



**CITY OF BLACK DIAMOND**  
**December 11, 2008 Workstudy Agenda**  
25510 Lawson St., Black Diamond, Washington

**7:00 P.M. – CALL TO ORDER, ROLL CALL**

- 1.) Sensitive Areas Ordinance - Mr. Nix
- 2.) Master Plan Development Ordinance – Mr. Pilcher
- 3.) Adjournment

411 108TH AVENUE NE, SUITE 1800  
BELLEVUE, WA 98004-5571  
T. 425.458.6200 F. 425.458.6363  
www.parametrix.com

## TECHNICAL MEMORANDUM

**Date:** December 2, 2008  
**To:** Aaron Nix, City of Black Diamond Parks/Natural Resources Director  
**From:** David Sherrard, Project Manager, Parametrix  
Chrissy Bailey, Wetland Scientist  
Christopher Collins, Wetland Biologist  
Mike Warfel, Geohydrologist  
**Subject:** Sensitive Areas Ordinance  
Response to Public Comments  
**Project Number:** 217-3043-004  
**Project Name:** City of Black Diamond, Sensitive Areas Ordinance

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### INTRODUCTION

This technical memorandum addresses issues raised by public comments on the Draft Sensitive Areas Ordinance dated September 17, 2008.

Comments were received from the following parties:

- Kevin Pierotti
- A.C. Kindig & Co
- Wetland Resources Inc
- J.S. Jones and Associates
- Julie and Dennis North

**Kevin Pierotti** supports smaller buffers and suggests that water quality can be addressed by requiring future development to provide water detention and water quality facilities.

*The Best Available Science Report (BAS), Technical Appendix A, Introduction, Overview and Landscape Analysis* addresses specifically the changes in the hydrologic process and the limitations of measures such as detention. A summary is provided on page A-40:

Both physical and biological changes have been measured across a range of watershed land use conditions. In general, both physical and biological attributes of streams correlate with changes in land use and generally decline as watershed development increases. Biologic measures may be a more sensitive indicator of degradation and indicate some impact, even at very low levels of development (Morley 2000).

Three key findings from the studies reviewed are:

**TECHNICAL MEMORANDUM (CONTINUED)**

The buffer values in Table 1 for the Ecology "Alternative 3" recommendation should reflect the high intensity adjacent land use, which is summarized below.

	Wetland Category			
	IV	III	II	I
Kindig citation for moderate intensity adjacent use	40 feet	60-110 feet	75-225 feet	75-225 feet
<b>Ecology BAS Guidance (2005) Alternative 3, High Intensity Adjacent Use</b>	<b>50 feet</b>	<b>80-150 feet</b>	<b>100-300 feet</b>	<b>100-300 feet</b>

Kindig's comments are valid, but are out of context and do not provide additional information, nor do they contradict the findings of the Best Available Science record that the "core area" in Black Diamond warrants a higher level of protection than would be warranted by classification of individual wetlands or by a single parameter, such as water quality.

**Wetland Resources Inc.** makes observations very similar to Kindigs. Comments about the productivity of individual wetlands in the "core area" reflect the classification of individual wetlands and ignore the functions provided by an interaction of resources.

This focus of comments on water quality functions does not take into consideration the wide range of wildlife and other functions provided by a complex ecological system in the core area, which is documented in the BAS reports.

The comment that high intensity adjacent use is presumed is correct. As indicated in the response to Kindig, above, all allowed development in the Black Diamond UGA would meet the definition of high intensity in *Wetlands in Washington State. Volume 2: Guidance for protecting and managing wetlands*. For this reason, there is no point in adopting standards for lower levels of impact.

**J.S. Jones and Associates** observes that portions of the area within the Shoreline Management Act jurisdiction at Lake Sawyer are wetlands and would be governed by the Sensitive Areas code. Such wetlands would be governed by the existing Shoreline Master Program (SMP) and may be governed by the proposed code to the extent it applies in shorelines. [Note: In the absence of a separate Black Diamond Shoreline Master Program, it would appear that the King County SMP in effect at the time of annexation would continue to apply, notwithstanding the mandate in WAC 173-26-160 to update the SMP within a year of the annexation.]

The observation that priority species are governed by *Section 19.10.310.C.2* is incorrect. This section applies to nomination of species of local importance. The regulations in *Section 19.10.320* through *.330* apply to aquatic species. There is a separate subsection *19.10.335 Habitat other than fish habitat* that applies to other species. The suggestion that habitat conservation be addressed separately from aquatic areas is included in the code.

The comment that mitigation or relocation of Category IV wetlands is not allowed is incorrect. This is addressed in *Sections 19.10.220 Uses and activities allowed in wetlands and adjacent lands*, *Section 19.10.325 Provisions for small isolated wetlands* and *Section 19.10.240 Mitigation requirements*. It is accurate and appropriate that *Section 19.10.050* calls for avoidance as the first priority for mitigation, however other actions that would allow displacement and mitigation are clearly specified.

**Julie and Dennis North** indicates a support for buffers of smaller dimension and suggest that the King County standards for critical areas in UGAs are appropriate. As indicated above, the balancing of critical area protection and other GMA goals is appropriate. The City could adopt standards similar to those

**DAVID SHERRARD, AICP**

**Project Manager**

David Sherrard, Senior Project Manager, has over 25 years of experience managing complex public planning and regulatory programs. His experience encompasses Growth Management Act (GMA) comprehensive plans, transportation plans, subarea plans, water and sewer plans, park and recreation plans and permit review of a variety of private projects. Mr. Sherrard has developed regulations for Critical Areas, Shoreline Management, subdivision, planned unit developments, design review, tree preservation, wireless communication facilities, utilities, and non-conforming uses. He has directed environmental review under SEPA and NEPA for comprehensive plans, subarea plans, transportation plans, corridor studies, arterial improvements, highways park and recreation facilities, water, sewer and storm drainage utilities, electrical transmission lines, electrical substations, and wireless facilities as well as commercial and housing development. He has extensive experience in coordinating studies with State and Federal agencies, and providing community outreach and public information. He was a contributor to the Washington Department of Ecology (DOE) advisory body for revision of SEPA Guidelines for GMA implementation. He has broad experience in working closely with clients, regulatory agencies and project engineers and designers in developing work programs and managing interdisciplinary teams in producing focused and relevant products.



**Selected Project Experience**

**Critical Areas Ordinance Update – Shelton, WA**

*Client: City of Shelton*

Project Manager of the Parametrix team responsible for updating Critical Areas regulations. Our team of scientific and policy specialists worked closely with City staff, agencies and the public to craft a unique approach to each critical area. As part of the Best Available Science record, Parametrix scientists prepared an analysis of ecological functions of stream reaches within the city to provide the basis of specific regulations. In addition, we prepared a Landscape Analysis of the entire Goldsbough Creek watershed within Mason County to assure that all important functions of this shoreline stream were preserved, given the level of regulation within the city. A coordination effort focused on stakeholders who were initially concerned about potential stream buffer impacts on the health of downtown and their businesses. In addition, the industrial base of the city, the Simpson Lumber Mill was directly affected by stream and marine shoreline frontage. Working closely with these groups, Parametrix and the city developed approaches that were endorsed by the affected stakeholders, as well as resource agencies. The Parametrix team worked closely with the WDFW local biologists and headquarters staff as well as local tribes to assure scientific concurrence with our approach. WDFW summarized their support in the following: *“this specific approach represents a significant amount of work in assessing local streams, and appears to use best available science to provide for adequate buffers, buffer enhancements, and restoration to achieve both fish and terrestrial wildlife protection in riparian areas.”*

*Registrations*  
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Planners

new Shoreline Guidelines to a SMP Update. This project is the most extensive and detailed initial application of the new guidelines to be adopted to date. In this program the Parametrix team established close working relationships with Ecology at the regional and headquarters level and addressed and clarified many areas where the guidelines are unclear. In addition, the Washington State Department of Fish and Wildlife (WDFW) and other state agencies devoted substantial resources to this program resulting in a close working relationship with technical and policy decision-makers in these agencies. Parametrix scientists were the major contributors to the Inventory/Analysis and worked closely with Ecology staff (Stanley, Grisby and others) in developing and testing the landscape analysis methodology. David was the primary author of the revised SMP and coordinated closely with a Technical Advisory Committee composed of state and local agency specialists and tribal representatives in developing scientifically supportable policies and regulations. A parallel coordination effort with a Citizen Advisory Committee representing a cross section of stakeholders assured broad public understanding and acceptance of the program. The Whatcom County SMP has served as a model for many of the recent SMP updates in the state. It has provided a broad background for the Parametrix Team in developing assessment methodologies, policies and regulations for a wide range of conditions ranging from near-natural to urban.

**WRIA1(Nooksack Basin) Watershed Management Plan – Whatcom County, WA**

*Client: Whatcom County*

Primary contributor to the development of strategy alternatives for implementation of the Watershed Management Plan, including integration of regulatory programs on a watershed-wide basis and adaptive management programs. He also contributed to development of financing options utilizing a variety of revenue sources ranging from general tax funding, to special district assessments and utility fees. He prepared preliminary reports on the implementation and regulatory program integration and adaptive management strategies for inclusion in the Watershed Management Plan with presentations to technical and advisory committees and the public. The project involves extensive coordination with a variety of local, state and federal agencies as well as local interest groups and the general public. The draft plan is currently in the review stage.

**Biological Review of Tri-County Model 4(d) Rule – Tri-County EIS Response, King, Snohomish and Pierce Counties, WA**

*Clients: King, Snohomish and Pierce Counties*

Parametrix biological review of the Tri County Model 4(d) proposal encompassed land use, buffer, stormwater, roads maintenance and adaptive management recommendations. The biological review evaluated whether program elements would be effective in restoring and maintaining degraded Chinook salmon and bull trout habitat. The evaluation encompassed both review of scientific literature and modeling the effects of implementing the recommended program elements on representative subbasins and extrapolating the results to a regional scale. Mr. Sherrard contributed the analysis of the extent to which recommended land use provisions developed as part of the Model 4(d) Rule would be mandated by the Washington Growth Management Act, specifically the Best Available Science requirements of RCW 36.70A.172 and the extent to which the land use and buffer elements would be feasible and effective as part of local regulatory programs.

**Sensitive Areas Regulations – Bellevue, WA**

*Client: While on the staff of the City of Bellevue*

Project team member for the initial development of regulations in 1987 for preservation of wetlands, riparian corridors and steep and unstable slopes. Project Manager for substantial revision in 1995 of provisions for setback averaging and modification for streams and wetlands, and clarification of performance standards for a variety of uses. The project also involved development of administrative guidelines and procedures for staff implementation of codes.

**Renton Municipal Airport Seaplane Base**

*Client: City of Renton, WA*

The existing Renton Seaplane Base is located at the southern end of Lake Washington, near the mouth of the Cedar River. The seaplane facilities include two floating docks for passenger boarding and offloading and a launching ramp, which make the Renton Municipal Airport one of the few airports in the Pacific Northwest where aircraft can land on wheels, be equipped with floats, and depart from the water, or vice versa. The lake bed in front of the Seaplane Base is part of the Cedar River's fluvial delta and is subject to on-going sediment deposition. Recent deposits out of the mouth of the Cedar River have reduced the water depth necessary for safe flight operations from the Seaplane Base. Parametrix is assisting the Renton Airport with a dredging project that will result in an adequate and safe water depth for seaplane operations currently conducted at the Seaplane Base. This project involves numerous federal permits as well as federal funding. Chrissy is the environmental permitting task lead for this project, which includes coordination with the Army Corps of Engineers, the Federal Endangered Species Act (ESA) Services, the Muckleshoot Tribe, the Washington State Departments of Natural Resources, Ecology, and Fish and Wildlife, and the City of Renton for necessary permits.

**Carney Lake/Kitsap Lake Developments**

*Client: Private*

With a team of Parametrix biologists, Chrissy assisted in the field reconnaissance and wetland delineation/rating for the onsite wetlands found within or adjacent to the site of these proposed developments. Chrissy also assisted in the planning elements of the Carney Lake project, assisting in coordination with Kitsap County regarding utilities, zoning regulations, and permitting.

**Great Western Sports CFP**

*Client: Private*

With a team of Parametrix staff biologists, Chrissy performed field reconnaissance of the proposed Northwest Speedway project area, to determine the presence and location of critical areas within the project site. Chrissy assisted in the writing of the technical memorandum that outlined findings of the reconnaissance activities and project implications of the findings for the client.

**Montgomery Wetland Delineation**

*Client: Private*

In Thurston County, wetland delineations and ratings expire after five years. This project involved delineation and rating of a known wetland to establish the regulatory buffer for a proposed construction project on site. Chrissy performed the wetland delineation and rating, and completed a wetland report for Thurston County. Chrissy also oversaw creation of a wetland mitigation plan to restore those portions of the wetland buffer that had been impacted by the placement of large slash piles.

**Seabrook - A New Beach Town**

*Client: Private*

With another Parametrix staff biologist, Chrissy performed field reconnaissance of the Seabrook Division 5 area, to determine the presence and location of streams and wetlands within the project site. Chrissy assisted in delineation of the onsite wetland and stream boundaries, and wrote the wetland delineation report to accompany the project application to the Grays Harbor County. Chrissy has also provided planning assistance for platting taking place to accommodate future divisions of Seabrook, including SEPA and Shorelines work.

**City of Lakewood Sewer Extension**

Chrissy assisted the City of Lakewood in determining if wetlands or habitat areas were present in the future location of a proposed City sewer pump station. Chrissy met City representatives on site to verify the areas needing evaluation, and provided the City with a report outlining the findings.

mitigation/conservation approach (state and federal) for unavoidable impacts under, but not limited to, section 401/404 of the Clean Water Act, Sections 7 and 10 of the Endangered Species Act, designated critical habitat and/or occupied habitat, and impacts to State of Oregon listed species under the Oregon Endangered Species Act. Chris' primary roles for this project include developing criteria for selecting mitigation/conservation sites, developing statewide species distribution lists, negotiating service areas with regulatory agencies, developing assessment tools for salmonid habitat, and implementing assessment methods at mitigation sites. Chris also managed the program's pilot mitigation bank.

**ODOT Bridge Replacement Strategy – Statewide, OR**

Chris participated on the ODOT "Bridges" project as a project biologist. In this capacity, he authored and reviewed aquatic, wildlife, and botany baseline biological assessments for approximately 200 bridge sites statewide and identified and delineated habitat for protected species. He also served as the lead biologist for the documentation of categorical exclusions portion of the project under the National Environmental Protection Act.

**Young Creek Stream Restoration – Corbett, OR**

Chris currently is managing the restoration of a salmon bearing stream located within the Columbia River floodplain. The project involves the installation of 20 large wood structures designed to improve salmonid habitat, replanting 45 acres of riparian forest, and improving fish passage through culvert retrofits. Specific duties include the design, permitting, and construction of all project components.

**Mirror Lake Mitigation Bank – Corbett, OR**

Chris managed the development of the Mirror Lake Mitigation/Conservation Bank, a 390-acre mitigation bank in the Columbia River Gorge designed to provide wetland, ESA, and water quality mitigation credits for ODOT projects. In this role, Chris coordinated and led field studies; authored and reviewed technical reports; designed mitigation/restoration activities; coordinated submittal and approval of all permits; developed the site management plan; presented mitigation plans and findings to regulatory agencies and stakeholders; and oversaw initial phases of construction planning and implementation. The Mirror Lake Bank was the "pilot" mitigation bank for the ODOT program, therefore Chris also coordinated and implemented field trials during the development of various assessment tools.

**Young Creek Culvert Removal and Bridge Replacement – Corbett, OR**

Chris managed the removal of a culvert that posed a partial barrier to anadromous fish passage and replacement with a timber bridge that fully spans this second-order stream. Specifically, Chris managed the project's budget, coordinated project permitting, oversaw bridge and stream channel design, led the field effort to remove and isolate fish from the construction area, and oversaw portions of construction.

**South Platte River Restoration Project – Lake George, CO**

Chris participated as a project biologist for a comprehensive stream restoration and trout habitat enhancement project for approximately 0.4 miles of the South Platte River. The project included surveying the stream reach, identifying limiting factors and restoration priorities, and developing habitat structure and restoration designs.

**Wahatoya Creek Restoration Project – LaVeta, CO**

Chris participated as a project biologist on a comprehensive stream restoration and trout habitat enhancement project for approximately 1.2 miles of Wahatoya Creek, a 2nd-order stream in southern Colorado. The project included surveying the stream reach, identifying limiting factors and restoration priorities, developing habitat structure and restoration designs, and overseeing project construction.

**Statewide Stream Condition Pilot Project – Portland, OR**



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

COMMUNITY DEVELOP.

FEB 27 2008

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February 25, 2008

Mr. Greg Amann  
Assistant City Attorney  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010

Dear Mr. Amann:

**RE: Comments on Black Diamond's Draft Critical Areas Ordinance Update**

Thank you for the chance to comment on the proposed revision of Black Diamond's Critical Areas Ordinance (CAO). I have reviewed the portions pertaining to wetlands of your January 22, 2008, draft.

As I said in my comment letter on an earlier draft in September 2004, I appreciate the work that went into this proposed revision and your efforts to include best available science (BAS) in developing your regulations. The Washington State Department of Ecology (Ecology) supports the stated purpose of the CAO "to achieve the goal of no net loss of critical areas or their functions and values...."

The latest draft of the CAO does a good job of providing the standards required to meet this goal. The mitigation sequencing, buffers, and compensatory mitigation called for in the proposed ordinance are consistent with the level of protection needed according to our own review of the scientific literature. We appreciate that this draft incorporates the most important suggestions we made in our review of the earlier version.

Our remaining suggestions, which repeat portions of our September 2004 letter, are generally limited to secondary concerns regarding the draft CAO.

**Section 19.10.140 Mitigation plans**

Our comments in September 2004 regarding mitigation plans remain pertinent: "This section of the draft CAO provides good, detailed guidance for preparing mitigation plans and for explicitly linking measurable performance criteria to the goals and objectives of a mitigation plan. As an aid to permit applicants and to encourage preparation of mitigation plans that are acceptable across jurisdictions, we recommend that the City require or promote the use of the interagency wetland mitigation guidance for Washington. Originally published in March 1994, this joint guidance of Ecology, the U.S. Army Corps of Engineers, and the Environmental Protection Agency has been updated, revised, and expanded." *Wetland Mitigation in Washington State* is available at <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/index.html>.





**D. Monitoring program**

As we noted in September 2004, "Compensatory mitigation projects should be monitored for at least five years, preferably ten. Ten years or more of monitoring are needed for forested and scrub-shrub communities, which take at least eight years after planting to reach 80-percent canopy closure. Having a ten-year monitoring program need not require biologists to collect data and produce a report every year. That could be done in years 1, 2, 3, 5, 7, and 10, for example."

**Section 19.10.240 Mitigation requirements**

**E. Wetlands enhancement as mitigation**

The replacement ratios in the proposed draft are generally consistent with state and federal guidance. This consistency will help streamline permitting for applicants seeking to fill wetlands and compensate for the impact.

Upgrading existing degraded wetlands can span a wide range, from gains in only one or a few functions to reinstating environmental processes at a landscape scale. For this reason, Ecology, the Corps, and EPA distinguish between simple *enhancement* and *rehabilitation* of existing wetlands. The former would not do as much to compensate for wetland impacts as the latter. The proposed ordinance does not distinguish between these two forms of improving an existing degraded wetland, but requires ratios that would be appropriate for wetland rehabilitation.

Unless the City requires the highest possible level of improvement of degraded sites, the improvement in function from enhancement alone may not be adequate to offset certain wetland impacts. We suggest that the ordinance distinguish between the two types of improvement of existing wetlands, with ratios up to twice as great for simple enhancement. An alternative would be to require that any "enhancement" be comprehensive enough to repair the natural and historic functions and ecological processes of a clearly degraded wetland.

I commend you on your good work in preparing a new CAO for the City. I hope you will consider our suggestions for further improving your ordinance.

I am available to discuss these comments with you and provide any help that I can. You can reach me at (425) 649-4447 or [riro461@ecy.wa.gov](mailto:riro461@ecy.wa.gov).

Sincerely,



Richard K. Robohm  
Wetland Specialist

cc: Sam Wentz, Department of Community, Trade and Economic Development  
Donna Bunten, Ecology CAO Review Coordinator  
Erik Stockdale, Wetlands Specialist, Ecology Northwest Regional Office  
Katie Knight, Washington Department of Fish & Wildlife

September 2, 2004

Mr. Rick Luther  
City Manager and Chief of Police  
25510 Lawson Street  
Black Diamond, WA 98010

Dear Chief Luther:

**RE: Comments on Black Diamond's Draft Critical Areas Ordinance Update**

Thank you for the chance to comment on the proposed revision of Black Diamond's Critical Areas Ordinance (CAO). I have reviewed the portions pertaining to wetlands of your May 3, 2004, draft.

I appreciate the work that went into this proposed revision and your efforts to include best available science (BAS) in developing your regulations. The draft ordinance is thorough and has been thought out well and prepared conscientiously. The Washington State Department of Ecology (Ecology) supports the stated purpose of the CAO "to achieve the goal of no net loss of critical areas or their functions and values...."

The current draft of the CAO goes a long way toward providing the standards required to meet this goal. However, proposed buffers fall short of what is needed to protect against degradation of wetland functions and values in the City of Black Diamond (City). Our suggestions aim at ensuring that the best available science is included and that wetland functions and values are fully protected.

**Chapter 19.10 – General Provisions**

**Section 19.20.030 Critical area reports**

**A. Preparation by qualified professional**

For preparing wetland reports, minimum professional qualifications should include certification as a Professional Wetland Scientist or at least five years of experience in wetland science, including preparing wetland reports.

**Section 19.20.040 Mitigation plans**

This section of the draft CAO provides good, detailed guidance for preparing mitigation plans and for explicitly linking measurable performance criteria to the goals and

objectives of a mitigation plan. As an aid to permit applicants and to encourage preparation of mitigation plans that are acceptable across jurisdictions, we recommend that the City require or promote the use of the interagency wetland mitigation guidance for Washington. Originally published in March 1994, this joint guidance of Ecology, the U.S. Army Corps of Engineers, and the Environmental Protection Agency has been updated, revised, and expanded. The draft version of *Guidance on Wetland Mitigation in Washington State* is available at <http://www.ecy.wa.gov/programs/sea/wet-updatedocs.htm>.

#### **D. Monitoring program**

Compensatory mitigation projects should be monitored for at least five years, preferably ten. Ten years or more of monitoring are needed for forested and scrub-shrub communities, which take at least eight years after planting to reach 80-percent canopy closure. Having a ten-year monitoring program need not require biologists to collect data and produce a report every year. That could be done in years 1, 2, 3, 5, 7, and 10, for example.

### **Chapter 19.30 – Wetlands**

#### **Section 19.30.010 Designating, rating, and mapping wetlands**

##### **B. Wetlands ratings**

We are glad to see that the City proposes to use Ecology's *Washington State Wetland Rating System for Western Washington*. A new edition of the rating system (see <http://www.ecy.wa.gov/biblio/0406014.html>) was finalized in August. It supersedes the 1993 edition cited in the proposed CAO. Updated language for this section of your ordinance can be found on pages 5 and 6 of the attached Appendix B of Volume 2 of our BAS document, *Freshwater Wetlands in Washington State*, which was issued last month in draft form (see [http://www.ecy.wa.gov/programs/sea/bas\\_wetlands/index.html](http://www.ecy.wa.gov/programs/sea/bas_wetlands/index.html)). The latest revision of the rating system is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them.

#### **Section 19.30.030 Performance standards**

##### **C. Category II and III wetlands & D. Category IV wetlands**

Both subsections should end with the following sentence: "Full compensation for the loss of acreage and functions of wetland and buffers will be provided under the terms established under Section 19.30.040."

I realize the wording used in the proposed draft is drawn from the *Critical Areas Assistance Handbook* from the Department of Community, Trade, and Economic Development (CTED). The wording I am suggesting corrects a typographical error from the CTED document and eliminates any doubt about compensating for losses to both Category II and III wetlands and Category IV wetlands.

## **F. Wetland Buffers**

### **1. Standard buffer widths.**

The best available science tells us that the wetland buffers proposed in the draft ordinance may not always be wide enough to prevent degradation of habitat functions in urban settings. A 100-foot buffer for Category II wetlands, for example, does not offer adequate protection for moderate- to high-quality wildlife habitat in wetlands next to high-intensity land use.

Ecology's guidance on buffer widths and compensation ratios relies on our improved understanding of how to protect wetland functions and represents the best available science. The buffer widths we recommend take into account not only the functions that need to be protected, but also the impacts of adjacent land use. Low-intensity adjacent land uses allow for narrower buffers around wetlands than those needed to protect from the impacts of high-intensity uses.

Our recommendations are contained in the enclosed Appendix 8-C of Volume 2 of our BAS document. Buffer Alternative 3 (Tables 4 through 7) described in this appendix offers the most flexibility, basing buffer widths on the wetland category, adjacent land use, and the specific wetland functions that require protection. Also enclosed are Appendices 8-E and 8-F, which explain the reasons for the recommended buffer widths and compensation ratios.

The advantages of using this approach include the following:

1. It provides for specific buffer widths based on the more detailed information provided by the new wetland rating system that the City proposes to adopt.
2. It is based on the best available science regarding wetland buffers and provides for wider buffers around the more valuable and sensitive wetlands and narrower buffers around the wetlands that are less valuable and sensitive.
3. It will generally result in smaller buffers around wetlands in highly urbanized areas because many of the wetlands in developed areas are not providing the habitat functions that require larger buffers.
4. It provides incentives to landowners and developers to incorporate low-impact site-development measures to reduce runoff, noise, light, etc. Using such measures allows for reduced buffers.
5. It provides incentives to landowners and developers to provide connectivity between wetlands on their property and other habitat areas in exchange for reduced buffers.

This approach will also provide a greater degree of predictability for applicants and reduce the risk that the City will act in an arbitrary or capricious manner in applying buffer reductions.

**Section 19.30.040 Mitigation requirements**

Your proposed replacement ratios, except for some Category I wetlands (we suggest 6:1 instead of 4:1 for forested Category I wetlands), are in line with our own general recommendations and with what the state and federal agencies require. This consistency with state and federal requirements will streamline the approval process for mitigation projects.

To provide greater flexibility and account for a wider range of mitigation strategies, we urge you to consider using the guidance on pages 12 to 19 of the attached Appendix 8-C. Table 9 in this appendix shows suggested compensation ratios for different types and categories of wetlands and for various kinds of mitigation.

Ratios may be increased or decreased in specific cases according to the probability of success, the difference in functions, the timing of mitigation, and other factors. We suggest that standard compensation ratios be based on the category of the wetland impacted and the nature of the mitigation, i.e.:

- reestablishment or creation;
- rehabilitation;
- enhancement; or
- a combination of reestablishment or creation and enhancement.

I commend you for the solid effort you have made in preparing a new CAO for the City. I hope you will evaluate the enclosed documents and consider our suggestions for improving your draft ordinance. Where the proposed CAO departs from the guidance of best available science, the City should set forth the reasons for this departure and its implications and potential risks. The City's reasoning and analysis should be part of the findings of the adopting ordinance.

Ecology's wetland specialists will be available to discuss our comments with you and provide additional assistance throughout your CAO update process. I look forward to working with you to support your efforts to update Black Diamond's CAO using best available science. Please call or e-mail me with any questions or for further discussion. I can be reached at (425) 649-4447 or [rro461@ecy.wa.gov](mailto:rro461@ecy.wa.gov).

Sincerely,



Richard K. Robohm  
Wetland Specialist

Enclosures

Mr. Rick Luther  
September 2, 2004  
Page 5

RKR:rc

cc: Elliott Barnett, Department of Community, Trade and Economic Development  
Donna Bunten, Ecology CAO Review Coordinator  
Erik Stockdale, Wetlands Specialist, Ecology Northwest Regional Office



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000*

November 13, 2008

Ms. Gwendolyn Voelpel  
City Administrator  
City of Black Diamond  
24301 Roberts Drive  
P.O. Box 599  
Black Diamond, WA 98010

**COMMUNITY DEVELOPMENT**

**NOV 13 2008**

**RECEIVED**

Dear Ms. Voelpel:

**RE: Comments on Black Diamond's Draft Critical Areas Ordinance Update**

Thank you for the chance to comment on the proposed revision of Black Diamond's Critical Areas Ordinance (CAO). I have reviewed the portions pertaining to wetlands of your most recent draft, which I received from Aaron Nix today via e-mail.

As I have said in letters commenting on earlier drafts in September 2004 and February 2008, I appreciate the work that has gone into these revisions and your efforts to include best available science (BAS) in developing your regulations. The Washington State Department of Ecology (Ecology) supports the stated purpose of the CAO to protect sensitive areas in a manner that assures protection of the ecological functions and values of sensitive areas ... while appropriately balancing other goals of the Growth Management Act...."

The latest draft of the CAO does a good job of providing the standards required to meet this goal. The mitigation sequencing, buffers, and compensatory mitigation called for in the proposed ordinance are consistent with the level of protection needed according to our own review of the scientific literature. We appreciate the innovative approach to protecting the City's most value habitat areas with "buffer transfers" from wetlands in less sensitive areas. This approach has the potential to give added protection where it is most needed while offering flexibility in the application of buffers in other areas.

Our specific suggestions will be incorporated in a detailed letter that to follow shortly. I Would be happy to meet with you, members of your staff, and members of the City Council to discuss how the approach embodied in your draft CAO can work for the benefit of all concerned.

I commend you on your good work in preparing a new CAO for the City.

Ms. Gwendolyn Voelpel  
November 13, 2008  
Page 2

I am available to discuss these comments with you and provide any help that I can. You can reach me at (425) 649-4447 or [riro461@ecy.wa.gov](mailto:riro461@ecy.wa.gov).

Sincerely,



Richard K. Robohm  
Wetland Specialist

cc: Aaron Nix, City of Black Diamond  
Kristine Hanson, Black Diamond City Council  
Sam Wentz, Department of Community, Trade and Economic Development  
Donna Buntin, Ecology CAO Review Coordinator  
Erik Stockdale, Wetlands Specialist, Ecology Northwest Regional Office  
Katie Knight, Washington Department of Fish & Wildlife





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

**MEMORANDUM**

Date: December 9, 2008  
To: City Council  
From: Steve Pilcher, Community Development Director  
Re: Proposed amendments to BDMC 18.98, MPD Ordinance

Background

Earlier this year, the City Council conducted a public hearing on the proposed new Zoning Code and Zoning Map, closed public testimony, but did not yet take formal action (adoption of the Comprehensive Plan update needs to occur first). Although the existing MPD (Master Planned Development) Ordinance is a portion of the Zoning Code (Chapter 18.98), proposed changes to that portion of code were not ready at the time the remainder of the code was considered. The City Attorney's office, in conjunction with input from staff, has since drafted proposed amendments to the MPD regulations. The Planning Commission is conducting a public hearing on the proposal this evening.

The MPD regulations were first adopted in December 2005, at the time the West Annexation Area was brought into the city limits and was zoned MPD. Now that MPD applications appear to be soon forthcoming, staff is recommending some adjustments to the code to reflect current concepts being considered and better address some of the "knowns" of the pending applications.

Major changes

As can be seen from the attached revisions, there are changes being proposed throughout the document. Some of the apparent magnitude of the changes relates to moving some sections to a different location in the document and to also eliminate the replication of some concepts. Therefore, the changes aren't exactly as broad-sweeping as they may appear to be in the attached document.

The following are the major changes being proposed:

1. The term "overlay" is proposed for elimination, as the MPD zone is actually a distinct zoning district. In other words, there isn't an "underlying" zone district which could impact allowable densities within the project. (The applicable Comprehensive Plan Future Land Use Map designation may, but not the current zoning).

2. New language is recommended in section 18.98.030.A to make it clear that development of geographically separated areas proposed for commercial development may be approved through a Site Plan Approval process (as opposed to the more lengthy MPD process), once an MPD application is filed. This would allow commercial development of the “Northern Triangle” area to occur on a faster track than the remainder of the MPD.
3. Also, within 18.98.030.B, existing language that would limit consideration of an MPD for property not currently within the city limits is proposed to be eliminated. This will allow for processing of the complete MPD applications to occur prior to finalization of the South and East Annexations.
4. Section 18.98.040 concerns application requirements. Several additions are made to this section to ensure that all desired information is being addressed within an application. Of greatest significance is (18), which requires an applicant to demonstrate that all Transferred Development Rights (TDRs) necessary to support the proposed density have been secured.
5. Section 18.98.080 concerns approval criteria for an MPD application. Item A.6 eliminates the need for an MPD to meet the affordable housing goals as defined in the King County Countywide Planning Policies in favor of meeting a City-established goal.
6. In the same section, item A.12 specifies that required open space shall be provided in phases throughout a project as development occurs.
7. Also, item A.14 provides that the location of school sites may be determined by an agreement between the applicant, city and school district (currently, negotiations to meet this continue).
8. Section 18.98.120.E establishes a cap on the maximum density that may be allowed within a specific project within an MPD (18 du/ac) and also sets a maximum density of 12 du/ac overall for an MPD.
9. A new section is added to address “environmentally sustainable development” standards (18.98.135), which must be met within a MPD.
10. Greater definition is provided concerning what types of lands will be considered as qualifying as open space (18.98.140).
11. Sections 18.98.170, -180 and -190 provide greater clarity on expectations for streets and utilities and what type of deviations may be considered from city-wide standards.
12. Since it will most likely take from 10-15 years (or longer, depending on market conditions) for a project to build out, additions have been made to section 18.98.195 to provide greater clarity regarding the vesting of a MPD project.

**Chapter 18.98**  
**MASTER PLANNED DEVELOPMENT**

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**18.98.135 MPD standards – Environmentally sustainable development.**

**18.98.140 MPD standards—Open space requirements.**

**18.98.150 MPD standards—On-site recreation and trail requirements.**

**18.98.155 MPD standards – Sensitive Areas Requirements.**

**18.98.160 MPD standards—Transfer of development rights.**

**18.98.170 MPD standards—Street standards.**

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**18.98.190 MPD standards—Water and sewer standards.**

**18.98.195 Vesting.**

**18.98.200 Revocation of MPD permit.**

**18.98.005 MPD zoning district created.**

The master plan development (MPD) zoning district is created. No development activity may occur, or any application accepted for processing, on property subject to an MPD zoning designation, or for which the submittal of an MPD is required by a development agreement, unless it is done in accordance with the terms and conditions of a valid MPD permit. Development activity shall include, but not be limited to, grading, clearing, filling, tree harvesting, platting, short platting, building or any other activity for which a city permit or other approval is required. (Ord. 796 § 1, 2005)

**18.98.010 Master planned development (MPD) permit - Purpose.**

The purposes of the master planned development (MPD) permit process and standards set out in this chapter are to:

- A. Establish a public review process for MPD applications;
- B. Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size;
- C. Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents;
- D. Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;
- E. Allow flexibility in development standards and permitted uses;
- F. Identify significant environmental impacts, and ensure appropriate mitigation;
- G. Provide greater certainty about the character and timing of residential and commercial development and population growth within the city;
- H. Provide environmentally sustainable development, so that the resulting MPD project integrates economic, environmental and social objectives of this chapter, as further defined in section 18.98.135;
- I. Provide needed services and facilities in an orderly, fiscally responsible manner;
- J. Promote economic development and job creation in the city;
- K. Create vibrant mixed-use neighborhoods, with a balance of housing, employment, civic and recreational opportunities;
- L. Promote and achieve the city's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book Rural By Design by Randall Arendt and in the City's design standards;
- M. Implement the city's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.020 MPD permit - Public benefit objectives.**

A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but are not limited to:

- A. Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;
- B. Protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies;
- C. Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse;
- D. Preservation and enhancement of open space and views of Mt. Rainier;
- E. Provision of employment uses to help meet the city's economic development objectives;
- F. Improvement of the city's fiscal performance;
- G. Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and
- H. Development of a coordinated system of pedestrian oriented facilities including, but not limited to, trails and bike paths that provide accessibility throughout the MPD and provide opportunity for connectivity with the city as a whole. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.030 MPD permit - Criteria for MPD eligibility.**

- A. Where Required. An MPD permit shall be required for any development where:
  - 1. Any of the property within the development is subject to an MPD overlay designation on the Comprehensive Plan Future Land Use Map or an MPD zoning designation;
  - 2. The parcel or combined parcels to be included in a development total at least eighty gross acres; or
  - 3. Any of the property within the development is subject to a development agreement that requires an MPD permit to be obtained.
  - 4. Provided, however, the above provisions notwithstanding, any commercial area that is intended to be used to meet the economic objectives of an MPD and is geographically separated from the residential component of a proposed MPD may be approved through the site plan approval process of Chapter 18.16, subject to the following conditions:
    - a. the commercial area is included in an MPD application that has been determined to be complete and is identified in the application as being intended to meet the economic objectives of the MPD application;
    - b. The MPD design and development standards shall be applied, unless modified in accordance with the provisions of section 18.98.130(A);
    - c. the approved conditions shall include the requirements of section 18.98.080(A);
    - d. if the environmental review on the MPD permit application has not been completed, then, if determined appropriate, an environmental determination may be issued for the commercial area, provided the determination contains provisions that the commercial area shall still be considered for cumulative impact purposes, and appropriate additional mitigation requirements in the environmental review for the MPD application.
    - e. the provisions of the subsequent MPD approval shall apply to the site plan approval, including vesting, but only to the extent that they do not adversely impact complete building applications that have been submitted, or on site infrastructure improvements that have already been permitted.

B. Eligibility. Where not required under subsection A of this section the city may accept an MPD permit application, and process a development proposal as an MPD, only for contiguous properties that are in a single ownership, or if in multiple ownerships, specific agreements satisfactory to the city shall be signed by each property owner that place the properties under unified control, and bind all owners to the MPD conditions of approval.

C. Contiguity. All properties to be included in an MPD must be contiguous, excepting those areas intended to be used for commercial purposes, other than neighborhood commercial. (Ord. 796 § 2, 2005; Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.040 MPD permit - Application requirements.**

A. Application Requirements. All applications for approval of an MPD permit shall, at a minimum, include all of the information and documents set forth in this section.

1. A set of master plan drawings, drawn at a scale as determined by the director, showing:
  - a. Proposed open space, parks, recreation areas, trail networks, wildlife corridors, and perimeter buffers, and the intended ownership and acreage for each area;
  - b. Existing environmentally sensitive areas and their buffers, together with the reports, surveys or delineations used to identify their locations and areas for which development within a wetland, bog, stream or its related buffer is proposed and for which mitigation or buffer averaging will be required;
  - c. Proposed locations and preliminary street sections of all streets having a function higher than neighborhood access, and all pedestrian connections including trails; if the local access street section is intended to vary from the adopted City standard;
  - d. Proposed sites for schools and other public facilities required to serve the development;
  - e. Conceptual public utility plans (sewer, water, stormwater);
  - f. Types, generalized locations, acreages, and densities of proposed residential and nonresidential development;
  - g. Proposed sites for public transit facilities;
  - h. Any existing easements located upon the property;
  - i. Identify areas that will be protected from development by the requirements of Chapter 19.10 (Sensitive Areas Ordinance).
2. A map, drawn at a scale as determined by the director, showing property boundaries and existing topography (five-foot contour intervals), areas of vegetation by type, other natural features, and existing structures.
3. A legal description of the MPD property, together with a title report no more than thirty days old, disclosing all lien holders and owners of record.
4. A projected phasing plan and development time schedule, regardless of intended ownership, for all development, including but not limited to housing, stormwater systems, sanitary sewer facilities, public water facilities, roads, trails, commercial (including required neighborhood commercial) areas, recreational facilities, and open space, including any off-site improvements.
5. A completed SEPA checklist, with various 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.

6. A comprehensive fiscal analysis disclosing the short and long-term financial impacts of the proposed MPD upon the city both during development and following project completion, including an analysis of required balance of residential and commercial land uses needed to ensure a fiscal benefit to the city after project completion, and including an analysis of personnel demands and fiscal short-falls anticipated during the development phase of the MPD together with recommended mitigations to ensure that the MPD does not negatively impact the fiscal health of the city, nor the ability of the city to adequately serve existing residents, provided that if an EIS will be prepared, the fiscal analysis may be prepared concurrently.

7. A narrative description and illustrations of the MPD planning/design concept, demonstrating how the proposed MPD is consistent with the adopted MPD design standards, the comprehensive plan, all elements of sections 18.98.010 and 18.98.020, and other applicable policies and standards.

8. Typical cross-sections of all proposed street and trail types, including landscaping, pedestrian facilities, and any other proposed improvements within the right-of-way or trail corridors.

9. A listing of all property owners of record within five hundred feet of the exterior boundaries of all parcels proposed to be included within the MPD,. (When one or more of the MPD property owners own property adjacent to but not included within the MPD, the five hundred feet shall be measured from the exterior boundary of this adjacent property.). The applicant shall update the list prior to each proposed public meeting or required public mailing, as requested by the city, in order to assure a current list of all required notices.

10. A narrative description and illustrations of how street alignments and land uses in the proposed MPD will coordinate and integrate with existing adjacent development, and adjacent undeveloped properties.

11. A narrative description of proposed ownership and proposed maintenance program for all lands and facilities required to be shown on the master plan drawings by subsection (A)(1)(a) of this section.

12. A proposed water conservation plan for the MPD pursuant to Section 18.98.190 .

13. If applicable, a description of any mineral (or other resource) extraction operations proposed within the MPD, the timing and phasing of the proposed operation and reclamation of the land for subsequent proposed uses.

14. Proof of proper notice for the public information meeting.

15. A narrative description, with reference to the drawings required by subsection (A)(1)(a) above, of how the proposal will comply with the Sensitive Areas Ordinance (Chapter 19.10);

16. Proposed floor area ratios (FAR) for both residential and non-residential areas;

17. A narrative description, with associated tables, showing the intended residential density, the number of development rights that are needed to meet the intended density, the number of development rights that are already associated with the property included within the proposed MPD boundaries, and the number of development rights that must be acquired to meet the intended density;

18. The originals of the development rights certificates, or documentation of the right to use development rights held in trust by the city pursuant to the terms of the Transfer of Development Rights Program (Chapter 19.24), showing that the development rights

necessary to meet the intended density have been acquired or otherwise secured so that they will be available if the intended density is approved.

B. The director shall have the authority to administratively establish additional detailed submittal requirements.

C. The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. A deposit in an amount equal to the staff's estimate of processing the MPD, as determined after the preapplication conference shall be required to be paid at the time of application, and shall be placed in a separate trust account. The city shall establish procedures for periodic billings to the applicant of MPD review costs as such costs are incurred, and may require the maintenance of a minimum fund balance through additional deposit requests. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### **18.98.050 MPD permit - Required approvals.**

A. MPD Permit Required. An approved MPD permit and development agreement shall be required for every MPD.

B. Consolidated Review. An MPD permit will be allowed as part of a consolidated permit action as authorized by RCW 36.70B. Consolidation shall not be allowed for comprehensive plan amendments. At the city's discretion, an MPD permit may be processed concurrently with amendments to the development regulations or interlocal agreements, provided that the applicant acknowledges in writing that they assume the risk of the MPD permit application being denied or otherwise conditioned as a result of final action on any requested amendment.

C. Implementing Development Applications. An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing development approval. An application for an MPD permit may be processed with amendments to the comprehensive plan, zoning code, inter-local agreements and land development permits associated with the MPD permit, such as forest practice permits, clearing and grading permits, shorelines permits, and permits required by other public agencies. The city shall not grant approvals to related permits before the granting of an MPD permit and recording of a development agreement. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### **18.98.060 MPD permit - Review process.**

A. MPD Permit - Preapplication Conference, Public Information Meeting and Planning Commission Informational Meeting Required.

1. A preapplication conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application .

a. The purpose of this conference is for the applicant to familiarize the staff with the proposed MPD, and for the staff to review with the applicant the city's submittal requirements, anticipated staffing needs, and processing procedures for MPD permit approval. The goal is to identify the city's objectives and likely issues, and to eliminate potential problems that could arise during processing of the MPD permit application prior to formal processing on the MPD permit application.



b. The applicant or representative shall present the information required as part of the MPD application. The city's intent is that the conference occurs after site inventory and analysis has been substantially completed, but prior to the completion of detailed survey, architectural or engineering work on the proposal.

c. A nonrefundable preapplication conference fee in an amount set forth in the adopted fee schedule resolution shall be paid before the preapplication conference will be scheduled.

d. If, at the preapplication conference, the city determines that it does not have adequate staff, space, or equipment, to process the application, then the applicant shall deposit with the city an amount sufficient for the city to hire the additional staff and/or consultants, and acquire the space and/or equipment necessary to process the application. The deposit must be made no less than four months or more than five months before the application is submitted. The public information meeting may not be scheduled until the deposit has been made. The city council may waive or shorten the four-month period if it is determined the necessary arrangements for staffing, space and equipment can be made in less than four months.

2. After the preapplication conference has been completed, a public information meeting shall be conducted by the applicant prior to acceptance of an MPD permit application.

a. The applicant shall schedule and conduct a public information meeting regarding the proposed application. The public information meeting shall be conducted at City Hall, or at such other public location within the city that will accommodate the anticipated attendees. The applicant shall attend the meeting and provide information to the public regarding the proposed project, its timing, and consistency with the city's MPD code, the comprehensive plan, and other applicable city codes and regulations.

b. The public information meeting shall not be a public hearing, but shall allow for an informal exchange of comments between the applicant and the general public. Notice of this meeting shall be provided in the newspaper of record at least fourteen days in advance of the meeting and shall be mailed to the property owners identified in subsection (B)(7)(c) of this section.

3. After the public information meeting has been completed, a planning commission informational meeting shall be conducted. The planning commission informational meeting is required before the city will accept an application for MPD permit approval.

a. The planning commission informational meeting will take place at a regular meeting of the commission. At this meeting, the applicant shall present the overall planning and design concept of the proposed MPD, and the commission shall provide preliminary feedback to the applicant regarding the consistency of this concept with the city's adopted standards, goals and policies. The planning commission may bring specific issues of interest or concern to the attention of the applicant.

b. While a public meeting, the purpose of the planning commission informational meeting is not intended for the receipt of comments from the public regarding the proposed MPD.

#### B. MPD Permit Public Review Process.

1. Completeness Check and SEPA. Staff shall review the MPD application for completeness and, once it is determined to be complete, provide the required notice of application. Staff will then initiate the SEPA process.

2. Optional EIS Scoping Meeting. If the responsible official makes a determination of environmental significance regarding an MPD application, staff may schedule and conduct an EIS scoping meeting. The applicant shall attend the meeting and provide information regarding the proposed project, scope, planning, timing, and the results of any relevant environmental studies performed by the applicant's consultants.

3. Staff Review. At the conclusion of the SEPA process, staff will conduct its detailed review of the proposal. This review may include requesting additional information, or proposal revisions, from the applicant.

4. Staff Report. The staff will prepare a written staff report to the hearing examiner. The completed staff report shall be sent to the hearing examiner and to the applicant at least ten calendar days prior to the public hearing.

5. Hearing Examiner Public Hearing. The city's hearing examiner shall hold a public hearing on the MPD permit application,. At least fourteen calendar days prior to the public hearing, the city shall provide notice of the hearing as follows:

- a. Publication in the city's newspaper of record;
- b. Posting of the proposal site, in at least three locations visible from public streets or rights-of-way;
- c. Mailing to owners of record of properties within five hundred feet of the perimeter of the proposed MPD per 18.98.040(A)(9); and
- d. Any person(s) formally requesting notice.

6. MPD Permit Approval Criteria. The hearing examiner shall prepare recommended findings of fact, conclusions of law, and conditions of approval or a recommendation for denial for the city council's consideration, and shall transmit these to the city council within fourteen calendar days of the close of the public hearing. The examiner shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in section 18.98.080.

7. City Council. At its first regular meeting following the receipt of the hearing examiner's recommendations, the city council shall schedule a time for its consideration of the MPD. The council may:

- a. Accept the examiner's recommendation;
- b. Remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or
- c. Modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed.

8. Appeals. The council's decision with regard to an MPD permit shall be the city's final action for the purpose of any and all appeals. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### **18.98.070 MPD permit - Environmental review (SEPA).**

A. Pursuant to the requirements of the State Environmental Policy Act (SEPA) and local SEPA regulations, the city shall determine whether an environmental impact statement is required for the MPD proposal. An application for an MPD permit shall include, at a minimum, a completed environmental checklist. Prior to or concurrent with application submittal, the city and the applicant may agree to prepare an environmental impact statement for the proposal.

B. If desired by the applicant and deemed appropriate by the city, an MPD proposal may be designated by the city as a planned action pursuant to RCW 43.21C.031(2) and WAC 197-11-164 et seq.

C. Implementing city permits and approvals, such as preliminary plats, building permits, and design reviews, shall be subject to applicable SEPA requirements. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.080 MPD permit approval - Conditions of approval.**

A. An MPD permit shall not be approved unless it is found that appropriate conditions are imposed so that all of the following criteria are met:

1. The project complies with all applicable adopted policies, standards and regulations. In the event of a conflict between the policies, standards or regulations, the most stringent shall apply unless modifications are authorized in this chapter and all requirements of section 18.98.130 have been met. In the case of a conflict between a specific standard set forth in this chapter and other adopted policies, standards or regulations, then the specific requirement of this chapter shall be deemed the most stringent.

2. There are no significant adverse environmental impacts.

3. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:

a. If any phase has not been completed within five years, a new fiscal analysis must be completed with regards to that phase before an extension can be granted; and

b. Prior to commencing a new phase.

4. A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:

a. Prior to the occupancy of any residential or commercial structure in each phase, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build out of that phase for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to serve the phase, and to provide for connectivity of the roads, trails and other open space systems to other developed phases within the MPD and to the MPD boundaries; and

b. At full build out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.

5. The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.

6. The project, in each residential phase, provides a mix of housing types that allows the project to meet the affordable housing goals of the city.

7. If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.
  8. If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.
  9. The orientation of public building sites and parks shall preserve and enhance, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.
  10. The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.
  11. If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.
  12. The proportionate amount of open space to meet the open space to developable land ratio applicable to the MPD as a whole is provided for in each phase, is permanent protected and developed as required by conditions of approval, and appropriate access is provided before occupancy of any structure in the phase. Provided, if the intent and purpose of the MPD is met, some of the required open space to meet the proportionate open space to developable land ratio may be protected and developed elsewhere in the MPD so long as developed connectivity is provided to the phase prior to occupancy of any structure in the phase.
  13. The combined floor area ratio for the ground floor of all structures on a single family lot or in a residential condominium project shall not exceed the ratio required in the MPD design guidelines.
  14. School sites shall be set aside so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build out, including the transition of children from elementary to middle schools, using school sizes based upon the applicable school district's adopted standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.
  15. Grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain significant natural contours.
- B. So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.

**18.98.090 MPD permit - Development agreement.**

The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals (preliminary plat, design review, building permit, etc.) (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.100 MPD permit - Amendments to an approved MPD permit.**

An applicant may request an amendment to any element or provision of an approved MPD. All applications for amendments shall be deemed either "minor" or "major." An amendment application shall be considered minor if it meets all of the following criteria:

- A. Would not increase the total number of dwelling units in an MPD above the maximum number set forth in the approved MPD permit or reduce the number by more than ten percent;
- B. Would not increase the total floor area of nonresidential uses by more than ten percent;
- C. Would not decrease the minimum, or increase the maximum density for residential areas of the MPD beyond density ranges approved in the MPD permit;
- D. Would not decrease the approved amount of open space or recreation space;
- E. Would not increase any adverse environmental impact, provided that additional environmental review may be required to determine whether such change is likely to occur;
- F. Would not adversely impact the project's fiscal projections to the detriment of the city;
- G. Would not significantly impact the overall design of the approved MPD; and
- H. Would not alter the size or location of any designated open space resulting in a lowered level of service and does not reduce the total amount of required open space.
- I. Minor amendments may be approved administratively in accordance with the procedure set forth in the MPD development agreement, where applicable. Any amendment application that is not "minor" shall be deemed to be major. The final determination regarding whether an amendment is "minor" or "major" shall rest with the director, subject to appeal to the hearing examiner. Applications for major modifications shall be reviewed by the same procedures applicable to new MPD permit requests. The city, through the development agreement for the approved MPD, may specify additional criteria for determining whether a proposed modification is "major" or "minor", but the criteria listed in this section cannot be modified or reduced in a development agreement. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.110 MPD standards - Design review required.**

- A. Design Standards. The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.
- B. Design Review Process.

1. MPD Permit. The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.

2. Implementing Permits or Approvals - Residential Subdivisions. Each residential subdivision that is part of an approved MPD shall be reviewed at the time of preliminary plat review for compliance with the city's MPD design standards. This review shall include typical schematic drawings (floor plans, elevations, and exterior material samples) for the single-family residences and other structures to be built on the subdivided lots. This review shall be merged with the planning commission's review of the preliminary plat.

3. Implementing Permits or Approvals - Short Subdivisions (Short Plats). Short subdivisions (short plats) within an approved MPD shall be reviewed by the director for compliance with the city's MPD design standards as required in (2) above.

4. Implementing Permits or Approvals - Residential Building Permits Staff shall administratively review residential building permit applications in approved and recorded subdivisions and short subdivisions for consistency with the schematic building drawings approved in conjunction with preliminary plat or short plat approval.

5. Implementing Permits or Approvals - Other Building Permits. All other structures shall be reviewed by the director for compliance with the MPD design standards. The director shall make a decision on the proposal's compliance with the MPD design standards and adopt findings, conclusions and, where applicable, conditions of approval. Building permit applications that are found to be not consistent with the approved design standards shall be rejected, subject to appeal to the hearing examiner.

6. Future Project Consistency. The decision-maker shall not approve a preliminary plat or short plat, or issue a building permit or site plan review approval for a parcel located within an MPD, unless the city has found that the proposal is consistent with applicable MPD design standards. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### **18.98.120 MPD standards - Permitted uses and densities.**

A. MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.

B. The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and shall also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.

C. The MPD shall, within the MPD boundary, or elsewhere within the city, provide for sufficient properly zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential units within the MPD, will, with reasonable certainty, be met before full buildout of the residential portion of the MPD.

E. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the

comprehensive plan. The council may authorize a residential density of up to 12 dwelling units per acre so long as all of the other criteria of this chapter are met and the additional density is acquired by participation in the TDR program. In any development area within an MPD, the effective density of development 12 dwelling units per acre, up to a maximum of 18 dwelling units per acre, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of 18.98.010 and 18.98.020.

**18.98.130 MPD standards - Development standards.**

A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related development agreement may allow development standards different from set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:

1. Is needed in order to provide flexibility to achieve a public benefit; and
2. Furthers the purposes of this chapter and achieves the public benefits set forth in section 18.98.010; and
3. Provides the functional equivalent and adequately achieves the purpose of the development standard from which it is intended to deviate.

B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.

**18.98.135 MPD standards – environmentally sustainable development.**

An approved MPD shall incorporate the following design guidelines, some of which can be met by compliance with other specific criteria imposed by the MPD code:

- A. Site Design. Provide resource-efficient site design which includes consideration for saving trees, constructing on-site stormwater retention/infiltration features, and building orientation to maximize passive solar heating and cooling.
- B. Efficient Use of Resources. Prepare a construction waste management plan to reduce construction waste by two-thirds. Consider life-cycle environmental impacts of building materials.
- C. Energy Efficiency. Incorporate energy saving techniques into all aspects of a building's design and operation.
- D. Water Efficiency. Maximize water conservation by maintaining or restoring pre-development hydrology with regard to temperature, rate, volume and duration of flow; use native species in landscaping; recycle water for on-site irrigation use.
- E. Indoor Environmental Quality. Use measures that can mitigate the effects of potential indoor air quality contaminants through controlling the source, diluting the source, and capturing the source through filtration.
- F. Community Impacts. Reduce overall community impacts by providing connectivity from the project to the community; by incorporating best management practices for stormwater management; by creating useable public spaces such as plazas and parks; and by protecting important community-identified viewsheds and scenic areas.

**18.98.140 MPD standards - Open space requirements.**

A. An approved MPD shall contain at least fifty percent on-site open space, except as modified by prior agreements. Open space is defined as wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreation areas, such as golf courses, trail corridors, playfields, parks of one-quarter (1/4) acre or more in size, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by the chapter 19.10.

B. Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD..

C. The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.

D. The approved MPD permit and development agreement shall establish specific uses for open space within the approved MPD.

E. The approved MPD permit and development agreement shall establish which open space shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.150 MPD standards - On-site recreation and trail requirements.**

A. An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.

B. The MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.155 MPD standards – sensitive areas.**

A. The requirements of the Sensitive Areas Ordinance (BDMC 19.10) shall be the minimum standards imposed for all sensitive areas.

B. All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.

**18.98.160 MPD standards - Transfer of development rights.**



A. All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and development agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site. (Ord. 779 § 2 Exh. 1 (part), 2005)

B. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.

**18.98.170 MPD standards - Street standards.**

A. Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity of streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.

B. The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.

C. The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.180 MPD standards - Stormwater management standards.**

A. The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.

B. The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in section 18.98.195(B).

C. Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD. (Ord. 779 § 2 Exh. 1 (part), 2005)

D. The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds

shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.

**18.98.190 MPD standards - Water and sewer standards.**

A. An MPD shall be served with public water and sanitary sewer systems that:

1. Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.

2. Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.

B. Each MPD shall develop and implement a water conservation plan to be approved as part of the development agreement that sets forth strategies for achieving water conservation at all phases of development and at full buildout, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit. (Ord. 779 § 2 Exh. 1 (part), 2005)

**18.98.195 Vesting.**

A. Except to the extent earlier terminated, modified by the provisions of this chapter, or as otherwise specified in the conditions of approval, the MPD permit approval vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.

B. Vesting as to stormwater regulations shall be on a phase by phase basis.

C. Vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis. (Ord. 779 § 2 Exh. 1 (part), 2005)

D. Building permit applications shall be subject to the building codes in effect at the time a building permit application is deemed complete.

E. The council may grant an extension of the 15 year vesting period for up to five years for any phase so long as the applicant demonstrates with clear and convincing evidence that all of the following are met:

1. The phase approval has not been revoked in accordance with the provisions of section 18.98.200;

2. The failure to obtain the implementing entitlement approval for the applicable phase is a result of factors beyond the applicant's control;

3. The granting of an extension will not adversely impact any of the purposes or public benefit provisions of this chapter; and

4. The city has not adopted ordinances of general application that impose a more stringent development standard than those in effect for the phase for which a time extension is requested or, in the alternative, the applicant agrees to comply with the more stringent standard.

Any request for an extension shall be considered as a major amendment to the MPD. The council may impose such additional conditions to the phases as it deems appropriate to further the purposes and public benefit objectives of the MPD code in light of the number of years that have passed since the original MPD permit approval and taking into consideration the effectiveness of the exiting permit conditions in meeting those purposes and public benefit objectives.

**18.98.200 Revocation of MPD permit.**

The city council may amend or revoke any or all conditions of MPD approval, after public hearing and notice under the following circumstances:

A. If the MPD permit allowed for phasing and the implementing action (i.e., final plat approval, site plan approval, etc.) for the development of the next phase has not been approved within five years of the approval of the previous phase or, in the case of the first phase, from the original MPD approval and an extension of said phase has not been previously granted. An extension may be granted for up to an additional two years on such additional conditions as the council determines are necessary in order to assure that the extension does not adversely impact the intent and purpose of the initial MPD approval.

B. A condition of the MPD approval has been violated and the violation has not been corrected after sixty days notice of the violation unless said violation can be corrected through the use of a duly posted performance or maintenance bond provided at the time of MPD approval.

C. A violation of an MPD condition of approval that cannot be corrected, such as the destruction of wetlands or removal of trees and vegetation that was specifically prohibited and cannot be restored to their original state within sixty days.

D. The MPD permit has been approved for more than five years and the city council finds that further development will present a threat to the public health, safety and welfare unless the amendment or revocation is implemented; provided, however, the city shall first determine that the condition cannot be amended in order to eliminate the threat to the public health, safety or welfare before it revokes the permit approval.

The above provisions notwithstanding, the vacation and/or amendment of the MPD approval shall not affect previously approved building permits. (Ord. 779 § 2 Exh. 1 (part), 2005)

E. If the MPD permit is revoked for undeveloped phases, the parcels for which the permit is revoked cannot be developed without a new MPD permit being obtained, even if the revoked parcels are less than the minimum acreage required by section 18.98.030.