 25 ft. (minimum) with enhancement	N/A ³	The City of Black Diamond City Council accepts this change.				Pursuant to WAC 173-26-201(3)(d)(i) it must be shown that the minimum setback (with buffer enhancement) will adequately protect water quality, habitat, and other shoreline ecological functions. Ecology provided feedback to the City, citing concerns related to impacts and inadequate protection of shoreline ecological functions associated with the proposed flexible shoreline buffer/setbacks in an email send on 8/19/2011 and the Checklist. Ecology has reviewed the City’s Final Shoreline Analysis Report (OTAK AHBL, 2010) and Final Cumulative Impacts Analysis (AHBL 2012), but did not find an analysis supporting small enhanced buffers. The impacts of future development under this scenario have not been shown to meet no net loss of shoreline ecological functions pursuant to WAC 173-26-201(2)(e). The following changes must be incorporated to ensure adequate protections under the required setbacks. Ecology Final Action: tbd.
DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC															
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 25 ft. (minimum) with enhancement	N/A ³															
			... ² The 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.																	

Comment [JB1]: Yes, I agree. It appears that the provision is applicable to subdivision of shoreline property, where the full structure setback should be considered in reviewing/approving the plat. Once the platted lots are established, then setback reduction mechanisms/enhancements could be considered on sites that are appropriate for enhancement and a net improvement in shoreline functions can be achieved.

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
14	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	<p>1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40)-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.</p>	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #13</p> <p>Ecology Final Action: tbd.</p>
15	Ch. 4.B.3 Flexible Shoreline Setback Regulations	Flexible setbacks	<p>3. Flexible Shoreline Setback Regulations</p> <p>In addition to the specific requirements for particular uses, the following standards shall apply:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>c.—No setback reduction is allowed in the Natural environment, where a one hundred (100) foot setback shall be required.</p> <p>d.—At least one Water Related Action or 25 feet of reduction allowance from selected Upland Related reduction mechanisms in Table III must be undertaken in order to achieve the full setback reduction allowed.</p> <p>e.—Alternative Setback Averaging – In instances of unique lot configurations, the Shoreline Administator 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:</p> <p>i. Alternative setback averaging will not reduce shoreline functions or functional performance;</p> <p>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</p>	The City of Black Diamond City Council accepts this change.	<p>See rational for required change #13</p> <p>Ecology Final Action: tbd.</p>

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)		CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>
			<p>are generally parallel to the shoreline edge;</p> <p>iii. The setback depth at its narrowest point is not reduced to less than twenty-five feet;</p> <p>iv. Under no circumstances shall a structure encroach more than five feet beyond either the standard or mitigated setback.</p> <p>2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration.</p> <p>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.</p> <p>4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.</p> <p>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:</p> <p>a. The goals and objectives for the mitigation plan;</p> <p>b. The criteria for assessing the mitigation;</p> <p>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</p> <p>d. A contingency plan.</p> <p>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.</p> <p>6. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p>			
16	Ch. 4.B.4 Shoreline Setback Reduction Mechanisms – Table III	Flexible setbacks	<div><div>REDUCTION MECHANISM</div><div>REDUCTION ALLOWANCE</div></div> <div>Water Related Actions</div> <div><div>1</div><div>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.</div><div>Bulkhead Removal on 75% of shoreline: 15 feet 50% of shoreline: 10 feet</div></div>	The City of Black Diamond City Council accepts this change.	See rational for required change #13 Ecology Final Action: tbd.	

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				25% of shoreline: 5 feet		
			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	
			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 applicant selected water related, shoreline enhancement at the on-site area of improvement. The City shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available.	5-15 feet	
			6	Contribution to a City restoration fund, or bank, for offsite shoreline restoration in the City owned parks on Lake Sawyer. Amount shall be determined based upon the cost per frontage foot shown below times the number of frontage feet on the applicant's parcel as shown in the current King County property tax assessment database. The City shall establish the restoration cost per foot for the three setback reductions below to make this reduction mechanism available. Setback Reduction of 5 ft. = \$XXX per foot of frontage at the on-site location. Setback Reduction of 10 ft. = \$YYY per foot of frontage at the on-site location Setback Reduction of 15 ft. = \$ZZZ per foot of frontage at the on-site location.	5-15 feet	
			Upland Related Actions			

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)		CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – ECY FINAL ACTION
			7	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	
			8	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	
			9	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 and exceed adopted stormwater requirements. (Note: stormwater ponds serving more than one property should be located outside of shoreline jurisdiction if possible).	5 feet	
			10	Installation of a “green” roof in accordance with the standards of the LEED Green Building Rating System.	5 feet	
			11	Installation of pervious material for entire length of a driveway or infiltration systems that do not degrade ecological function.	5 feet	
			12	Limiting total impervious surface, e.g. pathways or patios for water access and enjoyment, in the reduced setback area to less than 10 percent, provided the applicant complies with all other development requirements	5 feet	
			13	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	
			14	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	
			15	Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.	5 feet	

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			16	Contribution to a City mitigation fund, or bank, for offsite vegetation restoration and implementation of other measures contained in setback reduction mechanisms 6 and 7 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 shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available.					5-10 feet																																				
			17	Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.					5-feet																																				
Environment Designations																																													
17	Figure 1 Shoreline Environment Designation Map	Environment Designations	The Environment designations of the areas depicted on the attached map shall be changed from ‘Residential’ to ‘Urban Conservancy’.						The City of Black Diamond City Council accepts this change.	WAC 173-26-211 provides purpose, management policies, and environment designation criteria. The areas depicted on the attached map do not meet the designation criteria for the Residential environment (WAC 173-26-211(5)(f)(iii), but rather fit the designation criteria for Urban Conservancy (WAC 173-26-211(5)(e)(iii). Those areas identified shall be changed to the Urban Conservancy designation. Additional changes are needed throughout the SMP to ensure consistency with the purpose and management policies of WAC 173-26-211(5)(e). Ecology Final Action: tbd.																																			
18	Ch.2.D.3.c Designated Areas	Environment Designations	Urban Conservancy areas include shorelands within Lake Sawyer Boat Launch Park, portions of Lake Sawyer Regional Park that are not designated wetlands and large unplatted lots, 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, limited residential development and public access. The publicly-owned Lake Sawyer Boat Launch and Lake Sawyer Regional Park offer potential for ecological restoration.						The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.																																			
19	Ch.3.B.7.c Shoreline Vegetation Conservation Regulations	Environment Designations	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.						The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.																																			
20	Ch.4.B.1 Table I	Environment Designations	<table><tr><td></td><td>NATURAL</td><td>URBAN CONSERVANCY</td><td>SHORELINE RESIDENTIAL</td><td>SHORELINE RESIDENTIAL LIMITED</td><td>AQUATIC¹</td><td></td></tr><tr><td>SHORELINE USES</td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Community Pier (Private Shared Use)</td><td>X</td><td>X-P</td><td>P</td><td>C²</td><td>P</td><td></td></tr><tr><td>....</td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Single Family</td><td>X</td><td>X-P³</td><td>P</td><td>C</td><td>X</td><td></td></tr></table>							NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC ¹		SHORELINE USES							Community Pier (Private Shared Use)	X	X-P	P	C ²	P								Single Family	X	X-P ³	P	C	X		The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.
	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC ¹																																								
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Community Pier (Private Shared Use)	X	X-P	P	C ²	P																																								
....																																													
Single Family	X	X-P ³	P	C	X																																								

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

ITEM	DRAFT SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)							CITY RESPONSE (Acceptance or Alternative)	ECY RATIONALE – <i>ECY FINAL ACTION</i>												
			<div>....</div> <table><tr><td>New Roads related to Permitted Shoreline Activities</td><td>X</td><td>XC</td><td>C</td><td>X</td><td>X</td><td></td></tr></table> <div>²This use is subject to further zoning restrictions in the Black Diamond Municipal Code.</div>							New Roads related to Permitted Shoreline Activities	X	XC	C	X	X								
New Roads related to Permitted Shoreline Activities	X	XC	C	X	X																		
21	Ch.4.B.2 Table II	Environment Designations	<table><tr><td>DEVELOPMENT STANDARD</td><td>NATURAL</td><td>URBAN CONSERVANCY</td><td>SHORELINE RESIDENTIAL</td><td>SHORELINE RESIDENTIAL LIMITED</td><td>AQUATIC</td></tr><tr><td>Minimum lot width and water frontage</td><td>N/A</td><td>N/A 60 ft. ²</td><td>60 ft. ²</td><td>N/A</td><td>N/A³</td></tr><tr><td>Minimum Lot Size</td><td>No further subdivision is allowed</td><td>No further subdivision is allowed 9,600 sq. ft ^{6,7} <u>Subdivision of unsewered properties is prohibited</u></td><td>9,600 sq. ft ⁶ Subdivision of unsewered properties is prohibited.</td><td>No further subdivision is allowed.</td><td>N/A³</td></tr></table> <div>⁴ Subdivision is subject to further zoning restrictions in the Black Diamond Municipal Code.</div>	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	Minimum lot width and water frontage	N/A	N/A 60 ft. ²	60 ft. ²	N/A	N/A ³	Minimum Lot Size	No further subdivision is allowed	No further subdivision is allowed 9,600 sq. ft ^{6,7} <u>Subdivision of unsewered properties is prohibited</u>	9,600 sq. ft ⁶ Subdivision of unsewered properties is prohibited.	No further subdivision is allowed.	N/A ³	The City of Black Diamond City Council accepts this change.	See rational for required change #17 Ecology Final Action: tbd.
DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC																		
Minimum lot width and water frontage	N/A	N/A 60 ft. ²	60 ft. ²	N/A	N/A ³																		
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22	Ch. 1.E ¶ 3	Environment Designations	Black Diamond has designated its Lake Sawyer shorelines under four <u>five</u> shoreline environments: Aquatic, Natural, Urban Conservancy, <u>Shoreline Residential Limited</u> and Shoreline Residential.							The City of Black Diamond City Council accepts this change.	WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited. Ecology Final Action: tbd.												

References

Otak & AHBL 2010, Otak Inc. and AHBL. August 6, 2012. Shoreline Analysis Report Including Shoreline Inventory and Characterization for City of Black Diamond’s Shoreline: Lake Sawyer.

AHBL & Black Diamond 2012. City of Black Diamond Community Development Department and AHBL September 2012. Final Cumulative Impacts Analysis Component for City of Black Diamond Shoreline: Lake Sawyer.

Knutson, K. L., and V. L. Naef. 1997. Management recommendations for Washington’s priority habitats: riparian. Wash. Dept. Fish and Wildl., Olympia. 181pp.

Green/Duwamish and Central Puget Sound Watershed Water Resource Inventory Area 9 (WRIA 9) Steering Committee. 2005. Salmon Habitat Plan – Making Our Watershed Fit for a King. Prepared for the WRIA 9 Forum. August 2005

Department of Ecology. 2011. Shoreline Master Program Handbook; Chapter 11, Vegetation Conservation, Buffers and Setbacks. Accessed at: <http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Chapter11.pdf>

²Please see Residential Subdivision Standards in Chapter 4, Section C.8.c.

Bolton, Susan and Jeff Shellberg. 2001. White Paper - Ecological Issues in Floodplains and Riparian Corridors. Washington Department of Fish and Wildlife, Washington Department of Ecology, Washington Department of Transportation, Olympia, Washington.

Brennan, Jim, Culverwell, Hilary, Gregg, Rachel, Granger, Pete. 2009. Protection of Marine Riparian Functions in Puget Sound, Washington. Washington Department of Fish and Wildlife, Olympia, Washington.

Brennan, J.S., and H. Culverwell. 2004. Marine Riparian: An Assessment of Riparian Functions in Marine Ecosystems. Published by Washington Sea Grant Program. Copyright 2005, UW Board of Regents. Seattle, WA. 34 p.

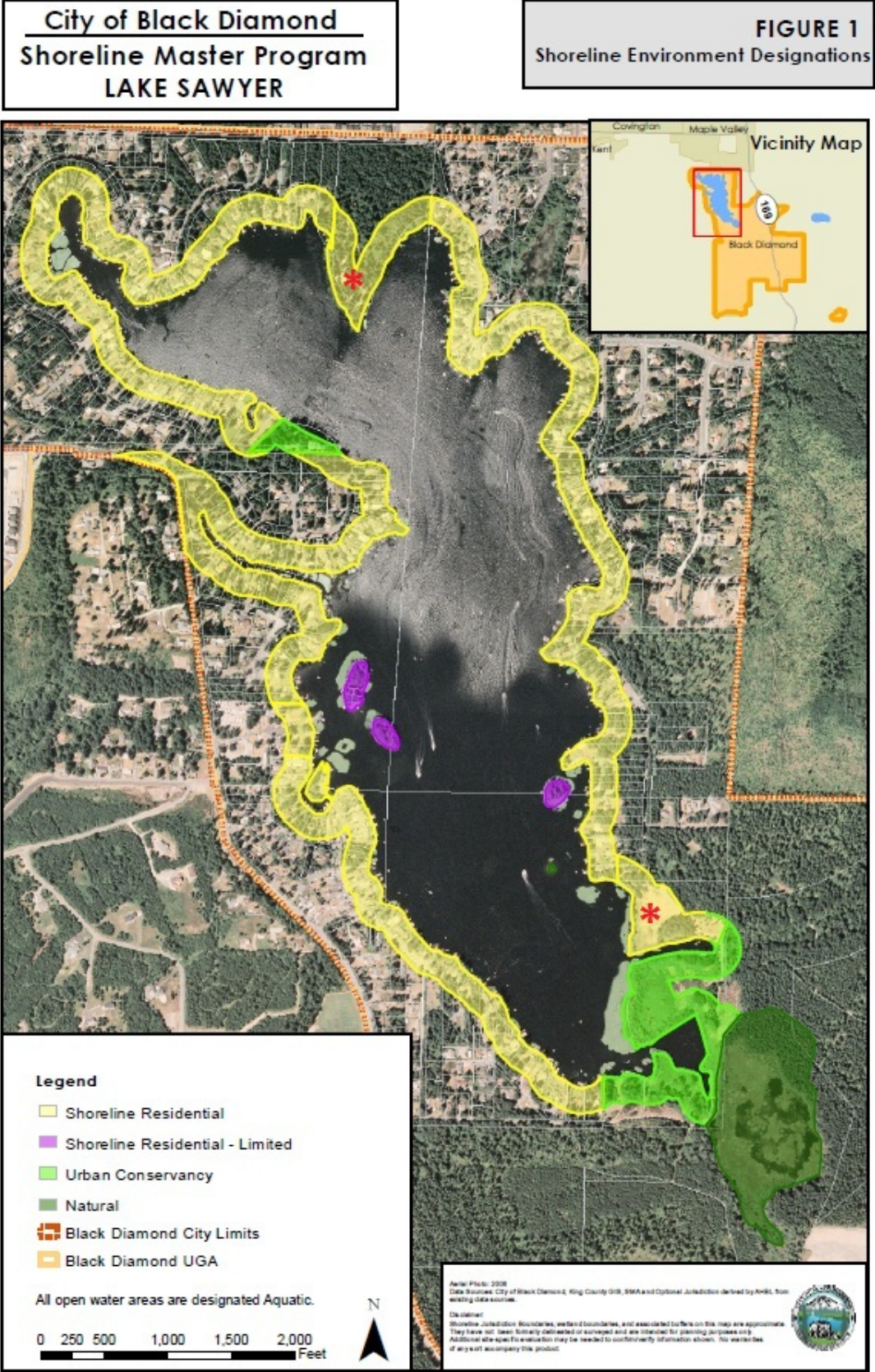
EnviroVision, Herrera Environmental and Aquatic Habitat Guidelines Program. 2007, revised 2010. Protecting Nearshore Habitat and Functions in Puget Sound.

Knight, K. 2009. Land Use Planning for Salmon, Steelhead and Trout. Washington Department of Fish and Wildlife, Olympia, Washington.

Knutson, K.C. and V.L. Naef. 1997. Management Recommendations for Washington’s Priority Habitats: Riparian. Washington Department of Fish and Wildlife, Olympia, Washington

Granger, T., T. Hraby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, E. Stockdale. April 2005. Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA.

Required Change # 17
Parcels noted with Red Asterisk shall be designated Urban Conservancy.



CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-049 Resolution No. 14-947 authorizing the Mayor to sign and submit a Public Works Trust Fund loan application for the 0.5 MG Water Tank Recoat project	Agenda Date:	May 15, 2014
		AB14-049
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note): \$170,000 loan revenue	Police – Chief Kiblinger	
Fund Source: Public Works Trust Fund loan	Public Works – Seth Boettcher	X
Timeline: 2014-2015	Court Administrator – Stephanie Metcalf	

Agenda Placement: ☐ Mayor ☐ Two Councilmembers ☒ Committee Chair ☐ City Administrator

Attachments: Resolution No. 14-947, Public Works Trust Fund application, CIP sheet

SUMMARY STATEMENT:

The Project: Taking direction from the City Council, the 0.5 MG water tank recoating project was identified as priority #1 and was budgeted for design and repainting this year. Our consultant (Res 14-927) RH2, along with City staff, is recommending that the City phase this project into the pumps and controls for service when the tank is off line and the second phase for the painting. Because of this phasing, the project will likely be completed next year. This also means that the City will be eligible for a PWTF loan for a large portion of the project.

Funding Opportunity: The City was selected and approved for a Public Works Trust Fund loan last year for this project but the state legislature pulled the funding from the program. City staff applied for other funding opportunities (Department of Health, State Revolving Fund Grant) but this project was not eligible for those opportunities. The PWTF has money available to fund projects next year and the application deadline is May 16, 2014. This application must be signed by the Mayor and authorized by the City Council. The City has budgeted this project with an inter-fund loan from the sewer utility on a max 5 year term. All expenditures after September 1, 2014 can be covered by this loan.

Loan Application: The loan application included in the packet is for reference purposes only. The loan application is not completed because as of May 7th, 2014 staff was just getting started filling out the loan application. The loan application will be complete on May 14th or 15th.

FISCAL NOTE (Finance Department): The phase one work will need to be paid for in 2014 with project carryover REET II funds and funds from Water Reserves. The advantage of using a Public Works Trust Funds loan is that the debt payments can be spread out over a 10 year period, where an internal loan can only be for five year. The estimated net annual debt service payments are expected to be about \$19,500 lower per year with the longer term. This will improve the cash flow of the water fund and help keep total water expenditures within the existing rate structure.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Public Works Committee has discussed this item and recommended moving forward for Council review and approval.		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-947, authorizing the Mayor to sign and submit a Public Works Trust Fund loan application to the Washington State Public Works Board for the 0.5 MG Water Tank Recoat project.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 15, 2014		

RESOLUTION NO. 14 -947

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING A PWTF LOAN APPLICATION FOR THE ½ MILLION GALLON RESERVOIR RECOAT

WHEREAS, the City has been planning to recoat the ½ million gallon water reservoir recoat (1/2 MG Reservoir Recoat) off the south end of Bott's Drive and has included the project in the City's capital improvement plan, and

WHEREAS, the City is eligible for a Public Works Trust Fund Loan and was successful in a previous application that was cut because of state budget short falls, and

WHEREAS, Public Works Trust funds will be available in July of 2015 and eligible costs can be reimbursed from September 1st, 2014 on; and

WHEREAS, the City can spread the cost of the tank painting project out over 10 years rather than the 5 years allowed with an inter-fund loan thus improving the water departments finances, and

WHEREAS, the repayment of the Public Works Board 2016 Construction loan funding requires adequate revenue to meet debt service; and

WHEREAS, the City's consultant is recommending a phase 1 of the project that will provide the pumps and controls that will allow for the tank to be drained, inspected and painted. The phasing of the project will push the painting portion of the project till next year anyway;

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

Section 1. The Mayor is hereby authorized to sign and submit a Public Works Trust Fund loan application for ½ MG Reservoir Recoat to the state.

Section 2. The City agrees to maintain adequate revenue streams sufficient to provide funds to pay all system operating expenses and debt repayments during the term of the loan.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF MAY, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

Capital Plan 2014 - 2019

Project for the	Water Department	#	W2
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PROJECT TITLE	Reservoir Painting and Maintenance	13.07
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DESCRIPTION Repaint the 0.5 MG reservoir inside and out.

BACKGROUND The paint job has lasted over twenty years but must be repainted soon before sandblasting to metal is needed. A PWTF loan still is a possibility and could provide financing on a 10 year term at a 0.5% interest rate.

COMMENTS The budget was increased from the 2013 budget because of the paint condition, need for an additional access port, tank mixing and staff costs. The preliminary engineering will start in 2013 as budgeted. Loan for five years at .5 % interest will be repaid from water operating revenue.

	Total \$ Requested 2014-2019	Capital Plan 2014 - 2019					
		2014	2015	2016	2017	2018	2019
CAPITAL PROJECT COSTS							
Design Engineering & bid docs	27,000	27,000					
specialty inspection	5,000	5,000					
Tank Painting & improvements	141,000	141,000					
Project management	26,000	26,000					
TOTAL COSTS	199,000	199,000	-	-	-	-	-
REQUESTED FUNDING							
Sewer Loan	187,000	187,000					
Real Estate Excise Tax II	12,000	12,000					
TOTAL SOURCES	199,000	199,000	-	-	-	-	-

	Total \$ Requested 2014-2019	2014	2015	2016	2017	2018	2019
DEBT FUNDING							
Internal Sewer Loan	189,814		37,963	37,963	37,963	37,963	37,963
TOTAL DEBT FUNDING	189,814	-	37,963	37,963	37,963	37,963	37,963



Old Lawson Hill 500,000
Gallon Tank



Washington State Public Works Board Construction Loan Application

**FUNDS AVAILABLE ONLY UPON GOVERNOR AND
2015 LEGISLATURE APPROVAL FOR THE 2016
FISCAL YEAR STARTING:**

JULY 1, 2015

Eligible Jurisdictions	<ul style="list-style-type: none">▪ Counties, Cities, and Towns▪ Water Districts▪ Sewer Districts▪ Public Utility Districts▪ Other Districts (excluding Tribes, Ports, and School Districts)
Eligible Systems	<ul style="list-style-type: none">▪ Domestic Water▪ Sanitary Sewer▪ Storm Water▪ Solid Waste and Recycling▪ Roads and Streets▪ Bridges
How to Apply	<ul style="list-style-type: none">▪ Hardcopy application (this Word file) – submit this form, also found at www.pwb.wa.gov/

	Due Date: Postmarked or Delivered on or before	Maximum Amount per Jurisdiction per Biennium	Hardcopy Application Submittals
Construction	May 16, 2014 6PM PST	\$7,000,000	Submit one signed original and a CD with the application in Microsoft Word format

Mail/Ship/Hand Deliver to:

Public Works Board
1011 Plum Street South East
PO Box 42525
Olympia WA 98504-2525
360.725.3153

For more information on the Public Works Board's loan programs and for the **Construction Loan Application Guidelines**, please visit the Public Works Board's website at www.pwb.wa.gov.

APPLICATION REQUIREMENTS/CHECKLIST

Items that will cause the application to be rejected

Questions? – Contact your Regional Service Coordinator (RSC) http://www.pwb.wa.gov/public-works-board/board-staff/Pages/default.aspx	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Counties, cities, and towns, must have imposed the one-quarter of one-percent REET as allowed by RCW 82.46.010(2). Full list: http://dor.wa.gov/Docs/forms/RealEstExcsTx/RealEstExTxRates.pdf
<input type="checkbox"/> Yes <input type="checkbox"/> No	For Sanitary Sewer projects that include side-sewer, applicant must adopt an ordinance or resolution declaring such activities will benefit the jurisdiction's sanitary sewer systems including a payback mechanism. <i>See page 9 of the Guidelines for full details.</i> Attach copy of ordinance to application materials if applicable.
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	(Sanitary Sewer and Drinking Water projects only) a. Was this project included on the recommended for funding 2014 Construction Loan List? b. If the answer to a. is "no," was this project submitted to either the Department of Health (Drinking Water) or the Department of Ecology (Sanitary Sewer)? c. Has this project been <i>fully</i> funded by either the Department of Health or the Department of Ecology? <i>Please contact your RSC if you've answered No to items a. or b.</i>
<input type="checkbox"/> Yes <input type="checkbox"/> No	Has the Applicant Certification Form been read and <i>signed</i> by the appropriate authority? Attach original signed document to the application materials due May 16, 2014. This must be signed in order for the application to be accepted for review.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Has the applicant adopted a policy to reduce greenhouse gas emissions? If NO, attach a copy of the policy with the application materials. Title of Policy: _____ Adoption Date: _____ If submitted to the Public Works Board in prior years, this requirement <i>has been met</i> . Submitted in prior years? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> No	Is a copy of the resolution whereby your governing body acknowledges the need to maintain adequate revenue streams sufficient to provide funds to pay all system operating expenses and debt repayments during the term of the loan attached? <i>See page 21 for an example.</i> Attach a copy of the resolution to application materials. ATTACH THE POLICY: <input type="checkbox"/> Yes <input type="checkbox"/> No

Items/Actions to ensure a complete application

<input checked="" type="checkbox"/>	Have you read the Application Guidelines? This document contains all the necessary information to assist you in applying for a construction loan. To download the current Application Guidelines go to www.pwb.wa.gov .
<input checked="" type="checkbox"/>	Have all questions applicable to your type of system been answered? Unanswered questions receive no points. Submitted information will be verified by Public Works Board staff.
<input checked="" type="checkbox"/>	Have you verified the accuracy of the Project Cost <u>sum</u> and the Project Funding <u>sum</u> ? These figures must match and accurately reflect the sum of the costs and the sum of the funding.
<input checked="" type="checkbox"/>	Is all relevant documentation (i.e., proof of other funding sources, regulatory orders, moratoriums, etc.) attached?
<input checked="" type="checkbox"/>	Have you made a copy, including all attachments, of the final, signed application package <u>for your records</u> ?
<input checked="" type="checkbox"/>	Applications and modifications (additions, removals, and substitutions) are allowed until: 6PM PST, May 16, 2014. After that time, no further changes will be accepted.

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SECTION 1: GENERAL APPLICANT INFORMATION

Public Works Board Construction Loan Application

PRIMARY SYSTEM AFFECTED BY THIS PROJECT (check only one)

☒ Domestic
Water

GENERAL APPLICANT INFORMATION

1.1	Applicant (Legal Name)	City of Black Diamond															
1.2	Federal Tax ID #	9	1	-	6	0	1	6	2	0	4						
1.3	Statewide Vendor Number and Suffix	S	W	V	0	0	1	9	0	8	1	-	0	0			
1.4	Administrative office – Street Address	24301 Roberts Drive															
	Mailing Address – (if different from street)	PO Box 599															
	City	Black Diamond															
	State	WA	Zip	9	8	0	1	0	-	0	5	9	9				
1.5	County	King															
1.6	Legislative District of Project Area http://app.leg.wa.gov/districtfinder/	5				Congressional District of Project Area http://app.leg.wa.gov/districtfinder/				8							
1.7	Applicant's Contact Person	Scott Hanis															
	Title	Public Works Administrative Assistant															
	Mailing Address –	PO Box 599															
	City	Black Diamond															
	State	WA	Zip	9	8	0	1	0	-	0	5	9	9				
	Telephone	360-886-5700															
	Email	shanis@ci.blackdiamond.wa.us															
1.8	Project Title	0.5 MG Water Tank Repainting															
1.9	Loan Request	\$															
1.10	Total Project Cost	\$															

LEGISLATIVELY REQUIRED INFORMATION:

1.11	<p>Does applicant jurisdiction (cities and counties only) have guidelines to process development permit requests? AND Does applicant jurisdiction abide by the guidelines set for processing permits?</p> <p>The guidelines should include:</p> <ul style="list-style-type: none"> The length of time between permit application submission and permit decision The information necessary to make a complete permit application A written explanation for denying a permit application, if applicable <p>Review section 1(2), Chapter 231, 2007 Laws of 2007 See page 960 of the PDF (or page 952 of paper document): http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/2007pam1.pdf</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
------	--	---------------------------------	--------------------------------	---------------------------------

GPS COORDINATES – Project Site (<http://www.gps-coordinates.net>)

1.12	Latitude (decimal degrees):			Longitude (decimal degrees):			
N <input type="checkbox"/>	Degrees:	Minutes:	Seconds:	N <input type="checkbox"/>	Degrees:	Minutes:	Seconds:
S <input type="checkbox"/>	_____°	_____'	_____"	S <input type="checkbox"/>	_____°	_____'	_____"

MEASURES OF FISCAL CAPACITY

The next series of questions is intended to establish the level of the applicant's fiscal capacity to incur debt.

1.13	<p>Has the applicant experienced severe fiscal distress resulting from a natural disaster (e.g., Governor declared emergency) or emergency public works need in the past 12 months? If Yes, describe below.</p> <p><i>(Not a scored question, but the Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)</i></p>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	The event(s):		
	When occurred:		
	Fiscal distress caused:		

RATE BASED SYSTEMS ONLY

THE RESPONSE MUST ADDRESS THE PRIMARY SYSTEM IDENTIFIED AT THE TOP OF THE APPLICATION. This information will assist the Board in evaluating the applicant system's financial capacity to incur debt. Please use system specific financial data to complete this section.

The data will be used to calculate the ratio of debt, cash, and capital per capita. **(Max 4 points)**

1.14	Number of people in jurisdiction:	Number of people served by the system in 2013:	Percentage of people in the system affected by this project: %
	Total operating revenue for the system in 2013.		\$
	Total operating expenses for the system in 2013.		\$
	Total outstanding debt for the system in 2013.		\$
	Cash and cash equivalents (deposits and all cash investments including restricted assets) for the system in 2013.		\$
	Value of land and capital assets, net of depreciation (construction in progress, building, machinery and equipment, infrastructure, and other improvements) for the system in 2013. (For those using Asset Management, not depreciation, enter annual value.)		\$

THE RESPONSE MUST ADDRESS THE PRIMARY SYSTEM IDENTIFIED AT THE TOP OF THE APPLICATION. This information will assist the Board in evaluating the applicant system's source of revenue. The data will be used to calculate the percent of monthly household income dedicated to utility services. **(Max 10 points)**

1.15	Number of Equivalent Residential Units (ERUs) in system.		
	List the average monthly rate per ERU assuming 1,000 cubic feet (also known as 10 CCF or 7,480 gallons)	Year	Rate
		2009	\$
		2010	\$
		2011	\$
		2012	\$
		2013	\$
1.16	Describe short- and long-term fiscal management strategies, which the applicant jurisdiction uses to maximize its ability to finance the system described in this application.		
	<i>If there have been no increases in the rates over the last five (5) years, explain how the fiscal management strategies make it possible for the system to maintain service without increased revenues. (Max 1 point)</i>		
1.17	What will be the <u>estimated</u> average residential customer's monthly rate upon project completion?		\$

SECTION 2: PROJECT INFORMATION

PROJECT DESCRIPTION

2.1 In 150 words or less, please describe the project to be completed. (Not scored)

PROJECT'S SCOPE OF WORK

2.2 Describe in detail all the activities required to complete this project. This should include only the contract deliverables, e.g., number of feet and size of pipe to be laid, etc. The activities listed here will be incorporated into the loan contract should this project be selected for funding. Do not use this section to explain the problem.
The activities listed here must correspond with the 1) project schedule, 2) project costs, and 3) project funding. (Maximum of 4,000 characters including letters, spaces, and punctuation – 1 page with 1 inch margins and 61 lines is approximately 4,000 characters. SEE GUIDELINES) (Not scored. Used as reference material in conjunction with schedule, costs, funding, and permitting.)

REQUIRED PERMITS (LOCAL, STATE, AND FEDERAL)

2.3 List permits required for the proposed project and indicate status of each permit (e.g., applied for, pending, issued, etc.) If no permits are required, explain why not. Needs to correspond with Question 4.1 Readiness-to-Proceed. Attach additional pages if more than five (5) permits are needed for the project. For assistance with permitting requirements, contact the Office of Regulatory Assistance or go to <http://www.ora.wa.gov>. (This section is not scored, but will be cross-referenced with Readiness-to-Proceed section and may impact scoring associated with Readiness-to-Proceed.)

Permit	Expected Date Submitted	Expected Date Issued or Received	Status
1.			
2.			
3.			
4.			
5.			
If no permits are required, please explain why not.			

PROJECT SCHEDULE

Activity	Current Status	% Complete	Completion Date (Mo/Yr)
Engineering Report			
Cultural and Historical Resources Review (Section 106 or Executive Order 05-05) ¹	Not applicable		
Environmental Review	Not applicable		
Land/Right-of-Way Acquisition	Not applicable		
Permits	Not applicable		
Public Involvement/Information			
Bid Documents			
Award Construction Contract			
Construction Start			
Construction Complete			
Project in Use			
Investment Grade Efficiency Audit (if applicable):			
Other:			
Other:			

PROJECT COSTS

Cost Category	Amount
Engineering Report	\$
Cultural and Historical Resources Review (Section 106 or Executive Order 05-05) ¹	\$
Environmental Review	\$
Land/Right-of-Way Acquisition	\$
Permits	\$
Public Involvement/Information	\$
Bid Documents	\$
Construction	\$
Other Fees (Sales or Use Taxes)	\$
Contingency (%)	\$
Investment Grade Efficiency Audit (if applicable):	\$
Other:	\$
Other:	\$
TOTAL ESTIMATED PROJECT COST	\$

¹ The EO 05-05 requires recipients of state funds to consult with interested parties (i.e., Department of Archaeology and Historic Preservation, and Tribes) prior to starting project construction. For Construction loans, this consultation should take place as early as possible, in order to avoid delays in starting the project construction. If you have questions regarding this process, please contact Heather Youckton at (360) 725-2744 or email her at Heather.Youckton@commerce.wa.gov.

PROJECT FUNDING

2.6 The Total Project Funding must equal the Total Estimated Project Cost in Question 2.5.
Please state the status of the project's funding sources as follows:

- Funds are **Planned** for if they are found in a formally adopted Capital Facilities Plan.
- Funds are **Applied** for if a formal application has been submitted to a funding source, and the funding source considers that application or funding request as having been submitted (attach notification from funder that application has been received).
- Funds are considered **Awarded** if a formal notice of approval for the funds is in place from the funding source (attach letter from funder or contract number). Local revenue must be in an approved budget to be considered in-hand.

(This section is not scored but will be checked for accuracy and cross-referenced with the Readiness-to-Proceed section.)

Type of Funding	Identify Source ²	Amount	Status (Planned, Applied, Awarded, etc.)	Contract/Reference Number
Grants (State/Federal Agency or Organization) – Non Match				
Grant #1		\$		
Grant #2		\$		
Grant #3		\$		
Total Grants		\$		
Prior Pre-Construction Loans from the Public Works Board – Non Match				
Non-Match Loan #1		\$		
Non-Match Loan #2		\$		
Total Prior Pre-Construction Loans		\$		
Loans (State, Federal, Private Agency or Organization)				
This Construction Loan Request	Public Works Board	\$	Proposed	
Other Loan #1		\$		
Other Loan #2		\$		
Total Loans		\$		
Local Revenue (Rates, General Fund, Levies, Reserves, Assessments, ULID, LID, etc.)				
Local Revenue #1		\$		
Local Revenue #2		\$		
Local Revenue #3		\$		
Total Local Revenue		\$		
Other Funds				
Other Funds #1		\$		
Other Funds #2		\$		
Total Other Funds		\$		
TOTAL PROJECT FUNDING		\$		

² If federal funds are included in the project-funding package, the project is subject to the federal Section 106 Cultural Historic Requirements. If you have questions regarding this process, please contact Heather Youckton at (360) 725-2744 or email her at Heather.Youckton@commerce.wa.gov.

2.7	Are there any constraints on the identified funding sources in Question 2.6 Project Funding? If yes, please explain. <i>(Not scored)</i>				<input type="checkbox"/> Yes		<input type="checkbox"/> No	
2.8	Indicate with a Y/N below which of the following financing options have been attempted for this project and provide dates of those attempts.							
	Please describe whether the attempt was successful, and if not, why not. If an option has not been attempted, please explain why. <i>(Not scored)</i>							
	Bond issuance		Local improvement district		Applications for federal or state funding		Applications for private funding	
	Attempted?	Y / N	Attempted?	Y / N	Attempted?	Y / N	Attempted?	Y / N
	Date(s) of attempts:		Date(s) of attempts:		Date(s) of attempts:		Date(s) of attempts:	
	Successful?	Y / N	Successful?	Y / N	Successful?	Y / N	Successful?	Y / N
	If not attempted, why was this option not feasible?		If not attempted, why was this option not feasible?		If not attempted, why was this option not feasible?		If not attempted, why was this option not feasible?	

SECTION 3: PROJECT NEED AND SOLUTION

This section includes a series of questions related to the need for the project and the proposed solution to the problem. Have thorough and complete responses.

Attach any verifying information if necessary to clarify the degree of the problem (i.e., regulatory orders, negotiated letters of agreement, etc.).

This is the applicant's opportunity to state the problem and its impact on the community.

The information below states the Program's priorities, which are used to recommend projects for funding.

- The program priority in which the project falls,
- Need assessment,
- How well the situation is documented, and
- How well the proposed solution addresses the problem.

Program Priorities:	1. Public health and safety
	2. Environmental health
	3. Economic Development/ Smart Growth

Assessing Need:	SEVERE SITUATION – or – CHANCE OPPORTUNITY	<ul style="list-style-type: none"> • Project is to fix systems that have failed, are in imminent danger of failing, and/or are currently out of regulatory compliance (under an active regulatory order). • An economic opportunity has presented itself provided that the local government improves infrastructure to take advantage of the opportunity.
	MODERATE	<ul style="list-style-type: none"> • The project is being done to meet emerging regulatory requirements and/or the project is being done to bring a non-compliant (but not under regulatory order) system up to existing standards. • Local government is improving the local business climate for future business expansion.
	POTENTIAL/ PREVENTATIVE	<ul style="list-style-type: none"> • Project is necessary for the repair or replacement (end of lifecycle). • Project is being done to enable potential opportunities for growth and/or economic development and/or smart growth principles.

Supporting Documentation:	SEVERE SITUATION – or – CHANCE OPPORTUNITY	<ul style="list-style-type: none"> • Court orders • Official regulatory orders • Negotiated agreement with an external agency • A letter of commitment/intent from a business
	MODERATE	<ul style="list-style-type: none"> • External agency is driving the project/timeline • Project specific formal studies and/or reports (either from an internal or external source) • A letter of interest from a business
	POTENTIAL/ PREVENTATIVE	<ul style="list-style-type: none"> • Internal monitoring • Awareness of a problem

Proposed Solution:	SEVERE SITUATION – or – CHANCE OPPORTUNITY	<ul style="list-style-type: none"> • Solution clearly solves the problem • Solution clearly maximizes the opportunity
	MODERATE	<ul style="list-style-type: none"> • Solution does not solve the entire problem or fully leverage the opportunity
	POTENTIAL/ PREVENTATIVE	<ul style="list-style-type: none"> • Solution does not directly address the problem or take advantage of the opportunity

PROJECT CATEGORY

3.1	For the applicant's primary system, as selected at the top of this application, identify the sub-category that is most affected by the proposed project. Check only one. (Max 8 points; the Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)							
Domestic Water	8 points	6 points	4 points	2 points	1 point	1 point	1 point	1 point
	<input type="checkbox"/> Treatment	<input type="checkbox"/> Primary Supply or Source	<input type="checkbox"/> Secondary Supply or Source	<input type="checkbox"/> Storage or Reservoir	<input type="checkbox"/> Transmission	<input type="checkbox"/> Distribution	<input type="checkbox"/> Telemetry or Equipment	<input type="checkbox"/> Conservation or Other

GENERAL PROJECT NEED QUESTIONS

The answers to Questions 3.2 through 3.7 must relate to the **primary system** as identified at the top of the application. Be thorough and complete when responding.

(Max 52 points; scoring will be derived from the responses to Questions 3.2-3.28)

3.2	How old are the components being corrected by the project?	What are the component materials and what are they made of?	What is the condition of the system components, which are being corrected by the project?	
	<i>Example: 40 years old</i>	<i>Example: asbestos cement pipes</i>	<i>Example: Deteriorating: they crumble when flushed for routine maintenance.</i>	
3.3	What are the impacts the existing situation has, or will have, on the system's operation and expenses, if this project is not completed?			
3.4	What are the impacts the existing situation has, or will have, on the environment and/or endangered species, if this project is not completed?			
3.5	Is this project being done in partnership with any other organizations/agencies? If Yes, please identify the partner(s) and describe the roles of each partner. See Guidelines for details. (The Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)		<input type="checkbox"/> Yes	<input type="checkbox"/> No
	<u>PARTNER</u>	<u>ROLE</u>		
3.6	Is this project being done to comply with emerging/maintaining/anticipating regulatory requirements or economic opportunities? If yes, please describe.		<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.7	Have any other measures/activities been undertaken to address the problem/situation/opportunity? If Yes, please describe. If No, explain why not?		<input type="checkbox"/> Yes	<input type="checkbox"/> No

SYSTEM-SPECIFIC QUESTIONS

Domestic Water Projects ONLY (in the last five years)					
		Red	Yellow	Blue	Green
3.8	What is the current status of the applicant's operating permit? http://www.doh.wa.gov/ehp/dw/sentry.htm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.9	Does the applicant have sufficient water rights for the project? If no, explain the status of the situation including a time when the water rights will be acquired.	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
3.10	Is the applicant taking over a failing water system?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
	Identify system:	Date taken over:		<input type="checkbox"/> N/A	
3.11	Has the system had any boil water orders? If yes, indicate when, for how long, and how (or if) the issue was corrected.	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
	Date(s):	Duration(s):			
3.12	Have there been any connection moratoriums? If yes, indicate when, for how long, and how (or if) the moratorium was lifted.	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
	Date(s):	Duration(s):			
3.13	Has there been more than 10% unaccounted-for water loss? If yes, please describe the current situation including whether or not the water loss has been stopped or decreased.	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
3.14	Does the system have a bilateral compliance order from Dept of Health?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	

NEED AND SOLUTION NARRATIVE STATEMENT

3.29	<p>Please include a Problem-Solution-Result narrative about the problem being solved.</p> <p>This is the applicant's opportunity to state the problem or possibility, its impact on the community, and the benefits to be achieved through this project.</p> <p>Attach relevant documents (i.e., regulatory orders, negotiated letter of agreements, resolutions, moratoriums, etc.) to clarify the degree of the problem or opportunity.</p> <p>The project need will be evaluated on:</p> <ul style="list-style-type: none">▪ Clarity of the need, including whether it is substantiated by data and documentation▪ A comparison of the relative hardship or possibility and the frequency of the identified need▪ The level of urgency required to address the need. <p>Please use a maximum of 4,000 characters in each response box: Problem, Solution, and Result (including letters, spaces, and punctuation). 1 page with 1-inch margins and 61 lines is approximately 4,000 characters.</p> <p>SEE GUIDELINES</p>
-------------	--

Problem/Opportunity: Please describe the problem, or opportunity, facing the community.

Solution: Please describe the solution proposed to address the **Problem** or develop the **Opportunity**.

Result: Please describe the results or benefits anticipated with the proposed **Solution**.

SECTION 4: LOCAL MANAGEMENT EFFORT

Local Management Effort responses are system specific and should be based on the primary system identified at the top of the application.

READINESS-TO-PROCEED

4.1	All responses are based on “at the time of application.” If the applicant is not required to do a particular task, list N/A in “% completed at time of application” box <u>and</u> explain why the task is not required. In order to receive points for a task marked “N/A,” an explanation must be included in the box below.		% completed at time of application (or N/A)
	Applicant certifies that the status of engineering and design is complete Name and license number of certified engineer <u>assigned</u> to the project: Name: _____ License #: _____	(Max 4 points)	%
	Applicant certifies that all applicable permits are in hand	(Max 3 points)	%
	Applicant certifies that bid documents are ready	(Max 4 points)	%
	Applicant certifies that right-of-way/easement for project is acquired	(Max 4 points)	%
	Applicant certifies that cultural and historic consultation and environmental reviews are complete. <i>If claiming 100% completion, attach verification that consultation with both Department of Archaeological and Historic Preservation (DAHP) and concerned tribe(s) has been complete.</i>	(Max 4 points)	%
If “N/A” is listed for any of the above tasks explain why the activity is not required.			

LOCAL MANAGEMENT EFFORT (In the last 5 years)

4.2	<ul style="list-style-type: none"> What is the applicant’s process for establishing the project system’s maintenance schedule? How frequently is the system’s maintenance schedule reviewed and updated? 	
	Give two specific examples of maintenance or operations activities performed on this system. If unable to give two examples from the prior five years, please explain why not. (Max 1 point)	
	Maintenance/ Operations Activity Example 1:	
	Maintenance/ Operations Activity Example 2:	
4.3	List two distinct and separate capital improvements, other than <u>this</u> project, made to the system.	
	If unable to give two examples from the prior five years, please explain why not. (Max 1 point)	
	Capital Improvements Example 1:	
	Capital Improvements Example 2:	

4.4	<ul style="list-style-type: none"> Describe the planning and public involvement activities performed that identify and/or prioritize local public works maintenance and capital needs for the applicant system. Give two specific examples of planning activities performed on this system in the last five years. If unable to do so, please explain why not. (Max 1 point) 	
	Planning Activity Example 1:	
	Planning Activity Example 2:	

STEWARDSHIP OF WASHINGTON'S NATURAL RESOURCES (RCW 70.235.070) (In last 12 months)

4.5	<p>During the last 12 month period, what activities have been done on the:</p> <ol style="list-style-type: none"> Jurisdiction level to conserve Washington's natural resources? System level to conserve Washington's natural resources? <p>If nothing has been done, please explain why not. SEE GUIDELINES FOR EXAMPLES (Max 3 points)</p> <p>What aspect of this project will result in the conservation of Washington's natural resources? (e.g., metering the system; reusing methane gas for energy creation; planting trees to offset carbon emissions, etc.)</p>	
	Jurisdiction level conservation activity Example 1:	
	System level conservation activity Example 2:	
	Project level conservation activity Example 3:	
<p>NOTE! In order to receive the point for the Project level conservation activity, applicant must be willing to have that response included in the 2016 Construction Loan Contract as a contractually obligated requirement. <i>See guidelines for details.</i></p> <p>Do you agree to this requirement: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		

APPLICANT CERTIFICATION

WHEREAS, [] (name of local government) is applying to the Washington State Public Works Board Construction Loan program for a loan for an eligible project; and

WHEREAS, RCW 43.155.070 requires that applicants planning under RCW 36.70A.040 must have adopted comprehensive plans in conformance with the requirements of chapter 36.70A RCW, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW; and

WHEREAS, RCW 70.95 requires a comprehensive Solid Waste Management plan be adopted by the city or county; and

WHEREAS, RCW 43.155.070(10) requires that solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

WHEREAS, the applicant certifies that it has a currently adopted plan for each and every one of the systems it owns and operates and that these plans fully conform to the specifics within this application; and

WHEREAS, RCW 43.155.070 requires that county and city applicants must have adopted the local optional one-quarter of one percent Real Estate Excise Tax, as described in Chapter 82.46 RCW; and

WHEREAS, the applicant states that their Capital Facility Plan is consistent with the Comprehensive Land Use Plan of the jurisdiction in which they provide service; and

WHEREAS, the local governing body has approved submission of this application for a Public Works Board Construction Fund loan; and

WHEREAS the applicant certifies that if they have permitting authority (Counties and Cities) that they have developed and are adhering to guidelines regarding their permitting process for those applying for development permits consistent with section 1(2) of Chapter 31, 2007 laws.

WHEREAS the applicant certifies that it has adopted, and that this project adheres to policies to reduce greenhouse gas emissions in accordance with RCW 70.235.070.

WHEREAS the applicant certifies that, there is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the applicant from repaying the Public Works Board Construction loan extended by the Public Works Board with respect to such project. The applicant is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.

WHEREAS, the applicant recognizes and acknowledges that the information in the application forms is the only information, which will be considered in the evaluation and/or rating process. Incomplete responses will result in a reduced chance of funding. In order to ensure fairness to all, the Public Works Board does not accept any additional written materials or permit applicants to make presentations before the Board; and

WHEREAS, it is necessary that certain conditions be met as part of the application process; and

WHEREAS, RCW 43.155.060 requires that the project will be advertised for competitive bids and administered according to standard local procedure; and

WHEREAS, the loan will not exceed the maximum amount allowed by the Board of eligible costs incurred for the project; and

WHEREAS, the applicant certifies that the improvement has a minimum life expectancy of at least the number of years of the loan term for which they are applying; and

WHEREAS, any loan arising from this application constitutes a debt to be repaid, and [] (person/title) has reviewed and concluded it has the necessary capacity to repay such a loan; and

WHEREAS, the information provided in this application is true and correct to the best of the government's belief and knowledge and it is understood that the state may verify information, and that untruthful or misleading information may be cause for rejection of this application or termination of any subsequent loan agreement(s); and

NOW THEREFORE, [] (name of local government) certifies that it meets these requirements, and further that it intends to enter into a loan agreement with the Public Works Board, provided that the terms and conditions for a Public Works Board Construction loan are satisfactory to both parties.

Signed: _____
Name: _____
Title: _____
Phone Number: _____
Date: _____
Attest: _____

CERTIFICATION BY PREPARER OF APPLICATION

To Be Completed by Staff Member or Consultant

WHEREAS, [] has prepared this application for a Washington State Public Works Board Construction loan; and

WHEREAS, the preparer recognizes and acknowledges that the information in this application is the only information that will be considered in the evaluation and/or rating process. Incomplete responses will result in a reduced chance of funding, and that in order to ensure fairness for all, the Public Works Board does not accept any additional written materials or permit applicants to make presentations before the Board; and

WHEREAS, the information provided in this application is true and correct to the best of the preparer's belief and knowledge; and

NOW THEREFORE, [] recognizes and acknowledges the above declarations and certifies that this application meets the above requirements.

Signed: _____
Name: _____
Title: _____
Phone Number: _____
Date: _____
Attest: _____

SAMPLE DRAFT RESOLUTION

NAME OF APPLICANT Resolution # _____

Whereas, the governing body for the NAME OF APPLICANT is pursuing a Public Works Board 2016

Construction loan.

Whereas, the repayment of the Public Works Board 2016 Construction loan funding requires adequate revenue to meet debt service.

Now therefore, be it hereby resolved that the governing body agrees to maintain adequate revenue streams sufficient to provide funds to pay all system operating expenses and debt repayments during the term of the loan.

Adopted this _____ (day) of _____ 2014 by the governing body of NAME OF APPLICANT.

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

**City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010**

ITEM INFORMATION					
SUBJECT:		Agenda Date: May 15, 2014		AB14-050	
AB14-050 Resolution No. 14-948, revising Council Rules of Procedure in its entirety		Mayor Dave Gordon			
		City Administrator Christy Todd			
		City Attorney Carol Morris			
		City Clerk – Brenda L. Martinez			
		Community Development – Stacey Welsh			
		Finance – May Miller			
		Economic Development – Andy Williamson			
		Parks/Natural Resources – Aaron Nix			
Cost Impact (see also Fiscal Note):		Police – Chief Kiblinger			
Fund Source:		Public Works – Seth Boettcher			
Timeline:		Court Administrator – Stephanie Metcalf			
Agenda Placement: <input type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator					
Attachments: Resolution No. 14-948					
SUMMARY STATEMENT: Per Council Rules Councilmember Benson and Councilmember Edelman have requested this item to be on the agenda. Councilmember Edelman will be addressing Council on this matter.					
FISCAL NOTE (Finance Department): 					
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:					
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-948, revising the Council Rules of Procedure in its entirety.					
RECORD OF COUNCIL ACTION					
<i>Meeting Date</i>	<i>Action</i>		<i>Vote</i>		
May 15, 2014					

RESOLUTION NO. 14-948

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF BLACK DIAMOND, KING
COUNTY, WASHINGTON, REVISING THE
COUNCIL RULES OF PROCEDURE IN ITS
ENTIRETY**

WHEREAS, the City Council of the City of Black Diamond adopted Resolution No. 09-598 establishing Council Rules of Procedure; and

WHEREAS, the last amendment to the Council Rules of Procedure was adopted by Resolution No. 14-922; and

WHEREAS, the City Council wishes to revise the Council Rules of Procedure in its entirety;

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

Section 1. The City Council hereby adopts the new version of the City Council Rules of Procedure as set forth in the attached Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THE 15TH DAY OF MAY, 2014.

CITY OF BLACK DIAMOND

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk



RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON

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RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON

SECTION 1 – AUTHORITY

In accordance with RCW 35A.12.120, the Black Diamond City Council hereby establishes the following rules for the conduct of Council meetings, proceedings and business. These rules shall take effect upon adoption by resolution of the Council and until such time as they are amended or new rules are adopted in the manner provided for by these rules.

References.

RCW 35A.12.100 (Duties and authority of the mayor — Veto — Tie-breaking vote): “The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter.^[1] He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.”

¹ For reference, the City of Black Diamond does not operate under a city charter.

RCW 35A.11.020 (Powers vested in legislative bodies of noncharter and charter code cities): “The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440 [repealed], 48.14.020, and 48.14.080.”

SECTION 2 – COUNCIL MEETINGS

- 2.1 Meetings Shall be Open to Public. All meetings of the City Council shall be open to the public and all persons shall be permitted to attend any meeting of this body, except as provided in Chapter 42.30 RCW (the Open Public Meetings Act). Under RCW 42.30.040, no person at the meeting shall be required to register or provide other information, to complete a questionnaire, or otherwise comply with any other conditions as a precondition to be allowed to attend. However, persons wishing to address the Council or otherwise present information to the Council during a Council meeting may be requested to register and identify themselves and their home address. Persons who disrupt a meeting of the Council may lose the right to be present for the remainder of the meeting. See *Section 2.10*.
- 2.2 Agenda. The City Clerk shall be responsible for preparing agendas for all City Council meetings that specify the time and place of the meeting and set forth a brief general description of each item to be considered by the Council. The agenda is subject to approval by the Mayor or the Mayor's designee.
- 2.3 Minutes. The City Clerk shall cause to be prepared action minutes of all of the Council meetings, which minutes shall contain an account of all official actions of the Council. Council meetings shall be electronically recorded and retained for the period of time as provided by State law. No changes shall be made to minutes except by motion approved by a majority of the Council at a properly noticed meeting.
- 2.4 Schedule of Regular Meetings. In accordance with BDMC 2.04.010, the regular meetings of the City Council shall be held on the first and third Thursdays of every month at 7:00 p.m. in the City Hall Council Chambers located at 25510 Lawson Street, Black Diamond, Washington. The regular meeting location may be changed by a majority vote of the City Council. Special Council Meetings will be held on the second Thursday of the month at 6:00 p. m. Town Hall meetings shall be held on the second Thursday of every month at 7:00 p.m. following the Special Council Meeting.in the City Hall Council Chambers located at 25510 Lawson Street, Black Diamond, Washington. The Town Hall Meeting will be adjourned by 9:00 p.m. unless otherwise amended by a majority vote of the Council.
- 2.5 Quorum Required. A quorum shall be required to transact Council business. The presence of a majority of the whole membership of the Council who are also eligible to vote at a Council meeting shall constitute a quorum. Should less than a quorum be present at the time of roll call, any Councilmember present may, upon belief that late arrival of one or more Councilmembers will enable a quorum to be created, make a motion that the Council meeting be recessed for up to one hour; should a quorum still be lacking at the end of the recess period, the

meeting shall be adjourned. As authorized under RCW 42.30.090, the City Clerk may adjourn the meeting if all Councilmembers are absent.

- 2.6 Holidays. Should a scheduled Council meeting fall on a legal holiday, the meeting shall be rescheduled to the next business day that is not a legal holiday or to another day certain by majority vote of Councilmembers present.
- 2.7 Study Sessions. Study sessions, or meetings to review upcoming and pertinent business of the City, may be scheduled as special meetings of the Council subject to the same notification procedures set forth below for special meetings.

Special Meetings. In accordance with chapter 42.30 RCW, a special meeting of the City Council may be called by the Mayor or at the request of any three (3) Councilmembers by written notice delivered to each Councilmember.

Emergency Meetings. In accordance with RCW 42.30.070 and .080, if, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by the City Council to meet the emergency, the Presiding Officer of the Council may provide for a meeting site other than the regular meeting site and the public meeting notice requirements shall be suspended during the emergency.

- 2.8 Executive Sessions. An executive session is a Council meeting that is closed except to the Council, the Mayor, the City Administrator, the City Attorney and staff members or others authorized to attend by the Mayor or a majority of Councilmembers present. In accordance with RCW 42.30.030 and .110, other persons and members of the public are prohibited from attending executive sessions.

Executive sessions may be held during regular Council meetings, Special Council meetings, or Council Study Sessions. In addition, the Council may retire to hold an executive session during one of these meetings. When this occurs, the portions of the meeting that are not part of the executive session shall continue to be open to the public. Prior to convening an executive session, the Presiding Officer shall make an announcement that an executive session is being held and inform the public when the executive session shall end; provided that, the ending time of an executive session may be extended by announcement of the Presiding Officer. Executive sessions may only be called to consider such matters as authorized by RCW 42.30.110.

- 2.9 Cancellation of Meetings. The Mayor, or in the absence of the Mayor the Mayor Pro Tem, or any three members of Council may cancel a meeting and upon proper notice given by the City Clerk.
- 2.10 Disruption of Meetings. As authorized by RCW 42.30.050, should any Council meeting be interrupted by a person or group of persons so as to render the

orderly conduct of such meeting unfeasible, such person or persons causing the interruption may be ordered removed from the meeting and prohibited from returning to attend the remainder of the meeting. If necessary to restore order, the Council may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the Councilmembers present. In such a session, final disposition may be taken only on matters that appear on the agenda. The Council shall allow any members of the public or representatives of the media who were not participating in the disturbance to attend any session that follows the disturbance, except an executive session, provided that the Council is not prohibited from establishing a procedure for readmitting individuals who were not responsible for disturbing the orderly conduct of the meeting.

SECTION 3 – REGULAR COUNCIL MEETING ORDER OF BUSINESS

- 3.1 Preparation of Council Agenda. All items to be included on the agenda for consideration at a Council meeting should be submitted to the City Clerk in full no later than 10:00 a.m. nine days prior to the scheduled Council meeting. Once the agenda has been finalized and provided to the Council, items added to the agenda may be declined to be considered by the Council at the meeting for which the agenda was prepared, until a future Council meeting date, which date shall be specified by the Council.

The form of agenda of a Regular City Council meeting shall be as follows:

- 3.2 Call to Order. The Presiding Officer shall call the meeting to order.
- 3.3 Flag Salute. The Presiding Officer shall lead the flag salute. However, the Presiding Officer may designate a Councilmember or other person to lead the flag salute.
- 3.4 Roll Call. The City Clerk will call the roll and determine whether quorum is satisfied. *See Subsection 2.5.*
- 3.5 Appointments, Announcements, Proclamations and Presentations.
- 3.5.1 *Appointments.* In accordance with the Black Diamond Municipal Code and these Rules of Procedure, individuals appointed by the Mayor to hold positions within City government or on various committees, boards and commissions may require confirmation by the Council. Where confirmation is required, the vote of the Council may be preceded by discussion in executive session. *See SECTION 17 and SECTION 18.*
- 3.5.2 *Announcements.* An announcement is a brief statement that informs the public of an event or happening of general interest. However, it cannot be a statement regarding a subject prohibited below *Subsection 3.5.4*

3.5.3 *Proclamations.* A proclamation is an official announcement made by the Mayor or the City Council regarding a non-controversial event, activity or special interest group which has had a major city-wide impact. The Mayor will read the proclamation and may invite guests to speak on the topic for no more than five (5) minutes.

3.5.4 *Presentations.* Any person(s) or organization(s) wishing to make a presentation to the Council must first submit a completed "Request to be on Council Agenda Form" with the City Clerk. The request should be made at least two weeks prior to the intended Council date. The Mayor or the Mayor's designee will determine if the proposed presentation is approved and will notify the applicant of the selected meeting date. If the presentation is not approved, the Mayor or the Mayor's designee will notify the applicant of the decision and the reason(s) for the decision. Presentations will not last more than five (5) minutes in length or unless at the request of the Mayor or Mayor's designee. Upon motion and approval of a majority of Councilmembers present, the Council may authorize presentations and may determine their length.

Prohibited Topics. Except as authorized or required by RCW 42.17A.555, no person may use this time to address the Council for the purpose of assisting a campaign for election of a person to any office or for the promotion of, or opposition to, any ballot proposition. Further, no person may use this time to address the Council for the purpose of advertising

3.6 Public Comments. Members of the audience may comment on any matter related to City business during the Public Comment period. See *Section 10*.

3.7 Legislative Public Hearings. Individuals may comment on legislative decisions regarding matters of policy. See *SECTION 11*.

3.8 Quasi-judicial Hearings. More formal proceedings are held to determine the legal rights of specific parties, which include the receipt of proponent and opponent testimony. See *SECTION 11*.

3.9 Agenda Modifications. The Presiding Officer shall announce any changes to the Council's published agenda.

3.10 Unfinished Business. Unfinished business consists of subjects discussed by the Council at a previous regular or special meeting and which have been placed on the agenda for additional discussion or resolution.

3.11 New Business, Ordinances and Resolutions.

- 3.11.1 *New Business*. New business shall mean topics or issues that have not previously been before the City Council for discussion or other action, other than ordinances and resolutions.
- 3.11.2 *Ordinances*. Ordinances prescribe general, uniform, and permanent rules of conduct and constitute the local law of the City of Black Diamond. See Subsection 9.1.
- 3.11.3 *Resolutions*. Resolutions concern matters of special, temporary, or ministerial character and express the opinion or mind of the City Council. See Subsection 9.2.
- 3.12 Department Reports. Department Directors may report on action and activities of their respective departments.
- 3.13 Mayor's Report. The Mayor may report on significant activities since the last regular meeting, inquire on matters of general City business, or initiate investigation or action on a matter of concern.
- 3.14 Councilmember Reports. Councilmembers may report on Council committee discussions or other significant activities since the last regular meeting, or on matters of general City business, or may initiate investigation or action on a matter of concern.
- 3.15 City Attorney Report. The City Attorney may report on legally significant events or activities.
- 3.16 Public Comments. Members of the audience may request to comment on any issue discussed during the Council meeting. Comments will be allowed subject to the time limits and other restrictions in *SECTION 10*.
- 3.17 Consent Agenda. Approval of the Consent Agenda, including items considered to be routine and non-controversial, may be approved by one motion. Any Councilmember may remove any item from the Consent Agenda for separate discussion and action. Items on the Consent Agenda include but are not limited to the following:
 - a. Approval of minutes.
 - b. Fixing dates for public hearings and appeals.
 - c. Approval of claims, vouchers and payroll, bid awards and contracts.
 - d. Approval of property as surplus.
 - e. Authorization of grant applications.

- f. Approval of interlocal agreements.
 - g. Other items designated by the City Council.
- 3.18 Executive Session. In accordance with RCW 42.30.030 and .110, executive sessions are closed to the general public. See *Subsection 2.8*.
- 3.19 Adjournment. With no further business to come before the Council, the Presiding Officer may adjourn the meeting.
- 3.20 Recess. The foregoing agenda may be interrupted for a stated time as called by the Presiding Officer to recess for any reason, including executive sessions.
- 3.21 Town Hall Meetings. Town Hall meetings are informal events that provide the City Council and members of the Black Diamond community an opportunity to discuss emerging issues and matters of local or general concern. See *SECTION 12*.

SECTION 4 – PRESIDING OFFICER

- 4.1 Who Shall Act as Presiding Officer.
- 4.1.1 The Mayor shall act as Presiding Officer at all meetings of the Council unless absent; in the absence of the Mayor, the Mayor Pro Tem will act as Presiding Officer. If both the Mayor and Mayor Pro Tem are absent and a quorum is present, the Council shall elect one of its members to serve as Presiding Officer until the return of the Mayor or Mayor Pro Tem. See *SECTION 13*.
- 4.2 Duties of Presiding Officer. The duties of the Presiding Officer shall be to:
- 4.2.1 Preserve order and decorum at all meetings of the Council and cause the removal of any person from any meeting for disorderly conduct.
- 4.2.2 Observe and enforce all rules adopted by the Council.
- 4.2.3 Recognize Councilmembers in the order in which they request the floor, and recognize every Councilmember who wishes an opportunity to speak; provided that, the mover of a motion shall be permitted to debate it first; provided further that, the Presiding Officer may allow discussion of an issue prior to the stating of a motion when such discussion would facilitate wording of a motion.
- 4.3 Reordering Items on Agenda. Without the necessity of any vote thereon, Presiding Officer may present matters before the Council for discussion,

consideration and voting in a different order than they appear in the agenda when matters on the agenda are able to be placed under more than one classification or category.

- 4.4 Limitations on Political Speech. Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue in accordance with RCW 42.17A.555, no Black Diamond elected official shall use a Council meeting to express an opinion in support of or in opposition to a candidate for public office or a ballot measure. See *also* *SECTION 19*.

SECTION 5 – COUNCILMEMBERS

5.1 Councilmember Attendance at Meetings.

- 5.1.1 Excused Absence. Councilmembers shall inform the Mayor or City Clerk in advance if the Councilmember will be unable to attend, or will be late to attend, any Council meeting. The Presiding Officer shall then announce during roll call that the Councilmember will be absent or late. Any absence following prior notice to the Mayor or City Clerk shall be noted in the minutes as an excused absence. Absence at a scheduled Council meeting due to sudden illness or emergency shall be noted in the minutes as an excused absence due to illness or emergency.
- 5.1.2 Excessive Absence Shall Create Vacancy. In accordance with RCW 35A.12.060, a Councilmember's position shall be deemed vacant if that Councilmember has three (3) consecutive unexcused absences from Regular Council meetings.
- 5.1.3 Telephonic or Other Electronic Attendance. Any Councilmember may attend any Council meeting by telephone, video conference, or other electronic means as long as all other persons present at the meeting can hear or otherwise understand all comments made and questions asked by the Councilmember and the Councilmember can hear or otherwise understand all comments made and questions asked by all other persons speaking at the meeting. The City Clerk shall reflect in the meeting minutes Councilmember attendance by telephone, video conference, or other electronic means.
- 5.2 Remarks. Councilmembers desiring to speak shall address the Presiding Officer and, when recognized, shall confine their remarks to matters currently under discussion, provided that a Councilmember may move to have a different matter considered by the Council, subject to these Rules of Procedure.
- 5.3 Questioning. Any Councilmember, including the Presiding Officer, shall have the right to question any individual, including members of the staff, on matters

germane to the issue properly before the Council for discussion. Under no circumstances shall such questioning be conducted in a manner that would constitute a cross-examination of or an attempt to ridicule or degrade the individual being questioned.

- 5.4 Limitations on Political Speech. Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue in accordance with RCW 42.17A.555, no Black Diamond elected official shall use a Council meeting as an occasion to express an opinion in support of or in opposition to a candidate for public office or a ballot measure. *See also SECTION 19.*

SECTION 6 – DEBATES

- 6.1 Speaking to the Motion. Councilmembers may speak on the motion at the time the motion is before the Council.
- 6.2 Interruption. No Councilmember, including the Presiding Officer, shall interrupt or argue with any other member while such member has the floor, other than the Presiding Officer's duty to preserve order during meetings as provided in *Subsection 4.2.1* of these rules.
- 6.3 Courtesy. In the discussion, comments, or debate of any matter or issue, all speakers, including the Presiding Officer and Council members, shall be courteous in their language and deportment, and shall not discuss or comment on personalities, or indulge in derogatory remarks or make insinuations about any other Councilmember, or any member of the staff or the public, but shall at all times confine their remarks only to those facts which are germane and relevant to the question or matter under discussion.
- 6.4 Violations. If a Councilmember violates these rules on debates, the Presiding Officer shall call such member to order, and the offending member shall be silent except to explain or continue in order. If the Presiding Officer violates these rules on debate or fails to call other members to order, any other Councilmember may, under a point of order, call the Presiding Officer or such other offending member to order, and the person being called to order shall be silent except to explain or continue in order.
- 6.5 Challenge to Ruling. Any Councilmember shall have the right to challenge any action or ruling of the Presiding Officer or other member, as the case may be, in which case the decision of the majority of the Councilmembers present shall govern.

SECTION 7 – PARLIAMENTARY PROCEDURES AND MOTIONS

- 7.1 Robert's Rules Supplementary. Except as provided in these Rules of Procedure, all City Council meetings shall be governed by *ROBERTS RULES OF ORDER, NEWLY REVISED* (latest edition). The City Attorney shall act as Parliamentarian when present; otherwise, the City Clerk shall act as Parliamentarian. If the Parliamentarian determines that a procedural issue is not adequately addressed by these Rules of Procedure or by Robert's Rules, the Council may handle the issue in any way that the majority of members who are present agrees is appropriate and which, in the opinion of the Parliamentarian, is not prohibited by law. Notwithstanding the foregoing, the proceedings of the Council may be conducted in an efficient and consensus-based manner.
- 7.2 Motions.
- 7.2.1 If a motion does not receive a second, it dies.
- 7.2.2 *Matters that do not constitute a motion include:* nominations; withdrawal of motion by the person making the motion; request for a roll call vote; point of order or privilege. Because these matters are not motions, a second is not needed.
- 7.2.3 A Councilmember may abstain from voting on a motion because of a conflict of interest or to preserve the appearance of fairness, but cannot then participate in discussion or argument about the motion. See *Subsection 8.3*.
- 7.2.4 A motion that receives a tie vote is deemed to have failed; provided that, except where prohibited by RCW 35A.12.100 or other law, the Mayor shall be allowed to vote to break a tie vote.
- 7.2.5 When making motions, Councilmembers shall be clear and concise and not include arguments for the motion within the motion.
- 7.2.6 After a motion has been made and seconded, Councilmembers may discuss their opinions on the issue prior to the vote.
- 7.2.7 A motion may be withdrawn by the maker of the motion at any time without the consent of the Council.
- 7.2.8 A "motion to table" is non-debatable and shall preclude all amendments or debates of the issue under consideration. A motion to table is to be used in instances where circumstances or situations arise which necessitate the interruption of the Councilmembers' consideration of the matter then before them. A motion to table, if passed, shall cause the subject matter to be tabled until the interrupting circumstances or situations have been

resolved, or until a time certain, if specified in the motion to table. To remove an item from the table in advance of the time certain requires an affirmative vote of at least a majority of the whole membership of the Council.

- 7.2.9 A “motion to postpone to a certain time” is debatable and amendable and may be reconsidered at the same meeting. The question being postponed must be considered at a later time at the same meeting, or may be postponed to a date certain at a future Regular or Special City Council meeting.
- 7.2.10 A “motion to postpone indefinitely” is debatable but not amendable, and may only be reconsidered at the same meeting if it receives an affirmative vote of at least a majority of Councilmembers present.
- 7.2.11 A “motion to call for the question” shall immediately close debate on the main motion and is not debatable. This motion must receive a second and fails without an affirmative vote of at least all of the Councilmembers present minus one. Debate is reopened if the motion fails.
- 7.2.12 A “motion to amend” is a motion to modify the wording of a pending motion before that pending motion is voted upon by the Council, by inserting, adding, striking out, striking out and inserting, or substituting language. A motion to amend must be seconded. However, some motions cannot be amended. *See Subsection 7.2.13.*
- 7.2.13 *Motions that cannot be amended include:* motion to adjourn; motion to lay on the table; motion to take from the table; motion for roll call vote; motion to reconsider; point of order; motion to amend. (A motion to amend an amendment is allowed.)
- 7.2.14 Amendments shall be voted on first, then the main motion as amended (if the amendment received an affirmative vote).
- 7.2.15 Debate of the motion only occurs after the motion has been moved and seconded.
- 7.2.16 The Mayor, City Attorney or City Clerk shall repeat the motion prior to voting by the Council.
- 7.2.17 The City Clerk shall take a roll call vote, if requested by the Mayor, City Attorney, a Councilmember, or as required by law.
- 7.2.18 When a question has been decided, any Councilmember who voted in the majority may move for reconsideration, but no motion for reconsideration of a vote shall be made until the next Regular City Council meeting.

7.2.19 These rules may be amended, or new rules adopted, by a majority vote of the full Council at a Regular or Special City Council meeting.

7.3 Waiver of Rules. The Council may, by motion that carries with an affirmative vote of at least a majority of the whole membership of the Council, waive, suspend, or modify these Rules of Procedure.

SECTION 8 – VOTING

8.1 Voice Vote. In general, voice votes shall be used. Voice votes are a generalized verbal indication by the Council as a whole of “yea or nay” on a matter, the outcome of which vote shall be recorded in the official minutes of the Council. Silence of a Councilmember during a voice vote shall be recorded as a vote with the prevailing side, except where the Councilmember abstains from participation, discussion and voting because of a stated conflict of interest, to preserve the appearance of fairness, or for other good cause. See *Subsection 8.3*. The Presiding Officer shall announce the outcome of each voice vote immediately thereafter and the result of each vote shall be recorded in the minutes.

8.2 Roll Call Vote. A roll call vote may be requested by the Mayor or by any Councilmember. When a roll call vote has been requested, the Clerk shall call upon each Councilmember and request an individual “yes or no”. The Presiding Officer shall announce the result of the vote immediately thereafter and the result of the vote shall be recorded in the minutes.

8.3 Abstentions.

8.3.1 *Abstention allowed for conflict of interest or appearance of fairness.* It is the responsibility of each Councilmember to vote when requested on a matter before the full Council. However, a Councilmember may abstain from discussion and voting on a question because of a stated conflict of interest or to preserve the appearance of fairness. Should the City Attorney indicate that the Mayor or a Councilmember is required to abstain from further participation on an issue, the affected person must abstain except where abstention would result in a lack of a quorum (or lack of a majority vote where required by law). See *Subsection 8.6.1*. Failure to abstain may cause delay in proceedings to allow court intervention. See *Subsection 8.6.3*.

8.3.2 *Notice of intent to abstain required.* Notice of intent to abstain shall be given prior to any discussion or participation on the subject matter or as soon thereafter as the Mayor or Councilmember perceives a need to abstain.

8.3.3 *Need to abstain shall be confirmed by City Attorney.* Prior to the time that the Mayor or a Councilmember gives notice of intent to abstain, the

affected person shall confer with the City Attorney to determine if abstention is truly required. If the intended abstention can be anticipated in advance, the conference with the City Attorney should occur prior to the meeting at which the subject matter is scheduled to come before the City Council. If that cannot be done, the affected person should advise the City Council that he or she has an “abstention question” that he or she wants to review with the City Attorney. A brief recess should then be taken for that purpose.

- 8.3.4 *Abstaining member shall advise the Council and end participation.* After conferring with the City Attorney, the Mayor or Councilmember wishing to abstain from a vote because of a conflict of interest or to preserve the appearance of fairness shall so advise the Council, and shall then remove and absent himself or herself from the Council’s deliberations and considerations of the motion, and shall have no further participation in the matter.
- 8.4 Votes by Mayor. Except where prohibited by law, the Mayor may only vote to break a tie vote of the Council and only with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money.
- 8.5 Votes by Councilmember Serving as Presiding Officer. In accordance with RCW 35A.12.110, a Councilmember serving as Presiding Officer in the absence of the Mayor shall have the same rights to vote on matters before the Council as the person would otherwise have as a Councilmember.
- 8.6 Effect of Challenges Based on Conflict of Interest or Appearance of Fairness.
- 8.6.1 *If abstention removes quorum or majority.* Should the City Attorney determine that the participation of the Mayor or a Councilmember in discussion and voting on an issue would be a conflict of interest or appear to violate the appearance of fairness doctrine, or any specific part of chapter 42.36 RCW, that person shall abstain from further participation unless, as provided by RCW 42.36.090, a challenge to a member or members of the decision-making body would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law; in such cases, any challenged member(s) shall be permitted to fully participate in the proceedings and vote as though the challenge had not occurred if the member(s) publicly disclose the basis for disqualification prior to rendering a decision and each party has a full opportunity to present regarding the information relating to the issues. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

- 8.6.2 *Refusal to Abstain.* Should the Mayor or a Councilmember refuse to abstain from participation and voting on an issue after the City Attorney has determined that abstention is necessary, the challenged person may be disqualified from participating and voting on that issue upon a vote to disqualify that is passed by a majority of the other Councilmembers present who are eligible to vote on the underlying issue.
- 8.6.3 *Failure to Abstain.* Should the Mayor or a Councilmember fail to abstain from participation and voting on an issue where that officer knows or should have known that a conflict of interest is present or that the appearance of fairness would be compromised, such failure to abstain by the Mayor or Councilmember shall be presumed to constitute a lack of good faith for purposes of officer indemnity under RCW 4.96.041; provided that, nothing herein shall preclude the Council from determining that the Mayor or Councilmember acted in good faith upon a failure to abstain.
- 8.7 Failure to Vote. In the absence of an abstention on the basis of a conflict of interest, appearance of fairness, or other good cause, an abstention or failure to vote of a Councilmember present at the proceeding shall constitute an affirmative vote on the proposition or motion before the Council.

SECTION 9 – ORDINANCES AND RESOLUTIONS

- 9.1 Ordinances. All ordinances shall be reviewed by the City Attorney. No ordinance shall be prepared or presented to the Council unless requested by two members of the Council, the Chair of a Council Committee, the Mayor, or the City Administrator. Unless waived, all ordinances shall be in writing, and the titles thereof shall be read aloud by the Presiding Officer prior to a vote being called. A motion and a second are required to bring an ordinance to a vote.

In accordance with RCW 35A.12.120 and .130, an ordinance must be adopted by the affirmative vote of at least a majority of the whole membership of the Council, subject to the Mayor's approval and Council reconsideration of a mayoral veto; provided that, public emergency ordinances require an affirmative vote of at least a majority plus one of the whole membership of the Council. A public emergency ordinance is one designated to protect public health, public safety, public property, or public peace.

In accordance with RCW 35A.12.160, either the full text of the ordinance or a summary shall be published as soon as practicable in the City's designated official newspaper after adoption. An ordinance becomes effective five (5) days after publication unless otherwise specified in the ordinance or as required by law.

- 9.2 Resolutions. Resolutions may be prepared or presented to the Council at the request of two Councilmembers, the Chair of a Council Committee, the Mayor, or

the City Administrator. All resolutions shall be in writing, and the titles thereof shall be read aloud by the Presiding Officer prior to a vote being called on their passage. A request for a full reading of a resolution need not be seconded.

Discussion and debate by the City Council on resolutions will be held prior to the vote on a resolution. Prior to voting on passage of a resolution, the Council may decide by majority vote to amend the resolution or direct staff to review the proposed resolution and make a report to the Council.

A resolution must be passed by an affirmative vote of at least a majority of the whole membership of the Council; if passed, the resolution becomes effective immediately.

SECTION 10 – PUBLIC COMMENTS

- 10.1 Requesting to Speak. During the Public Comment period, members of the audience may comment on any matter related to City business. Persons addressing the Council who are not specifically scheduled on the agenda will be requested to fill out the speaker sign-in sheet at the City Clerk's desk, then step up to the podium, give their name and address for the record. All remarks must be addressed to the Council as a whole. The City Clerk shall serve as timekeeper. The Presiding Officer may make exceptions to the time restrictions when warranted. *See Subsection 3.5 for requests to make special presentations to the Council.*
- 10.2 Time Limit. Comments are limited to three (3) minutes per person. The Presiding Officer may adjust the time restrictions when warranted by special circumstances and after approval of a majority of Councilmembers present.
- 10.3 Advertising or Promoting Political Cause is Prohibited. Except as authorized or required by RCW 42.17A.555, no person may address the Council for the purpose of assisting a campaign for election of a person to any office or for the promotion of, or opposition to, any ballot proposition. Further, no person may address the Council for the purpose of advertising any item, service, or product for profit or otherwise.
- 10.4 Other Prohibited Remarks. Any person who causes actual disruption by making personal attacks, using hate speech, making slanderous remarks or other disruptive conduct while addressing the Council shall be barred from further participation by the Presiding Officer, unless permission to continue is granted by a majority vote of Councilmembers present.

SECTION 11 – LEGISLATIVE AND QUASI-JUDICIAL HEARINGS

- 11.1 Legislative Hearings. Legislative public hearings are held to obtain public input on legislative decisions on matters of policy and in some instances are required by state law.
- 11.1.1 Before opening a legislative public hearing, the Presiding Officer shall state the hearing procedures.
 - 11.1.2 The Department Director or the Director's designee shall present the issue to the Council and respond to questions.
 - 11.1.3 A person may speak for up to five (5) minutes. A person may speak for up to ten (10) minutes if representing a group of two or more. No one may speak for a second time without the approval of the Presiding Officer, and only after everyone who wishes to speak has had an opportunity. The Presiding Officer may make exceptions to the time restrictions when warranted by the circumstances; provided that, the Council upon a motion and majority vote of Councilmembers present, may also make exceptions to the time restrictions or may overrule an exception granted by the Presiding Officer.
 - 11.1.4 The City Clerk shall serve as timekeeper during legislative hearings.
 - 11.1.5 After the speaker has used his or her allotted time, Councilmembers may ask questions of the speaker and the speaker may respond, but may not engage in further debate.
 - 11.1.6 The hearing will then be closed to public participation and open for discussion among Councilmembers.
 - 11.1.7 The Presiding Officer may request to change or modify the procedures at a particular meeting or hearing, but the decision to do so may be overruled by a majority vote of Councilmembers present.
 - 11.1.8 When necessary in the interests of fairness or when required by circumstances, the hearing may be recessed and continued to a date certain upon approval by a majority vote of Councilmembers present.
- 11.2 Quasi-judicial Hearings. Quasi-judicial hearings involve the legal rights of specific parties and afford procedural due process, which may include receiving testimony, making a record of the evidence considered by the Council and issuing specific Council findings. The following procedures shall apply:
- 11.2.1 Before opening a quasi-judicial hearing, the Presiding Officer shall state the hearing procedures.

- 11.2.2 The Department Director of the department most affected by the subject matter of the hearing, or said Director's designee, shall be afforded fifteen (15) minutes to present the City's position and findings. City staff shall be available to respond to Council questions.
- 11.2.3 The proponent or applicant spokesperson shall speak second and be allowed fifteen (15) minutes for presentation. The proponent may divide up the fifteen (15) minutes between more than one speaker and may reserve time to be added to the maximum time for rebuttal. Council may ask questions.
- 11.2.4 The opponent spokesperson, if any, shall speak third and be allowed fifteen (15) minutes for presentation, may divide up the fifteen (15) minutes between more than one speaker, and may reserve time to be added to the maximum time for rebuttal. Council may ask questions.
- 11.2.5 Each side shall then be allowed five (5) minutes for rebuttal, with the proponent spokesperson speaking first, followed by the opponent spokesperson. Any time reserved from the speaker's presentation may be added to the five minute limit.
- 11.2.6 After the proponent and opponent have used their speaking time, ten (10) minutes shall be allowed for the Council to ask further questions of the speakers, who shall be entitled to respond but who must limit their response to the question asked.
- 11.2.7 The City Clerk shall serve as timekeeper during these hearings. By motion and majority vote of Councilmembers present, the Council may extend the times provided in this Subsection 11.2.
- 11.2.8 When necessary in the interests of fairness or when required by circumstances, the hearing may be recessed and continued to a date certain upon approval by a majority vote of Councilmembers present; provided that, the record is closed for the entire period of continuance and only Councilmembers who were present for the earlier portion of the hearing, or Councilmembers who have had the opportunity to consider the entirety of the record (verbatim transcript or audio and/or visual recording), may participate when the hearing resumes. Examples of reasons to allow a recess include, but are not limited to, absence of a necessary party due to illness or emergency; request for additional argument on an issue by a majority vote of the Council; inability to complete the hearing due to circumstances beyond the parties' control, such as power failure or natural disaster.
- 11.2.9 Consistent with RCW 42.30.140(2), the Council may consider the matter in an executive session or otherwise.

- 11.2.10 Except as otherwise allowed by law, after the Council has publicly considered the arguments and evidence presented, the Council shall then vote on the issue that was the subject of the hearing.

SECTION 12 – TOWN HALL MEETINGS

- 12.1 Purpose. Town Hall meetings provide a forum for Council members and community members to discuss City initiatives, emerging issues and community concerns, opinions and preferences regarding specific topics affecting the Black Diamond community, and for the City to respond to community questions. It is not the purpose of Town Hall meetings to take final action on any matter before the City Council.
- 12.2 Town Hall Agenda. The scheduling, agenda preparation and public comment period for Town Hall meetings shall conform to these Rules of Procedure, except that public comment may be limited to specific topics identified in the Town Hall meeting agenda. The speakers should limit their time to 10 minutes, to allow time for all speakers to speak. A second round of comment will be allowed, and speakers will be limited to three minutes. The Presiding Officer shall retain authority to impose rules of procedure to ensure open discussion during the Town Hall meeting, that people with opposing or different viewpoints receive an equal opportunity to speak, that everyone receive an opportunity to speak before any one speaker receives a second opportunity to speak, and that order and decorum is maintained. When necessary to ensure that everyone receive an opportunity to speak, the Presiding Officer shall retain authority to limit all persons' remarks to an equal period of time.
- 12.3 Staffing. City staff and the City Attorney shall not be required to attend Town Hall meetings unless otherwise directed by the Mayor; with the exception that, the City Clerk, or designee, shall attend Town Hall meetings for the purpose of keeping a journal of the minutes of the meeting and to act as the City Council's parliamentarian in the absence of the City Attorney.

SECTION 13 – MAYOR PRO TEMPORE SELECTION PROCESS

Annually at the first meeting of a new Council, the members thereof, by majority vote, shall designate one of their members as Mayor Pro Tempore for such period as the Council may specify. The Mayor Pro Tempore shall serve in the absence or temporary disability of the Mayor. In the event the Mayor Pro Tempore leaves, the Council shall, by a majority vote, designate one of the remaining Councilmembers as Mayor Pro Tempore.

SECTION 14 – SELECTING A COUNCIL MEMBER PRO TEMPORE OR FILLING A VACANT COUNCIL POSITION

- 14.1 Selecting a Councilmember Pro Tempore. In accordance with RCW 35A.12.065, in the event of extended excused absences or disability of a Councilmember, the remaining members by majority vote may appoint a Councilmember Pro Tempore to serve during the period of absence or disability.
- 14.2 Filling Vacant Council Position. In the event that an unexpired Council position becomes vacant, the City Council has ninety (90) days from the occurrence of the vacancy to appoint, by majority vote of a quorum of the Council, a qualified person to fill the vacancy in accordance with Chapter 42.12 RCW. The Council may make such appointment at its next regular meeting, or at a special meeting called for that purpose.

SECTION 15 – COUNCIL MEETING STAFFING

- 15.1 The City Administrator or the City Administrator's designee must attend all meetings of the Council, unless excused.
- 15.2 The City Attorney shall attend all meetings of the Council unless excused, and upon request, may provide comment, either written or oral, on legal questions. An assistant city attorney shall attend meetings when the City Attorney has been excused or is unable to attend due to illness or emergency.
- 15.3 It shall be the responsibility of each Department Head to ensure that a department representative or other City staff attend as necessary to present the department's agenda items to the Council and answer Council member questions.

SECTION 16 – COUNCIL RELATIONS WITH STAFF

- 16.1 The Mayor, City staff and Councilmembers shall respect the different roles each officer plays in a successful City and will strive to treat each other with courtesy and respect when questions, comments or criticism are expressed in a public meeting.
- 16.2 City staff will acknowledge the Council as policy makers, and the Councilmembers will acknowledge the Mayor and City staff as administrators of the Council's policies.
- 16.3 All written informational material requested of City staff by any individual Councilmember that the requesting Councilmember then intends to reference or introduce at a Council meeting shall be submitted or made available to all Councilmembers prior to being referenced or introduced at the meeting, unless other reasons preclude such distribution, in which case the reasons shall be

communicated by the requesting Councilmember to the Mayor or the Mayor's designee and such reason provided to all Councilmembers.

- 16.4 Councilmembers shall not attempt to coerce or influence City staff in the administration of personnel, the awarding of contracts, the selection of consultants, the processing of development applications or purchases of City licenses or permits.
- 16.5 Councilmembers shall not attempt to change or interfere with the operating rules and practices of any City department.
- 16.6 No Councilmember shall direct the Mayor or City staff to initiate any action or prepare any report that is significant in nature, or initiate any project or study, without the consent of at least a majority of the whole membership of the Council.
- 16.7 Individual requests for information can be made directly to Department Directors unless otherwise determined by the Mayor. If the request would create a change in work assignments or City staffing levels, the request must be made through the Mayor.

SECTION 17 – APPOINTMENT BY MAYOR & CONFIRMATION BY CITY COUNCIL – WHEN REQUIRED

- 17.1 Mayor's Power to Appoint. In accordance with RCW 35A.12.090, the Mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service; provided that, in accordance with BDMC 2.08.020, each officer may hire any employee assigned to his or her department.
- 17.2 Confirmation by Council. In accordance with RCW 35A.12.090, confirmation by the City Council of mayoral appointments of officers and employees is required when City ordinance provides for the confirmation of such appointments. In addition, the City Council may require confirmation of mayoral appointments by the Council whenever the qualifications for the office or position have not been established by City ordinance.

SECTION 18 – COUNCIL COMMITTEES AND CITIZEN ADVISORY BOARDS

- 18.1 Council Standing Committees.
 - 18.1.1 *Establishment.* The City Council, by a majority vote of at least the whole membership of the Council, is authorized to establish Council Standing Committees to provide recommendations on major policy items to the City Council.

- 18.1.2 *Mayoral Appointment/Council Confirmation.* The Mayor shall appoint the members of each Council Standing Committee with the Committee Chair appointed from the membership of the Council. Membership of any given committee may include no more than two (2) Councilmembers, including the Committee Chair. Annually at its first meeting in January, or as soon thereafter as practicable, the Council upon a majority vote of at least the whole membership of the Council shall confirm or decline the Mayor's appointments to Council Standing Committees.
- 18.1.3 *Agenda Setting/Proceedings.* The agenda setting and proceedings of each Council Standing Committee shall be as follows:
- a. The Committee Chair will work with the Mayor and City staff to finalize the agenda to help guide the direction of the meeting.
 - b. If the Committee Chair is unable to attend a scheduled meeting, the remaining Councilmember member shall chair the meeting.
 - c. In instances where a committee member cannot be present at a committee meeting, it is the responsibility of that member to contact an alternate Councilmember to attend in his or her place.
 - d. Committees may forward issues with or without changes to staff for recommendation to the City Council. Reports on the activities of the committees may be given under the Council Reports section of the Council agenda by the Committee Chair.
 - e. Matters forwarded from a Council Standing Committee to the City Council as a whole will remain at that level unless requested to be returned to Committee by a majority of the Council.
 - f. Matters may be removed from Council Standing Committees and brought before the Council as a whole by a motion of the Council receiving an affirmative vote of at least a majority of the whole membership of the Council.
 - g. Should a Council Standing Committee be split on whether a matter should be approved, the matter may move forward to Council without a recommendation. It is the Mayor's responsibility to bring matters before Council.
 - h. Frequency of Council Standing Committee meetings shall be determined by the Mayor and Committee Chair
 - i. Any direction from the Council Standing Committee for work to be performed by staff must be approved by the Mayor.

- j. Audience participation at a Council Standing Committee meeting is at the discretion of the Committee Chair.

18.1.4 *Standing Committees Authorized.* Standing Council committees may include, but shall not be limited to:

- a. *Budget/Finance/Administration Committee:* The Budget, Finance and Administration Committee, in conjunction with City Staff, may consider matters related to the financial issue of the City, including the annual and capital budgets including revenues and expenditures, sales of bonds, general fiscal and financial conditions, voucher approval, rates and fees, audit and operations of the City, including but not limited to, facilities and properties computerization, periodic budget and financial reports, and policy matters related to personnel, in coordination with the finance and administration departments.
- b. *Parks/Cemetery Committee:* The Park and Cemetery Committee, in conjunction with City Staff, may consider matters related to planning and implementation of park and recreational facilities, capital improvement program, trails and cemetery.
- c. *Planning/Community Services Committee:* The Planning and Community Services Committee, in conjunction with City Staff, may consider matters of a non-quasi-judicial nature related to community growth and development, including but not limited to, planning of the physical, economic, aesthetic and social development of the City, comprehensive plan, zoning code, and housing, annexation policies, code enforcement. This committee may also consider matters not included in other committee's scopes of authority.
- d. *Public Safety Committee:* The Public Safety Committee, in conjunction with City Staff, may consider issues related to the public health, safety and welfare of the citizens of Black Diamond including but not limited to, law enforcement, fire safety, court, hazardous materials, animal control, special events and emergency services.
- e. *Public Works Committee:* The Public Works Committee, in conjunction with City Staff, may consider matters related to water, sewer, solid waste, recycling, utility franchises, storm water management, transportation, capital improvement program, transit, streets, street lighting, signalization and street local improvement.

18.2 Task Force Committees and Intergovernmental Groups.

18.2.1 The Mayor or a majority of the whole membership of the City Council may establish Task Force Committees on an *ad hoc* basis to consider matters that require a special approach or emphasis. Task Force Committees may be established and matters referred to them at Council study sessions. The Mayor shall appoint Council representatives to intergovernmental councils, boards and committees. Such appointments and their terms shall be communicated to the Council by the Mayor as soon as practical.

18.2.2 Task Force Committees shall consider all matters referred to them. The Chair of each Task Force Committee shall report the findings of the Committee to the Council. Committees may refer items to the Council with no Committee recommendation. Once the Committee's findings have been delivered to the Council, the Committee's duties shall be considered complete and the Committee dissolved, unless specifically re-tasked by the Council.

18.3 Advisory Boards, Committees and Commissions. Citizen advisory boards, committees and commissions may be established by ordinance from time to time, and shall consist of citizens appointed pursuant to the establishing ordinance and serving in the capacity and for the purposes indicated in the ordinance; such boards, commissions and committees shall act in an advisory capacity to the City Council.

SECTION 19 – SPEAKING WHEN REPRESENTING THE CITY COUNCIL

19.1 An Official City Position Requires a Public Vote. The City does not have an official position on any issue, whether the issue is political or non-political in nature, unless in accordance with RCW 42.17A.555, the City Council has taken a public vote and at least a majority of the whole membership of the Council votes to adopt the position. Failure of a majority of the Council to vote in favor of a position pursuant to RCW 42.17A.555 shall not constitute adoption of a contrary position; in such cases the City shall continue to have no official position on the issue.

19.2 Personal Opinions Must Be Distinguished From City Positions on an Issue.

19.2.1 *Speaking to persons about issues.* Whenever the Mayor or a Councilmember is speaking to a person or group of persons and the Councilmember expresses an opinion on an issue, whether the issue is political or non-political, the Mayor or Councilmember must clearly state whether the opinion represents the official position of the City of Black Diamond and its City Council, or whether it is only the speaker's personal opinion.

- 19.2.2 *Speaking on behalf of the City.* If the Mayor or a Councilmember appears on behalf of the City before another governmental agency, a community organization, or through the media, for the purpose of commenting on an issue, the Mayor or Councilmember must state the official position of the City Council, if known, on such issue. Personal opinions and comments which differ from those of the official position of the Council may be expressed only if the speaker clarifies that these statements do not represent the City Council's position.
- 19.2.3 *Expressing the views of other Councilmembers.* Prior to representing the position of an elected City official on an issue to the media, another government agency, a community organization, or members of the public, the Mayor and Councilmembers must have permission from that elected official; provided that, presenting how another elected official voted in an official public vote of the Council shall not require permission.

SECTION 20 – TRAVEL AUTHORIZATION

The City Council shall authorize and approve expenditures of city funds to pay for travel-related costs only in accordance with an adopted budget, and/or chapters 2.56 and 2.57 BDMC and/or the City's adopted administrative.

SECTION 21 CONFIDENTIALITYIn General. Certain information is required to be kept confidential under state or federal law. The Mayor and Councilmembers must keep such information confidential when that information has been provided to them by City staff or otherwise becomes known to them during the performance of their duties in office. Confidential information includes, but is not limited to, certain personnel and employment information, certain information regarding pending labor and other contracts, and certain information regarding negotiations for the sale or purchase of property. It is the duty of the Mayor and each Councilmember to consult with the City Attorney should the official have a question about whether any particular information is confidential and may not be released.

- 21.2 Executive Sessions. The Mayor and Councilmembers must keep confidential all written materials and verbal information provided to them during Executive Sessions and may not provide them to persons not present during Executive Sessions, unless, after consultation with the City Attorney, such provision will not violate the confidentiality of Executive Session, or will not violate some other legal exemption or legal privilege..

City Council Rules of Procedure

Date of Adoption: _____

Resolution No. _____

**City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010**

{WSS1171971.DOC;1/13105.000001/ }

RESOLUTION NO. 14-949

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE THE SECOND
ADDENDUM TO THE OGDEN, MURPHY, WALLACE
AGREEMENT FOR ATTORNEY SERVICES**

WHEREAS, the City entered into two agreements with Ogden, Murphy, Wallace, PLLC to provide legal services related to a sexual harassment complaint and public records requests relating to the complaint; and

WHEREAS, the parties wish to provide for additional ongoing legal services in that regard;

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

Section 1. The Mayor is hereby authorized to execute the second addendum to the agreement for attorney services with Ogden, Murphy, Wallace, PLLC in the form substantially attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF MAY, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**SECOND ADDENDUM
TO AGREEMENT FOR ATTORNEY SERVICES**

WHEREAS, the City of Black Diamond, a Washington municipal corporation (hereinafter "the City"), and Ogden Murphy Wallace, PLLC (hereinafter "the Attorney"), have entered into two agreements for professional services — the first with a do-not-exceed amount of \$7,500, and the second with a do-not-exceed amount of \$20,000, for a sum total of \$27,500, for services related to a sexual harassment complaint and public records requests relating to the complaint; and

WHEREAS, the parties wish to provide for additional ongoing legal services in that regard, NOW, THEREFORE,

THIS ADDENDUM is entered into between the City and the Attorney in consideration of the mutual benefits to be derived and the promises contained herein.

1. The underlying agreements between the parties, dated April 4, 2014, and an amendment thereto are hereby amended in, but only in the following respects:

Compensation. Prior agreements have provided for contracts for services for Seven Thousand Five Hundred Dollars and no/100 (\$7,500), and Twenty Thousand Dollars and no/100 (\$20,000). By this Addendum, the City Council hereby increases the do-not-exceed amount by an additional Ten Thousand Dollars and no/100 (\$10,000), for a sum total of \$37,500. The scope of services shall remain the same and all services shall be provided by W. Scott Snyder and, with respect to Public Records Act records review, by Bio F. Park.

2. In all other respects, the underlying agreements between the parties remain in full force and effect.

DATED this _____ day of _____, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

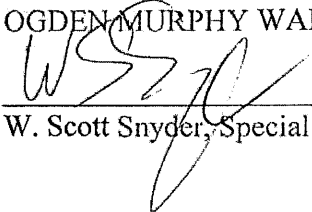
ATTEST:

Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

OGDEN MURPHY WALLACE, PLLC



W. Scott Snyder, Special Counsel

AGREEMENT FOR ATTORNEY SERVICES

THIS AGREEMENT, is made between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City") and Ogden Murphy Wallace, PLLC, organized under the laws of the State of Washington, located and doing business at 901 – 5th Avenue, Suite 3500, Seattle, WA 98164 (hereinafter the "Attorney").

Section 1. Purpose. The purpose of this Agreement is to ensure that the City receives professional services from the Attorney in an effective, timely and cost efficient manner while ensuring that the Attorney is appropriately and fairly compensated for services rendered.

Section 2. Scope of Service. The Attorney agrees to provide legal services, as requested by the City in connection with a personnel matter identified in documents provided to the Attorney by Carol Morris, City Attorney, on March 21, 2014. The attorneys authorized to work on the matters described above is Scott Snyder

Section 3. Compensation. The City hereby agrees to pay Attorney for legal services at the rate of Two Hundred Seventy-Five (\$275.00) per hour for Mr. Snyder, up to a not-to-exceed amount of Seven Thousand Five Hundred Dollars (\$7,500.00). This is the maximum amount to be paid under this Agreement for the services described in Section 2 above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement. The Attorney agrees that the hourly rate charged for the Attorney's services contracted for herein shall remain locked in at the negotiated rate for a period of one (1) year from the effective date of this Agreement. Attorney agrees to use every appropriate method to contain his fees on these matters.

The charges for legal services provided will be based on actual time or based on increments which are no greater than 6 minutes. The Attorney may bill for travel time, but for no more than two (2) hours from portal to portal during one day. No separate charges shall be paid for the following ordinary costs of doing business: local and long distance telephone costs and charges, postage, meals, clerical staff work, supplies and word processing. The City agrees to reimburse the extraordinary expenses incurred by Attorney, at cost with no mark-up as follows: legal messenger services, large volume photocopies prepared at the Attorney's office shall be reimbursed at the rate of \$.15 per page, large volume photocopies prepared by outside reproduction service shall be reimbursed at cost; computerized legal research over and above the Attorneys' monthly fee shall be reimbursed at cost but only when approved in advance by the City Attorney.

Section 4. Independent Contractor Status. It is expressly understood and agreed that Attorney, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the

City. The parties agree that the Attorney has the ability to control and direct the performance and details of his work, the City being interested only in the results obtained.

Section 5. Billings. Attorney shall submit to the Black Diamond Finance Director monthly bills for the assigned matter describing the legal services provided during the previous month. Attorney shall not bill for duplicate services performed by more than one person or for services to correct Attorney errors or oversights. Attorney shall bill for only one participant in a conference or consultation between members of Attorney's firm.

Attorney's monthly bills shall include, at a minimum, the following information for each specific matter to which such services or costs pertain: the name of the matter; a brief description of the legal services performed; the date the services were performed; and the amount of time spent on each date services were performed and by whom. In addition to providing copies of all documents as specified below, Attorney shall provide any information that will assist the City in performing a thorough review and/or audit of the billings, as may be requested by the City.

Unless the City objects to all or any portion of an invoice, the City shall pay the full amount within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Attorney of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

Any invoices reflecting separate charges for computerized legal research must include copies of the invoice for such computerized legal research associated with the services provided to the City.

Section 6. Advice and Status Reporting. Attorney shall provide the City Attorney and City Council with timely notice and advice of all significant developments arising during performance of his services hereunder, orally or in writing, as appropriate or as requested. Attorney shall provide the City Attorney (and/or City Council) with copies of all e-mails, pleadings, motions, discovery, correspondence, and other documents prepared by the Attorney, including research memoranda, or received by the Attorney unless they have been otherwise provided to the City.

Section 7. Communications. Attorney will communicate primarily with Carol Benson, Mayor Pro-Tem, and Carol Morris, City Attorney.

Section 8. Non-Assignment. The parties recognize hereto that a substantial inducement to the City for entering into this Agreement was, and is, the professional reputation and competence of the Attorney. Neither this Agreement nor any interest therein may be assigned by Scott Snyder without the prior written approval of the City.

Section 9. Indemnification and Insurance.

A. The Attorney shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Attorney in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The provisions of this indemnification shall survive the termination or expiration of this Agreement.

B. The Attorney shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services provided by the Attorney, its agents, representatives or employees.

The Attorney's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Attorney to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Minimum Scope of Insurance. The Attorney shall obtain insurance of the types and limits below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. There must be a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 per accident.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability malpractice insurance, written with limits no less than \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit.

The Attorney's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Attorney's insurance and shall not contribute with it.

The Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Attorney shall furnish the City with certificates and any amendments before providing services under this Agreement.

Section 10. Licenses. Attorney warrants that he is a member in good standing with the Washington State Bar, and that any license or licenses that are required in order to perform the legal services under this Agreement have been obtained and are valid.

Section 11. Termination. This Agreement may be terminated by either party upon written notice with or without cause. In the event of termination, the Attorney shall be entitled to compensation as provided for in this Agreement, for services performed satisfactorily to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Attorney's delivery to the City of any and all documents, photographs, computer software, video and audio tapes, and other materials provided to Attorney or prepared by or for Attorney or the City in connection with this Agreement.

Section 12. Notices. Notices required under this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

Attorney:

Scott Snyder
Ogden Murphy Wallace, PLLC
901 5th AVE, Suite 3500
Seattle, WA 98164

To the City: The City of Black Diamond
24301 Roberts Dr.
P.O. Box 599
Black Diamond, WA 98010

And to: Carol Morris, City Attorney
Morris Law, P.C.
3304 Rosedale Street N.W., Suite 200
Gig Harbor, WA 98335

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

Section 13. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Attorney pursuant to this Agreement shall be the property of the City at the moment of their completed preparation.

Section 14. Conflict of Interest. Attorney warrants and covenants that Attorney presently has no interest in, nor shall any interest be hereinafter acquired in, any

matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local or federal law or any rule of professional conduct. In the event that any conflict of interest should nevertheless hereinafter arise, Attorney shall promptly notify the City of the existence of such conflict of interest.

Section 15. Time is of the Essence. Attorney agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

Section 16. Confidentiality. Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without prior written consent of the City, any secret, confidential information, knowledge or data relating to the products, process or operation of the City and/or any of its departments and divisions. Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information or material developed or obtained by Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

Section 17. Amendments. This Agreement is not subject to modification or amendment, except by a written authorization executed by both the Attorney and the duly authorized representative of the City, which written authorization shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

Section 18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

Section 19. Severability. Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Section 20. Controlling Law. The laws of the State of Washington shall govern this Agreement and all matters relating to it.

Section 21. Whole Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 22. Disputes. In the event that the parties are unable to resolve any dispute regarding the performance of the legal services or this Agreement, any litigation brought to enforce the terms of this Agreement shall be filed in King County Superior

Court. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, Attorney and the City, by the signatures below, have executed this Agreement on the dates indicated below.

By W Scott

Dated: 4/25/14

THE CITY OF BLACK DIAMOND

By Dave Gordon

Mayor Dave Gordon

Dated: 3/25/2014

ATTEST:

Brenda L Martinez
Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

AGREEMENT FOR ATTORNEY SERVICES

THIS AGREEMENT, is made between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City") and Ogden Murphy Wallace, PLLC, organized under the laws of the State of Washington, located and doing business at Seattle (hereinafter the "Attorney").

Section 1. Purpose. The purpose of this Agreement is to ensure that the City receives professional services from the Attorney in an effective, timely and cost efficient manner while ensuring that the Attorney is appropriately and fairly compensated for services rendered. This Agreement supplements an agreement between the parties dated March 25, 2014.

Section 2. Scope of Service. The Attorney agrees to provide legal services, as requested by the City in connection with a personnel matter identified in documents provided to the Attorney by Carol Morris, City Attorney, on March 21, 2014. Services may include matters relating to pool coverage, records requests and other matters specifically related to the personnel matter. The attorneys authorized to work on the matters described above are Scott Snyder, Geoff Bridgeman and Kristin Eick.

Section 3. Compensation. The City hereby agrees to pay Attorney for legal services at the rate of Two Hundred Seventy-Five (\$275.00) per hour for Mr. Snyder and Mr. Bridgeman's services, and \$200 per hour for Ms. Eick's services, up to a not-to-exceed amount of Twenty Thousand Dollars (\$20,000.00). This is the maximum amount to be paid under this Agreement for the services described in Section 2 above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement. The Attorney agrees that the hourly rate charged for the Attorney's services contracted for herein shall remain locked in at the negotiated rate for a period of one (1) year from the effective date of this Agreement. Attorney agrees to use every appropriate method to contain his fees on these matters.

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Attorneys' monthly bills shall include, at a minimum, the following information for each specific matter to which such services or costs pertain: the name of the matter; a brief description of the legal services performed; the date the services were performed; and the amount of time spent on each date services were performed and by whom. In addition to providing copies of all documents as specified below, Attorneys shall provide any information that will assist the City in performing a thorough review and/or audit of the billings, as may be requested by the City.

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reputation and competence of the Attorney. Neither this Agreement nor any interest therein may be assigned by Scott Snyder without the prior written approval of the City.

Section 9. Indemnification and Insurance.

A. The Attorney shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Attorney in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The provisions of this indemnification shall survive the termination or expiration of this Agreement.

B. The Attorney shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services provided by the Attorney, its agents, representatives or employees.

The Attorney's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Attorney to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Minimum Scope of Insurance. The Attorney shall obtain insurance of the types and limits below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. There must be a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 per accident.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability malpractice insurance, written with limits no less than \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit.

The Attorney's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Attorney's insurance and shall not contribute with it.

The Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Attorney shall furnish the City with certificates and any amendments before providing services under this Agreement.

Section 10. Licenses. Attorney warrants that he is a member in good standing with the Washington State Bar, and that any license or licenses that are required in order to perform the legal services under this Agreement have been obtained and are valid.

Section 11. Termination. This Agreement may be terminated by either party upon written notice with or without cause. In the event of termination, the Attorney shall be entitled to compensation as provided for in this Agreement, for services performed satisfactorily to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Attorney's delivery to the City of any and all documents, photographs, computer software, video and audio tapes, and other materials provided to Attorney or prepared by or for Attorney or the City in connection with this Agreement.

Section 12. Notices. Notices required under this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

Attorney: W. Scott Snyder
Ogden Murphy Wallace, PLLC
901 5th Avenue, Suite 3500
Seattle, WA 98164

To the City: City of Black Diamond
24301 Roberts Dr.
P.O. Box 599
Black Diamond, WA 98010

And to: Carol Morris, City Attorney
Morris Law, P.C.
3304 Rosedale Street N.W., Suite 200
Gig Harbor, WA 98335

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

Section 13. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Attorney pursuant to this Agreement shall be the property of the City at the moment of their completed preparation.

Section 14. Conflict of Interest. Attorney warrants and covenants that Attorney presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local or federal law or any rule of professional conduct. In the event that any conflict of interest should nevertheless hereinafter arise, Attorney shall promptly notify the City of the existence of such conflict of interest.

Section 15. Time is of the Essence. Attorney agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

Section 16. Confidentiality. Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without prior written consent of the City, any secret, confidential information, knowledge or data relating to the products, process or operation of the City and/or any of its departments and divisions. Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information or material developed or obtained by Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

Section 17. Amendments. This Agreement is not subject to modification or amendment, except by a written authorization executed by both the Attorney and the duly authorized representative of the City, which written authorization shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

Section 18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

Section 19. Severability. Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Section 20. Controlling Law. The laws of the State of Washington shall govern this Agreement and all matters relating to it.

Section 21. Whole Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 22. Disputes. In the event that the parties are unable to resolve any dispute regarding the performance of the legal services or this Agreement, any litigation brought to enforce the terms of this Agreement shall be filed in King County Superior Court. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, Attorney and the City, by the signatures below, have executed this Agreement on the dates indicated below.

DATED this 4th day of April, 2014.

CITY OF BLACK DIAMOND

By: Carol Benson
Carol Benson, Mayor Pro Tem

ATTEST:

By: Brenda L Martinez
Brenda Martinez, City Clerk

APPROVED AS TO FORM:

By: _____
Carol A. Morris, City Attorney

OGDEN MURPHY WALLACE, PLLC

By: W. Scott Snyder
W. Scott Snyder, Special Counsel