



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
April 9, 2013 7:00 PM
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) APPROVAL OF MINUTES –March 12, 2013
- 3) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting’s agenda may do so at this time.
- 4) PUBLIC HEARING ON MISCELLANEOUS CODE AMENDMENTS:
 - Vesting provisions
 - Residential Cluster District
 - Sign regulations
 - SEPA appeal process
- 5) UNFINISHED BUSINESS
- 6) DEPARTMENT REPORT
- 7) PUBLIC COMMENTS
- 8) ADJOURN



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

STAFF REPORT

Date: March 28, 2013
To: Planning Commission
From: Steve Pilcher, Community Development Director
Re: Miscellaneous Code Amendments

Introduction

The Planning Commission has called for a public hearing to be held on four separate potential amendments to the Black Diamond Municipal Code (BDMC). These matters come forward based upon either past Commission discussions; actions taken by the City Council; or at staff suggestion. A public hearing has been scheduled and advertised for the regular Commission meeting to be held on April 9, 2013.

Public notice has been provided by publication of a legal notice in the Friday March 29 edition of the Maple Valley-Covington Reporter and by posting the same notice on the City's website on the same day.

A SEPA determination of nonsignificance (DNS) was issued on March 22nd and sent to State agencies and the newspaper for publication.

The staff report discusses each proposal individually.

Changes to vesting periods for previously approved project permits

Last year, the Commission considered a request of a property owner along SR-169 to extend the time period for which a previously approved Site Plan Approval could remain valid. The Commission recommended approval of the extension and, subsequently, the City Council adopted an ordinance (No. 12-978) amending the Site Plan section of the BDMC (18.16) to state that any site plan approval granted prior to April 1, 2013 would remain valid until April 1, 2015.

During the Commission's deliberation on this issue, they decided to re-examine vesting periods in general. Earlier this year, the Commission met and agreed to put forth a proposal to extend the vesting period to three year for all types of project permits (more than just site plan approvals) that otherwise do not have an approval period defined in the code.

Attached are the proposed revisions to Chapter 18.14. In addition to extending the time period from two to three years (see 18.14.050.A & B), a few other minor “housekeeping” amendments are included, such as removing references to “planned unit developments” (we don’t have a provision for PUDs in Black Diamond) and other minor edits. The only other change of significance is to note that construction must *commence* prior to the expiration of the three-year approval period, rather than be *substantially completed*. That provides a more distinct test, plus avoids the difficulty of determining an approval is no longer valid, even if construction has already begun.

Residential Cluster District, BDMC 18.86

In December 2012, the City Council approved amendments to the City’s Comprehensive Plan. Part of those amendments included a proposal to define intended residential densities in terms of dwelling units allowed per “net” acre instead of “gross” acreage. The intent of the Plan amendment was to exclude sensitive areas and their required buffers from density calculations.

That policy amendment requires that an amendment be made to Chapter 18.86 in order to ensure consistency between the Comprehensive Plan and implementing development regulations.

The attached amendment to BDMC 18.66 proposes to achieve this by noting in 18.86.040.A that for the purposes of calculating density for a cluster development, that portion of a site containing sensitive areas and buffers pursuant to BDMC 19.10 (Sensitive Areas Ordinance) is expressly excluded. In other words, cluster developments are still allowed, by only those portions of a site otherwise considered to be “developable” can be included for the purpose of determining allowable densities. In instances where sites include sensitive areas and/or buffers, this will reduce their overall development potential.

Another minor amendment is proposed to 18.66.030.C, as section 2 includes redundant and somewhat confusing language.

Sign Code revisions

Staff was approached by the owners of Diamond Square, who were seeking revisions to code that would allow for greater signage opportunities for their property. The current restrictions have (in part) resulted in a fairly heavy use of sandwich boards and banners by the various businesses residing within this project. Staff drafted proposed revisions to both the Gateway Overlay District (BDMC 18.76) and the Sign Code (BDMC 18.82). The proposed changes would apply to all properties within the Gateway Overlay District and all other commercial properties throughout the city.

The proposed revisions will:

1. Remove the unique sign area limitation applicable to the Gateway Overlay District, instead deferring to whatever the underlying zoning allows per the Sign Code (18.82)
2. Within the Gateway Overlay District, allow signs to be internally illuminated.
3. Maintain the existing 50 sq. ft. sign limitation for ground signs within all non-residential zones.
4. Allow all multi-tenant commercial/business centers (not just shopping centers) to have a larger ground sign (100 sq. ft. maximum).
5. Allow properties with significant street frontage (over 300 lineal feet) to have an additional ground sign, provided such signs are spaced a minimum of 150 ft. apart.

SEPA Appeal process

This proposal was suggested by staff after a recent SEPA appeal hearing. Currently, City code (BDMC 19.04) allows for an "administrative appeal" of a decision made by the SEPA Responsible Official. The code establishes an appeal fee of \$250 and specifies that appeals are to be considered by the City's Hearing Examiner. Individuals dissatisfied by the Examiner's decision may appeal to Superior Court.

The last SEPA appeal concerned the issuance of a Mitigated Determination of Nonsignificance (MDNS). Billings from the Hearing Examiner for that process cost the City over \$37,000. The City had no authority to either charge the appellants or the project applicant for this process and, therefore, was obligated to pay the Examiner's bill. This was an issue during tight budget times.

State law does not require a local government to provide an administrative appeal. Instead, a jurisdiction may require that any appeal proceed directly to Superior Court. Were this to occur in Black Diamond, the City's insurance provider would provide legal services in defense of the City's SEPA action. Therefore, expenses to the City would be minimized.

A survey of representative cities in Pierce and King County revealed that the vast majority do provide an administrative appeal process, with only a few requiring appeals proceed directly to Superior Court.

The proposed amendments would eliminate the administrative appeal process in Black Diamond and, instead, require appeals to be made to Superior Court.

Chapter 18.14 - VESTING

Sections:

18.14.010 - Definitions.

18.14.020 - Period for review of permit applications—Lapsing of applications.

18.14.030 - Vesting of project permits.

18.14.040 - Amendments to permit—Effect on vesting.

18.14.050 - Duration of approvals—Effect of permit expiration.

18.14.060 - Suspension or revocation of permit—Effect on vesting.

18.14.070 - Lapsing of existing approvals—Notice required.

18.14.010 - Definitions.

For purposes of this chapter, the following definitions shall apply:

"Complete project permit application" means a project permit application that meets the procedural submission requirements required for such a permit by the Black Diamond Municipal Code and the city's administrative regulations, and includes payment of all applicable fees and provision of all information needed under the city's municipal code and administrative regulations to make an application sufficient for continued processing.

"Lapse" means that any rights or potential rights created by the filing of any project permit application, whether the application is complete or incomplete, shall cease, and the application shall be deemed void.

"Project action" means a specific activity, located in a defined geographic area, relating to construction or development of such area.

"Project permit" means any land use or environmental permit or license required from the city for a project action, including but not limited to building permits, subdivisions, binding site plans, ~~planned unit developments~~, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by sensitive area or critical area ordinances, master planned developments, and site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, master planned development regulations or other development regulations.

"Vesting" means the establishment of a date that is used to determine which zoning and other land use control ordinances will apply to the review by the city of a complete project permit application.

18.14.020 - Period for review of permit applications—Lapsing of applications.

A.(1) Timeframe for Initial Review. Within twenty-eight days of receipt of any type of project permit application, the City shall mail or provide in person to the applicant a written determination stating either: (a) that the application is complete, or (b) that the application is incomplete, and stating what is necessary to make the application complete. To the extent known to the city, the city shall identify other agencies of local, state, or federal government that may have jurisdiction over some aspect of the application.

(2) Timeframe for Review After Additional Information Provided to City. Within fourteen days after the applicant has submitted additional information requested by the city as necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary.

(3) Timeframe for Review of a Complete Application. Once an application is deemed complete, the review process should take no longer than one hundred twenty days to issue a determination or take other action unless the city issues written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

B. In order to remain valid, project permit applications must be complete and all applicable fees paid within one hundred eighty days of filing. Project permit applications failing to satisfy these requirements are void. However, in the case of construction permits issued in accordance with the International Building Code, the building official is authorized to grant one or more extensions for additional periods of no more than ninety days each, but only where such extensions are requested in writing and justifiable cause is shown. The one hundred eighty days shall be tolled during any period in which the permit application is the subject of an appeal that has been properly and timely filed pursuant to the Black Diamond Municipal Code.

C. Except as prohibited by law, any of the terms and conditions of this section may in writing be waived or amended for a specific permit application for good cause shown, as determined in the sole discretion of the city.

18.14.030 - Vesting of project permits.

A. All project permit applications shall be considered under the zoning and other land use control ordinances in effect on the date a complete application for such permit is filed.

B. Vesting of a complete project permit application does not vest any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals, provided: (1) a complete application for a subdivision or short subdivision shall be vested pursuant to the terms of RCW 58.17.033, as currently enacted or hereafter amended; (2) the specific use and density

identified in an approved final subdivision shall be vested for the period of time allowed under RCW 58.17.170, as currently enacted or hereafter amended; (3) short subdivisions shall be vested for the specific use and density identified in the approved final short subdivision for a period of five years from the date of final plat approval; (4) vesting of subsequent permits and approvals as part of a master planned development shall be governed by this chapter unless expressly amended by the terms of a development agreement executed pursuant to Chapter 18.98

C. A complete application for a grading or filling permit vests only to the grading and filling on the property and does not vest any subsequent development or construction activities, including but not limited to water, sewer, storm water, plumbing, electrical, or other mechanical work. However, a project shall vest as to storm water management regulations if a complete storm water drainage permit application is submitted concurrently. Pursuant to BDMC 18.98, vesting of storm water permits for a Master Planned Development shall be on a phase-by-phase basis, unless otherwise provided by the terms of the approved Master Planned Development development agreement.

D. Submittal of pre-application materials does not, ~~by itself,~~ vest a project. ~~However,~~ SEPA checklists and other SEPA submittals may be considered in determining whether the underlying project permit application is complete.

E. Notwithstanding any other provisions of this chapter, the city may amend, alter, or suspend any vested rights created by the filing of a complete permit application and/or preliminary or final plat approval where the city's legislative body finds that a change in conditions creates a serious threat to public health or safety in the permitted area if development were to proceed under the vested rights.

18.14.040 - Amendments to permit—Effect on vesting.

A. "Minor" Amendments. An applicant may be granted an amendment to any of the conditions or requirements of a permit: (1) upon a showing of changed circumstances and a determination by the mayor, or his or her designee, that (a) the requested amendments constitute "minor" adjustments that can be sufficiently mitigated through new actions that may be required as part of the permit amendment approval, and (b) each of the proposed amended conditions is not otherwise prohibited under the municipal code and would not require additional environmental review under BDMC Title 19, and (2) the proposed amendments would not (a) increase gross building area by more than ten percent, (b) increase the number of dwelling units, (c) increase total impervious surface area, (d) change the number of ingress or egress points, or (e) increase the area of site disturbance by more than ten percent. Modifications to a permit required by the city shall be deemed "minor" amendments.

B. "Major" Amendments. An applicant shall not be granted an amendment to any condition or requirement of a permit if the mayor, or his or her designee, determines that the proposed amendment constitutes a "major" amendment. Any proposed amendment to the conditions and

requirements of a permit that does not meet the requirements of subsection A shall be considered a "major" amendment. Approval to implement a "major" amendment shall require a new permit application to be filed and approved by the city, provided, any work or use covered by the existing permit that would be unaffected by the requested "major" amendment shall continue to be vested under the terms of the existing permit.

C. Effect on Vesting.

1. Unless otherwise agreed to in writing by the city, approval of "minor" amendments to permit conditions and requirements shall terminate any vested right to the original permit conditions insofar as those conditions are inconsistent with the approved amendments, and, unless also otherwise agreed, approval does not toll or otherwise change the date upon which the amended permit lapses under this chapter.

2. Any new permit application filed as part of seeking a "major" amendment to the conditions and requirements of the original permit shall not be vested to any of the conditions of the original permit and shall be subject to the current codes and regulations in effect at the time the complete new application is filed.

D. City's Decision is Final. The city's determination that a requested amendment is "minor" or "major" shall be final and not subject to appeal.

E. Amending MPD Permits. Amending of a master planned development approval is controlled by the provisions of Chapter 18.98, provided, amending of subsequent permits and approvals required as part of a master planned development shall be governed by this chapter unless expressly amended by the terms of a development agreement executed pursuant to Chapter 18.98 Chapter 18.66.

18.14.050 - Duration of approvals—Effect of permit expiration.

A. Except where a different duration is established elsewhere in the Black Diamond Municipal Code, or by executed development agreement, administrative ruling or judicial order, or by state or federal law, all project permits shall expire ~~two~~three years after the date of issuance if construction of the project has not ~~been substantially completed~~commenced; provided, an extension of the permit may be granted as allowed under subsection B, and a building permit may become void after one hundred eighty days of inactivity, as detailed in subsection D; and provided further, permits that authorize an activity or use, rather than construction of a building or structure, shall expire as of the date indicated on the permit.

B. For project permits subject to the ~~two~~three-year duration set forth in subsection A, above, the City may extend the date of permit expiration up to two years for good cause, upon written request by the applicant at least thirty days prior to expiration of the permit. Requests for extensions shall be

submitted in writing, together with payment of a fee equal to one-half of the permit application fee in effect at the time the request for extension is filed, and shall ~~set~~ describe good cause necessary for an extension. Good cause shall mean the applicant was unable to ~~substantially complete~~ commence construction due to circumstances beyond the applicant's control and not foreseeable at the time of permit issuance, and the applicant demonstrates the ability to complete the project within the extended time period.

C. Unless a project permit has been extended pursuant to subsection B of this section, or as otherwise provided by an executed development agreement, any vested rights to particular regulations or conditions of issuance associated with a project permit shall cease upon expiration of the permit, except as RCW 58.17.170 or other applicable law may apply. An individual or entity seeking to replace an expired permit shall be subject to each fee, regulation, or condition of issuance in effect at the time a new complete permit application is filed and to which no specific exemption applies.

D. Any otherwise valid building permit shall be deemed to have expired and become void if the work authorized by the permit has not been substantially commenced within one hundred eighty days after its issuance, or the work authorized by the permit is suspended or abandoned for a period of one hundred eighty days after the work has commenced.

18.14.060 - Suspension or revocation of permit—Effect on vesting.

A. The community development director, or his or her designee, is authorized to suspend or revoke any project or other permit issued by the city whenever the permit is issued in error or was issued on the basis of materially incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of the municipal code.

B. When the suspension or revocation of a permit is based on no fault of the applicant, a replacement permit issued for the same project within one hundred twenty days of the suspension or revocation shall be vested to the regulations and requirements in effect as of the date the original complete application was filed and no additional application fee shall be required, provided, the project must still fully comply with the regulations and requirements in effect at the time the original complete application was filed.

18.14.070 - Lapsing of existing approvals—Notice required.

Any project permit issued by the city prior to the enactment of this chapter, if such approval or permit is not already subject to a definite expiration date under the provisions of the city's municipal code, shall hereby lapse and become void on April 1, 2012; provided, the city shall take reasonable steps to notify persons who may possess such approval or permits of this deadline. Reasonable steps may include putting notice on the city's website or mailing written notice to any person whom the city is

aware would be affected and for whom the city is able, through reasonable effort, to determine a current mailing address. Extension of such an approval or permit, or issuance of a new approval or permit, shall be subject to the provisions of this chapter.

Chapter 18.86 - RESIDENTIAL CLUSTER DEVELOPMENT (RCD)

Sections:

18.86.010. - Intent.

18.86.020 - Applicability.

18.86.030 - Procedures and criteria.

18.86.040 - Development standards.

18.86.010. - Intent.

The intent of the residential cluster development (RCD) provisions is to accommodate the overall density of the underlying zoning district while allowing residential development to utilize less land area. The RCD standards are intended to allow for innovative design, and promote the city's vision of a "Rural by Design" development pattern.

18.86.020 - Applicability.

- A. All residential zoning districts are eligible to apply for approval of residential cluster development.
- B. Cluster development may be applied to both multi-family and attached/detached single-family residential developments of three or more dwelling units.

18.86.030 - Procedures and criteria.

- A. Review Procedures. RCD applications are processed as a Type 3 Hearing Examiner decision pursuant to the provisions set forth in Chapter 18.08. Proposals for clustering shall be subject to and consolidated with the provisions for preliminary plat approval, if individual lot ownership is proposed.
- B. Criteria for Approval. The hearing examiner may approve a RCD only if it is found that:
 - 1. The location, design, and uses are consistent with the goals and policies of the comprehensive plan, the city's development codes and other city plans and ordinances;
 - 2. The residential development integrates with its surroundings and is designed to harmonize with existing or proposed development in the neighborhood, including the project's response to BDMC 18.86.040(F);
 - 3. The traffic generated by the development can be accommodated safely and within adopted level of service for affected streets;
 - 4. All development will be served by existing or planned facilities and services; and
 - 5. The development makes provision for the preservation of the natural environment and/or identified open space or trails per the comprehensive plan.

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C. Scope of Approval.

1. Through a RCD, modifications to the setbacks, height, lot area, building coverage and development coverage standards of the underlying zone district may be granted.

~~2. Approval of an RCD shall constitute a deviation of standards on the design of the site for only those designs and standards that are specifically included. Such revision of standards shall remain in effect until the residential development is constructed, or until its approval expires, at which time the underlying zoning standards automatically return to effect.~~

18.86.040 - Development standards.

A. The following standards are applicable to an RCD application:

1. Density. The maximum density of the underlying zone shall apply. Maximum density is determined by multiplying the allowable maximum density of the underlying zone district by the gross acreage of the site, less any area containing sensitive areas and buffers required pursuant to BDMC 19.10. ~~prior to development.~~

2. ~~Minimum Site Size~~ Area Required. Three times the minimum lot size as required in the underlying zone district.

3. Minimum Lot Size. The minimum lot size by underlying zone district is:

- a. R4 Zone: six thousand square feet.
- b. R6 Zone: four thousand square feet.
- c. MR8 Zone: two thousand eight hundred square feet.

4. Height. The maximum building height of the underlying zone may be increased, provided the height of buildings is compatible with the scale of the surrounding neighborhood, does not adversely affect existing scenic views, and ensures a reasonable balance of light and shadow on adjacent properties. Increased setbacks and location of structures may be used to mitigate effects of increased height and to insure compatibility.

5. Other Lot Standards. Deviations may be granted to the underlying zone development standards including setbacks, lot area, building coverage, and development coverage, except as limited herein.

B. Perimeter Setbacks. At a minimum, structures shall comply with the setbacks of the underlying zone along all perimeter lot lines of the overall site.

C. Circulation.

1. All public or private streets within the development and adjacent rights-of-way shall be designed and constructed in accordance with city street standards. Private driveways may provide different design alternatives.

2. Provision shall be made for a functional pedestrian circulation system that assures the safe movement of pedestrians both on the site and between nearby properties and activities.

3. All streets and parking areas shall contribute to the overall aesthetic design of the project while minimizing traffic congestion and the amount of impervious surface area.

4. The provision for adequate parking, loading, access and circulation facilities within the RCD shall be those contained in the parking requirements as set forth in Chapter 18.80. The hearing examiner may modify these standards to best meet the needs and objectives of the project, provided project parking will not spill over into nearby neighborhoods.

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D. Screening. All utility facilities, loading areas, trash containers, and outdoor storage areas shall be screened from surrounding properties. Solid fences, walls, and blank walls of buildings shall be softened through the use of trees and/or other landscaping materials if their impact cannot be minimized through architectural design or orientation.

E. Open Space.

1. Open Space Designation. The remaining land not developed for a permitted use shall be maintained as common open space. If an RCD is being subdivided, open space areas shall be located on a separate tract or tracts and shall be developed for recreational uses or set aside to preserve environmentally sensitive areas. Open space shall not include land for streets, driveways, parking or other infrastructure improvements, unless such facilities are integral to providing public accessibility to an open space amenity.

2. Development. Facilities and other improvements that enhance recreational use may be located in an open space.

3. Open Space Plan. An open space plan is required to identify all improvements, including trails and other active and passive recreational facilities and areas, environmentally sensitive areas, significant trees pursuant to Chapter 19.30, other vegetation to be preserved, and designation of areas for general public access. A management plan outlining maintenance responsibility shall be included as part of the plan.

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4. Guarantees. A legal instrument approved by the city and recorded with King County, which shall include a notice on the title referencing the legal instrument, shall be executed by the property owner. The legal instrument shall include the following types of guarantees:

- a. Retention of the open space per the open space plan prescribed in subsection (E)(3) of this section;
- b. Provision for perpetual maintenance of the open space and commonly owned facilities;
- c. Grant to or reservation for the use of property owners of all open space and commonly owned facilities within the development;
- d. Conveyance to a property owners' association or corporation;
- e. Execution of a conservation easement in favor of the city; and
- f. Conveyance by deed or easement for public use.

F. Site Design Elements Reflecting the Setting and Community Heritage. An RCD application shall indicate how the RCD proposal responds to the following community interests:

1. Maintaining, enhancing, or replacing existing native vegetation along arterial and collector streets;
2. Integration of local cultural or historical features into site design; and
3. Integration of local architectural components as identified in the design guidelines adopted pursuant to Chapter 18.74.

Gateway Overlay District – 18.76.070 (D)

Signage. Monument signs shall be permitted within the required development setback in accordance with provisions of this section and subject to the approval of the director. Pole signs are not permitted. Signs located beyond the setback area and not visible from the public right-of-way are not subject to the requirements of this section, but shall comply with the requirements of the underlying zone.

1. The total allowed sign area of all signage permitted within the development setback on any one lot shall not exceed ~~fifty-four square feet~~ the standards of BDMC 18.82. A double-faced sign shall be considered a single sign. No more than two signs shall be permitted within the development setback area per lot, provided that this limitation shall not apply to signs pertaining to the identification of the corridor and those signs and/or interpretive panels identifying and directing the traveling public to archaeological sites, historic sites and other similar non-commercial places and features of interest.

2. All signage shall be designed with a theme compatible with the architectural style of the development and have a brick, stone or similar masonry base. Signs should be painted a single neutral or earth tone color as determined by the director to be compatible with the architectural theme or style of the development. ~~Signs may be indirectly lit.~~

3. Internally illuminated signs are allowed, provided that no ~~In general, no internally illuminated signs shall be permitted, nor shall any flashing, blinking, fluctuating or otherwise changing light source is be permitted. Provided, an internally lit sign may be allowed if the sign face only allows light to illumine the lettering of the business or development name.~~

4. The main supporting structure of all signs shall be set back at least five feet from the edge of the public right-of-way.

5. If a business entrance opens onto the development setback, then a pedestrian oriented sign may be allowed, not to exceed twelve square feet, at the entrance to the business. These signs shall not be internally illuminated, but may be indirectly lit.

Sign Code – 18.82

4. Sign area standards:

All non-residential zone districts: Fifty square feet for a single side or one hundred square feet total both sides.

5. Location. Ground signs shall be set back a minimum of five feet from a front property line. Placements in these locations are subject to approval by the public works director. The placement of ground signs shall be in such a fashion and location as to not obstruct the view of signs of adjacent property owners.

6. Number. One ground sign shall be permitted on each street frontage of property on which the business is located; provided that properties with more than 300 lineal feet of street frontage shall be allowed an additional ground sign. The minimum distance between ground signs on a single property shall be 150 lineal feet.

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Shopping or Business Center Identification Sign(s). Each shopping center or other commercial property having eight or more tenants may be permitted one shopping center identification ground sign, not to exceed 100 sq. ft. in area. Any shopping or business center having eight or more ~~separate~~ tenants may have one shopping-center identification sign that includes identification of ~~each of the separate~~ multiple tenants, if and only if, all of the following conditions are met:

1. No other ground signs shall be allowed.
- ~~1.2.~~ All existing signs in the shopping-center must be brought into conformance with the city sign standards in effect at the time of application, prior to issuance of a sign permit for the shopping-center identification sign. Provided, however, existing roof signs shall be removed within eighteen months from issuance of the shopping-center identification sign;
- ~~2.3.~~ Individual tenants/businesses within a shopping-center using a shopping-center identification sign shall only be allowed to use wall signs;
- ~~3.4.~~ The shopping-center identification sign shall be consistent with the city's adopted design standards and guidelines with regard to height, size and design;
- ~~4.5.~~ The sign may only contain the names of the tenant businesses, and the name of the shopping-center;
- ~~5.6.~~ The tenant business names shall be of uniform type and size; and
- ~~6.7.~~ The landscape requirements for ground signs shall be met.

CITY OF BLACK DIAMOND
WASHINGTON
ORDINANCE NO. ___

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO ADMINISTRATIVE
REVIEW PROCEDURES OF SEPA DECISIONS;
ELIMINATING ADMINISTRATIVE APPEALS OF SEPA
DECISIONS; REPEALING AND RE-ENACTING BDMC
19.04.250; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the State Environmental Policy Act ("SEPA") was adopted in 1971 (codified at RCW Chapter 43.21) requiring environmental review of non-exempt proposed agency actions; and

WHEREAS, RCW 43.21C.060 provides that, except for permits and variances issued pursuant to chapter 90.58 RCW, when such a governmental action, not requiring a legislative decision, is conditioned or denied by a nonelected official of a local governmental agency, the decision shall be appealable to the legislative authority of the acting local governmental agency unless that legislative authority formally eliminates such appeals; and

WHEREAS, the City has adopted provisions set forth at BDMC 19.04.250 for administrative appeals of a threshold determination, adequacy of a final EIS and the conditions or denials of a requested action; and

WHEREAS, if a city has adopted provisions for appeals of SEPA decisions, no person may seek judicial review of such decisions without first exhausting the administrative appeal rights set forth in the City Code; and

WHEREAS, the requirement to exhaust administrative right to appeal creates an additional economic burden upon affected parties and the City by requiring that an administrative appeal be conducted as a condition precedent to seeking judicial review; and

WHEREAS, XX

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Repeal and Re-Enactment of BDMC 19.04.250 (Appeals). Section 19.04.250 of the Black Diamond Municipal Code is hereby repealed in its entirety and re-enacted to read as follows:

19.04.250 - Appeals.

A. The appellate procedures provided for by RCW 43.21C.060, which provides for an appeal to a local legislative body of any decision by a non-elected official conditioning or denying a proposal under authority of SEPA, are formally eliminated.

B. There shall be no administrative appeals of environmental determinations under this chapter.

C. Judicial appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the underlying governmental action which is subject to environmental review. If no such time period is provided for, judicial appeal of the environmental determinations must be filed within twenty-one days after the city's final decision on the underlying government action. Such appeals shall be to superior court

D. 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.

E. This chapter constitutes the exclusive 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).

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 20__.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED: