



CITY OF BLACK DIAMOND
August 21, 2013 Special Meeting Agenda
25510 Lawson St., Black Diamond, Washington

9:00 A.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

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

NEW BUSINESS:

- 1.) **AB13-062A** – Resolution Regarding Department of Ecology’s Comment Letter on the City’s Draft Shoreline Master Program

Mr. Nix

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 13-884, responding to the Department of Ecology's comment letter on the City's Draft Shoreline Master Program in order to be in compliance with RCW 90.58.090.	Agenda Date: August 21, 2013	
	AB13-062A	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	X
	Economic Devel. – Andy Williamson	
Police – Jamey Kiblinger		
Court – Stephanie Metcalf		
Comm. Dev. – Stacey Welsh		
Cost Impact: \$70,000		
Fund Source: Ecology Grant		
Timeline: N/A		
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
Attachments: Draft Resolution No. 13-884(clean and relined versions), Ecology letter dated July 26, 2013 w/attachments and Navigating the Final Steps in SMP Approval document; submitted public comments		
SUMMARY STATEMENT: Council at their August 15, 2013 meeting postponed action on this item to a special meeting on August 21, 2013 at 9:00 a.m. in the Council Chambers.		
COMMITTEE REVIEW AND RECOMMENDATION: Planning and Community Development – August 7, 2013. The Committee agrees with a majority of the required and recommended changes to the City of Black Diamond's Draft Shoreline Master Program, but requests that staff identify regulatory modifications that will reduce and/or eliminate the need for property owners to go through a variance process.		
RECOMMENDED ACTION: MOTION to adopt Resolution 13-884, concurring with the Department of Ecology's recommended and required changes to the City's Draft Shoreline Master Program with certain exceptions as set forth herein, and directing the Mayor to submit an alternate proposal.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 15, 2013	Postponed to Special meeting on Aug. 21 – Passed 4-0	
August 21, 2013		

By request of Council Member Goodwin

RESOLUTION NO. 13-884

**A RESOLUTION OF THE CITY COUNCIL OF
BLACK DIAMOND, WASHINGTON, CONCURRING
WITH THE DEPARTMENT OF ECOLOGY'S
RECOMMENDED AND REQUIRED CHANGES TO
THE CITY'S DRAFT SHORELINE MASTER
PROGRAM WITH CERTAIN EXECPTIONS AS SET
FORTH HEREIN, AND DIRECTING THE MAYOR
TO SUBMIT AN ALTERNATE PROPOSAL**

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

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

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

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

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

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

develop a Restoration Plan for the long-term restoration of impaired shoreline ecological functions; and

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

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

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

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

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

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

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

WHEREAS, the Black Diamond City Council considered written and verbal testimony provided, held one additional worksession on July 19, 2012, and made certain

modifications to the proposed SMP Update and proposed shoreline regulations to reflect such testimony; and

WHEREAS, once the City approved, pursuant to Resolution No. 12-829, the Draft Shoreline Master Program, it was sent by the Mayor, as requested by the City Council at their September 6, 2012 Council meeting, to the Washington State Department of Ecology for review and approval; and

WHEREAS, the Department of Ecology has reviewed the Draft Shoreline Master Program submitted by the City and has notified the City in a letter to Mayor Olness dated July 26, 2013 (the "Notice") that it has determined that those changes to the Draft Shoreline Master Program reflected in Exhibit B attached to the Notice are required in order for the City to obtain Department of Ecology approval of the Shoreline Master Program, and that those changes reflected in Exhibit C attached to the Notice are recommended, but not required, to obtain Department of Ecology approval of the Shoreline Master Program; and

WHEREAS, the City Council has reviewed the revisions as set forth in the Notice and conducted a public hearing on the 15th day of August, 2013 to take public testimony regarding the revisions proposed by the Department of Ecology, and having considered the foregoing and having been in all matters fully advised, concurs with the Department of Ecology's required and recommended changes as set forth in the Notice, with the exception that, the City requests that the Department consider an alternate proposal that, (1) modifies the proposed amendments set forth in Exhibit "C", Item No. 10 (Alternate Setback System) by extending the 160 foot lot length criteria for shallow lot exceptions to 190 feet; (2) adds to Chapter 4.B.4 (Shoreline Setback Reduction Mechanisms – Table III) a contribution to a City restoration fund or bank for offsite shoreline restoration at Lake Sawyer Park as an additional qualifying Water related mitigation measure currently specified by the Department of Ecology as reduction measures 3-6; (3) provides that, where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of the minimum 30 foot setback, the Shoreline Administrator may allow the residence to be located up to five (5) feet closer to the OHWM, provided all other provisions of this SMP are met and impacts are mitigated for No Net Loss; and (4) classifies as Shoreline Residential, and not Urban Conservancy as currently proposed by Department of Ecology, the 9.04 acre Palmer Coking Coal Property at the southeast end of Lake Sawyer that has been previously platted for low density residential use; and

WHEREAS, the City Council requests that the above described alternate proposal be sent to the Department of Ecology by the Mayor within the thirty (30) day response window of the mailing of Ecology's notice, in accordance with RCW 90.58.090; and

WHEREAS, upon Final Department of Ecology approval, the City will make

modifications, including revisions to the City's Comprehensive Plan, Municipal Code and any other relevant documents as required; and

WHEREAS, the City of Black Diamond Council understands that the amendments to the Shoreline Master Program become effective in accordance with RCW 90.58.090 (7);

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

Section 1. That the City Council concurs with the Department of Ecology's required and recommended changes as set forth in the Notice, and attachments thereto, sent on July 26, 2013 to the Mayor, Rebecca Olness, attached hereto as Exhibit "A", with the exception that, the City requests that the Department consider the City's alternate proposal, (1) to modify the proposed amendments set forth in Exhibit "C" of the Notice, Item No. 10 (Alternate Setback System) by extending the 160 foot lot length criteria for shallow lot exceptions to 190 feet; (2)add to Chapter 4.B.4 (Shoreline Setback Reduction Mechanisms – Table III) a contribution to a City restoration fund or bank for offsite shoreline restoration at Lake Sawyer Park as an additional qualifying Water related mitigation measure currently specified by the Department of Ecology as reduction measures 3-6; (3) provide that, where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of the minimum 30 foot setback, the Shoreline Administrator may allow the residence to be located up to five (5) feet closer to the OHWM, provided all other provisions of this SMP are met and impacts are mitigated for No Net Loss; and (4) classify as Shoreline Residential, and not Urban Conservancy as currently proposed by Department of Ecology, the 9.04 acre Palmer Coking Coal Property at the southeast end of Lake Sawyer that has been previously platted for low density residential use,.

Section 2. That the Mayor is hereby requested to provide notice to the Department of Ecology of the City's alternate proposal to amend the SMP as set forth herein, with further discussion to occur with the Department of Ecology regarding the alternate proposal.

Passed by the City Council on the 21st day of August, 2013.

Mayor Rebecca Olness

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha, City Attorney

Published: _____

Posted: _____

Effective Date: _____

attach: Exhibit A

EXHIBIT A

(Notice from Department of Ecology)

By request of Council Member Goodwin

RESOLUTION NO. 13-884

A RESOLUTION OF THE CITY COUNCIL OF BLACK DIAMOND, WASHINGTON, CONCURRING WITH THE DEPARTMENT OF ECOLOGY'S RECOMMENDED AND REQUIRED CHANGES TO THE CITY'S DRAFT SHORELINE MASTER PROGRAM WITH CERTAIN EXECPTIONS AS SET FORTH HEREIN, THE EXCEPTION OF INCREASE OF THE 160' LENGTH CRITERIA FOR A SHALLOW LOT EXCEPTION, UP TO 190' IN AND DIRECTING THE MAYOR TO SUBMIT AN ALTERNATE PROPOSAL

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

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

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

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

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

WHEREAS, the Shoreline Management Act requires all local governments, including the City of Black Diamond, to: 1) develop and inventory the natural characteristics and land use patterns along shorelines covered by the Act; 2) prepare a "Shoreline Master Program" to determine the future of the shorelines; 3) develop specific goals, policies and

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

WHEREAS, once the City approved, pursuant to Resolution No. 12-829, the Draft Shoreline Master Program, it was sent by the Mayor, as requested by the City Council at their September 6, 2012 Council meeting, to the Washington State Department of Ecology for review and approval; and

WHEREAS, the Department of Ecology has reviewed the Draft Shoreline Master Program submitted by the City and has notified the City in a letter to Mayor Olness dated July 26, 2013 (the "Notice") that it has determined that those changes to the Draft Shoreline Master Program reflected in Exhibit B attached to the Notice are required to in order for the City to obtain Department of Ecology approval of the Shoreline Master Program, and that those changes reflected in Exhibit C attached to the Notice are recommended, but not required, to obtain Department of Ecology approval of the Shoreline Master Program; and

WHEREAS, the City Council has reviewed the revisions as set forth in the Notice and conducted a public hearing on the 15th day of August, 2013 to take public testimony regarding the revisions proposed by the Department of Ecology, and having considered the foregoing and having been in all matters fully advised, concurs with the Department of Ecology's required and recommended changes as set forth in the Notice, with the exception that, the City requests that the Department consider an alternate proposal that, (1) modifies the proposed amendments set forth in Exhibit "C", Item No. 10 (Alternate Setback System) by extending the 160 foot lot length criteria for shallow lot exceptions to 190 feet; (2) adds to Chapter 4.B.4 (Shoreline Setback Reduction Mechanisms – Table III) a contribution to a City restoration fund or bank for offsite shoreline restoration at Lake Sawyer Park as an additional qualifying Water related mitigation measure currently specified by the Department of Ecology as reduction measures 3-6; (3) provides that, where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of the minimum 30 foot setback, the Shoreline Administrator may allow the residence to be located up to five (5) feet closer to the OHWM, provided all other provisions of this SMP are met and impacts are mitigated for No Net Loss; and (4) classifies as Shoreline Residential, and not Urban Conservancy as currently proposed by Department of Ecology, the 9.04 acre Palmer Coking Coal Property at the southeast end of Lake Sawyer that has been previously platted for low density residential use; and

WHEREAS, the City Council requests that the above described alternate proposal be sent to the Department of Ecology by the Mayor within the thirty (30) day response window

Mayor Rebecca Olness

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha, City Attorney

Published: _____

Posted: _____

Effective Date: _____

attach: Exhibit A



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 26, 2013

The Honorable Rebecca Olness
City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010

Re: City of Black Diamond Comprehensive Shoreline Master Program Update – Conditional Approval, Resolution Number 12-829

Dear Mayor Olness:

I would like to take this opportunity to commend the city of Black Diamond (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) update. It is obvious that a significant effort was invested in this update by your staff and engaged community. The SMP will provide a framework to guide development and habitat restoration along the City's shorelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) has identified specific changes necessary to make the proposal approvable. These changes are detailed in Attachment B. Recommended changes are included in Attachment C. Ecology's findings and conclusions related to the City's proposed SMP update are contained in Attachment A.

Pursuant to RCW 90.58.090 (2)(e), at this point, the City may:

- Agree to the proposed changes, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally submitted by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and Guidelines requirements.



The Honorable Rebecca Olness
July 26, 2013
Page 2

Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Ecology appreciates the dedicated work that you, the City Council, Natural Resources staff (Director Aaron Nix), the Planning Commission, and the Shoreline Advisory Committee have put into the Shoreline Master Program update.

Thank you again for your efforts. We look forward to concluding the SMP update process in the near future. If you have any questions or would like to discuss the changes identified by Ecology, please contact our Regional Planner, Anthony Boscolo at Anthony.Boscolo@ecy.wa.gov or (425) 649-7049.

Sincerely,

A handwritten signature in blue ink that reads "Maia D. Bellon" followed by a long horizontal flourish.

Maia D. Bellon
Director

Enclosures (3)

By Certified Mail [7012 1010 0003 3028 3348]

cc: Aaron Nix, City of Black Diamond
Anthony Boscolo, Ecology
Peter Skowlund, Ecology
Erik Stockdale, Ecology

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE CITY OF BLACK DIAMOND
SHORELINE MASTER PROGRAM**

SMP Submittal accepted October 9, 2012, Resolution No.12-829
Prepared by Anthony Boscolo on June 13, 2013

Brief Description of Proposed Amendment:

The City of Black Diamond has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program submittal contains locally tailored shoreline management policies, regulations, environment designation maps, administrative provisions as well as local ordinance # 08-875 adopted by reference as part of the SMP. Additional reports and supporting information and analyses noted below, are included in the submittal.

Black Diamond ordinance #08-875 established the current regulations for critical areas within the city limits. These regulations were updated in 2009 and are adopted by reference in the SMP. The SMP also contains provisions which modify the city's critical area protections to ensure consistency with the SMA and the SMP Guidelines.

FINDINGS OF FACT

Need for amendment:

The proposed amendment is needed to comply with the statutory deadline for a comprehensive update of the City's local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This amendment is also needed for compliance with the policies of the Shoreline Management Act, the applicable guidelines and implementing rules. The original City SMP was approved by Ecology in 1977 and has never been updated. This SMP update is also needed to address land use changes that have occurred along the City's shorelines over the past 36 years and to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the City's Critical Areas Ordinance, Comprehensive Plan, Flood Management Plan. In 1998 the City limits expanded through the annexation of lands around Lake Sawyer. In accordance with WAC 173-26-160, the City has been implementing the 1978 King County SMP for the newly acquired shoreline jurisdiction. This SMP update will bring all shoreline jurisdiction in Black Diamond under the same set of policy and regulations.

SMP provisions to be changed by the amendment as proposed:

This comprehensive SMP update is intended to entirely replace the City's existing SMP. Under the existing SMP no lands qualified as shoreline jurisdiction. Only in 1998, when the City incorporated the lands around Lake Sawyer did the City acquire lands required to be regulated by the SMA. This updated SMP increases, by 100%, the linear extent of shorelines to be covered and regulated by the

City. As a result, this SMP will now regulate approximately .01 miles of river and 6.6 miles of lake shorelines.

Under the existing SMP, there is one environment designation; Rural. In contrast, the updated SMP regulates activities and development along the City’s shorelines using the following five (5) new designations, each containing purpose statements, designation criteria, and management policies. The new designations and their purposes statements are listed below:

- 1) **Natural** – to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, include planning for restoration of degraded shoreline within this environment. (Portions of Lake Sawyer Regional Park identified as wetlands)
- 2) **Shoreline Residential** – to provide for residential needs where the necessary facilities for development can be provided. An additional purpose is to provide appropriate public access and recreational uses. (residential areas of Lake Sawyer)
- 3) **Shoreline Residential Limited** – The Shoreline Residential Limited environment designation recognizes the higher level of ecological function and sensitivity associated with specific islands located in Lake Sawyer, when compared to other shoreline areas that are developed or planned for residential development. This designation also recognizes the presence of existing residential and recreational uses in these areas and is designed to provide for development and/or redevelopment that is compatible with the protection of ecological functions at such time when appropriate facilities are provided, such as potable water, electricity and waste disposal that complies with King County and State Health Department regulations. In addition to residential and recreational uses, an additional purpose of this environment is to provide for ecological enhancement.
- 4) **Urban Conservancy** – to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. (more heavily used park areas such as Lake Sawyer Boat Launch Park and portions of Lake Sawyer Regional Park)
- 5) **Aquatic** – to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

The table below is a summarization of the changes in the updated SMP along with a comparison to the existing 1978 SMP.

Proposed Change Topic	Existing 1978 SMP Requirement	Proposed Requirement
Shoreline Stabilization	Precautions to avoid adverse effects. However, no prescriptions for avoiding/minimizing impacts described.	Consistent with Guideline requirements of WAC 173-26. New Stabilization restricted to the minimum size necessary and allowed only with a demonstrated need for protection and proof of

		infeasibility of softer alternatives through a geotechnical analysis.
Critical Area Regulations	No critical area regulations are identified	Incorporated CAO provisions which have been modified for consistency with the SMA and include protections for fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, streams, wetlands, and aquifer recharge areas. Stream buffer widths range 25 – 150 feet. Wetland buffers widths range 40 – 225 feet.
Allowed/Prohibited Uses	Use and modification table does not exist. With only one environment designation, uses were generally covered in the body of the SMP	A use and modification matrix is embedded in the SMP which was created to align with the City of Black Diamond's anticipated future land use. The new matrix specifically addresses types of modifications anticipated and their appropriateness in a lacustrine environment.
Environment designations	RURAL	NATURAL, AQUATIC, URBAN CONSERVANCY, SHORELINE RESIDENTIAL LIMITED, SHORELINE RESIDENTIAL.
SMP SETBACKS	All setbacks begin at 25 feet from OHWM. Rear yard setback is 20 feet. Total of 45 foot setback. Lake Sawyer currently regulated by King County SMP which establishes a 20 foot setback.	25-100 Feet
BREAKWATERS, JETTIES, GROINS, WEIRS	Not addressed	Prohibited in all shoreline designations
Moorage Facilities	Allowed	Permitted
Mining	Conservancy: Allowed Natural: Prohibited	Prohibited
Piers, docks	Permitted	Minimum size needed for

		access to watercraft.
Ecological protection	Requirements to avoid and minimize impacts of some projects.	Implementation of the concepts of no net loss of shoreline ecological function and mitigation sequencing.

The SMP changes include more site and use-specific policies and regulations designed to achieve no net loss of ecological function such as:

- Stabilization preference hierarchy from non-structural, to soft, to hard being the least preferred option.
- Geotechnical reports required as specified in WAC 173-26 for shoreline stabilization and the placement of structural flood hazard reduction measures.
- Dredging requires the use of the conditional use permit process. Dredging is prohibited except for public utilities, support of a water-dependent use, and restoration activities and only when authorization has been received by state and federal agencies.
- Mitigation sequencing is applied to all development regulated by the SMP within the shoreline jurisdiction.
- Vegetation conservation is applied throughout shoreline jurisdiction across all shoreline environment designations. Vegetation conservation standards are also applied through the critical area regulations with buffers ranging from 40 to 225 feet.

Amendment History, Review Process: The City indicates the proposed SMP amendments originated from a local planning process that began in June, 2008. In October 2009 the city released the SMP Update Public Participation Plan. The record shows that workshops and public hearings which were open to the public were held on December 6, 2011, January 10, February 7, February 21, March 6, March 13, March 27, April 10, May 8, May 31, June 19 and June 21, 2012. Affidavits of publication provided by the City indicate notice of the hearings was published on March 2 and June 8, 2012.

Pursuant to WAC 173-26-110, as indicated below, the City of Black Diamond has satisfied the submittal requirements for a comprehensive SMP update:

- Pursuant to WAC 173-26-110(1), a signed resolution was provided to the department which indicated that the SMP had been preliminary approved by Resolution No. 12-829, on September 6, 2012.
- As a comprehensive update, Resolution No. 12-829 is consistent with WAC 173-26-100(2).
- Pursuant to WAC 173-26-110(3), amended environment designation maps were submitted to the department.
- Pursuant to WAC 173-26-110(4), materials, minutes, and process summary were provided to the department.

- Pursuant to WAC 173-26-110(5), SEPA was noticed on March 2, 2012. On March 2, 2012, the City issued a SEPA Determination of Non-Significance (DNS) with a comment period ending March 30, 2012. No appeals were filed.
- Pursuant to WAC 173-26-110(7), copies of all public, tribal, and agency comments were submitted to the department.
- Pursuant to WAC 173-26-110(8), a completed SMP checklist was submitted to the department.
- Pursuant to WAC 173-26-110(9), copies of the use analysis, inventory and characterization, cumulative impacts analysis, and restoration plan were submitted to the department.

With passage of Resolution # 12-829, on September 6, 2012, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on October 9, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on November 8, 2012, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on November 13 and continued through December 21, 2012. No public comments were received.

Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City.

Ecology staff thoroughly reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines. Ecology staff also thoroughly reviewed and evaluated the City’s SMP inventory, characterization and analysis, public involvement process, and Growth Management Act integration, including critical areas. In addition, Ecology staff reviewed and evaluated the City’s Shoreline Restoration Plan including the background data and documentation.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on March 2, 2012. Notice of the SEPA determination was published in the Covington / Maple Valley / Black Diamond Reporter on March 2, 2012. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following reports, studies, map portfolios and data prepared for the City in support of the SMP amendment:

These supporting documents include:

- *a October 29, 2009 public participation plan,*
- *a August 6, 2010 shoreline inventory and characterization,*
- *a September 2012 cumulative impacts analysis, and*
- *a September 2012 restoration plan*

Summary of Issues Raised During The Public Review Process:

The City's SMP amendment drafting/public review process had quality participation with 35 oral and written comments submitted. The city did an exemplary job of addressing the concerns of interested parties. At the conclusion of the process staff was praised for their efforts in making the update a collaborative process. During the public participation period, extensive debate centered on the following topics: Setbacks, incentives for setback reductions, and use of Lake Sawyer.

Setbacks – Citizens expressed concern over the creation of larger setbacks given the existing setback is 20 feet yet the typical development is located much further from the water. This was highlighted in the Final Cumulative Impacts Analysis (CIA) which stated the average setback is 48 feet within the residential areas of Lake Sawyer. Although an incentive base setback scheme was created which allows for setback reductions from the standards setback, concern still remained that particular incentives would not be feasible or would increase the risk of erosion.

The City finally settled on a buffer scheme for residential areas which includes a 40 foot standard setback which could be reduced to 25 feet with a combination of upland related enhancements or use of water related enhancements. Additional setback averaging measures were also integrated into the final buffer system to add additional flexibility.

Ecology also provided written comment within the City provided Checklist which identified deficiencies in the proposed setback system, and indicated that the setback system did not meet the requirements of WAC 173-26-186 (8) for no net loss of shoreline ecological functions. Ecology noted the wide range in existing setbacks and that more equitable solutions should be pursued to give weight to localized circumstances. Given that a nearly identical setback scheme is included in the Final submittal, Ecology is requiring changes as identified in Attachment B.

Vegetation planting and bulkhead removal – As an incentive for a reduced setback, the SMP requires that a landowner choose from a number of site improvements. These range from increasing the amount of impervious surface, to installing a green roof, to bulkhead removal, to installing near shore plantings.

Concern was expressed over setback reduction incentives which require vegetation planting or bulkhead removal. In particular, that this type of incentive would go beyond the requirement of no net loss of shoreline ecological function and could lead to shoreline erosion.

In Ecology's initial review it indicated that incentive measures would need to be prioritized to emphasize near shore improvements. Based on the incentives proposed by the City these would involve some level of either bulkhead removal or near shore native vegetation plantings. This prioritization is consistent with the ecosystem needs identified in the Shoreline Analysis Report and is thus being required change as identified in Attachment B, required changes.

Damage from boat wakes – A number of citizens expressed concern over bulkhead removal standards. It was expressed that erosive forces caused by boat wakes threaten private property, and removal of a bulkhead would increase the risk. The City has standards which limit speed and usage to particular times of the day, yet those efforts seem to have raised the intensity of the use, and have failed to alleviate the concerns of shoreline landowners.

The City took steps to clarify that the SMP doesn't require bulkhead removal. Further, the City clarified that softer methods of stabilization have been shown to provide comparable protections while providing ecological benefits and improved shoreline access while meeting the requirements of the SMA.

Public access standards – Concern was raised regarding public access requirements for subdivision creating four lots or greater. Specifically, that requiring public access would devalue the new lots by taking away one of the characteristics unique to typical shoreline landowners.

As a result of this concern, the City inserted new standards into the SMP. The Shoreline Administrator now has the ability to determine if the public access requirement is met by community or visual access rather than public access.

Flooding concerns – Concerns were expressed regarding flooding due the increasing amount of development and impervious surface in the watershed. The City noted that concern and correctly indicated that shoreline jurisdiction only extends two hundred feet from the OHWM.

Summary of Issues Raised by Ecology as Relevant To Its Decision:

Vegetation Conservation – As proposed, the vegetation conservation standards allow for removal of 'unhealthy' trees within the shoreline setback. This is in conflict with WAC 173-26-221(5). Limited vegetation removal is allowable for safety and view protection. Required changes have been included to ensure proper hazardous tree removal consistent with WAC 173-26-221(5).

Additional standards have been incorporated into the proposed SMP when a tree is considered 'significant'. The SMP does not have a definition for significant tree. Rather, it relies on a definition located in city code outside of the SMP. This definition has been incorporated into the SMP as a required change.

Shoreline Setbacks – Setbacks within the SMP vary by environment designation. The most common designation, applied to the majority of residential areas, is the Shoreline Residential environment

designation. As proposed, the Shoreline Residential environment designation requires a standard 40 foot setback from the ordinary high water mark.

This reach contains a wide variety of lot shapes and sizes. An analysis of lots in this designation shows that the majority range in size from less than 1/10th of an acre to greater than 3 acres. The average lot size is roughly ½ acre. More telling is that the standard deviation is greater than .4 acres, which indicates that 68% of the lots are between approximately .15 acres and .95 acres, with the remaining 32% being outside of that range. The minimum lot size that can be achieved through subdivision is 9600 square feet or .22 acres.

Existing setbacks from the ordinary high water mark also vary greatly. The Final Cumulative Impacts Analysis Component for the City of Black Diamond summarizes the residential setbacks as follows:

The Shoreline Analysis Report included an initial analysis of the median setback distance for all structures within the shoreline jurisdiction, which was approximately 57 feet. This analysis has been refined and updated to focus only on primary residential structures. A review of building footprint data and aerial photography indicated that approximately 112 primary structures in Segment A are located within 40 feet of the OHWM, which is the proposed standard setback in the SMP for the Shoreline Residential environment. Of these, 67 structures are located within the proposed 20-foot minimum setback. The remaining 155 structures within Segment A lie more than 40 feet from the shoreline, outside the proposed maximum setback. The median setback is approximately 48.7 feet based on available data. However, the mapped location of the ordinary high water mark does not always correspond well with the apparent shoreline edge in aerial photos and therefore we believe this number may not accurately reflect the true median setback. (AHBL, September 2012, Page 6)

As described, existing setbacks have been difficult to measure with confidence. WAC 173-26-201 (3) (g) requires that when less is known about a particular resource, provisions should be more protective to ensure resource protection. Further, WAC 173-26-201 (2) (e) requires avoidance of impacts as the primary step of resource protection.

Relative to other shoreline reaches, the ecological functions within this reach have been found to be limited (AHBL/Otak, August 6, 2012). However limited, replacing those functions with residential structures and appurtenances is a loss of ecological function.

Flexible Shoreline Setbacks – Flexible setbacks, or reduced setbacks with enhancement, have been incorporated into the Black Diamond SMP. Under the proposed system, up to a 25 foot reduction can be achieved by performing a combination of ‘enhancements’. The minimum achievable setback from the Ordinary High Water Mark is 25 feet.

As proposed, the enhancements listed in SMP Table III can be utilized in any order, regardless of ecological needs. These enhancements range from monetary contributions to a city restoration fund, to bulkhead removal, to connecting to the sanitary sewer system, to written agreement to follow a vegetation management plan.

Although somewhat similar approaches have been used by other jurisdictions, the City of Black Diamond has not provided a rationale of how shoreline ecological functions will be protected under a

reduced setback. Rather, the Final Cumulative Impacts Analysis Component for the City of Black Diamond acknowledges additional impacts, though minimized.

All development in the Shoreline Residential environment would be subject to a standard 40-foot setback from the OHWM. This setback can be reduced to a minimum of 25 feet when approved mitigation or restoration actions are taken, such as bulkhead removal, vegetation preservation, use of LID techniques, or keeping impervious surface significantly below allowances. (SMP 4.B.3 and 4.B.4) Implementation of these techniques will minimize impacts on ecological functions by limiting impervious surface and reducing stormwater runoff to the lake that could contain excess nutrients and toxic materials, as well as increasing the potential for natural filtration by preserving natural vegetation. (AHBL, September 2012, Page 37)

Environment Designations – As drafted, the SMP contains five environment designations; Aquatic, Natural, Urban Conservancy, Shoreline Residential, and Shoreline Residential Limited. Concern was raised early in the drafting stage regarding the broad application of the Shoreline Residential designation. In particular, concern about the application to two large and lots in Shoreline Residential environment designation.

WAC 173-26-211 contains specific criteria for which areas may be considered for each environment designation. The Shoreline Residential designation criteria are as follows.

"Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development."

As previously described, residentially zoned lots on Lake Sawyer vary greatly in terms of size. The two lots in question are the largest lots in the designation and are 12.9 and 10 acres respectively. They are spatially diverse being located on the north and south ends of Lake Sawyer. Within the City of Black Diamond Shoreline Analysis Report these two areas were considered distinct enough to be separated for other residential areas.

The City of Black Diamond Shoreline Analysis Report describes the northern 12.9 acre lot as follows.

"The parcel appears to have a road that branches into two roads or driveways that lead to separate homes or outbuildings. There appears to be three significant structures on the parcel, as well as additional outbuildings. Personal communication with neighboring residents and visitors indicates that there is a larger historic house, a caretaker's house and a new cabin or conference building, plus small out buildings located on the site.

....

The property comes to a point out into the lake where there appears to be some very limited areas of armoring (approximately 2% of the total shoreline); however, the majority of the property has a natural shoreline with abundant, overhanging vegetation. There are three docks on the property that are visible in aerial photos." (AHBL/Otak, August 6, 2012, Page 32)

The Southern 10 Acre lot located adjacent to Lake Sawyer Regional Park was not specifically described in the City of Black Diamond Shoreline Analysis Report. In the report it was grouped with the Lake Sawyer Regional Park reach and conditions were analyzed as a whole. The Cumulative Impacts Analysis does provide some specific descriptions of the southern 10 acre lot.

"The residential parcel north of the park, which large enough for subdivision, is anticipated to remain vacant for the foreseeable future until sanitary sewer service is provided to the area. At such time, the parcel may convert to residential use. Although there are no current plans to do so, there is also the potential that this property could be converted to public recreational use as it is adjacent to the current Regional Park."

...

"This property has approximately 1,363 feet of shoreline frontage and, under the minimum lot dimension requirements of the proposed SMP and BDMC 18.30.040, could be subdivided to create up to 22 shoreline frontages." (AHBL, September 2012, Page 29)

Although not providing clear information about the specific properties physical characteristics, the information from the CIA does provide insight into the ecological uniqueness of the property.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's proposed comprehensive SMP update, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the City/County's existing critical areas ordinance.

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's comprehensive SMP update submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes is effective 14 days from Ecology's final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final. Approval of the updated SMP and proposed alternative/s is effective 14 days from Ecology's final action approving the alternative/s.

Attachment B:

Ecology Required Changes

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

ITEM	DRAFT SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1	Ch. 1.E ¶ 3	Environment Designations	Black Diamond has designated its Lake Sawyer shorelines under four <u>five</u> shoreline environments: Aquatic, Natural, Urban Conservancy, <u>Shoreline Residential Limited</u> and Shoreline Residential.	WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited.
2	Ch. 3.B.5.c.3	Public Access	h. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long term cost of the proposed development or other <u>Where constitutional or legal limitations preclude public access.</u>	Exceptions to public access standards are limited to those found in WAC 173-26-221 (4)(d)(iii).
Vegetation Conservation				
3	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	3. Any normal and routine maintenance of existing trees shall not be subject to these clearing and grading regulations, provided; that said maintenance does not involve removal of healthy trees and is not detrimental to the health of any trees.	The SMP allows the unmitigated removal of unhealthy non-hazardous trees. This is in conflict with WAC 173-26-221(5)(c), Shoreline vegetation conservation, WAC 173-26-201 (2) (e)), Environmental

			<p>impact Mitigation, and the provisions of WAC 173-26-186(8), as they relate to a finding of no net loss of shoreline ecological functions.</p> <p>The importance of vegetation in urban areas is addressed in the guidelines and the City's Inventory and Analysis. The Guidelines highlight the relative importance of vegetation in WAC 173-26-201(3)(d)(viii): While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity.</p> <p>Specific to Black Diamond, the City's Inventory and Characterization creates lists of recommendations for shoreline management. Chapter 7.1.2 states:</p> <p>"Conservation of existing native vegetation during land development and ongoing use is critical to maintaining the ecological processes and natural functions of shoreline</p>
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areas" and "The removal of mature trees and native vegetation should be regulated in a manner that provides protection that is equal to or greater than current Sensitive Area Regulations."

The inventory and Characterization language above is supported by the concept of Mitigation Sequencing, WAC 173-26-201(2) (e), by first avoiding, then minimizing and mitigating for impacts. Further, the SMP itself contains policy language supporting the preservation of existing vegetation. Policy 5 states "Removal of non-hazardous mature trees and native vegetation within the required shoreline setback should be severely restricted regardless of lot size or use." Policy 1 supports the concept of mitigation sequencing. It reads: "Clearing and grading activities in shoreline areas should be limited to the minimum necessary to accommodate shoreline development and should result in the enhancement of vegetation over time to

			<p>provide a greater level of ecological functions, human safety, and property protection." Allowing the unmitigated removal of unhealthy non-hazardous trees cannot be supported based on the analysis provided. Mitigation is required on a project by project basis which will provide equal or greater functions. See rational for required change #3</p>
4	Ch. 3.B.7.c.5 Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	<p>b. Pruning consistent with accepted arboricultural practices that does not involve the removal of healthy trees and is not detrimental to the health of any trees, maintenance of existing ornamental landscapes and other activities allowed pursuant to these regulations, provided that said modification is conducted in a manner consistent with this Master Program and results in no net loss to ecological functions or critical fish and wildlife habitats.</p>
5	Ch. 3.B.7.c.13 Shoreline Vegetation Conservation Regulations	Maintenance and monitoring	<p>b. If the proposed removal of native vegetation is intended for the development of non-native landscaping outside of the required setback area, ornamental species may be used for the revegetation, provided impacts are mitigated by planting native vegetation elsewhere on the property. The required setback area shall be a priority location for mitigation plantings and mitigation plantings shall be subject to Regulation 48-14 below.</p>
6	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Hazardous tree removal	<p>15. Hazardous trees may be removed when determined by a member of the American Society of Consulting Arborists or similar professional organization in accordance with the International Society of Arboriculture method found in "2011 Tree Risk Assessment (part 9)." in its most recent or adopted form. If a hazardous tree is removed it shall be mitigated to result in no net loss of shoreline ecological functions.</p> <p>Pursuant to WAC 173-26-221(5)(c), vegetation conservation standards required. By referencing 'Regulation 18', which does not exist, this regulation would avoid maintenance and monitoring standards. This appears to be an oversight as previous drafts of the SMP were properly referenced.</p> <p>The SMP doesn't allow tree removal within the shoreline setback except to mitigate hazard. To ensure consistency with WAC 173-26-201(2)(e), the application of hazardous tree standards must be</p>

			<p>c. Pruning consistent with accepted arboricultural practices shall be allowed within the open space tract to provide views of the water from and through the tract, but non-hazardous healthy native vegetation shall be retained consistent with Subsection b above.</p> <p><u>Significant Tree</u> – Means any tree that is at least six inches diameter at breast height. A tree growing multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree planted that is planted to fulfill requirements of this chapter shall be considered significant, regardless of size.</p>	<p>defined. See also rational for required change #2 See rational for required change #3</p>
7	Ch. 4.C.8.c.3 Residential Development	Vegetation Conservation Standards		
8	Ch. 7 Definitions	Significant Tree		<p>WAC 173-26-221 (5) requires vegetation conservation standards in SMP's. This includes definitions. Although the term 'Significant Tree' is defined in BDMC, that section of code could change resulting in unaccounted impacts within Shoreline Jurisdiction. See also rational for required change #3</p>

Shoreline Setbacks

9	Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	<p>DEVELOPMENT STANDARD</p> <p>NATURAL</p> <p>URBAN CONSERVANCY</p> <p>SHORELINE RESIDENTIAL</p> <p>SHORELINE RESIDENTIAL LIMITED</p> <p>AQUATIC</p>	<p>Ecology has reviewed the City's Cumulative Impact Assessment (AHBL, September 2012), but did not find conclusions or technical references supporting the proposed buffers, and their ability to contain sediment, nitrogen, nitrate or phosphorus from 40-foot down to 25-foot from the lakes edge. Further, the City's Cumulative Impact Assessment provides the following conclusion related to the impact of new</p>
			<p>Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non-conforming single family homes.</p>	
			100 ft	
			100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement	
			4050 ft. (standard) may be reduced to 25ft. (minimum) with enhancement	
			50 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement	
			N/A	

10	Ch. 4.B.3.1 Flexible Shoreline Setback Regulations	Setback Standards	<p>a. The forty(40) <u>fifty</u> (50) foot standard setback in the Shoreline Residential and the fifty (50) foot Shoreline Residential Limited Environments may be reduced down to a</p>	<p>development: "Development of the 11 existing vacant lots, as well as new lots from subdivision, including associated construction of new overwater structures and shoreline armoring, has the potential to further degrade ecological function. As described in Chapter 2, impervious cover in Segment A is estimated at approximately 25-30%, and construction of new residences and expansion of existing homes could potentially increase this coverage up to the maximum allowed. (AHBL, 2012; 39)" Therefore, Ecology requires the noted change to limit development to a minimum of 50-foot upland of the OHWM to minimize potential impacts related to the decline in buffer effectiveness consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(c)) and No Net Loss (WAC 173-26-186(8)) SMP-Guidelines requirements. See rational for #9</p>
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11	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	<p>minimum of twenty-five (25) feet when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.</p> <p>1. All structures associated with a recreational use, except water dependent structures, such as docks and boardwalks; and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40) fifty (50) feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 25 feet in the Shoreline Residential, 30 feet in the Shoreline Residential Limited Environment and 75 feet in the Urban Conservancy Environment using setback reduction mechanisms in Table II in this Chapter. Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.</p>	Pursuant to WAC 173-26-020, a boardwalk is not considered a water-dependent use. See also rationale for #9
12	Ch. 4.C.8.c.3 Residential Development	Setback Standards	<p>f. New primary residential structures shall not be located within 100 feet of the Ordinary High Water Mark (OHWM).</p>	The Cumulative Impacts Analysis was performed under a development scenario where the minimum rear lot setback is 25 feet and an additional 75 foot public space running parallel to OHWM for large lot subdivision. Given that the 25 foot rear lot setback is only found in BDMC, and not within the SMP, it then becomes essential in terms of meeting no net loss, as required by WAC 173-26-186(8), to include a provision maintaining the setback provided in the

Flexible Shoreline Setback Regulations		Cumulative Impacts Analysis.							
13	Ch. 4.B.2 Basic Development Standards -- Table II	Setback Standards	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	RESIDENTIAL SHORELINE	RESIDENTIAL SHORELINE LIMITED	AQUATIC	Pursuant to WAC 173-26-201(3)(d)(i) it must be shown that the minimum setback (with buffer enhancement) will adequately protect water quality, habitat, and other shoreline ecological functions. Ecology provided feedback to the City, citing concerns related to impacts and inadequate protection of shoreline ecological functions associated with the proposed flexible shoreline buffer/setbacks in an email send on 8/19/2011 and the Checklist. Ecology has reviewed the City's Final Shoreline Analysis Report (OTAK AHB, 2010) and Final Cumulative Impacts Analysis (AHBL 2012), but did not find an analysis supporting small enhanced buffers. The impacts of future development under this scenario have not been shown to meet no net loss of shoreline ecological functions pursuant to WAC 173-26-201(2)(e). The following changes must be
			Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non-conforming single family homes.	100 ft	100 ft. (standard) may be reduced to 75-ft. (minimum) with enhancement	40 ft. (standard) may be reduced to 25-ft. (minimum) with enhancement	50 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement	N/A	
<p>The standard setback applies to all permanent and temporary primary and accessory structures unless specifically exempted below. Setbacks are measured landward, on a horizontal plane perpendicular to the shoreline. The setback may be reduced to the minimum setback indicated in Table II where the applicant agrees to implement voluntary enhancements as described in Sections B-3 and B-4 below, and the Shoreline Administrator determines the proposal is consistent with all other requirements of this SMP. Please see zoning regulations for interior lot setbacks and other requirements that apply to specific zones. Development associated with water dependent uses, shoreline access and ecological restoration such as overwater structures, shoreline stabilization, trails, stairs and similar appurtenances are not required to meet the minimum setback. However, where such development is approved within the minimum setback, the placement of structures and hard surfaces shall be limited to the minimum necessary for the feasible operation of the use.</p>									

14	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	<p>1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40) feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 25 feet in the Shoreline Residential, 30 feet in the Shoreline Residential Limited Environment and 75 feet in the Urban Conservancy Environment using setback reduction mechanisms in Table II in this Chapter. Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.</p>	<p>incorporated to ensure adequate protections under the required setbacks. See rational for required change #13</p>
15	Ch. 4.B.3 Flexible Shoreline Setback Regulations	Flexible setbacks	<p>3. Flexible Shoreline Setback Regulations In addition to the specific requirements for particular uses, the following standards shall apply:</p> <ol style="list-style-type: none"> 1. A standard setback shall be established from the ordinary high water mark for all lots within shoreline jurisdiction. The setback shall not apply to docks, piers, bridges and similar water dependent structures. <ol style="list-style-type: none"> a. The forty (40) foot standard setback in the Shoreline Residential and the fifty (50) foot Shoreline Residential Limited Environments may be reduced down to a minimum of twenty-five (25) feet when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions. b. The one-hundred (100) foot setback within the Urban Conservancy environment may be reduced to a minimum of seventy-five (75) feet, when setback reduction impacts are mitigated using a combination of the mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions. c. No setback reduction is allowed in the Natural environment, where a one-hundred (100) foot setback shall be required. d. At least one Water Related Action or 25 feet of reduction allowance from selected Upland Related reduction mechanisms in Table III must be undertaken in order to achieve the full setback 	<p>See rational for required change #13</p>

			<p>reduction-allowed.</p> <p>e.—Alternative Setback Averaging — In instances of unique lot configurations, the Shoreline Administrator or his/her designee may allow modification either of the standard or-mitigated shoreline setback, by allowing a partial reduced setback if a compensating increased setback for other portions of the development is provided. Modified setback averaging may only be allowed where a qualified professional demonstrates that all of the following conditions are met:</p> <ol style="list-style-type: none"> i. Alternative setback averaging will not reduce shoreline functions or functional performance; ii. The total area contained in the setback area after averaging is no less than that which would otherwise be required; and all increases in setback dimension for averaging are generally parallel to the shoreline edge; iii. The setback depth at its narrowest point is not reduced to less than twenty-five feet; iv. Under no circumstances shall a structure encroach more than five feet beyond either the standard or-mitigated setback. <ol style="list-style-type: none"> 2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration. 3. All property owners who obtain approval for a reduction in the setback must record the final approved setback and corresponding conditions in a Notice on Title, and provide a copy of the Notice on Title to the Shoreline Administrator. 4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions. 5. Mitigation of native vegetation as discussed below shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. Preparation of a revegetation plan shall be completed by a qualified professional and include a monitoring and maintenance program that shall, at a minimum, include the following: <ol style="list-style-type: none"> a. The goals and objectives for the mitigation plan; b. The criteria for assessing the mitigation; c. A monitoring plan that includes annual progress reports submitted to the Shoreline Administrator and that lasts for a period sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and d. A contingency plan. 5. Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject
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16	Ch. 4.B.4 Shoreline Setback Reduction Mechanisms – Table III	Flexible setbacks	<p>to further monitoring as necessary to ensure the success of requirement mitigation measures.</p> <p>6. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p>	<p>See rational for required change #13</p>
<p>REDUCTION MECHANISM</p>			<p>REDUCTION ALLOWANCE</p>	
<p>Water-Related Actions</p>			<p>E</p>	
1	<p>Removal of existing bulkhead located at, below, or within 5 feet landward of the shoreline's ordinary high water mark (OHWM) and subsequent restoration of the shoreline to a natural or semi-natural state, including restoration of topography, beach/substrate composition and stabilization of disturbed soils with native vegetation.</p>	<p>Bulkhead Removal on 75% of shoreline--15 feet 50% of shoreline--10 feet 25% of shoreline--5 feet</p>		
2	<p>Restoration of natural shoreline conditions (e.g. no bulkhead or other unnatural shoreline features such as upland impervious surfaces or other structural alterations allowed) within 10 feet of the OHWM, including restoration of native vegetation. The reduction will only be granted if ecological functions would be improved relative to the existing condition.</p>	<p>10 feet</p>		
3	<p>Existing hard structural stabilization at or near the ordinary high water mark is removed and new hard structural shoreline stabilization measures are setback from the OHWM between 2 ft to 4 ft--based on feasibility and existing conditions and are sloped a maximum angle of 3-vertical: 1 horizontal to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow water habitat.</p>	<p>5 feet</p>		

4	<p>Soft structural shoreline stabilization measures are installed seaward of the OHWM on a site currently containing only hard stabilization. They shall include the use of gravels, cobbles, boulders and/or logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind and boat-driven waves and shall be graded to a maximum slope of 1 vertical: 4 horizontal</p>	5-foot		
5	<p>Contribution to a City restoration fund, or bank, for onsite shoreline restoration and implementation of measures contained in the setback reduction mechanisms of the Water Related Actions, items 1 through 4, of Table III above. Amount shall be determined by the Shoreline Administrator based upon the approximate cost that would be required to accomplish the applicant selected water-related shoreline enhancement at the on-site area of improvement. The City shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available.</p>	5-15-foot		
6	<p>Contribution to a City restoration fund, or bank, for onsite shoreline restoration in the City owned parks on Lake Sawyer. Amount shall be determined based upon the cost per frontage foot shown below times the number of frontage feet on the applicant's parcel as shown in the current King County property tax assessment database. The City shall establish the restoration cost per foot for the three setback reductions below to make this reduction mechanism available. Setback Reduction of 5 ft. = \$XXX per foot of frontage at the on-site location. Setback Reduction of 10 ft. = \$YYY per foot of frontage at the on-site location Setback Reduction of 15 ft. = \$ZZZ per foot of frontage at the on-site location.</p>	5-15-foot		
7	<p>Upland Related Actions Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 75 percent of the reduced (i.e. that portion remaining after reductions are applied) setback area. The remaining 25 percent of the setback area can be comprised of existing non-invasive, non-</p>	10-foot		

18	Ch.2.D.3.c Designated Areas	Environment Designations	Urban Conservancy areas include shorelands within Lake Sawyer Boat Launch Park, portions of Lake Sawyer Regional Park that are not designated wetlands and large unplatted lots, as shown in Figure 1. This designation will preserve and enhance the ecological functions of publicly-owned properties and undeveloped portions of the shoreline, while retaining future options for passive and active shoreline recreation, limited residential development and public access. The publicly-owned Lake Sawyer Boat Launch and Lake Sawyer Regional Park offer potential for ecological restoration. 7. Native understory vegetation and trees within the Urban-Conservancy and Natural Environment and within shoreline setback areas in all environments shall be retained, unless necessary to provide water access, to provide limited view corridors or to mitigate a hazard to life or property. Where limited removals are allowed pursuant to the conditions provided above, vegetation shall be replaced to assure no net loss is achieved.	Urban Conservancy (WAC 173-26-211(5)(e)(iii)). Those areas identified shall be changed to the Urban Conservancy designation. Additional changes are needed throughout the SMP to ensure consistency with the purpose and management policies of WAC 173-26-211(5)(e). See rational for required change #17																								
19	Ch.3.B.7.c Shoreline Vegetation Conservation Regulations	Environment Designations	SHORELINE USES Community Pier (Private Shared Use) Single Family New Roads related to Permitted Shoreline Activities	See rational for required change #17																								
20	Ch.4.B.1 Table I	Environment Designations	<table border="1"> <tr> <td>NATURAL</td> <td>X</td> <td>URBAN CONSERVANCY</td> <td>SHORELINE RESIDENTIAL</td> <td>SHORELINE RESIDENTIAL LIMITED</td> <td>AQUATIC</td> </tr> <tr> <td></td> <td>X-P</td> <td></td> <td>P</td> <td>C³</td> <td>P</td> </tr> <tr> <td></td> <td>X</td> <td>X-P⁵</td> <td>P</td> <td>C</td> <td>X</td> </tr> <tr> <td></td> <td>X</td> <td>XC</td> <td>C</td> <td>X</td> <td>X</td> </tr> </table>	NATURAL	X	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC		X-P		P	C ³	P		X	X-P ⁵	P	C	X		X	XC	C	X	X	See rational for required change #17
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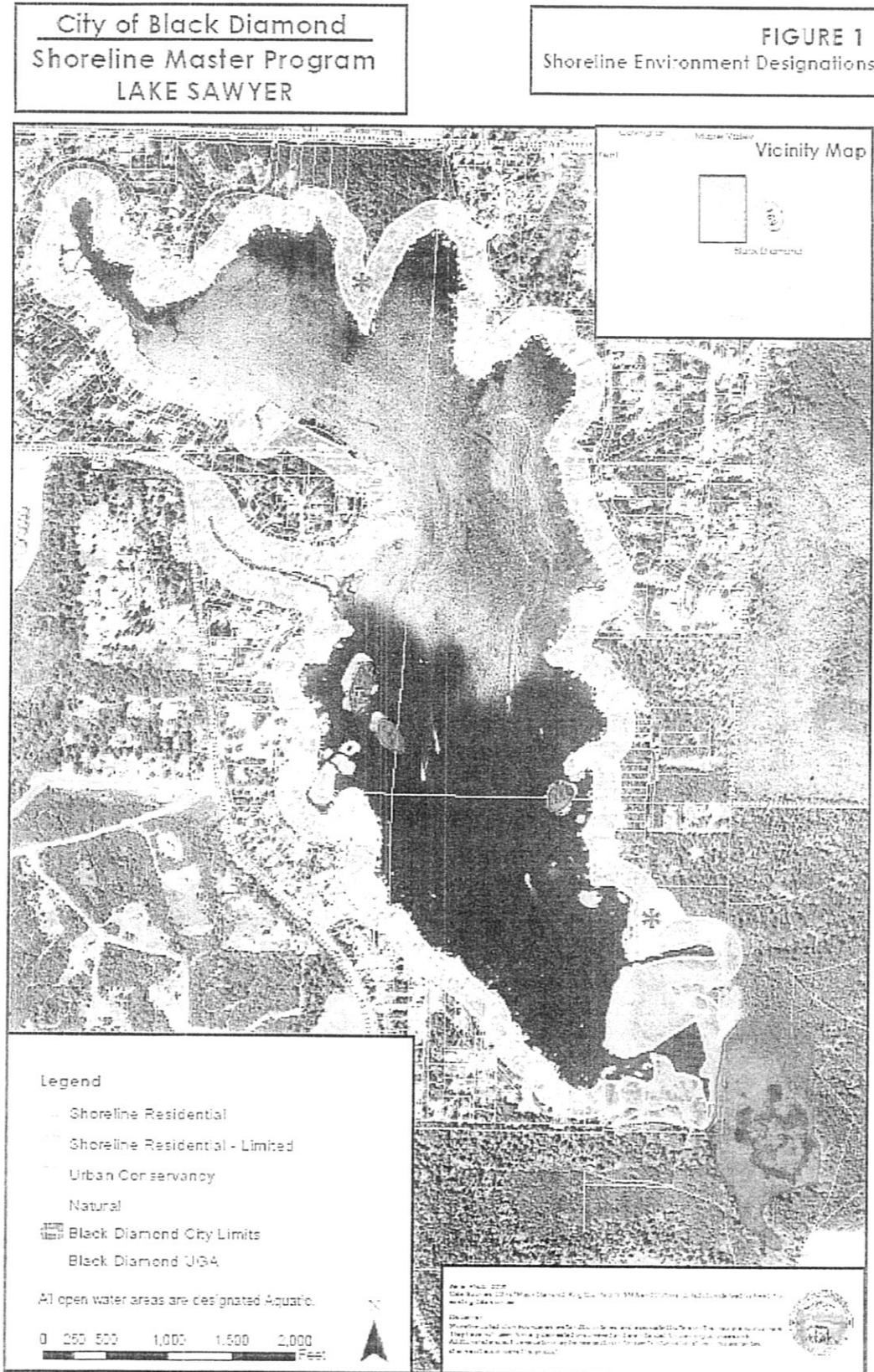
¹ Please also see adjacent upland environment. Where a use would be located both in upland and overwater, the more restrictive standards apply.

21	Ch. 4.B.2 Table II	Environment Designations	<p>⁵ This use is subject to further zoning restrictions in the Black Diamond Municipal Code.</p> <table border="1" data-bbox="402 420 914 1430"> <thead> <tr> <th data-bbox="402 1220 586 1430">DEVELOPMENT STANDARD</th> <th data-bbox="402 1073 586 1220">NATURAL</th> <th data-bbox="402 915 586 1073">URBAN CONSERVANCY</th> <th data-bbox="402 705 586 915">SHORELINE RESIDENTIAL</th> <th data-bbox="402 495 586 705">SHORELINE RESIDENTIAL LIMITED</th> <th data-bbox="402 415 586 495">AQUATIC</th> </tr> </thead> <tbody> <tr> <td data-bbox="586 1220 914 1430">Minimum lot width and water frontage</td> <td data-bbox="586 1073 914 1220">N/A</td> <td data-bbox="586 915 914 1073">N/A 60 ft.²</td> <td data-bbox="586 705 914 915">60 ft.²</td> <td data-bbox="586 495 914 705">N/A</td> <td data-bbox="586 415 914 495">N/A³</td> </tr> <tr> <td data-bbox="914 1220 1161 1430">Minimum Lot Size</td> <td data-bbox="914 1073 1161 1220">No further subdivision is allowed</td> <td data-bbox="914 915 1161 1073">No further subdivision is allowed 9,600 sq. ft. Subdivision of unsewered properties is prohibited</td> <td data-bbox="914 705 1161 915">9,600 sq. ft.⁶ Subdivision of unsewered properties is prohibited.</td> <td data-bbox="914 495 1161 705">No further subdivision is allowed.</td> <td data-bbox="914 415 1161 495">N/A³</td> </tr> </tbody> </table> <p>⁷ Subdivision is subject to further zoning restrictions in the Black Diamond Municipal Code. Black Diamond has designated its Lake Sawyer shorelines under four five shoreline environments: Aquatic, Natural, Urban Conservancy, Shoreline Residential Limited and Shoreline Residential.</p>						DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	Minimum lot width and water frontage	N/A	N/A 60 ft. ²	60 ft. ²	N/A	N/A ³	Minimum Lot Size	No further subdivision is allowed	No further subdivision is allowed 9,600 sq. ft. Subdivision of unsewered properties is prohibited	9,600 sq. ft. ⁶ Subdivision of unsewered properties is prohibited.	No further subdivision is allowed.	N/A ³	<p>See rational for required change #17</p> <p>WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited.</p>
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22	Ch. 1.E ¶ 3	Environment Designations	<p>⁵ This use is subject to further zoning restrictions in the Black Diamond Municipal Code.</p>						<p>See rational for required change #17</p> <p>WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited.</p>																		

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

References

- Otak & AHBL 2010, Otak Inc. and AHBL. August 6, 2012. Shoreline Analysis Report Including Shoreline Inventory and Characterization for City of Black Diamond's Shoreline: Lake Sawyer.
- AHBL & Black Diamond 2012. City of Black Diamond Community Development Department and AHBL September 2012. Final Cumulative Impacts Analysis Component for City of Black Diamond Shoreline: Lake Sawyer.
- Knutson, K. L., and V. L. Naef. 1997. Management recommendations for Washington's priority habitats: riparian. Wash. Dept. Fish and Wildl., Olympia. 181pp.
- Green/Duwamish and Central Puget Sound Watershed Water Resource Inventory Area 9 (WRIA 9) Steering Committee. 2005. Salmon Habitat Plan – Making Our Watershed Fit for a King. Prepared for the WRIA 9 Forum. August 2005
- Department of Ecology. 2011. Shoreline Master Program Handbook; Chapter 11, Vegetation Conservation, Buffers and Setbacks. Accessed at: <http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Chapter11.pdf>
- Bolton, Susan and Jeff Shellberg. 2001. White Paper - Ecological Issues in Floodplains and Riparian Corridors. Washington Department of Fish and Wildlife, Washington Department of Ecology, Washington Department of Transportation, Olympia, Washington.
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- Brennan, J.S., and H. Culverwell. 2004. Marine Riparian: An Assessment of Riparian Functions in Marine Ecosystems. Published by Washington Sea Grant Program. Copyright 2005, UW Board of Regents. Seattle, WA. 34 p.
- EnviroVision, Herrera Environmental and Aquatic Habitat Guidelines Program. 2007, revised 2010. Protecting Nearshore Habitat and Functions in Puget Sound.
- Knight, K. 2009. Land Use Planning for Salmon, Steelhead and Trout. Washington Department of Fish and Wildlife, Olympia, Washington.
- Knutson, K.C. and V.L. Naef. 1997. Management Recommendations for Washington's Priority Habitats: Riparian. Washington Department of Fish and Wildlife, Olympia, Washington
- Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, E. Stockdale. April 2005. Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA.



Attachment C:

Ecology Recommended Changes

The following changes are recommended to clarify elements of the City's updated SMP

ITEM	SMP Submittal Provision (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1	Table of Contents	Referencing	<u>Chapter 7 Definitions</u>	The Table of Contents references all chapters and sections in the SMP with the exception of Chapter 7. For ease of use, <i>Chapter 7 Definitions</i> should be added to the Table of Contents.
2	Ch. 2.D.2.a	Spelling	The Shoreline Residential Limited environment designation recognizes the higher level of ecological function and sensitivity associated with specific islands located in Lake Sawyer, when compared to other shoreline areas that are developed or planned for residential development. This designation also recognizes the presence of existing residential and recreational uses in these areas and is designed to provide for development and/or redevelopment that is compatible with the protection of ecological functions at such time when appropriate facilities are provided, such as potable water, electricity and waste disposal that complies with King County and State Health Department regulations regulations.	Spelling error.
3	Ch. 3.B.5.c.3	Subsection titles	f. a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means; g- b. Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions; h- c. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development or other constitutional or legal limitations preclude public access. i- d. Unacceptable environmental harm will result from the public access which cannot be mitigated; or j- e. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.	The section references appear out of order. For consistency and ease of use, consider labeling as indicated.

4	Ch. 4.C.11.b Utilities (Primary)	References	1. New primary utilities should be located outside of the SMA jurisdiction unless no other feasible option exists. Where allowed, they should utilize existing transportation and utility sites, rights-of-way and corridors whenever possible, rather than creating new corridors. Joint use of rights-of-way and corridors should be encouraged.	For ease of use and consistent application, consider the change indicated.
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Flexible Shoreline Setbacks																
5	Ch. 4.B.2 Basic Development Standards -- Table II	Setback Standards	<table border="1"> <tr> <td data-bbox="417 1312 690 1522">DEVELOPMENT STANDARD</td> <td data-bbox="417 1207 690 1312">NATURAL</td> <td data-bbox="417 1102 690 1207">URBAN CONSERVANCY</td> <td data-bbox="417 997 690 1102">SHORELINE RESIDENTIAL</td> <td data-bbox="417 892 690 997">SHORELINE RESIDENTIAL LIMITED</td> <td data-bbox="417 787 690 892">AQUATIC</td> </tr> <tr> <td data-bbox="690 1312 933 1522">Shoreline Setback (from OHWM)² Please also see Regulation #2 related to non-conforming single family homes.</td> <td data-bbox="690 1207 933 1312">100 ft</td> <td data-bbox="690 1102 933 1207">100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement⁵</td> <td data-bbox="690 997 933 1102">50 ft. (standard) may be reduced to 30 ft. (minimum) with enhancement</td> <td data-bbox="690 892 933 997">50 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement</td> <td data-bbox="690 787 933 892">N/A³</td> </tr> </table> <p data-bbox="933 539 1224 1522">...²The standard setback applies to all permanent and temporary primary and accessory structures unless specifically exempted below. Setbacks are measured landward, on a horizontal plane perpendicular to the shoreline. The setback may be reduced to the minimum setback indicated in Table II where the applicant agrees to implement voluntary enhancements as described in Sections B.3 and B.4 below, and the Shoreline Administrator determines the proposal is consistent with all other requirements of this SMP. Please see zoning regulations for interior lot setbacks and other requirements that apply to specific zones. Development associated with water dependent uses, shoreline access and ecological restoration are not required to meet the minimum setback. However, where such development is approved within the minimum setback, the placement of structures and hard surfaces shall be limited to the minimum necessary for the feasible operation of the use.</p>	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non-conforming single family homes.	100 ft	100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement ⁵	50 ft. (standard) may be reduced to 30 ft. (minimum) with enhancement	50 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement	N/A ³	<p>Beginning with early versions of the SMP there has been an incentive based setback reduction system integrated into the SMP. There appears to be strong community support for such a system. The city proposed system was not consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(e)) and No Net Loss (WAC 173-26-186(8)), and was required to be removed by required changes #12-15.</p> <p>This recommended change imbeds the principles of WAC 173-26-201(2)(e) while prioritizing enhancement consistent with the Final Cumulative Impacts Analysis (AHBL 2012) and Final Shoreline Analysis Report (OTAK AHBL, 2010). This recommended change is also consistent with RCW 90.58 and No Net Loss (WAC 173-26-186(8)).</p>
DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC											
Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non-conforming single family homes.	100 ft	100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement ⁵	50 ft. (standard) may be reduced to 30 ft. (minimum) with enhancement	50 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement	N/A ³											

6	Ch. 4.B.3	Off-site mitigation	<p>....</p> <p>56. Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject to further monitoring as necessary to ensure the success of requirement mitigation measures.</p> <p>67. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p> <p>8. <u>Off-Site Mitigation.</u> The City may provide a fund for off-site mitigation. If such a fund is created, the Shoreline Administrator or designee shall assess charges to new development when impacts to shoreline ecological functions cannot be fully mitigated on site. Charges assessed shall be of sufficient value to ensure off-site mitigation results in no net loss of shoreline ecological functions over time. Expenditures from such a fund shall be in accordance with the Black Diamond Restoration Plan.</p>	<p>There is both public and city interest in a mitigation fund. A version of a mitigation fund was included in the original submittal but was not kept due to conflicts with WAC 173-26-201(2)(e). Consistent with WAC 173-26-201(2)(e) (i)(b), this recommended change has been incorporated.</p> <p>Numbering changes have been included to ensure consistent application.</p>
7	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	<p>1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40)-feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 30 feet in the Shoreline Residential, 25 feet in the Shoreline Residential Limited Environment and 75 feet in the Urban Conservancy Environment using setback reduction mechanisms in Table II in this Chapter. Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.</p>	<p>See rational in #6</p>
8	Ch. 4.B	Flexible Shoreline Setback Regulations	<p>3. Flexible Shoreline Setback Regulations</p> <p>In addition to the specific requirements for particular uses, the following standards shall apply:</p> <p>1. A standard setback shall be established from the ordinary high water mark for all lots within shoreline jurisdiction. The setback shall not apply to docks, piers, bridges and similar water dependent structures.</p> <p>a. The fifty(50) foot standard setback in the Shoreline Residential and Shoreline</p>	<p>See rational in #6</p>

Residential Limited Environments may be reduced down to a minimum of thirty (30) and twenty-five (25) feet respectively when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.

b. The one-hundred (100) foot setback within the Urban Conservancy environment may be reduced to a minimum of seventy-five (75) feet, when setback reduction impacts are mitigated using a combination of the mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.

c. No setback reduction is allowed in the Natural environment, where a one-hundred (100) foot setback shall be required.

d. Reductions are cumulative and must be utilized in the following priority order: 1 or 2, 3, 4, 5, or 6 if a bulkhead is present. After reductions 1-2 and 3-6, then reductions 7-10 may be utilized in any order.

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

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

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

3. All property owners who obtain approval for a reduction in the setback must record the final approved setback and corresponding conditions in a Notice on Title, and provide a copy of the Notice on Title to the Shoreline Administrator.

		<p>4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.</p> <p>5. Mitigation of native vegetation as discussed below shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. Preparation of a revegetation plan shall be completed by a qualified professional and include a monitoring and maintenance program that shall, at a minimum, include the following:</p> <ol style="list-style-type: none"> The goals and objectives for the mitigation plan; The criteria for assessing the mitigation; A monitoring plan that includes annual progress reports submitted to the Shoreline Administrator and that lasts for a period sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and A contingency plan. <p>5. Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject to further monitoring as necessary to ensure the success of requirement mitigation measures.</p> <p>6. Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.</p>	See rational in #6						
9	<p>Ch. 4.B.4 Shoreline Setback Reduction Mechanisms – Table III</p>	<p>Flexible setbacks</p>	<table border="1"> <thead> <tr> <th data-bbox="1242 1522 1364 2037">REDUCTION MECHANISM</th> <th data-bbox="1364 1522 1575 2037">REDUCTION ALLOWANCE</th> </tr> </thead> <tbody> <tr> <td data-bbox="1242 1764 1364 2037">1</td> <td data-bbox="1364 1764 1575 2037"> <p>Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 75 percent of the reduced (i.e. that portion remaining after reductions are applied) setback area. The remaining 25 percent of the setback area can be comprised of existing non-invasive, non-native vegetation. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 75</p> </td> </tr> <tr> <td data-bbox="1242 2037 1364 2037"></td> <td data-bbox="1364 2037 1575 2037">10 feet</td> </tr> </tbody> </table>	REDUCTION MECHANISM	REDUCTION ALLOWANCE	1	<p>Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 75 percent of the reduced (i.e. that portion remaining after reductions are applied) setback area. The remaining 25 percent of the setback area can be comprised of existing non-invasive, non-native vegetation. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 75</p>		10 feet
REDUCTION MECHANISM	REDUCTION ALLOWANCE								
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	10 feet								

		<p>would be improved relative to the existing condition. Existing hard structural stabilization at or near the ordinary high water mark is removed and new soft structural shoreline stabilization measures are setback from the OHWM between 2 ft. to 4 ft. based on feasibility and existing conditions and are sloped a maximum angle of 3 vertical: 1 horizontal to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.</p>	10 feet
5		<p>Soft structural shoreline stabilization measures are installed waterward of the OHWM on a site currently containing only hard stabilization. They shall include the use of gravels, cobbles, boulders and/or logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind and boat-driven waves and shall be graded to a maximum slope of 1 vertical: 4 horizontal</p>	5 feet
6		<p>Installation of a "green" roof in accordance with the standards of the LEED Green Building Rating System.</p>	5 feet
7		<p>Reduction of 5 feet for impervious surface 10 percent less than the SMP standard and 10 feet for impervious coverage 20 percent less than the SMP standard</p>	5-10 feet
8		<p>Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.</p>	5 feet
9		<p>Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.</p>	5 feet
10	Ch. 4.B	Alternative Setback Systems	
		<p>5. Shallow lot exception. 1. Where a lot has the following conditions, the setback requirements set forth in Table II shall not apply and the minimum setback between the closet point of building and structures from the ordinary high water line shall be 25 feet. a. The depth of the lot is less than 160 feet; and b. The upland area of the lot is 9,600 square feet or less; and c. Sewer services are provided through an onsite sewer system and public sewer connections cannot be made within 300 feet of the subject property. 2. For the purposes of this provision, the depth of the lot shall be determined by: a. Measuring the distance of a horizontal line drawn midway between the side property lines</p>	<p>Given the number of small lots that lack access to the public sewer system, there is a need to have a streamlined approach to reduce the required setback. The proposed recommended language will allow those constrained lots the ability to develop, while providing mitigation.</p>

			<p>between the ordinary high water line and the front lot line; and</p> <p>b. If the lot is irregular in shape, or has fewer than two side lot lines, the midway will be determined in the most reasonable manner based on the lot lines that intersect the ordinary high water line.</p> <p>3. Restoration of native vegetation shall be provided (and preservation of existing trees and native vegetation) in at least 50 percent of the reduced setback area. Native vegetation restoration shall be located immediately adjacent to the OHWM and may contain breaks for shoreline access.</p>	
Administration				
11	Ch. 6.J.4 Nonconforming Lots	Nonconforming lot development criteria	<p>a. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established prior to the effective date of the SMA or the SMP, but which does not conform to the present lot size standards, may be developed subject to the requirements of BDMC 18.68.060(AG) and so long as such development conforms to all other requirements of the SMP and the SMA.</p>	For ease of use and consistent application, consider the change indicated.

Navigating the “Final Steps” in SMP Approval

1. Please remember: this is NOT GMA - there is no “presumed validity” in shoreline management. Locally submitted SMPs must be approved by Ecology before they become effective and before local statutory deadlines for SMP updates are satisfied. Ecology can either: approve SMP amendments “as submitted”, deny them outright, or require changes.
2. There is a “local” public process as well as a “state” public process required in approving an SMP.
3. Ideally, local staff work closely with Ecology regional staff to prepare a fully (Guidelines) compliant draft SMP, BEFORE it is locally approved and submitted to Ecology. This helps expedite the final approval process.

Serious discussion regarding SMP provisions that Ecology has problems or concerns with, should be clearly identified and resolved before local adoption, and ideally before local government begins the local public review and approval process.

4. For its part, this requires Ecology to be very clear, regarding what is specifically required and what is acceptable, depending on the topic.
5. SMP provisions that Ecology finds unacceptable and which remain unresolved through the process do not go away. They will surface again during Ecology’s formal review and approval process. An example would be Ecology concluding that certain specific policies, regulations, or shoreline environment designations in the SMP must be revised to satisfy SMA and/or guidelines requirements.
6. If changes are necessary, they will show up in Ecology’s Findings and Conclusions as “required” and “recommended” changes. Changes necessary to satisfy SMA policy or guidelines requirements are addressed as required changes. Changes addressing organization, graphics, typos, etc. that add clarity or aid in SMP implementation, are addressed as recommended (not required) changes.
7. Near the end of the state SMP approval process, Ecology required and/or recommended changes will be itemized as attachments to Ecology’s findings and conclusions, with the

actual corrective SMP-specific regulatory language Ecology finds acceptable, presented with rationale in a table or matrix. These documents are transmitted via a cover letter from Ecology's Director to the local government for consideration and action by local government.

8. Local governments have 30 days to respond to Ecology's required changes. They may either (formally, in writing) agree to the proposed changes OR submit an "alternative proposal".
9. If local government agrees to the changes, they must notify Ecology in writing. Please note, that once Ecology receives notice of local agreement to the changes, this is recognized as the local governments' final action regarding the amendment. Ecology promptly notifies the local government and interested parties that the approval incorporates the accepted changes, is final and effective 14 calendar days from Ecology's letter.

The process for determining what changes are acceptable to local government, and who makes that decision is local governments' business. Additional public hearings are not required but may be judged necessary by the local government. Who authorizes the local acceptance is also up the local government. Ecology accepts a letter from the mayor or commission chair, but a resolution or ordinance is ideal.

Remember, once Ecology is notified of the local acceptance of changes, no further changes can occur and the SMP amendment approval is final.

10. If an alternative to Ecology's changes is proposed by local government, Ecology must review the proposal and determine the alternative is consistent with SMA policy and the guidelines. In this case, the effective date of the SMP is 14 calendar days from the date Ecology's Director notifies the local government in writing that the alternative/s have been accepted.
11. In practice, required changes can cover a mix of topics and in some cases can be quite lengthy and complex. Ecology's required changes should not come as a surprise to local government.

12. All verbal approvals amongst staff ultimately need to be formalized in writing. If local government proposes alternatives, rationale must be provided and additional rounds of dialogue and negotiation may be necessary. In some cases required changes are quite acceptable to local government while others, for a variety of reasons, may not be. Ecology can also prepare a counter-proposal with supporting rationale, to locally proposed alternative language. If required changes are numerous, a winnowing process may be needed to focus in on remaining unresolved issues requiring further attention.

This is because, in the end, both local government and Ecology must reach total, formal agreement on ALL changes to the locally approved and submitted SMP before the amendment process is completed. Leaving out a particularly controversial topic in the SMP or only partially approving the SMP is not an option. Approval of an entirely complete “comprehensive” SMP update is required.

Ecology needs to closely track what has been agreed to and what items remain unresolved, so that in the end, it is clear precisely what makes up the complete approved SMP. Again, this is usually done in the form of a matrix.

“A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department”. RCW 90.58.090(7).

13. If complete agreement cannot be reached, then Ecology can deny the SMP. Local government can also request Ecology run the state review and approval process over again with Ecology’s required changes included, OR Ecology can begin rule-making to adopt a compliant SMP for the local government.
14. Please note: the effective date of all SMP amendments is 14 calendar days from Ecology’s final action. This is quite different from the appeal period for the amendment (60 days for GMA jurisdictions; 30 days for non-GMA jurisdictions), which is triggered by Ecology’s subsequent publication of the amendment approval.

Testimony of Jack Sperry Regarding DOE Required and Recommended Changes to Black Diamond's Shoreline Master Program document

Review of the DOE's Required and Recommended Changes to Black Diamond's Shoreline Master Program provided to the City in their letter of July 26, 2013 shows few changes compared to the draft material supplied on May 9, 2013 by Mr. Anthony Boscolo at the Town Hall Meeting. A few minor additions have been made, but no changes to the more onerous requirements. This is very disappointing considering that the City met with Mr. Boscolo and others at DOE offices on June 13th to express concerns regarding the increased setback requirements and other changes to the City's SMP being required by Mr. Boscolo. The Required and Recommended changes provided on May 9th and in the July 26th letter increase the City's proposed Standard setback from 40 ft. to 50 ft. and increase the Minimum setback with mitigation enhancement from 25 ft. to 30 ft. In addition the Required DOE changes threw out all of the City's 17 proposed voluntary mitigation enhancement options (setback reduction mechanisms) in Table III. Then in their Recommended Changes they replaced 10 of them, all of which must be applied in a strict priority order. As a result of these Required and Recommended changes, DOE is forcing property owners to remove their hardened bulkhead, or return their shoreline to a natural state, in order to allow development any closer than 40 ft. from the Ordinary High Water Mark (OHWM). And property owners without bulkheads on undeveloped parcels with natural shorelines will be unable to reduce their setback beyond 40 ft. due to the lack of applicable setback reduction mechanisms contained DOE's Recommended options number 3 through 6. These drastic setback requirements are not in league with the minimum setback requirement of 20 ft. approved by the DOE for the cities of Redmond and Sammamish, nor the 15 ft. minimum setback approved for Lake Burien for developed shorelines. And the new requirement for prioritized setback reduction mechanisms removes the flexibility designed into the Flexible Shoreline Setback Regulations of the City's SMP. The changes required at the shoreline by DOE will drive setback mitigation well beyond the concept of No Net Loss (NNL) for certain developed properties where ecological function is already at a degraded starting point. With no development allowed within 30 feet of the OHWM it makes no sense to require bulkhead removal to obtain a setback of less than 40 feet. The DOE has newly agreed to language supporting a City-managed offsite shoreline restoration fund, but has removed the City's setback reduction mechanisms 5 and 6 needed to obtain its use. This is especially critical for those properties that must build forward but also require a bulkhead for protection of their home. Setback reduction options 5 and 6 to make use of the City-managed shoreline restoration fund must be restored.

The City Council needs to listen to public testimony and take time to understand the DOE changes. I support the City's conditional acceptance of DOE's Required and Recommended changes, but only with the following recommended exceptions, changes, and additions which should be provided to DOE by the City as an alternate proposal in accordance with RCW 90.58.090:

1. The City should not accept the DOE's increase in **Standard** building setback in Segment A (Shoreline Residential) from 40 to 50 ft. The City should propose 45 ft. as a reasonable compromise between community and DOE desires. This debate is only over 5 ft., but this can mean a lot to landowners since Lake Sawyer contains topographically constrained or narrow and short lots requiring septic leach fields.
2. The City should not accept the DOE's increase in **Minimum** building setback with mitigation in Segment A (Shoreline Residential) from 25 ft. to 30 ft. The City should propose 25 ft. based upon the information below in item 1 of the "Background and Supporting Material" concerning incorrect statements regarding impervious surface growth in the City's Cumulative Impacts Analysis (CIA) document, and lack of DOE consideration of specific portions of the CIA document describing enhanced ecological function to be expected with the SMP mitigation required to achieve even a 20 ft. setback. Item #5 and #8 in the DOE's Recommended changes leave the minimum setback at 25 ft. in the Shoreline Residential Limited segment. However, the DOE and the City's SMP acknowledge that this segment, which contains four islands, is more fragile and needs additional restrictions. It makes little sense for DOE to support a 25 ft. minimum

setback in the Shoreline Residential Limited segment while increasing the minimum setback in the less fragile Shoreline Residential segment to 30 ft.

If the City is unwilling to propose and argue for a minimum setback of 25 ft. for all parcels in Segment A, the City should at least propose 25 ft. when applicable only to redevelopment on parcels with hardened bulkheads where no impacts will be made to the shoreline or to any native vegetation in the reduced setback area. In addition, the following statement should be added as a new footnote on page 40 in reference to the DOE recommended 30 ft. minimum setback for Shoreline Residential in Table II on page 39 of the SMP “*Where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of the 30 ft. Minimum setback, the Shoreline Administrator may allow the residence to be located up to five (5) feet closer to the OHWM, provided all other provisions of this SMP are met and impacts are fully mitigated for No Net Loss.*” The need for this option would be quite minimal, but potentially could save some property owners with short lots or unique lot configurations from the huge expense, delay, and risks associated with seeking a Variance.

3. The City should strongly propose the addition of the City’s setback mitigation options number 5 and 6 to be inserted between DOE’s Recommended setback mitigation options 3 and 4 to enable landowner use of the DOE agreed-to City-managed offsite shoreline restoration fund. The City should further state that it cannot agree to a prioritized set of setback reduction mechanisms unless mechanisms for use of a City-managed shoreline restoration fund can be provided for those landowners where it’s infeasible to remove their bulkhead due to safety needs.
4. Item #8 of the DOE’s recommended changes requires that its recommended setback reduction mechanisms be selected in a specific priority order beginning with revegetation of the shoreline buffer and then removal of the bulkhead and/or restoration of the shoreline. Bulkhead removal is entirely impractical for most low lying properties subject to extreme wave action from boats designed to maximize their wake for surfing. This recommended prioritization requirement for setback reduction options has been, and should be, totally unacceptable to the City as it completely precludes any tailoring of the ecological enhancement options to the unique site conditions. It also doesn’t recognize the heavy wave action on Lake Sawyer. Furthermore, it results in totally inequitable requirements for parcels which have already been developed with hardened shorelines and with native ground cover removed. Redevelopment on these parcels will not impact or remove any native vegetation and will have no impact on the existing shoreline/water (riparian) interface. Habitat is already lost and soils on developed sites are sufficiently porous to retard migration of toxic or undesirable nutrients to the water’s edge. Bulkhead removal to achieve a minimum setback of less than 40 ft. will not even be an option for low lying properties which absolutely require a bulkhead for protection of the home. This priority requirement does not make sense for low-lying already developed parcels. This requirement directly leads to individual site restoration beyond the NNL requirement. The requirement for a professionally prepared mitigation plan demonstrating No Net Loss should be sufficient for these sites to meet the RCW requirements for NNL. A fundamental premise of the SMP process in Washington State law states: “*Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.*” The City should reject the DOE’s recommendation for a prioritized list of setback reduction options for developed properties with hardened bulkheads and without native ground cover in the buffer area. For this limited subset of parcels the City should propose to allow landowner selection of setback reduction mechanisms to achieve the maximum allowance as long as NNL can be assured. The City should propose the following statement to be added as item 4.B.3.1.f to Chapter 4 of the SMP. “Those parcels with hardened bulkheads and no native ground cover in the buffer area which require no change to the shoreline, or removal or degradation of any native vegetation in the mitigated setback area, shall be able to select mitigation enhancement options that do not require mandatory bulkhead removal, shoreline restoration, or shoreline revegetation.” Since the fundamental requirement for future development on Lake Sawyer is based upon the principal, and legal requirement to achieve, No Net Loss during

development, the City should also propose adding the following statement as item 4.B.3.1.g to Chapter 4. on page 41 of the SMP in the section on Flexible Shoreline Setback Regulations: “*Alternatively, the applicant may choose to secure the services of a qualified professional to develop a report to demonstrate that the no-net-loss standard will be met with the selection of setback reduction options selected.*” Such an option has been included in other SMPs and would allow an applicant to precisely tailor mitigation enhancements to the specific ecological impact of the development on the applicant’s site.

Conclusions:

There is no recognition in the proposed DOE changes regarding the difference in existing site conditions on parcels to be developed or redeveloped. When applying a No Net Loss criteria to an individual site there should be flexibility to allow different amounts and types of enhancement for a given setback reduction to recognize the different baselines to which mitigation must be applied to achieve No Net Loss. Much more mitigation enhancement should be required when disturbing a natural site as opposed to one which has already been highly degraded due to prior development. The prioritized list of setback reduction options recommended by the DOE, do not provide adequate flexibility to the landowner and should be rejected by the City. The City should fight for setback reduction options 5 and 6 to provide a way to use the City-managed offsite shoreline restoration fund. This will provide landowners an option for not having to remove their bulkhead and will help fund the City’s requirement in the Shoreline Restoration Plan to improve the shorelines at the City parks. And finally, the City should oppose the DOE’s recommended change of shoreline setbacks to 50 ft. and 30 ft. and propose the values be 45 ft. and 25 ft. to provide greater flexibility for landowners with unique lot configurations or difficulty accommodating septic systems together with short and/or narrow lots.

I propose that the City submit an alternative proposal (letter) to DOE by August 25, 2013 as allowed by RCW 90.58.090 (2)(e), which states that the Required and Recommended changes proposed in the July 26, DOE letter are **conditionally acceptable** with the following alternative proposals:

1. The Segment A (Shoreline Residential) Standard setback shall be 45 feet which is very close to the correct average setback in this segment.
2. The Minimum setback with mitigation per Table III shall be 25 feet based upon revised values of only 30% for maximum potential future impervious surface. (CIA document to be revised accordingly)
3. The City’s original setback mitigation option numbers 5 and 6 shall be inserted between DOE’s recommended mitigation options 3 and 4 to enable use of the City’s offsite shoreline restoration fund. (Blue-highlighted language, shown in Appendix B below, needs be added as paragraph 4.B.3.9 on p. 42 of the SMP to enable use of offsite compensatory mitigation per WAC 173-26-201-2-e-ii-B.)
4. The City should propose adding the language in blue type above to permit parcels with hardened bulkheads and no native vegetation in the buffer area to select mitigation options without a specific priority order as long as NNL can be assured.

This collection of alternative proposals will permit the City to open a negotiation with the DOE to see if some, or all, of these important fixes can be accommodated to help future development on Lake Sawyer.

The DOE is anxious to complete this activity, but they have taken the better part of a year to provide the City with their formal Required and Recommended changes after receiving the City’s SMP in early October, 2012. These documents will not be updated for many years and will have profound, and in some cases severe impacts, on certain Lake Sawyer property owners and taxpayers. The City should take the time to work with the DOE to correct these issues and try to accommodate the issues that most affect its citizens.

I stand ready to offer my services in any way I can to be of use in this final process to arrive at a Shoreline Master Program that the DOE, the City, and Lake Sawyer property owners can look at with satisfaction.

Jack C. Sperry
29051 229th Ave SE
Black Diamond, WA 98010

Background and Supporting Material

Below are some detailed comments and recommendations regarding the DOE proposed changes to the Black Diamond Shoreline Master Program that I believe the Staff and Council needs to consider prior to submitting a response to Ecology.

1. Increased Building Setbacks: Most of Lake Sawyer shoreline has no sanitary sewer service and property owners must use large portions of their lot for primary and reserve septic system leach fields. Because Lake Sawyer also has many narrow and short length lots, the need for a private septic system can crowd building structures forward and make it very difficult to accommodate development on those parcels. Recognizing the desire to provide for development on the maximum number of parcels, the Citizens Advisory Committee (CAC) strongly advocated for a standard Residential Shoreline setback of 40 feet and the use of voluntarily chosen ecological mitigation options to permit reduction of the setback to a minimum of 20 feet (which has been the regulation in place since 1972). The City's menu of 17 setback reduction options (enhancements) was provided to give property owners flexibility to tailor their application to the specifics of the proposed development and the specific site environment while still achieving No Net Loss in development.

One of the comments received from DOE in their Checklist after review of the City's first draft SMP said *"SETBACKS: Inventory identifies median setback as 57 ft. This number has been refined to 48.7 ft. for the residential designation. The proposed standards in Table II, pg. 37, are far less restrictive than existing conditions. Given the existing conditions, and the proposed setbacks, achieving NNL is very difficult as nearly every new development will be located closer to OHWM. -To meet the core requirement of NNL, consider having a standard setback of 50ft, essentially equal to the existing conditions, which can be reduced to 30 feet using the Shoreline Setback Reduction Mechanisms of Table III.* Recognizing the early desires expressed by Ecology for a standard setback of 50 feet and a mitigated setback of 30 feet the City proposed a compromise of 40 feet and 25 feet in its official submittal to the DOE in October of 2012.

The assumption by DOE that "nearly every new development will be located closer to the OHWM" has no basis in fact and cannot be substantiated. The current average residential setback is the result of development throughout the entire history of the lake when the setback requirement was 20 feet or even unregulated. Most property owners who had a choice built further back than the minimum to provide for a yard or recreation area in front of their home. In general, only those people who absolutely have to build closer to the OHWM usually choose to do so. Additionally, people with medium to high bank properties tend to build back further to provide level access from the road to their driveway and garage. On lots with existing homes designed to take advantage of views of the lake, remodels or expansion is more likely to occur to the side or rear of the existing structure.

Furthermore the value of 48.7 ft. cited above by DOE for average setback and shown in the Cumulative Impacts Analysis is clearly incorrect and overstated. The OHWM is achieved only in the January-February time frame when the lake's water level is at its maximum height. However, the analysis conducted by the City's consultant used aerial photography to try and determine the distance between the OHWM and structures. Water levels during periods when aerial photography can reasonably be taken are much lower and therefore the distance between dwellings and the water's edge in the photography are greater. Thus the true OHWM is likely several feet less than 48.7 ft. and is likely closer to 45 ft. This provides further justification for 45 ft. being set as the Standard building setback in the Shoreline Residential Segment A as opposed to 50 feet.

DOE argues that Black Diamond's Cumulative Impacts Analysis (CIA) doesn't provide technical references supporting the proposed buffers ability to contain sediment, nitrogen, nitrate, or phosphorus between 40 ft. and

25 ft. from the lake's edge. Yet the soils surrounding Lake Sawyer are extremely porous and nearly gravel in nature. These soils would have no trouble in keeping these substances from reaching the water's edge from a 25 ft. distance and this conclusion should be added to the CIA document. The DOE also cited an incorrect statement in the CIA that *"impervious cover in Segment A (Shoreline Residential) is estimated at approximately 25-30% and construction of new residences and expansion of existing homes could potentially increase this coverage up to the maximum allowed"* (40%). Unfortunately this statement in the CIA is patently false. A more accurate calculation by the undersigned (included as Appendix A) shows that current impervious surface area on parcels is 18.2% and with roads and right-of-ways included is 24.6%. Parcel development/redevelopment would have to more than double (increase 119%) to reach 40% and that is far from feasible. If all 322 parcels on the lake added 500 sq. ft. of new impervious area and all 29 potential undeveloped parcels had 3,600 sq. ft. added in the future, impervious surface area would still be less than 30%. This incorrect statement in the CIA has given the DOE an incorrect estimate that way overstates the potential growth in impervious surface area. Corrections need to be added to the City's CIA and used to refute the DOE claims supporting their increased setback requirements.

For those property owners with short lot lengths or other unique constraints there needs to be mitigation options available to offset ecological impacts for building to as close as 25 feet from the OHWM. That is why there were 17 ecological enhancements offered in the SMP's Flexible Shoreline Setback Regulations (Table III). The City should do further work with DOE to find a way to define voluntary mitigation enhancement options which would support a Segment A standard setback of 45 ft. and a 25 ft. minimum setback while assuring No Net Loss (NNL). The City has already compromised between the Citizen's Advisory Committee's recommendation for a minimum setback of 20 feet and the DOE's request to consider 30 feet. The City should stand firm for 45 ft. and 25 ft. and cite the following pages in the Cumulative Impacts Analysis document that state that these values can be expected to result in improved ecological function over time based on the more rigid development standards required by the City's proposed SMP. (Cite Cumulative Impacts Analysis document pages 4, 21, 40, 51, 52.) Corrections also need to be made to the City's CIA on pages 39 and 43 to provide the more accurate estimate of potential growth on impervious surface area for the DOE to work with.

Other jurisdictions with developed shorelines have been approved by DOE at 20 to 25 ft. minimums. These cities include Sammamish at 20 ft., Redmond at 20 ft., Lake Burien at 15 ft., and Entiat at 25 ft.

2. Elimination of all Table III Shoreline Setback Reduction Mechanisms: DOE's Required Changes eliminate all 17 setback reduction mechanisms in Table III of the Black Diamond SMP. DOE states that the City's proposed incentive based system of 17 setback reduction mechanisms had to be removed because it was not consistent with WAC 173-26-201-2-e which requires *"(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments"*. However each and every one of those 17 alternative setback reduction options were different and worthy ecological enhancements intended to offset some amount of ecological loss from development inside the standard setback. While one might argue the relative amount of ecological loss which is offset by each of the 17 mechanisms in terms of setback footage reduction that is only a matter of individual judgment. The ecological benefit of each mechanism is also a variable depending upon the predevelopment conditions at each site. Nevertheless each of these 17 mechanisms meets the intent of WAC 173-26-201-2-e by providing "enhancement and/or substitute resources". The values, in terms of setback reduction footage available from each of the mechanisms in the City's Flexible Setback Regulations, were taken from SMPs developed by other cities which processed their SMP regulations ahead of those of Black Diamond.

DOE also states that the City's proposed incentive based system of setback reductions mechanisms was not consistent with No Net Loss (WAC 173-26-186-8). On the contrary, all of the 17 setback reduction mechanisms were incorporated to help ensure no net loss by adding back ecological enhancements to offset loss due to development. Once again one may argue as to the relative worth of each of the setback reduction

mechanisms and about how many feet of setback encroachment each one should be worth. But to throw the whole list of ecological enhancements out is uncalled for and is not justified by either of the sections of law cited by DOE.

In prior comments following review of the City's draft SMP, DOE made the following comment: "Please consider adding language which prioritizes the reduction mechanisms and establishes how many Water Related actions and Upland Related actions can be used in combination (underline added). A preference should be placed on activities at or near the shoreline." In response to the above DOE comment, the City made it a requirement in its proposed SMP to select at least one Water Related reduction mechanism or 25 feet worth of Upland Related reduction mechanisms in order to be able to obtain 15 feet of setback reduction. However the DOE is now recommending a revised and smaller set of setback reduction mechanisms that must be selected in a strict priority order. In addition, the priority order is focused upon improvements near or at the OHWM. In the recommended priority, five or ten feet of reduction can be obtained by restoring 25% to 75% of the setback area with native vegetation, but to gain any additional reduction below 40 feet of setback the bulkhead must be removed and/or shoreline restored to a natural condition.

These recommended and prioritized requirements for setback reduction make no sense for many residential properties on Lake Sawyer. First of all, nearly all residences have hardened bulkheads, most of which are now legally justified to protect the property from extreme wave action that regularly occurs on the lake. Secondly, if a parcel already has a hardened bulkhead and the accompanying shoreline has had its native vegetation previously removed, then the shoreline is already in a significantly degraded ecological state. Thirdly, removal of the bulkhead and conversion of the shoreline to a natural state is not feasible on low lying properties subject to periodic flooding and heavy wave action. Additionally, conversion of the bulkhead to natural shoreline goes well beyond any possible definition of NNL and is in fact beach restoration. Restoration beyond that needed for NNL is not a requirement for private property owners as part of the state's Shoreline Master Program laws. This is why Black Diamond chose to create a flexible system of voluntary setback reduction mechanisms so that they could be tailored to the unique conditions at each property. What DOE is trying to impose is a "one size fits all" approach which assumes that every parcel is a forested property in a natural state prior to development. And no consideration is being given for the lesser kinds of mitigation action that are needed for re-development of an already developed parcel with a hardened bulkhead with native vegetation previously removed. To be equitable to those citizens with already developed property who require hardened bulkheads for property and home protection, an additional set of reduction mechanisms, or greater flexibility in the ability to apply reduction mechanisms, should be created. This includes the majority of Lake Sawyer residential landowners who have short lots and no access to public sewer. The abundance of short or constrained lots combined with the need for septic leach fields drives the need for setback reduction and was the reason the City offered a variety of setback mitigation options.

3. Re-addition of City-managed Offsite Shoreline Restoration fund: The City's SMP had two variations of a setback reduction mechanism for use of a City-managed shoreline restoration fund. The intent was to enable a landowner to pay into the fund in an appropriate and approved amount to avoid the need to select another less desirable or infeasible mechanism to achieve needed setback. The funds would then be collected up and when sufficient funds were available would be used by the City to restore shoreline at the two City-owned parks. DOE initially balked at this mechanism, used in other jurisdictions, but has been persuaded to add back the capability. However, DOE deleted the setback reduction mechanisms needed to facilitate the use of such a fund and the City needs to argue for restoration of its reduction mechanisms number 5 and/or 6. DOE argued that WAC173-26-201-2-e required mitigation sequencing in a specific priority and that that offsite ecological mitigation wasn't in the list. However, WAC 173-26-201-2-e-ii-B specifically allows for offsite compensatory measures in the same watershed when higher priority measures are determined to be infeasible or inapplicable. Specific enabling language taken from the approved Renton SMP is shown in Appendix B to be added to paragraph 4.B.3.9 on page 42 of the SMP along with citations from WAC 173-26-201-2-e and -e-ii-B which support the right of the City to have this offsite compensatory option.

4. DOE Recommendation for Priority use of setback reduction mechanisms: Item #8 of the DOE's recommended changes relates to paragraph 4.B.3 in the SMP and describes the Flexible Shoreline Setback Regulations for achieving a reduction in setback requirements. The City's SMP provided 17 ecological enhancement options that a landowner could select from to reduce the required setback. These 17 mitigation options were divided into six Water Related options (at the shoreline) and eleven Upland Related (away from the shoreline) options. Paragraph 4.B.3.1.d required the landowner to select at least one Water Related option, or 25 feet of reduction allowance using Upland Related options in order to achieve the full setback reduction allowed from a standard forty feet to twenty-five feet. The DOE threw out all seventeen of the City's mitigation options with their Required Changes. The DOE's Recommended Changes add back ten of the City's setback reduction options plus one new option for short lots. The DOE's Recommended Changes also changed the City's paragraph 4.B.3.1.d requirement to select at least one Water Related option or twenty-five feet of Upland Related options to a new requirement to select setback options in a specific order selected by the DOE. The first option is to restore native vegetation in the buffer zone to achieve five to ten feet of setback reduction. Then to achieve any further setback reduction the landowner must either remove the bulkhead and restore the beach to a natural condition with native vegetation or build a natural beach in front of, or in place of the bulkhead. The DOE's justification for recommending a prioritized list of setback reduction options is not clear as it refers back to their justification for increasing the setback distances. The Cumulative Impacts Analysis submitted to DOE was based upon the use of the Flexible Setback Reduction options in Chapter 4.B of the SMP. As noted above, the assessment in the City's CIA consistently summarizes on pages 4, 21, 40, and 51 that with the City's voluntary plan and the requirement to select a Water Related option that over time the shoreline ecology would be expected to improve. There is no need for a fixed prioritized system of selecting setback reduction options and with the fixed system recommended by DOE there is no ability to select options to best fit the conditions of the site. If a site is already developed with a hardened bulkhead and all native vegetation has been removed it is already in a severely degraded state. Further encroachment into the buffer zone will have very little impact and will require much less enhancement to achieve No Net Loss than if the site to be developed was in a totally natural state. The fixed priority set of enhancements selected by the DOE are far more than necessary to achieve the maximum reduction in setback than are required for a site that has a hardened bulkhead and no native vegetation. For a site where all of the ecological functions are already lost it doesn't take much to achieve No Net Loss. The DOE is trying to force a "one size fits all" approach that is very inequitable to landowners with fully developed properties who want to expand their home. The City should oppose the DOE's recommended priority based setback reduction options. If this negotiation is unsuccessful, then the City should demand that the City's setback reduction options for a City-managed mitigation fund be restored as recommended in proposal 3 above. This would give a landowner with a bulkhead whose removal is infeasible an alternative for funding offsite shoreline restoration in lieu of bulkhead removal at the site.

Appendix A: Segment A Impervious Surface Calculations

Location	Total Area		% Impervious Surface Area	Impervious Surface-sq. ft.
	Acres	Sq. Ft.		
Segment A Parcel Area	107.9	4,699,252	18.2%	915,596
Segment A Roads	7.3	318,860	6.4%	318,860
<u>Segment A Totals Including Roads</u>	115.2	5,018,112	24.6%	1,234,456
Assume Future Impervious Surface Area of 40%			40.00%	2,007,245
Additional New Impervious Surface to Realize 40% Total				772,789
Required % Increase in Parcel Imp. Surface to Realize 40% Total				119%
Required Impervious Surface Increase per parcel (sq. ft.) to Realize 40% Total				2,202
(Assumed 322 Current plus 29 Theoretical Future parcels from CIA pages 6,21 & 23)				
Potential Additional Future Impervious Surface with Growth on every parcel and 100% sewer coverage				
Assume theoretical 29 New Developments @ 3,600 sq. ft. each				104,400
Assume 322 Redevelopments @ 500 sq. ft. each				161,000
				265,400
Potential Segment A Impervious Surface with every parcel Developed/Redeveloped =				1,499,856
				29.9%

Appendix B: Support for City-Managed Offsite Restoration Fund

- **DOE's reason for deleting mitigation banks was need for mitigation sequencing priorities in WAC 173-26-201-2-e (see yellow below)**

(i) To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (e)(i)(A) of this subsection being top priority.

(A) Avoiding the impact altogether by not taking a certain action or parts of an action;

(B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) Reducing or eliminating the impact over time by preservation and maintenance operations;

(E) *Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;* and

(F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

(A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

- **However, WAC 173-26-201-2-e-ii-B allows offsite compensatory measures in the same watershed when higher priority measures are determined to be infeasible or inapplicable (see green below)**

(B) *When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.*

- **This part of the law should not be denied and the enabling language below should be added to the SMP**

Appendix B: Support for City-Managed Offsite Restoration Fund (cont.)

The City should add the following language from WAC 173-26-201-2 and found in several approved SMPs to support the legal justification for landowner use of the City's offsite shoreline restoration fund. The language below should be added as a new paragraph 4.B.3.9 on p. 42 to recognize the requirement for mitigation sequencing plus the option for offsite compensatory measures via the City-managed offsite restoration fund (see especially the last line)

“9. Evaluation of Mitigation Sequencing Required: An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:

- (a) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.***
 - (b) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.***
 - (c) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.***
 - (d) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.***
 - (e) Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and***
 - (f) Monitoring the adverse impact and taking appropriate corrective measures.”***
- Lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.***

When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized (see City shoreline restoration fund reduction mechanisms in Table III).”

Brenda Martinez

From: Rachel Pitzel
Sent: Wednesday, August 14, 2013 4:54 PM
To: Brenda Martinez
Subject: FW: SMP Resolution

Sending your way- ☺

Rachel Pitzel
Deputy City Clerk / Emergency Services Director
City of Black Diamond
(360)886-5700
rpitzel@ci.blackdiamond.wa.us

From: Aaron Nix
Sent: Wednesday, August 14, 2013 4:53 PM
To: Rachel Pitzel
Subject: FW: SMP Resolution

More Shoreline Public Comment.

Aaron

From: Jack Sperry [<mailto:JackSperry@Comcast.net>]
Sent: Wednesday, August 14, 2013 4:35 PM
To: Craig Goodwin; Carol Benson; Janie Edelman; Ron Taylor; Tamie Deady
Cc: Mark Hoppen; Rebecca Olness; Aaron Nix
Subject: RE: SMP Resolution

Craig,

Thank you for your efforts on this.

Item 1: My analysis (shown below) and used in earlier deliberations that led to adding the "Alternative Setback Averaging" language to the SMP shows that it requires about 175 ft. of length on a 50 ft. wide lot to accommodate a 4-bedroom home and septic system leach fields. This measurement assumes that the leach fields can come within 10 ft. of the street/property line. If they must be 20 ft. back, add 10 ft. With an additional 30 ft. required for minimum setback that would be 205 ft. to 215 ft. total lot length required with a non-angled shoreline. But, even at 205 ft. the area of the 50 ft. wide lot would be 10,250 sq. ft. which exceeds the 9,600 sq. ft. maximum lot size specified in the Shallow lot exception. The diagram below shows that a 60 ft. wide lot requires 156 ft. plus 30 ft. for a total 186 ft., or possibly 196 ft. of lot length for a non-angled shoreline. If maximum lot size is constrained to 9,600 sq. ft. in the Shallow lot exception, then a 60 ft. wide lot can only be 160 ft. in length and it will still require a Variance. In addition, if the rear part of the lot has a high bank which can't contain the septic leach fields, even more lot length is required.

My recommendation would be to propose the lot length be extended to at least 205 ft. and the minimum allowed lot size to 11,500 square feet.

Item 1 addresses the issue of lot size, width, and length required to support septic systems without requiring a Variance to build or remodel a home. Another category of hardship is those 6-8 lots with shoreline along one side where

setbacks from the side shoreline can choke off development or redevelopment. Hopefully your item 3 will allow this situation to be addressed.

Item 2: I strongly support item 2 as it creates a win-win situation for the landowner, the City, and I believe the DOE. However, DOE has resisted this based upon citing language in WAC 173-26-201-2-e which states that mitigation must be done in a specific sequence. If DOE resists the inclusion of item 2 I recommend citing the language in WAC 173-26-201-2-e-ii-B which specifically allows for offsite compensatory mitigation in the same watershed if other options are infeasible.

Item 3: I heartily endorse item 3. The City might also want to consider the following language as “Plan B”, in case the DOE is unwilling to accept the language proposed in item 3. Both the item 3 language and the language shown below are intended to address true hardship cases to prevent the need for a Variance in unique situations, but the language below might be easier for the DOE to accept because it is more explicit about the conditions under which it can be used.

From **Entiat’s approved SMP** Section 4.2.1.E Maximum Buffer Reduction:

The Shoreline Administrator may approve a maximum setback reduction to twenty-five (25) feet according to the following review criteria:

- A. The applicant has demonstrated a hardship whereby the proposed use could not be accommodated without a reduced setback, and the approved buffer reduction is no more than that necessary to accommodate the proposed shoreline use.
- B. The applicant’s mitigation plan demonstrates that the selected mitigation options in Table III achieve an equal or greater protection of ecological functions than the standard buffer.
- C. The applicant’s mitigation plan demonstrates that existing conditions on the site, including existing uses, developments (developed prior to the adoption of this SMP), or naturally existing topographic barriers exist between the proposed development and the OHWM, substantially prevent or impair delivery of most riparian functions from the subject upland property to the waterbody.

Additional items:

Standard Setback: I still strongly recommend that the City propose a Standard setback of 45 feet. This would be a compromise between the 40 foot recommendation from the Citizens Advisory Committee and the 50 feet recommended by the DOE. The DOE recommended 50 feet based upon an overstated value of 48.7 ft. for the current average setback and a grossly overstated value for assumed growth in Impervious Surface stated in the City’s Cumulative Impacts Analysis (CIA). Data provided to you and City Staff show that current average setback is closer to 45 ft. and the potential growth in Impervious Surface with future development could be as much as 20% and not the 60% growth contained in the CIA. Unfortunately the DOE cited this incorrect data as justification for raising the setback requirements. I believe the City should propose a 45 ft. Standard setback and state that the information in the Cumulative Impacts Analysis document will be corrected on pages 39 and 40.

Prioritized Setback Reduction Mechanisms: The current SMP is structured to use setback reduction mechanisms without recognition of the ecological status of different sites. Some jurisdictions have used a point system to evaluate the ecological function available on a site before applying the No Net Loss (NNL) criteria. Obviously less mitigation is required on a highly degraded site than on one with lots of remaining native vegetation. This leads to the condition in the Black Diamond SMP where using a DOE forced priority system that requires shoreline restoration on a parcel with a hardened bulkhead and all native vegetation removed to get closer than 40 ft. is beyond the concept of NNL. To address this inequity I propose the City add the following statement as item 4.B.3.1.f to Chapter 4 of the SMP. *“Those parcels with hardened bulkheads and no native ground cover in the buffer area which require no change to the shoreline interface, or removal or degradation of any native vegetation in the mitigated setback area, shall be able to select mitigation enhancement options that do not require mandatory bulkhead removal, shoreline restoration, or shoreline revegetation.”*

Jack

From: Craig Goodwin [<mailto:CGoodwin@ci.blackdiamond.wa.us>]
Sent: Wednesday, August 14, 2013 1:56 PM
To: Carol Benson; Janie Edelman; Ron Taylor; Tamie Deady
Cc: Mark Hoppen; Rebecca Olness; Aaron Nix; JackSperry@comcast.net
Subject: SMP Resolution

Attached for your consideration at tomorrow night's City Council Meeting is a suggested alternative SMP resolution. I have not yet had an opportunity to review the comments from Palmer Coking Coal but will do so this evening and may propose further changes tomorrow. (Aaron, please send me an electronic copy so that I can review). After review, I believe that the logic used by Mr. Nix for the 190' contained in this recommendation is sound and consistent with actual on the ground data here in Black Diamond. Just for your consideration and debate. I will be happy to discuss further should there be questions.

Craig



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August 13, 2013

Mayor Rebecca Olness and Members of the City Council
City of Black Diamond
P.O. Box 599 / 24301 Roberts Drive
Black Diamond, WA 98010



Re: Proposed Shoreline Master Program

Dear Mayor Olness and Members of the City Council:

Thank you for this opportunity to comment on D.O.E.'s proposed changes to the COBD Shoreline Master Program (SMP) documents as they pertain to Lake Sawyer. Our company owns a 9.04 acre property on the southeast shore of Lake Sawyer, across a man-made canal from property owned by the City of Black Diamond and known as the Lake Sawyer Regional Park. Most of our comments are specific to this property.

The D.O.E. letter dated July 26, 2013 and various attachments to that letter attempt to dictate a change in the City's SMP by changing definitions and ignoring facts. The D.O.E.'s description of our 9.04 acre property (tax parcel 102106-9061, which is termed a 10-acre property in the D.O.E. analysis) relied heavily on the consultant, AHBL's description from September 2012. During the consultant's original work in this area, our property was mistakenly misidentified as part of the Lake Sawyer Park. It is not. We brought this fact to the attention of Aaron Nix, the Planning Commission, who in turn e-mailed the consultant. However, Palmer's 9.04 acre property was still grouped with the Lake Sawyer Park property in what were termed "segments" for analysis. This in turn was misguided. Palmer's property is not park property, nor are there any plans whatsoever to convert the property to "public recreational use" as the D.O.E. suggests. The only evidence they have to support their conclusion is adjacency to the park. The D.O.E. then quotes from AHBL's Cumulative Impact Analysis to suggest that there are significant wetlands on the property. However, this was refuted by Aaron Nix who walked the property and found no wetlands or wetland vegetation, simply a soccer field mowed and maintained by the owner. We challenged these assumptions in our previous correspondence to the City but the AHBL contractor refused to rely on direct evidence but instead chose to rely on inaccurate data from a national mapping service. Further clouding the situation, AHBL relied on outdated soils information which

misclassified the on-site soils. Once again our attempts to correct this misinformation were met with obfuscation and excuses from AHBL's Gabe Snedeker, who adds, "I agree the label with the slope is a bit misleading, but that is what the data category says". AHBL basically said, "Don't confuse me with the facts because we have wrong data which we're going to rely upon". The AHBL data also missed the fact that our property has bulkheads and shoreline rockeries, even though they have existed for over 40 years. But, D.O.E. now claims that this mis-mapped and incorrect data "provides insight into the ecological uniqueness of the property". This statement is simply words without meaning.

We note that the requirements for Shoreline Master Plans require compatibility with the City's Comprehensive Plan. Our 9.04 acre property is comprehensively planned and specifically zoned for low-density residential. This is one of the most important components for classifying properties in the SMP and one that D.O.E. seeks to ignore. There was no justification for originally grouping our property with the Lake Sawyer Park segment, a strategy which our company objected to throughout the process. The two properties have different ownership with different Comprehensive Planning and different owner objectives. They should not have been included in the same Segment E. There should have been two different segments for these two significantly different properties. Our property should have been grouped and segmented with the surrounding platted lots and owners who beneficially use this property. This segment of property, properly understood as the 9-acre property and surrounded platted lots, has been planned and platted for residential development for over 45 years. However, the mistake of grouping our property with the Park property across the canal does not justify misclassifying our property as "urban conservancy". Our property should retain the "shoreline residential" classification which the City assigned as supported by history, land use, plans, zoning and adjacency to the private residential neighborhood with which it is associated.

In reviewing WAC 173-26-211, we find that the following designation criteria for "shoreline residential":

5. (f) (D) (iii) - Assign a "shoreline residential" environmental designation to shoreline areas inside urban growth areas . . . if they are predominantly single-family or multifamily residential or are planned and platted for residential development.

The purpose language of "shoreline residential" provides:

5. (f) (i) – The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

Whereas, the WAC 173-26-211 purpose of the “urban conservancy” classification designation are defined as follows:

5. (e) (i) – The purpose of the “urban conservancy” environment is to protect and restore ecological functions of open, space, flood plain and other sensitive lands where they exist in urban and developed settings, which allowing a variety of compatible uses.

5. (e) (iii) – Assign an “urban conservancy” environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses, and that lie in incorporated municipalities

In reviewing the statutory language which governs the classification of properties under the SMP, it is clear that our property, when grouped with the adjacent properties that make beneficial use of the property, meets the precise definition of “shoreline residential”. The properties are predominantly single family, have no significant sensitive areas (excluding the mapping errors), are planned for residential use, are zoned for low residential use, and are platted for residential use. The property also meets the purpose language of “shoreline residential” as it can accommodate residential development and provides recreational use opportunities to the private adjacent residences. Our property even has an appurtenant structure and a floating dock.

Our subject property does not meet the purpose language of the “urban conservancy” classification. We hold that our property is not primarily “open space, flood plain, and other sensitive land”. We further contend that our property is generally suitable for water-dependent uses, while being not generally suitable is a criteria for “urban conservancy”.

In summary, our property and the adjacent residential properties which share beneficial use of the subject 9.04 acre platted lot were developed in the 1960s for residential use. From 1967-1969, Jim Hawk, the former owner of the subject lot, obtained permits from the State of Washington to dredge the lake and fill the property. Hawk subsequently installed timber piling to create a bulkhead to protect his property. Additional bulkheads were established along almost the entire shoreline of the property. Recreational improvements were made to the property. Our company purchased this property in 1986 to further our private residential community goals. The property has been comprehensively planned for and zoned for low

density, single-family residential use for over 40 years. Other than the shoreline interface, there are no flood plains and no significant sensitive areas. The property is not designated as open space. The property has no slope issue, and is predominantly underlain with gravel soils supporting non-wetland Douglas fir trees. The property and the adjacent beneficial users' properties are planned and platted for residential use. There is simply no justification for the "urban conservation" classification when the facts are examined and the property is grouped with a proper segment, and not with the Lake Sawyer Park, which lies on the other side of a manmade canal.

Thank your for your consideration of the true facts surrounding this property and the precise language of the WAC which governs its classification.

Very Truly Yours,



William Kombol, Manager
Palmer Coking Coal Company

Cc: Aaron Nix

Oral Testimony of Jack C Sperry

DOE Required and Recommended Changes to Black Diamond's Shoreline Master Program

August 15, 2013

DOE Required and Recommended Changes Discussion Items

Detailed written testimony provided to City on August 12, 2013

Oral presentation topics:

1. Required increase in Standard shoreline setback from 40 ft. to 50 ft.
2. Recommended increase in Minimum shoreline setback 30 ft. to 25 ft.
3. Exemption from prioritization of setback reduction mechanisms for properties with hardened bulkheads and no native ground cover
4. Need for City-managed offsite mitigation bank setback reduction mechanism #5

Proposed changes to DOE's Increased Standard Setback

- City should not accept DOE increase in Standard setback from 40 ft. to 50 ft. and should propose 45 ft.
- DOE increase based upon bad data in City documents and incorrect DOE assumptions
 - DOE assumption & argument that nearly every new development will be closer to water -- not valid
 - Lake dev't history shows people want yards and entertainment area in front if space available
 - Only build forward when they must (banks, short lots, etc.)
 - Ave. Residential setback of around 45 ft. developed during entire lake history while setback was unregulated or was 20 ft. (more than twice the requirement so history negates this DOE argument)
 - Most redevelopment expansion will be to rear/side to preserve view from current rooms facing the lake and avoid setback mitigation requirements whenever possible
- Unfortunately DOE setback increases primarily based upon citation to incorrect data in City's Cumulative Impacts Analysis document (must be corrected)
 - Average setback in Segment A Shoreline Residential area (48.7 ft.) Measurements used aerial photos (water levels lower when photography taken so setbacks longer (Should be. ~45 ft.)
 - Overstated projection of Impervious Surface growth of 60%- should be 20% (25%-30%vs.25%-40%)
 - DOE not recognizing Cumulative Impacts Analysis statements re expected ecological improvements with new tougher regulations for redevelopment (CIA p. 4, 21, 40, 51)
- Contrary to DOE statements re proposed setback standards in Table II far more restrictive than previous shoreline regulations (250% increase)
- City should propose Segment A Standard setback of 45 ft. (Equivalent to current average setback and compromise between 40 ft. recommended by CAC and DOE desire)
 - 45 ft. same as approved Lake Burien SMP standard setback, (Redmond/Lake Samammish = 35 ft.)
 - Per SAR, Lake Sawyer averaging only 5.2 new/re-developments/year (1998-2009) (68 years for all parcels to be developed/redeveloped at this rate) Plenty of time to upgrade SMP if needed

Proposed changes to DOE's Increased Minimum Setback

- DOE Increase to 30 ft. doesn't fit logic
- DOE recommends Shoreline Residential Limited be 25 ft. Min., yet ecology of this segment more fragile than Shoreline Residential segment
- Minimum setback increase to 30 ft. will preclude development on certain lots
 - Narrow lots requiring septic (50 ft. width requires 205 ft. depth, 60 ft. width requires 186 ft. depth for 4 Bedroom home) Some lots less than 50 ft. width
 - Lots with shoreline on side (approximately 8 current lots) severely impacted by setback cutting into lot width
- Testimony recommended City propose 25 ft. Minimum setback with mitigation
 - Statements re expected net ecological improvement need to be cited (CIA p. 4, 21, 40, 51)
 - Changes re incorrect Impervious Surface projections made CIA (p. 37 & 39)
 - Acknowledge setbacks in Redmond and Sammamish @ 20 ft. , Lake Burien at 15 ft., and Entiat at 25 ft.
- New language for hardship cases to obtain 25 ft. setback in proposed AB13-062 resolution eases my concern here and I support not fighting for 25 ft. with this language included
 - Two options from approved SMPs provided in my testimony
 - 2nd set of language should be offered if DOE rejects proposed option

Proposal to Decline Recommended Setback Reduction Prioritization

- Provide exemption to Recommended requirement 4.B.3.1(d) for prioritized setback reduction mechanisms [for those properties with hardened bulkhead and no native ground cover](#)
- DOE asking for more than NNL mitigation on properties with bulkheads and no native ground cover
 - DOE req't based on reference to incorrect impervious surface growth and inability to achieve NNL
 - Cum. Imp. Anal. Doc. [repeatedly states](#) that over time ecology will improve with City-proposed voluntary mitigations (not acknowledged by DOE)
 - Increased structure & roof area won't further degrade already developed buffer area or shoreline
 - Stormwater infiltration and bulkhead reduce transfer of nutrients and toxic compounds into water
 - Will not affect functions at shoreline and water interface nor water quality :
 - Hydrologic functions (more stormwater captured & infiltrated-less fertilized and toxic area)
 - Hyporheic functions (already minimized by bulkhead)
 - Habitat (already minimized by onsite development and human population)
 - Woody debris recruitment ability (already lost due to bulkhead)
 - Shoreline vegetation functions (already removed for bulkhead)
 - Requirement for professionally prepared mitigation plan demonstrating NNL should suffice
- If DOE won't yield on requiring [prioritized list of setback reduction mechanisms](#) for properties with hardened bulkhead and no native ground cover, re-propose (a.) One required Water Related action **or** (b.) exemption of priority selection requirement for parcels with hardened bulkheads and native ground cover previously removed, if setback reduction 2 in Table III made mandatory (revegetation of 25% of reduced buffer)
- City should not accept prioritization unless setback reduction option 5 accepted for inclusion in Water Related mitigation options

Re-addition of Setback reduction Mechanism #5

- The City is appropriately proposing re-addition of setback reduction mechanism #5 for use of City-managed offsite restoration fund
 - Critical to retain existing option #5 language with clerical changes needed for numbering
 - Critical to place within Water Related DOE options 3-6 collection (make #7 & revise callouts in SMP)
- I've suggested adding special language derived from the approved Renton SMP to support their offsite mitigation bank. Language could be added as new paragraph 4.B.3.9 on p. 42

"9. Evaluation of Mitigation Sequencing Required: An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:

- (a) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - (b) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
 - (c) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
 - (d) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
 - (e) Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and taking appropriate corrective measures.
 - (f) Monitoring the adverse impact and taking appropriate corrective measures."
- Lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized (see City restoration fund reduction mechanisms in Table III)."

Recommended Method for City to Propose Re-addition of its original setback reduction mechanism # 5 for landowner use of a City-managed offsite restoration fund

Proposed new Reduction Mechanism for landowner use of City-managed offsite shoreline restoration fund to be inserted after DOE Recommended mechanism # 6

7. Contribution to a City restoration fund, or bank, for offsite shoreline restoration and implementation of measures contained in the setback reduction mechanisms of the Water Related Actions, items 3 through 7, of Table III above. Amount shall be determined by the Shoreline Administrator based upon the approximate cost that would be required to accomplish the applicant selected water-related, shoreline enhancement at the on-site area of improvement. The City shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available. Reduction Allowance 5-15 feet

The City Proposes a slight re-wording below of DOE Recommended paragraph 4.B.3.1(d) to incorporate the above setback reduction mechanism

“Reductions are cumulative and must be utilized in the following priority order: 1 or 2, then one of 3, 4, 5, 6, or 7 if a bulkhead is present. After reductions 1-2 and 3-7, then reductions 8-11 may be utilized in any order.”