

Chapter Thirteen

FUNCTIONALLY EQUIVALENT STANDARDS & DEVELOPMENT REVIEW PROCESS

**Lawson Hills
Master Planned Development**

OVERVIEW

Under BDMC 18.98.010, one of the purposes of the MPD permit process is to allow flexibility in development standards and permitted uses. To implement that purpose, the Master Developer requests approval of the following functionally equivalent development standards pursuant to BDMC 18.98.040.A.7 and 18.98.130. These functionally equivalent standards apply to all development and Implementing Approvals within the MPD Project Site, and to certain possible off-site transportation improvements. As is the case throughout this document, all references to the BDMC or other City standards are to the standards in effect on the date of MPD Approval.

REQUESTED FUNCTIONALLY EQUIVALENT STANDARDS

APPLICABLE BDMC CODE STANDARD

18.100 Definitions

Requested Functionally Equivalent STANDARD

Use of several slightly altered or different, or additional definitions of land use terms from definitions found in BDMC 18.100 or elsewhere in the Code. Please see Chapter 3 of the MPD.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The MPD covers a large land area, with many different uses, and shared infrastructure and amenities. The standard code definitions do not uniformly capture elements of the MPD.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

MPD-specific definitions better achieve the public benefits required for an MPD. For example, one purpose of an MPD is to preserve open space and wildlife corridors while also preserving usable open space areas, to meet a public benefit objective to preserve and enhance open space, and to provide necessary facilities and infrastructure. Thus, the open space in an MPD differs from open space applicable to smaller projects and reflected in the code definitions. Similarly, the MPD includes amenities, such as soccer fields, that have no code definition, but for which all parties benefit by having a clear definition.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

Most of the Code definitions will continue to apply. A few will be altered to better fit the MPD, while still achieving the purpose of the original definition. Many new definitions will be added to assure clarity as implementing approvals are processed during the lengthy MPD buildout period.

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APPLICABLE BDMC CODE STANDARD

Development Review Process BDMC 18.08

Requested Functionally Equivalent STANDARD

An alternate development review process is proposed for implementing development projects within the MPD. Although a deviation from several sections within Chapter of BDMC 18.08 is proposed, the new process proposed is not a complete revision of Chapter 18.08. Please see Chapter 13 of the MPD Application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The development process set forth in BDMC Chapter 18.08 is not designed to address only MPD implementing projects. Chapter 18.08 is appropriate for traditional development projects but some procedures are unnecessary for MPD implementing projects given the thorough review procedures and MPD approval conditions required by BDMC Chapter 18.98. The development projects that implement the MPD will benefit from a more streamlined and efficient process that is described in the MPD Application, rather than in multiple chapters of the City Code.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The proposed development review process for MPD implementing projects furthers the purpose of establishing a comprehensive review process for development projects within the MPD. The proposed review process reduces redundancy between BDMC 18.08 and 18.98 while still providing opportunities for timely and informed public participation. The process includes specific timelines that provide certainty to both the applicant and the public. Additionally, the proposed process promotes cooperation and collaboration between the city and the applicant.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The proposed development review process for MPD implementing projects provides for a coordinated and collaborative approach between applicant and city staff, allows for a predictable review procedure and ensures that the decision-making process is consistent and expedient. Therefore, the requested standards are functionally equivalent to the code standards.

APPLICABLE BDMC CODE STANDARD

Subdivisions BDMC Title 17

Requested Functionally Equivalent STANDARD

Deviations from BDMC Title 17, Land Division, are proposed and summarized as follows: different development review process, vesting, and bonding requirements are proposed; there is a different definition of minor and major subdivision modification; there are different criteria and process for modifications to permits after approval; and clearing and grading permits are valid for up to 8 years after approval. Please see Chapter 13 of the MPD Application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

These alternate subdivision standards and processes are needed to promote the flexibility desired for MPD development and to assure timely provision of necessary infrastructure as the MPD develops.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The MPD-specific subdivision criteria and allowances achieve the public benefits of flexibility and assurance of timely completion of necessary infrastructure by allowing for vesting and bonding provisions that accommodate the scale of MPD development and the necessity of shared infrastructure better than the standard code provisions which are designed for piecemeal and in-fill development.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The purposes of the City’s subdivision code include the following: to regulate the subdivision of land to promote the public health, safety and general welfare, as well as to assure all appropriate infrastructure is provided, and to provide for expeditious review of proposed subdivisions. The alternate standards integrate with the MPD process to assure expeditious review, to assure all appropriate infrastructure is provided at the correct time, and to assure that all state law and city requirements for subdivisions are met.

APPLICABLE BDMC CODE STANDARD

18.80.030, 18.80.040, 18.80.045, 18.80.050, 18.80.060; Parking

Requested Functionally Equivalent STANDARD

A deviation from sections 18.80.030, 18.80.040, 18.80.045, 18.80.050, and 18.80.060 of the parking code is proposed, except for 18.80.050.B.3 (Access and Dimensions – Diagrams 1, 2, and 3). The MPD proposes different standards summarized as follows: different minimum off-street parking requirements for Multi-family, Commercial/Retail/Office, Mixed Use, Recreational and Institutional development within the MPD; allow different parking lot configuration; allow higher percentage of compact stalls; allow shared parking within Mixed Use areas; allow fewer loading spots; allow fewer drive-up window stacking spots. Please see Chapter 3, Page 3-34 and 3-35 of the MPD application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The current parking standards are appropriate for traditional subdivisions and commercial users but are not necessary for a master planned development. The MPD code encourages pedestrian orientation and less reliance on automobiles, therefore, different parking regulations are appropriate. In addition, reducing the size and number of parking stalls will reduce the amount of impervious surface and storm water runoff which directly relates to a public benefit.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The proposed parking standards will result in a more efficient use of land and will reduce the amount of impervious surface associated with the MPD. The deviation will allow the master developer to create a development layout that retains natural features and will contribute to a more environmentally sustainable development. Additionally, being able to limit parking areas supports the effort in creating vibrant mixed use neighborhoods.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The proposed parking standards maintain adequate space for parking but do so in a more efficient manner by relying on shared parking facilities and more compact parking stalls. The proposed standards will also reduce traffic congestion because users will be encouraged to “park once” and use the pedestrian connections to easily access commercial and retail facilities.

APPLICABLE BDMC CODE STANDARD

18.82 Signs; 18.76 Gateway Overlay District

Requested Functionally Equivalent STANDARD

Alternate sign standards, including monument sign standards in the Gateway Overlay District will apply in the MPD. A different review process is proposed. The real estate and construction sign program differs for the MPD and the proposed standards recognize that the MPD's Architectural Review Committee may impose stricter standards than City Code. A limited size and number of signs are allowed in the Gateway Overlay District. Please see Chapter 3, Page 3-36 and 3-37#-# of the MPD Application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

These revised standards are necessary to assure adequate way-finding for proposed commercial uses. The number of proposed signs in the Gateway Overlay District will be limited and the signage will be coordinated to assure clear messaging, while aesthetics of the signs will also be controlled to protect the look and feel of the Gateway Overlay District.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

Clear, visible signage serves the public benefits of meeting the City's economic development objectives and fiscal strength.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The purpose of the existing code standards are to promote a "quality visual environment," using quality design, and to create an attractive business climate. The purposes of the Gateway Overlay District also include protection of scenic character and regulation of land development to enhance and complement that scenic character. The proposed functionally equivalent sign standards meet those purposes, by imposing strict aesthetic standards while allowing signage necessary to inform the citizenry and other members of the public that the available businesses, employers and services are located within the MPD.

APPLICABLE BDMC CODE STANDARD

18.76 Gateway Overlay District

Requested Functionally Equivalent STANDARD

Grading and removal of invasive species and natural form replanting shall be allowed in the Gateway Overlay District, as well as sidewalk construction. Other facilities, such as street lights or other necessary above ground utilities will also be allowed. Please see Chapter 13 of the MPD application and Subsection 5.6 of the Draft Development Agreement.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

A strict application of the Gateway Overlay District may result in unintended consequences. The purpose of the Gateway Overlay District is to protect the scenic character and views along the City's gateways, however some portions of the identified gateways have already lost their natural character and would be well served by restoration and replanting. Additionally, the gateway area includes land adjacent to the Auburn-Black Diamond Road, a road that will be improved during implementation of the MPD. Deviations from the Gateway Overlay District are needed in order to allow for improvements to the Auburn-Black Diamond Road. Finally, access through the Gateway Overlay District adjacent to SR-169 will require street lights and may require signalization if a round-about is not feasible. Currently it is not explicit that above ground utilities would be allowed.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The proposed deviations from the Gateway Overlay District will allow the master developer to retain and enhance the physical characteristics of the City's gateway areas while at the same time providing needed infrastructure improvements. The improvements to the Auburn-Black Diamond Road can include additional lanes and innovative and low-impact stormwater management technologies if grading is allowed in the gateway area. In addition, the allowance for clearing of invasive and unsightly plantings, and replacement with attractive native species, assists in providing aesthetically pleasing and environmentally sustainable development. Allowing grading within the Gateway Overlay District will avoid the need to construct unsightly retaining walls that would be needed due to the existing site topography. Street lighting and other necessary above ground facilities are elemental to public safety.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The purpose of the Gateway Overlay District is to protect scenic character. In areas where the Gateway Overlay District includes unattractive and invasive species, the scenic character is best protected by allowing removal and replanting. As proposed, the functionally equivalent standard requires that cleared areas need to be replanted with native vegetation at sufficient densities to cover the cleared area within 3 years and significant trees need to be replaced at a 1:1 ratio. In addition, another purpose of the Gateway Overlay District is to allow a gradual transition into the urban environment and to ensure development complements the scenic experience. The allowance for grading and replanting within the Gateway Overlay District to accommodate road construction better meets these purposes, than forcing the developer to design road improvement projects with harsh edges and retaining walls.

APPLICABLE BDMC CODE STANDARD**18.72 Landscape****Requested Functionally Equivalent STANDARD**

A deviation from the entire landscape code is requested. The MPD/DA proposes different landscape requirements summarized as follows: buildings up to six residential units are exempt from landscape code requirements; minimum landscape areas are not required (18.72.030); landscaping plans are to be reviewed as a separate construction permit instead of through Site Plan Review; a landscape buffer between residential and non-residential uses is not required; and different parking lot landscape standards are proposed. Please see Chapter 13 of the MPD application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The flexibility provided by these alternate landscape standards allows the MPD developer to better assure alternative, innovative development with imaginative site design and development layout that preserves significant features of the natural environment. Additionally, the MPD developer would require a higher standard of landscaping through private design guidelines.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

These standards further the MPD purposes of providing comprehensive and efficient review procedures, creating vibrant neighborhoods, and providing for excellent design and innovative, rather than cookie-cutter, development.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The purposes of the landscape standards include the following: to protect natural habitats, to improve the appearance of the community, and buffer potentially incompatible uses by retaining some vegetation without reducing development densities, and requiring adequately maintained new landscaping. The MPD is master planned to assure that site layout and building design protect against the potential for neighboring incompatible uses, the MPD preserves vast amounts of native vegetation as open space, and the MPD includes a comprehensive community plan intended to assure a pleasing appearance through both architectural and landscape design. Street trees will be planted throughout the MPD, as well. Accordingly, the revised standards, combined with principles of master planning and additional protections achieved through the MPD developer's design guidelines, serve as functional equivalents for the landscape standards set by code.

APPLICABLE BDMC CODE STANDARD

19.30 Tree Preservation. The intent and purpose of the City’s Tree Preservation code is:

A. The city recognizes the importance of trees for the benefits they provide to property values and to the environment. Trees stabilize soil and control water pollution, conserve energy, reduce stormwater runoff, improve air quality, provide habitat to wildlife, and preserve the forested character of the Pacific Northwest that citizens value. Preserving trees in large quantities also contributes to a reduction in global warming.

B. The objectives of this chapter include reducing tree loss during construction and development; reducing indiscriminate removal and destruction of trees; and mitigating tree loss by requiring replacement of trees.

Requested Functionally Equivalent Standard.

The requested functionally equivalent standard is to recognize that the MPD essentially meets the Tree Preservation Ordinance’s exemption from tree replacement and, therefore, processing a permit application would be superfluous and inefficient for the City and the Applicant. Accordingly, the MPD requests an alternate interpretation and application of the permitting requirements under the Tree Preservation Ordinance, which does not require submittal or review of a permit application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The functionally equivalent tree preservation standard is necessary to allow for meaningful use of developable lands and to avoid the expense of preparation and review of a permit application that will not alter the end design of the MPD. While certainly beneficial and appropriate with respect to traditional subdivisions and lot-by-lot development, the tree preservation ordinance is not necessary for Master Planned Developments meeting the open space requirements of BDMC 18.98.120(F) and (G), as well as the preservation of over 1,000 acres associated with past and pending annexations. Additionally, by preserving and planting trees in open space tracts the developer has the opportunity to design tree plantings so as to preserve significant views for the enjoyment of residents.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The MPD Code purposes and public benefit objectives are served by the requested alternate application of the Tree Preservation Ordinance. The vast open space networks within the MPD provide for wildlife habitat and preserve and enhance the forested character of Black Diamond. In addition, these trees contribute to a reduction in global warming and

stabilize soil and control stormwater runoff. Strategic plantings of new trees rather than preservation of certain existing trees also can preserve and enhance views of Mt. Rainier, and better assure a coordinated system of pedestrian and bicycle amenities.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The tree preservation ordinance requires a detailed permit application and tree replacement plan. However, for sites that retain at least forty percent of the total site area as non-disturbed open space, critical areas, associated buffers, or other areas subject to conservation easement, no tree replacement is required. The requested functionally equivalent standard recognizes that the MPD sets aside open space as required by BDMC 18.98.120(F) and (G), plus the MPD also preserves over 1,000 acres of treed lands under conservation easements and similar mechanisms outside the MPD boundaries that were provided for through previous annexations and the BDUGAA. Therefore, the purpose of the tree preservation requirement is met by the MPD.

In addition, preserving trees within the MPD's open space network satisfies the intent of BDMC 19.30.010 without the risk to people and property that is associated with leaving random stands of trees in predominantly residential and commercial areas. The number of trees located in the open space areas are substantial enough to provide stabilization of soils, to improve air quality and to manage and control storm water runoff, and to enhance and maintain the forested character of Black Diamond.

APPLICABLE BDMC CODE STANDARD

Portions of the Black Diamond Engineering Design and Construction Standards; 3.2.02 Street Standards, 3.4.02 Sidewalk Standards, and 3.8.08 Street Tree Standards. The intent of the standards is to encourage the uniform development of an integrated and accessible public transportation system that will support present and future transportation demands. Through the implementation of these standards, streets are built as transportation facilities as well as public space, contributing positively to the character of an area. These standards help create an efficient multimodal transportation system with minimal environmental impact to the community.

Requested Functionally Equivalent STANDARD

Deviations from the Design Standards of Section 3.2.02 C is requested to allow similar but not identical street widths, design speeds and configurations. In addition, a deviation from the pavement design standard is requested, to allow an engineered pavement design solution that provides the equivalent function in areas of the site that have sufficient existing base materials to support less than the minimum section required while maintaining equivalent function. Additional private driveway, autocourts and private access configurations are proposed that are not included in the City's adopted standards. Deviations from Sidewalks (Section 3.4.02) is requested. Sidewalks are not required on both sides of a street in certain situations, and sidewalks on one side of minor arterials may be a soft surface trail, and the other side may be an asphalt trail. Deviation from the Street Tree Section 3.8.08 is requested to allow street trees and landscaping to be planted in drifts or groves rather than the minimum on-center requirements. Different, but similar, requirements for the number of street trees are proposed. These requested changes are consistent with BDMC 18.98.170 (Street Standards) which allows different street standards to be adopted for the MPD. Please see Chapter 4 of the MPD application and Subsections 5.4.5.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

These requested modifications to standards allow flexibility in design to encourage preservation and enhancement of site characteristics, low-impact stormwater management techniques, coordinated and aesthetically pleasing design of pedestrian facilities, and preservation and enhancement of views to Mt. Rainier.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The alterations to street widths, design speeds and configuration and sidewalks on only one side of certain roads assist in providing low-impact development by narrowing pavement width in some locations, while still maintaining public safety.

Alternate pavement design standards reduce resource use thereby reducing the potential “carbon footprint” for the MPD, while still assuring public safety and low long-term maintenance costs. Alternate pavement design will reduce the amount of grading needed in some areas and thus protect environmental features.

Additional standards for alternative private driveway and autocourt configurations allow the MPD to achieve creative design and density while still preserving large amounts of open space and reduce overall impervious surface.

Allowing street trees to be planted in drifts or groves assists the MPD to provide flexible and innovative designs and likely results in a greater number of total street trees because exceptions to street tree location associated with multiple driveway entrances, fire hydrants and the like would not apply.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The proposed alternate standards provide the function equivalent of the code standard as follows:

The alternate street design and sidewalk design and location standards assure adequate and vehicular and non-vehicular access throughout the MPD.

The alternate pavement design will be allowed anywhere site-specific geotechnical studies support its viability, thus protecting the City’s interest in public safety and long-term maintenance. In addition, the use of these designs may result in less grading and filling without compromising the life expectancy of the pavement as desired by the City.

The alternate street tree standards remain aesthetically pleasing to contribute positively to the character of the MPD and City as a whole.

Each of these alternate standards contributes towards minimizing potential environmental impacts, by allowing low-impact stormwater designs and assuring street tree planting, and integrated attractive trails to encourage non-vehicular travel.

APPLICABLE BDMC CODE STANDARD

Black Diamond Engineering Design and Construction Standards, maximum grade for a minor arterial is 8%, maximum grade for a collector is 10%, and maximum grade for a local access street is 12%.

Requested Functionally Equivalent STANDARD

Increase maximum grade for collectors to 12% for those sections of the Lawson Spine Road that would be required to build walls taller than 60" (sixty inches) in order to meet the maximum grade of 10%.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The MPD Code, at BDMC 18.98.170, anticipates that the City's street standards may be altered for an MPD and, in fact, the MPD proposes such alterations. Allowing different maximum grades assists in MPD design and environmental protection by allowing the streets to better match existing grades in the areas of the Lawson Spine Road. Forcing the road to meet the standard would generate the need for very large walls and very deep excavations.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

This alternate standard achieves the public benefit of preservation and enhancement of the physical characteristics of the site, including topography, drainage, and sensitive areas, by allowing the streets to better match existing site grades and features.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The purpose of maximum road grades is to assure public safety and adequate vehicular and fire truck access. The modified grade standards are within standards allowed elsewhere in Western Washington and do assure adequate public safety. In addition, the alternative road grades minimize site development impacts, including reducing cut and fill and the need for large retaining walls.

APPLICABLE BDMC CODE STANDARD

19.10.160 SAO

Requested Functionally Equivalent STANDARD

Within the building setbacks from a sensitive area buffer, allow balconies above the 1st floor so long as balcony is cantilevered or otherwise does not including support posts to the ground below.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The flexibility to provide balconies above building setbacks is needed to achieve the public benefits of greater built open space opportunities, and greater architectural modulation.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

This proposed standard encourages innovative development and imaginative site and building design, while protecting the ground level building setback from physical intrusion, and helps to create vibrant mixed use neighborhoods which are both MPD purposes, and preserves sensitive areas under the MPD public benefit requirements.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

This proposed standard provides the functional equivalent of the building setback restriction by meeting the purpose to ensure no ground level construction occurs to disrupt the ecology of the setback area, assuring protection of the adjoining buffer area.

APPLICABLE BDMC CODE STANDARD

19.10.160 SAO

Requested Functionally Equivalent STANDARD

Within the building setbacks from a sensitive area buffer, allow clearing and grading of more than 42 inches of cut or fill for utilities, roads, public infrastructure, and where necessary to provide for gravity flow and drainage.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The flexibility to provide clearing and grading of more than 42 inches in the building setbacks is needed to achieve the public benefits of reducing the use of retaining walls and allowing more flexible and holistic infrastructure design.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

This proposed standard encourages more natural-looking site design, with reduced long-term environmental impacts.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

This proposed standard provides the functional equivalent of the building setback restriction and limit on cut and fill because the border between a development parcel or road and the building setback can be softer by use of a graded transition instead of a harsh retaining wall. The requested change only allows additional clearing and grading in the building setback area, not in the formal sensitive area buffer. The requested change also reduces the cost of certain public infrastructure, for example, by allowing bridge spans to be shorter.

APPLICABLE BDMC CODE STANDARD

19.10 SAO restrictions on alteration of geologically hazardous areas.

Requested Functionally Equivalent STANDARD

Allow alteration of isolated geologically hazardous areas located outside of other sensitive areas to remove the hazard.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

Isolated mounds or small slope areas exist on the MPD site (and throughout Western Washington). The code imposes a blanket restriction on grading of such areas. Where a geologically hazardous area is co-existing with a stream channel buffer, the code restriction serves to protect the environment, but where the geologically hazardous area is an isolated mound, or manmade due to, for example, past excavation at a borrow pit, the code restriction limits design flexibility for no environmental benefit. A site-specific geotechnical analysis will still be conducted with the associated construction permits.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The purpose of the requested alternate standard is to encourage better, more innovative design, and enhance the topography of the site, which are desired public benefits from an MPD.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The requested standard continues to assure that geologically hazardous areas that are co-existing with other sensitive areas are protected, thereby assuring environmental benefit. Because the restriction on grading-out isolated geologically hazardous areas provides no clear environmental benefit, eliminating the restriction for the MPD has no impact. In addition, the requested alternate standard better meets the broad community design purposes of the MPD Code.

APPLICABLE BDMC CODE STANDARD

19.10 SAO, restrictions on certain alterations of wetlands, streams and buffers.

Requested Functionally Equivalent STANDARD

Allow alterations of wetlands/streams/buffers shown on Figure 10-1 from Chapter 10 of the MPD necessary to accommodate the proposed MPD circulation, land use and utility plans. These alterations are to be allowed based on the determination made with MPD approval that any alterations of wetlands/streams/buffers that are necessary to accommodate the approved MPD circulation, land use, and utility plans do meet the mitigation sequencing requirements of BDMC 19.10.050 and will be authorized through the City permitting process, subject to mitigation. Therefore, upon MPD approval, the avoidance criteria for these limited and necessary impacts will be deemed met.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

One of the fundamental purposes of the MPD process is to provide both the applicant and the community with a comprehensive review process for development occurring across large land areas. Agreeing on road crossings and other mapped MPD uses that impinge on wetlands/streams/buffers up front provides the flexibility necessary to prepare a functional master plan for early review. Otherwise, elements of the master plan may be unknown until implementing development applications are filed years in the future and final decisions made about fundamental design decisions such as the location of major access roads.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

This request provides the public benefits of assuring early comprehensive review of environmental impact, providing certainty about the character and timing of development, and providing assurance that the design vision for the MPD, as approved, will carry through as all implementing development proceeds. In addition, because the desired exceptions are for infrastructure, the requested alternate standard assures timely provision of necessary facilities and infrastructure. Finally, because the impacts are disclosed on a large scale with the MPD, this request avoids a later duplicative process.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The requested standard achieves the purposes of the code because the holistic design of the master plan has avoided sensitive areas and buffers everywhere possible, and minimized those few impacts that must occur to provide a functional and efficient road, land use, and utility system.

APPLICABLE BDMC CODE STANDARD

Water and Sewer Utility Comprehensive Plans

Requested Functionally Equivalent STANDARD

Adopted Water and Sewer Plans include maps that indicate the approximate location and type of facilities to serve development throughout the City. In addition, the MPD Code, BDMC 18.98.190, requires that water and sewer employ innovative measures and be designed to keep long-term service and maintenance costs to a minimum. Slightly different alignments and means of serving the site are proposed than those shown in the adopted Water and Sewer Plans. Since there is no specific standard in the MPD ordinance that requires the proposed utilities to be located as shown in the water and sewer comprehensive plans, then different standards can be proposed than those in the adopted policies as long as it provides the functional equivalent. The MPD proposes to use design modeling throughout the period of implementing development to best define the nature of the required water and sewer infrastructure and the timing at which it must be constructed.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

The site of the MPD and the long-term build-out period require flexibility to adjust the nature and timing and provision of on-site water and sewer infrastructure construction to assure the MPD goals to provide an innovative system with low maintenance costs is met.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The purposes of the MPD code and public benefits achieved by this flexible approach include improving the City's fiscal performance and the timely provision of infrastructure and facilities because the design modeling approach allows for construction of new facilities closest in time to when they are needed, and allows facilities to be designed with lower maintenance and service costs due to better integration with the actual development occurring on the ground.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The proposal is functionally equivalent to the code because infrastructure is timely provided to service new development. If, in the future, the infrastructure can be located as desired in the plans, the appropriate facilities will be in place to allow this to happen at a future date.

APPLICABLE BDMC CODE STANDARD

Comprehensive Plan; Possible Alternate Intersection Level of Service (LOS) Standard, should a lower standard be later-adopted.

Requested Functionally Equivalent STANDARD

The Comprehensive Plan sets Level of Service (LOS) standards for all City roadways at LOS C. During the Master Developer’s build-out of the MPD and associated off-site road infrastructure, it is possible that the City may later decide that certain road improvements can be constructed to achieve a different LOS standard such as LOS D or LOS E, in order to reduce lane count and better achieves the City’s design vision.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

If, for any reason, the City Council determines that a road project for which the Master Developer is partly or wholly responsible can be built to achieve a different LOS standard, the Development Agreement shall reflect that the Council’s determination for that specific project will apply to alter the nature of the road improvements otherwise anticipated to be built.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

This standard meets the purpose to promote and achieve the City’s vision for how its community should look, and achieves the public benefit objectives of improving the City’s fiscal performance if maintenance costs are reduced due to construction of fewer road lanes.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The City’s adopted “Level of Service” Standard is a policy decision. Should that policy change during the course of build-out to call for fewer transportation improvements (for example, if non-motorized trips are greater than anticipated), then this alternate standard provides the flexibility to meet that vision.

APPLICABLE BDMC CODE STANDARD

MPD Application Requirement to state Proposed Floor Area Ratio; 18.98.040.A.16; and Floor Area requirements in CC-Zoned area.

Requested Functionally Equivalent STANDARD

The MPD application must provide “proposed floor area ratios (FAR) for non-residential uses,” but specific FAR standards are not set elsewhere in the Code, except for the small portion of the MPD zoned Community Commercial. The MPD proposes use of design standards such as those applicable to setbacks and height, and design guidelines to drive the design of non-residential uses, rather than FAR standards.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

Requiring development to meet minimum or maximum FAR standards hampers the ability to design or site buildings creatively. FAR standards are typically created to limit development on parcels within an already densely developed downtown area or for developments that do not already have a limit on commercial space. Instead of FAR, the MPD limits how much commercial space can be built by an overall cap on total square footage allowed. In addition, the MPD includes building height limits and some setbacks to further control building bulk and scale. Although commercial space would not be subject to FAR standards, they would still be subject to dimensional standards, and the ability to creatively design or site a building will be maintained.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

Not prescribing a minimum or maximum FAR allows future planning to employ alternative and innovative forms of development, and encourages imaginative site and building design. By relying on the maximum square footage approved under the MPD and certain site design criteria, more flexibility is given to the actual site and building design.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

Floor area ratios (FAR) are typically put in place to limit development on certain parcels with a city. This is an appropriate tool when development limits are not put in place. However, because the MPDs are limited to a certain amount of commercial development, FAR is not necessary to limit development. In addition, City MPD Design Guidelines, as well as the MPD Master Developer’s Design Guidelines, will assure aesthetically pleasing commercial structures.

APPLICABLE BDMC CODE STANDARD

18.30 R-4 Zone and 18.32 MDR8 Zone; Setbacks, lot size and lot coverage

Requested Functionally Equivalent STANDARD

Much of the Lawson Hills property is zoned Single Family Residential (“R-4”) with a small portion zoned MDR8. The proposal deviates from the setback requirements of the R-4 and MDR8 zone. Please see Chapter 3, Table 3.3 of the MPD application.

Why this Functionally Equivalent Standard is needed in order to provide flexibility to achieve a public benefit, as required by BDMC 18.98.130.A.1:

Flexibility in setbacks, lot size and lot coverage across the MPD as a whole, allows the MPD to be designed with continuity to assure an identifiable community look and feel.

Why this Functionally Equivalent Standard furthers the purposes of the MPD Code and achieves public benefits set forth in 18.98.010, as required by BDMC 18.98.130.A.2:

The MPD purposes and public benefits achieved by allowing flexible setbacks within the R-4 and MDR8 zoned lands include the ability to provide innovative design across the entirety of the MPD, as well as to promote aesthetically pleasing residential development by allowing more variable setbacks to allow site specific decisions as to design and modulation of facades along any particular block.

Why this Functionally Equivalent Standard provides the functional equivalent and adequately achieves the purpose of the applicable development standard, as required by BDMC 18.98.130.A.3:

The proposal to use alternate criteria on the R-4 and MDR8 zoned lands still assures certainty in design, but better meets the overall goals for the MPD by allowing continuity in design across all of the MPD, regardless of the underlying zoning.

DEVELOPMENT REVIEW PROCESS

PURPOSE

The purpose of this chapter is to provide a process and criteria for the review of Development within the MPD for consistency with the terms and provisions of this Agreement and other applicable federal, state and local laws. The Development review process is intended to result in efficient and timely review of proposals and to encourage consensus and a collaborative approach to problem solving.

The preferred process for project review is to eliminate the submittal/review/ redesign/review/redesign process. The goal is for City staff, Master Developer, and applicant to work collaboratively as a team to achieve the goals of the project and implement the vision and intent of the MPD. This approach relies on early contact between the applicant and City staff to discuss the project and process and the pre-submittal meetings described below.

APPLICABILITY

This chapter applies to all Development within the MPD. Changes to the provisions of the Development agreement itself that would apply to Development throughout the MPD are addressed in Chapter 10.

ARCHITECTURAL REVIEW COMMITTEE

The Master Developer shall provide for the establishment of an Architectural Review Committee (ARC) with the primary responsibility of ensuring that Development within the MPD is consistent with the ARC Design Guidelines. All land use and Construction Permit applications must be reviewed by the ARC before the application is submitted to the City.

PERMIT REQUIRED

When a permit is required for Development by the Black Diamond Municipal Code, the same permit is required within the MPD. All permits within the MPD shall be processed according to the provisions of this Agreement. If this Agreement does not address the specific permit, then the Black Diamond Municipal Code applies.

EXEMPTIONS

If a Development is exempt from the permit requirements of the Black Diamond Municipal Code in effect as of the date of this agreement, then it is exempt from the requirements of this Chapter.

PERMIT PROCESS CLASSIFICATION

Process Types

All Development permit applications are classified as one of the review process types as provided in Table 13-1 and shall be reviewed according to the procedures specified for its process type.

DETERMINATION BY DESIGNATED OFFICIAL

The Designated Official shall determine the proper process type for all project permit applications. If there is a question as to the appropriate process type, the Designated Official shall resolve it in favor of the higher process type number. The act of classifying an application for process type shall be a Type 1 Administrative decision.

OPTIONAL CONSOLIDATED PERMIT REVIEW PROCESSING

Where the City must approve more than one project permit application for a given Development, the applicant may submit the applications for review under a single permit processing review procedure (“consolidated permit review”). The consolidated permit review process can be used with the submission of two or more applications at any time prior to the issuance of the notice of a public hearing on any of the associated applications, if applicable.

PROCESS TYPE FOR CONSOLIDATED PERMITS

A Consolidated application shall be reviewed and processed under the highest process type that applies to any of the applications and all notices shall include all project permits being reviewed through the consolidated review process. For example: If the applications included a Site Plan Review <=10 acres (Type 1), and a Preliminary Plat (Type 2) then the project would be processed as a Type 2 which would require that all of the permits would be submitted to the hearing examiner for an open record public hearing and the hearing examiner would make the decision on all of the permits.

DEVELOPMENT REVIEW PROCESS BY PERMIT TYPE

All Development permit applications are classified as one of the following process types: Type I -Administrative, Type 2- Hearing Examiner or Type 3- City Council.

TABLE 13.1
Permit Process Classification

Permit Type	Type 1 Administrative	Type 2 Hearing Examiner	Type 3 City Council
Lot Line Adjustment	X		
Prelim Short Plat	X		
Final Short Plat	X		
Prelim Plat/Plat Alteration		X	
Major Plat Modification		X	
Minor Plat Modification	X		
Minor Permit Modification	X		
Final Plat/Plat Alteration			X
Binding Site Plan <=100,000 sf Gross Floor Area	X		
Binding Site Plan >100,000 sf Gross Floor Area		X	
Home Occupation	X		
Accessory Dwelling Unit	X		
Site Plan Review <=10 Acre	X		
Site Plan Review >10 Acre		X	
Deviations	X		
Variances		X	
Construction Permit	X		
LUP Category Change	X		
Temporary Use	X		
Interpretations	X		
Appeals of Administrative Decisions		X	
Appeals of Hearing Examiner Decisions			X

APPLICATION REVIEW PROCEDURES

Procedures Applicable to All Projects

A. REVIEW BY ARCHITECTURAL REVIEW COMMITTEE

All Development subject to this chapter must be reviewed and approved by the Architectural Review Committee (ARC) prior to formal application submittal to the City. A permit application submitted without ARC approval is not complete.

B. INFORMAL FEASIBILITY CONSULTATION

Applicants are encouraged to hold a project feasibility meeting with City Staff prior to detailed work by an engineer, architect, landscape architect or planner. The purpose of this meeting is to eliminate as many potential problems as possible in order for the application to be processed without delay and undue expense. The City should make available all pertinent information that may relate to the proposal and take a collaborative approach to addressing any issues.

C. PRE-APPLICATION MEETING

A pre-application conference is recommended for all applications. At the pre-application meeting the applicant will present preliminary studies, conceptual sketches, draft text and other materials listed on the Pre-Application Checklist. The purpose of the meeting is to obtain direction from City Staff on the consistency of the proposed project with the standards in this Agreement as well applicable Federal, State and local laws.

D. SUBMITTAL REQUIREMENTS

Submittal requirements checklists for each permit type will be provided in the Development Agreement, including type, detail, and number of copies for an application to be determined to be complete. The Designated Official may waive specific submittal requirements determined to be unnecessary for review of an application.

E. DETERMINATION OF COMPLETENESS

- 1) Within ten days after receiving a project permit application, the Designated Official shall mail or provide in person a written determination to the applicant, stating either:
 - a) That the application is complete; or
 - b) That the application is incomplete and what is necessary to make the application complete.

To the extent known by the City, the City shall identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.

- 2) A project permit application is complete for purposes of this section on that date that all items specified on the applicable permit submittal checklist sufficient for continued processing even though additional information may be required pursuant to Subsection

12.8.1.F or project Modifications may be undertaken subsequently. The determination of completeness shall not preclude the Designated Official from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

3) An application shall be deemed complete under this section if the local government does not provide a written determination to the applicant that the application is incomplete as provided in subsection (1)(b) of this section.

4) Within fourteen days after an applicant has submitted to a local government additional information identified by the local government as being necessary for a complete application, the local government shall notify the applicant whether the application is complete or what additional information is necessary.

5) A consolidated application shall not be considered complete until all required items for all permit types included in the application have been submitted.

F. REQUEST FOR ADDITIONAL INFORMATION

The Designated Official may require additional material such as maps, studies, or models when the Designated Official determines such material is needed to adequately assess the proposed project. Additional materials required must be reasonably related to those necessary to ensure consistency with standards and criteria. Multiple requests for additional information shall be avoided.

G. STATE ENVIRONMENTAL POLICY ACT (SEPA) REVIEW

Development within the MPD is not subject to BDMC Chapter 19.04 except as referenced in this section. Development within the MPD has been designated a Planned Action under Ordinance/Resolution No. _____. Pursuant to WAC 197-11-172 and WAC 197-11-315, projects within the MPD must be reviewed under the following process:

1. The Designated Official shall determine if the project is categorically exempt under BDMC 19.04.090 using the process described in BDMC 19.04.100. If the project is exempt, no further environmental review is required;
2. If the project is not categorically exempt, the following is required:
 - a. An environmental checklist (WAC 197-11-164) must be submitted with the permit application;
 - b. The Designated Official shall conduct a “Planned Action Verification”. A Planned Action Verification consists of review of the environmental checklist to verify the following:
 - i. The project meets the description in, and will implement any applicable conditions or mitigation measures identified in the Planned Action Ordinance or Resolution; and

- ii. Verification that the probable significant adverse environmental impacts of the project have been adequately addressed in the EIS prepared under WAC 197-11-164 (1)(b) through review of an environmental checklist or other project review form as specified in WAC 197-11-315, filed with the project application. A proposal that meets 2 a) and b) does not require a threshold determination and does not require public notice beyond what is required for the underlying permit by this Agreement.
3. Environmental Review pursuant to the process and procedures contained in BDMC Chapter 19.04 shall be required for a proposal that does not meet the criteria under 2 a) and b).
4. A “Planned Action Verification” is not a permit, is not subject to appeal and no notice is required.

NOTICE REQUIREMENTS

Notice of Application

Except for those applications exempt from Notice pursuant to Subsection 12.10.3, Notice of Application shall be made available to the public by one or more of the following methods as specified for each permit type in Table 13-2:

1. Mail. Mailing to owners of real property located within 300 feet of the subject property. If the owner of the property that is subject of the application owns other real property adjacent to the subject property, then the 300-foot measurement shall be taken from the boundary of any such adjacently located parcels.
2. Publish. Publishing in the official City newspaper of record.
3. Post. Posting the property with a sign or placard as required by the Designated Official.
4. Online. Publishing or posting on the City’s website a notice of the application. If online method is used, the Designated Official will either establish a specific calendar for on-line publishing or will maintain an email distribution list to alert interested parties that a new proposal has been applied for.
5. Other. Other methods of notice are supplementary to some primary method and may include press releases, notices to community newspapers, notifying public or private groups known to have an interest in an area or certain type of proposal.

Table 13.2
Notice Methods by Permit Type

Permit Type	Notice Posted On-Site	Mailed Notice	Published In Newspaper	Online	Other
Lot Line Adjustment	No notice required				
Prelim Short Plat	X	X			
Final Short Plat					
Prelim Plat/Plat Alteration	X	X	X	X	
Major Plat Modification	X	X	X	X	
Minor Plat Modification	No notice required				
Final Plat/Plat Alteration			X	X	
Binding Site Plan <=100,000 sf Gross Floor Area	X	X		X	
Binding Site Plan >100,000 sf Gross Floor Area	X	X	X	X	
Home Occupation	No notice required				
Accessory Dwelling Unit	X	X			
Site Plan Review <=10 Acre	X	X			
Site Plan Review >10 Acre	X	X	X	X	
Deviations	No notice required				
Variances	X	X	X	X	
Construction Permit	No notice required				
LUP Category Change	X	X		X	
Temporary Use	No notice required				
Interpretation	No notice required				

Notice of Application Contents

The Notice of Application shall contain the following information:

- A. The dates of application, determination of completeness, and the date of the notice of application;
- B. The location and description of the project;
- C. A list of project permits included in the application and identification of other required permits;
- D. The identification of existing environmental documents that evaluate the proposal and the location where the application and any other relevant materials can be reviewed;
- E. The date, time and place of an open record hearing, if one is required and has been scheduled;
- F. The name of the applicant or project contact and the name of the City staff person assigned to the project, along with City staff contact information;
- G. A statement of the public comment period, which shall be 14 days, except for shoreline substantial Development, shoreline variance, or shoreline conditional use permit applications, which shall have a 30-day comment period for notice of application;
- H. A statement of the rights of individuals to comment on the application, receive notice, participate in any hearings, request a copy of the decision (once made) and a summary of any appeal rights; and
- I. Any other information the City determines to be appropriate

TYPE – 1 ADMINISTRATIVE DECISIONS

Decision by Designated Official

Type 1 applications are reviewed and approved by the Designated Official. At a minimum, all decisions must be written and include a consistency finding, the date of the decision and the date by which an appeal must be received. At the discretion of the Designated Official or as required by permit-specific standards, decisions may include approved maps and plans, reports and findings of fact as necessary to support the decision and create a defensible record.

Timeframe for Review

An administrative decision must be made within 45 days of the date of completeness of the application. If the decision cannot be issued within the required timeframe, the Designated Official shall provide the applicant with a letter explaining the reason(s) for delay and provide a date by which a decision will be issued.

Notice Requirements

Notice of application pursuant to subsection 12.9 shall be provided within 14 days of issuance of the determination of completeness for an application for a Type 1 land use decision. Notice of application is not required for Construction Permits, final short plats,

interpretations, minor plat Modifications, Temporary Uses, model homes, home occupations, lot line adjustments or Deviations.

Appeal to Hearing Examiner

Any order, recommendation, permit, decision or determination made by the Designated Official in the enforcement or administration of this Agreement shall be final and conclusive, unless appealed by an aggrieved party of record with standing to the Hearing Examiner as a Type 2 decision. Appeals must be received by the City Clerk's Office within 14 days of the date of the decision.

TYPE 2- HEARING EXAMINER DECISIONS

Decision by Hearing Examiner

Type 2 applications are reviewed and approved by the Hearing Examiner pursuant to the process, procedures and criteria in BDMC Chapter 2.30.010 through BDMC Chapter 2.30.120. Subsection 2.30.130 BDMC does not apply within the MPD.

Timeframe for Review

A public hearing on the proposal should be scheduled on a date within 60 days of the date of completeness or submittal of additional materials per Subsection 12.8.1.E. If the public hearing cannot be scheduled within the required timeframe, the Designated Official shall provide the applicant with a letter explaining the reason(s) for delay and provide a date by which a hearing will be scheduled.

Notice Requirements

Notice of application pursuant to Subsection 12.9 shall be provided within 14 days of issuance of the determination of completeness for an application for a Type 2 land use decision

Notice of the time and place of an open record public hearing shall be provided no less than 14 days prior to the public hearing for the permit application through the use of the same methods indicated for notice of application.

Appeal to City Council

Any order, recommendation, permit, decision or determination made by the Hearing Examiner in the enforcement or administration of this Agreement shall be final and conclusive, unless appealed to the City Council by a party of record with standing within 14 days of the decision. Appeals must be received by the City Clerk by close of business of the last day of the appeal period.

TYPE 3 - CITY COUNCIL DECISIONS

Final Plats/Final Plat Alterations

Final plat and final plat alterations are approved by the City Council pursuant to the process found in BDMC Chapter 17.20.060 and are exempt from the remaining requirements of Subsection 12.12.

Timeframe for Review

A. A closed record public hearing on the proposal should be held on a date within 60 days of the date the appeal was received by the City Clerk. If the public hearing cannot be held within the required timeframe, the Designated Official shall provide the applicant with a letter explaining the reason(s) for delay and provide a date by which a hearing will be held.

B. All decisions or recommendations of the City Council will be rendered within ten working days following the conclusion of all testimony and hearings and closing of the record unless a longer period is mutually agreed to by the applicant or appellant and the City Council. Upon issuance of the City Council's decision, the City Clerk will transmit a copy of the decision to the Designated Official and, by certified mail, to the applicant or appellant and by regular mail to other parties of record.

Staff Report

The Designated Official shall coordinate and assemble the reviews of other City departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the department's findings, conclusions, and recommendations. The report shall be filed with the City Council and copies thereof shall be mailed to the applicant and made available for public inspection at least five working days prior to the scheduled hearing.

Closed Record Public Hearing

Before rendering a decision or recommendation on any application or appeal, the City Council shall hold one closed record public hearing thereon. The Designated Official shall, in coordination with the City Council, be responsible for assigning a date and assuring due notice of public hearing pursuant to Subsection 12.9 for each such application or appeal. The public hearing shall be conducted in accordance with the ordinance governing the application or appeal and such other rules as the City Council may adopt.

Decision by City Council

Type 3 applications are reviewed and approved by the City Council in an closed record public hearing. All decisions or recommendations of the City Council must be supported by findings of fact and conclusions of law. The findings of fact must be supported by substantial evidence in the record and the conclusions of law must be based upon the policies of the comprehensive plan, subdivision regulations, environmental regulations, the

standards set forth in the various land use codes of the City, or any other relevant plan, regulation, federal or state law, case law, growth management hearings board decisions, or any other applicable law. Decisions or recommendations of the City Council may be to approve, conditionally approve, or deny the application or appeal.

Notice Requirements

Notice of the time and place of an open record public hearing shall be provided no less than 14 days prior to the public hearing for the permit application through the use of the same methods indicated for notice of application.

Appeals to Superior Court

Unless specifically provided for elsewhere in this chapter or in another applicable ordinance, the decision of the City Council shall be the final administrative decision of the City and may be appealed by a party of record with standing to the King County superior court pursuant to Chapter 36.70C RCW.

MODIFICATIONS TO PERMITS

Modifications to permits approved pursuant to this agreement may be allowed. Modifications are classified as “minor” or “major,” except for Plat Alterations which are not defined as a permit Modification.

Minor Modifications

All Modifications to an approved permit that are not defined as a major Modification are a minor Modification; provided that the applicable standards in this agreement are met, there are no changes to permit conditions, and the basic character of the Development remains the same. Minor Modifications are Type 1 – Administrative Decisions.

Major Modifications

Major Modifications include changes to permit conditions, and changes to the proposed Development of more than 15% in building size, lot size, Open Space, number of units, site coverage, height, parking or Setbacks. Major Modifications are reviewed pursuant to the same process required for the original permit.

APPLICABILITY, DECISION CRITERIA AND PERMIT SPECIFIC REQUIREMENTS

All Development within The Villages MPD must be consistent with the processes and standards found in this Agreement and the following standards. Where there is a conflict between the standards in this Agreement and the provisions of the referenced Black Diamond Municipal Code, this Agreement will prevail.

Construction Permits

A. BUILDING PERMITS

The International Residential Code, International Building Code, International Fire Code and other construction codes in effect in the City of Black Diamond or Amendments thereto, on the date of filing a complete building permit application or other construction application for a building in The Villages MPD shall apply, provided however no changes to such codes taking effect after the date of this Agreement shall require redesign or Modification of then-existing MPD utilities, facilities or other infrastructure that were installed in accordance with this Agreement unless redesign or Modification are required to avoid a serious threat to public health or safety.

B. ENGINEERING PERMITS

Except as modified in this agreement, all improvements within public right-of-way and/or public easements, and all improvements intended for ownership, operations or maintenance by the City shall be consistent with BDMC Chapter 15.08 and the City of Black Diamond Engineering Design and Construction Standards provided, however, that the Development review process, street design standards and bonding requirements in this agreement supersede the requirements of Chapter 15.08 and the City of Diamond Engineering Design and Construction Manual.

C. CLEARING AND GRADING

Except as modified in this agreement, clearing and grading activities shall be consistent with the clearing and grading standards of Black Diamond Municipal Code Chapter 15.28. The Designated Official shall be the responsible for administration of permits. Permits shall be reviewed according to the process in this chapter and shall be valid for 5 years from the date of approval. The Designated Official may extend the validity of a permit for an additional three years.

BOUNDARY LINE ADJUSTMENTS, SHORT SUBDIVISIONS, SUBDIVISIONS, PLAT ALTERATIONS/VACATIONS

Except as modified by this agreement, boundary line adjustments, short subdivisions, subdivisions, and plat alterations/vacations shall be consistent with requirements of Black Diamond Municipal Code Title 17. The Development review process, vesting and bonding requirements of this agreement supersede any such provisions in Title 17.

LAND USE PLAN (LUP) CATEGORY CHANGE

Land use category changes consistent with Subsection 4.4 of Chapter 4 of this agreement shall be allowed upon the following findings:

- A. Transportation, stormwater, water and sewer system improvements necessary to support the change are in place or will be provided at the time of occupancy; and

B. The change in category will not result in the maximum number of residential units or combined commercial/Office/Retail square feet to be exceeded or the total area of required Open Space to be reduced unless an Amendment to the Development Agreement is approved pursuant to Chapter 10.

MINOR SUBDIVISION MODIFICATION

Minor Modifications are changes after preliminary plat approval but prior to installation of improvements and recording of the final subdivision that do not substantially affect the design of the approved plat, alter conditions of preliminary approval and do not adversely affect public health, safety and welfare. A Minor Modification is any change that is not defined as Major Modification, provided it does not alter conditions of approval.

MAJOR SUBDIVISION MODIFICATION

Major Modifications are changes after preliminary plat approval and before recording of the final plat that substantially affect the design of the subdivision or alter a condition of preliminary approval. Examples of Major Modifications include the following:

- Greater than a 15% increase in the number of approved lots
- Realignment of external access roads
- Change of use of lots or tracts to a more intense land use than originally proposed
- Change of exterior access point
- A major subdivision Modification must be reviewed using the process and criteria for Subdivisions (Subsections 12.10)

SITE PLAN REVIEW

Site Plan Review applications shall be consistent with requirements of Black Diamond Municipal Code Chapter 18.16, except as modified by this agreement. The Development review process, vesting and bonding requirements of this agreement supersede any such provisions in Chapter 18.16.

BINDING SITE PLAN

Except as modified by this agreement, Binding Site Plan applications shall be consistent with requirements of Black Diamond Municipal Code Chapter 17.34. The Development review process, vesting and bonding requirements of this agreement supersede any such provisions in Chapter 17.34. BDMC Subsection 17.34.060.E and 17.34.060.I do not apply to Development subject to this agreement.

HOME OCCUPATION

Except as modified by this agreement, Home Occupations shall be consistent with the requirements of the Black Diamond Municipal Code Chapter 18.52. The Development review process within this agreement supersedes any such provisions in BDMC Chapter 18.52.

ADMINISTRATIVE CONDITIONAL USE PERMIT

Except as modified by this agreement, Administrative Conditional Use Permits shall be consistent with the requirements of the Black Diamond Municipal Code Chapter 18.52. The Development review process within this agreement supersedes any such provisions in BDMC Chapter 18.52.

ACCESSORY DWELLING UNIT (ADU)

Except as modified by this agreement, ADUs shall be consistent with process and requirements of Chapter 18.54 of the Black Diamond Municipal Code. The Development review process in this agreement supersedes any such provisions in BDMC Chapter 18.54.

DEVIATIONS FROM DEVELOPMENT STANDARDS

Each section of this Development Agreement specifies the standards for which a Deviation can be granted. Deviations are processed as a Type 1- Administrative Decision. In addition to the specific requirements in the applicable chapter, the following criteria must be met for a Deviation to be approved:

- The proposed Deviation must be functionally equivalent to, or superior to, the original standard or requirement in fulfilling the intent and purpose of that original standard or requirement;
- The proposed Deviation must result in Development that is compatible with the scale and character of the properties and uses adjacent to the location of the proposed Deviation, regardless of whether such adjacent properties are inside or outside The Villages MPD;
- The proposed Deviation must not create a significant adverse environmental impact that was not previously analyzed in environmental documents and cannot be mitigated through The Villages Development standards;
- Any additional stormwater, sewer, water or traffic facilities necessary as a result of the Deviation must be provided; and
- The proposed Deviation must not negatively impact public health or safety.

VARIANCE

Variances shall be consistent with process and requirements of BDMC 18.16.010 Conditions for granting a Variance.

BONDING FOR IMPROVEMENTS

Bonding for Improvements

The Master Developer may defer any required improvement so long as the completion of the work is guaranteed by a performance bond or other financial guarantee. The bond, or other financial guarantee, must be in a form acceptable to the City in an amount equal to one hundred fifty percent (150%) of the Master Developer's estimate of the cost of the improvements guaranteeing the actual construction and installation of such improvements within a time frame to be set by the Designated Official consistent with this Chapter.

Inspection and Acceptance of Improvements

The City shall inspect improvements within 24 hours of the inspection request. The inspector shall determine whether the improvements are substantially complete, and provide a written list of any corrections or additional work necessary for physical completion of the improvements within 7 days of the date of the inspection. The City shall make every effort to provide one comprehensive written list upon which all subsequent inspections shall be based. Multiple requests for corrections or work not on the initial written list shall be avoided. The improvements shall be accepted by the City once they have been inspected and determined to be physically complete.

Release of Bond or Financial Guarantee

Original bond or financial guarantee amounts will be fully released within 14 days of acceptance of the improvements by the City.

PROJECT BOUNDARY

LAWSON HILLS

CITY OF BLACK DIAMOND,



SHEET 2 OF 2

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NO. DATE REVISION

AL D. FURE, PE
 PROJECT MANAGER
 CARL H. SORENSON, PLS
 PROJECT SURVEYOR
 BARBARA A. STAAKE, PE
 PROJECT ENGINEER

PROJECT LANDSCAPE ARCHITECT
 FIRST SUBMITTAL DATE: 12-17-08
 SCALE: HORIZ: 1"=300' VERT:



STAMP NOT VALID
 UNLESS SIGNED AND DATED

JOB NO. **04-058**

SHEET NO. **1 OF 2**



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Land Development Consultants

WASHINGTON

PROJECT BOUNDARY

LAWSON HILLS

CITY OF BLACK DIAMOND

BY CS

NO.	DATE	REVISION
1		

AL D. FURE, PE
 PROJECT MANAGER
 CARL H. SORENSEN, PLS
 PROJECT SURVEYOR
 BARBARA A. STAAKE, PE
 PROJECT ENGINEER

PROJECT LANDSCAPE ARCHITECT
 FIRST SUBMITTAL DATE: 12-17-08
 SCALE: HORIZ: 1"=300' VERT:

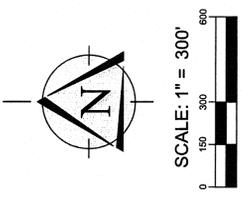
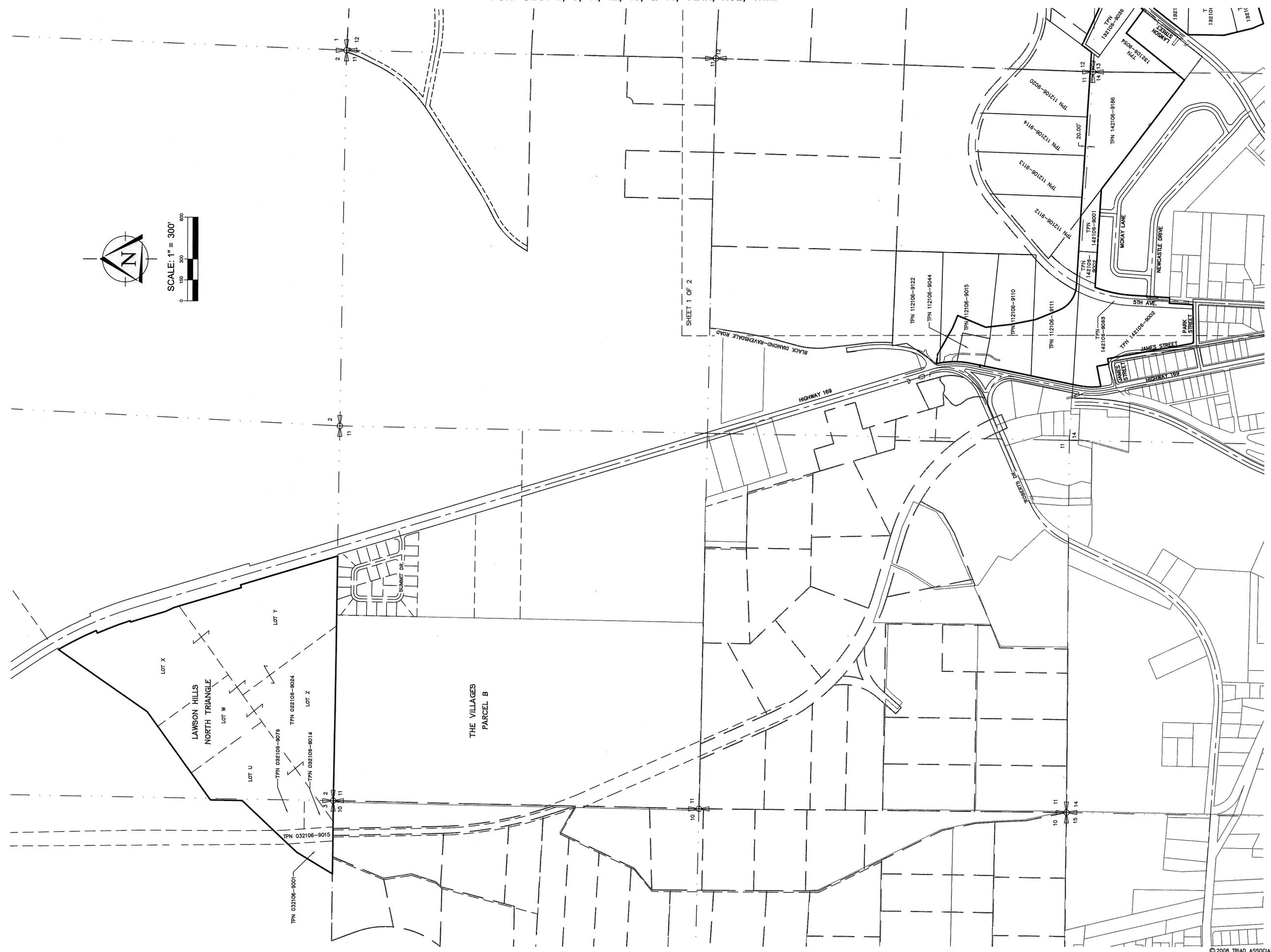


12/19/08

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JOB NO. 04-058

SHEET NO. 2 of 2



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