

December 17, 2015

**ORDINANCE NO. 15-1061**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, RELATING TO COMPREHENSIVE PLANNING UNDER THE GROWTH MANAGEMENT ACT, ADOPTING CONCURRENCY REGULATIONS FOR THE REVIEW OF LEGISLATIVE AND QUASI-JUDICIAL APPLICATIONS, AS MANDATED BY THE GMA (RCW 36.70A.070(6)(b)) FOR TRANSPORTATION FACILITIES, DESCRIBING EXEMPTIONS, REQUIRING EVALUATIONS OF CAPACITY ON THE CITY'S ROAD FACILITIES, DESCRIBING THE ELEMENTS OF A CAPACITY EVALUATION APPLICATION, EXPLAINING THE METHOD FOR DETERMINING AND RESERVING CAPACITY ON ROAD FACILITIES, DESCRIBING THE PROCESS FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES (CRC), DENIALS OF CRC'S, APPEALS, DESCRIBING THE ADMINISTRATIVE PROCESS FOR CONCURRENCY REPORTING AND MONITORING, ADOPTING A NEW CHAPTER 11.11 IN THE BLACK DIAMOND MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

---

WHEREAS, the Growth Management Act ("GMA," RCW 36.70A.070(6)(b)) requires that cities planning under GMA "adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development;" and

WHEREAS, the City has no concurrency regulations; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, on Oct 15<sup>th</sup>, 2015, the City Council held a public hearing on a draft concurrency ordinance: and

WHEREAS, On November 12<sup>th</sup>, 2015, the City Council reviewed and deliberated on the concurrency ordinance at a council workshop.

WHEREAS, on November 19<sup>th</sup>, 2015, the City Council held a public hearing and considered this ordinance, during a regular Council meeting; Now, Therefore

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,  
ORDAINS AS FOLLOWS:

Section 1. A new Chapter 11.11 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

**CHAPTER 11.11  
CONCURRENCY MANAGEMENT**

**Sections:**

- 11.11.001 Purpose.
- 11.11.002 Authority.
- 11.11.003 Definitions.
- 11.11.004 Exempt development.
- 11.11.005 Applicability.
- 11.11.006 Capacity evaluation required for a change of use.
- 11.11.007 Capacity evaluations required for certain rezones or comprehensive plan amendments.
- 11.11.008 All capacity evaluations exempt from project permit processing.
- 11.11.009 Level of Service standards.
- 11.11.010 Effect of LOS standards.
- 11.11.011 Capacity evaluations required prior to issuance of capacity reservation certificate.
- 11.11.012 Application for capacity evaluation.
- 11.11.013 Submission and acceptance of an application for a capacity evaluation application.
- 11.11.014 Method of capacity evaluation.
- 11.11.015 Purpose of capacity reservation certificate.
- 11.11.016 Procedure for capacity reservation certificates.
- 11.11.017 Use of reserved capacity.
- 11.11.018 Transfer of reserved capacity.
- 11.11.019 Denial letter.



- 11.11.020 Notice of concurrency determination.
- 11.11.021 Expiration of CRC and extensions of time.
- 11.11.022 Appeals.
- 11.11.023 Concurrency administration and procedure.
- 11.11.024 Annual reporting and monitoring.
- 11.11.025 Intersection LOS monitoring and modeling.

---

**11.11.001 Purpose.** The purpose of this Chapter is to implement the concurrency provisions of the transportation element of the City's comprehensive plan in accordance with RCW 36.70A.070(6)(b). All applications that are not exempt (as defined herein) shall be processed under and shall comply with this Chapter, which shall be cited as the City's "concurrency management ordinance."

**11.11.002 Authority.** The Director of Public Works or his/her designee, shall be responsible for implementing and enforcing this concurrency management ordinance.

**11.11.003 Definitions.** The following words and terms shall have the following meanings for the purpose of Chapter 11.11 unless the context clearly appears otherwise. Terms not defined herein shall be given their usual and customary meaning.

A. "Act" means the Growth Management Act, chapter 36.70A RCW, or as hereafter amended.

B. "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

C. "Approving Authority" means the city employee, agency or official having the authority to issue the approval or permit for the development activity involved.

D. "Annual capacity availability report" means the report prepared each year to include available and reserved capacity for each public facility and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service, a summary of development activity, a summary of current levels of service and recommendations.

E. "Available public facilities" means that public facilities are in place, or a financial commitment has been made to provide the facilities concurrent with development. For the purposes of transportation facilities, "concurrent with development means" that the improvements or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years. (RCW 36.70A.070(6)(b).)

F. "Capacity" means the ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends, or "peak p.m. trips," within the LOS standards for the facility.

G. "Capacity, available" means capacity in excess of current demand ("used capacity") for a specific public facility which can be encumbered, reserved or committed or the difference between capacity and current demand ("used capacity").

H. "Capacity, encumbered" means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.

I. "Capacity evaluation" means the evaluation by the Director based on adopted Level of Service (LOS) standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in the City's concurrency management ordinance.

J. "Capacity reservation certificate" or "CRC" means a determination made by the Director that: (1) a proposed development activity ~~of~~ or development phase will be concurrent with the applicable facilities at the time the CRC is issued, and (2) the Director has reserved capacity for an application for a period that corresponds to the respective development permit.

K. "Capacity, reserved" means capacity which has been reserved through use of the capacity reservation certificate process in Section 11.11.016

L. "Capital facilities" means the facilities or improvements included in a capital facilities plan.

M. "Capital facilities plan" means the capital facilities plan element of the City's comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

N. "Change of use" means, for the purposes of this Chapter, any change, redevelopment or modification of use of an existing building or site which meets the definition of "development activity" herein.

O. "City" means the City of Black Diamond, Washington.

P. "Comprehensive land use plan" or "comprehensive plan" means a generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

Q. "Concurrency" or "concurrent with development" means that adequate public facilities are available or improvements/strategies are in place when the impacts of development occur, or that a financial commitment is in place to complete the improvements or strategies within six years. This definition includes the concept of "adequate public facilities" as defined above. (RCW 36.70A.070(6)(b).)



- R. "Council" means the City Council of the City of Black Diamond, Washington.
- S. "Dedication" means the conveyance of land or facilities to the City for public facility purposes, by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat (or short plat).
- T. "Demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that: (1) shift demand outside of the peak travel time; (2) shift demand to other modes of transportation; (3) increase the number of occupants per vehicle; (4) decrease the length of trips; (5) avoid the need for vehicle trips.
- U. "Department" means the public works department of the City of Black Diamond
- V. "Developer" means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.
- W. "Development activity" or "development" means any construction or expansion of a building, structure, or use, or change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City. (RCW 82.02.090(1)).
- X. "Development agreement" means the agreements authorized in RCW 36.70B.170 and Chapter 18.66 of this Code.
- Y. "Development permit" or "project permit" means any land use permit required by the City for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site-specific rezones, and for purposes of the City's concurrency management ordinance, shall include applications for amendments to the City's comprehensive plan which request an increase in the extent or density of development on the subject property.
- Z. "Director" means the director of the public works department.
- AA. "Existing use" means existing development which physically exists or for which the owner holds a valid building permit as of the effective date of the ordinance codified in this Chapter.
- BB. "Encumbered" means to reserve or set aside capacity,
- CC. "Financial commitment" means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

DD. "Growth-related" means a development activity as defined herein that decreases the Level of Service (LOS) below the City's established minimum LOS for a transportation facility in the City's Comprehensive Plan.

EE. "Level of Service" or "LOS" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

FF. "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property, if the contract is recorded. In addition, the lessee of the real property shall be considered the owner, if the lease of the real property exceeds 25 years, and the lessee is the developer of the real property. (RCW 82.02.090(4).)

GG. "Previous use" means (a) the use existing on the site when a capacity evaluation is sought; or (b) the most recent use on the site, within the five year period prior to the date of application for the development.

HH. "Public/Private Project" means a system improvement, selected by the City Council for joint private and public funding.

II. "Right of Way" means a public property dedicated for the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley. Secondly public road right of way provides properties with a corridor for access to various utilities.

JJ. "Road facilities" includes public facilities related to land transportation.

KK. "State" means the State of Washington.

LL. "Subdivision" means all subdivisions as defined in Chapter 17.08, and all short subdivisions as defined in Chapter 17.32.

MM. "Traffic analysis zone" means the minimum geographic unit used for traffic analysis.

NN. "Transportation primary impact area" means a geographically determined area that delineates the impacted area of a deficient roadway link.

OO. "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirement.



PP. "Traffic demand model" means the simulation through the City's traffic model of vehicle trip ends assigned on the roadway network.

QQ. "Trip allocation program" means the program established to meter trip ends to new development annually by service area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

RR. "Trip end" means a single or one-directional vehicle movement.

SS. "Unit" or "Dwelling unit" means a dwelling unit as defined in BDMC 18.100.280

#### **11.11.004 Exempt development.**

No development activity as defined in Section BDMC 11.11.003(W) shall be exempt from the requirements of this chapter, unless the permit is listed below. The following types of permits are not subject to the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on transportation facilities.

1. Administrative interpretations;
2. Sign permit;
3. Street vacations;
4. Demolition permit;
5. Street use permit;
6. Interior alterations of a structure with no change in use;
7. Excavation/clearing permit;
8. Hydrant use permit;
9. Right-of-way permit;
10. Single-family remodeling with no change of use;
11. Plumbing permit;
12. Electrical permit;
13. Mechanical permit;
14. Excavation permit;
15. Sewer connection permit;
16. Driveway or street access permit;
17. Grading permit;
18. Tenant improvement permit;
19. Fire code permit;
20. Design review approval.

Notwithstanding the exemptions noted in this Section, if any of the above permit applications will generate any new p.m. peak hour trips, such application shall not be exempt from the requirements of this Chapter.

**11.11.005 Applicability** This Chapter shall apply to all applications for development or redevelopment if the proposal or use will generate any new p.m. peak-hour trips. Every

application for development shall be accompanied by an application for capacity reservation certificate.

**11.11.006 Capacity evaluation required for a change in use.** Any non-exempt development activity shall require a capacity evaluation in accordance with this Chapter.

A. Increased Impact on Road Facilities. If a change in use will have a greater impact on road facilities than the previous use, as determined by the Director, based on review of information submitted by the applicant and such supplemental information as available, a CRC shall be required for the net increase only. The applicant shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five-year period prior to the date of application for the capacity evaluation.

B. Decreased Impact on Road Facilities. If a change in use will have an equal or lesser impact on road facilities than the previous use as determined by the Director, based on review of information submitted by the applicant and supplemental information as available, a CRC will not be required.

C. No Capacity Credit. If no use existed on the site for the five-year period prior to the date of application, no capacity credit shall be issued pursuant to this Section.

D. Demolition or Termination of Use. In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact on road facilities for the new or proposed land use, as compared to the land use existing prior to demolition, provided, that such credit is utilized through a CRC within five years of the date of the issuance of the demolition permit.

**11.11.007. Capacity evaluations required for certain rezones and comprehensive plan amendments.** A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) submitted by the property owner, which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment. The City's approval of any comprehensive plan or zoning map amendment shall not reserve any capacity in transportation facilities unless the property owner has applied for and is issued a CRC and a development agreement which includes a deadline for the property owner's submission of a development permit application for the proposed development.

**11.11.008 All capacity determinations exempt from project permit processing.** The processing of applications pursuant to the authority in this Chapter shall be exempt from project permit processing procedures as described in Chapter 18.08 of the Zoning Code, except that the appeal procedures of Chapter 11.11.022 shall apply as indicated in this Chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review



procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation and utilities elements of the comprehensive plan.

#### **11.11.009 Level of Service Standards.**

A. Generally. Level of Service (LOS) is the established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need, as mandated by chapter 36.70A RCW. LOS standards shall be used to determine if public facilities or services are adequate to support a development's impact. The concept of concurrency is based on the maintenance of specified levels of service through capacity monitoring, allocation and reservation procedures. Concurrency describes the situation in which road facilities are available when the impacts of development occur. For road facilities, this time period is statutorily established as within six years from the time of development.

B. The City has designated levels of service for road facilities in the transportation element of the City's comprehensive plan:

1. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;
2. to reflect realistic expectations consistent with the achievement of growth aims; and
3. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's comprehensive plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

#### **11.11.010 Effect of LOS standards.**

The Director shall use the LOS standards set forth in the transportation element of the City's comprehensive plan to make capacity evaluations as part of the review of any application for a transportation CRC issued pursuant to this chapter.

#### **11.11.011 Capacity evaluations required prior to issuance of CRC.**

A. A capacity evaluation shall be required for any of the activities that are not exempt in Section 11.11.004 of this chapter.

B. The Director shall utilize the requirements in Sections 11.11.011 through 11.11.016 to conduct a capacity evaluation prior to issuance of a CRC. In addition to the requirements set forth in these sections, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency, which may be established from time to time by administrative rule.

C. A CRC will not be issued except after a capacity evaluation performed pursuant to this Chapter, indicating that capacity is available in all applicable road facilities.

#### **11.11.012 Application for capacity evaluation.**

A. An application for capacity evaluation and the application for the underlying development permit, or other activity, shall be accompanied by the requisite fee, as determined by City Council resolution. An applicant for the capacity evaluation shall submit the following information to the Director, on a form provided by the Director, together with the underlying development application:

1. Date of submittal;
2. Developer's name, address, telephone number and e-mail;
3. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
4. Proposed use(s) by land use category, square feet and number of units;
5. Phasing information by proposed uses, square feet and number of units, if applicable;
6. Existing use of property;
7. Acreage of property;
8. Proposed site design information, if applicable;
9. The applicant's proposed mitigation (if any) for the impact on the City's transportation facilities;
10. Written consent of the property owner, if different from the developer;
11. Proposed request of capacity by legal description, if applicable;
12. A preliminary site plan, which is a plan showing the approximate layout of proposed structures and other development, type and number of dwelling units, type and number of nonresidential building areas with gross square footage, the land use codes per the most recent edition of Trip Generation from the Institute of Transportation Engineers (ITE) and an analysis of the points of access to existing and proposed roadways;
13. Traffic impact analysis and traffic report. Developments or redevelopments, excluding an individual single-family residence, that will generate one or more new projected p.m. peak-hour vehicle trips that will pass through an intersection or roadway section identified with a level of service below the acceptable level noted in the transportation element in the City's comprehensive plan, or that will generate 15 or more new p.m. peak hour trips shall be required to have the City prepare a traffic impact analysis to determine the full impact of the proposal and appropriate mitigation. The results of the traffic impact analysis will be documented in a traffic report.

B. The applicant is not required to submit a traffic impact analysis from an independent traffic engineer. Instead, those applicants with a transportation CRC application are required to submit sufficient information for the City to prepare a traffic impact analysis. The applicant shall pay to the City a deposit equal to the estimated fee for the City's preparation of a traffic report. The City will cover the costs of the traffic report from the funds deposited by the applicant. If revisions to the traffic impact analysis are needed the applicant shall cover the additional cost.



Even if the traffic report is based on an estimate of the impact, if the City issues a CRC based on this estimate, the applicant will still be bound by the estimate of the impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: (a) a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; (b) mitigation of the additional impact under SEPA; (c) revocation of the CRC.

#### **11.11.013 Submission and acceptance of a capacity evaluation application.**

A. Notice of application. Issuance of a notice of application for the underlying permit application shall be handled by the Community Development Director or designee, following the process in Section 18.08.120. The notice of application required by Section 18.08.120 shall state that an application for a concurrency determination has been received by the City.

B. Determination of Completeness. The Community Development Director shall immediately forward all capacity evaluation applications received with development applications to the Public Works Director. Within twenty-eight (28) days after receiving a capacity evaluation application, the Public Works Director shall mail or personally deliver to the applicant a determination which states either:

1. That the application for capacity evaluation is complete; or
2. That the application for capacity evaluation is incomplete and what is necessary to make the application complete.

C. Additional information. An application for capacity evaluation is complete for purposes of initial processing when it meets the submission requirements in Section 11.11.012. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The Director's determination of completeness shall not preclude the Director's ability to request additional information or studies.

D. Incomplete applications.

1. Whenever the City issues a determination that the application for capacity evaluation is not complete, the application for capacity evaluation shall be handled in the same manner as a project permit application under Section 18.14.020 (G).

2. Date of Acceptance of Application. An application for capacity evaluation shall not be officially accepted or processed until it is complete and the underlying development application has been determined complete. When a capacity application is determined complete, the Director shall accept it and note the date of acceptance.

#### 11.11.014 Method of capacity evaluation.

A. Generally. In order to determine concurrency for the purposes of issuance of a CRC, the Director shall make the determination based on the analysis described in this Section. The Director may deem the development concurrent with transportation facilities if capacity is available. Additionally the Director may deem the development concurrent with transportation facilities if the development causes the level of service to decline below the standards adopted in the transportation element of the comprehensive plan, as long as the Director finds that there are acceptable transportation improvements or strategies to accommodate the development proposed by the applicant, and that the same will be made concurrent with the development. "Concurrent with the development" means that the improvements or strategies are in place at the time of the development, or that a financial commitment (secured by an enforceable development agreement) is in place to complete the improvements or strategies within six years. In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying application.

#### B. Process and methods

1. Upon submission and acceptance of a complete application for capacity evaluation, the Director shall conduct a Traffic Impact Analysis and issue a traffic report for those applications meeting the requirements of Section 11.11.012.

2. In performing the capacity evaluation for transportation facilities, and to prepare the CRC, the Director shall determine, based on the conclusions of the traffic report, whether a proposed development can be accommodated within the existing or planned capacity of transportation facilities. This shall involve the following:

- a. A determination of anticipated total capacity at the time the proposed impacts of development occur or within six years of such time;
- b. Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of the proposed development occur;
- c. Calculation of the available capacity for the proposed development;
- d. Calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation identified by the applicant to be provided by the applicant at the applicant's cost;
- e. Comparison of available capacity with proposed development impacts.

3. The Director shall determine if the capacity of the City's transportation facilities, less the capacity which is reserved and used, is available while meeting the level of



service performance standards set forth in the City's comprehensive plan, and if so, shall provide the applicant with a CRC. The Director's determination will be based on the application materials provided by the applicant, which must include the applicant's proposed mitigation for the impact on the City's transportation facilities.

C. Lack of Concurrency. If the Director determines that the proposed development will cause the LOS of a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a CRC and the underlying development permit, shall be denied. Upon denial, the applicant may perform one of the following:

1. Appeal the findings of the Director's decision in accordance with Section 11.11.022; or
2. Offer alternative data and/or perform an independent traffic impact analysis at the applicant's sole expense in support of alternative conclusions. Any study shall meet the requirements of the Public Works Director; or
3. Modify the development proposal to lessen the traffic impacts and/or identify voluntary transportation improvements as mitigation to be provided by the applicant at the applicant's cost and re-apply for capacity review. Re-application shall require repayment of the traffic impact analysis and traffic report preparation fee in accordance with Section 11.11.012; or
4. Withdraw the capacity evaluation application.

**11.11.015 Purpose of Capacity Reservation Certificate.** A CRC is a determination by the Director that: (1) the proposed development identified in the application for capacity evaluation does not cause the level of service on a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan; or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six (6) years. Upon issuance of a CRC, the Director will reserve transportation facility capacity for this application until the expiration of the underlying development permit. Although the CRC may identify the number of projected trips associated with the proposed development, nothing in this Chapter (including the trip transfer procedures) shall imply that the applicant "owns" or has any ownership interest in the projected trips.

**11.11.016 Procedure for capacity reservation certificates.** After receipt of a complete application for capacity evaluation, the Director shall process the application in accordance with this Chapter and issue the CRC or a denial letter.

**11.11.017 Use of reserved capacity.** When a CRC and a development permit issues for a project, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without issuance of a certificate of occupancy.

**11.11.018 Transfer of reserved capacity.** Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the applicant in the CRC. The applicant may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the Director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

**11.11.019 Denial letter.** If the Director determines that there is a lack of concurrency under the above provisions, the Director shall issue a denial letter, which shall advise the applicant that capacity is not available. If the applicant is not the property owner, the denial letter shall also be sent to the property owner. At a minimum, the denial letter shall identify the application and include the following information:

- A. An estimate of the level of the deficiency on the transportation facilities; and
- B. The options available to the applicant as outlined in 11.11.014(C)(1).
- C. A statement that the denial letter may be appealed if the appeal is submitted to the Director within ten (10) days after issuance of the denial letter, and that the appeal must conform to the requirements in Section 11.11.022. Any appeal of a denial letter must be filed according to this section, prior to issuance of the City's decision on the underlying development application. If an appeal is filed, processing of the underlying development application shall be stayed until the final decision on the appeal of the denial letter.

**11.11.020 Notice of concurrency determination.**

A. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the SEPA threshold determination (BDMC 19.04.210) for the underlying development permit unless the project is exempt from SEPA, in which case notice shall be given in the same manner as a final decision on the underlying development permit without any accompanying threshold determination. In the case of an approved CRC, any mitigation identified by the applicant to be provided by the applicant at the applicant's cost shall be included in the SEPA threshold determination or underlying permit decision (if categorically exempt from SEPA).

B. If a denial letter is not timely appealed, the underlying permit application will be processed and in most instances, will result in a denial. If a denial letter is appealed, any mitigation or conditions included in the appeal decision shall be included in the SEPA threshold decision or underlying permit decision (if categorically exempt from SEPA).

**11.11.021 Expiration of CRC and extensions of time.**



A. Expiration. If a certificate of occupancy has not been requested prior to the expiration of the underlying permit or termination of the associated development agreement, the Director shall convert the reserved capacity to available capacity for use by other developments. The act of requesting a certificate of occupancy before expiration of the CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes and issues a certificate of occupancy. If a complete underlying project permit application expires, the Director shall convert any reserved capacity allocated to the underlying project permit for use by other developments.

B. The City shall assume that the developer requests an extension of the CRC when the developer is requesting a renewal of the underlying development permit. No unused capacity may be carried forward beyond the duration of the CRC or any subsequent extension.

C. If a CRC has been granted for a rezone or comprehensive plan amendment, the CRC shall expire when the development agreement for the comprehensive plan or rezone terminates.

D. If the city's code or state law does not specify an expiration date for the underlying permit, the CRC shall expire no later than 5 years after issuance of the CRC.

**11.11.022 Appeals.** Upon receipt of an appeal from the applicant of the denial letter, the Director shall handle the appeal as follows:

A. A meeting shall be scheduled with the applicant to review the denial letter and the application materials, together with the appeal statement.

B. Within fourteen (14) days after the meeting, the Director shall issue a written decision, which will list all of the materials considered in making the decision. The written "Director's Decision" shall either affirm or reverse the denial letter. In any decision, the Director shall identify the mitigation that the applicant is required to provide at the applicant's cost, which will be imposed on the application approval in order to achieve concurrency, if any.

C. The mitigation identified in the Director's Decision shall be incorporated into the City's SEPA threshold decision on the application.

D. The Director's Decision shall state that it may be appealed with any appeal of the underlying application or activity, pursuant to Section 18.08.200.

**11.11.023 Concurrency administration and procedure.**

A. There are two transportation capacity accounts to be utilized by the Director in the implementation of this Chapter. These accounts are:

1. The available capacity account; and
2. The reserved capacity account.

Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a CRC is issued. Once the proposed development is constructed and an occupancy certificate is issued, the capacity is considered “used.” Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts.

#### **11.11.024 Annual reporting and monitoring.**

A. The Director is responsible for completion of annual transportation capacity availability reports. The report shall evaluate reserved capacity and permitted development activity for the previous 12-month period, and determine existing conditions with regard to available capacity of road facilities for additional traffic loading. The evaluations shall report on capacity used for the previous period, capacity added from new project(s), and capacity that will be available upon implementation of transportation projects on the City’s six-year capital facilities element of the City’s comprehensive plan and six-year transportation plan for road facilities, based on LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections, and shall, at a minimum, include:

1. A summary of development activity;
  2. The status of each capacity account;
  3. The six-year transportation plan;
  4. Actual capacity of selected street segments and intersections and current LOS;
- and
5. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element or to the comprehensive plan.

B. The findings of the annual transportation capacity availability report shall be considered by the Council in preparing the annual update to the transportation element of the comprehensive plan, any proposed amendments to the CIP and six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

C. Based upon the analysis included in the annual transportation capacity availability reports, the Director shall recommend to the City Council each year any necessary amendments to the CIP, TIP, or transportation element of the comprehensive plan. The Director shall also report on the status of all capacity accounts when public hearings for comprehensive plan amendments are heard.

#### **11.11.025 Intersection LOS monitoring and modeling.**

A. The City shall monitor level of service at all major collector and arterial intersections through the keeping of an updated traffic demand model and an annual update of the six-year transportation plan which will add data reflecting development permits issued and trip allocations reserved.



B. New trip generation numbers shall be assigned to the appropriate traffic analysis zone for each new project approved. The City will use the updated traffic demand model, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the comprehensive plan.

Section 2. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 3. 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 4. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond at a special meeting on this 7<sup>th</sup> day of December, 2015.

CITY OF

\_\_\_\_\_  
Carol Benson, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

|

APPROVED AS TO FORM:  
Office of the City Attorney

---

City Attorney

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:

FAILED - DECEMBER 7, 2015