

ORDINANCE NO. 10-933

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BLACK DIAMOND, KING COUNTY,
WASHINGTON, AMENDING CHAPTER SECTION
19.04.250 OF THE MUNICIPAL CODE REGARDING
THE SEPA APPEAL PROCESS**

WHEREAS, BDMC Title 19 constitutes the City's environmental policy; and

WHEREAS, BDMC 19.04 constitute the SEPA procedures for the City; and

WHEREAS, BDMC 19.04.250 provides the process for appeals of SEPA actions; and

WHEREAS, the city council finds it to be in the public interest to ensure that the process for appealing SEPA decisions is clear, accessible, and attainable to the public; and

WHEREAS, the city council finds it be in the public interest to ensure that the fee for filing a SEPA appeal does not discourage public input into the SEPA process; and

WHEREAS, to ensure the process is clear, accessible, and attainable to the public, it is in the public interest to amend BDMC 19.04.250 to clarify the SEPA appeal process for land use actions that require both hearing examiner and city council review,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 19.04.250 of the Black Diamond Municipal Code is hereby amended to read as follows:

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

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

C. A fee of \$250.00 shall accompany each appeal.

D. On receipt of a timely written notice of appeal, the director shall advise the hearing examiner of the appeal and request that a date for considering the appeal be established.

Provided that, if there is a concurrent land use application requiring a hearing examiner public hearing, then the two hearings shall be combined. The hearing examiner shall make the final decision on a SEPA appeal.

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

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

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

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

H. The city shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. Appeal from the Hearing Examiner's decision on a SEPA appeal is to superior court. The judicial appeal must be filed within 21 days after the Hearing Examiner renders a decision, unless the SEPA appeal is consolidated with the underlying governmental action, such as a permit application. If there is consolidation, judicial appeal of the Hearing Examiner's decision on the SEPA appeal must be filed within 21 days after the City's final decision on the underlying government action.

I. This chapter constitutes the exclusive administrative process to appeal a SEPA decision. Notwithstanding any other provision of the Municipal Code, the provisions of this chapter shall apply. This provision shall be construed in conjunction with BDMC 18.98, RCW 36.70B, and WAC197-11-680 (3) (a) (v).

Section 2. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 3. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by state law.

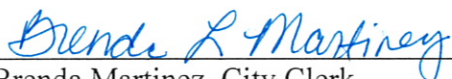
Introduced on the 7th day of January, 2010.

Passed by the City Council on the 7th day of January, 2010.



Mayor Rebecca Olness

ATTEST:



Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Yvonne Kinoshita Ward, City Attorney

Published: 1-12-2010

Posted: 1-8-2010

Effective Date: 1-17-2010