

**ORDINANCE NO. 14-1027**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS OF FACT TO SUPPORT A SIX-MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT, EXEMPTING CERTAIN PROPERTY AND APPLICATIONS.

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WHEREAS, on March 20, 2014, the City adopted Ordinance 14-1025, imposing an immediate six-month moratorium on the acceptance of non-exempt development applications for any “development activity,” “development permit” or “project permit” as defined therein, for certain property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, on April 17, 2014, the City Council held the 60-day hearing on the moratorium required by RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, these statutes require that the City Council adopt findings of fact immediately after the 60-day hearing, as long as the moratorium will continue for the six-month period; Now, therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,  
ORDAINS AS FOLLOWS:

Section 1. Background. The City Council incorporates the “whereas” sections from Ordinance 14-1025 by reference, as if fully set forth herein.

Section 2. Public Hearing. A public hearing was held by the City Council on the moratorium adopted in Ordinance 14-1025. Here is a summary of the testimony received:

A. Stacey Welsh: The Community Development Director, Stacey Welsh, described the facts and purpose relating to this public hearing.

B. William Kombol: Mr. Kombol is the Manager of Palmer Coking Coal Company, the owner of the property subject to the moratorium. He submitted a letter dated April 17, 2014, in which he complained that the moratorium only applied to the Palmer Coking Coal Company's 157 acres. According to Mr. Kombol's letter, Palmer Coking Coal has no development plans for the property, but he has discussed the Company's plans to do a silvicultural thinning of the dense and over-stocked forest on the property. He feared that these plans would be thwarted by the City's MPD moratorium. In sum, he asked that the City Council revise the MPD moratorium ordinance to exempt forest practices on Palmer Coking Coal's 157 acres.

C. Carol Morris: City Attorney Carol Morris explained that the reason that the remaining property in the MPD district (other than the Palmer Coking Coal property) was not included in the moratorium was because it was vested under Development Agreements executed by the property owners and the City. With regard to the application of the moratorium to Palmer Coking Coal Company's identified plans for the property, she explained that the moratorium was adopted for the purpose of preventing the submission of development applications for development activity not to prevent tree cutting activities. Based on her discussion with Aaron Nix on this subject, she learned that Mr. Kombol was referring to an exemption in the tree cutting ordinance, Black Diamond Municipal Code Section 19.30.050(F). Here is the language from the BDMC Section 19.30.050(F), exempting the following activities from the requirements of BDMC Sections 19.30.040, .060, 070, .080, and .090:

Harvesting with a Class II or Class III or Class IV forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.050. Provided that, land use and building permits may be denied in accordance with RCW Chapter 76.09 for six years from the date of approval of a Class II or Class III or Class IV forest practices permit.

Ms. Morris explained that the Council could address Mr. Kombol's concern by expressly clarifying that the activities identified in BDMC Section 19.30.050(F) were also exempt from the MPD moratorium.

D. Kristine Hanson. Ms. Hanson commented that she also did not understand why the MPD moratorium singled out Palmer Coking Coal. She asked that Councilmember Edelman recuse herself from voting because she is one of the original appellants in a lawsuit against the City.

E. Carol Morris. City Attorney Morris repeated the rationale for inclusion of the Palmer Coking Coal Company's property in the MPD moratorium, which is because it is zoned MPD. The City is interested in examining the MPD zone to determine whether it should be retained in the City. With regard to the question involving Councilmember Edelman, Ms. Morris stated that the lawsuit against the City did not include the property subject to this moratorium. Further, because all of the Council's actions with regard to this moratorium are legislative and not quasi-judicial, she is not disqualified from voting.

F. Brian Derdowski: Mr. Derdowski thanked the Council for their public service and spoke in favor of the moratorium. He believed that the 157 acres subject to the moratorium should be included in the comprehensive plan review currently underway. Because the issue of the MPD zone was raised in an appeal before the Growth Management Hearings Board, Mr. Derdowski suggested that the Board's decision should be entered into the administrative record on the moratorium. He also thought that the total record of the Yarrow Bay developments should

be entered as findings. Finally, he encouraged the Council not to allow logging in this area during the moratorium because a determination of the trees that should be kept is a decision to be made at the time of development.

Section 3. Council Deliberations. The Council briefly discussed the rationale for the adoption of the MPD moratorium and their favorable view of it. Questions were asked of the City Attorney as to whether an amendment needed to be made to the moratorium ordinance in order to allow Palmer Coking Coal to continue to submit their application(s) for forest practices exemptions from the City's tree cutting ordinance. City Attorney Morris informed the Council that the clarification could be addressed in the findings of fact, if they directed the staff to include it in the findings of fact that would be presented at the next City Council meeting. There was general agreement that the findings of fact should include this language for the Council's consideration at the next Council meeting.

Section 4. Moratorium Continued. The City Council hereby continues the six-month moratorium adopted on March 20, 2014 under Ordinance No. 14-1025, on the acceptance of all non-exempt development permit applications (as defined in that Ordinance) for development activities on property located within the MPD Zone, as such property is shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 5. Clarification of Moratorium. The moratorium imposed by Ordinance shall not prevent any property owner from submitting an application for an exemption under BDMC Section 19.30.050(F). With regard to the City's acceptance of any such exemption under BDMC

19.30.050(F), such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication.

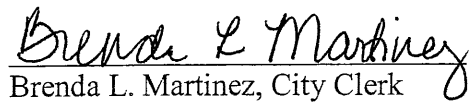
PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 1<sup>st</sup> day of May, 2014.

CITY OF BLACK DIAMOND



\_\_\_\_\_  
Mayor Dave Gordon

ATTEST/AUTHENTICATED:

  
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Brenda L. Martinez, City Clerk

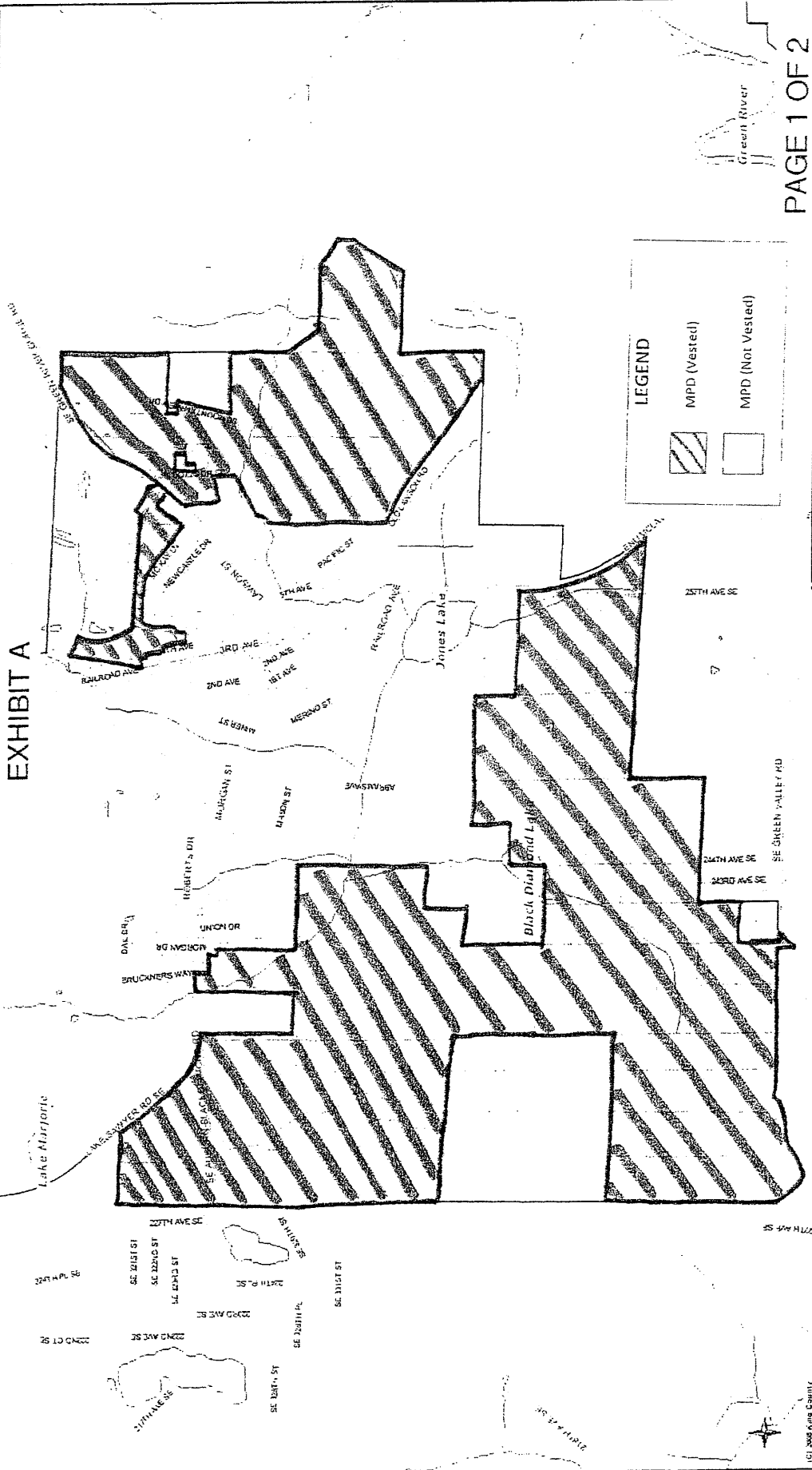
APPROVED AS TO FORM:  
Office of the City Attorney

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Carol A. Morris, City Attorney



FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL: 5/11/14  
PUBLISHED: 5/5/14  
EFFECTIVE DATE: 5/10/14  
ORDINANCE NO: 14-1027

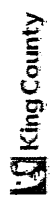
# King County iMAP Map

## EXHIBIT A



**LEGEND**

	MPD (Vested)
	MPD (Not Vested)



1998M  
 The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or fitness for the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale or reuse of the map or information on this map is prohibited except by written permission of King County.  
 Date: 4/9/2014 Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP/>)

