

Chapter 19.04

ENVIRONMENTAL POLICY

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- 19.04.010 Authority.

A. The city adopts the ordinance codified in this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

B. This chapter contains the city's SEPA procedures and policies.

C. The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this chapter. (Ord. 299 § 1, 1984)

19.04.020 Adoption by reference.

The city adopts the following sections of Chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

- WAC 197-11-040 Definitions.
- 050 Lead Agency.
- 055 Timing of the SEPA process.
- 060 Content of environmental review.
- 070 Limitations on actions during SEPA process.
- 080 Incomplete or unavailable information.
- 090 Supporting documents.
- 100 Information required of applicants.

(Ord. 299 § 2, 1984)

19.04.030 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

A. "Department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order.

B. "Early notice" means the city's response to an applicant stating whether it considers issuance of the determination of significance (DS) likely for the applicant's proposal.

C. "SEPA rules" means WAC Chapter 197-11 adopted by the Department of Ecology. (Ord. 299 § 3, 1984)

19.04.040 Designation of responsible official.

A. For those proposals for which the city is a lead agency, the responsible official shall be the public works superintendent or such other person as the superintendent may designate in writing.

B. For those proposals for which the city is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference. (Ord. 299 § 4, 1984)

19.04.050 Lead agency determination and responsibilities.

A. The responsible official shall determine the lead agency for that proposal under WAC 197-11-050 and WAC 197-11-922 through WAC 197-11-940, unless the lead agency has been previously determined or the responsible official is aware that another department or agency is in the process of determining the lead agency.

B. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless the city determines a supplemental environmental review is necessary under WAC 197-11-600.

C. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the responsible official or any department.

D. The responsible official is authorized to make agreements as to lead agency status or shared lead agency's duties for a proposal under WAC 197-11-942 and 197-11-944.

E. The responsible official shall require sufficient information from the applicant to identify other agencies with jurisdiction. (Ord. 299 § 5, 1984)

19.04.060 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which there

is one or more state agency with jurisdiction, the responsible official may elect to transfer the lead agency duties to the state agency. The state agency with jurisdiction appearing first on the priority list in WAC 197-11-936 shall be the lead agency. To transfer lead agency duties, the responsible official must transmit a notice of the transfer, together with any relevant information available on the proposal, to the appropriate state agency with jurisdiction. The responsible official shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 299 § 6, 1984)

19.04.070 Categorical exemptions and threshold determinations—Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference as supplemented in this chapter:

| | |
|----------------|---|
| WAC 197-11-300 | Purpose of this part. |
| 305 | Categorical exemptions. |
| 310 | Threshold determination required. |
| 315 | Environmental checklist. |
| 330 | Threshold determination process. |
| 335 | Additional information. |
| 340 | Determination of nonsignificance (DNS). |
| 350 | Mitigated DNS. |
| 360 | Determination of significance (DS)/initiation of scoping. |
| 390 | Effect of threshold determination. |

(Ord. 299 § 7, 1984)

19.04.080 Categorical exemptions and threshold determinations—Time estimates.

The time estimates contained in this section apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies. The actual time may vary with the complexity of the project, availability of staff, cooperation of agencies with jurisdiction or expertise, etc. The time estimates contained in this section shall not be construed to be mandatory. Days, for the purpose of this section, shall mean working days when the city is open for the conducting of business.

A. Categorical Exemptions. The city will normally identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations.

1. The city will normally complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's adequate application and completed checklist are submitted.

2. When the responsible official requires further information from the applicant or consults with other agencies with jurisdiction:

a. The city will normally request such further information within fifteen days of receiving an adequate application and completed environmental checklist.

b. The city will normally wait no longer than fifteen days for a consulted agency to respond.

c. The responsible official will normally complete the threshold determination within fifteen days of receiving the requested information from the applicant or the consulted agency.

3. When the city must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city

will normally complete the studies within thirty days of receiving an adequate application and a completed checklist.

4. The city will normally complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impacts described in the application, within fifteen days of receiving an adequate application and completed checklist.

5. The responsible official will normally respond to a request for early notice within ten days. The threshold determination will normally be made within fifteen days of receipt of the changed or clarified proposal, environmental checklist and/or permit application. (Ord. 299 § 8, 1984)

**19.04.090 Categorical exemptions—
Adoption by reference.**

The city adopts by reference the following rules for categorical exemption of WAC Chapter 197-11, as now existing or hereinafter amended, by reference, as supplemented in this chapter:

| | |
|----------------|---------------------------------------|
| WAC 197-11-800 | Categorical exemptions. |
| 880 | Emergencies. |
| 890 | Petitioning DOE to change exemptions. |

(Ord. 299 § 9, 1984)

**19.04.100 Categorical exemptions—
Determination.**

A. When the city receives an application for a license or, in the case of governmental proposals, a department initiates the proposal, the responsible official shall determine whether the license and/or the proposal is exempt. The determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal.

B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the government license required. If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency, even if the license application that triggers the consideration is exempt.

C. If a proposal includes both exempt and non-exempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:
 - a. Any nonexempt action,
 - b. Any action that would have an adverse environmental impact, or
 - c. Any action that would limit the choice of reasonable alternatives;

2. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt actions were not approved; and

3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt actions were not approved. (Ord. 299 § 10, 1984)

**19.04.110 Threshold determination—Review
at conceptual stage.**

A. If the city's only action on a proposal is a decision on a building permit or other licenses that require detailed project plans and specifications, the applicant may request in writing that the city conduct the environmental review prior to submission of the detailed plans and specifications.

B. In addition to the environmental documents an applicant shall submit the following information for early environmental review:

1. All items required for submittal for site plan review;

2. Other information as the responsible official may determine. (Ord. 299 § 11, 1984)

**19.04.120 Threshold determinations—
Environmental checklist.**

A. A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate, or other approval not exempted by this chapter. The checklist shall be in the form of WAC 197-11-960 with such additions that may be required by the responsible official in accordance with WAC 197-11-906(4).

B. The checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.

C. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency for determining the responsible official and for making the threshold determination.

D. For private proposals, the applicant is required to complete the environmental checklist. The city may provide assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

E. The city may decide to complete all or part of the environmental checklist for a private proposal, if any of the following occurs:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration. (Ord. 299 § 12, 1984)

**19.04.130 Threshold determinations—
Mitigated DNS.**

A. The responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
2. Precede the city's actual threshold determination for the proposal.

C. The responsible official's response to the request for early notice shall:

1. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the city to consider a DS; and
2. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and may revise the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal.

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance if the city determines that no additional information or mitigation measures are required.

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures, clarifications, changes, or conditions must be in writing and must be specific.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

E. The city shall not act upon a proposal for which a mitigated DNS has been issued for fifteen days after the date of issuance.

F. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the licensing decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city. Failure to comply with the designated mitigation measures shall be grounds for suspension an/or revocation of any license issued.

G. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigation DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) relating to withdrawal of a DNS.

H. The city's written response under subsection C of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 299 § 13, 1984)

19.04.140 Environmental impact statement (EIS)—Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference as supplemented by this chapter:

| | |
|----------------|-----------------------|
| WAC 197-11-400 | Purpose of EIS. |
| 402 | General requirements. |
| 405 | EIS types. |
| 406 | EIS timing. |
| 408 | Scoping. |
| 410 | Expanded scoping. |
| 420 | EIS preparation. |
| 425 | Style and size. |
| 430 | Format. |

| | |
|----------------|--|
| WAC 197-11-435 | Cover letter or memo. |
| 440 | EIS contents. |
| 442 | Contents of EIS on nonproject proposals. |
| 443 | EIS contents when prior nonproject EIS. |
| 444 | Elements of the environment. |
| 448 | Relationship of EIS to other considerations. |
| 450 | Cost-benefit analysis. |
| 455 | Issuance of DEIS. |
| 460 | Issuance of FEIS. |

(Ord. 299 § 14, 1984)

19.04.150 Preparation of EIS.

A. Preparation of draft and final EIS's and SEIS's shall be under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and WAC Chapter 197-11.

B. The draft and final EIS and SEIS shall be prepared at the city's option by the city staff, the applicant, or by a consultant approved by the city. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency; provided, however, that this does not apply to information the city may request under another ordinance or statute. (Ord. 299 § 15, 1984)

19.04.160 EIS—Additional elements.

The responsible official may include additional elements as part of the environment for the purposes of EIS content; however, these elements do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter. (Ord. 299 § 16, 1984)

19.04.170 EIS—Commenting—Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference as supplemented in this chapter:

| | |
|----------------|---|
| WAC 197-11-500 | Purpose of this part. |
| 502 | Inviting comment. |
| 504 | Availability and cost of environmental documents. |
| 508 | SEPA register. |
| 535 | Public hearings and meetings. |
| 545 | Effect of no comment. |
| 550 | Specificity of comments. |
| 560 | FEIS response to comments. |
| 570 | Consulted agency costs to assist lead agency. |

(Ord. 299 § 17, 1984)

19.04.180 Public notice.

A. Whenever public notice is required, the city shall follow the procedures set forth in this section.

B. Public notice will be given in the following situations:

1. When the city issues the following determinations of nonsignificance (DNS):

a. DNS involving another agency with jurisdiction,

b. DNS involving the demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or 197-11-880,

c. DNS involving the issuance of a clearing or grading permit not exempted by WAC 197-11-800 through 197-11-890,

d. DNS issued following a request for early notice pursuant to WAC 197-11-350(2),

e. Mitigated DNS issued pursuant to WAC 197-11-350(3),

f. DNS issued following the withdrawal of a DS pursuant to WAC 197-11-360(4);

2. When the city issues a determination of significance to commence scoping;

3. When a draft EIS (DEIS) is available for public comment;

4. Whenever the city holds a public hearing pursuant to WAC 197-11-535;

5. Whenever the responsible official determines that public notice is required.

C. The city shall give public notice by using at least one of the following methods:

1. Posting the property, for site-specific proposals;

2. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

3. Any other method reasonably calculated to inform the public and other agencies or required by statute or ordinance.

D. Notice of public hearings shall be published no later than ten days before the hearing. Notice of public hearings on nonproject proposals shall be published in a newspaper of general circulation in the city.

E. The city may require an applicant to compensate the city for the costs of compliance with the public notice requirements for the applicant's proposal or provide services and materials to assist. (Ord. 299 § 18, 1984)

19.04.190 Designation of official to perform consulted agency responsibilities.

A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a

threshold determination, participation in scoping and reviewing a draft EIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city. (Ord. 299 § 19, 1984)

19.04.200 Using existing environmental documents—Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference:

- WAC 197-11-600 When to use existing environmental documents.
- 610 Use of NEPA documents.
- 620 Supplemental environmental impact statements.
- 625 Addenda—Procedures.
- 630 Adoption—Procedures.
- 635 Incorporation by reference—Procedures.
- 640 Combining documents.

(Ord. 299 § 20, 1984)

19.04.210 SEPA decisions—Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference:

- WAC 197-11-650 Purpose of this part.
- 655 Implementation.
- 660 Substantive authority and mitigation.
- 680 Appeals.
- 700 Definitions.

(Ord. 299 § 21, 1984)

19.04.220 SEPA decisions—Nonexempt proposals.

For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the city staff's recommendation to any appropriate advisory body such as the planning commission. (Ord. 299 § 22, 1984)

19.04.230 SEPA decisions—Substantive authority.

A. The city may attach conditions to a license or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific adverse environmental impacts clearly identified in an environmental document prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. Such conditions are reasonable and capable of being accomplished; and
4. The city has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in Section 19.04.250 and cited in the permit, approval, license or other decision document.

B. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS; and
2. A finding is made that there are no reasonable mitigation measures are insufficient to mitigate the identified impact; and
3. The denial is based on one or more policies identified in this section and identified in writing in the decision document. (Ord. 299 § 23, 1984)

19.04.240 SEPA—Policies.

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city.

B. The city adopts by reference the policies in the following city codes, ordinances, resolutions and plans, as now existing or hereinafter amended:

1. The State Environmental Policy Act (SEPA), Chapter 43.21C RCW;
2. The city's comprehensive plan;
3. The city's zoning ordinances;
4. The shoreline master program;
5. The city's subdivision ordinance;
6. The city's short subdivision ordinance;
7. Water system regulations;
8. Comprehensive sewer plan;
9. Sewer system regulations;
10. Individual sewage disposal system ordinances;
11. The city fire code;
12. The city building code;
13. The city's mechanical, plumbing and electrical codes. (Ord. 299 § 24, 1984)

19.04.250 Appeals.

A. Any aggrieved person may appeal a threshold determination, adequacy of a final EIS and the conditions or denials of a requested action made by a nonelected city official pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed. No person may seek judicial review of a SEPA decision without first exhausting the administrative appeal process set forth herein.

B. All appeals filed pursuant to this section must be filed in writing with the community development director within fourteen calendar days of the date of the decision being appealed. The written appeal shall state concisely the basis or bases for the appeal, and the specific relief or remedy sought.

C. A fee of two hundred fifty dollars shall accompany each appeal.

D. On receipt of a timely written notice of appeal, the director shall advise the hearing examiner of the appeal and request that a date for considering the appeal be established. Provided that, if there is a concurrent land use application requiring a hearing examiner public hearing, then

the two hearings shall be combined. The hearing examiner shall make the final decision on a SEPA appeal.

E. All relevant evidence shall be received during the hearing of the appeal and the decision shall be made de novo. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding. The burden of proof shall be on the appellant, to demonstrate error by a preponderance of the evidence.

F. For any appeal under this section, the hearing examiner shall provide a record that shall consist of the following:

1. Findings and conclusions;
2. Testimony under oath; and
3. A taped or written transcript.

G. The city may require the applicant to provide an electronic transcript.

H. The city shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. Appeal from the hearing examiner's decision on a SEPA appeal is to superior court. The judicial appeal must be filed within twenty-one days after the hearing examiner renders a decision, unless the SEPA appeal is consolidated with the underlying governmental action, such as a permit application. If there is consolidation, judicial appeal of the hearing examiner's decision on the SEPA appeal must be filed within twenty-one days after the city's final decision on the underlying government action.

I. This chapter constitutes the exclusive administrative process to appeal a SEPA decision. Notwithstanding any other provision of the Municipal Code, the provisions of this chapter shall apply. This provision shall be construed in conjunction with Chapter 18.98 of this Code, RCW 36.70B, and WAC 197-11-680(3)(a)(v). (Ord. 857 § 47, 2008; Ord. 299 § 25, 1984) (Ord. No. 933, § 1, 1-7-2010)

19.04.260 Notice—Statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk-treasurer, applicant or proponent pursuant to RCW 43.21C.080. (Ord. 299 § 26, 1984)

19.04.270 Definitions—Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference, as supplemented in this chapter:

| | |
|----------------|---|
| WAC 197-11-700 | Definitions. |
| 702 | Act. |
| 704 | Action. |
| 706 | Addendum. |
| 708 | Adoption. |
| 710 | Affected tribe. |
| 712 | Affecting. |
| 714 | Agency. |
| 716 | Applicant. |
| 718 | Built environment. |
| 720 | Categorical exemption. |
| 722 | Consolidated agency. |
| 724 | Consulted agency. |
| 726 | Cost-benefit analysis. |
| 728 | County/city. |
| 730 | Decision maker. |
| 732 | Department. |
| WAC 197-11-734 | Determination of nonsignificance (DNS). |
| 736 | Determination of significance (DS). |
| 738 | EIS. |
| 740 | Environment. |
| 742 | Environmental checklist. |
| 744 | Environmental document. |
| 746 | Environmental review. |
| 748 | Environmentally sensitive area. |
| 750 | Expanded scoping. |

(Ord. 299 § 27, 1984)

| | |
|-----|---------------------------------|
| 752 | Impacts. |
| 754 | Incorporation by reference. |
| 756 | Lands covered by water. |
| 758 | Lead agency. |
| 760 | License. |
| 762 | Local agency. |
| 764 | Major action. |
| 766 | Mitigated DNS. |
| 768 | Mitigation. |
| 770 | Natural environment. |
| 772 | NEPA. |
| 774 | Nonproject. |
| 776 | Phased review. |
| 778 | Preparation. |
| 780 | Private project. |
| 782 | Probable. |
| 784 | Proposal. |
| 786 | Reasonable alternative. |
| 788 | Responsible official. |
| 790 | SEPA. |
| 792 | Scope. |
| 793 | Scoping. |
| 794 | Significant. |
| 796 | State agency. |
| 797 | Threshold determination. |
| 799 | Underlying governmental action. |

19.04.280 Compliance with SEPA— Adoption by reference.

The city adopts the following sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference, as supplemented in this chapter:

- WAC 197-11-900 Purpose of this part.
- 902 Agency SEPA policies.
- 916 Application to ongoing actions.
- 920 Agencies with environmental expertise.
- 922 Lead agency rules.
- 924 Determining the lead agency.
- 926 Lead agency for governmental proposals.
- 928 Lead agency for public and private proposals.
- 930 Lead agency for private projects with one agency with jurisdiction.
- 932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 936 Lead agency for private projects requiring licenses from more than one state agency.
- 938 Lead agencies for specific proposals.
- 940 Transfer of lead agency status to a state agency.
- 942 Agreements on lead agency status.



- WAC 197-11-944 Agreements on division of lead agency disputes.
- 946 DOE resolution of lead agency disputes.
- 948 Assumption of lead agency status.

(Ord. 299 § 28, 1984)

19.04.290 Environmentally sensitive areas.

A. The public works superintendent shall designate environmentally sensitive areas under the standards of WAC 197-11-908 and shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable to such areas, with the city clerk-treasurer and Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designation shall have full force and effect of law as of the date of the filing.

B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. (Ord. 299 § 29, 1984)

19.04.300 Fees.

The city shall require the following fees for its activities in accordance with the provisions of this chapter:

A. **Threshold Determination.** For every environmental checklist the city will review when it is lead agency, the city shall collect a fee of sixty dollars from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment

of fees. When the city assists the applicant or completes the environmental checklist at the applicant's request or under Section 19.04.120 of this chapter, an additional thirty dollars shall be collected.

B. Environmental Impact Statement.

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred, including overhead, by the city in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.

2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by the city.

3. The applicant shall pay the projected amount to the city prior to commencing work. The city will refund the excess, if any, at the completion of the EIS. If the city's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1 and 2 of this subsection which remain after incurred costs, including overhead, are paid.

C. The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

D. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.17. (Ord. 299 § 30, 1984)

19.04.310 Forms—Adoption by reference.

The city adopts the following forms and sections of WAC Chapter 197-11, as now existing or hereinafter amended, by reference:

- WAC 197-11-960 Environmental checklist.
- 965 Adoption notice.
- 970 Determination of nonsignificance (DNS).
- 980 Determination of significance and scoping notice (DS).
- 985 Notice of assumption of lead agency status.
- 990 Notice of action.

(Ord. 299 § 31, 1984)

19.04.320 WAC copies on file.

The city clerk-treasurer shall maintain on file for public use and examination three copies of the Washington Administrative Code sections referred to in this chapter. (Ord. 299 § 32, 1984)

Chapter 19.08

SHORELINE MASTER PROGRAM

Sections:

- 19.08.010 Purpose.
- 19.08.020 Definitions.
- 19.08.030 Use regulations.
- 19.08.040 Conditional uses.
- 19.08.050 Variances.
- 19.08.060 Substantial development permits.
- 19.08.070 Violation.

19.08.010 Purpose.

The purpose of this chapter is to establish rules, regulations and a permit system pursuant to and in harmony with RCW Chapter 90.58, the Shoreline Management Act of 1971, and WAC Chapter 173-14, and as an implementing tool for the city shoreline master program. (Ord. 188 § 1, 1976)

19.08.020 Definitions.

A. "Agricultural practices" mean those methods used in vegetation and soil management, such as tilling of the soil, control of weeds, control of plant diseases and insect pests, soil maintenance and fertilization.

B. "Bulkhead development" means those structures erected parallel to and near the high-water mark, for the purpose of protecting adjacent uplands from action of erosion.

C. "Commercial development" means those uses which are involved in wholesale and retail trade or businesses in residences.

D. "Conditional uses" means any and all of those uses permitted only after consideration by the planning commission and city council that meet such performance standards as set down by the planning commission and/or city council that make the use compatible with other permitted uses within that area.

E. "Department" means the Department of Ecology.

F. "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the waters overlying lands subject to this chapter at any state of the waters' level.

G. "Docks" means a structure built over or floating upon the water used as a landing place for marine transport or for pleasure craft or for recreational purposes.

H. "Dredging" means the removal of earth from the bottom of a stream, river, lake or other body of water.

I. "Final order" means Chapter 286, Laws of 1971, Extraordinary Session, the Shoreline Management Act of 1971.

J. "Forest management practices" mean those methods used for the protection, production and harvesting of timber.

K. "Landfill" means the creation of dry upland areas by filling or depositing of sand, soil or gravel into or on a wetland area. "Landfill" includes the deposition of sand, soil or gravel to replace those areas where wave action or normal erosive processes of nature have occurred.

L. "Marina development" means those facilities which provide boat launching, storage, supplies and services for pleasure craft.

M. "Master program" means the shoreline master program for the city and the use regulations together with maps, diagrams, charts or other descriptive material and text, developed in accordance with the policies enunciated in Section 2 of the Shoreline Management Act of 1971.

N. "Mining" means the removal of naturally occurring materials from the earth for economic use.

O. "Ordinary high-water mark" on all lakes, streams and tidal water is the mark that will be

found by examining the bed banks and ascertaining where the presence and action of water are so common and usual, and so long continued in ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter; provided, that in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high-water mark adjoining fresh water shall be the line of mean high water.

P. "Outdoor advertising, signs and billboards" means publicly displayed boards whose purpose is to provide information, direction or advertising.

Q. "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal, or agency of the state or any local governmental unit however designated.

R. "Shorelines" means all of the water areas within the incorporated portion of the city, including reservoirs and their associated wetlands, together with the lands underlying them, except:

1. Shorelines of statewide significance;
2. Shorelines on segments of a stream upstream of a point where the mean annual flow is twenty feet per second or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

S. "Shorelines of the state" means the total of all shorelines and shorelines of statewide significance within the state.

T. "Shorelines of statewide significance" means those shorelines described in Section 3(2)(e) of the Shoreline Management Act of 1971.

U. "Substantial development" means any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shoreline of the state; except that, the following shall not be considered substantial development for the purpose of this chapter:

1. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or the elements;

2. Construction of the normal protective bulkhead common to single-family residences;

3. Emergency construction necessary to protect property from damage by the elements;

4. Construction of a barn or similar structure on wetlands. Construction and practices normal or necessary for farming, irrigation and ranching activities including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities and irrigation channels; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

5. Construction or modification of navigational aids such as channel markers and anchor buoys;

6. Constructions on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or city having jurisdiction thereof, other than the requirements imposed pursuant to this chapter;

7. Construction of a dock, designed for pleasure craft only, for the private, noncommercial use of the owners, lessee or contract purchaser of a single-family residence, the cost or fair market value, whichever is the lowest, does not exceed two thousand five hundred dollars;

8. Operation, maintenance or construction of canals, waterways, drains, reservoirs or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from irrigation of lands;

9. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

10. Operation and maintenance of any system of dikes, ditches, drains or other facilities existing on the effective date of the ordinance codified in this chapter which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

11. Any project with the certification of the governor;

12. Construction of up to five hundred feet of one and only one road or segment of a road, provided such road does not enter the shoreline more than once. Such exemption shall be limited to a single road or road segment for each forest practice and such road shall be subject to the requirements of RCW Chapter 76.09 and regulations adopted pursuant thereto and to prohibitions or restrictions of the master program for the city.

V. "Wetlands" or "wet areas" mean those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high-water mark; and all marshes, bogs, swamps, floodways, rivers, deltas and flood plains associated with the streams, lakes and tidal water which are subject to the provisions of this chapter. (Ord. 188 § 2, 1976)

19.08.030 Use regulations.

The following regulations shall apply to:

A. Agricultural Practices.

1. There shall be maintained between filled areas and associated water bodies or wetlands a permanent vegetative buffer to retard runoff and siltation.

2. The location of confined animal feeding operations, retention and storage ponds for feedlot wastes and stock piles of manure, solids or liquids shall not be allowed in the shorelines.

3. The use of erosion control measures shall be encouraged.

B. Forest Management Practices.

1. Seeding, mulching, matting and replanting shall be required where necessary to provide stability of logged areas.

2. Replanting vegetation should be of a similar type and concentration as existed previous to the logging operations.

3. Special attention shall be directed in logging and thinning operations to prevent the accumulation of slash and other debris in the contiguous waterways.

4. Shoreline areas having scenic qualities, such as those providing a diversity of views, unique landscape contrasts or landscape panoramas shall be maintained as scenic views in timber harvesting areas. Timber harvesting practices, including road construction and debris removal, shall be closely regulated so that the quality of the view and viewpoints in the shoreline areas of the city are not degraded.

5. Proper road and bridge design, location and construction and maintenance practices shall be used to prevent development of roads and structures which would adversely affect shorelines resources. All road construction and maintenance practices shall conform with all regulations and restrictions pursuant to this chapter.

6. Logging shall be avoided on shorelines with slopes of such a grade that large sediment runoff will be precipitated, unless adequate restoration and erosion control can be expeditiously accomplished.

7. Logging within shoreline areas shall be conducted to ensure the maintenance of buffer strips of ground vegetation, brush, alder and conifers.

8. Timber harvesting practices in shorelines of the state shall be conducted to maintain the State Board of Health standards for public water supplies.

C. Commercial Development.

1. Priority shall be given to those commercial developments which are particularly dependent on their location and/or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

2. New commercial developments shall be encouraged to locate in those areas where current commercial uses already exist.

3. An assessment shall be made of the effect a commercial development will have on a scenic view significant to a given area or enjoyed by a significant number of people. The assessment shall include, by the direction of the mayor, or city council, or planning commission chairman, an environmental assessment.

4. Parking facilities shall be placed inland away from the immediate water's edge and recreational beaches, and shall be so constructed so as to minimize siltation and runoff into the water bodies by the use of settling ponds and catch basins.

5. Techniques shall be employed that minimize silt and sediment runoff during the construction of any commercial development, or structure or parking lot thereof.

D. Marina Development.

1. In locating marinas, special plans must be made to protect the fish and shellfish resources that may be harmed by construction and operation of the facility.

2. Marinas shall be designed in a manner that will reduce damage to fish and shellfish resources and be aesthetically compatible with adjacent areas.

3. Special attention shall be given to the design and development of operational procedures for fuel handling and storage in order to minimize accidental spillage and to provide satisfactory means for handling those spills that do occur.

4. Shallow water embayments with poor flushing action shall not be considered for overnight and long-term moorage facilities.

5. Marina construction and development shall comply with Washington State Fisheries guidelines and regulations and local and state health standards.

E. Mining.

1. When rock, sand, gravel and minerals are removed from shoreline areas, adequate protection against sediment and silt production shall be provided.

2. Excavations for the production of sand and gravel and minerals shall be done in conformance with the Washington State Surface Mining Act.

F. Outdoor Advertising, Signs and Billboards.

1. Off-premises outdoor advertising signs shall be prohibited.

2. Vistas and viewpoints shall not be degraded and visual access to the water from such vistas should not be impaired by the placement of signs.

3. Outdoor advertising signs where permitted under the zoning and subdivision ordinances and all other sections and regulations found in the zoning code of the city, shall be located on the upland side of public transportation routes which parallel and are adjacent to rivers, lakes and other water bodies.

G. Residential Development.

1. Subdivisions shall be designed at a level of density of site coverage and of occupancy compatible with the physical capabilities of the shorelines and water.

2. Subdivisions shall be encouraged to provide pedestrian access to the shorelines within the subdivisions.

3. Residential development over or on the water shall not be permitted.

4. Subdivisions shall be designed so as to adequately protect the water and shoreline aesthetic characteristics.

5. Techniques shall be employed that minimize silt and sediment runoff during the construction of any residential development.

6. Sewage disposal facilities, as well as water supply facilities, must be provided in accordance with appropriate state and local health regulations;

storm drains shall be separate and not combined in any way with a sewage disposal system.

7. Adequate water supplies shall be available so that groundwater quality will not be endangered by overpumping.

8. Residential developers shall be required to indicate how they plan to preserve shore vegetation and control erosion during construction.

9. Setback requirements shall be the same as provided for in the city zoning code except that all setbacks shall be measured at a point of beginning not less than twenty-five feet from the ordinary high-water mark of any body of water.

H. Bulkhead Development.

1. Bulkheads shall be located and constructed in such a manner which will not result in adverse effects on nearby beaches and will minimize alteration of the shoreline.

2. Bulkheads shall be located and constructed in such a way as to minimize damage to fish and shellfish habitats. Open piling construction is preferable to the solid type.

3. Bulkheads shall be so designed as to blend in with the surroundings and not to detract from the aesthetic qualities of the shoreline.

4. Bulkheads shall be designed and constructed so as to allow public access to the publicly owned shorelines. Designs shall be of such a nature as to allow easy access to the publicly owned water and shoreline for the disabled and/or physically handicapped.

5. The construction of bulkheads shall be permitted only where necessary to provide protection to upland areas or facilities.

I. Landfill.

1. Shoreline fills or cuts shall be designed and located so that significant damage to existing ecological values or natural resources, or alteration of local currents will not occur.

2. Fill material shall be of such a quality that it will not cause problems of water quality. Shoreline areas are not to be considered for landfills or disposal of solid waste.

3. All perimeters of fills shall be provided with vegetation, retaining walls or other mechanisms for erosion prevention.

4. Priority shall be given for landfills for water-dependent uses and for public uses.

J. Solid Waste Disposal. Solid waste disposal shall be prohibited on all shorelines.

K. Utilities Development.

1. Techniques shall be employed that minimize silt and sediment runoff during the construction and installation of all utilities.

2. Upon completion of installation/maintenance projects on shorelines, banks shall be restored to pre-project configuration, replanted with native species and provided maintenance care until the newly planted vegetation is established.

3. Whenever these facilities must be placed in a shoreline area, the location shall be chosen so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

4. Utilities shall be located to meet the needs of future populations.

L. Dredging.

1. Dredging shall be controlled to minimize damage to existing ecological values and natural resources of both the area to be dredged and the area for depositing of dredged materials.

2. Depositing of dredged material in water areas shall be allowed only for habitat improvement, to correct problems of material distribution affecting adversely fish and shellfish resources, or where the alternatives of depositing material on land is more detrimental to the shoreline resources than depositing it in the water areas.

3. Dredging of the bottom materials for the single purpose of obtaining fill material shall be discouraged.

M. Shoreline Protection.

1. Riprapping and other bank stabilization measures shall be located, designed and constructed so

as to avoid the need for channelization and to protect the natural character of the streamway.

2. Where flood protection measures such as dikes are planned, they shall be placed landward of the streamway, including associated swamps and marshes and other wetlands directly interrelated and interdependent with the streamway.

N. Road and Railroad Design and Construction.

1. Whenever feasible, major highways, freeways and railways shall be located away from the shoreline.

2. Roads located in wetlands shall be designed and maintained to prevent erosion and to permit a natural movement of groundwater.

3. All debris, overburden and other waste materials from construction shall be disposed of in a way as to prevent their entry by erosion from drainage, high water, or other means into any water.

4. Storm runoff water shall be channeled into settling ponds and catch basins so as to minimize silt and sediment runoff into the water bodies and shorelines.

5. Road locations shall be planned to fit the topography so that minimum alterations of natural conditions will be necessary.

6. Scenic corridors with public roadways shall have provisions for safe pedestrian and other nonmotorized travel. Also, provision should be made for sufficient view points, rest areas and picnic areas in public shorelines.

7. Extensive loops or spurs of old highways with high aesthetic quality shall be kept in service as pleasure bypass routes, especially where main highways, paralleling the old highway, must carry large traffic volumes at high speeds.

8. Since land use and transportation facilities are so highly interrelated, the plans for each shall be coordinated. The designation of potential high-use areas in the master program shall be done after the environmental impact of the transportation facilities needed to serve those areas has been assessed.

O. Piers and Docks.

1. The use of floating docks shall be encouraged only in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.

2. Priority shall be given to the use of community piers and docks in all new major waterfront subdivisions. In general, encouragement should be given to the cooperative use of piers and docks.

3. The capacity of the shoreline sites to absorb the impact of waste discharges from boats including gas and oil spillage shall be taken into consideration.

P. Archaeological Areas and Historic Sites.

1. The National Historic Preservation Act of 1966 and RCW Chapter 43.51 provide for the protection, rehabilitation, restoration and reconstruction of districts, sites, buildings and structures and objects of significance in American and Washington history, architecture, archaeology or culture. The state legislature names the director of the Washington State Parks and Recreation Commission as the person responsible for this program. Hence, all finds shall be reported to him.

2. Shoreline permits in general shall contain special provisions which require developers to notify the planning commission chairman or engineering department if any possible archaeological data are uncovered during excavations.

3. Where possible, sites shall be permanently preserved for scientific study and public observation. In areas known to contain archaeological data, a special condition should be attached to a shoreline permit providing for a site inspection and evaluation by an archaeologist to ensure that possible archaeological data are properly salvaged.

Q. Recreation.

1. Priority will be given to developments, other than single-family residences which are exempt from the permit requirements of the act, which provide recreational uses and other improvements facilitating public access to the shoreline.

2. Access to recreational locations such as fishing streams and hunting areas shall be a combination of areas and linear access to prevent concentrations of use pressure at a few points.

3. Parking areas shall be inland away from the immediate edge of the water and recreational beaches. Access shall be provided by walkways or other methods. Automobile traffic on beaches, dunes and fragile shorelines resources shall be prohibited.

4. Storm runoff water both before and after construction shall be channeled into settling ponds and catch basins to minimize silt and sediment runoff into the water bodies and shorelines.

5. In locating proposed recreational facilities such as a playing field, golf course and other open areas which use large quantities of fertilizers and pesticides in their turf maintenance programs, provisions will be made to prevent these chemicals from entering water. If this type of facility is approved on a shoreline location, provisions shall be made for protection of water areas from drainage and surface runoff.

6. The supply of recreation facilities shall be directly proportional to the proximity of population and compatible with the environment designations.

7. Facilities for intensive recreational activities shall be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational uses.

The following use activities are applicable to the Black Diamond area: aquaculture; ports and water-related industry; breakwaters; jetties and groins. (Ord. 188 § 3, 1976)

19.08.040 Conditional uses.

Conditional use permits will be granted only after the applicant can demonstrate all of the following:

A. The use will cause no unreasonably adverse effects on the environment or other uses in the area.

B. The use will not interfere with public use of the shoreline area.

C. Design of the site will be compatible with the surroundings and the master program.

D. The proposed use will not be contrary to the general intent of the master program. (Ord. 188 § 4, 1976)

19.08.050 Variances.

A variance will only be granted after the applicant can demonstrate the following:

A. The hardship that serves as the basis for granting of a variance is specifically related to the property of the applicant.

B. The hardship results from the application of the requirements and of the act and the master program and not from, for example, deed restrictions or the applicant's own actions.

C. The variance granted will be in harmony with the general purpose and intent of the master program.

D. The public welfare and interest will be preserved. If more harm will be done to the area by granting a variance than would be done to the applicant by denying it, the variance will be denied.

E. A greater economic gain if the property is put into a use contrary to the intent of the master program will not be sufficient reason for granting a variance. (Ord. 188 § 5, 1976)

19.08.060 Substantial development permits.

A. Applicability of Permit System to Federal Agencies. The substantial development permit system shall be applied in the following manner to federal agencies on lands meeting the criteria of the Shoreline Management Act and the department for shorelines of the state:

1. Federal agencies shall not be required to obtain permits for substantial developments undertaken by the federal government on lands owned in fee by the federal government, unless the federal government grants or reserves to the state or local government substantial jurisdiction over activities on those lands.

2. Upon approval of the state shoreline program pursuant to the Coastal Zone Management Act, 16 USC 1451, et seq., the federal government shall be subject to the state shoreline program as provided by the Coastal Zone Management Act.

3. The substantial development permit system shall apply to nonfederal activities constituting substantial developments undertaken on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

4. The substantial development permit system shall apply to substantial developments undertaken on lands not federally owned but under lease, easement, license or other similar federal property rights short of fee ownership, to the federal government.

B. Scope of Permit. The following time requirements apply to all substantial development permits, conditional uses and variances:

1. Construction or substantial progress toward construction of a project for which a permit has been granted pursuant to the act must be undertaken within two years after approval of the substantial development permit. Substantial progress toward construction includes, but is not limited to the letting of bids, making of contracts, purchase of materials involved in development, but does not include development or uses which are inconsistent with the criteria set forth in WAC 173-14-100. Provided, that in determining the running of the two-year period hereof, there shall not be included the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided further, that the city may, at its discretion extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of the construction.

2. If a project for which a permit has been granted pursuant to the act has not been completed

within five years after the approval of the permit by the city, the city shall, at the expiration of the five-year period, review the permit, and upon a showing of good cause, do either of the following:

- a. Extend the permit for one year; or
- b. Terminate the permit;

provided, that nothing in this section precludes the city from issuing substantial development permits with a fixed termination date of less than five years.

C. Revisions to Substantial Development Permits. When an applicant seeks to revise a substantial development permit, the city shall request from the applicant detailed plans and text describing the proposed changes in the permit.

1. If the city determines that the proposed changes are within the scope and intent of the original permit, the city shall approve a revision. The revised permit shall become effective immediately. The approved revision along with copies of the revised site plan and text should be submitted by certified mail to the appropriate Department of Ecology regional office, the attorney general, and to persons who have previously notified the city relative to the original application pursuant to WAC 173-14-070. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within fifteen days from the date of certified mailing. The party seeking review shall have the burden of proving the revision granted was not within the scope and intent of the original permit.

2. If the proposed changes are not within the scope and intent of the original permit, the applicant shall apply for a new substantial development permit in the manner provided for in this section.

D. Applications. Applications for a substantial development permit, which may include conditional use and/or variance shall contain, as a minimum, the information called for in the following form. The forms shall be supplied by the city.

E. Substantial Development Permits with Conditional Uses and Variances. After taking action on a substantial development permit designated to be a

conditional use or variance in an approved master program, the city shall submit the permit to the department for its approval, approved with conditions (with concurrence of the city), or denial.

F. Notice Required. Upon receipt of a proper application for a shoreline management substantial development permit, the city shall ensure that notices thereof are published at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within the area in which the development is proposed. In addition, the city shall ensure that additional notice of such application is be given by at least one of the following methods:

1. Mailing to the latest recorded real property owners as shown by the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

2. Posting in a conspicuous manner on the property upon which the project is to be constructed; or

3. Any other method deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public. Such additional notice shall be given or mailed at least thirty days before the date of final local action. An affidavit of publication that the notice has been properly published and/or as applicable, posted or deposited in the U.S. Mail pursuant to this section shall be affixed to the application. Within thirty days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit his written views upon the application to the city, or notify the city of his desire to receive a copy of the action taken upon the application. All persons who so submit their views, and all others who so notify the city, shall be notified in a timely manner of the actions taken upon the application. All notices of applications for shoreline management substantial development permits shall contain, as a minimum, the information called for in the following form:

Notice is hereby given that _____ who is _____ of the below described property has filed an application for a substantial development, conditional use, or variance permit for the development of _____, located at _____, within _____ of section _____ of township _____ N., Range _____ W.M., in _____, King County, Washington. Said development is proposed to be within and/or its associated wetlands. Any person desiring to express his views or to be notified of the action taken on this application should notify _____ in writing of his interest within thirty days of the final date of publication of this notice which is _____.

Written comments must be received by _____.

G. Public Hearings. The city may establish a mandatory or optional public hearing procedure to precede the issuance or denial of permits in order to allow interested persons to present their views.

H. Filing. Copies of the original application and other pertinent materials used in the final decision pursuant to either RCW Chapter 90.58 or RCW Chapter 43.21C, the permit and any other written evidence of the final order of the city relative to the application shall be filed with the Department of Ecology and attorney general within eight days of the final decision. Filing shall not be complete until the final order has actually been received by the regional office of the department within which the project lies, and by the attorney general.

I. Judgment Criteria.

1. Prior to the effective date of an applicable master program, a substantial development permit shall be granted only when the development proposed is consistent with:

- a. The policies and procedures of the act,
- b. The guidelines and regulations of the department,
- c. So far as can be ascertained, the master program being developed for the area; and

2. After the adoption or approval, as appropriate, by the department of an applicable master program, a substantial development permit shall be granted only when the development proposed is consistent with WAC 173-14-100(1) (with the exception of guidelines referred to in WAC 173-14-100(1)(b) above) and the master program adopted or approved for the area.

J. Hearings on Regulatory Orders.

1. The person to whom the order is directed may request review to the Shoreline Hearings Board within thirty days after being served. The requirements of RCW 90.58.180(1) and WAC Chapter 461-08 shall apply to all requests for review; provided, however, that there is no requirement for the requests to be filed with and certified by the Department of Ecology and the Attorney General.

2. All hearings held pursuant to this provision and judicial review thereof shall be in accordance with the rules establishing the Shoreline Hearings Board contained in RCW Chapter 90.58 and WAC Chapter 461-08.

K. Requests for Review. All requests for review of any final permit decisions under RCW Chapter 90.58 and WAC Chapter 173-14 are governed by the procedures established in RCW 90.58.180.

L. Department of Ecology Review. The department shall render and so notify the city and the permittee of its final decision approving or disapproving a permit for a conditional use or variance within thirty days of the filing by the city pursuant to WAC 173-14-090. The city shall notify those interested persons having contacted the city pursuant to WAC 173-14-070 of the final discussion.

M. Enforcement Orders.

1. The city and the Department of Ecology shall have the authority to serve upon a person undertaking, or about to undertake development as defined in RCW 90.58.030 (3)(d) a regulatory order if:

- a. The development constitutes an integral part of a substantial development being under-

taken, or about to be undertaken on the shorelines of the state in the absence of a substantial development permit; or

b. The development being undertaken, although an integral part of a project approved by an existing, valid substantial development permit is outside the scope and intent of the permit; or

c. The development being undertaken on the shorelines of the state is in violation of RCW 90.58.020, and the following:

i. Prior to the formal adoption or approval of the Department of Ecology of a master program for the area, the guidelines (WAC Chapter 173-14), and

ii. Thereafter the master program for the area.

2. The regulatory order shall set forth or contain:

a. The specific nature, extent and time of violation, and the damage or potential damage;

b. An order that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time; and

c. The right of the person to whom the order is directed to a hearing before the Shoreline Hearings Board.

3. A regulatory order issued pursuant to this subsection becomes effective immediately upon receipt by the person to whom the order is directed and shall become final unless review is requested pursuant to WAC 173-14-210. (Ord. 188 § 6, 1976)

19.08.070 Violation.

Violation of any provision of this chapter shall constitute a misdemeanor, and subject to fine and/or imprisonment as authorized by this code. (Ord. 188(part), 1976)

Chapter 19.10

SENSITIVE AREAS

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19.10.005 General provisions.

Sections 19.10.005 to 19.10.190 are general provisions pertaining to sensitive areas. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.010 Purpose.

This chapter has been enacted for the following purposes:

A. To designate and classify sensitive areas and their ecosystems and to protect these areas

and their functions and values using the best available science, giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, while recognizing and allowing for reasonable use of private property;

B. To limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values;

C. To protect members of the public and public resources and facilities from public health or safety concerns, including injury, loss of life, or property damage due to events such as landslides and steep slope failures, erosion, seismic events, and mine hazards;

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

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

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

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

19.10.020 Applicability and jurisdiction.

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

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

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

1. An inventory of designated sensitive areas is maintained by the city and has been mapped on the Black Diamond Sensitive Areas Maps, as amended or supplemented. Those maps are resources for the identification of the probable location, extent and classification of sensitive areas. Such information may be used by the mayor or his/her designee as a basis for applying the provisions of this code, including requiring field investigation and special reports. In the event of a conflict between information contained in the sensitive areas maps and information relating to the criteria by which sensitive areas are defined, including information resulting from a field investigation, the latter shall prevail. Preparation and maintenance of such documents and maps shall not create liability on the part of the City of Black Diamond or any officer or employee thereof for any damages that result from reliance on said maps.

2. Any area within the city meeting the definition of one or more sensitive area, regardless of any formal mapping, identification or delineation, are hereby designated as sensitive areas and are subject to the provisions of this chapter. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.030 Relationship to other regulations.

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

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

C. These sensitive areas regulations shall be applied concurrently with review required under other city codes for development and use and the State Environmental Policy Act (SEPA), and any conditions required pursuant to this chapter shall be included in the review of development or use permits, including SEPA review and threshold de-

termination. If no other permits are required, a separate sensitive areas permit is provided for in Section 19.10.120.B.3.

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

19.10.050 Mitigation.

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

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

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

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

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

19.10.060 Allowed activities.

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

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

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

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

- a. The removal of non-native or noxious and invasive weeds; and
- b. Maintenance of existing, lawfully established landscaping and gardens within a regulated

sensitive area or its buffer, including but not limited to, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas as they existed prior to adoption of this code, provided that native growth protection areas, mitigation sites, or other areas protected via conservation easements or similar restrictive covenants are not covered by this exception.

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

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

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

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

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

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

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

teration of sensitive areas may be required and may require subsequent preparation of a sensitive areas report and appropriate permits for restoration in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within ninety days of the date of the emergency, and completed in a timely manner.

C. Actions subject to notification and approval.

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

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

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

implemented. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:

- a. There is no practical alternative to the proposed activity with less impact on sensitive areas;
- b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
- c. The activity involves disturbance of an area less than seventy-five square feet.

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

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

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

- a. All vegetation cut (tree stems, branches, etc.) shall be left within the sensitive area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation or due to the potential for a public safety hazard;
- b. The landowner shall replace any trees that are removed with new trees in accordance with an

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

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

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

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

7. Activities undertaken to comply with a United States Environmental Protection Agency superfund related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act that specifically preempts local regulations in the findings of the order. Provided that an action that requires compliance with

the purpose and intent of local regulations may require a submittal of sensitive area reports and may be processed as a sensitive areas permit.

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

D. All actions that do not meet the criteria above must be approved in accordance with sensitive areas review integrated with other required permits or by a sensitive areas permit. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.080 Exceptions.

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

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

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

D. *Hearing examiner review.* The hearing examiner shall review the application, except for the provisions for a non-conforming single family lot as provided in subsection (E) below, consider the recommendation of the mayor or his/her designee, and consider public testimony at a public hearing. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the applicable exception criteria in subsection (D).

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

1. *Public agencies and public utilities exception:*

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

b. The application of this chapter would unreasonably restrict the ability to provide utility services to the public;

c. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

d. The proposal attempts to protect and mitigate adverse impacts to the sensitive area functions and values; and

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

2. *Private property reasonable use exception:*

a. The application of this chapter would deny all reasonable economic use of the property;

b. No other reasonable economic use of the property has less impact on the sensitive area;

c. The proposed impact to the sensitive area is the minimum necessary to allow for reasonable economic use of the property;

d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor;

e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

f. The proposal will result in no net loss of sensitive area functions and values; and

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

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

a. A reasonable use exception may be approved administratively by the mayor or his/her designee for non-conforming single family residential lots within a subdivision filed within five years previous to the adoption of provisions of this code that render them non-conforming in compliance with RCW 58.17.17, or other lots or parcels under contiguous ownership and less than twenty thousand square feet in size that are not subject to landslide hazard areas and associated buffers, shall be subject to the following standards, in conform-

ance with the provisions for a reasonable use exception in subsection (D)(2)(c) through (g) and in accordance with the following criteria:

b. Non-conforming lots with an area of two thousand five hundred square feet or more available for a building area unrestricted by sensitive areas or buffers shall comply with the standards of this chapter. The building area means the entire area that will be disturbed to construct a structure with a ten-foot setback containing an allowed use and normal appurtenances, including parking and landscaping.

c. Non-conforming lots that do not meet the requirement of subsection b., above, shall provide the maximum setback and buffer dimension feasible while providing for a building envelope, including ten-foot setback, to a maximum of two thousand five hundred square feet on the lot. The building area shall generally be located on the portion of the lot farthest from the required sensitive area or buffer and/or the least-sensitive portion of the lot.

d. The area between the structure and the sensitive area should be maintained or planted in native trees and understory vegetation.

e. The mayor or his/her designee shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the applicable exception criteria in subsection (D)(2)(c) through (g).

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

19.10.100 Sensitive area determination and reports.

Sections 19.10.100 through 19.10.140 pertain to sensitive areas determination and reports.

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

19.10.110 Sensitive area pre-application meeting.

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of this chapter is encouraged to conduct a consultation meeting with the mayor or his/her designee prior to submitting

an application for development or other approval. At this meeting, the mayor or his/her designee shall discuss the requirements of this chapter; provide sensitive area maps, scientific information, and other source materials maintained by the city; outline the review process; and work with the applicant to identify any potential concerns that might arise during the review process, as well as discussing the need for other permit approvals and their procedures.

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

19.10.120 Sensitive area permit review.

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

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

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

a. Administratively approve the emergency action taken with no further action required;

b. Administratively approve restoration activities that do not require other permits or approvals. A sensitive areas report and/or mitigation plan may be required.

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

2. *Actions subject to notification and approval.*

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

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

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

1. *Review.* Upon receipt of a project application and a sensitive area determination form, the mayor or his/her designee shall review available

sensitive area maps and data and conduct a site inspection to review sensitive area conditions on site if needed. The administrator and/or his designee make a determination as to whether any sensitive areas may be affected by the proposal and if a sensitive areas report will be required based on the following indicators:

a. Indication of a sensitive area on the city sensitive areas maps that may be impacted by the proposed activity;

b. Information and scientific opinions from appropriate agencies, including but not limited to the departments of Fish and Wildlife, Natural Resources, and Ecology;

c. Documentation, from a scientific or other reasonable source, of the possible presence of a sensitive area; or

d. A finding by a qualified professional or a reasonable belief by the mayor or his/her designee that a sensitive area may exist on or adjacent to the site of the proposed activity.

2. *Determination decisions.*

a. No sensitive areas present. If, after a site visit, the analysis by the mayor or his/her designee indicates that the project area is not within or adjacent to a sensitive area or buffer and that the proposed activity is unlikely to degrade the functions or values of a sensitive area, then the mayor or his/her designee shall rule that the sensitive area review is complete and note on the determination form the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.

b. Sensitive areas present, but no impact—Report waiver. If the mayor or his/her designee determines that there are sensitive areas within or adjacent to the project area, but that the proposed activity is outside of required buffer areas and is unlikely to degrade the functions or values of the sensitive area, the administrator may waive the requirement for a sensitive area report. A summary of this analysis and the findings shall be included in any staff report or decision on the

underlying permit. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:

i. The boundaries and classification of the sensitive area and associated buffers can be reliably determined without a technical study, and there will be no alteration of the sensitive area or buffer;

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

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

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

d. Sensitive area jurisdiction decisions shall be final unless unknown information is brought to the attention of the mayor or his/her designee. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.130 Sensitive area reports.

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

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

C. *Modifications to report requirements.*

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

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

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

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

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

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

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

2. A copy of the site plan for the development proposal including:

a. A map to scale depicting sensitive areas and buffers, and any areas to be cleared;

b. Extent of the project area for the proposed activity;

c. Topographic elevations at two foot intervals for the sensitive area and its buffer, and at five foot intervals for the remainder of the project site;

d. Location of existing and proposed structures, and areas for storage of materials;

e. A description of the proposed stormwater management plan and facilities for the development and consideration of adverse impacts to drainage alterations.

3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

4. Identification and characterization of all sensitive areas and buffers, water bodies, and floodplains within three hundred feet of the proposed project area;

5. Detailed description of vegetation in and adjacent to the project area and its associated buffer;

6. A statement documenting sources of best available science and all assumptions made and relied upon;

7. A description of reasonable efforts made to apply mitigation in the order of preference as stipulated in Section 19.10.050;

8. If required, plans for adequate mitigation to offset any adverse impacts, in accordance with [Section] 19.10.140, and including, but not limited to:

a. The adverse impacts of any proposed development within or adjacent to a sensitive area or buffer on the sensitive area; and

b. The adverse impacts of any proposed alteration of a sensitive area or buffer on the development proposal, other properties and the environment.

9. A discussion of the performance standards applicable to the sensitive area and proposed activity; and

10. Proposed financial guarantees to ensure compliance.

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

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

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

19.10.140 Mitigation plans.

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

1. A description of the anticipated adverse impacts to the sensitive areas and the mitigating actions proposed and the purposes of the compensation measures (if applicable), including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted sensitive area;

2. A review of the best available science supporting the proposed mitigation; and

3. Specific information requirements and criteria are provided below for each sensitive area.

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

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

1. Specific calculations of the area of impact and mitigation area utilized;

2. The proposed construction sequence, timing, and duration;

3. Grading and excavation details;

4. Erosion and sediment control features;

5. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

6. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope

percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

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

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

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

1. *Performance surety.* The applicant shall post a cash performance bond, letter of credit, or other security acceptable to the city in the amount of one hundred twenty-five percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the sensitive area that are at risk, whichever is greater.

The surety shall be based on an itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs. The conditions of the surety shall be consistent with the purposes of this chapter and the conditions to be fulfilled. In the event of a breach of any condition of any such bond, the city may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution. The city shall release the bond upon determining that:

a. All activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the permit and the requirements of this chapter;

b. Upon the posting by the applicant of a maintenance surety.

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

first year of monitoring provided that the year one performance standards are met and the risk of subsequent failure is considered low.

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

4. Public development proposals may be relieved from having to comply with the surety requirements of this section if public funds have been committed through a budget process with final approval for mitigation, maintenance, or monitoring.

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

1. Mitigation banks shall only be used when they provide significant ecological benefits including long-term conservation of sensitive areas, important species, habitats and/or habitat linkages, and when they are consistent with the city's Comprehensive Plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.

2. The mitigation bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule WAC 173-700 or as revised, and RCW 90.84 and the federal mitigation banking guidelines as outlined in the Federal Register Volume 60, No 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.

3. Preference shall be given to mitigation banks that implement restoration actions that have been identified in an adopted Shoreline Restora-

tion Plan, watershed planning document prepared and adopted pursuant to RCW 90.82, a Salmonid Recovery Plan or project that has been identified on the Salmon Recovery Board Habitat Project List or by the Washington Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

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

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

19.10.150 Notice on title.

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

1. State the presence of the sensitive area and/or buffer area on the property, and identify that there are limitations and restrictions on uses and actions in or affecting the sensitive area and/or buffer imposed by this code and by the provisions of the sensitive areas code and specific conditions of approval. The notice shall indicate that the restrictions run with the land and may be altered only in conjunction with amendment of this chapter or amendment of specific conditions of approval as provided by this chapter.

2. Provide that management of the sensitive area is required to include, but is not limited to, maintenance or replacement of vegetation to assure the long-term viability of a community of native vegetation, control of invasive plant control, and fulfillment of other conditions of approval.

3. Provide for the right of the public, and specifically the City of Black Diamond, to enforce the terms of the restrictions through civil infraction or other legal address.

4. If a site plan has been approved indicating the extent of the sensitive area and buffer and permit conditions, a copy of the site plan together with relevant survey information and permit conditions shall be included in the notice filed.

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

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

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

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

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

2. The mayor or his/her designee may allow a sensitive area and buffer to be placed within a protective easement on a parcel with the responsibility for meeting all requirements of preservation and management placed on the owner of the par-

cel over which the easement is placed. This means of designation shall be used in cases where the size and the ecological functions of the sensitive area do not require coordinated management or where formation of an incorporated homeowner's association or other legal entity for management is found to be impractical because of the limited number of lots, or where ownership and management by the city, a qualified special district or a land trust is found to be impractical. This alternative generally will be limited to sensitive areas and buffers of less than twenty thousand square feet and developments of fewer than ten parcels, or non-residential or multi-family development.

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

D. The applicant shall submit proof that the notice, dedication or easement has been filed for public record before the city shall approve any final plat or final site plan for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this section.

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

19.10.160 Building setbacks.

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

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

C. If slopes adjacent to the buffer for wetlands or water bodies exceed fifteen percent, including

slopes created by grading, a swale installed on the outside edge of the buffer or other engineered solution shall be installed sufficient to intercept surface water movement.

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

1. Landscaping, including rockeries not over forty-two inches high provided construction does not alter the buffer or sensitive area;
 2. Uncovered decks, platforms, porches and similar projections not over forty-two inches high;
 3. Building eaves, cornices, chimneys and similar projections;
 4. Impervious surfaces such as driveways, parking lots, roads, and patios provided that such surfaces conform to applicable water quality standards and that construction equipment does not enter the buffer or sensitive area;
 5. Clearing and grading consisting of not over forty-two inches of cut or fill;
 6. Fences, in accordance with local covenants and other design standards;
 7. Small utility projects.
- (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.170 Non-conforming development.

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

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

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

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

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

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

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

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

- a. Expansion of floor area by five hundred square feet or more, or by more than ten percent but less than fifty percent, whichever is less; or
- b. Expansion of impervious surface by more than one thousand square feet, or by more than ten percent but less than fifty percent, whichever is less; or

c. Remodeling or renovation equal to or greater than fifty percent but less than one hundred percent of the value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems.

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

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

- a. Expansion of floor area by fifty percent or more, or the expansion of impervious surface by fifty percent or more; or

b. Remodeling or renovation equal to or exceeding one hundred percent of the value of the existing structures or improvements, excluding plumbing and mechanical systems.

Such substantial reconstruction shall be considered the same as new construction and shall fully comply with the provisions of this code.

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

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

2. Lot depth one hundred feet to one hundred fifty feet—Buffers may be adjusted to utilize no more than fifty percent of lot depth or fifty percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.

3. Lot depth one hundred fifty to two hundred feet—Buffers may be adjusted to utilize no more than sixty percent of lot depth or sixty percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.

4. Lot depth two hundred feet to two hundred fifty feet—Buffers may be adjusted to no more than sixty-five percent of lot depth or sixty-five percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.

4. Lot depth two hundred fifty feet to three hundred feet—Buffers may be adjusted to utilize no more than seventy percent of lot depth or seventy percent of the distance between an existing primary building and the edge of the wetland or stream or other sensitive area.

5. All other provisions for design and management of buffer areas and adjacent land shall apply, provided that allowed uses in buffer areas may be restricted to reduce impacts on ecological functions and values.

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

19.10.180 Administration.

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

B. The mayor or his/her designee shall have a right to enter upon any property at reasonable times and to make such inspections as are necessary to determine compliance with the provisions of this chapter or the conditions imposed pursuant to this chapter. The city shall make a reasonable effort to locate the owner or persons in charge and notify them of the times and purposes of required entry.

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

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

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

19.10.190 Appeals.

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

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

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

19.10.200 Wetlands.

Sections 19.10.205 to 19.10.240 pertain to wetlands.

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

19.10.210 Designation, rating and mapping wetlands.

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

A. Designating wetlands. Wetlands are those areas designated in accordance with the requirements of RCW 36.70A.175 and 90.58.380 and the *Washington State Wetland Identification and Delineation Manual (1997)*. All areas meeting the criteria in manual regardless of mapping or other identification are designated sensitive areas and are subject to the provisions of this chapter.

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

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

2. *Headwaters wetlands.* The wetland complex associated with the headwaters of Ginder Creek, Lawson Creek and Ravensdale Creek are defined as headwaters wetlands. The general boundaries of the area affected are designated within the Best Available Science Document, Technical Appendix B, provided that the dimensions of the area

shall be defined by the field verified wetland boundaries and the buffers defined in Section 19.10.230.

3. *Other wetlands.* All other wetlands are rated according the following categories based on the criteria provided in the Washington State Wetland Rating System for Western Washington, revised August 2004 (Ecology Publication #04-06-025). These categories are generally defined as follows:

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

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

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

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

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

D. *Mapping.* The approximate location and extent of identified wetlands are shown on the Black Diamond Sensitive Areas Map(s). These maps are to be used as a guide for the city, project applicants, and/or property owners, and may be continuously updated as mapped wetlands be-

come more specifically delineated and new wetlands (if any) are identified. They are a reference and do not provide a final sensitive area designation. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.220 Uses and activities allowed in wetlands and adjacent lands.

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

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

1. Outdoor recreational or educational activities directly related to the cultural, recreational, scientific and educational aspects of the wetland and buffer and that do not remove vegetation or otherwise affect the function of the wetland or buffer (including wildlife management, viewpoints, outdoor scientific or interpretive facilities, and sports fishing) that have a minimal adverse impact may be permitted within a category II, III, or IV wetlands or their buffers and may be permitted only within the buffer of a category I wetland the buffer of a wetland in the core complex or the buffer of a headwaters wetland.

2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.

3. The harvesting of crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources may be permitted within a category II, III, or IV wetlands or their buffers and may be permit-

ted only within the buffer of a category I wetland the buffer of a wetland in the core complex or the buffer of a headwaters wetland.

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

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

1. Drilling for utilities under a category II, III, or IV wetland and buffer provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed. Staging areas shall be located outside the wetland buffer.

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

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

- a. Trails are limited to buffer areas except for limited area of pile supported trail sections or viewing areas may be placed within category II, III and IV wetlands for interpretive purposes.

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

- c. The trail or facility is located in the outer fifty percent of the category II, III and IV buffer and the outer twenty-five percent of the buffer of

a category I wetland, the buffer of a wetland in the core complex or the buffer of a headwaters wetland, except for limited placement closer to the wetland edge or within a category II, III and IV wetland for interpretive purposes as provided above.

d. The trail or facility is constructed and maintained in a manner that minimizes disturbance of the wetland or buffer. Trails or facilities within wetlands should be placed on an elevated structure as an alternative to fill.

e. Any adverse impacts on wetland functions and values are mitigated in accordance with Section 19.10.240.

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

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

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

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

c. Staging areas are located outside the wetland buffer.

d. Impacts on wetland functions are mitigated in accordance with Section 19.10.240.

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

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

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

c. Impacts on wetland functions are mitigated in accordance with Section 19.10.240.

3. Linear utilities and facilities such as water and sewer lines providing local delivery service, but not including non-linear facilities such as electrical substations, water and sewage pumping stations, water storage tanks, and not including petroleum products pipelines and not including transformers or other facilities containing hazardous substances, may be located in category II, III, and IV wetlands and their buffers and the buffer of a category I wetland, the buffer of a wetland in the core complex or the buffer of a headwaters wetland if the following criteria are met:

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

b. The utility line is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation.

c. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line, which may include boring, and the area is restored following utility installation.

d. Buried utility lines shall be constructed in a manner that prevents adverse impacts to subsurface drainage. This may include the use of trench plugs or other devices as needed to maintain hydrology.

e. Impacts on wetland functions are mitigated in accordance with Section 19.10.240.

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

a. There is no reasonable location or route outside the wetland or wetland buffer based on analysis of alternative routes including through

the provisions of RCW 8.24. Location within a wetland buffer shall be preferred over a location within a wetland. Location in a category II, III, and IV wetlands or their buffers shall be preferred over location in a category I wetland or its buffer, a wetland in the core complex or its buffer, or a headwaters wetland or its buffer.

b. Facilities in the buffer parallel to the wetland edge shall be located as far from the wetland edge as possible.

c. Clearing, grading, and excavation activities are limited to the minimum necessary, which may include placement on elevated structures as an alternative to fill, where feasible.

d. Disturbance of soils and vegetation shall be minimized.

e. Impacts on wetland functions are mitigated in accordance with Section 19.10.240.

5. Storm water detention/retention ponds are not permitted in a wetland buffer. However, storm water conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a wetland buffer, but only if the following criteria are met:

a. Due to topographic or other physical constraints, there are no feasible locations for these facilities to discharge to surface water through existing systems or outside the buffer.

b. Locations and designs that infiltrate water shall be preferred for category I, II, III, or IV wetland buffer over a design that provides for pipelines or surface discharge across the buffer or into the wetland. Only infiltration facilities are allowed within the buffer of a wetland in the core complex, or the buffer of a headwaters wetland and only when no trees of greater than four inches in diameter are disturbed.

c. A hydroperiod analysis is conducted and no impact is demonstrated by the study.

d. The discharge into a category I, II, III, or IV wetland is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation and avoids long-term rill or channel erosion. Surface water discharge into a wetland in the core complex or a

headwaters wetland is prohibited unless analysis demonstrates that infiltration is not feasible because of inherent features such as soil type.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Use of permeable pavement;

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

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

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

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

e. Adopt and implement an integrated pest management system including limiting use of fertilizers, herbicides and pesticides within twenty-five feet of the buffer of category III, or IV wetland, within fifty feet of the buffer of a category I, II, or headwaters wetland, and within one hundred feet of the buffer of a wetland in the core complex.

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

19.10.230 Wetland buffers.

A. *Wetland buffers.* Buffer requirements contained in this section shall apply to all wetlands designated in this chapter and all proposed miti-

gation sites. Except as otherwise provided for in this chapter, all wetland buffers shall be maintained in an undisturbed or enhanced condition.

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

1. The buffer may be extended further:

a. If land within and adjacent to the buffer has a slope in excess of thirty percent the buffer shall extend at least twenty-five feet beyond the top of the thirty percent slope, and

b. If land within and adjacent to the buffer is designated a landslide hazard, the buffer shall extend at least to the extent of the buffer designated in Section 19.10.410(B).

2. If a category III or IV wetland is located within the outer fifty percent of the buffer of a wetland designated as part of the core wetland complex, and does not have a surface hydrologic connection to the core complex, the buffers for that wetland shall be the standard wetland buffer in subsection (D), below.

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

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

buffers based on wetland category are as follows:

| Buffer Dimensions for Other Wetlands (Moderate Intensity) | | |
|--|---|---|
| Wetland Category | Wetland Characteristics | Minimum Buffer Width |
| Category IV | All | 40 feet |
| Category III | Moderate level of function for habitat (score for habitat 20—28 points) | 110 feet |
| | Not meeting above characteristic | 60 feet |
| Category II | High level of function for habitat (score for habitat 29—36 points) | 225 feet |
| | Moderate level of function for habitat (score for habitat 20—28 points) | 110 feet |
| | High level of function for water quality improvement and low for habitat (score for water quality 24—32 points; habitat less than 20) | 75 feet |
| | All others | 75 feet |
| Category I | National Heritage Wetlands | 190 feet |
| | Bogs | 190 feet |
| | Forested | Based on score for habitat or water quality |
| | High level of function for habitat (score for habitat 29—36 points) | 225 feet |
| | Moderate level of function for habitat 20—28 points) | 110 feet |
| | High level of function for water quality improvement (24—32 points) and low for habitat (less than 20 points) | 75 feet |
| | All others | 75 feet |

E. *Measurement of wetland buffers.* All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. The required buffer should be extended to include any adjacent regulated wildlife habitat area, landslide hazard areas and/or erosion hazard areas and required buffers. Buffers shall not be extended across existing human features that functionally and effectively separate the potential buffer from ecological functions of the resource, and shall include hardened surfaces including improved roads or other lawfully established structures or surfaces, or the developed portions of lots, under separate ownership, lying between the habitat area and the subject property, unless restoration of buffer functions on such property is or

may reasonably be expected to be the subject of a permit condition or an adopted public plan. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways and other mowed or paved areas will not be considered buffers.

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

1. Maintaining adequate cover of native vegetation including trees and understory; if existing

tree cover is less than a relative density of twenty, planting shall be required consisting of a density of three hundred seedlings per acre or the equivalent;

2. Provide a dense screen of native evergreen trees at the perimeter of the buffer. Clearing of existing second growth forest generally results in trees with little canopy at or near the ground level:

a. Core wetland and stream complex buffers generally will require interplanting among existing trees within an area of thirty to fifty feet to provide for regeneration of native species and prevent the establishment of invasive species.

b. Other wetland buffers will require plantings if existing vegetation is not sufficient to prevent viewing adjacent development from within the buffer or penetration of light and glare into the buffer or to prevent establishment of invasive species.

c. Planting specifications generally shall consist of as many rows of the following units as required to accomplish the management objectives:

(i) Two rows of three-foot high stock of native evergreens at a triangular spacing of fifteen feet, or

(ii) Three rows of gallon containers at a triangular spacing of eight feet.

3. Fencing may be required in order to separate sensitive areas from developed areas;

4. Provide a plan for control of invasive weeds, and remove existing invasive species;

5. Provide for a monitoring and maintenance plan for a period of at least five years, except this provision may be waived for single family residential lots;

6. Vegetation management plans for all wetlands may provide for preservation of view corridors from existing single family residences by the placement of new vegetation in a manner that frames views, provided that the same density is maintained and key functions such as shading for temperature attenuation and habitat functions are maintained.

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

1. A larger buffer is needed to protect other sensitive areas;

2. The buffer or adjacent uplands has a slope greater than fifteen percent or is susceptible to erosion and standard or proposed erosion-control measures will not prevent adverse impacts to the wetland.

H. *Wetland buffer width averaging.* The mayor or his/her designee may allow modification of the standard wetland buffer width in accordance with an approved sensitive area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

1. Averaging to improve wetland protection may be permitted when all of the following conditions are met:

a. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

b. Buffer averaging will not reduce wetland functions or functional performance;

c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and all increases in buffer dimension for averaging are generally parallel to the wetland edge;

d. The buffer width at its narrowest point is not reduced to less than fifty percent of the standard width and in no case less than thirty-five feet.

2. Averaging to allow reasonable use of a parcel may be permitted when all of the following criteria are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;

b. The buffer averaging does not reduce the functions or values wetland, or the buffer averaging, in conjunction with vegetation enhancement or other measures increases the wetland function;

c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and all increases in buffer dimension for averaging are generally parallel to the wetland edge;

d. The buffer at its narrowest point is never less than one-half of the required width except where the mayor or his/her designee finds that there is an existing feature such as a roadway that limits buffer dimension, or an essential element of a proposed development such as access that must be accommodated for reasonable use and requires a smaller buffer.

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

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

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

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

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

b. Buffer area shall be fenced and signs posted.

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

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

b. Buffer area shall be fenced and signs posted.

3. *Substantial alteration or redevelopment:*

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

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

c. Buffer area shall be fenced and signs posted. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.235 Provisions for small isolated wetlands.

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

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

1. The wetland is not associated with a riparian corridor; and

2. The wetland is not part of a wetland mosaic; and

3. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; and

4. Impacts of displaced wetlands shall be mitigated pursuant to Section 19.10.240.

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

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

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

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

3. Wetlands that achieve a score of at least twenty points on the Habitat Functions criteria of the Wetland Rating Form for Western Washington shall maintain a connection to a linear corridor maintained as a stream buffer, a buffer associated with a geological hazard or other designated open space buffer sufficient to allow movement of terrestrial wildlife to and from the wetland and buffer complex without interruption by roads, paved areas or buildings within fifty feet. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.240 Mitigation requirements.

A. *Mitigation plan.* A mitigation plan that achieves equivalent or greater biologic functions

will be required for all proposed wetland alterations or to mitigate unavoidable adverse impacts to the wetland functions and values resulting from a proposed action. Mitigation plans shall be prepared consistent with the minimum requirements of Section 19.10.140.

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

1. Compensation areas shall be determined according to the function, acreage, type, location, time factors, ability to be self sustaining and probability of project success.

2. Restored or created wetlands should have a higher function and value than the altered wetland.

3. Compensatory projects shall be completed immediately after the activities that will disturb wetlands and prior to use or occupancy, unless otherwise agreed to within the permit application. Construction of compensatory projects shall be timed to reduce adverse impacts to existing wildlife and flora.

C. Type and location of mitigation.

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

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

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

b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

c. Off-site locations shall be in the same sub-drainage basin unless established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site.

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

a. Out-of-kind replacement will result in a wetland with greater functional value; or

b. Scientific problems such as exotic vegetation and changes in watershed hydrology make in-kind compensation impractical.

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

a. Restoring wetlands on upland sites that were formerly wetlands (also called re-establishment);

b. Creating wetlands where none previously existed on upland sites. The preferred sites are those that have been disturbed such that vegetative cover consists primarily of non-native introduced species. Creation of wetlands in areas of mature native vegetation should be avoided when the habitat and other values of the site would be lost. Creation on upland sites should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed;

c. Restoration of wetland functions in an existing wetland area that is significantly degraded (also called rehabilitation). This may be done in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements;

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

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

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

* Ratio is the replacement area: impact area.

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

2. The mayor or his/her designee may increase the replacement ratios to account for uncertainties as to the success of the restoration or creation or the time required for replacement

wetlands to be effective. Such an increase will be based on the review of a sensitive area report prepared by a qualified professional.

3. In the case of off-site compensation the mayor or his/her designee may decrease the replacement ratios based on the review of a sensitive area report prepared by a qualified professional and upon findings reviewed by agencies with expertise that no net loss of wetland function or value is attained under a reduced compensation ratio; which in no case shall be less seventy-five percent of the values in the table above for the core wetland complex and fifty percent of the values in the table above for other wetlands and in no case lower than 1.5:1.

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

F. *Wetlands enhancement as mitigation.* Any applicant proposing to alter a wetland may propose enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a sensitive area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.250 Wetland mitigation plan.

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

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

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

1. The rationale for site selection;
2. General description and scaled drawings of the activities proposed including, but not limited to, clearing, grading/excavation, drainage alterations, planting, invasive plant management, installation of habitat structures, irrigation, and other site treatments associated with the development activities and proposed mitigation action(s);
3. A description of the ecological functions and values that the proposed alteration will affect and the specific ecological functions and values the proposed mitigation area(s) shall provide, together with a description of required or recommended mitigation ratios and an assessment of factors that may affect the success of the mitigation program;
4. Overall goals of the plan, including wetland function, value, and acreage;
5. Description of baseline (existing) site conditions including topography, vegetation, soils, hydrology, habitat features (i.e., snags), surrounding land use, and other pertinent information;
6. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to support existing and compensatory wetland area(s);
7. Nature of mitigation activities, including area of restored, created, enhanced and preserved wetland, by wetland type;
8. Detailed grading and planting plans showing proposed post-construction topography; general hydrologic patterns; spacing and distribution of plant species, size and type of proposed planting stock, watering or irrigation plans, and other pertinent information;
9. A description of site treatment measures including invasive species removal, use of mulch and fertilizer, placement of erosion and sediment

control devices, and best management practices that will be used to protect existing wetlands and desirable vegetation;

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

C. Specific measurable performance standards that the proposed mitigation action(s) shall achieve together with a description of how the mitigation action(s) will be evaluated and monitored to determine if the performance standards are being met and identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates that project performance standards are not being met. The performance standards shall be tied to and directly related to the mitigation goals and objectives.

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

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

19.10.260 Wetland mitigation monitoring.

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

1. The project does not meet the performance standards identified in the mitigation plan.

2. The project does not provide adequate replacement for the functions and values of the impacted sensitive area.

3. The project involves establishment of forested plant communities, which require longer time for establishment.

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

1. Number and location of vegetation sample plots used to document compliance with performance standards;

2. Measurements of the percent survival of planted material, plant cover, stem density, presence of invasive species, or other attributes;

3. For sites that involve wetland creation, re-establishment or rehabilitation, hydrologic observations of soil saturation/inundation as needed to demonstrate that a site meets the wetland hydrology criterion;

4. Representative photographs of the site;

5. A written summary of overall site conditions and recommendations for maintenance actions if needed;

6. Other information that the mayor or his/her designee deems necessary to ensure the success of the site.

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

19.10.300 Fish and wildlife conservation areas.

Sections 19.10.300 through 19.10.340 pertain to fish and wildlife conservation areas.

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

19.10.310 Designation and mapping.

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

A. *Core stream and wetland complex.* The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as the core stream and wetland complex. The general boundaries of

the area affected are designated on Attachment A, provided that the dimensions of the area shall be defined by the field verified stream boundaries and the buffers defined in Section 19.10.325.

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

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

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

2. Bald Eagle habitat pursuant to WAC 232-12-292;

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

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

a. Department of Natural Resources (DNR) designated Natural Areas Preserves (NAP) and Natural Resource Conservation Areas (NRCA);

b. Washington Department of Fish and Wildlife (WDFW) designated Wildlife Recreation Areas (WRA);

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

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

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

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

1. In order to nominate an area or a species to the category of locally important an individual or organization must:

a. Demonstrate a need for special consideration based on:

- i. Declining population;
- ii. High sensitivity to habitat manipulation;

or

iii. Demonstrated commercial, recreational, cultural, or other special value;

b. Propose relevant management strategies considered effective and within the scope of this chapter; and

c. Provide a map showing the species or habitat location(s).

2. Submitted proposals shall be reviewed by the city and may be forwarded to the state departments of fish and wildlife, natural resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.

3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter, the city planning commission will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats or species and will be subject to the provisions of this chapter.

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

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

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

A. Core stream and wetland complex. The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and

Ravensdale Creek are designated as the core stream and wetland complex. The general boundaries of the area affected are designated on Attachment A, provided that the dimensions of the area shall be defined by the field verified stream boundaries and the buffers defined in Section 19.10.325.

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

1. *Type S water.* All waters, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands.

2. *Type F water.* Segments of natural waters other than type S waters, which are within defined channels and periodically inundated areas of their associated wetlands or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water and which in any case contain fish habitat.

3. *Type Np water.* All segments of natural waters within defined channels that are perennial non-fish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

4. *Type Ns water.* All segments of natural waters within defined channels that are not type S, F, or Np waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a type Np water. Ns waters must be physically connected by an above-ground channel system to type S, F, or Np waters.

C. *[Non-fish habitat streams.]* Non-fish habitat streams are those streams that have no known or potential use by anadromous or resident fish based on the stream character, hydrology and gra-

dient, provided that human-made barriers shall not be considered a limit on fish use except when the mayor or his/her designee makes the following findings:

1. The human-made barrier is located beneath public infrastructure that is unlikely to be replaced and it is not feasible to remove the barrier without removing the public infrastructure, provided that the infrastructure is not identified for future modification in the capital facility or other plans of the public agency responsible for the infrastructure, and the facility will not exceed its design-life within the foreseeable future;

2. The human-made barrier is located beneath one or more occupied structures and it is not feasible to remove the barrier without removing the structure, and the structure is of a size and condition that removal or substantial remodel is not likely;

3. The human-made barrier is not identified for removal by a public agency or in an adopted watershed plan.

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

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

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

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

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

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

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

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

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

| Type | Buffer Width |
|---|--------------|
| Type S—All waters, as inventoried as "shorelines of the state" under the jurisdiction of the Shoreline Management Act, except associated wetlands, which shall be regulated in accordance with this chapter | 25 feet |
| Type F—Segments of natural waters other than Type S Waters | 150 feet |
| Type Np—Segments of natural waters that are perennial non-fish habitat streams. | 100 feet |
| Type Ns—Segments of natural waters within defined channels that are seasonal, non-fish habitat streams | 50 feet |

E. *Buffer measurement.* The buffer shall be measured landward horizontally on both sides of the water body from the ordinary high water mark as identified in the field perpendicular to the alignment of the stream or lake/pond bank. The re-

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

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

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

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

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

I. *Water body buffer width transfer.*

1. The mayor or his/her designee may allow decreased widths with transfer of an equal area of buffer from water bodies not within the core stream and wetland complex to the buffers of the core

stream and wetland complex in accordance with the table below provided the specific measures in [subsection] (2) below are incorporated into the buffers and adjacent development.

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

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

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

1. Averaging to improve water body habitat protection may be permitted when all of the following conditions are met:

a. The water body or buffer area has significant differences in characteristics that affect its habitat functions;

b. Buffer averaging will not reduce stream or adjacent upland habitat functions or adversely affect salmonid habitat;

c. Buffer averaging is combined with other provisions to provide additional habitat protection, such as buffer vegetation enhancement;

d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and the buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the water body and decreased adjacent to the lower-functioning or less sensitive portion and all increases in buffer dimension for averaging are generally parallel to the stream OHWM;

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

2. Averaging to allow reasonable use of a parcel may be permitted when all of the following criteria are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;

b. The buffer averaging does not reduce the functions or values of the stream or riparian habitat, or the buffer averaging, in conjunction with vegetation enhancement, increases the habitat function;

c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and all increases in buffer dimension for averaging are generally parallel to the wetland edge;

d. The buffer at its narrowest point is never less than seventy-five percent of the required width except where the mayor or his/her designee finds that there is an existing feature such as a roadway that limits buffer dimension, or an essential element of a proposed development such as access that must be accommodated for reasonable use and requires a smaller buffer.

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

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

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

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

1. *Minor alteration of existing development:*

a. Buffer vegetation enhancement shall be either fifty percent of buffer standard or fifty percent of existing shoreline structure setback.

- b. Buffer area shall be fenced and signs posted.
 - 2. *Moderate alteration of existing development.*
 - a. Buffer vegetation enhancement shall be either seventy percent of buffer standard or sixty percent of existing shoreline structure setback.
 - b. Buffer area shall be fenced and signs posted.
 - 3. *Substantial alteration or redevelopment.*
 - a. Buffer dimension shall be one hundred percent of standard, provided, if the standard buffer dimension exceeds the existing setback as measured from the edge of the primary building, the buffer may be reduced to ninety percent of the existing setback from the primary building to the edge of the sensitive area.
 - b. Buffer vegetation enhancement shall be one hundred percent of standard.
 - c. Buffer area shall be fenced and signs posted.
 - d. Existing bulkheads and docks shall be replaced with conforming structures.
- (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.328 Water bodies—Culvert replacement.

A. Culverts on public or private roads that are a barrier to fish movement shall be replaced at the time of major reconstruction, or if additional subdivision increases the number of lots served by the roadway by twenty percent or more. Replacement structures shall meet the standards of [subsection] 19.10.330(C)(10). This provision does not limit potential requirements for replacement under other statutes or treaty rights.

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

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

19.10.330 Activities allowed in water bodies and habitat buffers.

The activities listed below are allowed in water bodies and habitat buffers in addition to those

activities listed in, and consistent with, the provisions and activities established in Section 19.10.060, in accordance with the review provisions below:

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

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

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

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

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

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

of buffer area may be required to compensate for replacement of mature vegetation with replanting.

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

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

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

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

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

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

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

f. Any adverse impacts on habitat functions and values are mitigated in accordance with Section 19.10.340.

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

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

a. There is no reasonable location or route outside the wetland or wetland buffer based on

analysis of system needs, available technology and alternative routes. Location under a buffer shall be preferred over a location under a water body.

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

c. Staging areas are located outside the buffer.

d. Impacts on habitat functions are mitigated.

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

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

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

c. Impacts on habitat functions are mitigated.

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

a. There is no reasonable location or route that does not cross the water body or outside the buffer based on analysis of system needs, available technology and alternative routes. Location within a buffer shall be preferred over a location within a

water body. Crossings shall be contained within the footprint of an existing road or utility crossing where possible.

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

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

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

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

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

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

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

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

hydraulic project approval. The applicant or property owner shall maintain fish passage through bridge or culvert.

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

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

e. Access to private development sites may be permitted to cross streams, if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of RCW 8.24. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

f. Any adverse impacts on habitat functions and values are mitigated in accordance with Section 19.10.340.

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

a. Due to topographic or other physical constraints there are no feasible locations for these facilities outside the buffer;

b. The discharge is located as far from the ordinary high water mark as possible and in a manner that minimizes disturbance of soils and vegetation;

c. The discharge outlet is in an appropriate location and is designed to prevent erosion and promote infiltration;

d. The discharge meets stormwater flow and water quality standard as provided in the 2005 Ecology Stormwater Manual for Western Washington, or the equivalent;

e. Any adverse impacts on habitat functions and values are mitigated in accordance with Section 19.10.340.

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

a. Natural shoreline processes will be maintained to the maximum extent practicable. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs;

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

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

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

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

7. New public flood protection measures and expansion of existing measures may be permitted, provided that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection,

and shall be subject to requirement of the Shoreline Master Program, where applicable, hydraulic project approval and other permits.

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

a. To limit the effects on ecological functions, the number of docks should be limited and new subdivisions should employ shared moorage whenever feasible. Docks on shorelines of the state must comply with policies and regulations of the City of Black Diamond Shoreline Master Program.

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

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

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

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

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

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

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

a. Launch ramps shall be located and designed to minimize adverse effects on fluvial and limnal processes including stream gradient, and substrate; recruitment of woody debris; and fish habitat, including that related to anadromous fish.

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

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

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

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

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

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

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

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

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

e. Any adverse impacts on habitat functions and values are mitigated in accordance with Section 19.10.340.

f. A construction bond for one hundred twenty-five percent of the cost of the structure and all mitigation measures shall be filed prior to construction and a maintenance agreement shall specify responsibility for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a civil engineer licensed in the State of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.

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

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

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

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

c. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or re-establishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.335 Habitat other than fish and wildlife habitat conservation areas.

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

| Fish and Wildlife Habitat Conservation Area | Buffer Requirement |
|---|--|
| Areas with which federally listed threatened or endangered species have a primary association. State Priority Habitats and areas with which Priority Species have a Primary Association. A primary association means a sensitive component(s) of the habitats of a species, which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. | Buffers shall be based on recommendations provided by the Washington Department of Fish and Wildlife PHS Program; provided that where no such recommendations are available, the buffer width shall be determined based on published literature concerning the species/habitat(s) in question and/or the opinions and recommendations of qualified professional with appropriate expertise. |
| Natural Area Preserves and Natural Resource Conservation Areas | Buffers shall be based on recommendations provided by site managers provided that the management strategies are considered effective and within the scope of this chapter. |
| Locally Important Habitat Areas | The need for and dimensions of buffers for locally important species or habitats shall be determined on a case by case basis, according to the needs of specific species or habitat area of concern. The mayor or his/her designee shall coordinate with the Washington Department of Fish and Wildlife and other State, Federal or Tribal experts in these instances, and shall use WDFW PHS management recommendations when available. |

B. Alterations that occur within a locally important habitat area or that may affect a locally important species as defined herein shall be subject to review on a case-by-case basis. The mayor or his/her designee shall have the authority to require an assessment of the effects of the alteration on species or habitats and may require mitigation to ensure that adverse effects do not occur. This standard is intended to allow for flexibility and responsiveness with regard to locally important species and habitats.

C. Wildlife corridors. Corridors providing for migration to and from areas outside the urban growth area are provided in the core stream and wetland complex. Specific standards include:

| Stream, Wetland or other Corridor Feature | Corridor Requirements and Management Measures |
|--|--|
| Rock Creek/Lake Sawyer/Ravensdale Creek to the north and northeast | <ul style="list-style-type: none"> • All new bridges shall provide for animal passage including height sufficient for large mammals and width sufficient for a minimum 15 foot corridor adjacent to OHWM on at least one side. • Existing Rock Creek/Abrams Road Bridge shall be replaced at the time of development of lands served by the bridge to meet the same standards. • Existing Rock Creek/Roberts Road bridge should be replaced to meet the same bridge standards when programmed as part of capital improvement program. |

| Stream, Wetland or other Corridor Feature | Corridor Requirements and Management Measures |
|---|---|
| Jones Lake/Jones Creek to the east | <ul style="list-style-type: none"> • All new bridges shall provide for animal passage including height sufficient for large mammals and width sufficient for a minimum 15 foot corridor adjacent to OHWM on at least one side. • Existing Jones Creek/SR 169 Bridge should be replaced to meet the same bridge standards when substantial improvements are made to the road, or when programmed as part of other improvements or as part of fish passage programs. |
| Black Diamond Lake/Black Diamond Creek to the southeast | <ul style="list-style-type: none"> • Minimum corridor width of 450' shall extend to the southwest boundary of the UGA along the general alignment of Black Diamond Creek following designated wetlands. • All new bridges shall provide for animal passage including height sufficient for large mammals and width sufficient for a minimum 15 foot corridor adjacent to OHWM on at least one side. • Existing bridge on Chub Lake Road creek shall be replaced at the time of development of lands served by the bridge to meet the same standards. |

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

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

The following provisions shall apply in addition to the sensitive area report requirements of 19.10.130:

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

1. If no fish and wildlife habitat conservation areas are present, then review will be considered complete.

2. If the site evaluation determines that the species or habitat is present, the mayor or his/her designee may require a sensitive areas assessment report.

B. The mayor or his/her designee may waive the report requirement for a single-family development that involves less than two thousand five hundred square feet of clearing and/or vegetation removal and will not directly disturb the designated stream or pond buffer area, designated species, or specific areas or habitat features that comprise the fish and wildlife habitat conservation area (nest trees, breeding sites, etc.) as indicated by a site plan or scaled drawing of the proposed development, except in the case of Bald Eagle Habitat.

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

1. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.

2. Determination of the resource category and standard buffers.

3. Identification of sensitive areas and buffers within three hundred feet of the site and an estimate of the existing approximate acreage for each. The assessment of off-site resources shall be based on available information and shall not require accessing off-site properties if permission of the property owner cannot be obtained.

4. Proposed development activity.

5. A detailed description of the effects of the proposed development on ecological functions and buffer function and value, including the area of direct disturbance; area of buffer reduction or averaging including documentation that functions and values will not be adversely affected by the reduction or averaging; effects of storm water management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light or human intrusion.

6. Provisions to reduce or eliminate adverse impacts of the proposed development activities including, but not limited to:

- a. Clustering and buffering of development;
- b. Retention of native vegetation;
- c. Access limitations, including fencing.

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

e. Methods to reduce proximity impacts; and

f. Other appropriate and proven low impact development techniques.

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

19.10.340 Mitigation requirements.

A. *Impacts and mitigation.* Activities that adversely affect fish and wildlife habitat conservation areas and/or their buffers should generally be avoided through site design, including clustering. Unavoidable impacts to designated species or hab-

itats shall be compensated for through habitat creation, restoration and/or enhancement to achieve no net loss of habitat functions and values in accordance with the purpose and goals of this chapter.

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

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

1. General description and scaled drawings of the activities proposed including, but not limited to, clearing, grading/excavation, drainage alterations, planting, invasive plant management, installation of habitat structures, irrigation, and other site treatments associated with the development activities and proposed mitigation action(s);

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

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

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

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

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

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

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

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

19.10.400 Geologically hazardous areas.

Sections 19.10.400 through 19.10.440 pertain to geologically hazardous areas.

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

19.10.405 Designation and mapping.

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

1. *Erosion hazard areas.* Erosion hazard areas are those areas with soils identified by the U.S.

Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.

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

a. Areas of historic failures, such as areas that have shown evidence of historic failure or instability, including but not limited to back-rotated benches on slopes; areas with structures that exhibit structural damage such as settling and racking of building foundations; and areas that have toppling, leaning, or bowed trees caused by ground surface movement;

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

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

d. Areas with all three of the following characteristics:

i. Slopes steeper than fifteen percent; and

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

iii. Springs or ground water seepage.

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

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

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

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

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

a. Areas subject to surface faulting during a seismic event;

b. Areas with underlying deposits indicative of a risk of liquefaction during a seismic event;

c. Areas subject to slope failure during a seismic event;

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

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

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

19.10.410 Development standards—Landslide hazard areas.

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

1. Activities and facilities that do not require prior review or approval, provided, that where the mayor or his/her designee determines such activ-

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

a. Outdoor recreational or educational activities that do not remove vegetation or displace soils or install facilities, other than temporary or small scale structures that will be abandoned in the case of earth movement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Shall be equal to the height of the slope (the vertical distance from the toe of slope to the

top of slope, for a forty percent or greater slope, this shall be from the top of the portion of the slope which is a forty percent slope, provided that another forty percent slope is not located within the buffer area, in that case, the buffer shall be located from the top of the highest forty percent slope);

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

c. Fifty feet from the top of the slope.

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

a. The height of the slope; or

b. Fifty feet from the toe of the slope.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vii. Structures will meet the following design standards:

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

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

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

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

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

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

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

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

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

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

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

19.10.415 Landslide hazard—Review and reporting requirements.

A. When sensitive area maps or other sources of credible information indicate that a site pro-

posed for development or alteration is or may be located within a landslide hazard area the mayor or his/her designee shall have the authority to require the submittal of a landslide hazard assessment report. The following provisions shall apply in addition to the sensitive area report requirements of [Section] 19.10.130:

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

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

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

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

C. Analysis of potential risks shall include:

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

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

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

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

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

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

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

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

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

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

19.10.420 Development standards—Erosion hazard areas.

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

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

C. *Development standards.*

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

2. Grading shall minimize alterations to the natural contour of the slope. Building foundations shall conform to the natural contours of the slope and be stepped/tiered to conform to existing topography of the site;

3. Retaining walls shall be preferred over cut and fill for roads, parking lots and structures. Structures on slopes in excess of twenty-five per-

cent shall incorporate earth retaining structures in buildings rather than employing free-standing earth retention structures. Clearing and grading shall minimize ground disturbance to the maximum extent feasible and generally shall not extend more than ten feet beyond the approved development;

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

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

a. Located in the least sensitive area of the site.

b. Designed to minimize topographic modification with low gradients and/or parallel to the natural contours of the site.

c. Retaining walls shall be preferred over cut and fill slopes to minimize topographic modification.

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

19.10.425 Erosion hazard areas—Review and reporting requirements.

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

B. The erosion hazard assessment shall describe and evaluate the soil characteristics of the subject property and adjacent areas. The erosion hazard assessment shall include field investigation. The report shall include the following, pro-

vided that the mayor or his/her designee may determine that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. A description of areas on the site and the surrounding areas that influence or could be influenced by the site, or areas within three hundred feet of the site meet the criteria for an erosion hazard.

2. A scaled site plan showing:

a. The type and extent of soils subject to erosion hazard, and any other sensitive areas, and buffers on, adjacent to or that are likely to impact or be impacted by the proposal, including surface water, wetlands and other downgradient features;

b. The location of existing and proposed areas of clearing, structures, fill, access roads, storage of materials, and drainage facilities, with dimensions;

c. The existing site topography preferably accurate to within two-foot contours; and

d. Proposed erosion control and drainage control features and facilities.

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

1. A description and analysis of the level of erosion associated with no development within the erosion hazard area;

2. A description and analysis of the level of erosion associated with the proposal and alternatives;

3. A description and analysis of design features that could reduce erosion, including development standards within this section and other BMPs;

4. A description and analysis of the level of risk of sedimentation, degradation of water quality, impacts on aquatic species or other effects of the proposal and alternative design and BMPs.

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

19.10.430 Mine hazard areas.

A. *Declassification of mine hazard areas.* Areas underlain by mine workings may be declassified as a mine hazard area by the mayor or his/her

designee based on a detailed mine hazard study, field work, and completion of required mitigation to eliminate hazards of open workings, sinkholes, gas, fire and waste dumps and reducing the potential for settlement to 1:350 for ground tilt and 0.003 in/in strain such that hazards of mine workings are equivalent to lands not underlain by mines.

B. Mine areas of low hazard.

1. Mine areas of low hazard are defined as locations where:

a. All workings are at a depth of more than three hundred feet or where a previous mine hazard assessment report has determined that all workings have collapsed or that potential subsidence is limited to no more than 1:350 for ground tilt and 0.003 in/in strain; and

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

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

- a. Overhead utility lines;
- b. Trails and passive recreation uses;
- c. Mobile homes not on a rigid foundation;
- d. Construction of new buildings with less than two thousand five hundred square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;
- e. Additions to existing residences that are two hundred fifty square feet or less; and
- f. Installation of fences.

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

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

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

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

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

C. Mine areas of moderate hazard.

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

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

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

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

a. Overhead utility lines.

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

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

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

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

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

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

D. Mine areas of severe hazard.

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

a. Coal mine workings from a depth of less than one hundred fifty feet from the surface of the land; or

b. Unmitigated openings such as entries, portals, adits, mine shafts, air shafts, timber shafts; or

c. Sinkholes, improperly filled sinkholes and other areas of past or significant probability for catastrophic ground surface collapse.

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

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

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

i. Open space and passive recreation facilities with no public assembly;

ii. Public facilities that must traverse the area, such as roads and utilities, but only if mitigated in accordance with Section 19.10.430 and Section 19.10.435.

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

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

1. Development within mine hazard areas shall be accompanied by technical studies by qualified professionals that assess the potential risk from entries, shafts and ventilation facilities, of potential future trough subsidence or sinkhole de-

velopment due to collapse of abandoned coal mines and identifies specific measures to mitigate the risk in accordance with the criteria below:

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

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

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

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

i. Demonstrated to be stable through analysis by a qualified professional, or if such material does not meet stability criteria it shall be regarded or otherwise mitigated to meet stability criteria.

ii. If springs or seeps discharge from such areas, materials shall be removed or regraded to expose the source of the spring or seep.

iii. Mine tailings or fill materials shall be covered with a minimum two feet of clean soil and be revegetated with native vegetation to control erosion, unless an alternative specific use has been approved.

iv. Development shall not be permitted within one hundred feet of tailings or fill materials that shows evidence of current or past combustion, unless combustible materials are removed.

v. Development may be permitted over mine tailings or fill material only if an investigation and

analysis by a qualified professional identifies feasible construction criteria for foundation stability and performance.

e. Mine gas hazards shall be mitigated by backfilling all mine entries, shafts, and sinkholes in and providing appropriate venting.

f. Mine fire potential shall be assessed through analysis by a qualified professional. Development shall not be permitted within one hundred feet of workings where investigations indicate the possible presence of combustion in the underlying seam or seams.

2. Every development shall include appropriate construction standards established by a qualified professional in accordance with the criteria below:

a. Foundations shall be designed by a Washington State licensed structural engineer, with consideration of the subsidence effects documented for the site and the requirements of the International Building Code as provided by the criteria below:

i. Foundations and slabs on grade shall be designed to resist the ultimate forces for tension and/or compression as determined from the hazards report. The forces generated by subsidence effects of tilt and strain shall be treated as live loads with the appropriate load factors and/or factors of safety in design. Simultaneous friction drag force and lateral earth pressure loads shall be treated as earth pressure in load combinations.

ii. Ultimate passive soil pressure and distribution shall be assessed for all vertical surfaces in contact with foundation soil due to horizontal strain occurring from a subsidence and included in design specifications.

iii. Utility lines shall not be rigidly connected to the foundation wall. A flexible joint shall be provided at the point of transition from soil support to building support for all utilities.

iv. Positive drainage shall be designed for positive gravity flow under the most sensitive predicted subsidence conditions.

b. Roads and utilities shall be designed to accommodate the magnitudes of strains and tilts

documented by technical studies through adequate strength to resist the forces of maximum predicted subsidence-related tilts and strains, or by adequate flexibility to accommodate the resulting deformations.

i. Roadways shall be constructed of flexible material and shall be designed to maintain positive drainage with the maximum predicted subsidence.

ii. Bridges shall be designed to a factor of safety of two to accommodate maximum strains and tilts predicted.

iii. Water utilities shall be designed to provide for two times the maximum predicted tilts and strains, including service lines, structures, and related appurtenances.

iv. Sewer and storm drainage utility design shall provide for 1.5 times the maximum predicted tilts and strains, including service lines, structures, and related appurtenances. Design grades shall provide positive gradient after allowing for the maximum predicted subsidence.

vi. Storm drainage detention and retention facilities shall be designed to remain functional following the occurrence two times the maximum predicted tilts and strains. Such facilities may be located in mine hazard areas only if all risk of sinkhole development has been eliminated.

vii. Electric and gas cables and pipelines shall be designed to accommodate the maximum predicted tilts and strains with suitable safety factors applied to these magnitudes such that failure of the utility line will not present a risk to public safety. The applicant shall present certification from the respective private utility that utilities have been designed in accordance with the above.

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

19.10.435 Mine hazard—Review and reporting requirements.

A mine hazard study shall be prepared by a qualified professional that addresses the information and criteria below, provided that the mayor or his/her designee may accept and review a preliminary report with limited content to outline the

potential hazard level and propose a suggested analysis methodology. The administrator may retain, at the applicant's expense, an independent qualified professional to perform a peer review of the mine hazard report.

A. A mine hazard report shall contain all available documentary information about mine workings and the results of a surface reconnaissance that shall identify any public safety mine hazards, mine waste dumps, or evidence of mine subsidence or sinkholes and shall include:

1. Historical mining data, including available copies of original mine records for mine workings.

2. A map showing property boundaries, mine hazard boundaries, and any potential hazards identified on or within three hundred feet of the property.

B. Shallow hazards such as entry portals, shaft collars, ventilation shafts, prospects and mine waste dumps may be investigated by test pits or trenching, providing the method enables investigation to an adequate depth for the hazard being investigated.

C. Site-specific evaluation of potential trough subsidence.

1. Review of available records of original mine workings that could potentially influence the site by trough subsidence.

a. Locations, depths, and thicknesses of such seams and workings;

b. Workings that could potentially influence the site shall be determined by projecting the downdip limit angle from the lowest limit of the documented workings to the ground surface. Mine workings are considered to potentially influence the property if the property lies within the line at which the limit angle intersects the ground surface.

2. Subsurface conditions may be evaluated by drilling. Drilling is the most acceptable method for providing information for reducing the remaining mine height value used in subsidence calculations to less than the height of the original workings.

a. Drillholes shall be logged continuously from one hundred feet above to twenty feet below mine

workings, including lithology at five-foot intervals, drill fluid circulation, penetration rate, and free fall of the drill string.

b. Greater confidence will be placed in core drilling logs than rotary drilling logs.

c. As a guideline, a minimum of one drillhole penetrating each seam that could potentially cause trough subsidence at the site should be drilled for each two hundred foot length of the adit, unless alternative spacing is demonstrated to provide adequate information concerning the workings.

d. Surface geophysics, or other indirect means, may be used to assist in projecting information between and beyond drillholes, but shall not be accepted as the sole method for evaluating the condition of underground mine workings and calculating remaining mine height.

3. Calculation of trough subsidence magnitudes, tilts, and strains shall be in accordance with the empirical function method of the British National Coal Board, as presented in their Subsidence Engineers' Handbook, adjusted to reflect the effects of inclined seams and a downdip limit angles encountered and shall be based on a conservative evaluation of site conditions developed from the review of available records, site investigation and subsurface exploration.

a. Direct field evidence or a review of detailed mine records shall be used to calculate the subsidence factor, the downdip limit angle.

b. Remaining mine height shall be presumed to be equal to the seam thickness for the subsidence calculations unless evidence from drilling justifies modification.

c. The calculation of potential tilts and strains shall consider effects of individual panel widths and barrier pillar widths. If direct subsurface investigation indicates that the mine workings are fully collapsed, an estimate of potential surface settlements due to consolidation of rubble and loose material shall be made for the cumulative effect of all seams that could induce trough subsidence at the site.

4. Site plans shall be prepared showing the proposed development and calculated magnitudes

of potential subsidence, strains, and tilts at the property boundaries and at the locations of any proposed structures.

a. A map showing contours of potential subsidence magnitudes, strains, and tilts throughout the property shall be submitted for use in design of roads and utilities.

b. Appropriate recommendations shall be provided for structural and civil design requirements.

D. Site-specific evaluation: Potential sinkhole hazards.

1. Review of available record shall be in [subsection] (1)(a) above.

2. Subsurface conditions for workings located within one hundred fifty feet of the ground surface shall be investigated by drilling.

a. Drillhole sites shall be selected at representative locations and at representative working depths. A minimum of five drillholes shall be drilled along the alignment of any linear structure, such as roads or utility lines designed to cross a mine hazard area. No less than one drillhole per acre shall be provided for a site.

b. Core drilling is preferred, but is not compulsory. Rotary drilling is an acceptable method provided it is used in combination with downhole geophysical logging, including caliper logs. Drilling shall penetrate immediately above and through the predicted workings locations to facilitate interpretation of the condition of the mine workings.

c. Drillholes shall be logged continuously throughout their length, including lithology at five-foot intervals for rotary drillholes, drill fluid circulation, penetration rate, and free fall.

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

19.10.440 Seismic hazard areas.

Development may be allowed in seismic hazard areas when all of the following apply:

A. If evaluation of site-specific subsurface conditions by a qualified professional demonstrates that the proposed development site is not subject to the conditions indicating seismic risk in, the provisions of this subsection shall not apply.

B. If a site is subject to seismic risk, the applicant shall implement appropriate engineering design based on analysis by a qualified professional of the best available engineering and geological practices that either eliminates or minimizes the risk of structural damage or injury resulting from seismically induced settlement or soil liquefaction, including compliance with the following criteria:

1. Subdivision within a seismic hazard areas shall assure that each resulting lot has sufficient buildable area outside of the hazard area or that appropriate limitations on building and reference to appropriate standards are incorporated into subdivision approval and may be placed as restrictions on the face of the plat;

2. Structures in seismic hazard areas shall conform to applicable analysis and design criteria of the International Building Code;

3. Public roads, bridges, utilities and trails shall be allowed when there are no feasible alternative locations and geotechnical analysis and design are provided that ensure the roadway, bridge and utility structures and facilities will not be susceptible to damage from seismic induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

C. The mayor or his/her designee may waive or reduce engineering study and design requirements for alterations in seismic hazard areas for:

1. Mobile homes;

2. Additions or alterations to existing structures that do not increase occupancy or significantly affect the risk of structural damage or injury; and

3. Buildings that are not dwelling units or used as places of employment or public assembly. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.445 Seismic hazard—Review and reporting requirements.

A. When sensitive area maps or other sources of credible information indicate that a site pro-

posed for development or alteration is or may be located within a geologically hazardous area the mayor or his/her designee shall have the authority to require the submittal of a seismic hazard assessment report. The following provisions shall apply in addition to the sensitive area report requirements of [Section] 19.10.130:

B. An existing conditions assessment and investigation to evaluate the geologic characteristics of the subject property and adjacent areas and their susceptibility to damage during a seismic event.

1. The seismic assessment shall include field investigation and may include the analysis of historical aerial photographs, review of public records and documentation, and interviews with adjacent property owners, provided that the mayor or his/her designee may determine that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development;

2. A description of the general surface and subsurface geology, hydrology, soils, and vegetation found in the project area, including faults and indicators of earth movement, past seismic events and other features that would affect the site response to seismic conditions. This may include surface exploration data such as borings, drill holes, test pits, wells, geologic reports, and other relevant reports or regional, local and site investigations that may be useful in making conclusions or recommendations about the site under investigation;

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

1. Evaluation of the current design in terms of the risk of structural damage or injury resulting from seismically induced stress, settlement, soil liquefaction, and other processes.

2. A description and evaluation of the best available engineering and geological practices that either eliminates or minimizes the risk of struc-

tural damage or injury resulting from seismic forces including public roads, utilities and other features. (Ord. No. 875, § 4(Exh. B), 2-26-2009)

19.10.500 Sensitive aquifer recharge areas.

A. *Classification.* Aquifer recharge areas are categorized according to the following criteria:

1. *Category I—Severe aquifer sensitivity.* "Category I—Severe aquifer sensitivity" are those areas which provide rapid recharge with little protection, having highly permeable soils. The predominant soil series and types are those listed in category I in Table 19.10.500.B.

2. *Category II—Moderate aquifer sensitivity.* "Category II—Moderate aquifer sensitivity" are

those areas with aquifers present, but which have a surface soil material that encourages run-off and slows water entry into the ground. The predominant soil series and types are those listed as category II in Table 19.10.500.B.

3. *Category III—Slight aquifer sensitivity.* "Category III—Slight aquifer sensitivity" are those areas of low ground water availability and whose soil series are derived from basaltic, andesitic, or sedimentary rock or ancient glacial till which are parent material for soils with more clays at the surface. These geological formations do not provide abundant ground water. The predominant soil series and types are those listed as category III in Table 19.10.500.B.

Table 19.10.500.A—Aquifer Sensitivity Ratings for Soil Texture

| Soil Texture ¹ | DRASTIC Rating ¹ | Sensitivity |
|-----------------------------|-----------------------------|----------------------|
| Thin or Absent ³ | 10 | Category I—Severe |
| Gravel | 10 | Category I—Severe |
| Sand | 9 | Category I—Severe |
| Peat | 8 | Category I—Severe |
| Shrink/Swell Clay | 7 | Category II—Moderate |
| Sandy loam | 6 | Category II—Moderate |
| Loam | 5 | Category II—Moderate |
| Silt loam | 4 | Category II—Moderate |
| Clay loam | 3 | Category III—Slight |
| Muck | 2 | Category III—Slight |
| Non-shrink/Swell Clay | 1 | Category III—Slight |

¹ The DRASTIC Index (Aller et. al. June 1987) was developed cooperatively between the National Water Well Association (NWWA; now the National Ground Water Association) and the U.S. Environmental Protection Agency (EPA) to rank soil types with respect to pollution transport potential.

Table 19.10.500.B—Aquifer Sensitivity Ratings for Soil Units

| Soil Series Name and Map Unit Symbol | Category I Severe | Category II Moderate | Category III Slight |
|--|----------------------|-------------------------|------------------------|
| Alderwood gravelly sandy loam (Ag) | | X | |
| Alderwood and Kitsap soils, very steep (AkF) | | X | |
| Beausite gravelly sandy loam (Be) | | X | |
| Bellingham silt loam (Bh) | | X | |
| Buckley silt loam (Bu) | | X | |
| Everett gravelly sandy loam (Ev) | | X | |
| Mixed alluvial land (Ma) | | X | |
| Norma sandy loam (No) | | X | |
| Ragnar-Indianola association, sloping (RdC) | | X | |
| Seattle muck (Sk) | | | X |
| Shalcar muck (Sm) | | | X |

B. Prohibited uses and criteria.

1. The following new development proposals and alterations are not allowed on a site located in a category I sensitive aquifer recharge area:

- a. Disposal of radioactive wastes, as defined in Chapter 43.200 RCW;
- b. Hydrocarbon extraction;
- c. Commercial wood treatment facilities;
- d. Class V injection wells, but limited to subclasses 5F01, 5D03, 5D04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24;
- e. Underground storage tanks, including tanks exempt from the requirements of chapter 173-360 WAC, with hazardous substances, as defined in Chapter 70.105 RCW, that do not comply with the requirements of chapter 173-360 WAC and K.C.C. Title 17;
- f. Above ground storage tanks for hazardous substances, as defined in Chapter 70.105 RCW, unless protected with primary and secondary containment areas and a spill protection plan;
- g. Landfills for hazardous waste, or special waste, as defined in WAC 173-303;
- h. Wrecking yards;
- i. Electroplating;
- j. Solid waste handling and processing facilities;
- k. Dry cleaners, excluding drop-off only operations;
- l. Landfills for municipal solid waste;
- m. Transmission pipelines carrying petroleum or petroleum products;
- n. Sand and gravel, and hard rock mining;
- o. Mining of any type below the upper surface of the saturated ground water that could be used for potable water supply;
- p. Vehicle repair;
- q. Biological research;
- r. Chemical manufacturing, mixing and remanufacturing;
- s. Golf courses;
- t. Cemeteries.

2. Except as otherwise provided in subsection (C) of this section, the following new development proposals and alterations are not allowed on a site

located in a category II sensitive aquifer recharge area: items (a) through (i) in subsection (B)(1) above.

3. Except as otherwise provided in subsection (C) of this section, the following new development proposals and alterations are not allowed on a site located in a category III sensitive aquifer recharge area: items (a) through (h) in subsection (B)(1) above.

C. The following standards apply to development proposals and alterations that are substantial improvements on a site located in a sensitive aquifer recharge area:

1. The owner of an underground storage tank, including a tank that is exempt from the requirements of chapter 173 WAC, in a category I, II or III sensitive aquifer recharge area shall either bring the tank into compliance with the standards of chapter 173 WAC and or properly decommission or remove the tank; and

2. A development proposal for new residential development, including, but not limited to, a subdivision, short subdivision, or dwelling unit, shall incorporate best management practices in order to infiltrate stormwater runoff to the maximum extent.

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

19.10.600 Definitions.

Words not defined in this chapter shall be as defined in the City Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either code shall be as defined in the Webster's Third New International Dictionary, latest edition.

19.10.601 *Adjacent.* Immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from sensitive areas to ensure protection of the functions and values of the sensitive areas. Adjacent shall be determined on a case by case basis and at the minimum shall include any activity or development located:

A. On a site immediately adjoining a sensitive area;

B. A distance equal to or less than the greatest potential sensitive area buffer width and building setback applicable to the resource;

C. A distance equal to or less than one-half mile (two thousand six hundred forty feet) from a bald eagle nest;

D. A distance equal to or less than three hundred feet upland from a stream, wetland, or water body;

E. Bordering or within the floodway, floodplain or channel migration zone; or

F. A distance equal to or less than two hundred feet from a sensitive aquifer recharge area.

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

19.10.603 *Alteration.* Any human induced change on a site, or in the vicinity that alters the existing condition and/or ecological functions and values of a sensitive area or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, or any other activity that changes the character of the sensitive area.

19.10.604 *Anadromous fish.* Fish that spawn and rear in fresh water and mature in the marine environment.

19.10.605 *Applicant.* A person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, has a valid easement of other right to utilize, or is a public utility or public agency with the right of eminent domain, or is the authorized agent of such a person.

19.10.606 *Aquifer, sole source.* An area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty percent or more of the drinking water for an area without a sufficient replacement available.

19.10.607 *Best available science.* Current scientific information used in the process to designate, protect, or restore sensitive areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are included in Citations of Recommended Sources of the Best Available Science for Designating and Protecting Sensitive Areas published by the Washington State Office of Community Development.

19.10.608 *Best management practices (BMPs).* Conservation practices or systems of practices and management measures that reflect the current scientific and technical consensus on the best or most effective means of addressing adverse effects upon a resource.

19.10.609 *Buffer or buffer zone.* An area that is contiguous to a sensitive area and provides an area for related ecological functions to take place including, but not limited to, the continued maintenance, functioning, and/or structural stability of a sensitive area and/or separates and protects the sensitive area from adverse impacts associated with adjacent land uses.

19.10.610 *Compensation project.* Actions that are necessary to replace project-induced sensitive

area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

19.10.611 *Compensatory mitigation.* Replacing project-induced losses or impacts to a sensitive area, and includes, but is not limited to, the following:

A. *Restoration.* Actions performed to re-establish functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer provides such functions.

B. *Creation.* Actions performed to intentionally establish functional characteristics of an ecosystem at a site where it did not formerly exist.

C. *Enhancement.* Actions performed to improve the condition of existing degraded ecological functions so that the functions they provide are of a higher quality.

19.10.612 *Conservation easement.* A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, restrictions on use or specific facilities to protect resources such as water quality, wetland function, vegetation and habitat and may include passive recreation uses such as trails or scientific uses and may require specific measures to protect resources such as fences or other barriers. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

19.10.613 *Cumulative impacts or effects.* The combined, incremental effects of human activity on ecological or sensitive areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects or actions in a particular place and within a particular time.

19.10.614 *Developable area.* A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this chapter.

19.10.615 *Development.* Any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the city that binds land to specific patterns of use, including but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

A. Interior building improvements.

B. Exterior structure maintenance activities, including painting and roofing.

C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding.

D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

19.10.616 *Development permit.* Any permit issued by the [city/county], or other authorized agency, for construction, land use, or the alteration of land.

19.10.617 *Erosion.* The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

19.10.618 *Erosion hazard areas.* At least those areas identified by the United State Department of Agriculture National Resources Conservation Service as having a "severe" rill and inter-rill erosion hazard.

19.10.619 *Exotic.* Any species of plants or animals, which are foreign to the planning area.

19.10.620 *Fish habitat.* Habitat that provides the life supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements of a species depend on its age and

activity, the basic components of fish habitat in rivers, streams, ponds, lakes, and nearshore areas include, but are not limited to, the following:

A. Clean water and appropriate temperatures for spawning, rearing, and holding;

B. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-channel habitat;

C. Abundance of bank and in-stream structures to provide hiding and resting areas and stabilize stream banks and beds;

D. Appropriate substrates for spawning and embryonic development. For stream and lake dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand;

E. Presence of riparian vegetation that creates a transition zone, which provides shade, and food sources of aquatic and terrestrial insects for fish;

F. Unimpeded passage (i.e. due to suitable gradient and lack of barriers) for upstream and downstream migrating juveniles and adults.

19.10.621 *Flood or flooding*. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

19.10.622 *Floodplain*. The total land area adjoining a river, stream, watercourse or lake subject to inundation by the base flood.

19.10.623 *Formation*. An assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

19.10.624 *Functions and values*. Functions are processes or attributes provided by areas of the landscape (e.g. wetlands, rivers, streams, and riparian areas). The beneficial roles served by sensitive areas including, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, pro-

tection from hazards. Values are human perceptions of individual and social benefit associated with these functions and may include functional value for economic benefit, historical and archaeological value, aesthetic appreciation, educational, scientific, recreational or religious pursuits. These beneficial roles are not listed in order of priority.

19.10.625 *Ground water*. Water in a saturated zone or stratum beneath the surface of land or a surface water body.

19.10.626 *Geologically hazardous areas*. Areas designated as geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

19.10.627 *Hazardous substances*. Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

19.10.628 *Natural condition*. Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by human activity.

19.10.629 *In-kind compensation*. To replace sensitive areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

19.10.630 *Isolated wetlands*. Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream, and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

19.10.631 *Infiltration*. The downward entry of water into the immediate surface of soil.

19.10.632 *Landslide hazard areas*. Areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination

of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

19.10.633 *Monitoring*. Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

19.10.634 *Native growth protection area (NGPA)*. An area where native vegetation is preserved for the purpose of preserving ecological functions or preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat;

19.10.635 *Native vegetation*. Plant species that are indigenous to the area in question.

19.10.636 *Natural waters*. Waters, excluding water conveyance systems that are artificially constructed and actively maintained for irrigation.

19.10.637 *Non-indigenous*. See "exotic."

19.10.638 *Non-conforming*. A use, development, structure or parcel that was lawfully constructed or established prior to the effective date of this code or amendments hereto, but which does not conform to present regulations or standards.

19.10.639 *Off-site compensation*. To replace sensitive areas away from the site on which a sensitive area has been impacted.

19.10.640 *On-site compensation*. To replace sensitive areas at or adjacent to the site on which a sensitive area has been impacted.

19.10.641 *Out-of-kind compensation*. To replace sensitive areas with substitute sensitive areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement "out-of-category."

19.10.642 *Practical alternative*. An alternative that is available and capable of being carried out after taking into consideration, cost, existing tech-

nology, and logistics in light of overall project purposes, and having fewer impacts to sensitive areas.

19.10.643 *Primary association area*. The area used on a regular basis by, or is in close association with, or is necessary for the proper functioning of the habitat of a sensitive species. Regular basis means that the habitat area is normally, or usually known to contain a sensitive species, or based on known habitat requirements of the species, the area is likely to contain the sensitive species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

19.10.644 *Priority habitat*. Habitat type or elements with unique or significant value to one or more species as classified by the Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element (WAC 173-26-020(34)).

19.10.645 *Project area*. The area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire contiguous parcel owned or controlled by the applicant, at a minimum.

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

A. A qualified professional for terrestrial or aquatic habitats must have a degree in biology and professional experience related to the subject species.

B. A qualified professional for wetlands must have a degree in biology and professional experience related to wetlands and has passed a certification course.

C. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the State of Washington.

D. A qualified professional for sensitive aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

19.10.647 *Recharge*. The process involved in the absorption and addition of water to ground water.

19.10.648 *Relative density*. A method for evaluating the density of trees in relation to the theoretical maximum density for trees of the same size and species. It is preferable to a simple density (trees/acre) because it is a more accurate measure of occupied growing space and suppression mortality. Relative density equals the basal area of all trees in the stand divided by the square root of the quadratic mean diameter.

19.10.649 *Repair or maintenance*. An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter sensitive areas are not included in this definition.

19.10.650 *Restoration*. Measures taken to restore an altered or damaged natural feature including:

A. Active steps taken to restore damaged or altered ecological conditions, wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

B. Actions performed to re-establish structural and functional characteristics of the sensitive area that have been lost by alteration, past management activities, or catastrophic events.

19.10.651 *Riparian habitat*. Areas adjacent to aquatic systems (stream, lake or pond) that con-

tain elements of both aquatic and terrestrial ecosystems that mutually influence each other. Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Riparian habitat areas include those riparian areas altered due to human development activities.

19.10.652 *River*. See "Watercourse."

19.10.653 *Scientific process*. A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

A. *Peer review*. The information has been sensitively reviewed by other qualified scientific experts in that scientific discipline.

B. *Methods*. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to assure their reliability and validity.

C. *Logical conclusions and reasonable inferences*. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.

D. *Quantitative analysis*. The data have been analyzed using appropriate statistical or quantitative methods.

E. *Context*. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

F. *References*. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

19.10.654 *Seismic hazard areas*. Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

19.10.655 *Sensitive area tract*. Land designated as a separate parcel and retained in an open condition in perpetuity for the protection of sensitive areas. Lands within this type of dedication may include sensitive areas and related buffers. Ownership may be vested in a private party, in undivided interest by lots in a subdivision, in a non-profit entity or a public entity.

19.10.656 *Sensitive habitat*. Habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

19.10.657 *SEPA*. Washington State Environmental Policy Act, Chapter 43.21C RCW.

19.10.658 *Shorelands or shoreland areas*. Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.

19.10.659 *Soil survey*. The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

19.10.660 *Species*. Any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

19.10.661 *Species, endangered*. Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

19.10.662 *Species of local importance*. Those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species.

19.10.663 *Species, priority*. Any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

19.10.664 *Species, threatened*. Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

19.10.665 *Stream*. See "Watercourse."

19.10.666 *Sub-drainage basin or subbasin*. The drainage area of the highest order stream containing the subject property impact area. Stream order is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on.

19.10.667 *Unavoidable*. Adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

19.10.668 *Water dependent*. A use or portion of a use that cannot exist in a location that is not adjacent to the water, but is dependent on the water by reason of the intrinsic nature of its operations. A use that can be carried out only on, in, or adjacent to water. Examples of water dependent uses include ship cargo terminal loading areas; fishing; ferry and passenger terminals; barge loading, ship building, and dry docking facilities; marinas, moorage, and boat launching facilities;

aquaculture; float plane operations; surface water intake; and sanitary sewer and storm drain outfalls.

19.10.669 *Water resource inventory area (WRIA)*. One of sixty-two watersheds in the State of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter 173-500 WAC on January 1, 1997, as amended hereafter.

19.10.670 *Water table*. That surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

19.10.671 *Watercourse*. Those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition includes drainage ditches or other artificial water courses where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid or other fish populations.

19.10.672 *Well*. A bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

19.10.673 *Wetlands*. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or

highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the Washington State Wetland Identification and Delineation Manual.

19.10.674 *Wetland edge*. The boundary of a wetland as delineated based on the definitions contained in this chapter.

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

Chapter 19.12

ENVIRONMENTALLY SENSITIVE AREAS—AGRICULTURAL ACTIVITIES*

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19.12.010 Short title.

The ordinance codified in this chapter shall be referred to as the "Environmentally Sensitive Areas Ordinance." Said ordinance shall become a new chapter entitled 19.12 of the Black Diamond Municipal Code. (Ord. 474 § 1 Exh. A(2), 1993; Ord. 419 § 1, 1989)

19.12.020 Purpose of provisions.

The purpose of this chapter is to provide for the protection of the fish and wildlife habitat of wetlands, Rock Creek and Ginder Creek and pro-

*Editor's note—Ord. No. 875, §2, adopted Feb. 26, 2009, amended the title of Ch. 19.12 to read as herein set out. Prior to inclusion of said ordinance, ch. 19.12 was entitled, "Environmentally Sensitive Areas."

Cross reference—See Chapter 18.84 of this code for additional regulations on environmentally sensitive areas.

tect public safety through regulation of development within geologically hazardous areas. (Ord. 474 § 1 Exh. A(1), 1993; Ord. 419 § 1, 1989)

19.12.030 Definitions.

As used in this chapter:

"Buffer" means an area contiguous with a critical area that is required for the integrity, maintenance, function and structural stability of the critical area.

"Classification" means defining value and hazard categories to which critical areas will be assigned.

"Clearing" means the removal of timber, brush, grass, groundcover or other vegetative matter from a site which exposes the earth's surface of the site.

"Critical areas (environmentally sensitive areas)" means and includes the following areas and ecosystems:

1. Wetlands;
2. Fish and wildlife habitat conservation areas;
3. Geologically hazardous areas.

"Erosion hazard areas" means areas with soils, as identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) 1973 Soil Survey, that may experience "severe" to "very severe" erosion hazard (i.e., AgD/Alderwood gravelly sandy loam 15—30 percent slopes, AkF/Alderwood Kitsap very steep, BeD and BeF/Beausite gravelly sandy loam 15+% slopes, KpD/Kitsap silt loam 15—30 percent slopes, OvD and OvF/Ovall gravelly loam 15+% slopes, RaD/Ragnar fine sandy loam 15—25 percent slopes, and RdE/Ragnar-Indianola association, moderately steep Rh/Riverwash.

"Fish and wildlife habitat areas" means those areas identified as being of critical importance to maintenance of fish, wildlife and plant species, including: areas with which endangered, threatened and sensitive species have a primary association; habitats and species of local importance; naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat; lakes, ponds, streams and rivers

planted with game fish by a governmental or a tribal entity; state natural area preserves and natural resource conservation areas.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake or other geological events, are not suited to siting commercial, residential or industrial development consistent with public health or safety concerns.

"Habitats of local importance" means a seasonal range or habitat element with which a given species has a primary association and which if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus and wetlands.

"Landslide hazard areas" means (1) any area with a combination of: slopes greater than fifteen percent, and; impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominately sand and gravel), and; springs or groundwater seepage, (2) any area that has shown movement during the Holocene epoch (ten thousand years ago to the present), or that is underlain by mass wastage debris of that epoch, (3) any area potentially unstable as a result of rapid stream incision or stream bank erosion.

Coal Mine Hazards Area.

1. "Moderate-hazard areas" are areas where mine workings are deeper than one hundred feet (steeply dipping seams) or deeper than fifteen times the thickness of the seam or workings (gently dipping seams). May be affected by broad downwarping.

2. "High-hazard areas" are areas with abandoned and improperly sealed openings and areas underlain by mine workings shallower than one hundred feet in depth (steeply dipping seams) or shallower than fifteen times the thickness of the seam or workings (gently dipping seams). May be affected by collapse or other subsidence.

"Seismic hazard areas" are areas subject to severe risk of earthquake damage as a result of seismically induced settlement or soil liquefaction. These conditions occur in areas underlain by cohesionless soils of low density, usually in association with a shallow groundwater table.

"Wetland or wetlands" means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include artificial wetlands. Artificial wetlands are defined as those created from nonwetland sites including but not limited to irrigation and drainage ditches, grasslined swales, canals, detention facilities, with water treatment facilities, farm ponds, landscape amenities. (Ord. 474 § 1 Exh. A(4), 1993: Ord. 419 § 3, 1989)

19.12.040 Compliance with chapter provisions—Required.

No agricultural activities shall be undertaken by any person or entity which results in a substantial alteration of a sensitive area except in compliance with the requirements and goals, purposes and objectives of this chapter and only with those mitigation measures set forth in Section 19.12.070, below. "Agricultural activities" shall mean uses and practices existing or legally allowed on the effective date of this ordinance on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations;

maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a sensitive area than the original facility; and maintaining agricultural lands under production or cultivation. (Ord. 474 § 1 Exh. A(5), 1993; Ord. 456 § 1 (part) 1992; Ord. 419 § 2, 1989) (Ord. No. 875, § 3, 2-26-2009)

19.12.050 Compliance with chapter provisions—Prerequisite to permit issuance.

The city shall not issue, prior to fulfilling the requirements of this chapter, any of the following: any building permit; binding site plan; conditional use permit; franchise right-of-way construction permit; grading permit; lot line adjustment; master plan development; planned unit development; right-of-way permit; shoreline conditional use permit; shoreline substantial development permit; shoreline environmental redesignation; shoreline variance; short subdivision; long subdivision; special use permit; any form of subdivision; unclassified use permit; utility or other use permit; zone reclassification; or any other subsequently adopted permit or required approval not expressly exempt from this chapter. (Ord. 474 § 1 Exh. A(7), 1993; Ord. 419 § 7(part), 1989)

19.12.060 Fish and wildlife conservation areas.

Fish and wildlife habitats within the city have been identified and ranked in the "City of Black Diamond Fish and Wildlife Habitat" study (David Evans and Associates in January, 1992). High-value habitats include the Rock Creek and Ginder Creek corridors, open water ponds, lakes and riparian forests. These habitats are all streams and wetlands which are identified, ranked and regulated under the wetlands and streams section of this chapter. (Ord. 474 § 1 Exh. A(8), 1993; Ord. 419 § 7(part), 1989)

19.12.070 Geologically hazardous areas.

A. "Geologically hazardous areas" include erosion hazards, landslide hazards, seismic haz-

ards, mine hazards and areas subject to geologic events such as differential settlement. Areas of steep slopes (25%+) and past coal mine workings are identified and mapped in the 1980 City of Black Diamond Comprehensive Plan.

B. For all regulated activities proposed within geologically hazard areas, a geotechnical report prepared by a professional engineer licensed by the state of Washington with expertise in geotechnical engineering shall be submitted. The report should confirm or revise the hazard classification and if a hazard is identified, identify necessary mitigation. The city may require an independent review of any such report by a qualified geotechnical professional selected by the city. The independent review shall be paid for by the applicant. Special inspection requirements may be imposed on construction in hazard areas; provided, whereas an applicant can demonstrate, through submittal of an approved geotechnical assessment, that there are no geologic hazards on site, the requirements for the geotechnical report may be waived, if approved by a geotechnical engineer, and city council and the planning commission. (Ord. 474 § 1 Exh. A(9), 1993; Ord. 456 § 1 (part), 1992; Ord. 419 § 8, 1989)

19.12.075 Wetlands and streams—Classification.

Wetlands and streams within the city have been identified and classified in the "City of Black Diamond Wetland and Stream Inventory," (David Evans and Associates, [Recognizance and Level] January, 1992). This report is on file with the city clerk-treasurer.

A. Methodology for Wetland and Identification/Delineation. Wetland identification and delineation shall be consistent with the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

B. Classification of Wetlands. Wetlands in the city are classified according to the state of

Washington Department of Ecology Four-Tier Wetlands Rating System. The classifications and classification criteria are as follows:

1. Category I Wetlands.

a. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies; or

b. High quality native wetland communities, including documented Category I or II quality Natural Heritage Wetland sites and sites which qualify as a Category I or II quality Natural Heritage Wetland;

c. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine, wetlands or mature forested swamps; or

d. Wetlands of Exceptional Local Significance. The criteria for such a designation shall be developed and adopted by the local jurisdiction under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed or other regional boundary.

2. Category II Wetlands.

a. Regulated wetlands that do not contain features outlined in Category I; and

b. Documented habitats for sensitive plant, fish or animal species recognized by federal or state agencies; or

c. Rare wetland communities listed in subsection (1)(c) of this section which are not high quality; or

d. Wetland types with significant functions which may not be adequately replicated through creation or restoration; or

e. Regulated wetlands with significant habitat value based on diversity and size; or

f. Regulated wetlands contiguous with salmonid fish-bearing waters, including streams where flows are intermittent; or

g. Regulated wetlands with significant use by fish and wildlife.

3. Category III Wetlands.

a. Regulated wetlands that do not contain features outlined in Category I, II or IV.

4. Category IV Wetlands.

a. Regulated wetlands which do not meet the criteria of a Category I or II wetland; and

b. Isolated wetlands that are less than or equal to one acre in size; and have only one wetland class; and have only one dominant plant species (monotypic vegetation); or

c. Isolated wetlands that are less than or equal to two acres in size, and have only one wetland class and a predominance of exotic species.

C. Classification Streams. Streams within the city are classified according to the state of Washington Department of Natural Resources Water Typing System. The classification and classification criteria are as follows:

1. Type 1 Water: all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under RCW Chapter 90.58.

2. Type 2 Water: segments of natural waters which are not classified as Type 1 water and have a high use and are important from a water quality standpoint for:

a. Domestic water supplies;

b. Public recreation;

c. Fish spawning, rearing or migration or wildlife uses; or

d. Are highly significant to protect water quality.

3. Type 3 Water: segments of natural waters which are not classified as Type 1 or 2 water and have a moderate to slight use and are moderately important from a water quality standard point for:

a. Domestic use;

b. Public recreation;

c. Fish spawning, rearing or migration or wildlife uses; or

d. Have moderate value to protect water quality.

4. Type 4 Water: segments of natural waters which are not classified as Type 1, 2 or 3. Their

significance lies in their influence on water quality downstream in Type 1, 2 or 3 waters. These may be perennial or intermittent.

5. Type 5 Water: all other waters, in natural water courses, including streams with or without a well defined channel, areas of perennial or intermittent seepage, ponds and natural sinks. Drainage ways having short periods of spring runoff are considered to be Type 5 waters.

D. Buffers. All wetland buffers shall be measured from the wetland edge as marked in the field. The width of the wetland buffer is determined from the identified wetland category. Minimum buffer width requirements are as follows:

1. Wetlands:
 - a. Category I — seventy-five feet;
 - b. Category II — seventy-five feet;
 - c. Category III — fifty feet;
 - d. Category IV — twenty-five feet.

In addition, there shall be a twenty-five-foot building structure setback from any wetland buffer.

2. Buffers for streams with no associated wetlands shall be measured from the centerline of the stream. Minimum stream buffer requirements are as follows:

- a. Type 1 — seventy-five feet;
- b. Type 2 — seventy-five feet;
- c. Type 3 — fifty feet;
- d. Type 4 — twenty-five feet;
- e. Type 5 — twenty-five feet.

E. Permitted Uses in Buffers. Passive recreation parks, pedestrian and bicycle trails, and road and utilities only as necessary and as crossing. Storm drainage facilities are discouraged from locating within buffers, but may be allowed under special circumstances if so approved by the planning commission. Prior to approval, the planning commission must make a finding of no adverse effect on water quality.

F. Mitigation. Recognizing the importance of wetlands for flood control, biological support, groundwater recharge, and water quality improvement, the filling of Category 1, 2 and 3 wetlands will be prohibited. Other proposed alterations, as defined below, will be reviewed on a case-by-case

basis, consistent with the intent and requirements of this code. Alterations will only be allowed through the variance process (Section 19.12.090). Up to .5 acres of a Category 4 wetland may be filled or disturbed providing a two to one (2:1) wetland replacement ratio (including compensating flood storage) is maintained by the permit applicant.

Alteration. An "alteration" means any change other than that caused by nature. A "substantial alteration," requiring mitigation set forth above includes but is not limited to, grading, dredging, channelization, cutting, clearing, relocating or removing vegetation, applying herbicides or pesticides or any hazardous or toxic substance, discharging pollutants, grazing domestic animals (except on grazed wet meadows), modifying for surface water management purposes or any other human activity that changes the existing vegetation, hydrology, wildlife or wildlife habitat.

G. Procedures for Single-Family Dwellings. The following procedure shall apply to construction of a single-family dwelling and accessory structures on a single lot subdivided prior to adoption of these regulations.

1. Identification. When the city determines that a wetland may be present on or immediately adjacent to a single-family lot subject to these procedures, the applicant for the building permit shall submit a written statement prepared by a wetland specialist to the city. This statement shall identify the wetland type, estimated size and required buffer. From this information the applicant shall prepare a site plan which includes a map of the wetland boundaries with respect to the boundaries of the lot and proposed construction activities. The city may review and approve this information.

2. City Determination Regarding Impacts to Wetlands and/or Buffers. If the city determines that the proposed activity will impact only the required buffer, the city may administratively allow up to a fifty percent reduction in the buffer if the applicant demonstrates that:

- a. The reduction is necessary to permit use of the property for a single-family residence;

b. Any temporary intrusion into the remaining buffer for construction activities includes provisions for adequate restoration of the buffer; and

c. There will be no adverse impacts to the wetland (buffer enhancement may be required to meet this criteria).

If the city determines that the proposed activity will impact both the required buffer and wetland, a wetland delineation report will be required. Construction in the wetland and buffer will be allowed only if a variance is approved as outlined in Section 19.12.090 by the city council. (Ord. 474 § 1 Exh. A(10), 1993)

19.12.080 Exceptions to chapter applicability.

Exceptions to the provision of this chapter include:

A. Removal of hazardous trees on private property determined to be unsafe by the building official;

B. Removal of any plants that are on the state's noxious weed list, provided such removal is by mechanical means and not through the use of herbicides or pesticides;

C. Landscaping in existence at the time of passage of the ordinance codified in this chapter which are located in the setback area, provided no herbicides, pesticides or fertilizers are utilized within twenty-five feet of the water's edge;

D. Restoration of streams and wetlands shall be allowed, provided restoration shall be performed under a plan for the design, implementation, maintenance and monitoring of the project prepared by a civil engineer and qualified biologist, and shall be carried out under the direct supervision of a qualified biologist pursuant to the criteria set out in the King County Code, Title 21. A biologist shall be defined in accordance with the definition used in the King County Code Title 21;

E. Pedestrian trails or walking/bicycle paths may be provided, not to exceed ten feet;

F. Emergency conditions caused by high water or flooding which can reasonably be expected to endanger lives or property;

G. The maintenance of ponds and retention/detention systems provided such maintenance will not result in any damage to the sensitive area, fish and wildlife;

H. Normal and routine maintenance or repair of existing electric, streets, water, sewer, storm water, retention systems, natural gas, cable communications and telephone utility-related activities when undertaken pursuant to city-approved best management practices to avoid impacts to the critical areas. This exemption also includes installation or construction in an improved public road right-of-way (electrical facilities with a voltage of fifty-five thousand volts or less) and relocation of facilities (electrical facilities with a voltage of fifty-five thousand volts or less) when required by the city and when the city approves the new location. However, the construction of a new street in a critical area is required to be approved as set forth in the variance procedures set forth in Section 19.12.090. (Ord. 474 § 1 Exh. A(12), 1993; Ord. 419 § 11, 1989)

19.12.090 Variances.

Variances from the regulations contained in this chapter may be granted by the city council provided:

A. The applicant files an application for a variance setting forth the location of the property, the location of the environmentally sensitive areas, setting forth the variance requested, and providing a mitigation measure to mitigate adverse effects the variance may have on wildlife and fishery habitat;

B. The city shall set a time and place for public hearing to consider the application. Written notice of the application and the hearing date shall be given to all property owners of record within a three-hundred foot radius of the external boundaries of the subject property requesting the variance. In addition, notice shall be posted on the nearest public street from the property at least ten days prior to the hearing;

C. A variance shall only be granted by the city council upon specific findings that mitigation

measures shall be taken and implemented to enhance wildlife and fishery habitat as a substitute for the action taken necessitating the variance. The city council may require the posting of a bond or cash amount equal to the value of the mitigation measure and if the mitigation measure is not taken within six months from the date that any alteration takes place, then the city may contract such mitigation measure to be done and utilize bond or cash held of the purpose of paying for the mitigation measure;

D. A variance may be granted for the building setback to be reduced to, no less than fifty percent of the setback, by the council after a public hearing is done at a planning committee meeting;

E. Single-Family Dwellings. If strict application of these regulations would not allow use of the property for a single-family dwelling, the city council may approve use of the property for a single-family dwelling following a public hearing. Approval shall be granted only if the following conditions are met:

1. The proposed activity will have only minor impacts to the wetland, and

2. The proposed activity will not jeopardize the continued existence of species listed by the federal government or the state of Washington as endangered, threatened, sensitive or documented priority species or priority habitats, and

3. The proposed activity will not cause significant degradation of groundwater or surface water quality, and

4. All adverse impacts to the wetland will be mitigated to the greatest extent possible, and

5. There will be no damage to public or private property and no threat to the health and safety of people caused by the proposed activity, and

6. The inability to use the property for a single-family dwelling is not the result of segregating or dividing the property after the effective date of the provisions codified in this chapter. (Ord. 474 § 1 Exh. A(11), 1993; Ord. 419 § 10, 1989)

19.12.100 Resolution of conflicting provisions.

In the event any provision of the Black Diamond Municipal Code conflicts with the provisions contained in this chapter, the more restrictive shall apply. (Ord. 474 § 1 Exh. A(6), 1993; Ord. 419 § 6, 1989)

19.12.110 Violation—Penalty.

A. Any person that violates the terms of this chapter shall be guilty of a misdemeanor and shall be penalized as provided in Chapter 1.12 of the Black Diamond Municipal Code. Each individual alteration shall be considered a separate offense.

B. Restoration and/or mitigation as described in Section 19.12.070 may be required by a civil action when any environmentally sensitive area has been altered in violation of this chapter. (Ord. 474 § 1 Exh. A(13), 1993; Ord. 456 § 1 (part), 1992; Ord. 419 § 9, 1989)

Chapter 19.24

TRANSFER OF DEVELOPMENT RIGHTS
(TDR) PROGRAM*

Sections:

- 19.24.010 Definitions.
- 19.24.020 Parcel owner notification.
- 19.24.030 Allocation/calculation of transferable development rights.
- 19.24.040 Treasured place designation process.
- 19.24.050 Effect on other laws; sending area parcels under moratorium on the conversion of forest land to other use.
- 19.24.055 Creation of TDR bank.
- 19.24.060 Issuance of development right certificates, perfecting the right to sell.
- 19.24.065 DRCs held in trust by the TDR bank.
- 19.24.070 Request for administrative appeal.
- 19.24.080 Conservation easement and restrictive covenant.
- 19.24.090 Sale or transfer of right to acquire development rights.
- 19.24.100 Transfer and application of development rights to receiving sites.
- 19.24.110 Density rights appurtenant to the land.
- 19.24.120 Program evaluation.
- 19.24.130 Stewardship program.
- 19.24.140 Establishing additional TDR sending areas.

- 19.24.150 Lands eligible for TDR sending area designation.
- 19.24.155 Lands not eligible for TDR sending area designation.
- 19.24.160 Application and designation process for TDR sending areas.
- 19.24.170 Public benefit land evaluation criteria.
- 19.24.175 Establishing additional TDR receiving areas.

19.24.010 Definitions.

When used in this chapter, unless the context indicates otherwise, the following words when capitalized shall be defined as set forth in this section.

"Development right certificate (DRC)" means a document issued by the city administrator indicating the development rights available for transfer. City DRCs shall mean DRCs that are created by the TDR bank.

"DRC holder" means the person or entity who appears in the TDR program database as the person entitled to use the development rights specified in a DRC.

"Final letter of notification" means the official action of the city, through the city administrator that establishes a parcel as being a TDR sending area.

"Preliminary letter of notification" means the written notice provided to parcel owners of eligible sending sites notifying them of the parcel's potential eligibility to participate in the transfer of development rights program.

"Public benefit lands" mean parcels that have been or may be approved as TDR sending areas due to the presence of outstanding environmental, resource or recreational values, or provide significant public benefit(s) by preserving or defining the character of the city or will provide a site for necessary city facilities.

"TDR receiving area" means the real property designated by the city to which development rights can be transferred under the TDR program. The TDR receiving areas are identified on the map

*Editor's note—Ord. No. 895, § 1(Exh. A), adopted April 2, 2009, amended Ch. 19.24 in its entirety to read as herein set out. Former Ch. 19.24, §§ 19.24.010—19.24.180, pertained to similar subject matter, and derived from Ord. 752, § 2 Exh. 1 (part), adopted 2003; Ord. 755, § 1, adopted 2004; Ord. No. 767, §§ 1, 2, adopted 2004.

entitled the TDR program map, which is attached to Ordinance 752 as Exhibit 2 and is dated December 18, 2003. Further TDR receiving areas may be established pursuant to the process set forth in the TDR program.

"TDR receiving area parcel(s)" means the lot of record upon which the TDR receiving area is located.

"TDR sending area" means the real property from which development rights can be transferred under the TDR program. The initial TDR sending areas are identified on the map entitled TDR sending area map, which is attached to Ordinance 752 as Exhibit 2 and is dated the 26th day of December, 2003.

"TDR sending area parcel(s)" means the lot of record upon which the TDR sending area is located.

"Transferable development right (TDR)" means an interest in real property that represents the difference between the existing use of a parcel and its potential development use. This right is made severable from the parcel to which the interest is attached and transferable to another parcel for development and use under Black Diamond's TDR program.

"Treasured place" means a public benefit land that, due to its high significance and uniqueness for environmental, cultural, aesthetic, community or strategic city planning purposes, its immediate acquisition by the city is deemed to be of the utmost importance to the public welfare.

"UGA agreement" means the agreement between the City of Black Diamond, King County, Palmer Creek Timber Company, L.P. and Palmer Coking Coal Company, dated December 31, 1996. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.020 Parcel owner notification.

A. Prior to sending the preliminary letter of notification the city administrator will hold a public meeting to explain the TDR program to interested persons. Written notice of the meeting will be sent to parcel owners whose property is identified on the TDR sending area map as a TDR

sending area, to all persons who have requested notification, and shall also be posted and published in the same manner as an official city notice.

B. The mayor is hereby directed as soon as possible, but no later than April 30, 2004, based upon available staffing and funding, to direct the preparation and submittal of the preliminary letter of notification. The city administrator will identify each parcel that qualifies as a TDR sending area and send the owner of record a preliminary letter of notification. The preliminary letter of notification will indicate that the property has been identified as a TDR sending area, and will provide an estimate of the number of development rights that are available on the parcel based upon information existing at the time of notification, including any "bonus development right" as authorized by the TDR program. Neither the preliminary letter of notification nor the final letter of notification creates a vested right to the number of development rights indicated. The actual number of development rights attached to a qualifying parcel will only be calculated at the time an owner files an application for a development right certificate (DRC) pursuant to Section 19.24.060.

C. The city administrator shall create a parcel database to be known as the TDR program database that will provide information that will track the development rights created pursuant to the TDR program. It shall include such information as the city administrator deems necessary to administer the TDR program and shall include information for tracking the identified TDR sending areas, the owners of the TDR sending areas and the estimated development rights available for transfer. It shall also include information regarding development right certificates (DRC) including the names and addresses of DRC holders, and details of any DRC transfers. Each development right eligible for sale or transfer will be serially numbered preceded by its King County tax parcel number and entered in the city's parcel database by the city administrator. The numbering system will include a code to identify those development rights which were created as a result of a success-

ful administrative appeal and a code to indicate the status of the development rights (e.g., final letter of notification, DRC applied for, DRC issued, development right sold or transferred, or modified by zone classification change). The TDR program database shall be available for public inspection upon reasonable notice.

D. After sending out the preliminary letters of notification, the city administrator will hold a second public meeting to review the program and describe the procedures for exercising and transferring development rights. At the city administrator's discretion, additional public meetings may be held, if necessary, for the purpose of explaining the TDR program and procedures.

E. As soon as practicable after the conclusion of the public meetings the city administrator shall issue a final letter of notification (FLN) regarding each parcel for which a preliminary letter of notification was provided. The FLN shall identify the tax parcel that contains a TDR sending area and an estimate of the number of transferable development rights associated therewith. This information shall be entered in the TDR program database.

F. Any parcel owner who does not receive a final letter of notification but believes its parcel is eligible to participate in the TDR program, may submit a letter to the city administrator requesting a final letter of notification. The city administrator will determine whether the parcel contains a TDR sending area and either a final letter of notification or an explanation as to why the parcel is not eligible.

G. The issuance of an FLN or a refusal to issue an FLN shall be a final decision for purposes of determining whether a property contains a TDR sending area. This decision may be appealed to the city council following the same procedures provided in Section 19.24.070 for appeals relating to development right certificates (DRC). If the basis for appeal includes a dispute with regards to the size of the TDR sending area, then the appeal application, in addition to the requirements of Section 19.24.070, must include a survey, stamped

by a licensed surveyor or professional engineer authorized to practice in the State of Washington, showing the alleged dimension error in relation to the actual field conditions.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.030 Allocation/calculation of transferable development rights.

A. The issuance of an FLN does not impact the use of a parcel containing a TDR sending area. The underlying development and zoning regulations continue to apply.

B. Once a DRC is issued for a TDR sending area, only those uses consistent with the conservation easement and as further limited by Black Diamond zoning and development regulations shall be allowed on the TDR sending area.

C. Parcels zoned community commercial prior to January 1, 2004, shall have three TDRs transferable for each one-fourth acre within the TDR sending area. All other parcels shall have one TDR transferable for each one-fourth acre within the TDR sending area. Provided, parcels designated as low density residential on the TDR program map must retain at least one development right per one acre or portion thereof. That portion of a parcel that was used to satisfy zoning bulk requirement or other conditions of development, or that is already subject to a conservation easement or other encumbrance that was not created as part of the TDR process and that effectively results in the same protection from development that is afforded by being a TDR sending area, shall be excluded from being considered in the calculation to determine the number of available TDRs.

D. In calculating available development rights, the area of the parcel that is within the TDR sending area shall be used. A minimum of one-fourth acre of the parcel must be contained within the area to be protected for transferable development right eligibility. No fractional development rights shall be created.

E. Optional bonus. Fee ownership of certain TDR sending areas may be preferred by the city. These are areas to which intensive public access

may be desired, such as active recreation parks, public trails, or other properties for which significant expenditure of monies are anticipated to be made by the city, in order for the property to maximize the potential for which it was preserved. If the city accepts an offer to convey a fee ownership interest, or a lesser estate, such as for a public trail that will have high public use, but, due to real property laws regarding conveyances the fee cannot be transferred the owner will receive two transferable development rights for every unused development right associated with the parcel. Notwithstanding the eligibility of the parcel, acceptance of a fee interest or public trail easement is within the discretion of the city council. If a property has been designated a treasured place, then it shall receive the bonus density established in the treasured place designation process, which will not be more than three TDRs for every unused development right.

F. If the city acquires fee ownership of a parcel that was designated as a TDR sending area, and the development rights were not already transferred from the parcel, then the city may receive a DRC for the TDR sending area so acquired. The TDR associated with TDR sending area acquired by the city shall equal the total development potential of the site, even though the site will subsequently be developed consistent with the purpose for which it was acquired.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.040 Treasured place designation process.

The treasured place designation process can only be initiated by the city council adopting a resolution identifying an area as a potential treasured place. The process set forth in subsections 19.24.160(B) through (E) shall be followed, with the additional requirement that the staff report and the planning commission recommendation shall also set forth whether or not all or a portion of the property meets the criteria for treasured place designation, and, if so, what conditions, if any, should be placed upon the designation, and the recommended density bonus credit that should

be given. Once an application has been properly submitted, no development may occur on the nominated site until the application for treasured place status has been approved or denied, and all appeals completed or waived. However, the council may set a time limit on how long a decision on approval or denial of the application shall take. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.050 Effect on other laws; sending area parcels under moratorium on the conversion of forest land to other use.

A. Nothing contained herein shall be construed as allowing a use that is not otherwise permitted by applicable federal, state and local laws, regulations, codes and ordinances.

B. Sending and receiving site parcels subject to a forest practices moratorium pursuant to Title 76 RCW on conversions of forestland to other uses shall not be eligible to transfer or receive development rights during the term of the moratorium.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.055 Creation of TDR bank.

A. There is created a TDR bank within the TDR program. The city administrator shall include information regarding TDR bank issued DRCs (city DRCs) in the TDR program database.

B. The TDR bank may buy, sell, and issue DRCs. Any monies generated from the sale of DRCs from the TDR bank, shall only be used to purchase TDR sending area parcels, to purchase DRCs already issued for TDR sending areas, or to develop, preserve or enhance properties acquired by the city pursuant to the TDR program.

C. The TDR bank shall initially have one thousand city DRCs which will be identified in the TDR program database as city DRCs. City DRCs shall immediately be transferred to the receiving site upon purchase from the TDR bank. Any DRCs that are otherwise purchased by the TDR bank from a property identified as a TDR sending area,

shall only be transferred to the receiving site in accordance with the provision of Section 19.24.100.

D. The TDR bank may not sell city DRCs unless all of the following conditions are met:

1. The city has received an application to buy city DRCs that sets forth the tax parcel number of the intended receiving site, the number of city DRCs requested, the number of DRCs already acquired for the intended receiving site, and the efforts made to acquire DRCs from other property owners. The application must be signed by all owners of record for the intended receiving site.

2. The applicant will pay all city costs associated with the purchase and sale of city DRCs and in complying with the terms of this code section, whether or not a sale is consummated, including, but not limited to notice costs, appraisal costs, and city staff time. The city may require that the applicant deposit with the city an amount that is estimated to cover the costs before the city processes the application.

3. The sales price must be at no less than the fair market value at the time of sale, as determined by a qualified real estate appraiser hired by the city.

4. The city must first notify all property owners to which a FLN has been issued and that have not sold their DRCs, that the city intends to sell a designated number of city DRCs at the designated price, unless owners of property for which FLNs have been issued agree to sell their DRCs on the same terms and conditions. If a property owner(s), within fifteen days of being sent the notice, notifies the city administrator, in writing, that it will sell its DRCs on the same terms and conditions, then the city will delay the sale of the city DRCs for sixty days to allow the private sale to be consummated. If the sale is not consummated within that time through no fault of the party seeking to buy the DRCs, or, if the private sale is for fewer development credits than the buyer was seeking, then the city may consummate the sale for the number of city DRCs necessary to provide the number of credits sought by the buyer up to the number of available city DRCs.

5. In no event shall the city sell more DRCs than are in the TDR bank, nor more than the sending site is eligible to receive.

6. Regardless of the number of city DRCs purchased the sending site may only develop to the density authorized by development regulations and other city approvals.

E. DRCs acquired by the TDR bank, other than city DRCs, may be sold by the city through a sealed bid process following the same procedures as required for calling for bids on a public works project for which formal bids are required, except as expressly modified herein. The terms of sale shall be cash, and a cashier's check in the amount of five percent of the bid amount must be included with the bid as a bid guarantee. The bid must be irrevocable for sixty days from the bid date. The full purchase price must be paid within ten days of bid award or the five percent bid guarantee is forfeited. The bid guarantee of the unsuccessful bidders shall be returned after the full purchase price has been paid. In addition, each owner of record, as determined by the county assessor's records, for each property within the city that has been officially designated as a TDR sending site shall be mailed a copy of the call for bids, at the address appearing in the county assessor's records, at least twenty-one calendar days before the intended sale date. The city reserves the right to reject any and all bids or to only sell a portion of the available TDRs that were offered. If two or more bids are for the same amount, and the council determines that it will accept the bid, then the mayor, by random drawing between the tied bids, shall select the winning bid.

F. The TDR bank shall be administered by the city administrator, subject to the terms and conditions of the TDR program.

G. The TDR bank is authorized to place DRCs in trust, subject to the conditions set forth in Black Diamond Municipal Code Section 19.24.065.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.060 Issuance of development right certificates, perfecting the right to sell.

A. Parcel owners receiving a final letter of notification may request a development right certificate (DRC) from the city administrator. Upon receiving the request for a DRC, the city administrator will calculate the number of development rights attached to the parcel pursuant to the provisions of the TDR program.

B. A DRC certifies that a specific number of development rights are available for severance from a parcel and authorizes the rights to be sold or transferred to an eligible receiving site. The amount of development rights indicated in the DRC may be held by the parcel owner for future sale and/or transfer if not applied to the TDR sending area parcel. The DRC is valid for a period of five years following its issuance. However, the five-year period shall be tolled commencing when the DRC holder submits a preliminary plat application for a receiving site that is eligible for additional residential density in accordance with the TDR program. The five-year period shall continue to be tolled until the preliminary or final plat application is withdrawn or the city issues a final decision on a final plat application or five years after preliminary plat approval, whichever is earlier. Following the expiration of the five-year period, the DRC becomes void and the sending area owner must apply for a new DRC to sell or transfer development rights from the parcel. The number of development rights available for transfer may be recalculated at any time after the DRCs term of validity has expired.

C. Development rights eligible for transfer remain with the parcel that contains the TDR sending area until transferred to a receiving site. A DRC may be requested by successive parcel owners if one is not issued to an earlier owner.

D. Requests for DRCs must include the following:

1. Name(s) and address(es) of the parcel owner(s) of the site;
2. Legal description and parcel numbers;

3. Copy of the parcel deed and title;
4. Application fee in the amount set forth in the City of Black Diamond's fee resolution;
5. Title report confirming that applicant is the owner of the parcel and has unrestricted legal right to transfer the development;

6. Mortgage and/or lien holder subordination and release. The mortgage and/or lien holder must provide an acknowledgment that a conservation easement will be placed on the parcel and that they agree to subordinate their interest in the parcel to the conservation easement;

7. Acknowledgment of intent to grant to the City of Black Diamond a conservation easement in a form provided by the city permanently restricting development uses to those allowed by the remaining development rights attached to the parcel, if any, and preserving the parcel's environmental/resource value;

8. A description of any changes in the parcel (development, dredging, clearing, etc.) occurring since the final letter of notification was issued; and

9. Acknowledgement of intent to grant a fee simple deed to the parcel or a public trail easement, if bonus development rights are requested.

E. Upon review and approval of the required documentation, and confirmation of the remaining development rights, the city administrator will issue individual DRCs for each eligible parcel for which an application is received. The certificate will cite the serial numbers of each development right certified for sale or transfer to an eligible receiving site. A notice of issuance of the DRC shall be recorded by the city with the King County recorder's office in order to provide notice that the certificate has been issued and shall state the name of the DRC holder.

F. The city administrator will promptly notify DRC holders if the development rights available for transfer under the DRC are to be modified by the Black Diamond City Code after the term of validity has expired. Notification of modifications to the DRC is not required for those DRCs that have already been applied to a receiving site.

G. A DRC must be surrendered if the TDR sending area parcel is developed using all or a portion of the density included within the previously issued DRC. The development of the TDR sending area parcel will not be approved until the DRC is surrendered.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.065 DRCs held in trust by the TDR bank.

A. The city may authorize a DRC to be placed into trust with the TDR bank. A DRC may only be placed into trust with the TDR bank if all of the following conditions are met:

1. The city council has determined that the immediate removal of development rights from a specified sending area prior to the time that they are transferred to a receiving area will further the goals and purposes of the city comprehensive plan, the TDR program and the 1996 Black Diamond urban growth area agreement;

2. A permanent conservation easement in a form approved by the city attorney, has been recorded on the receiving area;

3. All of the receiving area property owners have signed a DRC trust agreement with the city.

B. The provisions of Section 19.24.060 notwithstanding, the following special conditions shall only apply to a DRC placed into trust with the TDR bank:

1. The DRCs shall be permanently removed from the receiving area as of the date they are placed into trust;

2. The DRC shall not have an expiration date;

3. The DRC shall remain in trust until the DRC holder provides the city TDR bank administrator with written notice that the DRC should be transferred to a specific receiving area, and the designated receiving area is eligible to receive the development rights identified in the DRC.

C. The TDR program database shall identify the trust status of DRCs held in trust by the TDR bank.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.070 Request for administrative appeal.

A. Parcel owners who dispute the number of development rights identified as available for transfer from their parcel or the eligibility of the parcel for participation in the program may submit a request for administrative appeal to the city council.

B. Requests for an administrative appeal must be filed with the city clerk within twenty-one calendar days from the issuance of the DRC, from the receipt of the written denial of eligibility for participation in the program, or from the date of any final action made pursuant to the terms of the TDR Program for which an appeal is allowed.

C. The request for administrative appeal shall include the appeal fee set forth in the city's fee resolution, and shall contain the following information: the name, address and phone number of the property owner for the parcel(s) affected by the appeal, identify the decision being appealed, the alleged error that is contained in the appealed decision, the facts that are the basis for the appeal, the legal basis for the appeal, and the requested relief. The appeal request must be signed by the owners of record for the affected parcel.

D. The city administrator will review each request for an administrative appeal and may prepare a report assessing the eligibility of the parcel or the number of development rights identified as available for transfer from the parcel. The city council will consider the city administrator's recommendations and report, if applicable, and will issue a final decision on the administrative appeal request after holding a closed record hearing. The city council shall issue findings and a decision either denying the appeal or directing the city administrator to issue a new or revised development right certificate or FLN.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.080 Conservation easement and restrictive covenant.

A. In order to sever development rights from a TDR sending area parcel for transfer to a receiving site, a conservation easement must be placed

on the TDR sending area parcel permanently restricting development of the site to the uses allowed by the remaining development rights attached to the parcel, if any, and protecting/preserving the environmental/resource values associated with the TDR sending area. The conservation easement must be signed by all owners of record for the TDR sending area parcel and the City of Black Diamond Mayor or his/her designee and recorded with the county recorder's office. If fee ownership is to be acquired, then a perpetual restrictive covenant shall be placed on the property that restricts its future use to only the uses for which it was acquired under the TDR program, in addition to the other restrictions set forth below for conservation easements.

B. Conservation easements shall be on a form approved by the Black Diamond City Attorney and shall contain at a minimum the following basic provisions:

1. The uses of the TDR sending area shall be limited to uses that further the intent for which the specific TDR sending area was designated as a sending area;

2. Future use of the TDR sending area parcel will be governed by zoning regulations in effect at the time of development to the extent they are not inconsistent with the terms of the conservation easement;

3. Restrictions are granted in favor of the City of Black Diamond and the residents and property owners within the city and are enforceable by the City of Black Diamond and if the city fails or refuses to enforce them that they can be enforced by any city resident or owner of property within the city;

4. Restriction is granted in perpetuity, and shall bind existing and future parcel owners;

5. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the parcel, and the owner of the parcel, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement; and

6. If enforcement action is commenced then the substantially prevailing party shall be entitled to their costs and attorneys fees incurred in the action.

C. At the point of transfer of TDRs from an eligible sending area, the conservation easement must be recorded with the King County Recorder's Office, and a copy of the recorded document filed with the city clerk.

D. The city's TDR program database must be amended to show that the development rights have been removed from these parcels.
(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.090 Sale or transfer of right to acquire development rights.

The right to use the development rights specified in a DRC may be transferred to the owner of record of any eligible receiving site for use on that receiving site, or a person who has acquired the right to develop the receiving site. Provided, however, in order for a person or entity to have the right to use any of the development rights specified in a DRC he must be the DRC holder. If the city receives written notification from a DRC holder that he has conveyed the right to use the development rights specified in the DRC, then the city administrator, upon receipt of the notice and payment of the applicable transfer fee as specified in the city fee schedule, will enter that data into the TDR program database, change the name of the DRC holder to reflect the transfer, issue a written notice to the new DRC holder and the former DRC holder that the TDR program database has been updated to reflect the transfer, and record with the King County Recorder's Office notification that the DRC holder has changed.
(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.100 Transfer and application of development rights to receiving sites.

A. The TDRs shall remain with the TDR sending area parcel until the receiving site parcel is authorized to apply the TDRs pursuant to a final plat approval. All transfers shall occur by a deed

of transfer to the receiving site, the form of which shall be provided by the city. The deed of transfer shall specify the number and source of development rights sold or otherwise conveyed and the legal description of the receiving site. The deed of transfer will be recorded simultaneously with the conservation easement for the TDR sending area parcel.

B. The development rights may be used only on a receiving site(s) that is eligible for additional residential density through the transfer of development rights in accordance with the Black Diamond zoning regulations. The process for transferring and applying TDRs to an eligible receiving site is as follows:

1. The DRC and a title report for the TDR sending area parcel shall be included with the application for preliminary plat approval for subdivision or development of a receiving site.

2. At such time as the receiving site owner submits an application for final plat approval, the application shall be accompanied by an updated title report for the TDR sending area parcel, a draft conservation easement and a draft deed of transfer, both of which shall be in a form designated by the city.

3. The city administrator will review the conservation easement and deed of transfer to ensure compliance with the TDR program and the updated title report to verify ownership of the development rights.

4. As a condition of final plat approval the TDR sending area and receiving site owners shall execute and record a deed of transfer and the sending area owner shall simultaneously execute and record a conservation easement.

5. The conservation easement for the TDR sending area parcel and deed of transfer shall be recorded with the King County Recorder's Office and a recorded copy filed with the city clerk. The deed of transfer must comply with any other requirements imposed by law on the conveyance of interest in real property.

6. The TDR sending area parcel and receiving site parcel owners shall be responsible for all costs of recording.

C. The development density allowed on the receiving site parcel shall not exceed that allowed by the zone in which the parcel is located.

D. If the preliminary plat application is denied or only a portion of the available TDRs are permitted for use, the city will reissue the DRC indicating the remaining TDRs available for sale or transfer.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.110 Density rights appurtenant to the land.

A. Subject to applicable federal and state laws, all TDRs shall be deemed to be appurtenant to the TDR sending area until such rights are separated from the parcel by the proper recording of a deed of transfer severing the development rights from the parcel.

B. After a deed of transfer is executed and recorded, the density associated with the deed of transfer becomes appurtenant to the receiving site. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.120 Program evaluation.

A. The city shall review the TDR program or any components thereof within three years after adoption and then as deemed necessary by the city, making a written report and recommendations to the city council on the following matters:

1. *Program utilization.* The use of the program, including the number of and distribution of all sales, transfers, and purchases of development rights during the reporting period;

2. *Program functioning.* The functioning of the program itself, including such issues as administration, cost, application processing, monitoring, and maintaining an appropriate balance between the number of sending and receiving areas; and

3. *Program effectiveness.* The effectiveness of the program in meeting its land preservation goals. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.130 Stewardship program.*A. Strategic purchase program.*

1. The City of Black Diamond may elect to purchase and hold development rights which have been designated as TDR sending areas when the purchase will significantly further the objectives of Black Diamond's comprehensive plan. In determining whether to purchase development rights from an eligible parcel, the council will consider the availability of adequate funds and the extent to which the purchase is necessary for:

- a. The protection of parcel which is of significant ecological importance;
- b. The protection of parcel which is contiguous to, or buffers, publicly owned or managed conservation lands;
- c. The transfer of development rights to a residential development project would further a compelling public need such as affordable housing;
- d. The demonstration of a significant and positive example of the TDR program in operation;
- e. The enhancement or improvement of the parcel's environmental, resource, or recreational values (e.g., habitat restoration) and is consistent with the terms of the restriction on the deed to the parcel; or
- f. Otherwise furthering the goals of the City of Black Diamond's comprehensive plan.

2. In selecting between two equally beneficial properties, the city may also consider additional public policy and equity concerns relative to the sale of development rights to the city. Notwithstanding the availability of funds and eligible parcel, the strategic purchase program is solely discretionary by the city council and it may elect to delay or decline the purchase of development rights.

B. Fee ownership.

1. The principal interest of the City of Black Diamond is to ensure that quality open space lands are preserved and subsequently stewarded in a manner that maintains and enhances their open space values. There may be some instances where there is a public interest in holding a fee interest in

the land, for continued stewardship and protection of the land. In these instances, either fee simple or less-than-fee parcel interests may be acquired for eligible lands. Whether a fee interest is acquired will depend on a variety of considerations including:

- a. The degree to which the land will require management or stewardship and the resources available to conduct the necessary activities;
- b. Whether public access is necessary or beneficial;
- c. The scope of parcel interests the land owner/donor has offered; or
- d. The administrative, monitoring and enforcement issues associated with the interest to be acquired and the resources available to address the issues.

C. Stewardship/ownership review.

1. The City of Black Diamond will include as part of its review of the potential acquisition of transferable development rights or a fee parcel interest an assessment of whether the city or a non-profit organization would be the optimal owner or steward of the acquired parcel interests over the long term. The principal concern regarding the ownership of the parcel is to ensure the preserved lands are cared for in a manner that maintains and enhances their open space values. If the City of Black Diamond concludes another organization would be the preferable owner of the development rights, it may seek that organization's cooperation and involvement during negotiations, or, if appropriate, transfer the newly acquired interests to that organization at some later date. The city will consider:

- a. The preferences of the donor or seller;
- b. Maintenance and stewardship costs;
- c. The entity that is best equipped to provide maintenance and stewardship; or
- d. The jurisdiction in which the parcel is located; and
- e. The entity that can provide for appropriate public access.

2. No transfer will be authorized until the city attorney certifies that to do so would not be an unconstitutional gift of public funds. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.140 Establishing additional TDR sending areas.

The TDR program encourages preservation of targeted open space land by enabling owners of designated TDR sending area parcels to transfer the development rights from TDR sending areas to permissible TDR receiving areas. The initial TDR sending areas are set forth on the TDR program map as adopted. The city may consider designation of additional sites for preservation by designating them as TDR sending areas after careful evaluation to ensure an appropriate balance will continue to exist between the number of sending and receiving areas to ensure the program will function effectively. The following procedures and processes apply to the designation of additional TDR sending areas.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.150 Lands eligible for TDR sending area designation.

Public benefit lands are eligible for TDR sending area designation by the city in accordance with the criteria and procedures set forth below. Eligible parcels for sending area designation must be at least one-fourth acre in size and contain one or more of the following features, as defined in the city's comprehensive plan:

A. Category I wetlands.

1. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies;

2. High quality native wetland communities, including documented category I or II quality natural heritage wetland sites and sites which qualify as a category I or II quality natural heritage wetland;

3. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine, wetlands, or mature forested swamps; or

4. Wetlands of exceptional local significance. The criteria for such a designation shall be developed and adopted by the local jurisdiction under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed or other regional boundary.

B. Freshwater bodies.

1. *High priority freshwater bodies.* For those freshwater sites which meet any of the following criteria, property is of high priority for acquisition which, by itself or in conjunction with other offered or already preserved property, includes a material portion of a category I or II wetland and a buffer in accordance with Chapter 19.12 and the wetland boundary of the contained portion:

a. Either the presence of species proposed or listed as endangered or threatened or which receives some other legal protection, or the presence of critical or outstanding actual habitat for those species;

b. Wetlands with forty percent to sixty percent coverage by permanent open water in dispersed patches with two or more subclasses of vegetation;

c. Wetlands equal to or greater than ten acres in size and having three or more wetland classes, one of which is open water; or

d. The presence of plant associations of infrequent occurrence.

2. *Priority freshwater bodies.* For those freshwater sites which meet any of the following criteria, property is eligible which by itself or in conjunction with other offered or already preserved property includes an entire freshwater site or category I or II wetland along with a buffer of fifty feet beyond the wetland boundary.

a. Wetlands greater than one acre in size;

b. Wetlands equal to or less than one acre in size that have three or more wetland classes;

c. Wetlands equal to or less than one acre in size that have a forested wetland class or subclasses; or

d. The presence of heron rookeries or raptor nesting sites.

C. *Wildlife corridors.* Eligible wildlife corridors should have high species abundance and diversity, or provide a critical wildlife access link between two or more important wildlife areas, or contain species listed as threatened, rare or endangered.

D. *Stream and small creek corridors.* Lands under this category include property which either by itself or in conjunction with other offered or already preserved property is contiguous with the established high water mark of a type 1 or type 2 streams. Property may extend up to five hundred feet from the center of the stream channel or up to two hundred feet in elevation above the channel in order to buffer the stream with sufficient vegetative cover and runoff protection.

E. *Historic landmarks/archaeological sites.* Historic and archaeological lands are those which constitute, or upon which is situated, a historical landmark formally listed or registered by the county or city for local regulatory protection.

F. *Open space lands.* Open spaces lands are those that contain environmentally sensitive areas and buffers. In addition, open space lands include those parcels adjacent to environmentally sensitive areas that also provide community valued open space and treasured areas, urban/rural buffers, in-city urban separators, public and private parks and recreation and community facilities.

G. *Urban wildlife pocket.* Lands under this category provide some open space and wildlife habitat in the urban setting. These naturally vegetative lands are found in densely configured communities where an undeveloped lot is the exception in the area. Although single lots may be eligible as an urban wildlife pocket, a higher priority will be given to those lands offered in conjunction with other offered or already preserved properties or where there exists a high probability of other properties that may be preserved in the vicinity. The natural and wildlife amenities of such lands should be reasonably certain to remain unaffected over the foreseeable future.

H. *Critical fish and wildlife habitat areas.* Lands under this category should provide high quality habitat and support a diversity and abundance of wildlife. High quality fish and wildlife habitat areas also tend to protect rare, unique, or threatened habitat.

I. *Endangered, threatened, or sensitive species habitat.* Lands under this category have been identified by the Washington State Department of Wildlife as areas with threatened or endangered species, or species of special concern.

J. *Trails.* Lands under this category should contribute to the completion of trails designed and scheduled for eventual right-of-way acquisition or surface preparation. These trails should provide public access between and through open spaces in the city, serving bicyclists, pedestrians, equestrians or other appropriate users. (Note: Public access makes this land category suitable for fee acquisition.)

K. *Greenways.* Lands under this category should lie within a greenway or greenbelt, which are land areas that are naturally vegetated, provide public access to and linkages between open space resources.

L. *Viewpoints and vistas.* Vista properties are parcels of land which offer sweeping views of lakes, mountains, valleys, rivers, streams, historic structures, farms and other rural landscapes, or landmarks. The quality of a view from a vista property should be reasonably certain to remain unaffected over the foreseeable future. For instance, a potential property may not be of high priority under this particular land type if development is likely to occur that would materially diminish the quality of the view from the vista property.

M. *Parklands.* Property in its natural state, open to the public and located in an urban growth area, which will enhance opportunities for passive recreational needs, as determined at the time of land classification.

N. *Parksites and active recreation sites.* Property which has been identified as land which the city, school district, other municipal corporation

or other qualified not-for-profit land conservation organization may, at a future date, want to purchase as park, recreation, or open space parkland. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.155 Lands not eligible for TDR sending area designation.

Any lands identified under Section 19.24.150 that are located within identified receiving areas shall not be eligible for designation as TDR sending areas.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.160 Application and designation process for TDR sending areas.

A. *Applications.* Applications requesting inclusion of public benefit lands into the TDR program as a TDR sending area shall be submitted to the city administrator. Applications shall be completed on forms supplied by the city and shall include the following information:

1. Name(s) and address(es) of each parcel owner(s);
2. Legal description and parcel number of the parcel;
3. Description of the parcel, to include size, existing zoning, site characteristics, current use and the resources and/or features that may be considered in evaluating the property's eligibility as a qualifying land type under Section 19.24.030;
4. Copy of the parcel deed and title;
5. Expected area or population to benefit from the preservation of the parcel;
6. Proposed property interest to be conveyed to the city;
7. Statement(s) and or letter(s), if any, evidencing community support of the property's designation for inclusion into the TDR program; and
8. Signed by all owners of record.

B. *City review.* Applications will be screened by the city administrator or designee to determine eligibility and to evaluate each application according to the listed criteria. The city administrator may conduct an inspection of the nominated property and may also require the submission of addi-

tional information necessary to evaluate the property's resources/features. The city administrator will provide to the planning commission a report that sets forth: (1) whether the property meets the requisite criteria for sending area designation, and (2) whether its designations as a TDR sending area will impair in any appreciable degree the operation of the TDR program; and (3) what bonus density, if any, should be credited to the TDR sending area.

C. *Planning commission review and recommendation.* The city administrator will present his/her analysis and recommendations to the Black Diamond Planning Commission for review and consideration. The commission will consider the city administrator's report and submit its recommendation to the Black Diamond City Council as to whether or not the area should be designated as a TDR sending area, and whether the area should be considered for bonus density.

D. *City council action.* The city council will hold a public hearing, consider the planning commission's recommendation and the city administrator's report, and will issue a final decision on the application for TDR sending area designation. The city council may deny the application or approve the application and direct the city administrator to issue a final letter of notification. Parcels that are approved for TDR sending area designation are subject to the city's TDR program procedures for transfer of development rights, including the DRC process. As a condition of granting TDR sending area status, the city may require either a fee transfer or grant of conservation easement within the discretion of the city council. The council shall also determine whether bonus density should be allowed. The designation of a TDR sending area, a treasured place, and the appropriate density bonus are legislative actions. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.170 Public benefit land evaluation criteria.

The following evaluation criteria are designed to assist the city's review and assessment of designating additional properties as TDR sending areas:

A. *Significant land resource.* The property supports multiple environmental, resource or recreational purposes by materially satisfying one or more of the definitions of eligible land types.

B. *Educational or recreational value.* The property promotes conservation principles by example or by offering educational opportunities or enhancing recreational opportunities.

C. *Size of parcel.* The size of the property is significant to the environmental, resource or recreational value and/or public benefit provided by the property in preserving or defining the character of the city.

D. *Threat to property.* The property's open space value is substantially threatened. Evidence of substantial threat could include:

1. There is development activity nearby the parcel;
2. The property is presently listed for sale;
3. Development permits have been submitted on the property;
4. There is commercial development within the vicinity of the property; or
5. Preservation assistance offered by another entity is available for a limited time, including matching funds, contributions of conservation easements or other property interests, or sale at less than full value.

E. *Community support.* The community supports designation of the property as a TDR sending area. The following support will be recognized:

1. Letters supporting not only the preservation of the property, but the intended permanent open space or resource objectives for the property if it is preserved;
2. Resolution of support by an established citizens organization or community land trust; or

3. Endorsement by other agencies or local governments.

F. *Geographic distribution.* The property is located in an area where the environmental, resource or recreational value is scarce and the preservation of any land would provide a significant benefit.

G. *TDR program functionality.* Designating the parcel as a TDR sending area will not impair in any appreciable degree the functionality of the TDR program.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

19.24.175 Establishing additional TDR receiving areas.

The mayor, or his or her designee, shall periodically review the city's official TDR map and TDR database to determine whether the number of TDR receiving areas needs adjustment to ensure the TDR program continues to function effectively. If, based on this review, it is determined that additional TDR receiving areas are necessary, the mayor or his or her designee shall designate areas that shall be proposed as additional TDR receiving areas and present this proposal to the planning commission. The planning commission shall conduct a public hearing in which the proposal shall be considered. The planning commission shall then decide whether to recommend or oppose the proposal, or to recommend the proposal with suggested modifications, and forward this decision to the city council. The city council shall then make the final decision on whether the proposal is approved, denied, or approved with modifications.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

Chapter 19.30

TREE PRESERVATION

Sections:

- 19.30.010 Intent.**
- 19.30.020 Applicability.**
- 19.30.030 Additional definitions.**
- 19.30.040 Retention of significant trees.**
- 19.30.050 Exemptions.**
- 19.30.060 Tree removal permits.**
- 19.30.070 Tree replacement.**
- 19.30.080 Protection of trees during construction.**
- 19.30.090 Heritage trees.**

19.30.010 Intent.

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. (Ord. 866 § 1 (part), 2008)

19.30.020 Applicability.

The requirements of this chapter shall apply any time of any land alteration, whether pursuant to a permit for clearing, grading, land alteration, land disturbance, building construction or land development, or on an existing developed site. (Ord. 866 § 1 (part), 2008)

19.30.030 Additional definitions.

"Caliper" means standard for trunk diameter measurement of nursery stock. Caliper of the trunk

shall be the trunk diameter measured at DBH (diameter at breast height), which is four and one-half feet above grade.

"Drip line" means an area encircling the base of a tree delineated by a vertical line descending from the outer limit of a tree's branch tips to the ground.

"Heritage tree" means a tree of unique significance to the community that may be associated with historic figures, events or properties; be of rare or unusual species; or may have aesthetic value worthy of preservation for the health and general welfare of the community.

"Nonsignificant tree" means any tree under six inches caliper or those included on the following list, regardless of size:

1. Black locust (*Robinia pseudoacacia*);
2. Cottonwood (*Populus freemontii*);
3. Native alder (Native *Alnus* only);
4. Native willow (Native *Salix* only);
5. Lombardy poplar (*Populus nigra*).

"Significant tree" means any healthy tree that is at least six inches in caliper, excepting nonsignificant trees. A tree growing with multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree that is planted to fulfill requirements of this chapter shall be considered significant, regardless of size or species. (Ord. 866 § 1 (part), 2008)

19.30.040 Retention of significant trees.

No person, corporation, agency or other entity shall remove any significant or heritage tree, as defined in this chapter, without first obtaining a tree removal permit pursuant to this chapter. Provided, a permit shall not be required for situations specifically exempted by this chapter.

The city shall not accept and/or issue any land use or building permit for a period of six years from the date of verification that any significant tree has been removed from a site if a tree removal permit was not first obtained pursuant to this chapter. Whenever trees are removed in violation

of this chapter, replacement shall be required per Section 19.30.070 prior to the city accepting and/or issuing any land use or building permit. A tree replacement plan shall be approved by the natural resources director prior to commencing replanting. (Ord. 866 § 1 (part), 2008)

19.30.050 Exemptions.

The following actions are exempt from the provisions of this chapter:

A. Emergency removal of any hazardous trees necessary to remedy an immediate threat to persons or property;

B. Removal of trees within or adjacent to public rights-of-way or easements, at the direction of the city, for the protection of the public safety (such as obstructions inhibiting visibility at intersections);

C. Removal of obviously dead or diseased trees;

D. Removal of no more than six trees in any thirty-six consecutive months, subject to the following conditions:

1. There is no current application for construction or development on the subject site,

2. The tree is not within an easement protecting a regulated critical area, designated primary or secondary open space, or a required buffer area, and

3. The tree is not one of the last two significant trees on the property;

E. The removal of trees for the construction of a new or addition to an existing single-family dwelling or duplex, where the trees are located less than ten feet from the building exterior walls, driveways, or utilities;

F. Trees that have been grown for the purpose of sales of Christmas trees or commercial landscaping materials by commercial nurseries and tree farms;

G. Harvesting with a Class II or Class III forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.050. Provided that, the city shall not accept and/or issue any land use or building per-

mit for six years from the date of approval of a Class II or Class III forest practices permit. (Ord. 866 § 1 (part), 2008)

19.30.060 Tree removal permits.

A. A permit is required for the removal of trees that are subject to this chapter. A tree plan, meeting the following requirements and standards, shall be submitted as part of a permit application for tree removal.

B. Existing Development/Level I Tree Plan.

1. A Level I tree plan is required for changes to existing development, including all residential, commercial, industrial or institutional sites that involve a land disturbance or expansion of buildings or parking. The following information shall be provided as part of the plan:

a. All proposed development of structures, parking, driveways, roadways, lanes, sidewalks and pathways, and retaining walls.

b. All significant trees located within the property.

c. Planting plan, including location, species, and size of new trees to be planted.

2. For existing development subject to a Level I plan, all significant trees within any required perimeter planting area, critical area, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access and as approved by the city. In all other areas, site design should integrate significant trees into required landscaping.

C. New Development/Level II Tree Plan.

1. A Level II tree plan is required for new development, including residential, commercial, industrial or institutional developments that involve land disturbance, parking areas, roads, buildings, or other construction. The tree plan must be completed by a certified professional forester, arborist, or landscape architect and must provide the following information:

a. Information required for a Level I plan; and

b. Description of off-site trees that could be affected by proposed activity.

2. For new development subject to a Level II plan, all significant trees within any required perimeter planting area, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access and as approved by the city. In all other areas, site design should integrate significant trees into required landscaping. (Ord. 866 § 1 (part), 2008)

19.30.070 Tree replacement.

A. Each Level I and Level II tree removal permit shall require a tree replacement plan. With the exception of significant trees that are relocated, each significant tree removed shall be replaced by new trees based on diameter at breast height (DBH) as required by the table below.

B. Replacement trees shall be planted on the site from which significant trees are removed or, if on-site replacement is demonstrated to be impractical, on an off-site location determined by the city.

C. Replacement trees must meet the following criteria:

1. Significant trees must be replaced with an equivalent number of trees based on diameter at breast height (DBH);

2. New trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;

3. New trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements;

4. New trees must be located away from areas where damage is likely;

5. Deciduous replacement trees shall be a minimum of three inches in caliper (DBH), evergreen trees must be a minimum of twelve feet in height; and

6. Trees shall be watered as necessary to ensure survival and growth during their first two growing seasons after planting.

| Size of Tree Removed (DBH) | Number of Replacement Trees Required |
|----------------------------|--------------------------------------|
| 6"—9" | 3 |
| 9"—12" | 4 |
| 12"—16" | 5 |
| >16" | 6 |

D. In lieu of on-site tree replacement, the city shall create a "significant tree" removal mitigation fund. As an option, an applicant can pay a flat fee of fifty dollars per each tree removed into this fund. These funds will be utilized in replanting projects throughout the city of Black Diamond, as determined by the city.

E. When at least forty percent of the total site area is preserved as nondisturbed open space, critical areas and their associated buffers, or other areas subject to a conservation easement, the tree replacement requirement shall not apply. Provided, however, the natural resources director shall require the retention of significant trees in areas that will be located in public rights-of-way, landscape and open space areas that will be open to the public or owned and controlled by an association, unless the director determines preservation of the trees would unreasonably interfere with the construction of needed infrastructure. (Ord. 866 § 1 (part), 2008)

19.30.080 Protection of trees during construction.

The following best management practices shall be applied to protect trees during development or construction activities:

A. All construction activities, including staging and traffic areas, shall be prohibited within five feet of the drip line of protected trees.

B. Tree protective fencing shall be installed along the outer edge and completely surround the drip line of significant trees to be protected prior to any land disturbance.

C. Tree protective fencing shall be a minimum of four feet high and be highly visible. Signs must be posted on the fence reading "Tree Protection Area."

D. Trees to be retained shall be watered appropriately during and immediately after construction and shall be protected from erosion and sedimentation.

E. The grade shall not be changed within five feet of the drip line of the trees to be preserved, nor shall any impervious surface be installed within five feet of the drip line of the trees to be preserved.

F. Directional felling shall be used to avoid damaging trees designated for protection. (Ord. 866 § 1 (part), 2008)

19.30.090 Heritage trees.

The purpose of the heritage tree designation is to recognize trees with a unique significance to the community, to establish a register of these trees, and to provide additional means for their protection. Heritage trees may be associated with historic figures, events or properties; be of rare or unusual species; or may have aesthetic value worthy of preservation for the health and general welfare of the community.

A. The city shall maintain a heritage tree register and map, which may be amended at any time pursuant to the process in this section.

1. Trees can be nominated for designation by individual citizens, community groups, city staff, or any board or commission of the city.

2. Staff shall review an application and make a recommendation to the city council, which shall have the final authority for designating heritage trees.

3. Trees designated as heritage trees shall be classified as follows:

a. Historical—a tree which by virtue of its age, its association with or contribution to a historical structure or district, or its association with a noted citizen or historical event;

b. Specimen—age, size, health and quality factors combine to qualify the tree as unique among the species in Black Diamond and Washington State;

c. Rare—one or very few of a kind, or is unusual in some form of growth or species;

d. Significant grove—outstanding rows or groups of trees that impact the city's landscape.

B. Upon receipt of a nomination, the natural resources director shall review the request and provide mailed notice of the nomination to the property owner and provide other public notice such as to invite public comment for a period of not less than ten days. The director shall inspect the tree, consider public comments, and formulate a recommendation to the city council for its consideration at a regular council meeting no less than sixty days after the nomination is made.

C. Each property owner who has one or more registered heritage trees shall be notified by first class mail of the designation within thirty days of the council's action.

D. Heritage Tree Declassification. Any heritage tree may be removed from heritage tree status by action of the city council following the written request of the property owner, provided that if the request is based upon whether the tree is of poor health, diseased or no longer alive, the natural resources director may approve the request.

1. The request shall be filed with the natural resources director. If the request for decertification is based upon the health of the tree, and a visual inspection by the director cannot establish that the tree is dead, diseased, or hazardous, the applicant shall pay for an outside certified arborist or forester to make a determination. If it is determined that the tree is dead, diseased, or otherwise hazardous and cannot be saved, the director may approve the removal. If the tree is determined to be healthy, or with treatable infestation or infection, the director shall deny the permit.

2. In its evaluation of whether to declassify a heritage tree, the city council shall consider the following:

a. If the tree may be considered hazardous according to this chapter;

b. If the tree no longer meets the criteria for initial designation as specified in subsection A of this section;

c. Retention of the tree would make reasonable use of the property allowed under the current

zoning district impractical or impossible in that development would not be allowed to meet the maximum density/intensity allowed by that zoning district. (Ord. 866 § 1 (part), 2008)

