

## **1. Why is the City doing this?**

Three entities generally control how sensitive areas such as wetlands and streams are treated in Black Diamond: 1) Army Corps of Engineers at the federal level; 2) Department of Ecology at the state level; 3) City of Black Diamond. Ecology generally sets the standards for cities on how sensitive areas are to be protected at the local level and reviews all sensitive areas ordinances for compliance.

In our case, the state required the City to update its sensitive areas regulations. All cities and counties in Washington are required to adopt sensitive areas regulations by the Growth Management Act (RCW 36.70A.060). The GMA was amended in 1995 to require counties and cities to include the best available science (see explanation of how best available science has been integrated into the City of Black Diamond's update of its sensitive areas regulations) in developing policies and development regulations to protect the functions and values of sensitive areas (RCW 36.70A.172). All jurisdictions are required to review, evaluate, and, if necessary, revise their sensitive areas ordinances in order to remain in compliance with the Growth Management Act. The City's previous regulations did not incorporate best available science so an update was required to comply.

## **2. What triggers the ordinance? If I am just continuing what I've always done on my property and don't build anything new, do I have to do anything?**

No. The regulations apply to new applications or activities (subdividing your property, adding on, etc.) as they are brought forward to the City.

## **3. How do I know if this applies to my land?**

You can get an initial sense of whether your property might be affected by looking at the maps the City has created. The City initiated and completed a study in which historical as well as current information was collected and displayed in a map that shows the City of Black Diamond's current inventory of sensitive areas within its borders. The map can be reproduced for anyone that would like one for a small copying fee and can be picked up at the Community Development office at 24301 Roberts Drive in the Community Development Department building during normal business hours. However, this is not the final word on whether you have sensitive areas on your land. If the City determines there might be sensitive areas on your property, individual surveys of your land during the application process would be required. Those surveys, subject to City review, would determine whether sensitive areas exist and, if so, what types of areas and how large they are.

## **4. How much buildable area am I allowed under a reasonable use exception? What does that include?**

A reasonable use exception is allowed if: 1) the property can't meet the standard buffer width requirements; and 2) the lot depth ratio in #9 does not result in sufficient buildable land. It ensures a property owner is allowed some use of their land. The applicable portion of the draft ordinance is below. The City is currently considering how a reasonable use exception might apply to commercial lands.

I. Private property reasonable use exception:

- a. The application of this chapter would deny all reasonable economic use of the property;
- b. No other reasonable economic use of the property has less impact on the sensitive area;
- c. The proposed impact to the sensitive area is the minimum necessary to allow for reasonable economic use of the property;
- d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor;
- e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- f. The proposal will result in no net loss of sensitive area functions and values; and
- g. The proposal is consistent with other applicable regulations and standards.

II. Reasonable Use Exception for Non-Conforming Single Family Lots

- a. A reasonable use exception may be approved administratively by the city administrator and/or his/her designee for non-conforming single family residential lots within a subdivision filed within five years previous to the adoption of provisions of this code that render them non-conforming in compliance with RCW 58.17.17, or other lots or parcels under contiguous ownership and less than 20,000 square feet in size that are not subject to landslide hazard areas and associated buffers, shall be subject to the following standards, in conformance with the provisions for a reasonable use exception in subsection (D)(2)(c) through (g) and in accordance with the following criteria:
- b. Non-conforming lots with an area of 2,000 square feet or more available for a building area unrestricted by sensitive areas or buffers shall comply with the standards of this chapter. The building area means the entire area that will be disturbed to construct a structure containing an allowed use and normal

appurtenances, including parking and landscaping.

- c. Non-conforming lots that do not meet the requirement of subsection (b) above shall provide the maximum setback and buffer dimension feasible while providing for a building envelope of at least 2,000 square feet on the lot. The building area shall generally be located on the portion of the lot farthest from the required sensitive area or buffer and/or the least sensitive portion of the lot.
- d. The area between the structure and the sensitive area shall be maintained or planted in native trees and understory vegetation.
- e. The city administrator and/or his/her designee shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the applicable exception criteria in Subsection (D)(2)(c) through (g).

## **5. What do I need to do if I don't think there are sensitive areas on my property?**

During the application process the City will make an initial determination on whether they think sensitive areas might exist on your property and whether your activity might impact those areas. Those decisions will determine whether you need to create a report. The applicable portion of the draft ordinance follows.

### **19.10.110 Sensitive Area Pre-Application Meeting**

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of this chapter is encouraged to conduct a consultation meeting with the city administrator and/or his/her designee prior to submitting an application for development or other approval. At this meeting, the administrator shall discuss the requirements of this chapter; provide sensitive area maps, scientific information, and other source materials maintained by the city; outline the review process; and work with the applicant to identify any potential concerns that might arise during the review process, as well as discussing the need for other permit approvals and their procedures.

You will also have the opportunity to provide alternative information to the City as you pursue development on your property. Applicants will provide updated information on wetlands, streams and other areas through the work of consultants you will procure to provide information to accompany your application. It is expected that some changes might occur, since staff was limited to the extent of environmental work associated with the field component of the City sensitive areas ordinance

update. The City will utilize the map for planning purposes only. As development proposals and more detailed information is acquired by the City, information regarding sensitive areas and their associated buffers will be updated to meet the conditions identified in the field.

## **6. Who are “qualified personnel” for sensitive area reports under this ordinance? When is the report required?**

### **19.10.130 Sensitive Area Reports**

A. **Preparation by qualified professional.** Sensitive area reports shall be prepared by a qualified professional(s) having expertise in the specific sensitive area category(s) that are the subject of the report.

**19.10.646 *Qualified professional*** – A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant sensitive area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in the relevant field, and two years of related work experience.

- a. A qualified professional for terrestrial or aquatic habitats must have a degree in biology and professional experience related to the subject species.
- b. A qualified professional for wetlands must have a degree in biology and professional experience related to wetlands and has passed a certification course.
- c. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
- d. A qualified professional for sensitive aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

The Washington State Department of Ecology has a searchable database for wetlands specialists that you can find online at <http://www.ecy.wa.gov/programs/sea/wetlands/professional.html> or by going to [www.ecy.wa.gov](http://www.ecy.wa.gov) and drilling down to the wetlands page.

## **7. What is mitigation banking? Does that apply around Lake Sawyer and the “core complex”? What types of mitigation can I do to reduce the buffers on my land?**

There are three ways to alter the standard widths—mitigation banking, buffer width averaging and buffer transfer. Mitigation banking and buffer averaging do not apply around Lake Sawyer, the core complex or the headwaters complex. You can make buffer transfers to increase the buffers in the core or headwaters complex. The key sections of the ordinance are below. Mitigation banking has not yet been established in Black Diamond and all regulations remain under discussion at the policymakers' level.

**Mitigation Banking.** The City may approve mitigation banking as a form of compensatory mitigation for wetlands and fish and wildlife habitat conservation area impacts when the provisions of this chapter require mitigation and when it is clearly demonstrated that the use of a mitigation bank will provide equivalent or greater replacement of sensitive area functions and values when compared to conventional on-site mitigation, provided that all of the following criteria are met:

- a. Mitigation banks shall only be used when they provide significant ecological benefits including long-term conservation of sensitive areas, important species, habitats and/or habitat linkages, and when they are consistent with the City's Comprehensive Plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.
- b. The mitigation bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule WAC 173-700 or as revised, and RCW 90.84 and the federal mitigation banking guidelines as outlined in the Federal Register Volume 60. No 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.
- c. Preference shall be given to mitigation banks that implement restoration actions that have been identified in an adopted Shoreline Restoration Plan, watershed planning document prepared and adopted pursuant to RCW 90.82, a Salmonid Recovery Plan or project that has been identified on the Salmon Recovery Board Habitat Project List or by the Washington Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.
- d. Mitigation banks shall not be used for mitigation of impacts to wetlands and wildlife habitat areas within the Lake Sawyer watershed except in cases where the city administrator and/or his/her designee determine that mitigation is not feasible within the Lake Sawyer watershed.

**Wetland buffer width averaging.** The city administrator and/or his/her designee may allow modification of the standard wetland buffer width in accordance with an approved sensitive area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of

buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

- I. Averaging to improve wetland protection may be permitted when all of the following conditions are met:
  - a. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
  - b. Buffer averaging will not reduce wetland functions or functional performance;
  - c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and all increases in buffer dimension for averaging are generally parallel to the wetland edge;
  - d. The buffer width at its narrowest point is not reduced to less than 75 percent (75%) of the standard width and in no case less than thirty-five (35) feet.
- II. Averaging to allow reasonable use of a parcel may be permitted when all of the following criteria are met:
  - a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;
  - b. The buffer averaging does not reduce the functions or values wetland, or the buffer averaging, in conjunction with vegetation enhancement or other measures increases the wetland function;
  - c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and all increases in buffer dimension for averaging are generally parallel to the wetland edge;
  - d. The buffer at its narrowest point is never less than 3/4 of the required width except where the city administrator and/or his/her designee finds that there is an existing feature such as a roadway that limits buffer dimension, or an essential element of a proposed development such as access that must be accommodated for reasonable use and requires a smaller buffer.
- III. The width reduction may not be located within another sensitive area or associated buffer unless criteria for averaging said buffer are also addressed and approved.
- IV. Buffer averaging may not be approved when buffer transfer is approved in accordance with subsection I, above.

## **8. Why do you need an additional building setback if you already have a buffer? What's allowed in the building setback?**

The additional 10' setback is intended to reduce high level impacts to the buffer and its sensitive area. There are many activities/uses allowed in the setback:

- I. The following facilities and uses are allowed in the building setback:
  - a. Landscaping, including rockeries not over 42 inches high provided construction does not alter the buffer or sensitive area;
  - b. Uncovered decks, platforms, porches and similar projections not over 42 inches high;
  - c. Building eaves, cornices, chimneys and similar projections;
  - d. Impervious surfaces such as driveways, parking lots, roads, and patios provided that such surfaces conform to applicable water quality standards and that construction equipment does not enter the buffer or sensitive area;
  - e. Clearing and grading consisting of not over 42 inches of cut or fill.
  - f. Fences, in accordance with local conventions and other design standards.
  - g. Minor utilities

## **9. What if I want to renovate? How much of my house can I renovate without triggering the ordinance?**

It depends whether or not your house is located within a sensitive area and/or its buffer.

Assuming that your house is located within these areas, these criteria apply in the current draft ordinance:

### **Alterations defined**

Alteration of existing structures or facilities may require modification to sensitive areas or buffers, in accordance with this section and other provisions of this code.

- I. Minor alteration or renovation shall be defined as alteration or renovation of any structure, or associated improvements within a sensitive area or buffer that results in an expansion of floor area of less than 500 square feet, or 10 percent, whichever is less, or the expansion of impervious surface by less than 1,000 square feet, or 10 percent, whichever is less; or remodeling or renovation that is less than 50 percent of the value of the structure or improvements,

excluding plumbing, electrical and mechanical systems. Minor alteration may require compliance with specific performance standards of this code.

- II. Moderate alteration or renovation shall be defined as the alteration or renovation of any structure, or associated improvements within a sensitive area that results in an expansion of floor area of 500 square feet or more, or more than 10 percent and less than 50 percent, whichever is greater; or the expansion of impervious surface by more than 1,000 square feet, or of more than 10 percent and less than 50 percent, whichever is greater; or remodeling or renovation that is greater than 50 percent and less than 100 percent of the value of the structures or improvements excluding plumbing, electrical and mechanical systems.. Moderate alteration may require compliance with specific performance standards of this code.
- III. Substantial reconstruction shall be defined as the alteration or renovation that results in an expansion of floor area of more than 50 percent, or the expansion of impervious surface by more than 50 percent, or remodeling or renovation that exceeds 100 percent of the value of the structures or other improvements, excluding plumbing and mechanical systems. Such substantial reconstruction shall be considered the same as new construction and shall fully comply with the provisions of this code.

### **Alteration requirements**

**Buffer enhancement for changes to existing uses.** As provided in Sections 19.10.170 and 19.10.350.C, buffer dimensions and enhancement of vegetation communities may be enhanced at the time of redevelopment of improvements on non-conforming lots as provided below:

- I. Minor alteration or renovation of existing development
  - a. Vegetate buffer enhancement, either 50% of buffer standard or 50% of existing structure setback from wetland
  - b. Fence and sign buffer area
- II. Moderate alteration or renovation of existing development
  - a. Vegetate buffer enhancement, either 70% of buffer standard or 60% of existing structure setback from wetland
  - b. Fence and sign buffer area
- III. Substantial redevelopment
  - a. Buffer dimension, 100 percent of standard
  - b. Vegetation enhancement, 100% of standard
  - c. Fence and sign buffer area

## **10. What's the difference between a 150 foot and a 225 foot buffer? Why not go smaller?**

A key component to this update of the Sensitive Areas Ordinance is the integration of a Best Available Science standard in the development of buffers and protection our natural resources. Differences in buffer dimensions are dictated by the quality of the sensitive area that is being protected and its functional value. Larger buffers are meant to protect these higher quality systems and the functions and values that they provide in nature (Please see the attachments for further information on BAS as well as the section out of the study that shows how the buffer sizes were reached). In general, 150-foot buffers provide less water quality and wildlife protection.

## **11. What if my property is so encumbered by sensitive areas and buffers that it would be difficult to build a house on it?**

Again, the updated code has flexibility built into it so that property owners have options when it comes time to build on their investment. Depending on the depth of your particular lot, a percentage of the property can be utilized. If the applicant can still not meet these requirements, the City has included a "reasonable use" provision that would allow conditioned, building-type activities, approved by the hearing examiner.

## **12. What other ways can I get around this thing?**

The first level of flexibility is a buffer adjustment based on existing lot depth. The section of the current draft ordinance that outlines this process is below. In practice, if you have a lot that is 300 feet deep and covered in wetlands this exception will ensure that the buffer takes up no more than 75% of the lot depth, or 225 feet, leaving 75 feet for building.

**Buffer adjustment based on existing lot depth.** The city administrator and/or his/her designee may vary buffer dimensions on existing non-conforming lots under contiguous ownership may take into consideration the existing depth of lots, measured perpendicular from the boundary of the wetland or stream or other sensitive area. Buffers on such lots may be adjusted up to the following, provided that this shall not apply to a geological hazard area unless all applicable design and other standards are met.

- I. Lot depth less than 100 feet – buffers may be adjusted to utilize no more than 40% of lot depth, or as necessary to provide a buildable area outside the buffer no less than 40 feet deep, provided that a minimum buffer is not less than 25 feet or 50% of the distance between an existing primary building and the edge of the wetland

or stream or other sensitive area.

- II. Lot depth 100 feet to 150 feet – buffers may be adjusted to utilize no more than 50% of lot depth or 50% of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
- III. Lot depth 150 to 200 feet – buffers may be adjusted to utilize no more than 70% of lot depth or 70% of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
- IV. Lot depth 200 feet to 250 feet – buffers may be adjusted to no more than 75% of lot depth or 75% of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
- V. Lot depth 250 feet to 300 feet – buffers may be adjusted to utilize no more than 75% of lot depth or 75% of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
- VI. All other provisions for design and management of buffer areas and adjacent land shall apply, provided that allowed uses in buffer areas may be restricted to reduce impacts on ecological functions and values.

### **13. Am I allowed to do anything in a sensitive area buffer?**

Although significant activities within sensitive areas buffers will be limited, there has been flexibility put into the code for activities that have minimal or little impact on the functions of buffers in relation to the sensitive area being protected. That includes recreation uses such as trails and community gardening and siting of utilities in some instances. The City also offers a reduction in buffer size program for sensitive areas outside of the “core” area and a Transfer of Development Right program for participating property owners. More information can be obtained by contacting City staff or on the City’s website at [www.ci.blackdiamond.wa.us](http://www.ci.blackdiamond.wa.us).

### **14. What’s in the core wetland and stream complex?**

The Rock Creek/Jones Lake/Jones Creek corridor and the Black Diamond Lake/Stream corridors and the associated wetland complexes are recognized as a core area that provides a variety of water supply, water quality, and habitat functions. These functions are essential to the preservation of water quality in Lake Sawyer, and to continue to provide the rich ecological functions of these systems. To function as wildlife corridors, the Core should extend to Ravensdale Creek to the north and the UGA boundaries to the east and west. They should be preserved with a minimum buffer width of 225 feet and requirements for adjacent

uses to incorporate measures to reduce proximity impacts from noise, light and glare, stormwater and predation from pets.

### **15. What's in the headwaters complex?**

Large wetland complexes at the headwaters of Ginder Creek Lawson Creek, Mud Creek and the Rock Creek tributary to the Cedar River that provide important inputs of water to the core through surface and groundwater should be preserved with buffers of 225 feet and are identified as headwater areas.

### **16. How do I take advantage of buffer transfers? Is that for all wetlands, including the core and headwaters complexes?**

Buffer transfers are not intended to take from, but only add to, buffer widths in the core and headwaters complexes. For all other wetlands, the applicable section of the draft ordinance is below.

#### **Wetland buffer width transfer.**

1. The city administrator and/or his/her designee may allow decreased widths with transfer of an equal area of buffer from wetlands not within the Core Wetland Complex and not Headwater Wetlands to the buffers of the Core Wetland Complex in accordance with the table below provided the specific measures in (2) below are incorporated into the buffers and adjacent development.,

<b>Wetland Category</b>	<b>Buffer Width (feet) Minimum after Transfer</b>
Category IV	30 (standard 50')
Category III	50 (standard 80')
Category II	100 (standard 150')
Category I	125 (standard 180')

2. The following specific mitigation measures shall be incorporated into adjacent development in order to utilize the buffer dimensions specified in (1) above shall be as follows, provided that the city administrator and/or his/her designee may approve alternatives measures that are demonstrated by the applicant to have equivalent effectiveness in reducing impacts on wetland functions:
  - a. A buffer area transferred may not be less than 200 linear feet, except for existing non-conforming lots. Buffer area transfer is preferred within new development as part of an integrated

program for management of sensitive areas.

- b. The slope within the buffer to be reduced and adjacent lands shall not exceed 15%.
- c. All standards for adjacent development in Subsection 19.10.220.D. shall be complied with, and in addition:
  - i. No mechanical or ventilating equipment shall be located on sides of buildings adjacent to the wetland and buffer.
  - ii. No discharge of surface water from adjacent development may take place into the resource or buffer. If topography is such that runoff is naturally directed toward the resource or buffer, low impact development features shall be incorporated with a design incorporating infiltration that demonstrates that no surface runoff will be produced. If soils or other conditions are not suitable to meet this standard, the buffer transfer may not be approved.
- d. All standards for vegetation management in Subsection 19.10.230.F. shall be complied with, and in addition:
  - i. The buffer area being transferred to must have a relative density of at least 20 and/or enhancement vegetation must be installed, or plans approved and a performance assurance provided in accordance with Subsection 19.10.140.F.
  - ii. The buffer area being transferred from must be interplanted to provide a more effective buffer or plans approved and a performance assurance provided in accordance with Subsection 19.10.140.F. Planting must be installed prior to construction upon the adjacent parcel.
- e. A notice on title or plat or short plat restriction shall be filed in accordance with Section 19.10.150 that shall include a survey of the wetland boundary, the buffer boundary and building setback lines and all conditions of approval.

**Water body buffer width transfer.**

- 1. The city administrator and/or his/her designee may allow decreased widths with transfer of an equal area of buffer from water bodies not within the Core Stream and Wetland Complex to the buffers of the Core Stream and Wetland Complex in accordance with the table below provided the specific measures in (2) below are incorporated into the buffers and adjacent development,

Type	Buffer Width (feet) after Transfer
Type S	150 feet
Type F	100 feet
Type Np	50 feet
Type Ns	30 feet

- The specific mitigation measures in Subsection 19.10.2300.F.2 shall be incorporated into adjacent development in order to utilize the buffer dimensions specified in (1) above.

Transfer width of buffers only applies to the transfer of wetland and stream buffers outside the core and headwater areas back to these areas. For example, 20' of a type Ns buffer can be transferred to add to the 225' minimum required on the core and headwater areas.

## 17. How are buffers on wetlands and streams measured? From the middle or the outside?

### Wetlands

**Measurement of wetland buffers.** All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. The required buffer shall be extended to include any adjacent regulated wildlife habitat area, landslide hazard areas and/or erosion hazard areas and required buffers. Buffers shall not be extended across existing human features that functionally and effectively separate the potential buffer from ecological functions of the resource, and shall include hardened surfaces including improved roads or other lawfully established structures or surfaces, or the developed portions of lots, under separate ownership, lying between the habitat area and the subject property, unless restoration of buffer functions on such property is or may reasonably be expected to be the subject of a permit condition or an adopted public plan. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways and other mowed or paved areas will not be considered buffers.

### Streams

**Buffer measurement.** The buffer shall be measured landward horizontally on both sides of the water body from the ordinary high water mark as identified in the field perpendicular to the alignment of the stream or lake/pond bank. The required buffer shall be extended to include any adjacent regulated wetland(s),

landslide hazard areas and/or erosion hazard areas and required buffers. Buffers shall not be extended across existing human features that functionally and effectively separate the potential buffer from ecological functions of the resource, and shall include hardened surfaces, including improved roads or other lawfully established structures or surfaces, or the developed portions of lots, under separate ownership, lying between the habitat area and the subject property, unless restoration of buffer functions on such property is or may reasonably be expected to be the subject of a permit condition or an adopted public plan.

These measurement mechanisms are industry standards and have integrated Best Available Science into each method.

**18. What type of stream classification is a fish-bearing stream? Non-fish bearing stream?**

Type	Buffer Width
Type S- all waters, as inventoried as "shorelines of the state" under the jurisdiction of the Shoreline Management Act, except associated wetlands, which shall be regulated in accordance with this chapter (S means shorelines)	200 feet
Type F - segments of natural waters other than Type S Waters (F means fish bearing)	150 feet
Type Np - segments of natural waters that are perennial non-fish habitat streams. (N means natural and p means perennial, or that there are always fish in the water.)	100 feet
Type Ns - segments of natural waters within defined channels that are seasonal, non-fish habitat streams (N means natural and s means seasonal.)	50 feet

**19. So how do I get any value for my land as I feel I’m being too limited on what I can or can’t do there?**

In addition to the lot depth buffer adjustment and the reasonable use exception, the City has initiated a Transfer of Development Rights (TDR) program that will allow some property owners the ability to sell of development right to parts of the City, better adjusted to handle significant growth. When the transaction occurs, a conservation easement is placed on the sending property so that future development is limited. In essence, protections are placed on these sensitive areas, while the owner of the land receives a financial incentive to keep these areas in open space.