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Public Comment: Brian Derdowski, Emailed December
12, 2014

The following sections of the Black Diamond Municipal Code (BDMC) have informed our testimony and we wish to enter them into the record as foundational components of that testimony. Underlined sections support our testimony regarding inadequate or inaccurate staff analysis:

17.08.040 Revocation or modification of conditions after approval.

A.

A subdivision or short subdivision shall be governed by the terms of approval of the final plat, and the statutes, codes and regulations in effect at the time of final plat approval, including certificates of availability for water and sewer capacity, and approvals granted after approval by the public works director, unless the city council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

B.

The city council may modify the conditions of preliminary subdivision or short subdivision approval, or revoke the approval, if, after notice and opportunity to be heard by the owner of the land to be subdivided, if the city council finds:

1.

The modification or revocation is necessary to protect the public health, safety or welfare; and

2.

If the council intends to revoke the preliminary approval, that it is impossible to satisfy the condition of preliminary plat approval because of a knowing and deliberate violation of the condition.

(Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 5, 6-3-2010)

17.12.010 Application.

Any person desiring to subdivide land into seven or more parcels within the city shall first submit an application for preliminary plat approval to the community development department. The application shall be on forms provided by the city. To the extent that procedural requirements permit simultaneous proceedings, a subdivision application will be processed concurrently with applications for variances, residential cluster development, site plan approvals and similar approvals, unless the applicant expressly requests sequential processing. A preliminary plat application will not be accepted for property within an MPD zone unless there is a previously approved MPD permit. A preliminary plat application will not be

accepted for property that is part of a master planned development (MPD) permit application unless the city, pursuant to Section 18.98.050(C) of this code, authorizes the simultaneous processing of the subdivision application. The application shall include:

A.

Copies of the preliminary plat drawing and vicinity map containing items specified in [Section 17.12.020](#) of this chapter;

B.

Copies of proposed street and utility plans showing proposed locations, sizing and alignment, and of plans showing areas of existing trees and natural vegetation to be retained, and those to be removed;

C.

Copies of a completed environmental checklist, together with applicable environmental studies and SEPA documents. If the city and the applicant have agreed that an environmental impact statement will be prepared for the proposal, a checklist shall not be required;

D.

A preliminary outline of any areas within the subdivision to be dedicated or reserved for public or common use, with the purposes indicated thereon and in the dedication or restrictive covenant;

E.

A title report disclosing vesting of title, all existing easements of record or other existing restrictions on the proposed platted land;

F.

Storm drainage design analysis at a level of detail to allow for accurate sizing of storm drainage facilities and tracts;

G.

A listing of all property owners of record within three hundred feet of the exterior boundaries of all parcels proposed to be included within the subdivision. The three hundred feet shall be measured from the exterior boundary of adjacent property in the same ownership as the land to be subdivided;

H.

Certificates of sewer and water availability;

I.

if the property to be subdivided has been designated as a receiving area pursuant to the city's transfer of development rights program, a copy of all development right certificates (DRCs) proposed for use in obtaining the proposed net density;

J.

The nonrefundable preliminary plat fee and review deposit in the amount specified in the city fee resolution;

K.

Any further information required by the terms of a previously approved MPD permit that is required by the approval to be shown on the plat or required to be constructed as part of the subdivision approval process;

L.

[A tree survey prepared in conformance with Section 19.30.060;](#)

M.

The names and addresses of all persons having an ownership interest in the property or in the applicant. If the property is owned by, or the applicant is a partnership, limited liability company, corporation or other legal entity, then the names and addresses of all persons having a financial interest in the legal entity or entities shall be provided; and

N.

Any other information that is necessary and appropriate as determined in the reasonable discretion of the city in order to determine whether or not the application meets the preliminary plat approval criteria set forth in [Chapter 17.15](#) of this title.

(Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 6, 6-3-2010)

17.15.010 Substantive standards.

The requirements set forth in this chapter are substantive standards that must be met in order for a preliminary plat to be approved. The hearing examiner, in making its decision whether the plat should be approved, approved with conditions, or denied, shall make findings as to each of the approval criteria set forth in this chapter. The hearing examiner's decision shall be final action, unless an appeal is timely filed to the city council.

(Ord. 857 § 18, 2008: Ord. 780 § 2 Exh. 1 (part), 2005)

17.15.020 Approval criteria.

A.

The following criteria must be met to approve any subdivision. The criteria may be met by conditions imposed by the hearing examiner as conditions of approval:

1.

The proposed subdivision meets all city zoning regulations and is consistent with the city's comprehensive plan maps and policies, and with the Black Diamond design standards and guidelines where applicable;

2.

The proposed subdivision results in a net density that is equal to or less than the allowable maximum density established by the zoning regulations, and is greater than or equal to any applicable minimum density requirement;

3.

The public use and interest is served by the establishment of the subdivision and dedication. In considering this criteria, it shall be determined if appropriate provisions are made for all relevant matters, including, but not limited to, the public health, safety and general welfare, open spaces, storm drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds;

4.

The physical characteristics of the proposed subdivision site, as conditioned, do not increase the risk of flood or inundation conditions on- or off-site;

5.

Applicable city development standards are met or exceeded;

6.

All environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies;

7.

Concurrency exists for all utilities and transportation system improvements prior to occupancy of any structures;

8.

If the proposal is in an approved MPD, the proposed subdivision shall be consistent with the approved MPD, the MPD conditions of approval, the MPD design standards, and the MPD development agreement;

9.

There shall be connectivity of motorized and nonmotorized transportation routes, open spaces and wildlife corridors with existing or proposed routes or corridors on adjacent properties;

10.

The use of cul-de-sacs and other dead-end streets shall be minimized to the fullest extent possible;

11.

Appropriate provision has been made for the dedication of land to any public body, and provision of public improvements has been made as necessary to serve the subdivision. This shall include appropriate provision for payment of any impact fees imposed in accordance with the provisions of RCW 82.02.050 through 82.02.090, and applicable city codes and regulations. Dedications shall clearly be shown on the final plat;

12.

The streetscape and public open space amenities shall be compatible with any adjacent project that has been developed or approved for development as an MPD;

13.

The proposed subdivision provides safe walking conditions for students who walk to and from school; and

14.

The proposed subdivision provides for tree preservation consistent with the provisions of chapter 19.30.

(Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 10, 6-3-2010)

17.16.010 Staff review.

A.

Completeness Check and SEPA. Community development department staff shall review the preliminary plat application for completeness within twenty-eight days of its receipt. If the application is determined to not be complete, department staff shall identify in its determination of completeness the items required to make the application complete. Once the application has been determined to be complete, city staff shall issue a formal notice of application which shall allow at least fourteen days for public comment regarding the application. Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of another city or town, or which contemplates the use of any city or town utilities, shall be given to the appropriate city or town authorities. Any notice required by this title shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in the city and adjoining the municipal boundaries of another city or town shall be given to the appropriate city officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway (SR-169), or within two miles of the boundary of a state or municipal airport, shall be given to the secretary of transportation.

B.

At the time of issuing the notice of application, the community development director shall submit the proposed subdivision to all city department heads, including, but not limited to, the public works director, the police chief, the natural resources director and the fire marshal for staff review. The following review criteria shall apply:

1.

The public works director shall review the proposed subdivision for engineering adequacy of the proposed street system, sewage disposal system, storm drainage system and water supply system, and shall review the same for compliance with all city standards, including, but not limited to, those set forth in the city's public works standards or standards approved as part of an MPD, if applicable. The public works director shall also review the proposed subdivision to ensure that all requirements as may be necessary to minimize flood damage are met;

2.

The city fire chief shall review the proposed subdivision for adequacy of water supply and access for fire protection and medical aid purposes; and

3.

The city natural resources director shall review the proposed subdivision for consistency with [Chapter 19.10](#) and other environmental regulations.

C.

SEPA Determination and Staff Report. Each department head and reviewing staff shall complete his or her review of the proposed subdivision and transmit written comments and recommendations to the community development department. At the conclusion of the SEPA process, staff will finish its detailed

review of the proposal and will issue a SEPA threshold determination, pursuant to Chapter 19.04. Community development staff will also prepare a written staff report to the hearing examiner.

(Ord. 857 § 20, 2008; Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 12, 6-3-2010)

17.16.020 Hearing examiner public hearing.

A.

Public Hearing Required. Upon completion of the SEPA review process, the community development department shall schedule the preliminary plat for public hearing before the hearing examiner, and provide notice pursuant to Chapter 18.08.

B.

Public Hearing. At the public hearing, the hearing examiner shall consider all relevant evidence. Any hearing may be continued at the discretion of the hearing examiner in order to allow all relevant public input to be received.

(Ord. 857 § 21, 2008; Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 13, 6-3-2010)

18.30.020 Permitted uses.

A.

Residential.

1.

Single-family detached structures on individual lots.

2.

Manufactured housing as provided in Chapter 18.90.

3.

Agricultural uses, including farms, nurseries and community gardens/pea patches. Greenhouses, storage sheds and similar buildings accessory to such uses are also permitted.

B.

Other or Related Uses.

1.

Accessory buildings or structures as provided in Chapter 18.50.

2.

Temporary uses as provided in Chapter 18.52.

3.

Home occupations as provided in Chapter 18.54.

4.

Utilities, underground.

5.

Child day care for up to twelve children.

6.

Agricultural stands for sales of produce and plants grown on-site.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009; Ord. No. 948, § 27, 10-7-2010; Ord. No. 962, § 2, 7-7-2011)

18.30.030 Conditional uses.

The following uses not allowed as permitted uses in [Section 18.30.020](#) may be allowed by approval of a conditional use permit in accordance with Chapters 18.08 and 18.12:

A.

Child care for more than twelve children, including nursery schools, day care centers and preschools;

B.

Utilities, aboveground;

C.

Public uses/facilities;

D.

Religious institutions, not to exceed ten thousand square feet gross floor area;

E.

Bed and breakfasts;

F.

Duplexes, subject to the following criteria:

1.

The minimum lot size for a duplex shall be one and one-half times that required for a single family detached structure. Only one duplex shall be permitted per lot meeting this standard;

2.

A lot on which a duplex is proposed shall not be located within three hundred feet of any other lot on which a duplex or multiple unit structure is found (accessory dwelling units excluded), or constitute more than ten percent of the dwelling units in a single block; and

3.

Duplexes shall be subject to design standards to ensure their compatibility in terms of bulk, scale and architectural style with the surrounding neighborhood.

G.

Private schools, K-12.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009; Ord. No. 948, § 28, 10-7-2010)

18.30.040 Development standards.

A.

Site area and dimensional standards.

1.

Minimum lot area:

a.

Districts designated R4: Nine thousand six hundred square feet.

b.

Districts designated R6: Seven thousand two hundred square feet.

2.

Maximum density.

a.

R4 district: four dwelling units per acre.

b.

R6 district: six dwelling units per acre.

3.

Minimum lot width: Sixty feet.

4.

Minimum lot depth: Eighty feet.

5.

Minimum front yard:

a.

On minor street: Twenty feet.

b.

On major street: Twenty-five feet.

6.

Minimum side yards: Seven feet.

a.

Minimum on a flanking street: Ten feet.

7.

Minimum rear yard: Twenty feet.

8.

Maximum building coverage: Thirty percent.

9.

Maximum building height:

a.

Primary dwelling unit: Thirty-two feet.

b.

Accessory building: No greater than the height of the primary dwelling unit or twenty-six feet, whichever is less.

B.

Parking. Off-street parking shall be provided in accordance with Chapter 18.80.

C.

Landscaping.

1.

Landscaping shall be planned and provided in accordance with Chapter 18.72.

2.

Development shall also comply with the tree preservation requirements of Chapter 19.30.

D.

Signs. Regulation of signs is provided in Chapter 18.82.

E.

Lighting. Lighting shall comply with the requirements of Chapter 18.70.

F.

Storage and Exterior Displays.

1.

Required landscaping or buffer areas shall not be used for storage of any sort.

2.

Storage or parking of motor vehicles for rental income is prohibited.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009; Ord. No. 948, § 29, 10-7-2010)

18.30.050 Additional requirements.

A.

All development within the R4 and R6 zones shall comply with applicable environmental performance standards of Chapter 18.78 and, if applicable, the design review requirements of Chapter 18.74.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009; Ord. No. 948, § 30, 10-7-2010)

18.74.020 Compliance with design standards and guidelines.

All development shall comply with the design standards and guidelines applicable to the type of use and/or the district in which the proposed development is located. The director (or hearing examiner) shall have the authority to apply the standards to specific development proposals as conditions of site plan or (for single family and duplex residential) building permit approval. For all projects subject to design review, the director or hearing examiner shall provide written documentation concerning the project's compliance with the adopted design standards.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

18.74.030 Amendments to design standards and guidelines.

17.20.010 Contents of application.

The final plat application shall include the following:

A.

Final plat drawings in conformance with criteria set forth in this title and properly containing all information required by the conditions of preliminary plat approval;

B.

A title insurance report confirming that the title of the lands as described and shown on the plat is in the name of the owners signing the plat's certificate or instrument of dedication;

C.

Certified sets of "as-built" subdivision improvement drawings, or in the alternative, and at the city's sole discretion, a subdivision improvements completion bond as specified in this chapter;

D.

A maintenance and guarantee bond as described in this chapter;

E.

Survey information in conformance with criteria set forth in this chapter;

F.

A nonrefundable final plat fee in the amount specified by the city's fee schedule;

G.

Any other documentation which may be necessary to show compliance with conditions of preliminary plat approval; and

H.

A title insurance policy in favor of the city in an amount as approved by the city attorney for all land within the subdivision to be dedicated to the city.

(Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 15, 6-3-2010)

17.20.050 Improvements.

A.

The applicant shall either complete the required improvements before the final plat is approved or, at the applicant's request and at the city's sole discretion, the applicant may be permitted to financially guarantee installation of the same pursuant to criteria established in subsection B of this section. If the hearing examiner has determined that the completion before final plat approval of all required water system, sanitary sewer system, and storm sewer system improvements, and all street improvements other than the final overlay, is necessary to protect the public health, safety and welfare, then those improvements cannot be bonded in lieu of completion before final plat approval. Any required off-site improvements that are imposed as a condition of environmental review, the need for which is not triggered until more than one-half of all resulting lots are occupied, may be bonded, if the council makes a written finding, at the time of final plat approval, that to do so will not jeopardize the public health, safety or welfare.

B.

Completion and Maintenance Bonds. In lieu of the completion of the actual construction of required public improvements prior to approval of a final plat, other than the exempted improvements referenced in subsection A of this section, the city may accept a bond, in a form approved by the city attorney, or other secure method, in an amount equal to one hundred fifty percent of the public works director's estimate of the cost of public improvements guaranteeing the actual construction and installation of such public improvements within a period of time to be set by the city, but in no event more than one year after final plat approval. In addition, before final plat approval is granted, the applicant/property owner shall file a maintenance bond, or other secure method approved by the city, in an amount equal to twenty-five percent of the public works director's estimate of the cost of improvements for a period lasting through the period two years after final acceptance of the improvements. The city shall withhold approval of the final plat until the completion bond (if accepted by the city) and maintenance bond are filed. The city may enforce such bonds according to their terms, pursuant to any and all legal and equitable remedies. In addition, any completion or maintenance bond filed pursuant to this subsection shall be subject to enforcement in the following manner:

1.

In the event the bonded public improvements are not completed as required, or maintenance is not performed satisfactorily, the city shall notify the property owner and the bonding company in writing which shall set forth the specific defects which must be remedied or repaired and shall state a specific time by which such shall be completed.

2.

In the event repairs or maintenance are not completed as specified in the notice referred to in subsection (B)(1) of this section by the specified time, the city may, but shall not be obligated to, proceed to repair the defect or perform the maintenance by either: (a) force account, using city forces, or (b) by private contractor. To the extent that additional funds remain from the performance bond proceeds after the city has completed the work, these funds shall not be returned to the applicant/property owner until all work has been completed and accepted by the city. In the event the city is required to bring suit to enforce maintenance or completion bonds, or to collect the cost of repairs or maintenance, the applicant/property owner and bonding company shall be responsible for any costs and attorney's fees incurred by the city as a result of the action.

C.

No Permits to be Issued. In the event that the city allows the applicant to file the performance bond instead of completing some or all of the required improvements prior to final approval of the plat, no building permits shall be issued for development within the subdivision until all required improvements have been completed to city standards and accepted by the city.

D.

Improvement Construction. Construction of subdivision improvements prior to final plat approval or subsequent to final plat approval as a condition to meeting bond requirements shall proceed as follows:

1.

Sets of complete construction drawings and specifications shall be submitted to the public works director for approval prior to the commencement of construction. The submitted drawings and specifications shall be designed and certified by a professional civil engineer. Construction drawings shall be in conformance with the conditions, if any, of preliminary plat approval and applicable city standards.

2.

Construction of improvements shall not be initiated without authorization of the public works director. The public works director shall authorize the applicant/property owner to proceed with construction after approval of the construction drawings and specifications. The public works director may grant approval on condition that additions or changes are made in the drawings or specifications, or on the inclusion or implementation of mitigating measures necessary to minimize the impact of the subdivision or subdivision construction on the environment.

3.

Any changes to the construction drawings or specifications involving the design of the subdivision improvements shall first be reviewed and approved by the public works director.

4.

Construction of the subdivision improvements shall proceed as shown in the construction drawings and specifications. Construction shall proceed under the supervision of a professional civil engineer. The public works director shall ensure that construction progress is inspected to review compliance with construction plans and required standards. All costs of inspections by the public works director shall be borne by the applicant/property owner.

5.

After the completion of construction, three sets of "as-built" drawings showing the subdivision improvement as constructed shall be certified as true and complete by a professional civil engineer and one shall be reproducible mylar. The certified "as-built" drawings shall be submitted to the city prior to final plat approval and/or acceptance of the subdivision improvements by the city.

(Ord. 780 § 2 Exh. 1 (part), 2005)

(Ord. No. 941, § 19, 6-3-2010)

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 determination. 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 alteration 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 of 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 conformance 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)

(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 Restoration 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)

19.10.160 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)

19.10.210 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 become 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 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.

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 mitigation 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)

19.10.310 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 gradient, 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).

<u>Type</u>	<u>Buffer Width</u>
<u>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</u>	<u>25 feet</u>
<u>Type F—Segments of natural waters other than Type S Waters</u>	<u>150 feet</u>
<u>Type Np—Segments of natural waters that are perennial non-fish habitat streams.</u>	<u>100 feet</u>
<u>Type Ns—Segments of natural waters within defined channels that are seasonal, non-fish habitat streams</u>	<u>50 feet</u>

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 required 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.

<u>Fish and Wildlife Habitat Conservation Area</u>	<u>Buffer Requirement</u>
<u>Areas with which federally listed threatened or endangered species have a primary association.</u> <u>State Priority Habitats and areas with which Priority Species have a Primary Association.</u> <u>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.</u>	<u>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.</u>
<u>Natural Area Preserves and Natural Resource Conservation Areas</u>	<u>Buffers shall be based on recommendations provided by site managers provided that the management strategies are considered effective and</u>

	<u>within the scope of this chapter.</u>
<u>Locally Important Habitat Areas</u>	<u>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 exerts in these instances, and shall use WDFW PHS management recommendations when available.</u>

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:

<u>Stream, Wetland or other Corridor Feature</u>	<u>Corridor Requirements and Management Measures</u>
<u>Rock Creek/Lake Sawyer/Ravensdale Creek to the north and northeast</u>	<u>• 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.</u>
	<u>• 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.</u>
	<u>• Existing Rock Creek/Roberts Road bridge should be replaced to meet the same bridge standards when programmed as part of capital improvement program.</u>
<u>Jones Lake/Jones Creek to the east</u>	<u>• 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</u>

	<p><u>OHWM on at least one side.</u></p> <ul style="list-style-type: none"> • <u>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.</u>
<p><u>Black Diamond Lake/Black Diamond Creek to the southeast</u></p>	<ul style="list-style-type: none"> • <u>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.</u>
	<ul style="list-style-type: none"> • <u>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.</u>
	<ul style="list-style-type: none"> • <u>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.</u>

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(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 habitats 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)

19.10.420 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 percent 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)

19.10.500 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.

19.30.040 Retention of significant trees.

A.

Permit Required. No person, corporation, agency or other entity shall remove any significant tree, as defined in this chapter, without first obtaining a tree removal permit pursuant to this chapter; provided that, a permit shall not be required for situations specifically exempted by this chapter.

B.

General Site Design Guidelines. Site improvements associated with land development shall be designed and constructed to meet the following guidelines:

1.

The site design incorporates trees as a site amenity, and reflects a strong emphasis on tree protection.

2.

To the extent possible, forested sites retain their forested look, value, and function after development. Trees should be protected within vegetated islands and stands rather than as individual, isolated trees scattered throughout the site.

3.

Site improvements should be designed to give priority to protection of trees with the following characteristics, functions, or location:

a.

Existing stands of healthy trees;

b.

Healthy trees that have a reasonable chance of survival once the site is developed or will not pose a threat to life or property;

c.

Trees that have a screening function or provide relief from glare, blight, commercial or industrial harshness;

d.

Trees providing habitat value, such as riparian habitat;

e.

Trees within the required yard setbacks or around the site perimeter;

f.

Trees having a significant land stability function;

g.

Trees adjacent to public parks and open space.

h.

Trees that are significant trees or heritage trees.

4.

Building footprints, parking areas, roadways, utility corridors and other structures are designed and located with a consideration of tree protection opportunities.

5.

The project grading plans accommodate existing trees and avoid alteration to grades around existing significant trees.

6.

Required open space and recreational space is designed and located to protect existing stands of trees.

7.

The site design and landscape plans provide suitable locations and adequate area for replacement trees as required in BDMC Section 19.30.070, tree replacement.

8.

In considering trees for protection, avoid selecting trees that may become hazardous because of wind gusts, including trees adjacent to utility corridors where falling trees may cause power outages or other damage. Remaining trees may be susceptible to blow downs because of loss of a buffer from other trees, grade changes affecting the tree health and stability and/or the presence of buildings in close proximity.

9.

The landscape requirements set forth in BDMC Chapter 18.72, when applicable.

10.

To the extent possible, without reducing development densities from those indicated in the comprehensive plan, the site improvements and landscape plans should be designed to give priority to protection of significant trees and heritage trees.

11.

In the event that a proposed site design will result in retainage of less than twenty percent of all significant trees within the site, not including wetlands and sensitive areas and their associated buffers, alternative site designs should be evaluated and considered to

determine if an alternative design will better achieve the values, objectives, and guidelines set forth in this chapter without reducing development densities.

(Ord. No. 961, § 1, 6-16-2011)

19.30.060 Tree removal permits.

A.

Tree Removal Permit Required. A tree removal permit is required for the removal of significant trees unless the tree removal is exempt from the permit requirements of this chapter. No person shall remove a significant tree except pursuant to a tree removal permit lawfully issued pursuant to this chapter or pursuant to an exemption granted herein. All applications for a tree removal permit shall be filed with the community development department using a form provided by the city. The tree removal permit fee shall be set by resolution or ordinance of the city council.

B.

Persons Authorized to Apply. No person may apply for a tree removal permit under this chapter unless that person is the owner or person in control of the property or has been otherwise authorized in writing by the property owner to apply for the tree removal permit on behalf of the property owner.

C.

Tree Plan Required. All applications for a tree removal permit under this chapter, for which there is no exemption or request for an exemption, shall include a tree plan showing the location, species, size of new trees to be planted, the schedule for replanting, and the location of any significant tree to be removed. Unless otherwise provided in a Level I or Level II tree plan, replanting shall take place no later than one year after the tree removal permit is issued. A tree plan for significant tree removal when associated with the development or redevelopment of property, shall meet the following requirements and standards, and may be incorporated within the landscaping plan if such a plan is required pursuant to BDMC Chapter 18.72:

1.

Redevelopment/Level I Tree Plan. A Level 1 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 impervious surface. The following information shall be provided as part of the plan:

a.

A site plan showing all proposed development or expansion of structures, parking, driveways, roadways, lanes, sidewalks and pathways, and retaining walls;

b.

The site plan will show all significant trees located within the site subject to development and shall depict those significant trees to be retained in order to meet the guidelines of BDMC Section 19.30.040(B); and

c.

Planting plan including location, species, size of new trees to be planted and a schedule for replanting.

2.

New Development/Level II Tree Plan. 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 contents of the tree plan must be certified by a certified professional forester, arborist, or landscape architect and must provide the following information:

a.

Information required for a Level I plan;

b.

Description of off-site trees that could be affected by proposed activity; and

c.

In the event that the proposed tree plan will result in retainage of fewer than twenty percent of all significant trees within the site, not including wetlands and sensitive areas and their associated buffers, the tree plan shall include a description of alternative site designs that were evaluated and considered by the applicant to provide greater protection of significant trees and a detailed explanation of why such alternative site designs were rejected.

D.

All significant trees within any required perimeter planting area, sensitive area, wetland, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access as approved by the city. In all other areas, site improvement design should integrate significant trees into required landscaping.

E.

The determination to deny, approve, or approve with conditions a tree removal permit shall be made by the mayor or his/her designee based upon the requirements and guidelines set forth in this chapter. Permit applications shall be processed as a Type 1 application in accordance with the requirements for Type 1 applications set forth at BMC Chapter 18.08; provided that, if the application is made in conjunction with another development permit application with a higher level decision, the application shall be processed in accordance with the procedures applicable to the higher level decision.

(Ord. No. 961, § 1, 6-16-2011)

19.30.070 Tree replacement.

A.

Each application for a 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 on a 1:1 removal to replacement ratio.

B.

Replacement trees shall be planted on the site from which significant trees are removed. If on-site replacement is not feasible, an off-site location may be approved by the city administrator.

C.

Replacement trees must meet the following criteria:

1.

Native trees are preferred over non-native trees;

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 and marked appropriately;

4.

New trees must be located away from areas where damage is likely;

5.

Deciduous replacement trees shall be a minimum of one and one-half-inch in caliper, evergreen trees shall be a minimum of six feet in height; and

6.

The time period for planting of replacement trees shall conform to standards for transplanting trees as set forth in ANSI A300, Part 6, as now exists or may hereafter be amended, or such other comparable standard as may be approved by the mayor or his/her designee.

7.

Trees shall be watered as necessary to ensure survival and growth during their first two growing seasons after planting. Dead trees shall be replaced within the two-year planting period to ensure survival.

D.

The city shall create a "significant tree removal mitigation fund." An applicant for a tree removal permit can, at the election of the applicant, pay a tree removal mitigation fee in the amount of five hundred dollars for each tree removed into the removal mitigation fund in lieu of replacement. These funds will be maintained by the city and utilized in replanting projects throughout the City of Black Diamond and for the designation and protection of heritage trees, as determined by the city.

(Ord. No. 961, § 1, 6-16-2011)

19.30.080 Protection of trees during construction.

A.

During land alteration and construction, in order to provide for the protection and health of retained significant trees, the applicant shall utilize the best management practices for tree protection as set forth in the Best Management Practices Guidebook for the Pacific Northwest published by Oregon State University, © 2009, or such other manual or standards generally accepted in the industry and approved by the mayor or his/her designee.

B.

Unless alternative best management practices for tree protection are approved by the mayor or his/her designee, the following best management practices shall be applied to protect trees during land alteration or construction activities:

1.

An area of prohibited disturbance, generally corresponding to the critical root zone, shall be identified prior to the construction stage of significant trees and all heritage trees to be protected prior to any land disturbance.

2.

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."

3.

Trees to be retained shall be watered appropriately during and immediately after construction and shall be protected from erosion and sedimentation.

4.

The grade shall not be changed within five feet of the drip line of all heritage trees and the significant trees to be preserved, nor shall any impervious surface be installed within five feet of the drip line of any heritage trees or the significant trees to be preserved.

5.

Directional felling shall be used to avoid damaging any heritage trees or significant trees designated for protection.

C.

If during redevelopment activities on a site, an applicant proposes to remove a significant tree in lieu of compliance with the best management practices set forth in subsection B of this section, the mayor or his/her designee may approve alternative best management practices for tree protection to the extent reasonably necessary to retain the significant tree impacted by such activities.

(Ord. No. 961, § 1, 6-16-2011)

14.04.170 Review and acceptance.

A.

The director shall review all drainage related submittals for compliance with the specific criteria set forth in this chapter. Incomplete submittals shall be returned to the proponent without being reviewed. An acceptance of a stormwater site plan or construction

stormwater pollution prevention plan by the director does not relieve the proponent or the project engineer from responsibility for ensuring that all facilities are safe and that calculations, plans, specifications, construction and drawings of record comply with normal engineering standards, this chapter and applicable federal, state and local laws and codes.

B.

The city shall not issue any underlying permit (e.g., preliminary plat, building permit) until the director has determined that all requirements of this chapter have been met. The implementation of the applicable minimum requirements shall be a condition of said permit.

(Ord. No. 914, § 4, 6-25-2009)

14.04.210 Minimum setbacks from infiltration facilities.

The minimum setbacks for infiltration facilities shall be as follows:

<u>Site Feature</u>	<u>Infiltration Facility Setback (ft)</u>	<u>Roof Downspout Drywells (ft)</u>		
		<u>Down¹</u>	<u>Up</u>	<u>Down</u>
<u>Onsite septic system</u>	<u>100</u>	<u>30</u>	<u>30</u>	<u>10</u>
<u>Water supply well</u>	<u>100</u>	<u>100</u>	<u>30</u>	<u>10</u>
<u>Building foundation²</u>	<u>100</u>	<u>20</u>	<u>50</u>	<u>10</u>
<u>Slopes over 15%</u>	<u>50</u>	<u>n/a</u>	<u>25</u>	<u>n/a</u>

-

NOTES:

1.

For purposes of this section, "up" means the infiltration facility is up-gradient of the site feature. "Down" means the facility is down-gradient of the site feature.

2.

The project engineer shall show calculations that ensure that the line of saturation, measured from the design storm elevation in the facility at a gradient acceptable to the

administrator, falls a minimum of one foot below the lowest floor elevation. The administrator may adjust setbacks to buildings, up or down, based on these calculations.

(Ord. No. 914, § 5, 6-25-2009)

14.04.330 Director may modify minimum requirements.

A.

This chapter presents minimum standards for achieving the city's goals. The Director has the authority to increase requirements to protect the public interest on the basis of reports pertaining to threatened water quality, erosion, habitat destruction, protection of uninterrupted services and endangerment to property.

B.

Alternatives to standard plans, specifications and design details found in the Stormwater Manual may be accepted by the administrator if they meet or exceed the performance of the standards set forth herein.

C.

Where requirements in this chapter are covered in any other law, ordinance, resolution, rule or regulation, the more restrictive of the two shall govern.

(Ord. No. 914, § 6, 6-25-2009)

14.04.340 Variances from these standards.

A.

Variances from the minimum requirements may be granted by the director pursuant to the procedures and criteria set forth in the Stormwater Manual.

B.

All requests for variances must be submitted in writing to the director, and must clearly state the specific requirements from which a variance is requested and the reasons for said requested variance.

(Ord. No. 914, § 7, 6-25-2009)

14.04.350 Standard plans and specifications.

The most recent editions of Standard Specifications for Road, Bridge and Municipal Construction and Standard Plans for Road, Bridge and Municipal Construction, published by the Washington State Department of Transportation shall be the standards used for the design and construction of all drainage and erosion control facilities not explicitly

described herein, or in the Black Diamond Engineering Design and Construction Standards. In the event of a conflict between the Standard Specifications, Standard Plans, Black Diamond Engineering Design and Construction Standards, and the Stormwater Manual, the order of preference shall be (1) Stormwater Manual, (2) Black Diamond Engineering Design and Construction Standards, (3) Standard Specifications, (4) Standard Plans.

(Ord. No. 914, § 8, 6-25-2009)