



**CITY OF BLACK DIAMOND**  
**April 10, 2014 Work Session and Town Hall Meeting Agenda**  
25510 Lawson Street, Black Diamond, Washington

**6:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**WORK SESSION:**

- 1) Shoreline Master Program – Mr. Nix

**TOWN HALL MEETING:**

- 2) Open Mic
- 3) Adjournment



# CITY OF BLACK DIAMOND

## Interoffice Memorandum

**TO: CITY OF BLACK DIAMOND MAYOR AND COUNCIL**  
**FROM: AARON NIX, PARKS/NATURAL RESOURCES DIRECTOR**  
**SUBJECT: SHORELINE MASTER PROGRAM UPDATE (FINAL STEPS)**  
**DATE: APRIL 2, 2014**

HONORABLE MAYOR AND COUNCIL MEMBERS,

Included are materials associated with discussions between staff, Mr. Sperry and the Department of Ecology. These materials were supplied to the Planning and Community Development Committee and discussed at their meeting on April 2, 2014. Staff is currently working on the last remaining issues with Mr. Sperry; the City Attorney is providing a brief legal analysis and the Department of Ecology is providing further clarification and direction on these issues. Staff hopes to have these issues addressed prior to the Council's work study on the April 10<sup>th</sup> and sent to the Council as soon as a clear pathway is identified and agreed to by all parties. We're almost there.

Thank you and I'll see you on Thursday, if not earlier.

Regards,

Aaron Nix  
City of Black Diamond  
Parks/Natural Resources  
360.886.5700

Cc. Stacey Welsh, City of Black Diamond, Planning Director  
Brenda Martinez, City of Black Diamond, City Clerk/Human Resources Manager

The document sequence is as follows:

1. SMP\_finalsteps\_jan2012, PDF
2. ECY-conditional SMP approval, PDF
3. ECY\_feedback\_BlackDiamond\_response, PDF
4. Response for City proposed Change #1, 3, 6 – Sperry, PDF
5. Proposed new restoration fund, Word document
6. Ecology response, email

## 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.



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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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](mailto:Anthony.Boscolo@ecy.wa.gov) or (425) 649-7049.

Sincerely,



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



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000*

March 14, 2014

City of Black Diamond Department of Community Development  
Attn: Aaron Nix  
P.O. Box 599  
Black Diamond, WA 98010

**RE: City Response to Ecology's Conditional Shoreline Master Program (SMP) Approval**

Hi Aaron,

We remain hopeful that the City will provide a response to Ecology's July 26, 2013 conditional approval that allows Ecology to take final action and complete the SMP-update. As provided in our July 26, 2013 conditional approval letter, RCW 90.58.090 (2) (e) only authorizes Ecology to take final action in approving a conditionally approved SMP, after receiving one of the following from the City:

- Agreement from the City accepting the proposed changes, or
- Submittal of an alternative the Ecology's required changes. Under this option Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally submitted by Ecology.

Therefore, we think it is very important that we coordinate closely with the City on any potential alternatives, to make sure that they can be approved by Ecology as a final action. We want to be clear in distinguishing this step in the approval process from the previous step, as we do not have the option at this stage in our decision making to amend an alternative provided by the City, but rather must either accept it as consistent, or deny the SMP. We remain committed to working with the City to finish this SMP update, for which we have prepared the following feedback for the City's consideration regarding remaining issues and stakeholder input pertaining to this final step in the SMP-update.

**Proposed Change #1** (Item 10 – ECY Recommended Changes) Based on an initial review of materials shared during our June 13, 2013 meeting, we remain optimistic that an alternative from the City could be approved, amending the shallow lot exemption from 160' lot depth to 190'. Again as we discussed, Ecology would need the City to submit materials (such as the diagram provided on June 13, 2013) and a rationale justifying the change as part of a formal response to Ecology.

We understand that the City may also be considering a new amendment that would increase this exception on lots as deep as 235'. We would caution the City in considering extending this exemption, as it does not seem consistent with our June 2013 discussion and more than likely would not be approved by Ecology for the following reasons:

- The subject provision is intended to reasonably accommodate a subset of small/shallow lots where there is a demonstrated "hardship" or need for accommodation. The exception is not intended to be broadly applied, potentially in cases where there is not a demonstrated need for relief. Therefore, a clear threshold is necessary to limit the use of this exception to appropriate situations.
- Lack of basis for proportionality of lot size to structure size. In general, larger lots are able to support larger structures that may not be able to be built on smaller lots. In other words, the goal should be to produce a SMP that allows for a reasonably sized structure on all lots, but should not unreasonably attempt to allow large structures common to large unconstrained lots on small (constrained) lots. Therefore, without detailed data identifying common structure size relative to lot sizes throughout the City, the SMP should identify a clear limit for classifying "constrained lots" based on a reasonably sized structure that is proportional to the lot size. Based on review of recent stakeholder input to the City on this issue, we conclude that the 190' amendment appears to accommodate a majority of the constrained lots within the City, and appears to be based on a reasonable sized structure including drain field, garage and driveway.

**Proposed Change #2** (Item 9 – ECY Recommended Changes) we generally agree with staff's analysis for this item (entitled Exhibit B, dated November 19, 2013) and are awaiting new language as we discussed. Our primary interest is to assure that any future use of a mitigation bank or fund, be consistent with mitigation sequencing and be targeted to restoring those shoreline functions that are most in need of enhancement throughout the City. Therefore, we suggest that the City rely on supporting analysis (Inventory, Cumulative Impact Analysis, Restoration Plan) developed during the SMP update to specifically identify the type of restoration that the mitigation bank or fund would be used for. This may be as simple as developing a prioritized list such as "(1) riparian vegetation, (2) water quality..." etc.

**Proposed Change #3** Ecology does not support the recent amendment allowing administrative reduction of a buffer down to 25', as it is not clear that provision is needed and we do not see how the change is "within the scope and intent" of a change identified in Ecology's conditional approval. Since the SMP will allow for "Shallow Lot Exceptions" (i.e., Proposed Change #1), we do not see the need for additional administrative flexibility in managing shoreline setbacks. The one example of the "U" shaped lot, does not reflect a common scenario within the City, for which this unique situation does not justify creation of a broad administrative exception that would be difficult for the City to administer. The

proposed change is significant for which we do not see how the amendment can be considered as consistent with Ecology's July 2013 changes as required under RCW 90.58.090 (2) (e). In addition, the change would create a standard that would be difficult to administer in a consistent manner, as the standard would put the City in the awkward position of allowing a proposal to potentially create a "hardship", as opposed to the more typical approach of encouraging the applicant to scale the proposal to avoid the "hardship" and then if necessary consider variance from unreasonable standards when specific site characteristics warrant.

**Proposed Change #4** (Item(s) 17 and 21 – ECY Required Changes) we support staff's analysis (within the staff additions document, entitled Exhibit B) to accept Ecology's required change designating these areas as "Urban Conservancy" (UC). We recognize that the term "Urban Conservancy" (UC) can be perceived as not supporting future residential development, for which many jurisdictions feel more comfortable in using the "Shoreline Residential" (SR) designation. However, we would like to clarify that future residential development can and should be allowed within the UC designation, as the designation criteria in the SMP-Guidelines support; *"planned development...compatible with maintaining or restoring of the ecological functions of the area"*. We would like to clearly acknowledge that the subject areas in the City are "planned" for residential development, as the existing platting and zoning support future residential development. Further we see the development standards in the SMP as satisfying designation criteria related to maintaining ecological functions. We also want to clarify that we do not see an additional obligation for "restoration" of these areas beyond case-by-case mitigation associated with individual developments and only if the mitigation is required by the updated SMP.

From Ecology's perspective, the SR designation is not a good fit for these areas, as they are largely undeveloped, whereas SR designated areas throughout the City are currently developed. This distinction is important as the City's development standards for the SR focus primarily on managing redevelopment or remodeling of existing residential structures. Whereas future development in the UC designated areas are anticipated to be new construction. Therefore, we believe that the platted, but largely undeveloped areas should be designated as UC, to align SMP development standards with the type of development anticipated for the area.

Finally, we would like to note that if the City's accepts Ecology's required changes, the UC development standards for residential development are not overly onerous when compared to parallel standards required in the SR. As pointed out by City staff, the SMP identifies the same "minimum lot size" (9,600-sq'), minimum lot width (60'), and the ability to reach a similar setback (75' w/enhancement in UC) for both the UC and SR designations. Therefore, based on designation criteria provided in the SMP-Guidelines and considering characteristics of the City's shoreline areas, we encourage the City to accept Ecology's required change and designate these areas as Urban Conservancy.

**Proposed Change #5** (Item(s) 17 and 21 – ECY Required Changes) same issue as Proposed Change #4 above, but on a different area on Lake Sawyer. Ecology agrees with the staff's analysis that this parcel may be more appropriately placed within the Urban Conservancy designation based on the rationale discussed above.

**Proposed Change #6** (Item 9 – ECY Required Changes) we sincerely appreciate all the research and information gathered for the proposed change in the setback from 50' to 45'. However, we (Ecology) have to base our decision within the authority of the SMA, for which we are not confident that we could defend a legal challenge to the suggested amendment of this SMP provision. In addition to concerns in reliance on the water-level data/analysis, the comments have misinterpreted the definition of "OHWM", as water level metrics are only to be used when there are not sufficient "marks on the landscape" to appropriately distinguish between the aquatic and terrestrial environment. Interpretation of the OHWM definition is well established through agency guidance and legal cases. Finally, we would also point out that the setback average will also be affected by the City's acceptance of the "constrained lots" provisions in the SMP, for which we continue to conclude that to 50' setback is appropriate for the City's updated SMP.

In closing we would like to reiterate our appreciation of the City's continued commitment to the SMP update, for which we hope this feedback is helpful. Please do not hesitate to contact us if we can be of any further assistance.

Sincerely,



Joe Burcar, Senior Planner  
Washington Department of Ecology – Northwest Regional Office  
[Joe.Burcar@ecy.wa.gov](mailto:Joe.Burcar@ecy.wa.gov) or 425-649-7145

Attachment:

Ecology's July 26, 2013 conditional approval of the City of Black Diamond SMP

cc

Erik Stockdale - Ecology

## EXHIBIT B

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### City of Black Diamond Proposed Changes to Draft SMP

#### Proposed Change 1

The City proposes to modify the DOE's Recommended paragraph 4.B.5 Alternative Setback Systems "Shallow lot exception" by extending the 160 foot lot length criteria for shallow lot exceptions to 190 feet.

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

Staff Discussion with the Department of Ecology on Proposed Change – Ecology is requesting that the analysis of these parcels be included within the City's response and the code adjusted in order to capture these restrained lots.

#### **Comment re "Shallow lot exception" extension from 160 ft. to 190 ft.**

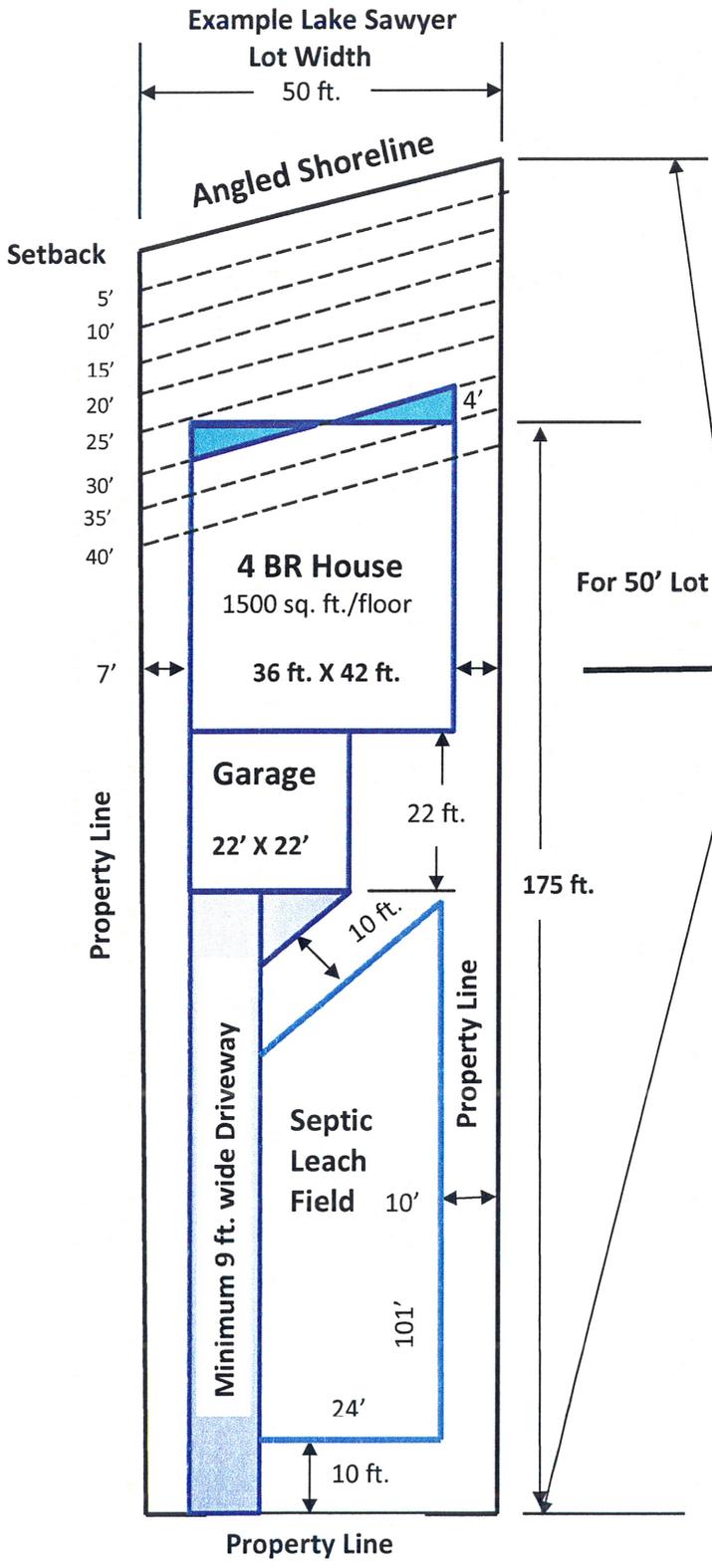
Very few lots on Lake Sawyer are currently served by public sewers and therefore require an onsite septic system. Most of the soils surrounding Lake Sawyer are quite porous and are referred to as Type 1 soils for septic system design. According to the King County Board of Health this requires use of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

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

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

The table on page 3 shows the number of lots on Lake Sawyer with less than 9,600 sq. ft. of area that are 50 feet or less in width plus a couple more that are greater than 50 ft. wide. Some of these properties might not be able to provide sufficient length and area to support even a 3 bedroom home with a new septic system. But, there are a handful of properties, highlighted in yellow, that are less than 9,600 sq. ft. in area that should be accommodated with a "shallow lot exception" having depth (length) greater than the 160 feet recommended by the DOE. An increase to 190 ft., or preferably as much as 220 ft., is requested to help accommodate these properties so that an expensive Variance doesn't have to be sought and processed when these properties are developed or redeveloped.

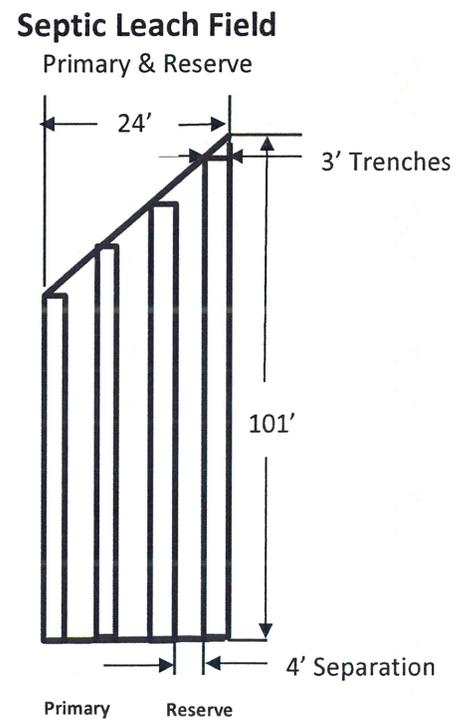
## Minimum Lot length Requirements for a 50 ft. Wide Lot with 4 BR Home Requiring Septic System (Example shown is for 30 ft. setback with "Alternative Setback Averaging")



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

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

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



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

	<u>Parcel No.</u>	<u>Width (ft)</u>	<u>Area (sq. ft.)</u>	<u>Description of Current Dwelling Unit</u>	<u>Ave. Lot Depth</u>
1	4067600340	50	7,900	Very small 940 sq. ft. home built in 1940	158 ft.
2	1021069020	50	9,075	Very small 1,030 sq. ft. home built 1923	183 ft.
3	4391600030	40	5,800	Small home built 1939	145 ft.
4	4391600035	45	7,020	Small home built 1934 & Renovated 1978	156 ft.
5	4392200140	50	9,415	House built 1947 & Renovated 1986	188 ft.
6	4392200165	49	6,567	Small 850 sq. ft. cabin built 1940	134 ft.
7	4391600015	45	8,036	Small 1,520 sq. ft. home built 1924 & Renovated 1992	179 ft.
8	4391600040	45	6,662	Very small 640 sq. ft. cabin built 1938	148 ft.
9	4391600045	45	6,542	Home built 1953 & Renovated 1981	145 ft.
10	4391600050	45	5,925	Small 1,020 sq. ft. home built 1924 & Renovated 1979	132 ft.
11	4391600060	40	5,381	Home built 1967	134 ft.
12	4391600065	45	6,862	Very small 520 sq. ft. home built 1924 & Renovated 1980	152 ft.
13	4391600070	45	6,755	Home built 1965 & Renovated 2005	150 ft.
14	4391600090	45	7,935	Small 1,730 sq. ft. home built 1985	176 ft.
15	4391600085	40	8,756	Small 1,400 sq. ft. home built 1961	218 ft.
16	0321069032	46	9,148	Vacant Lot	199 ft.
<b>Greater than 50 ft. width</b>					
1	4392200095	57	8,839	Home built 1924 and Renovated in 1965	155 ft.
2	4392200090	56	8,473	Home built 1987	151 ft.

**Shallow lot exception of more than 160 feet required**

### Proposed Change 3

The City proposes the following statement to be added as item 4.B.3.1(f) to Chapter 4 of the SMP.

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

- *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.*
- *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.*
- *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.”*

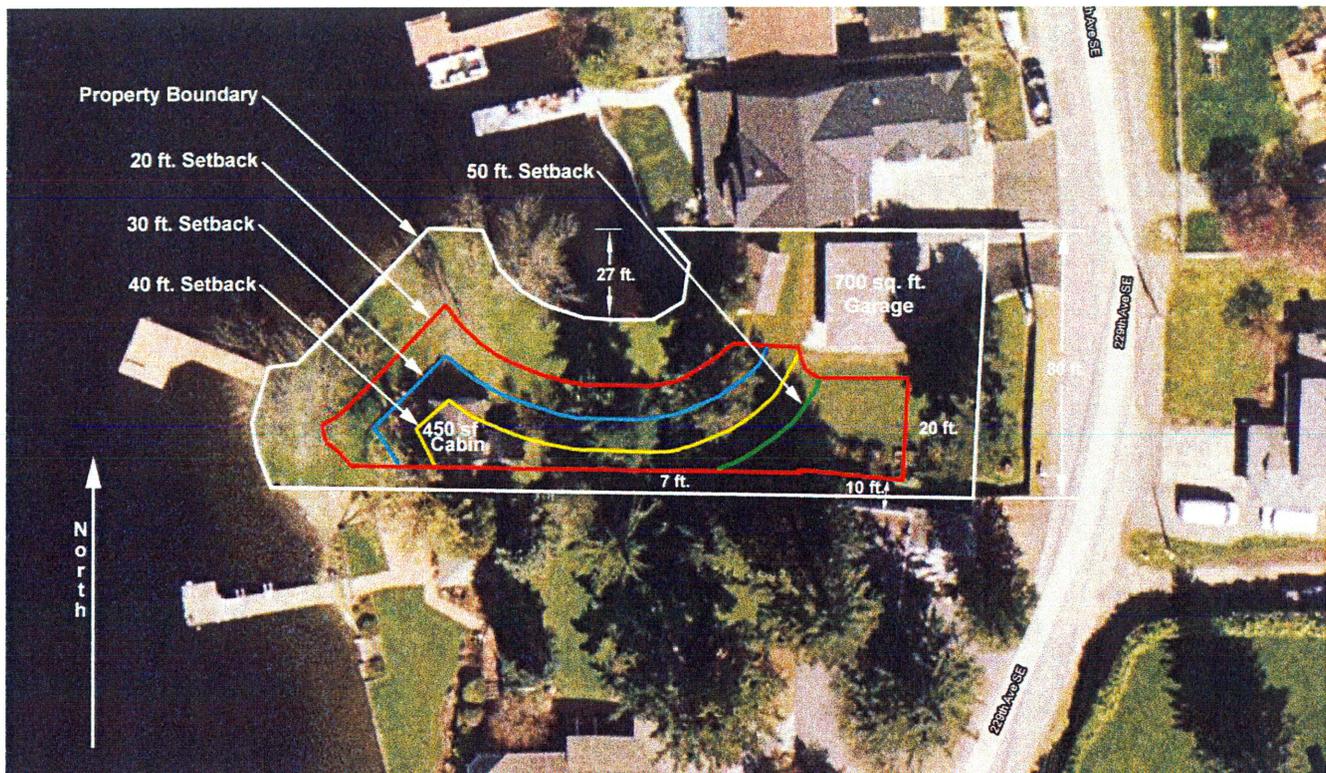
**Justification:** This will allow the Shoreline Administrator to prevent a very small number of hardship cases from needing to go to the time, trouble, risk, and expense of processing a Variance when unique instances of lot topography, shape, length, or width prevent development. It will also aid those situations where the shoreline runs alongside the side property line. In this situation the setback distance cuts deeply into the lot width and can eliminate the possibility of reasonable development.

Staff Discussion with the Department of Ecology on Proposed Change – Ecology is requesting that the analysis of these parcels be included within the City’s response and the code adjusted in order to capture these restrained lots.

### Comments to provide background for requesting this change

Change proposal #3 is virtually identical to paragraph 3b on page 53 in the City of Entiat's approved SMP. (The Entiat SMP was approved by the DOE and became effective on March 19, 2013.) The intent of the proposed language in Black Diamond's proposed change #3, is to provide for some administrative approval of a maximum buffer reduction to 25 feet for a very few unique hardship cases where topography or lot dimensions would preclude reasonable development of a shoreline residential property. The City wishes to afford the maximum possible buffer reduction for these unique situations, consistent with a requirement to demonstrate NNL, without forcing the property owner to go to the time, trouble, and expense to seek a Variance.

One example is shown below of how unique property topography, combined with newly increased minimum setback requirements in the Black Diamond SMP, can result in the need for a buffer reduction to 25 feet.



This property (parcel # 406820-0010) has a tiny 450 sq. ft. seasonal-use cabin built in 1947 on the forward portion of the parcel and a shed and new 700 sq. ft. garage in the rear. The shoreline wraps around this property and has created a small cove on the north side that cuts 27 feet into the width of this 80 foot wide lot. All native ground cover has been removed and replaced with lawn and a few shrubs. Several large fir, maple, and ash trees remain on the property. A hardened concrete bulkhead surrounds the shoreline. So in its current state the "existing conditions on the site substantially prevent or impair delivery of most riparian functions from the subject upland property to the waterbody".

As can be seen, the cove shoreline cuts a third of the way into the buildable width of the parcel. With the current 20 ft. setback requirement, there is room to build a new three bedroom home on the forward and central portion of the lot inside the red 20 ft. setback line. With a 40 or 50 foot setback (yellow and green lines) there is insufficient buildable width to develop a new home on this relatively large parcel. With a 30 foot setback, the buildable width in the center of the lot is still only 16 feet due the 27 foot width reduction from the cove, the 30 foot shoreline setback, and the required seven foot building setback from the southern property line ( $80-27-30-7=16$ ). So with a 30 foot setback only a small home of about 1,100 sq. ft. per floor could be built on this lot. But with a 25 foot setback a three bedroom home of the same size as surrounding residences could be developed on this lot. Without a reduction in setback to 25 feet, the market value of this parcel will be severely

impaired with the currently planned 30 foot minimum setback. And the current owner would not be able to redevelop the property with a home of a size similar to neighbors and commensurate with other typical homes on the lake.

Clearly the imposition of new increased setback distances creates a hardship for this property and results in a "take away" kind of situation by severely constraining the size of any new residence that could be developed on this parcel. In this example case if the property owner of this parcel could demonstrate that a mitigation plan using the mitigation options specified in Table III of the SMP can achieve an equal or greater protection of ecological functions than with the current minimum buffer of 30 feet this should be acceptable to both the City and the DOE. The City would like the Shoreline Administrator to have the authority to approve a 25 foot setback distance in this kind of situation. This would keep the property owner, the City, and the DOE from being forced to go to the time and expense of applying for and processing a Variance.

It's hard to know all the unusual situations at this time that may force a property owner to need a Variance. The use of this proposed item 4.B.3.1 (f) in Chapter 4 of the SMP is anticipated to be very limited, but where unique conditions arise and NNL can be demonstrated via the applicant's mitigation plan, the City would like to have this approval option as was granted to the City of Entiat.

#### **Proposed Change 6**

The City proposes that the Standard shoreline setback in the Shoreline Residential segment in Table II of Chapter 4.B.2 be established as 45 feet and not 50 feet as recommended in Item 6 of the Recommended changes from the Department of Ecology.

**Justification:** Additional analysis has shown that the aerial photography used to determine the current average setback in the Shoreline Residential segment was not taken when the water was at its OHWM. The OHWM on Lake Sawyer is normally established during late January to mid-February when winter storms create peak water levels. Since the photography was taken when the water level was much lower the observed distance between structures and the observed OHWM was greater than what constitutes the true setback distance. Therefore the value of 48.7 feet cited in the cumulative Impacts Analysis is overstated.

Additionally, general statements in the Cumulative Impacts Analysis that "the median setback distance for primary structures 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" (which is 40%) are incorrect. New analysis has shown that while the current impervious surface area in the Shoreline Residential segment is 24.6% (composed of 18.2% from parcels and 6.4% from roads and right-of-ways) future impervious surface with growth cannot be expected to exceed 30%, even if every developed parcel added 500 square feet and every possible new undeveloped parcel (including those from new subdivisions) added 3,600 square feet. Furthermore, all future development will be required to comply with the setback regulations in SMP paragraph 4.B.4 to assure No Net loss.

There are extremely porous soils surrounding Lake Sawyer which are nearly gravel (Everett soils classification) as evidenced by a gravel pit at the south end of the lake. This soil can easily absorb water and undesirable nutrients even with a 25 foot setback buffer, so a five foot reduction of the Standard setback to 45 feet should cause no concern.

With the new regulations in the SMP, average building setback will be expected to increase since the current setback average in the Shoreline Residential segment was achieved during the entire history of Lake Sawyer residential development when there were either no setback requirements or everyone was allowed to build to 20 feet of the shoreline.

Staff Discussion with the Department of Ecology on Proposed Change – Ecology is requesting that the analysis of these parcels be included within the City's response and the code adjusted in order to capture these restrained lots.

## **Comments re Analysis and Justification in Support of a Standard Setback of 45 feet in the Shoreline Residential Segment**

Recognizing the early desires expressed by Ecology for a standard setback of 50 feet and a mitigated setback of 30 feet as well as the input received from the Citizens Advisory Committee and the City Planning Commission's approval of a SMP draft with a proposed 40 foot standard and 20 foot mitigated setback, the City Council proposed a compromise of 40 feet and 25 feet in its official submittal to the DOE in October of 2012. Unfortunately certain incorrect statements in the SMP and Cumulative Impacts Analysis documents have made it hard for the DOE to accept the City's request.

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 50 ft., essentially equal to the existing conditions, which can be reduced to 30 feet using the Shoreline Setback Reduction Mechanisms of Table III.*

### New Development Assumption

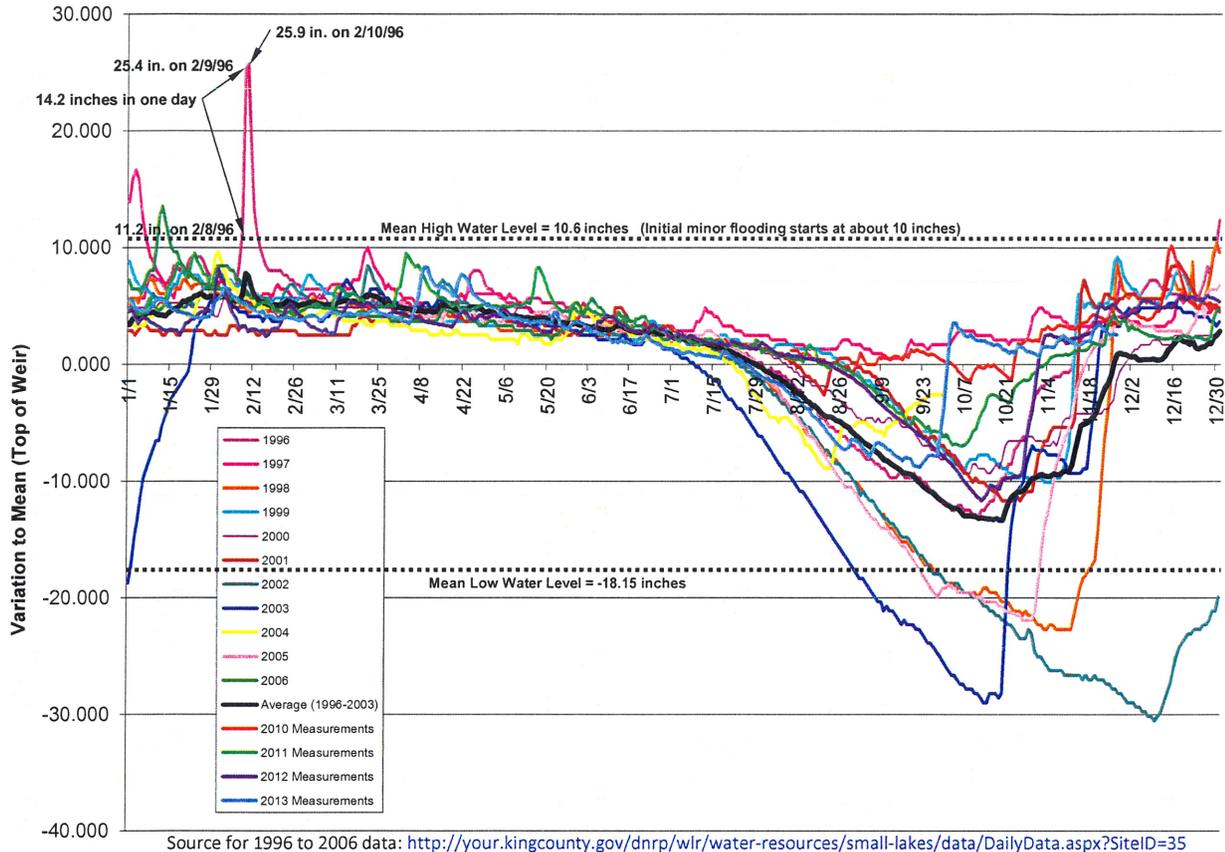
The assumption stated above by DOE that "nearly every new development will be located closer to the OHWM" has no basis in fact and cannot be substantiated. The current average residential setback is the result of development throughout the entire history of the lake when the setback requirement was unregulated or only 20 feet. The vast majority of property owners who had a choice built much further back than the minimum to provide for a yard or recreation area in front of their home facing the water. In general, only those people who absolutely must build closer to the OHWM usually choose to. 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, remodeling or expansion is more likely to occur above, to the side, or to the rear of the existing structure to protect the view from existing rooms designed with the view in mind.

### Incorrect value for Residential Segment Average Setback

Unfortunately the value of 48.7 ft. cited above by DOE for average setback in the residential designation and shown in the City's SMP documents is overstated because of the methodology employed. The value for average setback on Lake Sawyer was determined using an aerial photographic map dated July 24, 2006. No onsite measurements were made. The OHWM is achieved in the winter when the lake's water level is at its maximum height. Using aerial photography from the summertime results in greater perceived setback distance because the land/water interface on non-hardened shorelines is much further out. Because there is no high water mark that can be seen on non-armored shorelines from aerial photography, those setbacks should have used the line of mean high water or Mean High Water Level (MHWL) as a surrogate for the OHWM. (Per RCW 90.58.030 (1) (c) the ordinary high water mark (OHWM) shall be the line of **mean high water** or **mean high water line** on freshwater shorelines when the OHWM can't be found.)

Variations in winter vs. summer water levels can easily be seen in the graph on the next page which shows daily water level history for portions of fifteen years of water level measurements on Lake Sawyer. Eleven years of this water level data were gathered and recorded by King County and during the past nearly four years local residents have been monitoring and recording daily water level history. (The data gathered by lake residents is being forwarded to the DOE in Bellevue.) The graph shows how the highest water levels typically occur in the January-February time frame. The water level stays high through late spring, drops dramatically during the summer, and rises again in the early winter.

## Lake Sawyer Water Level Relative to the Mean (top of Weir on NE side)



Data from the previous water level measurements has been examined to determine the degree to which the stated setback of 48.7 ft. is in error. According to the study performed by the Watershed Company in 2004 to determine the OHWL for Lake Sammamish, the most common method to determine the OHWL from gage data “is to place the OHWL at the mean of the annual peak events”. For the thirteen years during which usable water level measurements have been taken for Lake Sawyer, the peak water level has averaged 10.6 inches above the height of the NE side of the lake’s outlet Weir where the water exits to Covington Creek. The data used to establish this value is shown in the following table and is referenced to the top of the NE side weir at the lake’s outlet to Covington Creek.

Year	HWL	Date
1996	25.74	10-Feb
1997	16.685	3-Jan
1998	10.386	30-Dec
1999	9.205	27-Nov
2000	6.055	5-Mar
2001	8.811	17-Dec
2002	8.418	21-Mar
2003	7.237	14-Mar
2004	9.599	31-Jan
2005		
2006		
2007		
2008		
2009		
2010	10.2	15-Dec
2011	9.5	23-Jan
2012	8.2	31-Jan
2013	8.29	10-Apr
Mean-inches	10.6	
Average-Date		23-Jan

The lake's mean high water of 10.6 inches above the weir occurs on average in late January. In the prior graph, the top surface of the NE side of the weir has been set to zero for reference purposes and water level is plotted relative to that physical point. During the months of July through September water level in Lake Sawyer can be anywhere from twenty to forty vertical inches lower than the mean high water level.

The exact water-level on July 24, 2006 is unknown because no water level measurements were taken that summer. But, during the thirteen years of water-level data available for that date shown in the prior graph, the water level has ranged from 2.9 inches above the top of the weir to 3.8 inches below the weir. So within the range of variation shown in the graph, the water-level could easily have been as much as 14.4 (10.6 + 3.8) inches below the mean high water. And that could translate to five to ten feet of horizontal difference between the actual mean high water and the water-land interface visible in the photography taken on July 24, 2006.

As detailed in Table 1 in the City's Cumulative Impacts Analysis, there are 35,005 feet of shoreline on Lake Sawyer. The Shoreline Residential segment contains 24,738.4 feet of frontage and 80% of that is armored. (The other shoreline segments are not armored.) That means that 19,791 feet of shoreline out of 35,005 feet or 56.5% of the lake's shoreline has been armored.

A clear demarcation between the armored shoreline and the nearest structure could be seen for that 56.4% of the shoreline which was measured. But for the 43.5% of the shoreline which is not armored, the land/water interface is subject to the error between the true mean high water established in the January-February timeframe and what the aerial photography shows for water level in existence on July 24, 2006. In other words 43.5% of the Shoreline Residential measurements using the aerial photography are **overstated** by five to ten feet. That translates to a 2.4 to 4.8 (0.435 times 5 or 10 feet) foot reduction to the 48.7 foot estimate cited in the SMP documentation. And that would make the correct measurement for average setback in the residential segment somewhere between **42.3** and **46.7** feet. So the City's request to use a Standard Setback of **45** feet is likely a little less than what currently exists today.

#### Buffer Ability to Retain Unsatisfactory Materials

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 (Everett soils classification). (A large commercial gravel pit exists at the south end of the lake.) These soils should have no trouble in accepting these substances and preventing them from reaching the water's edge from a 25 ft. distance. This conclusion can be added to the Cumulative Impacts Analysis.

#### Incorrect Statement re Future Impervious Surface Growth

As part of the rationale for requiring a 50 ft. standard setback, the DOE has cited what is unfortunately 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%). That sweeping statement in the CIA that impervious surface area in the Shoreline Residential Segment A could reach 40% is patently false and needs to be corrected.

The calculations included in the table on the next page show that current impervious surface area on parcels in Segment A (Shoreline Residential) is 18.2% and with roads and right-of-ways added becomes 24.6%. New impervious surface area from parcel development/redevelopment would have nearly double (increase 84%) from the current impervious surface area to reach a 40% total for the combination of parcels and roads, and that is far from feasible. Growth to 40% would require, on average, an additional 2,202 sq. ft. of impervious surface to be added to all 322 existing parcels and to the potential 29 new parcels which might be developed. It is just not believable that all 322 existing parcels could, or would, add anywhere near that much new impervious surface area in the future.

Looked at another way, if every one of the existing 322 parcels along the lake added 500 sq. ft. of new impervious area (equivalent to three new rooms) and if all 29 potential undeveloped parcels had 3,600 sq. ft. added in the future (large new homes plus driveways), impervious surface area would still be less than 30% (last line in table). This incorrect statement in the CIA regarding potential growth in impervious surface area to 40% has given the DOE an incorrect estimate that way overstates the potential growth in impervious surface area. Corrections need to be made to the City's CIA.

<u>Location</u>	<u>Total Area</u>		<u>% Impervious Surface Area</u>	<u>Impervious Surface-sq. ft.</u>
	<u>Acres</u>	<u>Sq. Ft.</u>		
<b>Segment A Parcel Area</b>	107.9	4,699,252	<b>18.2%</b>	915,596
<b>Segment A Roads &amp; Right of Ways</b>	<u>7.3</u>	<u>318,860</u>	<u>6.4%</u>	<u>318,860</u>
<b>Segment A Totals <u>Including Roads &amp; Right of Ways</u></b>	<b>115.2</b>	<b>5,018,112</b>	<b>24.6%</b>	<b>1,234,456</b>
<b>Impervious Surface Area if it grew to 40%</b>			<b>40.00%</b>	<b>2,007,245</b>
<b>Additional New Impervious Surface to Realize 40% Total</b>				<b>772,789</b>
<b>Required % Increase in Parcel Imp. Surface to Realize 40% Total</b>				<b>84%</b>
<b>Required Impervious Surface Increase per parcel (sq. ft.) to Realize 40% Total</b>				<b>2,202</b>
<b>(Assumed 322 Current plus 29 Theoretical Future parcels from CIA pages 6,21 &amp; 23)</b>				
<b>Potential Additional Future Impervious Surface with Growth on <u>every parcel and 100% sewer coverage</u></b>				
Assume theoretical 29 New Developments @ 3,600 sq. ft. each				104,400
Assume 322 Redevelopments @ 500 sq. ft. each				<u>161,000</u>
				265,400
<b>Potential Segment A Impervious Surface with every parcel Developed/Redeveloped =</b>				<b>1,499,856</b>
				<b>29.9%</b>

Concluding Remarks Regarding City's Desired 45 foot Standard Setback

With the new SMP regulations, average building setback will be expected to increase over time since the current setback average of between 42.3 and 46.7 feet was achieved during the entire history of Lake Sawyer development when there were either no setback requirements or everyone was allowed to build within 20 feet of the shoreline. With a new standard setback that is more than doubled, a minimum setback that is increased 50%, and stringent new mitigation requirements in the SMP, new construction will on average be built even further back than in the prior history. A **Standard setback of 45 feet** should be more than sufficient to maintain NNL considering the very porous soils surrounding the lake and the significant mitigation being required by the new SMP requirements regarding such areas as storm water containment and infiltration, sewer connection, phosphorous-free fertilizers, native vegetation retention, and tree preservation. Furthermore, as noted in the Shoreline Analysis Report, Lake Sawyer is averaging a combined total of 5.2 new developments and re-developments per year. At this rate it would take another 68 years for all parcels to be developed/re-developed. There is very strong citizen desire to have the City and DOE seek a compromise on the Standard Setback for the Shoreline Residential Segment A at 45 feet. And there is a belief that there is plenty of time to monitor this standard setback requirement and to make any desired changes in future revisions to the SMP documents should it be desirable.

## Options for a City-managed Restoration Fund

Lake Sawyer has limited hours for boating in excess of 5 miles per hour. Boats are allowed to go faster only between the hours of 2PM and 7PM on weekdays and between the hours of 11AM and 3PM on weekends and holidays. These limited hours result in heavy usage and intense wave action during those hours, especially on weekends during the summer. As a consequence, owners of low-lying lots must retain their armored shoreline to protect their property and home. This will make it very difficult to select from setback reduction mechanisms 3 through 6 for shoreline mitigation when redeveloping a site. In addition, the City has a need for funds to help support its commitment for restoration of shoreline in the City's Regional and Boat Launch parks.

The City and those Lake Sawyer residents with low-lying properties would like to have an opportunity to contribute to a City-managed shoreline restoration fund for compensatory offsite mitigation in lieu of selecting one of the shoreline setback reduction mechanisms 3 through 6 contained in Table III of Chapter 4 of the SMP. Two setback reduction mechanism options are proposed below to be available when compensatory mitigation is justified by WAC 173-26-201-e.

*Proposed new setback reduction mechanism #7 (in DOE's new prioritized order)*

### Option 1

Contribution to a City restoration fund, or bank, for offsite shoreline restoration in the City owned parks on Lake Sawyer in lieu of one of the onsite setback reduction mechanisms items 3 through 6, of Table III above. Amount shall be determined by the Shoreline Administrator based upon the estimated cost that would be required to accomplish the applicant selected shoreline setback reduction mechanism 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. Use of this alternative compensatory mitigation measure shall be in accordance with the mitigation sequencing requirements of WAC 173-26-201-2-e as determined by a qualified professional.

### Option 2

Contribution to a City restoration fund, or bank, for offsite shoreline restoration in the City owned parks on Lake Sawyer in lieu of one of the onsite setback reduction mechanisms items 3 through 6, of Table III above. 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. Use of this alternative compensatory mitigation measure shall be in accordance with the mitigation sequencing requirements of WAC 173-26-201-2-e as determined by a qualified professional.

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

**Comment [JB1]: Question:** has the need for armoring been linked to boat wakes as part of a formal assessment?

If so, then the City should consider further limiting boating operations, or inform the boaters of the potential damage to private property from their boat wakes.

If the need for armoring has not been formally linked to seasonal or periodic boat wakes, then consideration of alternative stabilization options should be considered based on assessment of site specific erosion and risk factors.

In either case, the structure setback from the shoreline should not be reduced when shoreline erosion risk would require construction of a bulkhead or armoring to protect the structure.

**Comment [JB2]: Comment:** The setback reduction provisions in the SMP are only intended to be used when the buffer reduction can be allowed in exchange for restoration of a shoreline habitat (i.e. bulkhead removal which is considered a high priority action the City).

As addressed above, redevelopment of a site should not be encouraged to move closer to the shoreline, when shoreline erosion could threaten the new structure, or require additional shoreline armoring.

**Comment [JB3]: Question:** How would these lots be distinguished from other shoreline lots in the City? Is there specific criteria that make a site "low-lying"? How many lots within the City would qualify as "low-lying"?

**Comment [JB4]: Comment:** As described in my email response, this does not appear to be consistent with the SMP-Guidelines, as there does not appear to be a comprehensive assessment justifying use of "alternative compensatory mitigation" or use of off-site mitigation.

## Brenda Martinez

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**From:** Burcar, Joe (ECY) <jobu461@ECY.WA.GOV>  
**Sent:** Tuesday, April 01, 2014 2:43 PM  
**To:** Aaron Nix  
**Cc:** Stockdale, Erik (ECY)  
**Subject:** RE: Restoration Fund Options  
**Attachments:** Proposed new Restoration Fund Options (ECY-feedback).docx

Hi Aaron,

I have reviewed the mitigation bank amendment language that you passed along, for which I inserted a number of questions into the document (attached) and also offer the following comments for your consideration.

Based on the scenario described in the mitigation bank amendment proposal, neither option appears feasible, as they both appear inconsistent with the intent of “mitigation sequencing” and also appear inconsistent with the purpose and intent of the setback reductions provided in the SMP.

### **Inconsistency with Mitigation Sequencing**

In regards to “mitigation sequencing”, WAC 173-26-201 (2) (e) provides a comprehensive framework for managing Environmental Impacts. The concept of “mitigation sequencing” depends on following a clear sequencing in the order described in the WAC, for which “avoidance” of impacts is always the first step, followed by “minimization”, and then finally “mitigation”. The options described in the proposed amendment would essentially skip both the “avoidance” and “minimization” steps, as the need for shoreline armoring and impacts associated with these modifications would not be “avoided” or “minimized” by allowing new or expanded structure to be built closer to the shoreline. The proposal seems especially inappropriate if the parcel is experiencing shoreline erosion, for which redevelopment should not be encouraged to be located closer to the water. Further, the proposed amendment does not appear to be consistent with the stated restoration priorities in the City, nor is it consistent with the principles of “compensatory measures” as described in WAC 173-26-201 (2) (e) (ii). As highlighted in WAC 173-26-201 (2) (e) below, “appropriate mitigation measures” are intended to first require high priority forms of mitigations, for which lower priority restoration actions should only be considered if high priority actions are infeasible or inapplicable. Similarly, “alternative compensatory mitigation” needs to be based on an analysis, or comprehensive assessment, justifying the alternative approach. I am not aware that any assessment or analysis has been prepared within the City considering the appropriateness of the mitigation bank amendment proposal. Therefore, we need to follow the recommendations from existing assessments, such as the City’s shoreline Inventory/Characterization and Cumulative Impact Analysis, which both identify bulkhead removal as a high priority action.

### **Inconsistency with setback reduction provisions**

In concept, the setback reduction provisions in the updated SMP are intended to provide a “win-win” in providing additional flexibility for redevelopment of existing lots, in exchange for restoration of a priority function (such as those achieved by bulkhead removal) within the shoreline. This regulatory framework has been successfully used in many of the Lake Washington jurisdictions, but will not work for all lots. It is important to point out that this framework is not intended to ensure compensatory mitigation for redevelopment activities, but rather to exchange setback flexibility and further potential impacts to one function (i.e. additional riparian buffer lost to expanded structure located closer to shoreline), for benefits/enhancement of a higher priority function (such as bulkhead removal to restore habitat connectivity between the aquatic and upland). Therefore, the proposal’s exception of the need to remove an existing bulkhead, takes away the ecological benefit that provision was intended to achieve and no longer justifies the reduction of the shoreline buffer.

WAC 173-26-201 (2) (e) Environmental impact mitigation.

(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.

(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.

My understanding of the intent in inserting a "Mitigation Bank" setback reduction mechanism to the end of the existing list in Chapter 4.B.4, was to create a placeholder in the event that the City was able to do a comprehensive analysis in the future that might identify different priorities related to potential benefits off-site mitigation. Because we have no way of knowing the results of this future analysis, we cannot assign specific credits or setback reduction allowances into the SMP at this time. However, as we have discussed in the past, the City could insert a general placeholder, as a low-priority mechanism that could only be applied, if the City completed a comprehensive alternative mitigation analysis and established a formal system to appropriately manage off-site mitigation.

I hope this information is helpful, please feel free to contact me, if I can be of any further assistance.

Best regards,

-Joe

Joe Burcar | Senior Shoreline Planner | Department of Ecology | 425-649-7145 | [Joe.Burcar@ecy.wa.gov](mailto:Joe.Burcar@ecy.wa.gov)



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**From:** Aaron Nix [mailto:ANix@ci.blackdiamond.wa.us]

**Sent:** Monday, March 31, 2014 11:33 AM

**To:** Burcar, Joe (ECY)

**Subject:** FW: Restoration Fund Options

Good Morning Joe,

I've been given some language as it pertains to the notion of a mitigation bank fund for your review. When you get a moment, might you take a look at it and offer any suggestions that would make it palatable to the Department. I appreciate your time. I'm meeting with our Planning and Community Development Committee on Wednesday and having a work study with the entire Council on the 10<sup>th</sup>. We're getting closer.

Thanks Again,

# Aaron Nix

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**From:** Jack Sperry [<mailto:JackSperry@Comcast.net>]  
**Sent:** Thursday, March 27, 2014 7:28 PM  
**To:** Aaron Nix  
**Subject:** Restoration Fund Options

Aaron,

Attached is my cut at two options you could run by Joe to see if he would agree with one, or hopefully, both of them. I don't see how he can refuse, but if he does you might ask him how to re-word them to give this option to the City and landowners with low-lying properties subject to intense wave action. As you know, this is actually a real ecological enhancement for lots currently containing hardened bulkheads and no native vegetation in the reduced setback area. And the wording requires that these options recognize the sequencing requirements of WAC 173-26-201-2-e.

Jack

PS While I've pretty much given up on the fight for a 45 ft. Standard setback, I believe the revised Change #6 response in the Pdf file I sent you addresses each of the reasons the DOE used in its arguments for disallowing the 45 ft. value. Especially the statement in the study by "The Watershed Company" to determine the OHWM for Lake Sammamish that the most common method using water level gage measurements is to take the mean of the annual peak events. That's what I did and applied that data to that portion of the lake that has unarmored shoreline where using summer water level provides an overstated value for the line of mean high water.