



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
September 8, 2020
25510 Lawson Street, Black Diamond, Washington

**THIS IS OFFERED AS A ZOOM MEETING ONLY.
CALL IN AND JOINING INFORMATION FOLLOWS:**

Zoom link to join meeting:

<https://zoom.us/j/6906694804?pwd=OVY5SDF3eFl6LzVPdXcwUkdSSFNPZz09>

Meeting ID: 690 669 4804

Password: PC

Telephone dial in options:

+1 206 337 9723 US (Seattle)

+1 253 215 8782 US (Tacoma)

Meeting ID: 690 669 4804

Password: 675496

6:00 P.M. - CALL TO ORDER, FLAG SALUTE, & ROLL CALL

APPROVAL OF MINUTES:

1. *Planning Commission Meeting of August 11, 2020*

PUBLIC COMMENTS: There will be no oral public comment at this meeting. Only written comment will be accepted and shall be included with the minutes. Written public comment should be submitted by email to bkincaid@blackdiamondwa.gov by 5:00 p.m. on September 7, 2020. The public is asked to include "PUBLIC COMMENT 09/08/20" in the subject line. Public comment should include name and city of commenter.

PUBLIC HEARING: None

STUDY/WORK SESSION:

2. *Amendments to Black Diamond Municipal Code Chapter 15.24, Flood Damage Prevention*
3. *Amendments to Black Diamond Municipal Code Chapter 19.10, Sensitive Areas*

This site is barrier free. People needing special assistance or accommodations should contact the Community Development Department 72 hours in advance of the meeting at (360) 851-4447

4. *2020 Annual Comprehensive Plan Amendments:*
 - a. Chapter 3, Parks, Recreation, Trails and Open Space
 - b. Chapter 4, Natural Environment

UNFINISHED BUSINESS:

5. *Public Comment discussion*

COMMUNITY DEVELOPMENT DEPARTMENT REPORT:

ADJOURN:



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING MINUTES
August 11, 2020, 6:00 PM

1) FLAG SALUTE, CALL TO ORDER, and ROLL CALL

Chairperson McCain called the meeting to order at 6:01 p.m.

Present: Commissioners: La Conte, Jensen, McCain, Ekberg, Ambur, Olson
Absent: Commissioner Butt (unexcused)
Staff: Barbara Kincaid, Community Development Director
Carina Thornquist, Deputy City Clerk

2) APPROVAL OF MINUTES

a) Regular meeting of July 21, 2020

Motion was made by Commissioner Olson to approve the July 21, 2020 minutes. **Motion seconded** by Commissioner LaConte. **Vote**, Motion passed 6-0.

Chairperson McCain reminded the citizens of the role of the Planning Commissioners which is to be an advisory board to the City Council.

3) PUBLIC COMMENT – Chairperson McCain stated there were no written comments submitted by the August 10th due date.

4) PUBLIC HEARING

b) *Emergency Amendment to Chapter 8 of Comprehensive Plan to adopt School Capital Facility Plans*

Director Kincaid discussed the proposed amendments to Chapter 8.8 of the Comprehensive Plan to specifically name each of the four school district's Capital Facility Plans (Enumclaw, Auburn, Kent, and Tahoma) and to adopt a new policy, PS-6, to authorize the collection of school impact fees.

Kristen Bryant from Bellevue – spoke to the importance of these impact fees as the community is growing.

Gary Davis from Black Diamond – agreed with Kristen Bryant about the importance of the impact fees.

Denise Stiffarm – legal attorney for Auburn and Enumclaw School Districts. She thanked the Commissioners for consideration to move this to the City Council for approval.

Chair McCain said she would entertain a motion to close the Public Hearing. **Motion** was made by Commissioner Olson to close the Public Hearing. **Motion seconded** by Commissioner Jensen. **Vote, Motion passed 6-0.**

There was some discussion about the school impact fee ordinance and Director Kincaid explained that this matter would be before the City Council for consideration.

Motion was made by Commissioner Olson to move this Emergency Amendment to City Council. **Motion seconded** by Commissioner Jensen. **Vote, Motion passed 6-0.**

5) **STUDY/WORK SESSION** –

c) New Business: Sensitive Area Ordinance (SAO) Update
Director Kincaid “shared” the Checklist Summary SAO and gave a brief overview.

6) **UNFINISHED BUSINESS** - none

7) **COMMUNITY DEVELOPMENT DEPARTMENT REPORT** - Director Kincaid stated that the City Council adopted the docket “as is”. She then turned the discussion over to Commissioner Ekberg who expressed his views of changing the “No oral public comments” to allow the public to speak during the Public Comment section; Commissioner Olson expressed the same view. Director Kincaid explained that the Clerk’s department uses this same format with the City Council. The Commissioners requested Ms. Kincaid to look into the subject for further discussion.

8) **PUBLIC COMMENTS** - none

9) **ADJOURN**

Motion was made by Commissioner Olsen to adjourn the meeting. **Motion seconded** by Commissioner LaConte. **Vote, Motion passed 6-0.**

THE MEETING ADJOURNED AT 6:40 p.m.

These minutes were respectively recorded by Carina Thornquist, Deputy City Clerk

ATTEST:

Pam McCain, Chairperson

Planning Commission Secretary



CITY OF BLACK DIAMOND

Interoffice Memorandum

TO: BLACK DIAMOND PLANNING COMMISSION
FROM: BARB KINCAID, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: DRAFT AMENDMENTS TO BLACK DIAMOND MUNICIPAL CODE CHAPTER 15.24, FLOOD DAMAGE PREVENTION CODE
DATE: SEPTEMBER 8, 2020

Chapter 15.25 of the Black Diamond Municipal Code (BDMC) addresses prevention of property damage from flooding. These regulations are required by the FEMA for compliance with federal rules and are overseen by FEMA and the Washington State Department of Ecology (DOE).

FEMA has recently revised the rules for flood hazard ordinances and is requiring all cities and counties to adopt model code language for development within a flood hazard area. Non-compliance, in other words, not adopting the required model code language, will result in the inability of a landowner to purchase flood insurance through the National Flood Insurance Program (NFIP).

The draft code changes in the attached document have been highlighted for easy reference. The deleted language (from the existing BDMC code) is shown on the right margin of the document. New language is shown in underline format.

As you read through this draft, it is important to remember that the proposed language has been provided by FEMA and DOE. These agencies will have to approve the City's code amendments for NFIP compliance.

DRAFT REVISIONS TO BLACK DIAMOND MUNICIPAL CODE
CHAPTER 15.24, FLOOD DAMAGE PREVENTION CODE

ARTICLE I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

15.24.010 Statutory authorization.

15.24.020 Findings of fact.

15.24.030 Statement of purpose.

15.24.040 Methods of reducing flood losses.

15.24.010 Statutory authorization.

The legislature of the state of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

15.24.020 Findings of fact.

A. The flood hazard areas of Black Diamond are subject to periodic inundation which results in flooded roads and yards. If development were to be allowed in these areas there would be the potential for loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, adverse environmental impacts and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. Flood losses may be caused or are exacerbated by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately designed may cause damage in other areas. Uses that are inadequately flood-proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

C. The mapped flood hazard zones within the City of Black Diamond are entirely within protected wetlands.

15.24.030 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas by provisions designed:

A. To protect human life and health;

- B. To minimize expenditure of public money and costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard;
- H. To notify those who occupy flood hazard areas ensure that those who occupy the areas of special flood hazard that they assume responsibility for their actions; and
- I. To participate in and maintain eligibility for flood insurance and disaster relief.

15.24.040 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, process permits through the variance procedure to show necessity and minimize the impact of development within the flood hazard zone and such uses designed to be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help to accommodate or channel flood waters;
- D. Controlling, filling, grading, dredging, and other development within the flood plain; and
- E. Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

ARTICLE II. DEFINITIONS

15.24.050 Definitions.

15.24.050 Definitions.

“Alteration of watercourse” means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

"Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

"Area of shallow flooding" designated as AO, or AH zone on the flood insurance rate map (FIRM). AO zones have base flood depths that range from one to three feet above the natural ground; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow; AH indicates ponding, and is shown with standard base flood elevations. "Area of shallow flooding" means a designated zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. Also referred to as the sheet flow area. "Area of special flood hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"Area of special flood hazard" means the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). "Special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "one hundred-year flood") as designated on flood insurance rate maps by the letters A or V.

"Base flood" means the flood having a 1% chance of being equaled or exceeded in any given year (also referred to as the "100-year flood").

"Base Flood Elevation (BFE)" means the elevation to which floodwater is anticipated to rise during the base flood.

"Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

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"Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include (but are not limited to) schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard. ~~"Elevation certificate" means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by community officials.~~

"Elevation Certificate" means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

"Elevated building" means, for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "flooding" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters; and/or
 - b. The unusual and rapid accumulation of runoff of surface waters from any source.

- c. Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
 2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition."Flood Insurance Rate Map (FIRM)" means the official flood insurance rate map for King County and Incorporated Areas, dated May 16, 1995 and any official revisions thereto.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS).

"Flood Insurance Rate Map (FIRM)" means the official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

"Flood insurance study (FIS)" means the official flood insurance study for King County and Incorporated Areas, dated April 19th, 2005, and any official revisions thereto."Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source. See "Flood or flooding."

"Floodplain administrator" means the community official designated by this Chapter to administer and enforce the floodplain management regulations.

"Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Flood proofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively

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increasing the water surface elevation more than a designated height. Also referred to as "Regulatory Floodway."

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

a. By an approved state program as determined by the Secretary of the Interior, or

b. Directly by the Secretary of the Interior in states without approved programs.

"Infrastructure of public significance" means a public improvement, roads, utilities, sidewalks, pedestrian paths, bridges or parks.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in

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violation of the applicable non-elevation design requirements of this chapter found at Section 15.24.160(A)(2), (i.e. provided there are adequate flood ventilation openings).

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean Sea Level" means for purposes of the National Flood Insurance Program, the vertical datum to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this c"New construction" means for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"Recreational vehicle" means a vehicle:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of

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the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" for floodplain management purposes means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

~~"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:~~

- ~~1. Before the improvement or repair is started; or~~
- ~~2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.~~

~~The term can exclude:~~

- ~~1. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or~~
- ~~1. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.~~

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct previously identified existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variance" means a grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by this chapter.

"Water dependent" means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

ARTICLE III. GENERAL PROVISIONS

15.24.060 Lands to which this chapter applies.

15.24.070 Basis for establishing the areas of special flood hazard.

15.24.072 Compliance

15.24.074 Penalties for Noncompliance

15.24.080 Abrogation and greater restrictions.

15.24.090 Interpretation

15.24.100 Warning and disclaimer of liability.

15.24.060 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of Black Diamond.

15.24.070 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for King County and Incorporated Cities" dated ~~May 16, 1995 and 2005~~ August 19, 2020, and any revisions thereto, with an accompanying flood insurance rate map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this

chapter. The flood insurance study and the FIRM are on file at the City of Black Diamond. The best available information for flood hazard area identification as outlined in Section 15.24.130(B) shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section 15.24.030(B).

15.24.072 Compliance

All development within special flood hazard areas is subject to the terms of this ordinance and other applicable regulations.

15.24.074 Penalties for Noncompliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a civil violation under Chapter 8.02, Code Enforcement. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined in accordance with BDMC Chapter 8.02, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

15.24.080 Abrogation and greater restrictions.

The ordinance codified in this chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where the ordinance codified in this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

15.24.090 Interpretation

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.24.100 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of

special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Black Diamond, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

ARTICLE IV. ADMINISTRATION

15.24.110 Establishment of development permit.

15.24.120 Designation of the local administrator.

15.24.130 Duties and responsibilities of the local administrator.

15.24.140 Conditions for variances.

15.24.142 Requirements for Variances.

15.24.144 Variance Criteria

14.24.146 Additional Requirements for the Issuance of a Variance

15.24.110 Establishment of development permit.

A. Activities and Permitted Uses.

1. Infrastructure of public significance is an allowed use within a flood hazard zone as long as the design of the feature or the activity meets the requirements of Article V.
2. Development and structures as set forth in the definitions are only allowed within the flood hazard zone by variance only.

B. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.24.070. The permit shall be for infrastructure of public significance or activities, structures, or uses approved by variance as set forth in the "definitions."

~~C. Application for Development Permit. Application for a development permit shall be made on forms furnished by the City of Black Diamond and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:~~

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1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FF 81-31) with Section B completed by the local official;
2. Elevation in relation to mean sea level to which any structure has been flood proofed;
3. Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet flood proofing criteria in Section 15.24.160(B); and
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

C. Application for Development Permit. Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate with Section B completed by the Floodplain Administrator.
2. Elevation in relation to mean sea level to which any structure has been flood proofed;
3. Where a structure is to be flood proofed, certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet flood proofing criteria in Section 15.24.160(B).
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development;
5. Where development is proposed in a floodway, an engineering analysis indicating no rise of the Base Flood Elevation; and
6. Any other such information that may be reasonably required by the Floodplain Administrator in order to review the application.

15.24.120 Designation of the local Floodplain administrator.

The public works director is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

15.24.130 Duties and responsibilities of the local administrator.

Duties of the public works director shall include, but not be limited to:

- A. Permit Review.

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1. Review all development permits to determine that the permit requirements of this chapter have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

4. 3. The site is reasonably safe from flooding. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 15.24.180(A) are met.

5. Notify FEMA when annexations occur in the Special Flood Hazard Area.

B. Use of Other Base Flood Data (in A and V Zones). When base flood elevation data has not been provided (in A or V zones) in accordance with Section 15.24.070, basis for establishing the areas of special flood hazard, the public works director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Sections 15.24.160, specific standards, and 15.24.180, floodways.

C. Information to be Obtained and Maintained.

~~1. Where base flood elevation data is provided through the flood insurance study, FIRM, or required as in Section 15.24.130(B), obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, whether or not the structure contains a basement and record the information on a current elevation certificate (FF 81-31) with Section B completed by the local official.~~

~~3. For all new or substantially improved flood-proofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section 15.24.130(B):~~

~~a. Obtain and record the elevation (in relation to mean sea level) to which the structure was flood-proofed; and~~

~~b. Maintain the flood-proofing certifications required in Section 15.24.110(B)(3).~~

~~c. Maintain for public inspection all records pertaining to the provisions of this chapter.~~

1. Where base flood elevation data is provided through the FIS, FIRM, or required as in Section 15.24.130 (B), obtain and maintain a record of the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

2. For all new or substantially improved flood proofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section 15.24.130(B):

a. Obtain and maintain a record of the elevation (in relation to mean sea level) to which the structure was flood proofed.

b. Maintain the flood proofing certifications required in Section 15.24.110(B)(3).

3. Certification required by Section 15.24.180. (floodway encroachments).

4. Records of all variance actions, including justification for their issuance.

5. Improvement and damage calculations.

6. Maintain for public inspection all records pertaining to the provisions of this ordinance.

D. ~~Alteration of Watercourse Notification to Other Entities.~~ Whenever a watercourse is to be altered or relocated:

1. Notify adjacent communities and the department of ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration through appropriate notification means, and

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

E. Interpretation of FIRM Boundaries. The public works director may make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g. where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59-76).

~~15.24.140 — Conditions for variances.~~

~~A. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.~~

~~B. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.~~

~~C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.~~

~~D. Variances shall only be issued upon:~~

~~1. A showing of good and sufficient cause; proposals that are not being considered as part of a reasonable use application under the city's sensitive areas ordinance will not be considered as showing good and sufficient cause;~~

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

E. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.

F. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood-proofing than watertight or dry flood-proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection A, and otherwise complies with Sections 15.24.150(A), 15.24.150(C), and 15.24.150(D) of the general standards.

G. Any applicant to whom a variance is granted shall meet all of the provisions of Article V.

15.24.140 Variances.

The variance criteria set forth in this Chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the Base Flood Elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

15.24.142 Requirements for Variances.

A. Variances shall only be issued:

1. Upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
2. For the repair, rehabilitation, or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
3. Upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
4. Upon a showing of good and sufficient cause;
5. Upon a determination that failure to grant the variance would result in exceptional hardship to the applicant;
6. Upon a showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in this ordinance in the definition of "Functionally Dependent Use."

B. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.

C. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the BFE, provided the procedures of Articles IV and V of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

15.24.144 Variance Criteria

A. In considering variance applications, the City shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in time of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and,
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical, water system, and streets and bridges.

14.24.146 Additional Requirements for the Issuance of a Variance

A. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
2. Such construction below the BFE increases risks to life and property.

B. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

C. The Floodplain Administrator shall condition the variance as needed to ensure that the requirements and criteria of this chapter are met.

Variances as interpreted in the NFIP are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.

ARTICLE V. PROVISIONS FOR FLOOD HAZARD REDUCTION

15.24.150 General standards.

15.24.160 Specific standards.

15.25.162 Enclosed Area Below the Lowest Floor

15.25.170 AE and A1-30 zones with base flood elevations but no floodways.

15.24.180 Floodways.

15.24.182 All Other Building Standards Apply in the Floodway.

15.24.190 Critical facility.

15.24.150 General standards.

In all areas of special flood hazards, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements, including those related to manufactured homes, shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
2. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
2. Water wells shall be located on high ground that is not in the floodway.
3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
4. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals and Development.

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1. All subdivision proposals, as well as new development, shall be consistent with the need to minimize flood damage.
2. All subdivision proposals, as well as new development, shall have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
3. All subdivision proposals, as well as new development, shall have adequate drainage provided to reduce exposure to flood damage.
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less) as part of the application.

E. Review of Building Permits. Where elevation data is not available either through the flood insurance study, FIRM, or from another authoritative source (Section 15.24.130(B)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

15.24.160 Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.24.070, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, or Section 15.24.130(B), USE OF OTHER BASE FLOOD DATA. The following provisions are required:

A. Residential Construction.

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated three feet or more above the base flood elevation (BFE).

2. New construction and substantial improvement of any residential structure in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.

3. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

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- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

d. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated three feet or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be flood-proofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water or dry flood proofed to the elevation required by ASCE 24, whichever is greater;

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 15.24.130(C)(2); and

4. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in Section 15.24.160(A)(2).

Applicants who are flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level (e.g. a building flood proofed to the base flood level will be rated as one foot below). Flood proofing the building an additional foot will reduce insurance premiums.

C. Manufactured Homes.

- 1. All manufactured homes in the floodplain to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated three foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

D. Recreational Vehicles. Recreational vehicles placed on sites are required to either:

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1. Be on the site only during the months between June 1st and September 31st; or
2. Be fully licensed and ready for highway use, on wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
3. Meet the requirements of Section 15.24.160(C) above and the elevation and anchoring requirements for manufactured homes.

15.25.162 Enclosed Area Below the Lowest Floor

If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the lowest floor, the areas shall be used solely for parking of vehicles, building access, or storage.

15.25.170 AE and A1-30 zones with base flood elevations but no floodways.

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

15.24.180 Floodways.

Located within areas of special flood hazard established in Section 15.24.070 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:

A. No Rise Standard. Encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge;

B. Residential Construction in Floodways. Construction or reconstruction of residential structures is prohibited within designated floodways, except for (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, or reconstruction is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and

which are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the fifty percent; and

C. If Section 15.24.180(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V, provisions for flood hazard reduction.

15.24.182 All Other Building Standards Apply in the Floodway.

If Section 15.24.180(A) is satisfied or construction is allowed pursuant to Section 15.24.180(B), all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article V, Provision For Flood Hazard Reduction.

15.24.190 Critical facility.

Construction of new critical facilities shall be located outside the limits of the special flood hazard area (SFHA) (one hundred-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the BFE shall be provided to all critical facilities to the extent possible.



CITY OF BLACK DIAMOND

Interoffice Memorandum

TO: BLACK DIAMOND PLANNING COMMISSION
FROM: BARB KINCAID, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: DRAFT AMENDMENTS TO BLACK DIAMOND MUNICIPAL CODE CHAPTER 19.10, SENSITIVE AREA ORDINANCE
DATE: SEPTEMBER 8, 2020

Chapter 19.10 of the Black Diamond Municipal Code (BDMC) is the ordinance for regulating development in “sensitive” or “critical” areas. These are areas that need protection and special consideration because they are of environmental importance.

The Growth Management Act (GMA) and other state and federal environmental protection regulations for sensitive areas are mandated. The GMA explicitly requires cities and counties to adopt and update sensitive area ordinances as needed.

The City’s current sensitive area ordinance (SAO) was adopted in 2009. The Washington State Department of Commerce (Commerce) has since published new guidelines for cities and counties to review and revise their SAOs for GMA compliance.

Staff reviewed the Commerce checklist against the City’s adopted SAO and found that generally, the City’s adopted SAO required few changes. The draft revisions to Chapter 19.10 are attached to this memo. These proposed changes are throughout the ordinance and are shown in the document as highlighted text.

Chapter 19.10 SENSITIVE AREAS

Sections:

- [19.10.005 General provisions.](#)
- [19.10.010 Purpose.](#)
- [19.10.020 Applicability and jurisdiction.](#)
- [19.10.030 Relationship to other regulations.](#)
- [19.10.050 Mitigation.](#)
- [19.10.060 Allowed activities.](#)
- [19.10.080 Exceptions.](#)
- [19.10.100 Sensitive area determination and reports.](#)
- [19.10.110 Sensitive area pre-application meeting.](#)
- [19.10.120 Sensitive area permit review.](#)
- [19.10.130 Sensitive area reports.](#)
- [19.10.140 Mitigation plans.](#)
- [19.10.150 Notice on title.](#)
- [19.10.160 Building setbacks.](#)
- [19.10.170 Non-conforming development.](#)
- [19.10.180 Administration.](#)
- [19.10.190 Appeals.](#)
- [19.10.200 Wetlands.](#)
- [19.10.210 Designation, rating and mapping wetlands.](#)
- [19.10.220 Uses and activities allowed in wetlands and adjacent lands.](#)
- [19.10.230 Wetland buffers.](#)
- [19.10.235 Provisions for small isolated wetlands.](#)
- [19.10.240 Mitigation requirements.](#)
- [19.10.250 Wetland mitigation plan.](#)
- [19.10.260 Wetland mitigation monitoring.](#)
- [19.10.300 Fish and wildlife conservation areas.](#)
- [19.10.310 Designation and mapping.](#)
- [19.10.320 Classification of fish and wildlife habitat conservation areas—Water bodies.](#)
- [19.10.325 Fish and wildlife habitat conservation areas—Water bodies—Buffers.](#)
- [19.10.328 Water bodies—Culvert replacement.](#)
- [19.10.330 Activities allowed in water bodies and habitat buffers.](#)
- [19.10.335 Habitat other than fish and wildlife habitat conservation areas.](#)
- [19.10.337 Fish and wildlife habitat conservation areas—Review and reporting requirements.](#)
- [19.10.340 Mitigation requirements.](#)
- [19.10.400 Geologically hazardous areas.](#)
- [19.10.405 Designation and mapping.](#)

- [19.10.410 Development standards—Landslide hazard areas.](#)
- [19.10.415 Landslide hazard—Review and reporting requirements.](#)
- [19.10.420 Development standards—Erosion hazard areas.](#)
- [19.10.425 Erosion hazard areas—Review and reporting requirements.](#)
- [19.10.430 Mine hazard areas.](#)
- [19.10.435 Mine hazard—Review and reporting requirements.](#)
- [19.10.440 Seismic hazard areas.](#)
- [19.10.445 Seismic hazard—Review and reporting requirements.](#)
- [19.10.500 Sensitive aquifer recharge areas.](#)
- [19.10.600 Definitions.](#)

19.10.005 General provisions.

Sections [19.10.005](#) to [19.10.190](#) are general provisions pertaining to sensitive areas.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.010 Purpose.

This chapter has been enacted for the following purposes:

- A. To designate and classify sensitive areas and their ecosystems and to protect these areas and their functions and values using the best available science, giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, while recognizing and allowing for reasonable use of private property;
- B. To limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values, **through both regulatory and non-regulatory measures;**
- C. To protect members of the public and public resources and facilities from public health or safety concerns, including injury, loss of life, or property damage due to events such as landslides and steep slope failures, erosion, seismic events, and mine hazards;

Commented [LM1]: Addressing checklist category Good Ideas, p. 17-18.

D. To provide for compatible land use on or adjacent to sensitive areas and direct activities not compatible with sensitive areas resources to less ecologically sensitive sites and mitigate unavoidable adverse impacts to sensitive areas by regulating alterations in and adjacent to sensitive areas; and

E. To prevent cumulative adverse environmental impacts to sensitive areas resulting from many individual actions.

F. To place the highest level of protection on what has been identified the "Core" and "Headwater Areas".

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.020 Applicability and jurisdiction.

A. This chapter shall apply to all uses, activities, and developments undertaken within or adjacent to one or more sensitive areas and their ecosystems, including buffers as designated herein. Sensitive areas designated and regulated by this chapter include:

1. Wetlands.
2. Fish and wildlife conservation areas.
3. Geologically hazardous areas.
4. Critical aquifer recharge areas.
5. Frequently flooded areas.

B. The jurisdiction of this chapter includes all development that may have adverse impacts on sensitive areas within the city and their buffers.

1. An inventory of designated sensitive areas is maintained by the city and has been mapped on the Black Diamond Sensitive Areas Maps, as amended or supplemented. Those maps are resources for the identification of the probable location, extent and classification of sensitive areas. Such information may be used by the mayor or his/her designee as a basis for applying the provisions of this code, including requiring field investigation

and special reports. In the event of a conflict between information contained in the sensitive areas maps and information relating to the criteria by which sensitive areas are defined, including information resulting from a field investigation, the latter shall prevail. Preparation and maintenance of such documents and maps shall not create liability on the part of the City of Black Diamond or any officer or employee thereof for any damages that result from reliance on said maps.

2. Any area within the city meeting the definition of one or more sensitive area, regardless of any formal mapping, identification or delineation, are hereby designated as sensitive areas and are subject to the provisions of this chapter.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.030 Relationship to other regulations.

A. These sensitive areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

B. Regulation of frequently flooded areas as required by Chapter 36.70A RCW and WAC 365-190-080 is provided for through the City of Black Diamond Flood Damage Prevention Code, Chapter 15.24 BDMC.

C. Any sensitive area or buffer subject to another type of sensitive area shall be provided the buffer and meet the requirements that provide the most protection to the sensitive areas involved.

C. These sensitive areas regulations shall be applied concurrently with review required under other city codes for development and use and the State Environmental Policy Act (SEPA), and any conditions required pursuant to this chapter shall be included in the review of development or use permits, including SEPA review and threshold determination. If no other permits are required, a separate sensitive areas permit is provided for in Section 19.10.120.B.3.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.050 Mitigation.

Commented [LM2]: Addressing checklist category Frequently Flooded Areas, p. 9.

A. *Project action.* Any project action taken pursuant to this chapter shall be mitigated and result in equivalent or greater functions and values of the sensitive areas associated with the proposed action.

B. *Proposed action.* The design and development of a proposed action under this chapter must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon, and their habitat.

C. *Mitigation sequencing.* All proposed actions and developments shall be designed to avoid, minimize, and/or restore all identified adverse impacts in the following order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the impact and the required mitigation and taking corrective measures action when necessary.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.060 Allowed activities.

The following activities are allowed under this chapter: The level of review shall be determined by the mayor or his/her designee and shall include (1) existing and compatible activities, (2) emergency actions, (3) activities requiring notification or (4) a full permit review through existing permits or the sensitive area review permit or the exception process. The allowed activities under each review process include:

A. *Existing and compatible activities.* The continuation of existing use and activities does not require prior review or approval. Review of expansion of existing use associated with new facilities shall be reviewed in accordance with non-conforming provisions in [Section] [19.10.170](#). Such activities include, but are not limited to:

1. *Operation, maintenance, or repair.* Operation, maintenance, or repair of existing legally established structures, infrastructure improvements, utilities, public or private roads, or drainage systems, that do not require construction permits, if the activity does not modify the character, scope, or size of the original structure or facility or increase the impact to, or encroach further within, the sensitive area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the sensitive area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

2. *Vegetation management.* The following vegetation removal activities are allowed using hand labor and light equipment:

- a. The removal of non-native or noxious and invasive weeds; and
- b. Maintenance of existing, lawfully established landscaping and gardens within a regulated sensitive area or its buffer, including but not limited to, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas as they existed prior to adoption of this code, provided that native

growth protection areas, mitigation sites, or other areas protected via conservation easements or similar restrictive covenants are not covered by this exception.

3. *Outdoor activities.* Recreation, education, and scientific research activities that do not degrade the sensitive area, including such things as fishing, hiking, and bird watching.

4. *Forest practices.* These practices are governed by a valid Forest Practices Permit granted by the Washington State Department of Natural Resources and subject to the requirements of BDMC 15.28.140, except where:

a. The lands have been or are proposed to be converted under a conversion option harvest plan to a use other than commercial forest product production as provided in chapter RCW 76.09.050 and RCW 76.09.240; or

b. On lands which have been platted after January 1, 1960, as provided in RCW 76.09.050 and RCW 76.09.240.

5. *Agricultural activities.* Agricultural activities shall be subject to the provisions [of] [Chapter 19.12](#) of the Black Diamond Municipal Code in effect prior to this amendment until July 1, 2010, pursuant to RCW 36.70A.560.

6. *Boundary markers.* Construction or modification of boundary markers.

B. *Emergencies.* Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to public or private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter may be undertaken without prior notification. The mayor or his/her designee shall be provided notification of action taken within two working days after work is initiated, except for city-wide or regional disasters. Mitigation for alteration of sensitive areas may be required and may require subsequent preparation of a sensitive areas report and appropriate permits for restoration in accordance with the review procedures contained herein.

Commented [LM3]: Addressing checklist category Forest Practices Application Requirements, p. 17.

Restoration and/or mitigation activities must be initiated within ninety days of the date of the emergency, and completed in a timely manner.

C. Actions subject to notification and approval. The following actions that can be planned and programmed in advance require written notification to the mayor or his/her designee. If the mayor or his/her designee does not respond within ten days of notification, the activity is deemed approved. The notification must be in a format specified by the administrator to provide specific information describing the activity and the best management practices proposed to minimize impacts on sensitive areas, as well as mitigation proposed. The mayor or his/her designee may deny or impose conditions on proposed activities, or specify that an alternative review process is required. Such activities include:

1. *Minor site investigative work.* Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or displacement of more than ten cubic yards of material. Investigations involving displacement of more than ten cubic yards of material, including geotechnical soil borings, groundwater monitoring wells, percolation tests, and similar activities shall require submittal of specific plans and restoration plans. In every case, impacts to the sensitive area shall be minimized and disturbed areas shall be immediately restored; and

2. *Minor utility projects.* Utility projects that have minor or short-duration impacts to sensitive areas, as determined by the mayor or his/her designee in accordance with the criteria below, and which do not significantly impact the function or values of the sensitive area(s); provided that such projects are constructed with best management practices and additional restoration measures are implemented. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:

a. There is no practical alternative to the proposed activity with less impact on sensitive areas;

- b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
- c. The activity involves disturbance of an area less than seventy-five square feet.

3. *Activities within the improved right-of-way.* Replacement, modification, installation, or construction of new utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city authorized private roadway (road surface, shoulder, sidewalks, and fill slopes not characterized by re-establishment of trees in excess of four inches in diameter); except, those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. All activities are subject to the following:

- a. Sensitive area and/or buffer widths shall be increased, where possible, equal to the area of disturbance; and
- b. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.

4. *Hazardous tree removal.* The removal of trees from sensitive areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property can be conducted in accordance with the [Chapter 19.30](#) provided that:

- a. All vegetation cut (tree stems, branches, etc.) shall be left within the sensitive area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation or due to the potential for a public safety hazard;
- b. The landowner shall replace any trees that are removed with new trees in accordance with an approved restoration plan within at a ratio that will lead to re-establishment of ecological functions of water cycle, erosion control, shade and habitat. Replacement plantings generally will consist of replanting of the area within the

drip line of the removed tree and include either one gallon containers at a minimum triangular spacing of five feet, five gallon containers at a minimum triangular spacing of eight feet, or at a minimum a ratio of two replacement trees for each tree removed (2:1) of trees a minimum of four to six feet in height for deciduous trees and six to twelve feet for evergreens as measured from the top of the root ball. Restoration plantings must be installed within the next feasible growing season and in no case more than one year from removal. A performance security may be required to assure implementation. Replacement trees shall be species that are native and indigenous to the site;

c. If a tree to be removed provides sensitive habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts. Compliance with state and federal requirements may be required.

5. Removal of vegetation or woody debris from a wildlife conservation area or wetland due to the potential for disease or pest transmittal to other healthy vegetation or due to the potential for a fire or other public safety hazard, or as a necessary part of an approved alteration.

6. Measures to control a fire or halt the spread of disease or damaging insects consistent with the state Forest Practices Act, Chapter 76.09 RCW, provided that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan.

7. Activities undertaken to comply with a United States Environmental Protection Agency superfund related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act that specifically preempts local regulations in the findings of the order. Provided that an action that requires compliance with the purpose and intent of local regulations may require a submittal of sensitive area reports and may be processed as a sensitive areas permit.

8. Activities and facilities for restoration and enhancement of ecological functions of sensitive areas and related resources upon approval of a

restoration and mitigation plan by all other relevant agencies in accordance with a watershed restoration project pursuant to RCW 89.08.460, a Salmonid Recovery Plan, or Salmon Recovery Board Habitat Project List, or identified by the Washington Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement pursuant to RCW 77.55.290.

D. All actions that do not meet the criteria above must be approved in accordance with sensitive areas review integrated with other required permits or by a sensitive areas permit.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.080 Exceptions.

A. *Agricultural activities.* The provisions of this sensitive areas ordinance shall not apply to agricultural activities. "Agricultural activities" shall mean agricultural uses and practices existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170, as currently enacted or hereafter amended, including but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment or facilities, when the facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.

B. *Essential public facility.* If the application of this chapter would prohibit a development proposal by a public agency or public utility that is essential to providing a public service, or if the application of this chapter would deny all reasonable economic use of the subject property by the property owner, then the agency or utility or property owner may apply for an exception pursuant to this section.

C. *Exception request and review process.* An application for a public agency, public utility or reasonable use exception shall be made to the city and shall

include a sensitive area identification form; sensitive area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents. The mayor or his/her designee shall prepare a recommendation to the hearing examiner, except for the provisions for a non-conforming single family lot as provided in subsection (E) below, based on review of the submitted information, a site inspection, and the proposal's ability to comply with the applicable public agency and utility exception review criteria in subsection (D) below.

D. *Hearing examiner review.* The hearing examiner shall review the application, except for the provisions for a non-conforming single family lot as provided in subsection (E) below, consider the recommendation of the mayor or his/her designee, and consider public testimony at a public hearing. The hearing examiner 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).

E. *Exception review criteria.* The criteria for review and approval of a requested exception are as follows:

1. *Public agencies and public utilities exception:*

- a. There is no other practical alternative to the proposed development with less impact on the sensitive areas;
- b. The application of this chapter would unreasonably restrict the ability to provide utility services to the public;
- c. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- d. The proposal attempts to protect and mitigate adverse impacts to the sensitive area functions and values; and
- e. The proposal is consistent with other applicable regulations and standards.

2. *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.

3. *Reasonable use exception for non-conforming single family lots:*

- a. A reasonable use exception may be approved administratively by the mayor 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 twenty thousand 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 two thousand five hundred 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 with a ten-foot setback 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, including ten-foot setback, to a maximum of two thousand five hundred 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 should be maintained or planted in native trees and understory vegetation.

e. The mayor 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).

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.100 Sensitive area determination and reports.

Sections [19.10.100](#) through [19.10.140](#) pertain to sensitive areas determination and reports.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

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 mayor or his/her designee prior to submitting an application for development or other approval. At this meeting, the mayor or his/her designee 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.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.120 Sensitive area permit review.

A. *Integration with other permits.* The approval or denial of an activity or modification within a sensitive area shall be integrated with the review required by any other permit. The decision shall be made by the decision-maker prescribed by the underlying permit, provided that the mayor or his/her designee shall prepare a written analysis that may be in checklist form, for compliance with sensitive area standards and criteria. The review process will be integrated with the review of the underlying permit. Public notice is required only if required by the underlying permit.

B. *Separate permit review.* If no other permit or approval is required, or for approval of allowed uses listed in [Section 19.10.060](#), or for review of sensitive areas jurisdiction as provided in [subsection] (C)(1) below, the mayor or his/her designee may approve a separate sensitive areas permit. Submittal requirements may be modified to address the specific proposal. Fees shall be in accordance with the city fee schedule. Review shall be administrative. If variation in standards for any sensitive area is proposed, public notice shall be provide as provided for a variance in the zoning code. Sensitive area reviews include:

1. *Emergencies.* Notification of emergency actions taken where there is imminent danger to persons of property requiring that action must take place within forty-eight hours do not require prior approval. Such notification shall describe work performed and sensitive areas and buffers disturbed. The mayor or his/her designee may:

- a. Administratively approve the emergency action taken with no further action required;
- b. Administratively approve restoration activities that do not require other permits or approvals. A sensitive areas report and/or mitigation plan may be required.

c. Direct the applicant to apply for other required permits or approvals for required restoration activities.

2. *Actions subject to notification and approval.* Actions that can be planned and programmed in advance, including repair or replacement of utility facilities that do not require other permits or approval shall be subject to notification and administrative review. The mayor or his/her designee shall specify requirements for submittal requirements to address information required on the presence of sensitive areas, description of the activity proposed, and description of the BMPs proposed. The mayor or his/her designee may approve said work and impose conditions upon finding that no substantive impact on sensitive area functions and values will occur. Notification shall be submitted at least ten full business days prior to initiating work. Approvals may be granted for up to one year per activity provided that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process.

3. *Sensitive area permit.* Projects that may have substantial impacts on sensitive area functions, but do not require other permits may be reviewed by the mayor or his/her designee as a sensitive area permit subject to all submittal and review criteria and standards of this section. Jurisdiction determinations can be made for projects requiring other permits or approvals; however, review of the proposal must take place in conjunction with other review required.

C. *Sensitive areas jurisdiction decision.* At the time of, or prior to the city's consideration of any proposed activity, the applicant shall submit to the department a completed sensitive area determination on a form provided by the city.

1. *Review.* Upon receipt of a project application and a sensitive area determination form, the mayor or his/her designee shall review available sensitive area maps and data and conduct a site inspection to review sensitive area conditions on site if needed. The administrator and/or his designee make a determination as to whether any sensitive areas may be affected by the proposal and if a sensitive areas report will be required based on the following indicators:

- a. Indication of a sensitive area on the city sensitive areas maps that may be impacted by the proposed activity;
- b. Information and scientific opinions from appropriate agencies, including but not limited to the departments of Fish and Wildlife, Natural Resources, and Ecology;
- c. Documentation, from a scientific or other reasonable source, of the possible presence of a sensitive area; or
- d. A finding by a qualified professional or a reasonable belief by the mayor or his/her designee that a sensitive area may exist on or adjacent to the site of the proposed activity.

2. *Determination decisions.*

- a. No sensitive areas present. If, after a site visit, the analysis by the mayor or his/her designee indicates that the project area is not within or adjacent to a sensitive area or buffer and that the proposed activity is unlikely to degrade the functions or values of a sensitive area, then the mayor or his/her designee shall rule that the sensitive area review is complete and note on the determination form the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.
- b. Sensitive areas present, but no impact—Report waiver. If the mayor or his/her designee determines that there are sensitive areas within or adjacent to the project area, but that the proposed activity is outside of required buffer areas and is unlikely to degrade the functions or values of the sensitive area, the administrator may waive the requirement for a sensitive area report. A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
 - i. The boundaries and classification of the sensitive area and associated buffers can be reliably determined without a technical study, and there will be no alteration of the sensitive area or buffer;

ii. The development proposal will not adversely impact the sensitive area in a manner contrary to the purpose, intent, and requirements of this chapter; and

iii. The proposal is consistent with other applicable regulations and standards.

c. Sensitive areas may be affected by proposal. If the mayor or his/her designee determines that a sensitive area or areas may be adversely affected by the proposal, then the administrator shall notify the applicant that a sensitive areas report must be submitted prior to further review of the project, and indicate each of the sensitive area types that should be addressed in the report.

d. Sensitive area jurisdiction decisions shall be final unless unknown information is brought to the attention of the mayor or his/her designee.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

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.

B. Use of existing documents. Unless otherwise provided and as approved by the mayor or his/her designee, a sensitive area report may be supplemented by or composed, in whole or in part, of any reports or studies required under other laws and regulations or previously prepared for and applicable to the development proposal site.

C. Modifications to report requirements.

1. *Limitations to study area.* The required geographic area of the sensitive area report may be limited as appropriate if:

a. The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or

b. The proposed activity will affect only a limited part of the subject site.

2. *Modifications to required contents.* The applicant may consult with the mayor or his/her designee prior to or during preparation of the sensitive area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential adverse impacts and required mitigation.

3. *Additional information requirements.* The mayor or his/her designee may require additional information to be included in the sensitive area report if necessary, for the city to adequately review the proposed activity in accordance with this chapter.

D. *Minimum report contents.* At a minimum, the report shall contain the following information:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
2. A copy of the site plan for the development proposal including:
 - a. A map to scale depicting sensitive areas and buffers, and any areas to be cleared;
 - b. Extent of the project area for the proposed activity;
 - c. Topographic elevations at two-foot intervals for the sensitive area and its buffer, and at five-foot intervals for the remainder of the project site;
 - d. Location of existing and proposed structures, and areas for storage of materials;
 - e. A description of the proposed stormwater management plan and facilities for the development and consideration of adverse impacts to drainage alterations.
3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

4. Identification and characterization of all sensitive areas and buffers, water bodies, and floodplains within three hundred feet of the proposed project area;
5. Detailed description of vegetation in and adjacent to the project area and its associated buffer;
6. A statement documenting sources of best available science and all assumptions made and relied upon;
7. A description of reasonable efforts made to apply mitigation in the order of preference as stipulated in [Section 19.10.050](#);
8. If required, plans for adequate mitigation to offset any adverse impacts, in accordance with [Section] [19.10.140](#), and including, but not limited to:
 - a. The adverse impacts of any proposed development within or adjacent to a sensitive area or buffer on the sensitive area; and
 - b. The adverse impacts of any proposed alteration of a sensitive area or buffer on the development proposal, other properties and the environment.
9. A discussion of the performance standards applicable to the sensitive area and proposed activity; and
10. Proposed financial guarantees to ensure compliance.

E. *Additional information requirements for specific sensitive areas.* In addition to the report requirements listed above in [Section 19.10.130\(D\)](#), the minimum information specific to each sensitive area category shall also be required.

F. The city maintains the authority to call for a third party, independent review, paid for by the applicant, if a disagreement exists in the content of the sensitive area report.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.140 Mitigation plans.

A. *Requirements.* When mitigation is required, the applicant shall submit for approval by the city, a mitigation plan as part of the sensitive area report. The mitigation plan shall include:

1. A description of the anticipated adverse impacts to the sensitive areas and the mitigating actions proposed and the purposes of the compensation measures (if applicable), including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted sensitive area;
2. A review of the best available science supporting the proposed mitigation; and
3. Specific information requirements and criteria are provided below for each sensitive area.

B. *Plan criteria.* The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met.

C. *Plan specifications.* The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as (and if applicable):

1. Specific calculations of the area of impact and mitigation area utilized;
2. The proposed construction sequence, timing, and duration;
3. Grading and excavation details;
4. Erosion and sediment control features;
5. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
6. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

D. *Monitoring program.* The mitigation plan shall include a program for monitoring construction of the proposed mitigation or compensation project and for assessing the completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur during the construction of the development and also in years one, three, and five after final acceptance of the project by the city), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the project. After final acceptance of the project by the city, the mitigation efforts shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than three years. Specific more detailed information requirements and criteria are provided below for each sensitive area.

E. *Contingencies.* The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

F. *Financial guarantees.* The mitigation plan shall include proposed financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted with the city at the time of the first grading, clearing, or construction permit in the amount as provided below:

1. *Performance surety.* The applicant shall post a cash performance bond, letter of credit, or other security acceptable to the city in the amount of one hundred twenty-five percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the sensitive area that are at risk, whichever is greater. The surety shall be based on an itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs. The conditions of the surety shall be consistent with the purposes of this chapter and the conditions to be

fulfilled. In the event of a breach of any condition of any such bond, the city may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution. The city shall release the bond upon determining that:

- a. All activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the permit and the requirements of this chapter;
- b. Upon the posting by the applicant of a maintenance surety.

2. Maintenance and monitoring surety. The city shall require the holder of a development permit issued pursuant to this chapter to post a cash performance bond, letter of credit, or other security acceptable to the city in an amount and with surety and conditions sufficient to guarantee that structures, improvements and mitigation required by the permit and by this chapter are performed satisfactorily, including performing required maintenance during the monitoring period identified in [Section 19.10.140\(D\)](#) that follows final acceptance of the development by the city. The city shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements and/or compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the permit review process. The maintenance bond applicable to a compensation project shall not be released until the city determines that performance standards established for evaluating the effect and success of the project have been met. The mayor or his/her designee may return up to twenty-five percent of the surety following the first year of monitoring provided that the year one performance standards are met and the risk of subsequent failure is considered low.

3. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.

4. Public development proposals may be relieved from having to comply with the surety requirements of this section if public funds have been committed

through a budget process with final approval for mitigation, maintenance, or monitoring.

G. *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:

1. 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.
2. 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.
3. 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.
4. Mitigation banks shall be used for mitigation of impacts to wetlands and wildlife habitat areas within the Lake Sawyer watershed except in cases where the mayor or his/her designee determine that mitigation is not feasible within the Lake Sawyer watershed.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.150 Notice on title.

A. Recording of restriction. The owner of any property containing sensitive areas on which a development proposal is approved shall file with the mayor or his/her designee and provide a copy of the filed notice to the city, unless notice is provided on a plat as provided in [subsection] (B), below. The notice shall:

1. State the presence of the sensitive area and/or buffer area on the property, and identify that there are limitations and restrictions on uses and actions in or affecting the sensitive area and/or buffer imposed by this code and by the provisions of the sensitive areas code and specific conditions of approval. The notice shall indicate that the restrictions run with the land and may be altered only in conjunction with amendment of this chapter or amendment of specific conditions of approval as provided by this chapter.
2. Provide that management of the sensitive area is required to include, but is not limited to, maintenance or replacement of vegetation to assure the long-term viability of a community of native vegetation, control of invasive plant control, and fulfillment of other conditions of approval.
3. Provide for the right of the public, and specifically the City of Black Diamond, to enforce the terms of the restrictions through civil infraction or other legal address.
4. If a site plan has been approved indicating the extent of the sensitive area and buffer and permit conditions, a copy of the site plan together with relevant survey information and permit conditions shall be included in the notice filed.

B. Plats and short plats. Restrictions on use and development of sensitive areas buffers and setback areas on plats and short plats shall include the information in [subsection] (A), above, shall designate the party responsible for maintenance of the sensitive area, if other than the property owner, and shall place sensitive areas in tracts or easements as provided below:

1. Designation of separate tracts for sensitive areas and buffers shall be the preferred method of designation and protection of sensitive areas in plats to provide for integrated management of the sensitive area and buffer separately from lots. The tract may be:

a. Held in an undivided interest by each owner of a building lot within the development, the ownership of which shall pass with the ownership of the lot. Responsibility for meeting all requirements of preservation and management shall be designated to an incorporated homeowner's association or other legal entity that assures the ownership and protection of the sensitive area.

b. Dedicated to the City of Black Diamond or other governmental entity qualified to own and manage open space as soon as any mitigation and monitoring requirements have been completed by the applicant.

c. Conveyed to a non-profit land trust, provided the land may not be thereafter transferred to a private party, and provided that if the land trust is dissolved or otherwise fails to perform its functions, ownership and responsibility for management shall devolve to an undivided interest by each owner of a building lot within the development, as provided in [subsection] a., above.

2. The mayor or his/her designee may allow a sensitive area and buffer to be placed within a protective easement on a parcel with the responsibility for meeting all requirements of preservation and management placed on the owner of the parcel over which the easement is placed. This means of designation shall be used in cases where the size and the ecological functions of the sensitive area do not require coordinated management or where formation of an incorporated homeowner's association or other legal entity for management is found to be impractical because of the limited number of lots, or where ownership and management by the city, a qualified special district or a land trust is found to be impractical. This alternative generally will be limited to sensitive areas and buffers of less than twenty thousand square feet and developments of fewer than ten parcels, or non-residential or multi-family development.

C. This notice on title shall not be required for a development proposal by a public agency or public or private utility within a right-of-way or easement for which they do not have fee-simple title.

D. The applicant shall submit proof that the notice, dedication or easement has been filed for public record before the city shall approve any final plat or final site plan for such site. The notice shall run with the land and failure to provide such

notice to any purchaser prior to transferring any interest in the property shall be a violation of this section.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.160 Building setbacks.

A. Buildings and other structures shall be set back a sufficient distance to assure that disturbance to sensitive area vegetation and soils is avoided during construction, maintenance and use.

B. Buildings and other structures shall be set back a distance of ten feet from the edges of all sensitive area buffers or from the edges of all sensitive areas if no buffers are required, provided that the mayor or his/her designee may modify the building setback based on specific development plans that document that construction techniques, maintenance needs and use will not disturb sensitive areas or buffer.

C. If slopes adjacent to the buffer for wetlands or water bodies exceed fifteen percent, including slopes created by grading, a swale installed on the outside edge of the buffer or other engineered solution shall be installed sufficient to intercept surface water movement.

D. The following facilities and uses are allowed in the building setback:

1. Landscaping, including rockeries not over forty-two inches high provided construction does not alter the buffer or sensitive area;
2. Uncovered decks, platforms, porches and similar projections not over forty-two inches high;
3. Building eaves, cornices, chimneys and similar projections;
4. 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;
5. Clearing and grading consisting of not over forty-two inches of cut or fill;
6. Fences, in accordance with local covenants and other design standards;

7. Small utility projects.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.170 Non-conforming development.

The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this program.

A. Non-conforming uses shall be governed in accordance with the provisions of the zoning code or in accordance with the Shoreline Master Program subject to additional provisions in this chapter. Such use may not be altered or expanded except in compliance with standards provided in said codes.

B. Non-conforming structures, facilities and developments damaged by fire or other cause shall be governed in accordance with the provisions of the zoning code or in accordance with the Shoreline Master Program subject to additional provisions in this chapter.

C. 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.

1. *Minor alteration or renovation* shall be defined as alteration or renovation of any structure, or making other improvements, that result in any of the following:

- a. Expansion of floor area by up to five hundred square feet, or by up to ten percent, whichever is less; or
- b. Expansion of impervious surface by up to one thousand square feet, or by up to ten percent, whichever is less; or
- c. Remodeling or renovation that equals less than fifty percent of the value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems.

Minor alteration may require compliance with specific performance standards of this code.

2. *Moderate alteration or renovation* shall be defined as the alteration or renovation of any structure, or making other improvements, that result in any of the following:

- a. Expansion of floor area by five hundred square feet or more, or by more than ten percent but less than fifty percent, whichever is less; or
- b. Expansion of impervious surface by more than one thousand square feet, or by more than ten percent but less than fifty percent, whichever is less; or
- c. Remodeling or renovation equal to or greater than fifty percent but less than one hundred percent of the value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems.

Moderate alteration may require compliance with specific performance standards of this code.

3. *Substantial alteration or redevelopment* shall be defined as alteration or renovation of any structure, or making other improvements, that result in any of the following:

- a. Expansion of floor area by fifty percent or more, or the expansion of impervious surface by fifty percent or more; or
- b. Remodeling or renovation equal to or exceeding one hundred percent of the value of the existing structures or 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.

D. Buffer adjustment based on existing lot depth. The mayor or his/her designee may vary buffer dimensions on existing lots under contiguous ownership to 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.

1. Lot depth less than one hundred feet—Buffers may be adjusted to utilize no more than forty percent of lot depth, or as necessary to provide a buildable area outside the buffer no less than forty feet deep, provided that a minimum buffer is not less than twenty-five feet or fifty percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
2. Lot depth one hundred feet to one hundred fifty feet—Buffers may be adjusted to utilize no more than fifty percent of lot depth or fifty percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
3. Lot depth one hundred fifty to two hundred feet—Buffers may be adjusted to utilize no more than sixty percent of lot depth or sixty percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
4. Lot depth two hundred feet to two hundred fifty feet—Buffers may be adjusted to no more than sixty-five percent of lot depth or sixty-five percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.
5. 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.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.180 Administration.

A. The mayor or his/her designee shall have the authority to adopt administrative rules as deemed necessary consistent with the provisions of this chapter and that are necessary for the implementation of sensitive area regulations.

B. The mayor or his/her designee shall have a right to enter upon any property at reasonable times and to make such inspections as are necessary to determine

compliance with the provisions of this chapter or the conditions imposed pursuant to this chapter. The city shall make a reasonable effort to locate the owner or persons in charge and notify them of the times and purposes of required entry.

C. The mayor or his/her designee is further authorized to take such actions as may be necessary to enforce the provisions of this chapter including but not limited to the civil infraction, abatement and criminal penalties provided in the Black Diamond Municipal Code.

D. The city's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.190 Appeals.

A. An aggrieved party may appeal a decision of the city granting or denying a permit that is subject to the appeal process provided for the underlying permit.

B. For a sensitive areas permit where no other permit is provided, an appeal may be filed pursuant to the provisions for administrative appeal in the zoning code.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.200 Wetlands.

Sections 19.10.205 to [19.10.240](#) pertain to wetlands.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.210 Designation, rating and mapping wetlands.

Wetlands in Black Diamond are designated and classified in accordance with the following provisions:

A. Designating wetlands. Wetlands are those areas designated in accordance with the requirements of RCW 36.70A.175 and 90.58.380 and the *Washington State Wetland Identification and Delineation Manual* (~~1989~~).

as supplemented). All areas meeting the criteria in manual regardless of mapping or other identification are designated sensitive areas and are subject to the provisions of this chapter.

Commented [LM4]: Addressing checklist category Wetlands Delineation, p. 5, to correct a typographical error.

B. Wetlands shall be rated based on categories that reflect the functions and values of each wetland.

1. *Core wetland and stream complex.* The wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as the core stream and wetland complex. The general boundaries of the area affected are designated within the Best Available Science Document, Technical Appendix B, provided that the dimensions of the area shall be defined by the field verified wetland boundaries and the buffers defined in [Section 19.10.230](#).

2. *Headwaters wetlands.* The wetland complex associated with the headwaters of Ginder Creek, Lawson Creek and Ravensdale Creek are defined as headwaters wetlands. The general boundaries of the area affected are designated within the Best Available Science Document, Technical Appendix B, provided that the dimensions of the area shall be defined by the field verified wetland boundaries and the buffers defined in [Section 19.10.230](#).

3. *Other wetlands.* All other wetlands are rated according the following categories based on the criteria provided in the Washington State Wetland Rating System for Western Washington, revised ~~August 2004~~2014 (Ecology Publication # ~~104-06-0295~~). These categories are generally defined as follows:

Commented [LM5]: Addressing checklist category Wetlands Protection, p. 5.

a. *Category I wetlands.* Category I wetlands are those wetlands of exceptional value in terms of protecting water quality, storing flood and storm water, and/or providing habitat for wildlife as indicated by a rating system score of seventy points or more. These are wetland communities of infrequent occurrence that often provide documented habitat for sensitive, threatened or endangered species, and/or have other attributes that are very difficult or impossible to replace if altered.

b. *Category II wetlands.* Category II wetlands have significant value based on their function as indicated by a rating system score of between fifty-one and sixty-nine points. They do not meet the criteria for category I rating but occur infrequently and have qualities that are difficult to replace if altered.

c. *Category III wetlands.* Category III wetlands have important resource value as indicated by a rating system score of between thirty and fifty points.

d. *Category IV wetlands.* Category IV wetlands are wetlands of limited resource value as indicated by a rating system score of less than thirty points. They typically have vegetation of similar age and class, lack special habitat features, and/or are isolated or disconnected from other aquatic systems or high-quality upland habitats.

C. Illegal modifications. Wetland rating categories shall not change due to illegal modifications.

D. Mapping. The approximate location and extent of identified wetlands are shown on the Black Diamond Sensitive Areas Map(s). These maps are to be used as a guide for the city, project applicants, and/or property owners, and may be continuously updated as mapped wetlands become more specifically delineated and new wetlands (if any) are identified. They are a reference and do not provide a final sensitive area designation.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.220 Uses and activities allowed in wetlands and adjacent lands.

The activities listed below are allowed in wetlands in addition to those activities listed in, and consistent with, the provisions and activities established in [Section 19.10.060](#), and [Section] [19.10.120](#), sensitive area permit review.

A. Activities and facilities that do not require prior review or approval, provided, that were the mayor or his/her designee determines such activities

may result in a loss of functions and values of a wetland or its buffer the provisions of [subsections] (B) or (C) shall apply. These activities include:

1. Outdoor recreational or educational activities directly related to the cultural, recreational, scientific and educational aspects of the wetland and buffer and that do not remove vegetation or otherwise affect the function of the wetland or buffer (including wildlife management, viewpoints, outdoor scientific or interpretive facilities, and sports fishing) that have a minimal adverse impact may be permitted within a category II, III, or IV wetlands or their buffers and may be permitted only within the buffer of a category I wetland the buffer of a wetland in the core complex or the buffer of a headwaters wetland.
2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.
3. The harvesting of crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources may be permitted within a category II, III, or IV wetlands or their buffers and may be permitted only within the buffer of a category I wetland the buffer of a wetland in the core complex or the buffer of a headwaters wetland.
4. Enhancement of a wetland through the removal of non-native invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be re-vegetated with native shrubs, and trees at natural densities. Some hand seeding may also be done over the bare areas with native grasses.

B. Actions that can be planned and programmed in advance requiring notification and review in accordance with [Section 19.10.060\(B\)\(2\)](#):

1. Drilling for utilities under a category II, III, or IV wetland and buffer provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil

column. Specific studies by hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed. Staging areas shall be located outside the wetland buffer.

2. Overhead utility lines may cross a category II, III, or IV wetland provided that the line spans the wetland with no poles or other supports within the wetland. Poles may be placed in category II, III, or IV wetland buffers.

3. Trails may be permitted within a category II, III, or IV wetlands or their buffers and may be permitted only within the buffer of a category I wetland, the buffer of a wetland in the core complex or the buffer of a headwaters wetland if the following criteria are met:

- a. Trails are limited to buffer areas except for limited area of pile supported trail sections or viewing areas may be placed within category II, III and IV wetlands for interpretive purposes.
- b. Trails shall not exceed four feet in width and shall be surfaced with wood chips, gravel or other pervious material, including boardwalks.
- c. The trail or facility is located in the outer fifty percent of the category II, III and IV buffer and the outer twenty-five percent of the buffer of a category I wetland, the buffer of a wetland in the core complex or the buffer of a headwaters wetland, except for limited placement closer to the wetland edge or within a category II, III and IV wetland for interpretive purposes as provided above.
- d. The trail or facility is constructed and maintained in a manner that minimizes disturbance of the wetland or buffer. Trails or facilities within wetlands should be placed on an elevated structure as an alternative to fill.
- e. Any adverse impacts on wetland functions and values are mitigated in accordance with [Section 19.10.240](#).

C. Uses and activities that shall be reviewed by a full permit process include:

1. Drilling for utilities under a wetland or buffer in the core complex, within a headwaters wetland or buffer or a category I wetland or buffer, may be permitted if the following criteria are met:

- a. There is no reasonable location or route outside the wetland or wetland buffer based on analysis of system needs, available technology and alternative routes. Location within a wetland buffer shall be preferred over a location within wetlands.
- b. The drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed.
- c. Staging areas are located outside the wetland buffer.
- d. Impacts on wetland functions are mitigated in accordance with [Section 19.10.240](#).

2. Overhead utility lines that cross a wetland or buffer in the core complex, within a headwaters wetland or buffer or a category I, II, III, or IV wetland or buffer, with no poles or other supports within the wetland:

- a. There is no reasonable location or route outside the wetland or wetland buffer based on analysis of system needs, available technology and alternative routes. Location within a wetland buffer shall be preferred over a location within a wetland.
- b. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line, and the area is restored following utility installation.
- c. Impacts on wetland functions are mitigated in accordance with [Section 19.10.240](#).

3. Linear utilities and facilities such as water and sewer lines providing local delivery service, but not including non-linear facilities such as electrical substations, water and sewage pumping stations, water storage tanks, and not including petroleum products pipelines and not

including transformers or other facilities containing hazardous substances, may be located in category II, III, and IV wetlands and their buffers and the buffer of a category I wetland, the buffer of a wetland in the core complex or the buffer of a headwaters wetland if the following criteria are met:

- a. There is no reasonable location or route outside the wetland or wetland buffer based on analysis of system needs, available technology and alternative routes. Location within a wetland buffer shall be preferred over a location within a wetland.
- b. The utility line is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation.
- c. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line, which may include boring, and the area is restored following utility installation.
- d. Buried utility lines shall be constructed in a manner that prevents adverse impacts to subsurface drainage. This may include the use of trench plugs or other devices as needed to maintain hydrology.
- e. Impacts on wetland functions are mitigated in accordance with [Section 19.10.240](#).

4. Public and private roadways and railroad facilities, including bridge construction and culvert installation, and access to private property may be permitted in wetlands or their buffers, if the following criteria are met:

- a. There is no reasonable location or route outside the wetland or wetland buffer based on analysis of alternative routes including through the provisions of RCW 8.24. Location within a wetland buffer shall be preferred over a location within a wetland. Location in a category II, III, and IV wetlands or their buffers shall be preferred over location in a category I wetland or its buffer, a wetland in the core complex or its buffer, or a headwaters wetland or its buffer.

- b. Facilities in the buffer parallel to the wetland edge shall be located as far from the wetland edge as possible.
 - c. Clearing, grading, and excavation activities are limited to the minimum necessary, which may include placement on elevated structures as an alternative to fill, where feasible.
 - d. Disturbance of soils and vegetation shall be minimized.
 - e. Impacts on wetland functions are mitigated in accordance with [Section 19.10.240](#).
5. Storm water detention/retention ponds are not permitted in a wetland buffer. However, storm water conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a wetland buffer, but only if the following criteria are met:
- a. Due to topographic or other physical constraints, there are no feasible locations for these facilities to discharge to surface water through existing systems or outside the buffer.
 - b. Locations and designs that infiltrate water shall be preferred for category I, II, III, or IV wetland buffer over a design that provides for pipelines or surface discharge across the buffer or into the wetland. Only infiltration facilities are allowed within the buffer of a wetland in the core complex, or the buffer of a headwaters wetland and only when no trees of greater than four inches in diameter are disturbed.
 - c. A hydroperiod analysis is conducted and no impact is demonstrated by the study.
 - d. The discharge into a category I, II, III, or IV wetland is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation and avoids long-term rill or channel erosion. Surface water discharge into a wetland in the core complex or a headwaters wetland is prohibited unless analysis demonstrates that infiltration is not feasible because of inherent features such as soil type.

6. On-site sewage disposal system conventional drainfields are not permitted within wetland buffers.

D. Development of adjacent land shall minimize adverse effects on the wetland, and shall include the following standards:

1. Fencing and appropriate sensitive area signage as dictated by the most recent version of the City of Black Diamond's design standards shall be provided at the perimeter of any development or land use activity.

2. Activities that generate noise shall be located as far from the wetland and buffer as feasible. Roads, driveways, and parking lots for other than park and recreation facilities, as well as loading areas, mechanical or ventilating equipment shall be located on sides of buildings away from the wetland.

3. Light penetration into buffer areas and wetlands shall be limited. All exterior lighting shall be designed, placed, shielded and/or directed so that no light directly shines or intrudes into the wetland, stream or any sensitive.

4. Management of surface runoff from adjacent land shall minimize adverse effects on wetland ecological functions and shall include:

a. Control of surface water peak flow and duration of flow should be maintained at rates typical of native forest cover;

b. Low impact development measures shall be incorporated to the maximum extent feasible, including but not limited to:

(i) Site design to maximize preservation of existing patterns of overland water flow and of groundwater interflow;

(ii) Vehicle and pedestrian circulation systems that minimize alteration of topography and natural hydrologic features and processes through following the natural contours of the land;

(iii) Road location and circulation patterns shall reduce or eliminate stream crossings and encroachment on sensitive areas and their buffers;

(iv) Utilities consolidated within roadway and driveway corridors to avoid additional clearing for multiple corridors;

(v) Layout of lots and or structures to minimize alteration of existing topography, disturbance to soils and native vegetation;

(vi) Runoff should be routed to infiltration systems, to the maximum extent feasible, to provide groundwater interflow recharge to wetlands and/or water bodies and to limit overland flow and erosion:

(1) Use of permeable pavement;

(2) Dispersion of runoff into areas that permit infiltration;

(3) Engineered facilities designed for bioretention and infiltration ranging from swales to ponds to tree wells to engineered wetlands.

c. Surface or piped stormwater should be routed to existing conveyances or to other areas, wherever hydraulic gradients allow. Where stormwater is routed to wetlands, system design shall assure that erosion and sedimentation will be avoided to the maximum extent feasible;

d. To prevent channelized flow from lawns and other landscaped areas from entering the buffer, and to prevent washing of fertilizers, herbicides and pesticides into the buffer, if slopes adjacent to the buffer exceed fifteen percent, a ten-foot wide swale to intercept runoff shall be provided at the edge of the buffer or other effective surface water interception design approved by the mayor or his/her designee;

e. Adopt and implement an integrated pest management system including limiting use of fertilizers, herbicides and pesticides within twenty-five feet of the buffer of category III, or IV wetland, within

fifty feet of the buffer of a category I, II, or headwaters wetland, and within one hundred feet of the buffer of a wetland in the core complex.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.230 Wetland buffers.

A. *Wetland buffers.* Buffer requirements contained in this section shall apply to all wetlands designated in this chapter and all proposed mitigation sites. Except as otherwise provided for in this chapter, all wetland buffers shall be maintained in an undisturbed or enhanced condition.

B. *[Core wetland complex buffers.]* Core wetland complex buffers shall be a minimum of two hundred twenty-five feet for all wetlands within the core area, except for the north side of the Rock Creek complex between Roberts Drive and State Route 169 where the buffer shall be a minimum of one hundred eighty-five feet, provided that:

1. The buffer may be extended further:
 - a. If land within and adjacent to the buffer has a slope in excess of thirty percent the buffer shall extend at least twenty-five feet beyond the top of the thirty percent slope, and
 - b. If land within and adjacent to the buffer is designated a landslide hazard, the buffer shall extend at least to the extent of the buffer designated in [Section 19.10.410\(B\)](#).
2. If a category III or IV wetland is located within the outer fifty percent of the buffer of a wetland designated as part of the core wetland complex, and does not have a surface hydrologic connection to the core complex, the buffers for that wetland shall be the standard wetland buffer in subsection (D), below.

C. *[Headwaters wetland buffers.]* Headwaters wetland buffers shall be a minimum of two hundred twenty-five feet for all wetlands.

D. *Other wetlands—Standard buffer widths.* The standard buffer widths presume the existence of a relatively intact mature native vegetation community (relative density of twenty or greater) in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased, or the buffer shall be planted to maintain the standard width. The minimum buffer requirements assume that adjacent land use meets the conditions outlined in [section 19.10.220\(D\)](#), in accordance with the Department of Ecology's Guidance on Wetlands in Washington State (2005), Volume 2 - Protecting and Managing Wetlands, Appendix 8C (Moderate Intensity Land Use). Required standard wetland buffers based on wetland category are as follows:

Buffer Dimensions for Other Wetlands (Moderate Intensity)		
Wetland Category	Wetland Characteristics	Minimum Buffer Width
Category IV	All	40 feet
Category III	Moderate level of function for habitat score (score for habitat 20-30 points)	110 feet
	Not meeting above characteristic	60 feet
Category II	High level of function for habitat (score for habitat 29-36 points)	225 feet
	Moderate level of function for habitat (score for habitat 20-30 points)	110 feet
	All others	75 feet
Category I	National Heritage Wetlands	190 feet
	Bogs	190 feet
	Forested	Based on score for habitat or water quality
	High level of function for habitat (score for habitat 29-36 points)	225 feet
	Moderate level of function for habitat (score for habitat 20-28 points)	110 feet

	High level of function for water quality improvement (24-32 points) and low for habitat (less than 20 points)	75 feet
	All others	75 feet

E. *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 should 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.

F. *Vegetation management.* In order to maintain effective buffer conditions and functions, a vegetation management plan shall be required for all buffer areas, to include:

1. Maintaining adequate cover of native vegetation including trees and understory; if existing tree cover is less than a relative density of twenty, planting shall be required consisting of a density of three hundred seedlings per acre or the equivalent;
2. Provide a dense screen of native evergreen trees at the perimeter of the buffer. Clearing of existing second growth forest generally results in trees with little canopy at or near the ground level:

- a. Core wetland and stream complex buffers generally will require interplanting among existing trees within an area of thirty to fifty feet to provide for regeneration of native species and prevent the establishment of invasive species.
- b. Other wetland buffers will require plantings if existing vegetation is not sufficient to prevent viewing adjacent development from within the buffer or penetration of light and glare into the buffer or to prevent establishment of invasive species.
- c. Planting specifications generally shall consist of as many rows of the following units as required to accomplish the management objectives:
 - (i) Two rows of three-foot high stock of native evergreens at a triangular spacing of fifteen feet, or
 - (ii) Three rows of gallon containers at a triangular spacing of eight feet.

- 3. Fencing may be required in order to separate sensitive areas from developed areas;
- 4. Provide a plan for control of invasive weeds, and remove existing invasive species;
- 5. Provide for a monitoring and maintenance plan for a period of at least five years, except this provision may be waived for single family residential lots;
- 6. Vegetation management plans for all wetlands may provide for preservation of view corridors from existing single family residences by the placement of new vegetation in a manner that frames views, provided that the same density is maintained and key functions such as shading for temperature attenuation and habitat functions are maintained.

G. Increased wetland buffer widths. The mayor or his/her designee shall require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

1. A larger buffer is needed to protect other sensitive areas;
2. The buffer or adjacent uplands has a slope greater than fifteen percent or is susceptible to erosion and standard or proposed erosion-control measures will not prevent adverse impacts to the wetland.

H. *Wetland buffer width averaging.* The mayor 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:

1. 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 fifty percent of the standard width and in no case less than thirty-five feet.
2. 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 one-half of the required width except where the mayor 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.

3. 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.

4. Buffer averaging may not be approved when buffer transfer is approved in accordance with subsection (H), above.

I. *Buffer enhancement for changes to existing uses.* As provided in [Section 19.10.170](#), buffer vegetation shall be enhanced at the time of redevelopment or improvements on non-conforming lots as provided below; for substantial redevelopment, buffer width may be reduced as indicated:

1. *Minor alteration or renovation of existing development:*

a. Buffer vegetation enhancement shall be either fifty percent of buffer standard or fifty percent of existing structure setback from wetland, whichever is less.

b. Buffer area shall be fenced, and signs posted.

2. *Moderate alteration or renovation of existing development:*

a. Buffer vegetation enhancement shall be either seventy percent of buffer standard or sixty percent of existing structure setback from wetland, whichever is less.

b. Buffer area shall be fenced, and signs posted.

3. *Substantial alteration or redevelopment:*

a. Buffer dimension shall be one hundred percent of standard, provided, if the standard buffer dimension exceeds the existing setback as measured from the edge of the primary building, the buffer may be reduced to ninety percent of the existing setback from the primary building to the edge of the sensitive area.

b. Buffer vegetation enhancement shall be one hundred percent of standard.

c. Buffer area shall be fenced, and signs posted.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.235 Provisions for small isolated wetlands.

A. All wetlands shall be regulated regardless of size, provided that the mayor or his/her designee shall assure that preservation of isolated wetlands and associated buffers of less than ten thousand square feet of combined wetland and buffer shall maintain effective wetland functions, or be mitigated as provided below.

B. Wetlands and associated buffers of less than one thousand square feet may be displaced when the wetland meets all of the following criteria, as documented in a wetland sensitive area study:

1. The wetland is not associated with a riparian corridor; and
2. The wetland is not part of a wetland mosaic; and
3. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; and

4. Impacts of displaced wetlands shall be mitigated pursuant to [Section 19.10.240](#).

C. Category III and IV wetlands between one thousand and four thousand square feet may be displaced without meeting the provisions of [Section 19.10.240](#) regarding avoidance, minimization, rectification, and reducing and eliminating the impact over time, provided that the criteria in subsection (B), above, are met and the wetland does not score twenty points or greater for habitat in the 2004 Western Washington Rating System.

D. Preservation of isolated wetlands with a total area of the combined wetland and buffer of ten thousand square feet or less shall meet the following provisions, or if the said provisions cannot be demonstrated, the mayor or his/her designee may permit such a wetland to be displaced and mitigated as specified in [Section 19.10.240](#).

1. Depressional wetlands recharged only by precipitation, interflow or groundwater shall be assured a source of recharge through stormwater infiltration, or other means, to maintain the wetland's hydrologic character.

2. Wetlands that have a potential to reduce flooding or erosion, or have the potential and opportunity to maintain or improve water quality as evidenced by a score of at least ten points on the applicable criteria of the Wetland Rating Form for Western Washington, shall maintain a hydraulic connection to surface water that maintains effective wetland function for flood or erosion reduction or water quality and does not substantially alter the existing hydroperiod of the wetland.

3. Wetlands that achieve a score of at least twenty points on the Habitat Functions criteria of the Wetland Rating Form for Western Washington shall maintain a connection to a linear corridor maintained as a stream buffer, a buffer associated with a geological hazard or other designated open space buffer sufficient to allow movement of terrestrial wildlife to and from the wetland and buffer complex without interruption by roads, paved areas or buildings within fifty feet.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.240 Mitigation requirements.

A. *Mitigation plan.* A mitigation plan that achieves equivalent or greater biologic functions will be required for all proposed wetland alterations or to mitigate unavoidable adverse impacts to the wetland functions and values resulting from a proposed action. Mitigation plans shall be prepared consistent with the minimum requirements of [Section 19.10.140](#).

B. *Compensatory mitigation.* As a condition of any permit allowing alteration of a wetland and/or wetland buffer, or as part of an enforcement action, an applicant may be required to provide restoration, creation or enhancement of wetlands and their buffers to offset unavoidable adverse impacts resulting from the applicant's or violator's actions.

1. Compensation areas shall be determined according to the function, acreage, type, location, time factors, ability to be self-sustaining and probability of project success.
2. Restored or created wetlands should have a higher function and value than the altered wetland.
3. Compensatory projects shall be completed immediately after the activities that will disturb wetlands and prior to use or occupancy, unless otherwise agreed to within the permit application. Construction of compensatory projects shall be timed to reduce adverse impacts to existing wildlife and flora.

C. *Type and location of mitigation.*

1. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, or sub-basin. Mitigation actions shall be conducted within the same sub-drainage basin and on the same site as the alteration except when the following apply:

- a. There are no reasonable on-site or in subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include anticipated wetland mitigation replacement ratios, buffer

conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife; and

- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- c. Off-site locations shall be in the same sub-drainage basin unless established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site.

2. In kind compensation shall be provided where feasible. The applicant may provide out-of-kind compensation provided:

- a. Out-of-kind replacement will result in a wetland with greater functional value; or
- b. Scientific problems such as exotic vegetation and changes in watershed hydrology make in-kind compensation impractical.

3. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

- a. Restoring wetlands on upland sites that were formerly wetlands (also called re-establishment);
- b. Creating wetlands where none previously existed on upland sites. The preferred sites are those that have been disturbed such that vegetative cover consists primarily of non-native introduced species. Creation of wetlands in areas of mature native vegetation should be avoided when the habitat and other values of the site would be lost. Creation on upland sites should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed;
- c. Restoration of wetland functions in an existing wetland area that is significantly degraded (also called rehabilitation). This may be done in combination with restoration or creation. Such enhancement should be

part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements;

d. Enhancement of some wetland functions in an existing wetland that may reduce other functions.

D. *Mitigation ratios.* The following ratios apply to the different categories of compensation:

Wetland Category	Wetland Mitigation Type and Replacement Ratio*			
	Re-establishment	Creation	Rehabilitation	Enhancement Only
Category IV	1.5:1	1.5:1	2:1	3:1
Category III	2:1	2:1	3:1	4:1
Category II	3:1	3:1	4:1	6:1
Category I	6:1	6:1	8:1	Not allowed
Headwaters Wetlands	6:1	6:1	8:1	Not allowed
Core Wetland Complex	6:1	8:1	10:1	Not allowed

*Ratio is the replacement area: impact area.

1. Buffers shall be provided for wetland compensation sites as provided in [Section 19.10.230](#), provided that the mayor or his/her designee shall have the same authority to modify and average widths.

2. The mayor or his/her designee may increase the replacement ratios to account for uncertainties as to the success of the restoration or creation or the time required for replacement wetlands to be effective. Such an increase will be based on the review of a sensitive area report prepared by a qualified professional.

3. In the case of off-site compensation the mayor or his/her designee may decrease the replacement ratios based on the review of a sensitive area report prepared by a qualified professional and upon findings reviewed by agencies with expertise that no net loss of wetland function or value is

attained under a reduced compensation ratio; which in no case shall be less seventy-five percent of the values in the table above for the core wetland complex and fifty percent of the values in the table above for other wetlands and in no case lower than 1.5:1.

E. *Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio.* Compensatory mitigation for buffer impacts shall include enhancement of buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures in accordance with subsection [19.10.140\(F\)](#).

F. *Wetlands enhancement as mitigation.* Any applicant proposing to alter a wetland may propose enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a sensitive area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.250 Wetland mitigation plan.

In addition to meeting the requirements of [Section 19.10.140](#), a compensatory mitigation plan for wetland and wetland buffer impacts shall meet the following requirements:

A. The plan shall be based on applicable portions of the Washington State Department of Ecology's Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 2004 or other appropriate guidance document that is consistent with best available science.

B. The plan shall contain sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include:

1. The rationale for site selection;
2. General description and scaled drawings of the activities proposed including, but not limited to, clearing, grading/excavation, drainage

alterations, planting, invasive plant management, installation of habitat structures, irrigation, and other site treatments associated with the development activities and proposed mitigation action(s);

3. A description of the ecological functions and values that the proposed alteration will affect and the specific ecological functions and values the proposed mitigation area(s) shall provide, together with a description of required or recommended mitigation ratios and an assessment of factors that may affect the success of the mitigation program;

4. Overall goals of the plan, including wetland function, value, and acreage;

5. Description of baseline (existing) site conditions including topography, vegetation, soils, hydrology, habitat features (i.e., snags), surrounding land use, and other pertinent information;

6. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to support existing and compensatory wetland area(s);

7. Nature of mitigation activities, including area of restored, created, enhanced and preserved wetland, by wetland type;

8. Detailed grading and planting plans showing proposed post-construction topography; general hydrologic patterns; spacing and distribution of plant species, size and type of proposed planting stock, watering or irrigation plans, and other pertinent information;

9. A description of site treatment measures including invasive species removal, use of mulch and fertilizer, placement of erosion and sediment control devices, and best management practices that will be used to protect existing wetlands and desirable vegetation;

10. A demonstration that the site will have adequate buffers sufficient to protect the wetland functions into perpetuity.

C. Specific measurable performance standards that the proposed mitigation action(s) shall achieve together with a description of how the mitigation action(s) will be evaluated and monitored to determine if the performance

standards are being met and identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates that project performance standards are not being met. The performance standards shall be tied to and directly related to the mitigation goals and objectives.

D. Cost estimates for the installation of the mitigation program, monitoring, and potential corrective actions if project performance standards are not being met.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.260 Wetland mitigation monitoring.

A. All wetland mitigation projects shall be monitored for a period necessary to establish that performance standards have been met, but generally not for a period less than five years after final acceptance by the city. Reports shall be submitted annually for the first three years following construction and at the completion of years five, seven, and ten if applicable to document milestones, successes, problems, and contingency actions of the compensatory mitigation. The mayor or his/her designee shall have the authority to modify or extend the monitoring period and require additional monitoring reports for up to ten years when any of the following conditions apply:

1. The project does not meet the performance standards identified in the mitigation plan.
2. The project does not provide adequate replacement for the functions and values of the impacted sensitive area.
3. The project involves establishment of forested plant communities, which require longer time for establishment.

B. Mitigation monitoring reports shall include information sufficient to document and assess the degree of mitigation success or failure as defined by the performance standards contained in the approved mitigation plan. Information to be provided in annual monitoring reports shall include the following:

1. Number and location of vegetation sample plots used to document compliance with performance standards;
2. Measurements of the percent survival of planted material, plant cover, stem density, presence of invasive species, or other attributes;
3. For sites that involve wetland creation, re-establishment or rehabilitation, hydrologic observations of soil saturation/inundation as needed to demonstrate that a site meets the wetland hydrology criterion;
4. Representative photographs of the site;
5. A written summary of overall site conditions and recommendations for maintenance actions if needed;
6. Other information that the mayor or his/her designee deems necessary to ensure the success of the site.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.300 Fish and wildlife conservation areas.

Sections [19.10.300](#) through [19.10.340](#) pertain to fish and wildlife conservation areas.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.310 Designation and mapping.

Fish and wildlife conservation areas in Black Diamond are designated and classified in accordance with the following provisions:

- A. *Core stream and wetland complex.* The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as the core stream and wetland complex. The general boundaries of the area affected are designated on Attachment A, provided that the dimensions of the area shall be defined by the field verified stream boundaries and the buffers defined in [Section 19.10.325](#).

B. *Other fish and wildlife conservation areas.* Areas outside of the core stream and wetland complex include areas within the city which state or federally designated endangered, threatened, and sensitive species have a known primary association, including;

1. The Washington State Department of Fish and Wildlife Priority Habitats and Species Recommendations for Species and Habitats, for:

- a. Endangered species listed at WAC 232-12-014;
- b. Threatened species listed at WAC 232-12-001;
- c. Sensitive species listed at WAC 232-12-011.

2. Bald Eagle habitat pursuant to ~~WAC 232-12-292220-610-100~~;

Commented [LM6]: Addressing checklist category Protection of Fish and Wildlife Habitat and Conservation Areas, p. 13.

3. Endangered or threatened species listed in accordance with the federal Endangered Species Act together with the areas with which they have a primary association;

4. State natural area preserves and natural resource conservation areas including:

- a. Department of Natural Resources (DNR) designated Natural Areas Preserves (NAP) and Natural Resource Conservation Areas (NRCA);
- b. Washington Department of Fish and Wildlife (WDFW) designated Wildlife Recreation Areas (WRA);

5. Waters of the state as defined in RCW 77.55.011, and RCW 90.56.010 including shorelines of the state as defined in RCW 90.58.010;

6. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.

C. Habitats and species of local importance as may be determined by the city.

1. In order to nominate an area or a species to the category of locally important an individual or organization must:
 - a. Demonstrate a need for special consideration based on:
 - i. Declining population;
 - ii. High sensitivity to habitat manipulation; or
 - iii. Demonstrated commercial, recreational, cultural, or other special value;
 - b. Propose relevant management strategies considered effective and within the scope of this chapter; and
 - c. Provide a map showing the species or habitat location(s).
2. Submitted proposals shall be reviewed by the city and may be forwarded to the state departments of fish and wildlife, natural resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.
3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter, the city planning commission will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats or species and will be subject to the provisions of this chapter.

D. Mapping. The approximate location and extent of known wildlife conservation areas are shown on the sensitive area maps. These maps are a reference and do not provide a final sensitive area designation.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.320 Classification of fish and wildlife habitat conservation areas—Water bodies.

A. *Core stream and wetland complex.* The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as the core stream and wetland complex. The general boundaries of the area affected are designated on Attachment A, provided that the dimensions of the area shall be defined by the field verified stream boundaries and the buffers defined in [Section 19.10.325](#).

B. *Other fish and wildlife conservation areas.* Streams outside of the core stream and wetland complex shall be designated in accordance with the Washington State Department of Natural Resources (DNR) stream type as provided in WAC 222-16-030 with the following revisions:

1. *Type S water.* All waters, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands.
2. *Type F water.* Segments of natural waters other than type S waters, which are within defined channels and periodically inundated areas of their associated wetlands or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water and which in any case contain fish habitat.
3. *Type Np water.* All segments of natural waters within defined channels that are perennial non-fish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
4. *Type Ns water.* All segments of natural waters within defined channels that are not type S, F, or Np waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a type Np water. Ns waters must be physically connected by an above-ground channel system to type S, F, or Np waters.

C. *[Non-fish habitat streams.]* Non-fish habitat streams are those streams that have no known or potential use by anadromous or resident fish based on the stream character, hydrology and gradient, provided that human-made barriers shall not be considered a limit on fish use except when the mayor or his/her designee makes the following findings:

1. The human-made barrier is located beneath public infrastructure that is unlikely to be replaced and it is not feasible to remove the barrier without removing the public infrastructure, provided that the infrastructure is not identified for future modification in the capital facility or other plans of the public agency responsible for the infrastructure, and the facility will not exceed its design-life within the foreseeable future;
2. The human-made barrier is located beneath one or more occupied structures and it is not feasible to remove the barrier without removing the structure, and the structure is of a size and condition that removal or substantial remodel is not likely;
3. The human-made barrier is not identified for removal by a public agency or in an adopted watershed plan.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.325 Fish and wildlife habitat conservation areas—Water bodies—Buffers.

The mayor or his/her designee shall have the authority to require buffers from the edges of all streams in accordance with the following:

A. *Buffers required.* Buffers shall be established for activities adjacent to habitat areas as necessary to protect the integrity, functions and values of the resource. Buffer widths shall reflect the sensitivity of the species or habitat and the type and intensity of the adjacent human use or activity.

B. *Buffer purposes.* The buffer widths required by this section are based on scientific studies of the conditions necessary to sustain ecological functions and values to support anadromous and resident fish and presume the existence of a dense native vegetation community in the buffer zone adequate to protect the stream functions and values at the time of the

proposed activity. Buffers of undisturbed native vegetation shall be required along all streams as provided below. The buffer shall extend landward from the top of the bank.

C. *[Core stream and wetland complex buffers.]* Core stream and wetland complex buffers shall be a minimum of two hundred twenty-five feet for all streams within the core area, except for the north side of the Rock Creek complex between Roberts Drive and State Route 169 where the buffer shall be a minimum of one hundred eighty-five feet, provided that the buffer may be extended further if:

1. Land within and adjacent to the buffer has a slope in excess of thirty percent the buffer shall extend at least twenty-five feet beyond the top of the thirty percent slope; and
2. Land within and adjacent to the buffer is designated a landslide hazard, the buffer shall extend at least to the extent of the buffer.

D. *Other streams, standard buffer.* All other streams shall be provided the following buffers based on the Department of Natural Resources (DNR) water typing classification system as defined in [Section 19.10.320\(B\)](#).

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	25 feet
Type F—Segments of natural waters other than Type S Waters	150 feet
Type Np—Segments of natural waters that are perennial non-fish habitat streams.	100 feet
Type Ns—Segments of natural waters within defined channels that are seasonal, non-fish habitat streams	50 feet

E. *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.

F. *Buffers in conjunction with other sensitive areas.* Where other sensitive areas defined in this chapter fall within the water body buffer, the buffer area shall be the most expansive of the buffers applicable to any applicable sensitive area.

G. *Vegetation management.* In order to maintain effective buffer conditions and functions, a vegetation management plan shall be required for all buffer areas, to include the standards found in Subsection [19.10.230\(F\)](#).

H. *Buffer increase.* The mayor or his/her designee shall have the authority to increase the width of a stream buffer on a case-by-case basis when such increase is necessary to achieve any of the following:

1. Protect fish and wildlife habitat, maintain water quality, ensure adequate flow conveyance, provide adequate recruitment for large woody debris, maintain adequate stream temperatures, or maintain in-stream conditions.
2. Compensate for degraded vegetation communities or steep slopes adjacent to the stream.
3. Maintain areas for channel migration.
4. Protect adjacent or downstream areas from erosion, landslides, or other hazards.

I. *Water body buffer width transfer.*

1. The mayor 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 [subsection] (2) below are incorporated into the buffers and adjacent development.

Type	Buffer Width (feet) After Transfer
Type S	25 feet
Type F	100 feet
Type Np	50 feet
Type Ns	30 feet

2. The specific mitigation measures in subsection [19.10.230\(F\)\(2\)](#) shall be incorporated into adjacent development in order to utilize the buffer dimensions specified in [subsection] (1) above.

J. *Habitat buffer averaging.* The mayor or his/her designee may allow the recommended habitat area buffer width to be reduced in accordance when the applicant demonstrates to the satisfaction of the administrator that all the following criteria are met:

1. Averaging to improve water body habitat protection may be permitted when all of the following conditions are met:
 - a. The water body or buffer area has significant differences in characteristics that affect its habitat functions;
 - b. Buffer averaging will not reduce stream or adjacent upland habitat functions or adversely affect salmonid habitat;
 - c. Buffer averaging is combined with other provisions to provide additional habitat protection, such as buffer vegetation enhancement;
 - d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer

and the buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the water body and decreased adjacent to the lower-functioning or less sensitive portion and all increases in buffer dimension for averaging are generally parallel to the stream OHWM;

e. The buffer area width is not reduced by more than twenty-five percent in any location.

2. 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 of the stream or riparian habitat, or the buffer averaging, in conjunction with vegetation enhancement, increases the habitat 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 seventy-five percent of the required width except where the mayor 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.

3. The buffer width reduction may not be located within another sensitive area or associated buffer unless criteria for averaging said buffer are also addressed and approved.

4. Buffer averaging may not be approved when buffer transfer is approved in accordance with subsection (l), above.

K. *[Development of adjacent land.]* Development of adjacent land shall minimize adverse effects on the habitat area, and shall include the standards in subsection [19.10.220\(D\)](#).

L. *Buffer enhancement for changes to existing non-conforming lots.* As provided in [Section 19.10.170](#), buffer vegetation shall be enhanced at the time of redevelopment or improvements on non-conforming lots as provided below; for substantial redevelopment, buffer width may be reduced as indicated:

1. *Minor alteration of existing development:*

- a. Buffer vegetation enhancement shall be either fifty percent of buffer standard or fifty percent of existing shoreline structure setback.
- b. Buffer area shall be fenced, and signs posted.

2. *Moderate alteration of existing development:*

- a. Buffer vegetation enhancement shall be either seventy percent of buffer standard or sixty percent of existing shoreline structure setback.
- b. Buffer area shall be fenced, and signs posted.

3. *Substantial alteration or redevelopment:*

- a. Buffer dimension shall be one hundred percent of standard, provided, if the standard buffer dimension exceeds the existing setback as measured from the edge of the primary building, the buffer may be reduced to ninety percent of the existing setback from the primary building to the edge of the sensitive area.
- b. Buffer vegetation enhancement shall be one hundred percent of standard.
- c. Buffer area shall be fenced, and signs posted.

d. Existing bulkheads and docks shall be replaced with conforming structures.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.328 Water bodies—Culvert replacement.

A. Culverts on public or private roads that are a barrier to fish movement shall be replaced at the time of major reconstruction, or if additional subdivision increases the number of lots served by the roadway by twenty percent or more.

Replacement structures shall meet the standards of [subsection] [19.10.330\(C\)\(10\)](#). This provision does not limit potential requirements for replacement under other statutes or treaty rights.

B. Stream sections not within public or private roads that are culverted or enclosed shall be replaced by an open channel at any time of moderate or substantial reconstruction of uses on the parcel lots is served.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.330 Activities allowed in water bodies and habitat buffers.

The activities listed below are allowed in water bodies and habitat buffers in addition to those activities listed in, and consistent with, the provisions and activities established in [Section 19.10.060](#), in accordance with the review provisions below:

A. Activities and facilities that do not require prior review or approval and do not require submission of a sensitive area report, provided, that where the mayor or his/her designee determines such activities may result in a loss to the functions and values of a habitat area or its buffer the provisions of [subsections] (B) or (C) shall apply. These activities include:

1. Outdoor recreational or educational activities directly related to the cultural, recreational, scientific and educational aspects of the habitat and that do not remove vegetation or otherwise affect the function of the wetland or regulated buffer (including wildlife management, viewpoints, outdoor scientific or interpretive facilities, hunting blinds, and sports

fishing) and that have a minimal adverse impact on the buffer and wildlife area.

2. The harvesting of crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

3. Enhancement of a water body or buffer through the removal of non-native invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be re-vegetated with native shrubs, and trees at natural densities. Some hand seeding may also be done over the bare areas with native herbs.

B. Actions that can be planned and programmed in advance requiring notification and review in accordance with [Section 19.10.060\(B\)\(2\)](#):

1. Drilling for a single linear utility under a type F, Np and Ns water body. Drilling under buffers is preferred. Cut and cover installation may be approved only when impacts to buffer vegetation is minimized and mitigated. Expansion of buffer area may be required to compensate for replacement of mature vegetation with replanting.

2. Installation of single overhead utility lines that span the water body with no poles or other supports within the water body. Poles may be placed in buffers provided that impacts to vegetation is minimized and mitigated. Expansion of buffer area may be required to compensate for replacement of mature vegetation with replanting.

3. Trails may be permitted within buffers if the following criteria are met:

a. Trails are limited to buffer areas except for limited area of pile supported trail sections or viewing areas may be placed within water bodies outside the core complex for interpretive purposes.

b. Trails shall not be permitted in buffer areas reduced through transfer of other adjustment.

c. Trails shall not exceed four feet in width and shall be surfaced with wood chips, gravel or pervious material, including boardwalks;

d. The trail or facility is located in the outer twenty-five [feet] of a buffer, except for limited placement closer to the waters edge or within the water body for interpretive purposes for water bodies other than in the core complex, as provided above;

e. The trail or facility is constructed and maintained in manner that minimizes disturbance of the water body or buffer. Trails or facilities within water bodies shall be placed on an elevated structure as an alternative to fill.

f. Any adverse impacts on habitat functions and values are mitigated in accordance with [Section 19.10.340](#).

C. Uses and activities that shall be reviewed by a full permit process include:

1. Drilling for utilities under a water body in the core complex may be permitted if the following criteria are met:

a. There is no reasonable location or route outside the wetland or wetland buffer based on analysis of system needs, available technology and alternative routes. Location under a buffer shall be preferred over a location under a water body.

b. The drilling does not interrupt groundwater flow or recharge to the water body or percolation of surface water down through the soil column. Specific studies by hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed.

c. Staging areas are located outside the buffer.

d. Impacts on habitat functions are mitigated.

2. Overhead utility lines that cross a water body or buffer in the core complex with no poles or other supports within the water body. Poles may be placed in buffers.

a. There is no reasonable location or route outside the water body or buffer based on analysis of system needs, available technology and alternative routes. Location within a buffer shall be preferred over a crossing of a water body.

b. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line, and the area is restored following utility installation.

c. Impacts on habitat functions are mitigated.

3. Linear utilities and facilities such as water and sewer lines providing local delivery service, but not including non-linear facilities such as electrical substations, water and sewage pumping stations, water storage tanks, and not including petroleum products pipelines and not including transformers or other facilities containing hazardous substances, may be located in the buffer of a type F, Np and Ns stream, if the following criteria are met:

a. There is no reasonable location or route that does not cross the water body or outside the buffer based on analysis of system needs, available technology and alternative routes. Location within a buffer shall be preferred over a location within a water body. Crossings shall be contained within the footprint of an existing road or utility crossing where possible.

b. Impacts to fish and wildlife habitat shall be avoided to the maximum extent possible and mitigated when avoidance is not feasible in accordance with [Section 19.10.340](#).

c. Utilities that cross water bodies shall be as close to perpendicular to the channel as possible to minimize disturbance. Boring under the water body may be required.

d. If not a crossing, the utility line shall be located as far from the water body as possible.

e. The utility installation shall maintain the existing stream gradient and substrate.

f. Clearing, grading, and excavation activities shall be limited to the minimum necessary to install the utility line, and the area is restored following utility installation.

4. Road, railroad and similar rights-of-way, including trails not meeting the criteria in [subsection] (B)(3), above, provided they meet the following criteria:

a. There is no other feasible alternative route with less impact on the sensitive area or buffer.

b. The crossing minimizes interruption of natural processes such as the downstream movement of wood and gravel and the movement of all fish and wildlife. Bridges are preferred for all stream crossings and are required for crossings of the core complex. Bridges should be designed to maintain the existing stream gradient and substrate provide adequate horizontal clearance on each side of the ordinary high-water mark and adequate vertical clearance above ordinary high-water mark for animal passage. If a bridge crossing is not feasible, culverts shall be designed according to applicable state and federal guidance criteria for fish passage as identified in Fish Passage Design at Road Culverts, WDFW March 1999, and/or the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000, (and subsequent revisions) and in accordance with a state hydraulic project approval. The applicant or property owner shall maintain fish passage through bridge or culvert.

c. The city may require that existing culverts be removed, repaired, or modified as a condition of approval if the culvert is detrimental to fish habitat or water quality, and a feasible alternative exists.

d. Crossings shall be limited to the minimum width necessary. Common crossings are the preferred approach where multiple properties can be accessed by one crossing.

e. Access to private development sites may be permitted to cross streams, if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including

through the provisions of RCW 8.24. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

f. Any adverse impacts on habitat functions and values are mitigated in accordance with [Section 19.10.340](#).

5. Storm water detention/retention ponds are not permitted in a fish and wildlife habitat conservation buffer. However, storm water conveyance, discharge facilities such as infiltration systems dispersion trenches, level spreaders, and outfalls may be permitted in a fish and wildlife habitat conservation area buffer on a case-by-case basis when all of the following are met:

- a. Due to topographic or other physical constraints there are no feasible locations for these facilities outside the buffer;
- b. The discharge is located as far from the ordinary high-water mark as possible and in a manner that minimizes disturbance of soils and vegetation;
- c. The discharge outlet is in an appropriate location and is designed to prevent erosion and promote infiltration;
- d. The discharge meets stormwater flow and water quality standard as provided in the 2005 Ecology Stormwater Manual for Western Washington, or the equivalent;
- e. Any adverse impacts on habitat functions and values are mitigated in accordance with [Section 19.10.340](#).

6. Stream bank stabilization, shoreline protection, and public or private launching ramps may be permitted subject to all of the following standards:

- a. Natural shoreline processes will be maintained to the maximum extent practicable. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream

substrate, or eliminate or reduce sediment supply from feeder bluffs;

b. Adverse impact to fish or wildlife habitat conservation areas, specifically juvenile and adult fish migration corridors, or associated wetlands will be mitigated;

c. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;

d. Stabilization is achieved through bioengineering or soft armoring techniques in accordance with an applicable Hydraulic Project Approval is issued by the Washington Department of Fish and Wildlife;

e. Hard bank armoring may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply.

7. New public flood protection measures and expansion of existing measures may be permitted, provided that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection and shall be subject to requirement of the Shoreline Master Program, where applicable, hydraulic project approval and other permits.

8. New docks shall be permitted only for public access, as an accessory to water-dependent uses or associated with a single-family residence provided that it is designed and used only as a facility for access to watercraft.

a. To limit the effects on ecological functions, the number of docks should be limited, and new subdivisions should employ shared

moorage whenever feasible. Docks on shorelines of the state must comply with policies and regulations of the City of Black Diamond Shoreline Master Program.

b. Docks shall be located and designed to minimize adverse effects on ecological processes through location where they will interfere with fluvial and limnal processes including gradient and substrate; recruitment of woody debris; and fish habitat, including that related to anadromous fish.

c. Docks shall minimize reduction in ambient light level by limiting width to the minimum necessary and shall not exceed four feet in width, except where specific information on use patterns justifies a greater width. Materials that will allow light to pass through the deck may be required including grating on walkways or gangplanks in nearshore areas.

d. Approaches shall utilize piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be designed to avoid interfering with stream processes.

e. Pile spacing shall be the maximum feasible to minimize shading and avoid a wall effect that would block or baffle currents, sediment movement or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.

f. Docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.

g. Space for recreation activities other than those strictly water dependent (such as water sports) are prohibited over water.

9. Launch ramps may be permitted for access to the water for the public or for residents of a development for water dependent use subject to the following criteria:

a. Launch ramps shall be located and designed to minimize adverse effects on fluvial and limnal processes including stream

gradient, and substrate; recruitment of woody debris; and fish habitat, including that related to anadromous fish.

b. Ramps shall be placed and maintained near flush with the bank slope. Preferred ramp designs, in order of priority, are:

i. Open grid designs with minimum coverage of beach substrate;

A. Seasonal ramps that can be removed and stored upland;

B. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in beach profile.

10. Instream structures, such as, but not limited to, high flow bypasses, dams, and weirs, other than those regulated exclusively by the Federal Energy Regulatory Commission (FERC) shall be permitted only when the multiple public benefits are provided, and ecological impacts are fully mitigated. Dams on shorelines of the state shall be regulated in accordance with the Shoreline Master Program.

a. Instream facilities locations shall avoid areas of high habitat value for aquatic organisms, specifically anadromous fish.

b. Instream facilities shall be designed to produce the least feasible effect on fluvial processes and shall minimize change in gradient.

c. Instream facilities shall provide mitigation of all impacts on aquatic species and habitat.

d. Instream facilities shall provide fish passage, in accordance with RCW 77.57.

e. Any adverse impacts on habitat functions and values are mitigated in accordance with [Section 19.10.340](#).

f. A construction bond for one hundred twenty-five percent of the cost of the structure and all mitigation measures shall be filed prior

to construction and a maintenance agreement shall specify responsibility for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a civil engineer licensed in the State of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.

11. Facilities permitted as shoreline dependent or shoreline oriented uses in accordance with the city Shoreline Master Program, may be located in water bodies and buffers, provided that only those facilities that are water dependent or water oriented and facilities for necessary access may be located in water bodies and buffers and provided that the facility is located, designed, constructed and operated to minimize and, where possible, avoid sensitive area disturbance to the maximum extent feasible.

12. Clearing and grading, when allowed as part of an authorized use or activity or as otherwise allowed in these standards, may be permitted provided that the following shall apply:

a. Grading is allowed only during the designated dry season, which is typically regarded as May 1 to October 1 of each year, provided that the city may extend or shorten the designated dry season on a case-by-case basis, based on actual weather conditions.

b. Appropriate erosion and sediment control measures shall be used at all times. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, disturbed topsoil shall be redistributed to other areas of the site.

c. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or re-establishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.335 Habitat other than fish and wildlife habitat conservation areas.

A. Definition and buffers. Protection standards for fish and wildlife habitat conservation areas other than streams and lakes are as provided in the table below.

Ord. No. 875, § 4(Exh. B), 2-26-2009)

**19.10.337 Fish and wildlife habitat conservation areas—
Review and reporting requirements.**

The following provisions shall apply in addition to the sensitive area report requirements of [19.10.130](#):

A. When city sensitive area maps or Washington Department of Fish and Wildlife Priority Species and Habitat information, or other sources of credible information indicate that a site proposed for development or alteration is more likely than not to contain fish and wildlife habitat conservation areas or is within the buffer of a fish and wildlife habitat conservation area, the mayor or his/her designee shall require a site evaluation (field investigation) by a qualified professional or other measures to determine whether or not the species or habitat is present and if so, its relative location in relation to the proposed project area or site.

1. If no fish and wildlife habitat conservation areas are present, then review will be considered complete.
2. If the site evaluation determines that the species or habitat is present, the mayor or his/her designee may require a sensitive areas assessment report.

B. The mayor or his/her designee may waive the report requirement for a single-family development that involves less than two thousand five hundred square feet of clearing and/or vegetation removal and will not directly disturb the designated stream or pond buffer area, designated species, or specific

areas or habitat features that comprise the fish and wildlife habitat conservation area (nest trees, breeding sites, etc.) as indicated by a site plan or scaled drawing of the proposed development, except in the case of Bald Eagle Habitat.

C. The sensitive areas report shall describe the characteristics of the subject property and adjacent areas. The assessment shall include the following:

1. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.
2. Determination of the resource category and standard buffers.
3. Identification of sensitive areas and buffers within three hundred feet of the site and an estimate of the existing approximate acreage for each. The assessment of off-site resources shall be based on available information and shall not require accessing off-site properties if permission of the property owner cannot be obtained.
4. Proposed development activity.
5. A detailed description of the effects of the proposed development on ecological functions and buffer function and value, including the area of direct disturbance; area of buffer reduction or averaging including documentation that functions and values will not be adversely affected by the reduction or averaging; effects of storm water management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light or human intrusion.
6. Provisions to reduce or eliminate adverse impacts of the proposed development activities including, but not limited to:
 - a. Clustering and buffering of development;
 - b. Retention of native vegetation;
 - c. Access limitations, including fencing.

d. Seasonal restrictions on construction activities in accordance with the guidelines developed by the Washington Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the Salmonid Recovery Plan and/or other agency or tribe with expertise and jurisdiction over the subject species/ habitat;

e. Methods to reduce proximity impacts; and

f. Other appropriate and proven low impact development techniques.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.340 Mitigation requirements.

A. *Impacts and mitigation.* Activities that adversely affect fish and wildlife habitat conservation areas and/or their buffers should generally be avoided through site design, including clustering. Unavoidable impacts to designated species or habitats shall be compensated for through habitat creation, restoration and/or enhancement to achieve no net loss of habitat functions and values in accordance with the purpose and goals of this chapter.

B. *Alterations.* A fish and wildlife habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from fish and wildlife conservation areas, except in accordance with this chapter.

C. *Mitigation plan.* A mitigation plan will be required for all proposed fish and wildlife conservation area alterations or to mitigate unavoidable adverse impacts to the habitat functions and values resulting from a proposed action. Mitigation plans shall be prepared in accordance with the requirements of [Section 19.10.140](#). The mitigation plan for habitat areas provides sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include, but not be limited to:

1. General description and scaled drawings of the activities proposed including, but not limited to, clearing, grading/excavation, drainage

alterations, planting, invasive plant management, installation of habitat structures, irrigation, and other site treatments associated with the development activities and proposed mitigation action(s);

2. A description of the functions and values that the proposed mitigation area(s) shall provide, together with a description of required and an assessment of factors that may affect the success of the mitigation program; and

3. A description of known management objectives for the species or habitat.

D. *Non-indigenous species.* Any plant, wildlife, or fish species not indigenous to the region shall not be introduced into a fish and wildlife conservation area unless authorized by a state or federal permit or approval.

E. *Mitigation standard.* Mitigation of alterations to fish and wildlife conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

F. *Timing.* Required mitigation shall be completed as soon as possible following activities that will disturb fish and wildlife habitat conservation areas and during the appropriate season. Mitigation shall be completed prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

G. *Monitoring.* The mayor or his/her designee shall have authority to require monitoring of mitigation activities and submittal of annual monitoring reports to ensure and document that the goals and objectives of the mitigation are met. The frequency and duration of the monitoring shall be based on the specific needs of the project as determined by the city.

H. *Mitigation and contiguous corridors.* Mitigation sites shall be located to preserve or achieve contiguous fish and wildlife habitat corridors in accordance with a mitigation plan that is part of an approved sensitive area report to minimize the isolating effects of development on fish and wildlife conservation areas, so

long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

Priority species and priority habitats. Habitat species that have been identified as priority species or priority habitats by the Washington Department of Fish and Wildlife Priority Habitats and Species Program shall not be reduced and shall be preserved through regulation, acquisition, incentives and other techniques based on but not limited to the management policies in the Black Diamond Shoreline Master Program adopted September 19, 2019. Habitats and species of local importance shall also be protected in this manner.

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19.10.400 Geologically hazardous areas.

Sections [19.10.400](#) through [19.10.440](#) pertain to geologically hazardous areas.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.405 Designation and mapping.

A. *Designations.* Geologically hazardous areas include the following:

1.

Erosion hazard areas. Erosion hazard areas are those areas with soils identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.

2. *Landslide hazard areas.* Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible due to any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. These may include the following:

a. Areas of historic failures, such as areas that have shown evidence of historic failure or instability, including but not limited to back-rotated benches on slopes; areas with structures that exhibit structural damage

such as settling and racking of building foundations; and areas that have toppling, leaning, or bowed trees caused by ground surface movement;

b. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

c. Those areas mapped by the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5);

d. Areas with all three of the following characteristics:

i. Slopes steeper than fifteen percent; and

ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

iii. Springs or ground water seepage.

e. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting;

f. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten feet of vertical relief.

g. Areas that are at risk of mass wasting due to seismic forces.

3. *Mine hazard areas.* Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. These are further described below in terms of degree of hazard.

4. *Seismic hazard areas.* Areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, soil liquefaction or surface faulting including:

- a. Areas subject to surface faulting during a seismic event;
- b. Areas with underlying deposits indicative of a risk of liquefaction during a seismic event;
- c. Areas subject to slope failure during a seismic event;

Seismic hazards shall be as identified in Washington State Department of Natural Resources seismic hazard maps for Western Washington and other geologic resources.

B. *Mapping.* The approximate location and extent of known geologically hazardous areas are shown on the Black Diamond Sensitive Areas Map(s). Those maps are resources for the identification of the probable location, extent and classification of sensitive areas. The criteria by which geological hazards are defined and the results of field investigation shall prevail over information on the maps.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.410 Development standards—Landslide hazard areas.

A. *Activities allowed in landslide hazard areas.* The activities listed below are allowed in landslide hazard areas in addition to those activities listed in, and consistent with, the provisions and activities established in [Section 19.10.060](#), in accordance with the review provisions below.

1. Activities and facilities that do not require prior review or approval, provided, that where the mayor or his/her designee determines such activities may result in a loss of functions and values of a wetland or its buffer the provisions of [subsections] (B) or (C) shall apply. These activities include:

- a. Outdoor recreational or educational activities that do not remove vegetation or displace soils or install facilities, other than temporary or

small-scale structures that will be abandoned in the case of earth movement.

b. The harvesting of crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

2. Actions that can be planned and programmed in advance requiring notification and review in accordance with [Section 19.10.060](#)(B)(2):

a. Overhead utility lines that span the landslide hazard areas or that involve poles installed without soil movement for access roads.

b. Trails may be permitted within a landslide area if the trails do not exceed four feet in width, shall not exceed eighteen inches of cut or fill and shall be surfaced with gravel or pervious material, including boardwalks.

3. Uses and activities that shall be reviewed by a full permit process include:

a. Utility lines and pipes shall be permitted in landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The preferred design is for a line or pipe to be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;

b. Roads, driveways and other vehicular access, trails and walkways, may be permitted to serve existing lots and existing development, only if the applicant demonstrates that:

i. No other feasible alternative exists, including through the provisions of RCW 8.24; and

ii. If analysis by a qualified professional establishes compliance with the standards in subsection (C), below.

c. Alteration of a landslide hazard area and buffer in order to accommodate structures or land alteration may be authorized only in cases where the mayor or his/her designee find that:

i. Reasonable development cannot be accommodated on portions of the site not subject to landslide hazards and buffers; and

ii. If analysis by a qualified professional establishes compliance with the standards in subsection (C), below.

d. Point discharges from surface water facilities and roof drains onto or up gradient from an erosion or landslide hazard area shall be prohibited.

e. Vulnerable facilities, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials shall not be located in landslide hazard areas if there is a feasible alternative location outside the hazardous areas that would serve the intended service population. A facility may be allowed only subject to the standards in subsection (C), below.

B. *Buffer requirement.* A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the mayor or his/her designee to eliminate or minimize the risk of property damage, death, or injury resulting from landslides, based upon review of and concurrence with a sensitive area report prepared by a qualified professional.

1. *Minimum buffer from the top of a slope.* The minimum buffer from the top of a slope shall be designed to protect persons and property from damage due to catastrophic slope failure and slope retreat over the lifetime of the use and provide an area of vegetation to promote shallow stability, control erosion and promote multiple benefits to wildlife and other resources. The minimum dimension of the buffer shall be equal to the greater of:

a. Shall be equal to the height of the slope (the vertical distance from the toe of slope to the top of slope, for a forty percent or greater slope, this shall be from the top of the portion of the slope which is a forty percent slope, provided that another forty percent slope is not located

within the buffer area, in that case, the buffer shall be located from the top of the highest forty percent slope);

b. The distance from the top of slope equal to the distance from the toe of slope upslope at a slope of 2:1 (horizontal to vertical) to a point that intersects with the site's ground elevation; or

c. Fifty feet from the top of the slope.

2. *Minimum buffer from the bottom of a slope.* The minimum buffer from the bottom of a slope shall provide for safety of persons and property from the run-out resulting from slope failure and shall be the greater of:

a. The height of the slope; or

b. Fifty feet from the toe of the slope.

3. *Minimum buffer from the side of a slope.* The minimum buffer from the bottom of a slope shall provide for safety of persons and property from the run-out resulting from slope failure and shall be the greater of:

a. Twenty-five feet from the toe of the slope; or

b. A triangular area that extends from the edge of the top of the slope outward at a 1:3 angle (one horizontal foot to three vertical feet).

4. *Buffer reduction.* The buffer may be reduced to a minimum of ten feet when a qualified professional demonstrates to the satisfaction of the mayor or his/her designee that the reduction will adequately protect the proposed development, adjacent developments, proposed uses and the subject sensitive area and meet the development standards in subsection (C).

5. *Increased buffer.* The buffer may be increased where the mayor or his/her designee determines through best available science documented in a sensitive area report prepared by a qualified professional that a larger buffer is necessary to prevent risk of damage to proposed and existing development or to meet the development standards in subsection (C).

C. *Criteria and design standards for landslide hazard areas.* All uses and activities in landslide hazard areas shall conform to the following standards:

1. No use or alteration of a landslide hazard area and buffer may be authorized except where the mayor or his/her designee finds that:

a. Reasonable development cannot be accommodated on portions of the site not subject to landslide hazards and buffers; and

b. If analysis by a qualified professional establishes compliance with the following standards based on specific development plans:

i. The proposed development will not result in a risk of landslide that may affect development on the subject property or other properties in the vicinity and will not result in a greater risk or a need for increased buffers on neighboring properties. For unconsolidated deposits, development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

ii. Measures to maintain slope stability, such as drainage systems, must be of a design that will assure operation without facilities requiring regular maintenance that would jeopardize stability if the facility fails;

iii. The development will not increase erosion or sedimentation risk on the site;

iv. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

v. Such alterations will not adversely impact other sensitive areas;

vi. Structures shall be located on the least sensitive portion of the site and clustered where possible to reduce disturbance and removal of vegetation;

vii. Structures will meet the following design standards:

(A) Grading shall minimize alterations to the natural contour of the slope;

(B) Foundations should conform to the natural contours of the slope and foundations should be stepped/tiered where possible to conform to existing topography of the site;

(C) Retaining walls shall be preferred over cut and fill and shall be incorporated into structures wherever feasible.

viii. Landslide hazard areas on unconsolidated deposits with a gradient of forty percent where the toe of slope is within the buffer area of a wetland, stream, pond or lake are not eligible for alteration of landslide hazard areas but may be subject to alteration of buffers, subject to compliance with the standards of this chapter.

2. Division of land within or adjacent to landslide hazard areas and associated buffers shall be clustered to avoid landslide hazard areas and associated buffers. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of the landslide area and buffer with provision for access, drainage, erosion control and related features that will not adversely affect the stability of the landslide area.

3. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The preferred design is for a line or pipe to be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

4. Roads, driveways and other vehicular access, trails and walkways, may be permitted only if the applicant demonstrates that no other feasible alternative exists, including through the provisions of RCW 8.24 and subject to the standards in [subsection] 1., above. If access through a hazard area is granted, exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be

specified. Access roads and trails shall be engineered and built to standards that avoid the need for major repair or reconstruction beyond that which would be required in non-hazard areas and shall be:

- a. Located in the least sensitive area of the site.
- b. Designed to minimize topographic modification with low gradients and/or parallel to the natural contours of the site.
- c. Retaining walls shall be preferred over cut and fill slopes to minimize topographic modification.
- d. Clearing and grading shall minimize ground disturbance to the maximum extent feasible to accommodate allowed development and generally shall not extend more than ten feet beyond the approved development.

5. A qualified professional, licensed in the State of Washington, shall review project plans in landslide hazardous areas to ensure that they are properly designed and shall certify that they have inspected the construction of facilities and the facilities are constructed to incorporate all required facilities to meet the standards above, and no unanticipated features were identified during construction that change the design required to meet said standards. If any unanticipated features related to bedrock, soil, slope (gradient), slope aspect, structure, geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; hydrology including springs or ground water seepage or stream geomorphology relating to stream bank erosion or undercutting are identified during construction that were not anticipated in the initial review, the qualified professional shall be responsible for the cessation of work if the conclusions of the initial review are no longer valid and report to the mayor or his/her designee.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.415 Landslide hazard—Review and reporting requirements.

A. When sensitive area maps or other sources of credible information indicate that a site proposed for development or alteration is or may be located within a

landslide hazard area the mayor or his/her designee shall have the authority to require the submittal of a landslide hazard assessment report. The following provisions shall apply in addition to the sensitive area report requirements of [Section] [19.10.130](#):

B. The landslide hazard assessment shall describe and evaluate the geologic characteristics of the subject property and adjacent areas. The landslide hazard assessment shall include field investigation and may include the analysis of historical aerial photographs, review of public records and documentation, and interviews with adjacent property owners. The report shall include the following, provided that the mayor or his/her designee may determine that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. A description of which areas on the site, surrounding areas that influence or could be influenced by the site, or areas within three hundred feet of the site meet the criteria for a landslide hazard.
2. A scaled site plan showing:
 - a. The type and extent of landslide hazard areas, and any other sensitive areas, and buffers on, adjacent to or that are likely to impact or influence the proposal, including properties upslope of the subject site;
 - b. The location of existing and proposed structures, fill, access roads, storage of materials, and drainage facilities, with dimensions;
 - c. The existing site topography preferably accurate to within two-foot contours; and
 - d. Clearing limits.
3. A description of the site features, including surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report. This may include surface exploration data such as borings, drill holes, test pits, wells, geologic reports, and other relevant reports or site investigations that may be useful in making conclusions or recommendations about the site under investigation;

4. A description of the processes affecting the property or affected by development of the property including geologic processes, soil or water erosion, deposition, or accretion;

5. A description of the vulnerability of the site to seismic and other geologic processes and a description of any potential hazards that could be created or exacerbated as a result of site development.

C. Analysis of potential risks shall include:

1. A description and analysis of the level of risk associated with no development on the landslide hazard area and buffers;

2. A description and analysis of the level of risk associated with alternative proposals for development within or with less setback from the area of landslide hazard including risk to future occupants of the subject property, adjacent property, other sensitive areas and the general public safety;

3. A description and analysis of the level of risk associated with the measures proposed to mitigate the hazards, ensure public safety, and protect property and other sensitive areas, including the risk of failure if structures, drainage systems or other facilities are not monitored, maintained, or cease to function as designed for any reasons;

4. A description and analysis of the level of risk associated with increased erosion or sedimentation risk on the site and potential effects on adjacent properties, water bodies and wetlands;

5. Assessments and conclusions regarding slope stability for both the existing and developed conditions including the potential types of landslide failure mechanisms (e.g., debris flow, rotational slump, translational slip, etc.) that may affect the site. The stability evaluation shall also consider dynamic earthquake loading, and shall use a minimum horizontal acceleration as established by the current version of the International Building Code;

6. Description of the potential run-out hazard of landslide debris related to the proposed development that starts upslope (whether part of the subject

property or on a neighboring property) and/or the impacts of landslide run-out on down slope properties and sensitive areas;

7. For proposed development on unconsolidated deposits, analysis of whether the development results in a factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

8. The analysis shall include evaluation of stability under seismic conditions for both unconsolidated deposits and bedrock.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.420 Development standards—Erosion hazard areas.

A. *Activities allowed in erosion hazard areas.* Erosion hazard areas have soil and slope conditions such that development must incorporate adequate control in order to avoid soil movement and potential impacts on downgradient resources, including water quality and aquatic habitat. Activities in erosion control areas shall be subject to the following standards.

B. *Landslide hazard areas.* Except as otherwise provided for in this chapter, only those activities approved and permitted consistent with an approved sensitive area report in accordance with this chapter shall be allowed in erosion or landslide hazard areas.

C. *Development standards.*

1. Structures shall be located on the least sensitive portion of the site and clustered where possible to reduce disturbance and removal of vegetation.
2. Grading shall minimize alterations to the natural contour of the slope. Building foundations shall conform to the natural contours of the slope and be stepped/tiered to conform to existing topography of the site;
3. Retaining walls shall be preferred over cut and fill for roads, parking lots and structures. Structures on slopes in excess of twenty-five percent shall incorporate earth retaining structures in buildings rather than employing free-

standing earth retention structures. Clearing and grading shall minimize ground disturbance to the maximum extent feasible and generally shall not extend more than ten feet beyond the approved development;

4. All structures or impervious surface improvements shall be required to have on-site drainage systems to meet the specifications of the public works department to control conveyance of stormwater to avoid erosion hazard areas. Point discharges or overland dispersion systems from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited from discharging onto slopes in excess of five percent. Conveyance should be provided to the foot of slopes;

5. Roads, driveways and other vehicular access, trails and walkways, shall be:

- a. Located in the least sensitive area of the site.
- b. Designed to minimize topographic modification with low gradients and/or parallel to the natural contours of the site.
- c. Retaining walls shall be preferred over cut and fill slopes to minimize topographic modification.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.425 Erosion hazard areas—Review and reporting requirements.

A. When sensitive area maps or other sources of credible information indicate that a site proposed for development or alteration is or may be located within an erosion hazard area the mayor or his/her designee shall have the authority to require the submittal of an erosion hazard assessment report. The following provisions shall apply in addition to the sensitive area report requirements of [Section] [19.10.130](#):

B. The erosion hazard assessment shall describe and evaluate the soil characteristics of the subject property and adjacent areas. The erosion hazard assessment shall include field investigation. The report shall include the following, provided that the mayor or his/her designee may determine that any

portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. A description of areas on the site and the surrounding areas that influence or could be influenced by the site, or areas within three hundred feet of the site meet the criteria for an erosion hazard.
2. A scaled site plan showing:
 - a. The type and extent of soils subject to erosion hazard, and any other sensitive areas, and buffers on, adjacent to or that are likely to impact or be impacted by the proposal, including surface water, wetlands and other downgradient features;
 - b. The location of existing and proposed areas of clearing, structures, fill, access roads, storage of materials, and drainage facilities, with dimensions;
 - c. The existing site topography preferably accurate to within two-foot contours; and
 - d. Proposed erosion control and drainage control features and facilities.

C. Analysis of potential erosion and best management practices to control erosion:

1. A description and analysis of the level of erosion associated with no development within the erosion hazard area;
2. A description and analysis of the level of erosion associated with the proposal and alternatives;
3. A description and analysis of design features that could reduce erosion, including development standards within this section and other BMPs;
4. A description and analysis of the level of risk of sedimentation, degradation of water quality, impacts on aquatic species or other effects of the proposal and alternative design and BMPs.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.430 Mine hazard areas.

A. *Declassification of mine hazard areas.* Areas underlain by mine workings may be declassified as a mine hazard area by the mayor or his/her designee based on a detailed mine hazard study, field work, and completion of required mitigation to eliminate hazards of open workings, sinkholes, gas, fire and waste dumps and reducing the potential for settlement to 1:350 for ground tilt and 0.003 in/in strain such that hazards of mine workings are equivalent to lands not underlain by mines.

B. *Mine areas of low hazard.*

1.

Mine areas of low hazard are defined as locations where:

- a. All workings are at a depth of more than three hundred feet or where a previous mine hazard assessment report has determined that all workings have collapsed or that potential subsidence is limited to no more than 1:350 for ground tilt and 0.003 in/in strain; and
- b. No unmitigated openings such as entries, portals, adits, mine shafts, air shafts, timber shafts, sinkholes, improperly filled sinkholes, tailings or other areas of past mining activity creating a significant probability for catastrophic ground surface collapse are within one hundred feet of the location.

2. The mayor or his/her designee may allow the following activities or installations in low hazard mine areas without a detailed mine hazard assessment:

- a. Overhead utility lines;
- b. Trails and passive recreation uses;
- c. Mobile homes not on a rigid foundation;
- d. Construction of new buildings with less than two thousand five hundred square feet of floor area or roof area, whichever is greater, and

which are not residential structures or used as places of employment or public assembly;

e. Additions to existing residences that are two hundred fifty square feet or less; and

f. Installation of fences.

3. All other uses may be allowed in low hazard mine areas only if analysis by a qualified professional establishes compliance with the following standards, based on a specific risk assessment and remediation plans:

a. The risk of sinkhole development is reduced to a level no greater than other properties not affected by mine workings; and

b. The risk of other public safety hazards related to underground workings and or waste dumps is reduced to a level no greater than other properties not affected by mine workings; and

c. If the site could be subject to trough subsidence due to collapse of mine workings, remediation plans shall include site-specific design specifications that can accommodate calculated potential subsidence effects as required by the performance standards in subsection (E), below.

4. Vulnerable facilities, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials shall not be located in mine areas of low hazard if there is a feasible alternative location outside the hazardous areas that would serve the intended service population. A facility may be allowed only subject to the performance standards in subsection (E), below.

C. Mine areas of moderate hazard.

1. Areas of moderate mine hazard are defined as locations that pose significant risks of property damage that may be mitigated by implementing special engineering or architectural recommendations. These are locations that typically include, but are not limited to:

a. Mine workings that are at a depth of one hundred fifty feet to three hundred feet below the surface of the land; or

b. No unmitigated openings such as entries, portals, adits, mine shafts, air shafts, timber shafts, sinkholes, improperly filled sinkholes, tailings and other areas of past or significant probability for catastrophic ground surface collapse are within one hundred feet of the location.

2. The mayor or his/her designee may allow the following activities or installations in a moderate mine hazard area without a detailed hazard assessment:

a. Overhead utility lines.

3. All other uses may be allowed only if analysis by a qualified professional establishes compliance with the following standards, based on a specific risk assessment and remediation plans:

a. All entries, portals, adits, mine shafts, air shafts, timber shafts, sinkholes, improperly filled sinkholes and other areas of past or significant probability for catastrophic ground surface collapse are mitigated in compliance with the performance standards in subsection (E), below; and

b. The risk of sinkhole development is reduced to a level no greater than other properties not affected by mine workings; and

c. The risk of other public safety hazards related to underground workings and or tailings is reduced to a level no greater than other properties not affected by mine workings; and

d. If the site could be subject to trough subsidence due to collapse of mine workings, remediation plans include site-specific design specifications that can accommodate calculated potential subsidence effects as required in the performance standards in subsection (E), below.

4. Vulnerable facilities, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials shall not be located in a

moderate mine hazard areas if there is a feasible alternative location outside the hazardous areas that would serve the intended service population. A vulnerable facility may only be allowed in a moderate mine hazard area according to the performance standards in subsection (E), below.

D. Mine areas of severe hazard.

1. Mine areas of severe hazard are defined as locations that pose a significant risk of catastrophic ground surface collapse. These are locations that typically include, but are not limited to:

- a. Coal mine workings from a depth of less than one hundred fifty feet from the surface of the land; or
- b. Unmitigated openings such as entries, portals, adits, mine shafts, air shafts, timber shafts; or
- c. Sinkholes improperly filled sinkholes and other areas of past or significant probability for catastrophic ground surface collapse.

2. All uses and activities within a severe mine hazard area require analysis by a qualified professional and compliance with specific risk assessment and remediation plans, including:

- a. Remediation of hazards related to entries, portals, adits, mine shafts, air shafts, timber shafts, sinkholes, improperly filled sinkholes, mine tailings and other areas of past or significant probability for catastrophic ground surface collapse are mitigated in compliance with development standards in subsection (E) to a standard that reduces risk of personal injury and risk of damage to structures and public facilities to a level similar to lands not underlain by mine workings.

b. The preferred uses for areas of severe mine hazard are:

- i. Open space and passive recreation facilities with no public assembly;
- ii. Public facilities that must traverse the area, such as roads and utilities, but only if mitigated in accordance with [Section 19.10.430](#) and [Section 19.10.435](#).

3. Vulnerable facilities, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials are prohibited in severe mine hazard areas.

E. *Performance standards.* Development on or near a mine hazard area requires applicant to first demonstrate that hazards to health or safety, persons, or property at the proposed site as a result of the development is equivalent to land not underlain by mine workings. If a proposal is located on or near a mine hazard area, a study by a qualified professional geotechnical specialist may be required.

1. Development within mine hazard areas shall be accompanied by technical studies by qualified professionals that assess the potential risk from entries, shafts and ventilation facilities, of potential future trough subsidence or sinkhole development due to collapse of abandoned coal mines and identifies specific measures to mitigate the risk in accordance with the criteria below:

a. Mine entries and shafts shall be permanently sealed using controlled backfill and/or grouting, or an approved, engineered seal and shall include permanent diversion of surface drainage away from the shaft or mine entry.

b. Existing sinkholes and shallow prospect excavations shall be backfilled to surface using controlled placement of suitable backfill and shall include permanent diversion of surface drainage away from existing sinkholes and prospect excavations.

c. Potential sinkhole hazards shall be assessed by a qualified professional utilizing direct subsurface investigation that demonstrate coal mine workings either do not exist, or that the workings have collapsed so that there is no remaining potential for sinkhole development; or show that the hazards associated with any voids that are identified are fully mitigated by backfilling, grouting, or other approved means such that the potential for sinkhole development is eliminated.

d. Any mine tailings or other fill materials shall be:

- i. Demonstrated to be stable through analysis by a qualified professional, or if such material does not meet stability criteria it shall be regarded or otherwise mitigated to meet stability criteria.
 - ii. If springs or seeps discharge from such areas, materials shall be removed or regraded to expose the source of the spring or seep.
 - iii. Mine tailings or fill materials shall be covered with a minimum two feet of clean soil and be revegetated with native vegetation to control erosion, unless an alternative specific use has been approved.
 - iv. Development shall not be permitted within one hundred feet of tailings or fill materials that shows evidence of current or past combustion, unless combustible materials are removed.
 - v. Development may be permitted over mine tailings or fill material only if an investigation and analysis by a qualified professional identifies feasible construction criteria for foundation stability and performance.
- e. Mine gas hazards shall be mitigated by backfilling all mine entries, shafts, and sinkholes in and providing appropriate venting.
- f. Mine fire potential shall be assessed through analysis by a qualified professional. Development shall not be permitted within one hundred feet of workings where investigations indicate the possible presence of combustion in the underlying seam or seams.
2. Every development shall include appropriate construction standards established by a qualified professional in accordance with the criteria below:
- a. Foundations shall be designed by a Washington State licensed structural engineer, with consideration of the subsidence effects documented for the site and the requirements of the International Building Code as provided by the criteria below:
 - i. Foundations and slabs on grade shall be designed to resist the ultimate forces for tension and/or compression as determined from the hazards report. The forces generated by subsidence effects of

tilt and strain shall be treated as live loads with the appropriate load factors and/or factors of safety in design. Simultaneous friction drag force and lateral earth pressure loads shall be treated as earth pressure in load combinations.

ii. Ultimate passive soil pressure and distribution shall be assessed for all vertical surfaces in contact with foundation soil due to horizontal strain occurring from a subsidence and included in design specifications.

iii. Utility lines shall not be rigidly connected to the foundation wall. A flexible joint shall be provided at the point of transition from soil support to building support for all utilities.

iv. Positive drainage shall be designed for positive gravity flow under the most sensitive predicted subsidence conditions.

b. Roads and utilities shall be designed to accommodate the magnitudes of strains and tilts documented by technical studies through adequate strength to resist the forces of maximum predicted subsidence-related tilts and strains, or by adequate flexibility to accommodate the resulting deformations.

i. Roadways shall be constructed of flexible material and shall be designed to maintain positive drainage with the maximum predicted subsidence.

ii. Bridges shall be designed to a factor of safety of two to accommodate maximum strains and tilts predicted.

iii. Water utilities shall be designed to provide for two times the maximum predicted tilts and strains, including service lines, structures, and related appurtenances.

iv. Sewer and storm drainage utility design shall provide for 1.5 times the maximum predicted tilts and strains, including service lines, structures, and related appurtenances. Design grades shall provide positive gradient after allowing for the maximum predicted subsidence.

vi. Storm drainage detention and retention facilities shall be designed to remain functional following the occurrence two times the maximum predicted tilts and strains. Such facilities may be located in mine hazard areas only if all risk of sinkhole development has been eliminated.

vii. Electric and gas cables and pipelines shall be designed to accommodate the maximum predicted tilts and strains with suitable safety factors applied to these magnitudes such that failure of the utility line will not present a risk to public safety. The applicant shall present certification from the respective private utility that utilities have been designed in accordance with the above.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.435 Mine hazard—Review and reporting requirements.

A mine hazard study shall be prepared by a qualified professional that addresses the information and criteria below, provided that the mayor or his/her designee may accept and review a preliminary report with limited content to outline the potential hazard level and propose a suggested analysis methodology. The administrator may retain, at the applicant's expense, an independent qualified professional to perform a peer review of the mine hazard report.

A. A mine hazard report shall contain all available documentary information about mine workings and the results of a surface reconnaissance that shall identify any public safety mine hazards, mine waste dumps, or evidence of mine subsidence or sinkholes and shall include:

1. Historical mining data, including available copies of original mine records for mine workings.
2. A map showing property boundaries, mine hazard boundaries, and any potential hazards identified on or within three hundred feet of the property.

B. Shallow hazards such as entry portals, shaft collars, ventilation shafts, prospects and mine waste dumps may be investigated by test pits or

trenching, providing the method enables investigation to an adequate depth for the hazard being investigated.

C. Site-specific evaluation of potential trough subsidence.

1. Review of available records of original mine workings that could potentially influence the site by trough subsidence.

a. Locations, depths, and thicknesses of such seams and workings;

b. Workings that could potentially influence the site shall be determined by projecting the downdip limit angle from the lowest limit of the documented workings to the ground surface. Mine workings are considered to potentially influence the property if the property lies within the line at which the limit angle intersects the ground surface.

2. Subsurface conditions may be evaluated by drilling. Drilling is the most acceptable method for providing information for reducing the remaining mine height value used in subsidence calculations to less than the height of the original workings.

a. Drillholes shall be logged continuously from one hundred feet above to twenty feet below mine workings, including lithology at five-foot intervals, drill fluid circulation, penetration rate, and free fall of the drill string.

b. Greater confidence will be placed in core drilling logs than rotary drilling logs.

c. As a guideline, a minimum of one drillhole penetrating each seam that could potentially cause trough subsidence at the site should be drilled for each two-hundred-foot length of the adit, unless alternative spacing is demonstrated to provide adequate information concerning the workings.

d. Surface geophysics, or other indirect means, may be used to assist in projecting information between and beyond drillholes, but shall not be accepted as the sole method for evaluating the

condition of underground mine workings and calculating remaining mine height.

3. Calculation of trough subsidence magnitudes, tilts, and strains shall be in accordance with the empirical function method of the British National Coal Board, as presented in their Subsidence Engineers' Handbook, adjusted to reflect the effects of inclined seams and a downdip limit angles encountered and shall be based on a conservative evaluation of site conditions developed from the review of available records, site investigation and subsurface exploration.

a. Direct field evidence or a review of detailed mine records shall be used to calculate the subsidence factor, the downdip limit angle.

b. Remaining mine height shall be presumed to be equal to the seam thickness for the subsidence calculations unless evidence from drilling justifies modification.

c. The calculation of potential tilts and strains shall consider effects of individual panel widths and barrier pillar widths. If direct subsurface investigation indicates that the mine workings are fully collapsed, an estimate of potential surface settlements due to consolidation of rubble and loose material shall be made for the cumulative effect of all seams that could induce trough subsidence at the site.

4. Site plans shall be prepared showing the proposed development and calculated magnitudes of potential subsidence, strains, and tilts at the property boundaries and at the locations of any proposed structures.

a. A map showing contours of potential subsidence magnitudes, strains, and tilts throughout the property shall be submitted for use in design of roads and utilities.

b. Appropriate recommendations shall be provided for structural and civil design requirements.

D. Site-specific evaluation: Potential sinkhole hazards.

1. Review of available record shall be in [subsection] (1)(a) above.

2. Subsurface conditions for workings located within one hundred fifty feet of the ground surface shall be investigated by drilling.

a. Drillhole sites shall be selected at representative locations and at representative working depths. A minimum of five drillholes shall be drilled along the alignment of any linear structure, such as roads or utility lines designed to cross a mine hazard area. No less than one drillhole per acre shall be provided for a site.

b. Core drilling is preferred but is not compulsory. Rotary drilling is an acceptable method provided it is used in combination with downhole geophysical logging, including caliper logs. Drilling shall penetrate immediately above and through the predicted workings locations to facilitate interpretation of the condition of the mine workings.

c. Drillholes shall be logged continuously throughout their length, including lithology at five-foot intervals for rotary drillholes, drill fluid circulation, penetration rate, and free fall.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.440 Seismic hazard areas.

Development may be allowed in seismic hazard areas when all of the following apply:

A. If evaluation of site-specific subsurface conditions by a qualified professional demonstrates that the proposed development site is not subject to the conditions indicating seismic risk in, the provisions of this subsection shall not apply.

B. If a site is subject to seismic risk, the applicant shall implement appropriate engineering design based on analysis by a qualified professional of the best available engineering and geological practices that either eliminates or minimizes the risk of structural damage or injury resulting from seismically induced settlement or soil liquefaction, including compliance with the following criteria:

1. Subdivision within a seismic hazard areas shall assure that each resulting lot has sufficient buildable area outside of the hazard area or that appropriate limitations on building and reference to appropriate standards are incorporated into subdivision approval and may be placed as restrictions on the face of the plat;

2. Structures in seismic hazard areas shall conform to applicable analysis and design criteria of the International Building Code;

3. Public roads, bridges, utilities and trails shall be allowed when there are no feasible alternative locations and geotechnical analysis and design are provided that ensure the roadway, bridge and utility structures and facilities will not be susceptible to damage from seismic induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

C. The mayor or his/her designee may waive or reduce engineering study and design requirements for alterations in seismic hazard areas for:

1.

Mobile homes;

2. Additions or alterations to existing structures that do not increase occupancy or significantly affect the risk of structural damage or injury; and

3. Buildings that are not dwelling units or used as places of employment or public assembly.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.445 Seismic hazard—Review and reporting requirements.

A. When sensitive area maps or other sources of credible information indicate that a site proposed for development or alteration is or may be located within a

geologically hazardous area the mayor or his/her designee shall have the authority to require the submittal of a seismic hazard assessment report. The following provisions shall apply in addition to the sensitive area report requirements of [Section] [19.10.130](#):

B. An existing conditions assessment and investigation to evaluate the geologic characteristics of the subject property and adjacent areas and their susceptibility to damage during a seismic event.

1. The seismic assessment shall include field investigation and may include the analysis of historical aerial photographs, review of public records and documentation, and interviews with adjacent property owners, provided that the mayor or his/her designee may determine that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development;

2. A description of the general surface and subsurface geology, hydrology, soils, and vegetation found in the project area, including faults and indicators of earth movement, past seismic events and other features that would affect the site response to seismic conditions. This may include surface exploration data such as borings, drill holes, test pits, wells, geologic reports, and other relevant reports or regional, local and site investigations that may be useful in making conclusions or recommendations about the site under investigation;

C. A description of the vulnerability of the site and structures to seismic and other geologic processes and a description of any potential hazards that could be created or exacerbated as a result of site development.

1. Evaluation of the current design in terms of the risk of structural damage or injury resulting from seismically induced stress, settlement, soil liquefaction, and other processes.

2. A description and evaluation of the best available engineering and geological practices that either eliminates or minimizes the risk of structural damage or injury resulting from seismic forces including public roads, utilities and other features.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.500 Sensitive aquifer recharge areas.

A. *Classification.* Aquifer recharge areas are categorized according to the following criteria:

1. *Category I—Severe aquifer sensitivity.* "Category I—Severe aquifer sensitivity" are those areas which provide rapid recharge with little protection, having highly permeable soils. The predominant soil series and types are those listed in category I in Table 19.10.500.B.

2. *Category II—Moderate aquifer sensitivity.* "Category II—Moderate aquifer sensitivity" are those areas with aquifers present, but which have a surface soil material that encourages run-off and slows water entry into the ground. The predominant soil series and types are those listed as category II in Table 19.10.500.B.

3. *Category III—Slight aquifer sensitivity.* "Category III—Slight aquifer sensitivity" are those areas of low ground water availability and whose soil series are derived from basaltic, andesitic, or sedimentary rock or ancient glacial till which are parent material for soils with more clays at the surface. These geological formations do not provide abundant ground water. The predominant soil series and types are those listed as category III in Table 19.10.500.B.

Table 19.10.500.A – Aquifer Sensitivity Ratings for Soil Texture		
Soil Texture¹	DRASTIC Rating¹	Sensitivity
Thin or Absent ³	10	Category I - Severe
Gravel	10	Category I - Severe
Sand	9	Category I – Severe
Peat	8	Category I – Severe
Shrink/Swell Clay	7	Category II - Moderate
Sandy loam	6	Category II - Moderate
Loam	5	Category II – Moderate
Silt loam	3	Category III – Slight
Clay loam	3	Category III – Slight
Muck	2	Category III – Slight
Non-shrink/Swell Clay	1	Category III - Slight

¹ The DRASTIC Index (Aller et. al. June 1987) was developed cooperatively between the National Water Well Association (NWWA; now the National Ground Water Association) and the U.S. Environmental Protection Agency (EPA) to rank soil types with respect to pollution transport potential.

Table 19.10.500.B—Aquifer Sensitivity Ratings for Soil Units

Soil Series Name and Map Unit Symbol	Category I Severe	Category II Moderate	Category III Slight
Alderwood gravelly sandy loam (Ag)		X	
Alderwood and Kitsap soils, very steep (AkF)		X	
Beausite gravelly sandy loam (Be)		X	
Bellingham silt loam (Bh)		X	
Buckley silt loam (Bu)		X	
Everett gravelly sandy loam (Ev)		X	
Mixed alluvial land (Ma)		X	
Norma sandy loam (No)		X	
Ragnar-Indianola association, sloping (RdC)		X	
Seattle muck (Sk)			X
Shalcar muck (Sm)			X

B. Prohibited uses and criteria.

1. The following new development proposals and alterations are not allowed on a site located in a category I sensitive aquifer recharge area:

- a. Disposal of radioactive wastes, as defined in Chapter 43.200 RCW;
- b. Hydrocarbon extraction;
- c. Commercial wood treatment facilities;
- d. Class V injection wells, but limited to subclasses 5F01, 5D03, 5D04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24;
- e. Underground storage tanks, including tanks exempt from the requirements of chapter 173-360 WAC, with hazardous substances, as

defined in Chapter 70.105 RCW, that do not comply with the requirements of chapter 173-360 WAC and K.C.C. [Title 17](#);

f. Above ground storage tanks for hazardous substances, as defined in Chapter 70.105 RCW, unless protected with primary and secondary containment areas and a spill protection plan;

g. Landfills for hazardous waste, or special waste, as defined in WAC 173-303;

h. Wrecking yards;

i. Electroplating;

j. Solid waste handling and processing facilities;

k. Dry cleaners, excluding drop-off only operations;

l. Landfills for municipal solid waste;

m. Transmission pipelines carrying petroleum or petroleum products;

n. Sand and gravel, and hard rock mining;

o. Mining of any type below the upper surface of the saturated ground water that could be used for potable water supply;

p. Vehicle repair;

q. Biological research;

r. Chemical manufacturing, mixing and remanufacturing;

s. Golf courses;

t. Cemeteries.

2. Except as otherwise provided in subsection (C) of this section, the following new development proposals and alterations are not allowed on a site located in a category II sensitive aquifer recharge area: items (a) through (i) in subsection (B)(1) above.

3. Except as otherwise provided in subsection (C) of this section, the following new development proposals and alterations are not allowed on a site located in a category III sensitive aquifer recharge area: items (a) through (h) in subsection (B)(1) above.

C. The following standards apply to development proposals and alterations that are substantial improvements on a site located in a sensitive aquifer recharge area:

1. The owner of an underground storage tank, including a tank that is exempt from the requirements of chapter 173 WAC, in a category I, II or III sensitive aquifer recharge area shall either bring the tank into compliance with the standards of chapter 173 WAC and or properly decommission or remove the tank; and
2. A development proposal for new residential development, including, but not limited to, a subdivision, short subdivision, or dwelling unit, shall incorporate best management practices in order to infiltrate stormwater runoff to the maximum extent.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.600 Definitions.

Words not defined in this chapter shall be as defined in the City Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either code shall be as defined in the Webster's Third New International Dictionary, latest edition.

19.10.601 *Adjacent*. Immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from sensitive areas to ensure protection of the functions and values of the sensitive areas. Adjacent shall be determined on a case by case basis and at the minimum shall include any activity or development located:

- A. On a site immediately adjoining a sensitive area;

- B. A distance equal to or less than the greatest potential sensitive area buffer width and building setback applicable to the resource;
- C. A distance equal to or less than one-half mile (two thousand six hundred forty feet) from a bald eagle nest;
- D. A distance equal to or less than three hundred feet upland from a stream, wetland, or water body;
- E. Bordering or within the floodway, floodplain or channel migration zone; or
- F. A distance equal to or less than two hundred feet from a sensitive aquifer recharge area.

19.10.602 *Agricultural activities.* Agricultural uses and practices existing or legally allowed on the effective date of this ordinance on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a sensitive area than the original facility; and maintaining agricultural lands under production or cultivation.

19.10.603 *Alteration.* Any human induced change on a site, or in the vicinity that alters the existing condition and/or ecological functions and values of a sensitive area or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, or any other activity that changes the character of the sensitive area.

19.10.604 *Anadromous fish.* Fish that spawn and rear in fresh water and mature in the marine environment.

19.10.605 *Applicant*. A person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, has a valid easement of other right to utilize, or is a public utility or public agency with the right of eminent domain, or is the authorized agent of such a person.

19.10.606 *Aquifer, sole source*. An area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty percent or more of the drinking water for an area without a sufficient replacement available.

19.10.607 *Best available science*. Current scientific information used in the process to designate, protect, or restore sensitive areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are included in Citations of Recommended Sources of the Best Available Science for Designating and Protecting Sensitive Areas published by the Washington State Office of Community Development.

19.10.608 *Best management practices (BMPs)*. Conservation practices or systems of practices and management measures that reflect the current scientific and technical consensus on the best or most effective means of addressing adverse effects upon a resource.

19.10.609 *Buffer or buffer zone*. An area that is contiguous to a sensitive area and provides an area for related ecological functions to take place including, but not limited to, the continued maintenance, functioning, and/or structural stability of a sensitive area and/or separates and protects the sensitive area from adverse impacts associated with adjacent land uses.

19.10.610 *Compensation project*. Actions that are necessary to replace project-induced sensitive area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

19.10.611 *Compensatory mitigation*. Replacing project-induced losses or impacts to a sensitive area, and includes, but is not limited to, the following:

A. *Restoration*. Actions performed to re-establish functional characteristics and processes that have been lost by alterations,

activities, or catastrophic events within an area that no longer provides such functions.

B. *Creation*. Actions performed to intentionally establish functional characteristics of an ecosystem at a site where it did not formerly exist.

C. *Enhancement*. Actions performed to improve the condition of existing degraded ecological functions so that the functions they provide are of a higher quality.

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

19.10.613 *Critical areas*. Critical areas include the following areas and ecosystems: Wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

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19.10.614 *Critical aquifer recharge areas*. Areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

Commented [LM8]: Addressing checklist category Overall Requirements, p. 2-3.

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19.10.~~613~~615 *Cumulative impacts or effects*. The combined, incremental effects of human activity on ecological or sensitive areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects or actions in a particular place and within a particular time.

Commented [LM9]: Addressing checklist category Overall Requirements, p. 2-3.

19.10.~~614-616~~ *Developable area*. A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this chapter.

19.10.~~615-617~~ *Development*. Any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the city that binds land to specific patterns of use, including but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

- A. Interior building improvements.
- B. Exterior structure maintenance activities, including painting and roofing.
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding.
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

19.10.~~616-618~~ *Development permit*. Any permit issued by the [city/county], or other authorized agency, for construction, land use, or the alteration of land.

19.10.~~617-619~~ *Erosion*. The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

19.10.~~618-620~~ *Erosion hazard areas*. At least those areas identified by the United State Department of Agriculture National Resources Conservation Service as having a "severe" rill and inter-rill erosion hazard.

19.10.~~619-621~~ *Exotic*. Any species of plants or animals, which are foreign to the planning area.

19.10.620-622 *Fish habitat*. Habitat that provides the life supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements of a species depend on its age and activity, the basic components of fish habitat in rivers, streams, ponds, lakes, and nearshore areas include, but are not limited to, the following:

- A. Clean water and appropriate temperatures for spawning, rearing, and holding;
- B. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-channel habitat;
- C. Abundance of bank and in-stream structures to provide hiding and resting areas and stabilize stream banks and beds;
- D. Appropriate substrates for spawning and embryonic development. For stream and lake dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand;
- E. Presence of riparian vegetation that creates a transition zone, which provides shade, and food sources of aquatic and terrestrial insects for fish;
- F. Unimpeded passage (i.e. due to suitable gradient and lack of barriers) for upstream and downstream migrating juveniles and adults.

19.10.623 *Fish and wildlife habitat conservation areas*. Areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

19.10.624-624 *Flood or flooding*. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of

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Commented [LM10]: Addressing checklist categories Overall Requirements, p. 2-3, and Definition of Fish and Wildlife Habitat and Conservation Areas, p. 13.

inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

19.10.~~622-625~~ *Floodplain*. The total land area adjoining a river, stream, watercourse or lake subject to inundation by the base flood.

~~19.10.626~~ *Frequently flooded areas*. Lands in the floodplain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

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Commented [LM11]: Addressing checklist category Overall Requirements, p. 2-4.

19.10.~~623-627~~ *Formation*. An assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

19.10.~~624-628~~ *Functions and values*. Functions are processes or attributes provided by areas of the landscape (e.g. wetlands, rivers, streams, and riparian areas). The beneficial roles served by sensitive areas including, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards. Values are human perceptions of individual and social benefit associated with these functions and may include functional value for economic benefit, historical and archaeological value, aesthetic appreciation, educational, scientific, recreational or religious pursuits. These beneficial roles are not listed in order of priority.

19.10.~~625-629~~ *Ground water*. Water in a saturated zone or stratum beneath the surface of land or a surface water body.

~~19.10.626-630~~ *Geologically hazardous areas*. Areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

~~19.10.631~~ *Habitats of local importance*. Habitats designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities. Areas designated as geologically hazardous

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~~areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.~~

19.10.~~627-632~~ *Hazardous substances*. Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

19.10.~~628-633~~ *Natural condition*. Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by human activity.

19.10.~~629-634~~ *In-kind compensation*. To replace sensitive areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

19.10.~~630-635~~ *Isolated wetlands*. Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream, and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

19.10.~~631-636~~ *Infiltration*. The downward entry of water into the immediate surface of soil.

19.10.~~632-637~~ *Landslide hazard areas*. Areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

19.10.~~633-638~~ *Monitoring*. Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

Commented [LM12]: Addressing checklist categories Overall Requirements, p. 2-3, and Definition of Geologically Hazardous Areas, p. 11.

Commented [LM13]: Addressing checklist category Overall Requirements, p. 2-3.

19.10.~~634-639~~ *Native growth protection area (NGPA)*. An area where native vegetation is preserved for the purpose of preserving ecological functions or preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat;

19.10.~~635-640~~ *Native vegetation*. Plant species that are indigenous to the area in question.

19.10.~~636-641~~ *Natural waters*. Waters, excluding water conveyance systems that are artificially constructed and actively maintained for irrigation.

19.10.~~637-642~~ *Non-indigenous*. See "exotic."

19.10.~~638-643~~ *Non-conforming*. A use, development, structure or parcel that was lawfully constructed or established prior to the effective date of this code or amendments hereto, but which does not conform to present regulations or standards.

19.10.~~639-644~~ *Off-site compensation*. To replace sensitive areas away from the site on which a sensitive area has been impacted.

19.10.~~640-645~~ *On-site compensation*. To replace sensitive areas at or adjacent to the site on which a sensitive area has been impacted.

19.10.~~641-646~~ *Out-of-kind compensation*. To replace sensitive areas with substitute sensitive areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement "out-of-category."

19.10.~~642-647~~ *Practical alternative*. An alternative that is available and capable of being carried out after taking into consideration, cost, existing technology, and logistics in light of overall project purposes, and having fewer impacts to sensitive areas.

19.10.~~643-648~~ *Primary association area*. The area used on a regular basis by, or is in close association with, or is necessary for the proper functioning of the habitat of a sensitive species. Regular basis means that the habitat area is normally, or usually known to contain a sensitive species, or based on known habitat requirements of the species, the area is likely to contain the sensitive

species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

19.10.~~644-649~~ *Priority habitat*. Habitat type or elements with unique or significant value to one or more species as classified by the Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element (WAC 173-26-020(34)).

19.10.~~645-650~~ *Project area*. The area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire contiguous parcel owned or controlled by the applicant, at a minimum.

19.10.~~646-651~~ *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.

19.10.~~647-652~~ *Recharge*. The process involved in the absorption and addition of water to ground water.

19.10.~~648-653~~ *Relative density*. A method for evaluating the density of trees in relation to the theoretical maximum density for trees of the same size and species. It is preferable to a simple density (trees/acre) because it is a more accurate measure of occupied growing space and suppression mortality. Relative density equals the basal area of all trees in the stand divided by the square root of the quadratic mean diameter.

19.10.~~649-654~~ *Repair or maintenance*. An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter sensitive areas are not included in this definition.

19.10.~~650-655~~ *Restoration*. Measures taken to restore an altered or damaged natural feature including:

- A. Active steps taken to restore damaged or altered ecological conditions, wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- B. Actions performed to re-establish structural and functional characteristics of the sensitive area that have been lost by alteration, past management activities, or catastrophic events.

19.10.~~654-656~~ *Riparian habitat*. Areas adjacent to aquatic systems (stream, lake or pond) that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Riparian habitat areas include those riparian areas altered due to human development activities.

19.10.~~652-657~~ *River*. See "Watercourse."

19.10.~~653-658~~ *Scientific process*. A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

A. *Peer review*. The information has been sensitively reviewed by other qualified scientific experts in that scientific discipline.

B. *Methods*. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to assure their reliability and validity.

C. *Logical conclusions and reasonable inferences*. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.

D. *Quantitative analysis*. The data have been analyzed using appropriate statistical or quantitative methods.

E. *Context*. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

F. *References*. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

19.10.~~654-659~~ *Seismic hazard areas*. Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

19.10.~~655-660~~ *Sensitive area tract*. Land designated as a separate parcel and retained in an open condition in perpetuity for the protection of sensitive areas. Lands within this type of dedication may include sensitive areas and related buffers. Ownership may be vested in a private party, in undivided interest by lots in a subdivision, in a non-profit entity or a public entity.

19.10.~~656-661~~ *Sensitive habitat*. Habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary

association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

19.10.~~657-662~~ *SEPA*. Washington State Environmental Policy Act, Chapter 43.21C RCW.

19.10.~~658-663~~ *Shorelands or shoreland areas*. Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.

19.10.~~659-664~~ *Soil survey*. The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

19.10.~~660-665~~ *Species*. Any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

19.10.~~664-666~~ *Species, endangered*. Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

19.10.~~662-667~~ *Species of local importance*. Those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species.

19.10.~~663-668~~ *Species, priority*. Any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

19.10.~~664-669~~ *Species, threatened.* Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats and is listed by the state or federal government as a threatened species.

19.10.~~665-670~~ *Stream.* See "Watercourse."

19.10.~~666-671~~ *Sub-drainage basin or subbasin.* The drainage area of the highest order stream containing the subject property impact area. Stream order is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on.

19.10.~~667-672~~ *Unavoidable.* Adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

19.10.~~668-673~~ *Water dependent.* A use or portion of a use that cannot exist in a location that is not adjacent to the water but is dependent on the water by reason of the intrinsic nature of its operations. A use that can be carried out only on, in, or adjacent to water. Examples of water dependent uses include ship cargo terminal loading areas; fishing; ferry and passenger terminals; barge loading, ship building, and dry-docking facilities; marinas, moorage, and boat launching facilities; aquaculture; float plane operations; surface water intake; and sanitary sewer and storm drain outfalls.

19.10.~~669-674~~ *Water resource inventory area (WRIA).* One of sixty-two watersheds in the State of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter 173-500 WAC on January 1, 1997, as amended hereafter.

19.10.~~670-675~~ *Water table.* That surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

19.10.~~674-676~~ *Watercourse*. Those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition includes drainage ditches or other artificial water courses where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid or other fish populations.

19.10.~~672-677~~ *Well*. A bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

19.10.~~673-678~~ *Wetlands*. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the Washington State Wetland Identification and Delineation Manual.

19.10.~~674-679~~ *Wetland edge*. The boundary of a wetland as delineated based on the definitions contained in this chapter.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)



CITY OF BLACK DIAMOND

Interoffice Memorandum

TO: BLACK DIAMOND PLANNING COMMISSION
FROM: BARB KINCAID, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: DRAFT AMENDMENTS TO BLACK DIAMOND COMPREHENSIVE PLAN CHAPTERS 3 AND 4
DATE: SEPTEMBER 8, 2020

The City Council approved the Planning Commission's preliminary docket for the 2020 annual amendments to the Comprehensive Plan. Two of the docket items were to replace language that had been inadvertently deleted during the formatting of the comprehensive plan update that was adopted in 2019.

These two items are shown in the attached excerpts from the City's adopted Comprehensive Plan. The language to be added back is shown as highlighted and underlined text.

Docket Item #1: Add language back into Chapter 3 of the Parks, Recreation, Trails and Open Space Element to commit the City to planning for parks, recreation and trails under the American with Disabilities Act (ADA) guidelines and regulations to ensure equal access to everyone.

CHAPTER 3. PARKS, RECREATION, TRAILS AND OPEN SPACE

3.1 Introduction

The City's parks, recreation, trails and open space areas are a vital component of the health and wellbeing of the community. Access to these places contribute to Black Diamond's physical, mental and environmental health as they support the City's economic vitality and provide valuable fish, wildlife and vegetation habitat. Conservation and enhancement of ecological resources within the City is a key concept in this Comprehensive Plan.

City residents and visitors enjoy access to a system of citywide and regional parks, trails, and open space areas. The City parks, recreation, trails and open space system comprises about 5% of the total city land area and includes a range of uses from conservancy to active play areas. Lake Sawyer, the fourth largest natural lake in King County, offers public access for boating, water skiing, swimming and fishing.

Other agencies, such as King County and Washington State Parks, also provide significant recreational and open space opportunities for Black Diamond residents. All in all, Black Diamond and other public and private agencies have amassed an impressive amount of open space acreage. Much of it encompasses and preserves valuable streams, wetlands, and habitat conservation areas. Almost every type of park, trail and open space experience is within or very near the City's boundaries.

3.2 Planning Framework

Regulatory Setting and Relationship to Other Plans:

Growth Management Act (GMA)

Cities planning under Washington State's Growth Management Act (GMA) are required to include a parks and recreation element in their comprehensive plan. RCW 36.70A.070(8) of the GMA states that the parks and recreation element must implement and be consistent with the parks and recreation facilities identified in the Capital Facilities Element. The element must also include three components:

- Estimates of park and recreation demand for at least a 10-year period;
- An evaluation of facilities and service needs;
- An evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

This Element meets these directives. The Parks, Recreation, Trails and Open Space Appendix provides an inventory and evaluation of demand and facility and service needs. In addition, The City of Black Diamond is committed to providing equal access under Title II of the Americans with Disability Act (ADA) for its parks, recreational and trails system.

Docket Item #2: Add a policy back into Chapter 4, Natural Environment for the use of LID (low impact development) techniques to manage stormwater runoff.

CHAPTER 4. NATURAL ENVIRONMENT

4.8 Frequently Flooded Areas Goals and Policies

Frequently flooded areas are floodplains and other areas that are subject to flooding. They typically include areas within the 100-year floodplain, which is designated by the Federal Emergency Management Agency (FEMA). Frequently flooded areas are generally flat and low-lying and are adjacent to rivers or streams that flood during storm events. These areas perform important hydrologic functions and may present a risk to persons and property from the movement of large volumes of water and debris downstream during storm events.

❖ **NE Goal 6:** Reduce flood related financial and public safety impacts.

▪ Policy NE-21: Use LID (low impact development) techniques to manage stormwater runoff. *NOTE: all policy numbers will shift to accommodate insertion of new policy NE-21*

▪ **Policy NE-21 (becomes NE-22):** Minimize the alteration of natural surface water features by man or wildlife that retain or carry floodwaters and prevent land alterations that would increase potential flooding.

▪ **Policy NE-22 (becomes NE-23):** Seek to meet or exceed regulatory standards for floodplain development as these standards are updated for consistency with relevant local, state, and federal requirements including those related to the Endangered Species Act.