Chapter 18.08

ADMINISTRATION: PROCEDURES, NOTICE & APPEALS

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18.08.010 Purpose.

The purpose of this chapter is to establish standard procedures~~,~~ for public notification and the timing of development decisions made by the City of Black Diamond. These procedures are intended to:

A. Promote timely and informed public participation;
B. Eliminate redundancy in the application, permit review, and appeals processes;
C. Process permits equitably and expediently;
D. Balance the needs of permit applicants with ~~project neighbors~~interested citizens;
E. Ensure that decisions are made consistently and predictably; and
F. Result in development that furthers City goals, objectives and policies as set forth in the Comprehensive Plan.

~~18.08.020 Supersedence.~~

~~The provisions of this chapter supersede all other procedural requirements that may exist in other sections of the City Code. Where conflicts occur between provisions of this~~

~~chapter and/or between this chapter and other City regulations, the requirements of this chapter shall apply.~~

18.08.030 Decision types.

There are six types of decisions~~, actions, or permit applications~~ that ~~are reviewed~~may be made under the provisions of this title. The types are based on who makes the decision, the amount of discretion exercised by the decision making individual or body, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. This chapter sets forth procedural requirements for applications, decisions, and appeals. Decision criteria and additional standards for specific permit types and for GMA legislative decisions are set forth in chapter 18.12. Decision types are summarized below; not all permits are listed. ~~.~~

Decision Type	**Decision Maker(s)**	**Types of Permits**
Type 1 – Ministerial	Director	Boundary line adjustment Building permit Final short plat Shoreline exemptions Temporary use permits Use interpretation
Type 2 – Administrative	Director ~~or SEPA Responsible Official~~	Accessory dwelling unit Administrative conditional use Administrative variance Binding site plan Sensitive area ~~buffer reduction and~~ reasonable use exception Formal code interpretation ~~SEPA threshold determination~~ Preliminary short plat Site plan minor amendment
Type 3 – Quasi-Judicial	Hearing Examiner	Conditional use permit Plat alteration or vacation Preliminary plat Shoreline substantial development, conditional, use or variance Variance Site Plan Review Site plan major amendment Sensitive Areas exceptions

Type 4 – Quasi-Judicial	Hearing Examiner/City Council	Development agreements Master Planned Development Rezones (site specific)
Type 5 – Legislative	Planning Commission/ City Council	Comprehensive Plan amendments (text or map) Area-wide rezones Zoning Code text amendments
Type 6 – ~~Quasi-judicial~~City Council	City Council	Final Plat ~~acceptance~~ LID/ULID final assessment rolls

If a proposal requires multiple permits with decisions of different types (e.g., site plan approval and conditional use permit, Type 2 and Type 3), the higher type process applies to the entire proposal. Refer to 18.08.130.

18.08.040 Ministerial decisions – Type 1.

A. Type 1 decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated in the ~~City~~ Code. These decisions are made by the director, are exempt from notice requirements, and are final actions. Type 1 decisions ~~of the director~~ may be appealed to the Hearing Examiner and then to Superior Court ~~(excepting building permits and related technical code decisions)~~.

B. The following decisions, actions and permit applications require a Type 1 decision:

1. Building permits and related technical code applications referenced in BDMC Title 15 (fire, mechanical, plumbing, etc)
2. Boundary Line Adjustments
3. Use interpretation
4. Shoreline exemptions
5. Final short plat
6. Temporary use permit

18.08.050 Administrative decisions – Type 2.

A. The Director makes Type 2 decisions based on standards and clearly identified criteria. Type 2 decisions require written documentation that the proposal meets all applicable City standards or is appropriately conditioned to meet requirements. The supporting documentation may be in the form of a checklist, letter, staff report, or combination of forms, reports and checklists.

B. Type 2 decisions require public notice as set forth in Section 18.08.120.

C. Type 2 decisions are subject to an administrative appeal to the Hearing Examiner unless specifically modified or excluded pursuant to this Section.

~~D. Shoreline substantial development permits and shoreline variances may be appealed only to the State Shorelines Hearings Board.~~

~~E. Administrative appeals of SEPA threshold determinations of significance (DS) are not allowed.~~

~~F. Administrative appeals of the adequacy of an environmental impact statement are not allowed.~~

~~G. Appeal of a SEPA decision associated with a Type 5 legislative action is allowed only in conjunction with appeal of the decision to the Growth Management Hearings Board.~~

~~H.~~ The following decisions, actions and permit applications require a Type 2 decision:

1. ~~SEPA threshold determinations / Use approval with SEPA~~
2. Preliminary short plat
3. Accessory dwelling unit
4. Administrative Conditional Use Permit (ACUP)
5. Administrative Variance
6. ~~Critical~~ Sensitive Areas Reasonable Use Exception
7. Formal code interpretation
8. Binding site plan
9. Site plan minor amendment

18.08.060 Quasi-judicial decisions – Type 3.

A. Type 3 decisions are made by the Hearing Examiner following an open record public hearing and involve the use of discretionary judgment in the review of each specific application.

B. Type 3 decisions require public notice as set forth in Sections 18.08.120.

C. For each Type 3 decision, the Department will forward a recommendation to the Hearing Examiner regarding whether the proposal is consistent with applicable ~~City~~ regulations and policies and whether the proposal should be approved, approved with modifications or conditions, or denied. The Examiner will issue a written decision including findings, conclusions, and conditions, if any.

D. The ~~Department~~ Director may require an applicant to participate in a public meeting to provide information and take public comment before the department forwards a recommendation to the Hearing Examiner.

~~E. Any administrative appeal of a SEPA threshold determination of non-significance (DNS), mitigated determination of non-significance (MDNS) or other Type 2 decision shall be consolidated with the open record public hearing on a Type 3 proposal.~~

F. A Type 3 decision may be appealed to ~~the~~ Superior Court, except that a Type 3 decision on a shoreline application may be appealed only to the State Shorelines Hearings Board. (See also 18.08.200 regarding consolidated permit processing and appeals).

G. The following decisions, actions, and permit applications require a Type 3 decision:

1. Preliminary plat~~)~~
2. Conditional Use Permit
3. Shoreline~~,~~ substantial development, conditional use permit or variance
4. Plat alteration or vacation
5. Site plan approval or major amendment
6. Variance
7. Sensitive Areas Exceptions

18.08.070 Quasi-judicial decisions – Type 4.

A. Type 4 decisions are made by the City Council following a closed record hearing based on a recommendation from the Hearing Examiner. Type 4 decisions proceed in the same way as Type 3 decisions, except that:
   1. The Hearing Examiner makes a recommendation to the City Council rather than making a decision.
   2. The City Council holds a closed record hearing to consider the recommendation from the Hearing Examiner. Only parties of record who testified at the Hearing Examiner hearing may speak at the closed record hearing; however, testimony is limited to discussion about the recommendation from the Hearing Examiner. All argument and discussion must be based on the factual record developed at the Hearing Examiner open record hearing.
   3. The City Council ~~will~~ shall decide the application by motion and ~~will~~ shall adopt formal findings and conclusions approving, denying, or modifying the proposal.
   4. Appeal of the City Council decision is to Superior Court. ~~There is no administrative appeal.~~

B. Type 4 decisions require public notice as set forth in Sections 18.08.120.

C. The following decisions, actions and permit applications require a Type 4 decision:
   1. Rezone (site specific)
   2. Development agreement
   3. Master Planned Development

18.08.080 Legislative decisions – Type 5.

A. Type 5 decisions are legislative, non-project decisions made by the City Council under its authority to establish substantive policies and regulations pursuant to the Growth Management Act. Type 5 decisions do not include legislation of a procedural nature such as the adoption of fee ordinances or technical issues such as adoption of building codes, engineering standards and related matters.

B. Type 5 decisions require public notice as set forth in Section 18.08.120 and a public hearing before the ~~City~~ Planning Commission, ~~who~~ which will make a recommendation to the City Council~~, and broad public outreach prior to a decision by the City Council~~.

C. There is no administrative appeal of Type 5 decisions, but they may be appealed to the Washington State Growth Management Hearings Board.

D. The following actions require a Type 5 decision:
   1. Comprehensive Plan Amendment (text or future land use map)
   2. Sub-area plan adoption or amendment
   3. Area-wide rezone
   4. Amendment of the Zoning ~~code~~ Code or other development regulations.

18.08.090 ~~Quasi-judicial~~City Council decisions - Type 6.

A. Type 6 decisions are quasi-judicial decisions or other decisions, not necessarily requring the filing of a project permit application, made by the ~~city~~ City ~~council~~ Council following a recommendation by staff.

B. Type 6 decisions include, but are not limited to, the following ~~project applications~~:
   1. Final plat approval;

2. Final assessment roll hearings for local improvement districts and utility local improvement districts.

18.08.100 Application.

A. Who may apply:
   1. The property owner or an agent of the owner with authorized proof of agency may apply for a Type 1, 2, 3, ~~or~~ 4 or 6 decision. Eligibility and procedures for amending the comprehensive plan are found in BDMC Title 16.~~, or for a site-specific Comprehensive Plan Amendment.~~
   2. The Mayor, Planning Commission, or City Council may initiate a site-specific rezone (a Type 4 decision) for City-owned or managed property, or an area-wide rezone, a Comprehensive Plan Amendment, or an amendment to the text of the Zoning Code (Type 5 decisions).
   3. Any person may propose a text or map amendment to the Comprehensive Plan or request that the City initiate an area-wide rezone, or amendments to the text of the Zoning Code. Procedures for amending the Comprehensive Plan are outlined in BDMC 16.30.

B. All applications for Type 1, 2, 3, 4, 5 or 6 decisions, actions, or permits shall be submitted on official forms or as prescribed and provided by the Department and be accompanied by the required filing fee.

C. The Department shall establish, and may revise from time to time, submittal requirements for each type of application.
   1. Individual submittal requirements may be waived by the Director, in writing, only if the applicant can demonstrate that normally required information is not relevant to the proposed action and is not required to show that an application complies with applicable City codes and regulations.
   2. For project permit applications, the submittal requirements established by the Director shall include a target turn-around period for initial review and an estimate of average turn-around times for permit issuance. Such time periods shall be established administratively and included in application submittal requirements available to the public, but shall not exceed one hundred twenty (120) days.

18.08.110 Determination of completeness.

A. An application for a Type 1, 2, 3, ~~4~~or 4 ~~or 6~~ decision shall be determined complete when all information required in the applicable submittal requirements has been provided in a manner sufficient for processing the application. Additional information may be required by the City even though an application has been determined to be complete for processing.

B. The City may, at its discretion and at the applicant's expense, retain a qualified professional to review and confirm the applicant's reports, studies and plans.

C. If an application is determined to be incomplete, the City will mail written notification to an applicant of what information or material must be submitted to make the application complete. Notice that an application is not complete shall be mailed within 28 days of receiving the application.

D. The City may choose to notify an applicant by mail, telephone or email that an application is complete. If the City does not notify the applicant of completeness or incompleteness within 28 days of submitting the application, the application shall be considered complete on the 29th day.

18.08.120 Notice of application.

A. Within 14 days of the determination of completeness, the City shall issue a notice of application for all Type 2, 3, and 4 applications.

B. The notice of application shall include the following information:

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

C. The notice of application shall be made available to the public by one or more of the following methods, as specified for each permit application type in Table 18-1:

1. Mail. Mailing to owners of real property located within 300 feet of the subject property. If the owner of the property that is the subject of the application owns other real property adjacent to the subject property, then the 300-foot measurement shall be taken from the boundary of any such adjacently located parcels. This distance shall be increased to 500 feet for a Master Planned Development~~;~~.
2. Publish. Publishing in the official City newspaper of record.
3. Post. Posting the property with a sign or placard as required by the department.
4. Online. Publishing or posting on the City's website a notice of the application. If online method is used, the Department will either establish a specific calendar for online publishing or will maintain an email distribution list to alert interested parties that a new proposal has been applied for.

5. Other. Other methods of notice are supplementary to some primary method and may include press releases, notices to community newspapers, notifying public or private groups known to have an interest in an area or certain type of proposal.

18.08.125 Notice requirements table.

A. Notice shall be provided using the following methods for each decision type. Specific applications with unique noticing requirements are noted individually.~~:~~

Table 18-1

~~Application~~	~~Process Type~~	~~Mail~~	~~Publish~~	~~Post~~	~~Online~~	~~Other~~
~~SEPA Threshold Determination / Use Approval with SEPA, Draft and Final EIS/SEIS publication~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Short Subdivision~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Variance~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Shoreline Variance~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Shoreline Substantial Development Permit~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Administrative Conditional Use~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Critical Areas Reasonable Use Exception~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Formal Code Interpretation~~	~~Type 2~~		~~X~~		~~X~~	~~X~~
~~Binding site plan approval~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Site plan minor amendment~~	~~Type 2~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Preliminary Subdivision (Plat)~~	~~Type 3~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Plat Alteration or Vacation~~	~~Type 3~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Conditional Use Permit~~	~~Type 3~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Shoreline Conditional Use Permit~~	~~Type 3~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Site plan approval, or major amendment~~	~~Type 3~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Master Planned Development~~	~~Type 4~~	~~X~~	~~X~~	~~X~~	~~X~~	~~X~~
~~Rezone~~	~~Type 4~~	~~X~~	~~X~~	~~X~~	~~X~~	
~~Development Agreement~~	~~Type 4~~	~~X~~	~~X~~		~~X~~	~~X~~
~~Comprehensive Plan Amendment (map or text)~~	~~Type 5~~	~~X~~	~~X~~	~~X~~	~~X~~	~~X~~
~~Zoning Code Text Amendment~~	~~Type 5~~	~~X~~			~~X~~	~~X~~

Decision Type	**Mail**	**Publish**	**Post**	**Online**	**Other**
Type 1	NA	NA	NA	NA	NA
Type 2	X	X	X	X	
• Formal code interpretation		X		X	X
• Site Plan minor amend	X	X	X	X	X
Type 3	X	X	X	X	
• Site Plan major amend	X	X	X	X	X
Type 4	X	X	X	X	X
Type 5	X	X	X	X	
• Zoning Code text amend.		X		X	X
Type 6					
• Final Plat				X	X
• Other	X	X	X	X	

18.08.130 Consolidated permit process.

A. If a project requires more than one type of land use application, the applications shall be processed concurrently unless the ~~applicant~~ director determines~~demonstrates~~ that separate processing will result in a more efficient or effective review process. ~~The Director may, however, require consolidated processing when concerns exist about cumulative impacts, inappropriate piece-mealing of the project, or when decision makers need clarity about later phases of a final development proposal.~~

B. Type 5 applications may not be consolidated with related project permit applications.

C. Consolidation of review processes shall modify decision making authority and appeal procedures only as follows.

1. When review of a Type 1 application is consolidated with a Type 2 or higher application, no change in decision making or appeal processes will occur. The effective date of the Type 1 decision shall be no sooner than the date of final City action on the related Type 2 or higher application.
2. When a Type 2 application is consolidated with a Type 3 or Type 4 application, no change in decision making or appeal processes will occur, except that

shoreline applications (variance or substantial development permits) shall be decided by the higher level decision maker. Appeals of Type 2 decisions shall be consolidated into the required open record public hearing for the Type 3 or Type 4 decision.

3. When a Type 3 application is consolidated with a Type 4 application, the Type 3 decision shall be made as part of the Type 4 application.

18.08.150 Public notice of decision.

A. Each Type 2, 3, or 4 decision shall be made in writing. The form of a Type 2 decision may be a checklist, annotated checklist, letter, report, memo, or combination of forms. Type 3 and Type 4 decisions shall include findings and conclusions in support of the decision.

B. Notice of each Type 2, 3, or 4 decision shall be mailed to:
   1. The applicant and applicant's contact person;
   2. Each person who submitted a comment on the proposal during the public comment period;
   3. Each person who spoke at any required public hearing; and
   4. Each person who requested notice of the decision or who has requested notification of all permit decisions.

C. Notice of a decision shall include a description of how to appeal the decision.

18.08.180 Notice of public hearing.

Notice of the time and place of an open record hearing for Type 3 and 4 applications shall be provided by the Department no less than 14 days prior to the hearing, through use of the same methods indicated for notice of application. See 18.08.120 and 18.08.125.

18.08.190 Effective date of decision.

Type 1 decisions shall be effective on the date the decision is made. Type 2 and 3 decisions shall be effective at the close of the appeal period, or if appealed, on the date of final City action on the appeal. Type 4 decisions are effective on the date final findings and conclusions are adopted by the City Council. Type 5 and 6 decisions are effective on the date of passage of the ordinance or resolution regarding the application by the City Council, or on a later date as may be specified in the resolution or ordinance.

18.08.200 Appeal structure.

Table 18.08.200-1 provides a summary of the appeal structure for Type 1- 5 applications.

Table 18.08.200-1 Summary of Appeal Structure

Process Type	**Decision maker**	**Appeal to**	**Further appeal**
Type 1~~, except building permit appeals~~	Director	Hearing Examiner	n.a.
Type 2~~, except shoreline applications~~	Director	Hearing Examiner	Court
Type 3, except shoreline applications	Hearing Examiner	Superior Court	Court
Type 4 and 6	City Council	Superior Court	n.a.
Type 5	City Council	Growth Management Hearings Board (GMHB)	Court
~~Type 2 Shoreline applications~~	~~Director~~	~~Shorelines Hearings Board~~	~~Court~~
Type 3 Shoreline application	Hearing Examiner	Shorelines Hearings Board	Court
Note that a consolidated permit process may change the initial decision maker for Type 2 shoreline applications and for Type 3 applications consolidated with Type 4 applications.			

~~Table 18.08.200-2 SEPA Appeal Structure~~

~~SEPA Action~~	**~~Decision maker~~**	**~~Appeal to~~**	**~~Further Appeal~~**
~~a. Determination of Non-Significance (DNS), Mitigated Determination of Non-significance (MDNS) for:~~			
~~Type 1, 2, 3, 4 decisions~~	~~Director/Responsible Official~~	~~Court~~	
~~Type 5 decisions~~	~~Director/Responsible Official~~	~~GMHB~~	~~Court~~
~~B. EIS Adequacy:~~			
~~Type 1, 2, 3 decisions~~		~~Court~~	
~~Type 4 or 5 decisions~~		~~City Council~~	~~GMHB and/or Court~~

18.08.210 Administrative appeals.

A. Who may appeal. Any aggrieved party of record may file an administrative appeal of a Type 1, 2 or ~~Type~~ 3 decision.

B. Time and place to appeal. Appeals of a Type 1, 2 or 3 decision shall be addressed to the hearing examiner and filed in writing with the department within 14 calendar days of the notice of decision, except for shoreline appeals ~~and appeals associated with a SEPA comment DNS~~.

C. Shoreline appeals. Appeals of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance decision shall be filed with the state shorelines hearings board pursuant to RCW 90.58.180.

~~D. SEPA Determination of Nonsignificance (DNS) or Mitigated Determination of Nonsignificance (MDNS). When a SEPA DNS or MDNS is issued pursuant to WAC 197-11-340 or 350, appeals of the DNS/MDNS and any associated Type 2 decision shall be filed within 14 days of the notice of decision.~~

E. Fees. Each appeal filed on a non-shoreline decision shall be accompanied by a filing fee in the amount established in the City's schedule of fees.

F. Form of appeal. A person appealing a Type 1 decision must file a written statement setting forth:

1. Facts demonstrating that the person is aggrieved by the decision;
2. A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria. ~~An appeal of a SEPA environmental document shall describe any alleged inadequacy in the threshold determination with respect to evaluation of a specific environmental element~~;
3. The specific relief requested; and
4. Any other information reasonably necessary to make a decision on appeal.

G. Limitation on new appeal issues. No new substantive appeal issues may be raised or submitted after the close of the time period for filing of the original appeal. The hearing examiner may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal.

18.08.220 Appeal process.

A. Within 14 calendar days following timely filing of an administrative appeal, the department shall mail notice of the date, time and place for the appeal hearing to all parties who received notice of the decision.

B. Appeals shall be heard and decided within 90 days from the date the appeal is filed, unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause shown. The period of time for hearing and deciding an appeal shall be excluded in calculating the 120 period for permit issuance established pursuant to BDMC 18.08.100 or state law.

C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the City, the applicant, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.

D. The appellant shall carry the burden of proof in the appeal. The burden of proof shall be met by a preponderance of the evidence in order for the appellant to prevail.~~; provided that in any appeal of a SEPA decision, the decision of the department shall be given substantial weight and may be overturned only if it is clearly erroneous.~~

18.08.230 Judicial review.

A. No person may seek judicial review of any decision of the City, unless that person first exhausts the administrative remedies provided by the City.

B. Any judicial appeal shall be filed in accordance with State law. If there is not a statutory time limit for filing a judicial appeal, the appeal shall be filed within 21 calendar days after a final decision is issued by the City.