

RESOLUTION NO. 13-884

A RESOLUTION OF THE CITY COUNCIL OF BLACK DIAMOND, WASHINGTON, CONCURRING WITH THE DEPARTMENT OF ECOLOGY'S RECOMMENDED AND REQUIRED CHANGES TO THE CITY'S DRAFT SHORELINE MASTER PROGRAM WITH CERTAIN EXCEPTIONS AS SET FORTH HEREIN, AND DIRECTING THE MAYOR TO SUBMIT AN ALTERNATE PROPOSAL

WHEREAS, the people of the State of Washington enacted the Shoreline Management Act by a vote of the people in 1971; and

WHEREAS, the State of Washington Shoreline Management Act (RCW 90.58), adopted in 1972, recognizes that "shorelines are among the most valuable and fragile" resources of the State, and that to protect the public interest in preserving these shorelines, the State and local governments must establish a coordinated planning program to address the types and effects of development occurring along the State's shorelines; and

WHEREAS, the broad policies of the Shoreline Management Act are to encourage water-dependent uses, protect shoreline natural areas and promote public access; and

WHEREAS, the City of Black Diamond adopted its own version of a Shoreline Master Program in 1978, but did not identify, at the time, Shorelines of Statewide Significance within its corporate borders; and

WHEREAS, the shorelines and outlying areas of Lake Sawyer were incorporated into the City limits of the City of Black Diamond in 1998 and the then established goals, policies and regulations of King County's Shoreline Master Program continue to be implemented in accordance with WAC 173-26-160; and

WHEREAS, the Shoreline Management Act requires all local governments, including the City of Black Diamond, to: 1) develop and inventory the natural characteristics and land use patterns along shorelines covered by the Act; 2) prepare a "Shoreline Master Program" to determine the future of the shorelines; 3) develop specific goals, policies and recommendations for protection of such shoreline resources; 4) develop a permit system with development standards for all shoreline uses within existing shoreline designations that further the goals and policies of both the Act and the local Shoreline Master Program; and 5)

develop a Restoration Plan for the long-term restoration of impaired shoreline ecological functions; and

WHEREAS, the City of Black Diamond received a grant to update its Shoreline Master Program from the Department of Ecology in June, 2008 in the amount of \$60,000 and was further awarded an additional \$10,000 in 2012 in order to complete the preliminary Shoreline Master Program; and

WHEREAS, the City and its Consultant, AHBL Inc., produced a Public Participation Plan that included: 1) a Visioning Workshop that was advertised and held on September 21, 2010; 2) the formation of and receipt of input from a Citizen Advisory Committee over a period of 6 months; 3) significant communication of the process to the public through newsletter articles, postings on the City's webpage, postings on the Lake Sawyer Community Club's website and comprehensive email distribution list, and two mass mailings advising the public of the Shoreline Master Program Update; and 4) phone calls and email outreach by City staff with property owners surrounding the lake; and

WHEREAS, the City's Responsible Official issued a Determination of Non-Significance on the proposed Shoreline Master Program on March 2, 2012; and

WHEREAS, the Black Diamond Planning Commission held four worksessions to discuss the contents of the SMP Update and held two nights of formal public hearings on March 13 and March 27, 2012, where eleven individuals provided public testimony and twenty-four individuals provided written comment; and

WHEREAS, the Black Diamond Planning Commission considered the written and verbal testimony provided, held two additional worksessions on May 8 and June 12, 2012, and made certain modifications to the proposed SMP Update and proposed shoreline regulations to reflect such testimony; and

WHEREAS, on June 12, 2012, the Black Diamond Planning Commission recommended unanimously that the Black Diamond City Council adopt the proposed SMP update; and

WHEREAS, the Black Diamond City Council held one worksession to discuss the contents of the SMP Update on May 31, 2012, and a formal public hearing on June 21, 2012, where one individual provided public testimony and one individual provided written comment; and

WHEREAS, the Black Diamond City Council considered written and verbal testimony provided, held one additional worksession on July 19, 2012, and made certain

modifications to the proposed SMP Update and proposed shoreline regulations to reflect such testimony; and

WHEREAS, once the City approved, pursuant to Resolution No. 12-829, the Draft Shoreline Master Program, it was sent by the Mayor, as requested by the City Council at their September 6, 2012, Council meeting, to the Washington State Department of Ecology for review and approval; and

WHEREAS, the Department of Ecology has reviewed the Draft Shoreline Master Program submitted by the City and has notified the City in a letter to Mayor Olness dated July 26, 2013, (the "Notice") that it has determined that those changes to the Draft Shoreline Master Program reflected in Attachment B attached to the Notice are required to in order for the City to obtain Department of Ecology approval of the Shoreline Master Program, and that those changes reflected in Attachment C attached to the Notice are recommended, but not required, to obtain Department of Ecology approval of the Shoreline Master Program; and

WHEREAS, the City Council has reviewed the revisions as set forth in the Notice and conducted a public hearing on the 15th day of August, 2013, to take public testimony regarding the revisions proposed by the Department of Ecology, and having considered the foregoing and having been in all matters fully advised, concurs with the Department of Ecology's required and recommended changes as set forth in the Notice, with the exception that the City requests that the Department consider an alternate proposal that incorporates the changes and additions detailed in Exhibit B; and

WHEREAS, the City Council requests that the above described alternate proposal be sent to the Department of Ecology by the Mayor within the thirty (30) day response window of the mailing of Ecology's notice, in accordance with RCW 90.58.090; and

WHEREAS, upon Final Department of Ecology approval, the City will make

modifications, including revisions to the City's Comprehensive Plan, Municipal Code and any other relevant documents as required; and

WHEREAS, the City of Black Diamond Council understands that the amendments to the Shoreline Master Program become effective in accordance with RCW 90.58.090 (7);

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

Section 1. That the City Council concurs with the Department of Ecology's required and recommended changes as set forth in the Notice, and attachments thereto, sent on July 26, 2013, to the Mayor, Rebecca Olness, attached hereto as Exhibit "A", with the exception that the City requests that the Department consider an alternate proposal that incorporates the changes and additions detailed in Exhibit B.

Section 2. That the Mayor shall provide notice to the Department of Ecology of the City's alternate proposal to amend the SMP as set forth herein, with further discussion to occur with the Department of Ecology regarding the alternate proposal.

Passed by the City Council on the-21st day of August, 2013.

Mayor Rebecca Olness

A handwritten signature in cursive script, reading "Rebecca Olness", is written over a horizontal line.

ATTEST/AUTHENTICATED:

Brenda L. Martinez

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha, City Attorney

Published:

Posted:

Effective Date:

attach: Exhibit A

Exhibit B



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 26, 2013

The Honorable Rebecca Olness
City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010

Re: City of Black Diamond Comprehensive Shoreline Master Program Update – Conditional Approval, Resolution Number 12-829

Dear Mayor Olness:

I would like to take this opportunity to commend the city of Black Diamond (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) update. It is obvious that a significant effort was invested in this update by your staff and engaged community. The SMP will provide a framework to guide development and habitat restoration along the City's shorelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) has identified specific changes necessary to make the proposal approvable. These changes are detailed in Attachment B. Recommended changes are included in Attachment C. Ecology's findings and conclusions related to the City's proposed SMP update are contained in Attachment A.

Pursuant to RCW 90.58.090 (2)(e), at this point, the City may:

- Agree to the proposed changes, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally submitted by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and Guidelines requirements.

The Honorable Rebecca Olness
July 26, 2013
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Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Ecology appreciates the dedicated work that you, the City Council, Natural Resources staff (Director Aaron Nix), the Planning Commission, and the Shoreline Advisory Committee have put into the Shoreline Master Program update.

Thank you again for your efforts. We look forward to concluding the SMP update process in the near future. If you have any questions or would like to discuss the changes identified by Ecology, please contact our Regional Planner, Anthony Boscolo at Anthony.Boscolo@ecy.wa.gov or (425) 649-7049.

Sincerely,



Maia D. Bellon
Director

Enclosures (3)

By Certified Mail [7012 1010 0003 3028 3348]

cc: Aaron Nix, City of Black Diamond
Anthony Boscolo, Ecology
Peter Skowlund, Ecology
Erik Stockdale, Ecology

ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE CITY OF BLACK DIAMOND
SHORELINE MASTER PROGRAM

SMP Submittal accepted October 9, 2012, Resolution No.12-829
Prepared by Anthony Boscolo on June 13, 2013

Brief Description of Proposed Amendment:

The City of Black Diamond has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program submittal contains locally tailored shoreline management policies, regulations, environment designation maps, administrative provisions as well as local ordinance # 08-875 adopted by reference as part of the SMP. Additional reports and supporting information and analyses noted below, are included in the submittal.

Black Diamond ordinance #08-875 established the current regulations for critical areas within the city limits. These regulations were updated in 2009 and are adopted by reference in the SMP. The SMP also contains provisions which modify the city's critical area protections to ensure consistency with the SMA and the SMP Guidelines.

FINDINGS OF FACT

Need for amendment:

The proposed amendment is needed to comply with the statutory deadline for a comprehensive update of the City's local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This amendment is also needed for compliance with the policies of the Shoreline Management Act, the applicable guidelines and implementing rules. The original City SMP was approved by Ecology in 1977 and has never been updated. This SMP update is also needed to address land use changes that have occurred along the City's shorelines over the past 36 years and to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the City's Critical Areas Ordinance, Comprehensive Plan, Flood Management Plan. In 1998 the City limits expanded through the annexation of lands around Lake Sawyer. In accordance with WAC 173-26-160, the City has been implementing the 1978 King County SMP for the newly acquired shoreline jurisdiction. This SMP update will bring all shoreline jurisdiction in Black Diamond under the same set of policy and regulations.

SMP provisions to be changed by the amendment as proposed:

This comprehensive SMP update is intended to entirely replace the City's existing SMP. Under the existing SMP no lands qualified as shoreline jurisdiction. Only in 1998, when the City incorporated the lands around Lake Sawyer did the City acquire lands required to be regulated by the SMA. This updated SMP increases, by 100%, the linear extent of shorelines to be covered and regulated by the

City. As a result, this SMP will now regulate approximately .01 miles of river and 6.6 miles of lake shorelines.

Under the existing SMP, there is one environment designation: Rural. In contrast, the updated SMP regulates activities and development along the City’s shorelines using the following five (5) new designations, each containing purpose statements, designation criteria, and management policies. The new designations and their purposes statements are listed below:

- 1) Natural – to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, include planning for restoration of degraded shoreline within this environment. (Portions of Lake Sawyer Regional Park identified as wetlands)
- 2) Shoreline Residential – to provide for residential needs where the necessary facilities for development can be provided. An additional purpose is to provide appropriate public access and recreational uses. (residential areas of Lake Sawyer)
- 3) Shoreline Residential Limited – The Shoreline Residential Limited environment designation recognizes the higher level of ecological function and sensitivity associated with specific islands located in Lake Sawyer, when compared to other shoreline areas that are developed or planned for residential development. This designation also recognizes the presence of existing residential and recreational uses in these areas and is designed to provide for development and/or redevelopment that is compatible with the protection of ecological functions at such time when appropriate facilities are provided, such as potable water, electricity and waste disposal that complies with King County and State Health Department regulations. In addition to residential and recreational uses, an additional purpose of this environment is to provide for ecological enhancement.
- 4) Urban Conservancy – to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. (more heavily used park areas such as Lake Sawyer Boat Launch Park and portions of Lake Sawyer Regional Park)
- 5) Aquatic – to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

The table below is a summarization of the changes in the updated SMP along with a comparison to the existing 1978 SMP.

Proposed Change Topic	Existing 1978 SMP Requirements	Proposed Requirement
Shoreline Stabilization	Precautions to avoid adverse effects. However, no prescriptions for avoiding/minimizing impacts described.	Consistent with Guideline requirements of WAC 173-26. New Stabilization restricted to the minimum size necessary and allowed only with a demonstrated need for protection and proof of

Critical Area Regulations	No critical area regulations are identified	infeasibility of softer alternatives through a geotechnical analysis. Incorporated CAO provisions which have been modified for consistency with the SMA and include protections for fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, streams, wetlands, and aquifer recharge areas. Stream buffer widths range 25 – 150 feet. Wetland buffers widths range 40 – 225 feet.
Allowed/Prohibited Uses	Use and modification table does not exist. With only one environment designation, uses were generally covered in the body of the SMP	A use and modification matrix is embedded in the SMP which was created to align with the City of Black Diamond's anticipated future land use. The new matrix specifically addresses types of modifications anticipated and their appropriateness in a lacustrine environment.
Environment designations	RURAL	NATURAL, AQUATIC, URBAN CONSERVANCY, SHORELINE RESIDENTIAL LIMITED, SHORELINE RESIDENTIAL.
SMP SETBACKS	All setbacks begin at 25 feet from OHWM. Rear yard setback is 20 feet. Total of 45 foot setback. Lake Sawyer currently regulated by King County SMP which establishes a 20 foot setback.	25-100 Feet
BREAKWATERS, JETTIES, GROINS, WEIRS	Not addressed	Prohibited in all shoreline designations
Moorage Facilities	Allowed	Permitted
Mining	Conservancy: Allowed Natural: Prohibited	Prohibited
Piers, docks	Permitted	Minimum size needed for

Ecological protection	Requirements to avoid and minimize impacts of some projects.	access to watercraft. Implementation of the concepts of no net loss of shoreline ecological function and mitigation sequencing.
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The SMP changes include more site and use-specific policies and regulations designed to achieve no net loss of ecological function such as:

- Stabilization preference hierarchy from non-structural, to soft, to hard being the least preferred option.
- Geotechnical reports required as specified in WAC 173-26 for shoreline stabilization and the placement of structural flood hazard reduction measures.
- Dredging requires the use of the conditional use permit process. Dredging is prohibited except for public utilities, support of a water-dependent use, and restoration activities and only when authorization has been received by state and federal agencies.
- Mitigation sequencing is applied to all development regulated by the SMP within the shoreline jurisdiction.
- Vegetation conservation is applied throughout shoreline jurisdiction across all shoreline environment designations. Vegetation conservation standards are also applied through the critical area regulations with buffers ranging from 40 to 225 feet.

Amendment History, Review Process: The City indicates the proposed SMP amendments originated from a local planning process that began in June, 2008. In October 2009 the city released the SMP Update Public Participation Plan. The record shows that workshops and public hearings which were open to the public were held on December 6, 2011, January 10, February 7, February 21, March 6, March 13, March 27, April 10, May 8, May 31, June 19 and June 21, 2012. Affidavits of publication provided by the City indicate notice of the hearings was published on March 2 and June 8, 2012.

Pursuant to WAC 173-26-110, as indicated below, the City of Black Diamond has satisfied the submittal requirements for a comprehensive SMP update:

- Pursuant to WAC 173-26-110(1), a signed resolution was provided to the department which indicated that the SMP had been preliminary approved by Resolution No. 12-829, on September 6, 2012.
- As a comprehensive update, Resolution No. 12-829 is consistent with WAC 173-26-100(2).
- Pursuant to WAC 173-26-110(3), amended environment designation maps were submitted to the department.
- Pursuant to WAC 173-26-110(4), materials, minutes, and process summary were provided to the department.

- Pursuant to WAC 173-26-110(5), SEPA was noticed on March 2, 2012. On March 2, 2012, the City issued a SEPA Determination of Non-Significance (DNS) with a comment period ending March 30, 2012. No appeals were filed.
- Pursuant to WAC 173-26-110(7), copies of all public, tribal, and agency comments were submitted to the department.
- Pursuant to WAC 173-26-110(8), a completed SMP checklist was submitted to the department.
- Pursuant to WAC 173-26-110(9), copies of the use analysis, inventory and characterization, cumulative impacts analysis, and restoration plan were submitted to the department.

With passage of Resolution # 12-829, on September 6, 2012, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on October 9, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on November 8, 2012, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on November 13 and continued through December 21, 2012. No public comments were received.

Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City.

Ecology staff thoroughly reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines. Ecology staff also thoroughly reviewed and evaluated the City's SMP inventory, characterization and analysis, public involvement process, and Growth Management Act integration, including critical areas. In addition, Ecology staff reviewed and evaluated the City's Shoreline Restoration Plan including the background data and documentation.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on March 2, 2012. Notice of the SEPA determination was published in the Covington / Maple Valley / Black Diamond Reporter on March 2, 2012. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following reports, studies, map portfolios and data prepared for the City in support of the SMP amendment:

These supporting documents include:

- *a October 29, 2009 public participation plan,*
- *a August 6, 2010 shoreline inventory and characterization,*
- *a September 2012 cumulative impacts analysis, and*
- *a September 2012 restoration plan*

Summary of Issues Raised During The Public Review Process:

The City's SMP amendment drafting/public review process had quality participation with 35 oral and written comments submitted. The city did an exemplary job of addressing the concerns of interested parties. At the conclusion of the process staff was praised for their efforts in making the update a collaborative process. During the public participation period, extensive debate centered on the following topics: Setbacks, incentives for setback reductions, and use of Lake Sawyer.

Setbacks – Citizens expressed concern over the creation of larger setbacks given the existing setback is 20 feet yet the typical development is located much further from the water. This was highlighted in the Final Cumulative Impacts Analysis (CIA) which stated the average setback is 48 feet within the residential areas of Lake Sawyer. Although an incentive base setback scheme was created which allows for setback reductions from the standards setback, concern still remained that particular incentives would not be feasible or would increase the risk of erosion.

The City finally settled on a buffer scheme for residential areas which includes a 40 foot standard setback which could be reduced to 25 feet with a combination of upland related enhancements or use of water related enhancements. Additional setback averaging measures were also integrated into the final buffer system to add additional flexibility.

Ecology also provided written comment within the City provided Checklist which identified deficiencies in the proposed setback system, and indicated that the setback system did not meet the requirements of WAC 173-26-186 (8) for no net loss of shoreline ecological functions. Ecology noted the wide range in existing setbacks and that more equitable solutions should be pursued to give weight to localized circumstances. Given that a nearly identical setback scheme is included in the Final submittal, Ecology is requiring changes as identified in Attachment B.

Vegetation planting and bulkhead removal – As an incentive for a reduced setback, the SMP requires that a landowner choose from a number of site improvements. These range from increasing the amount of impervious surface, to installing a green roof, to bulkhead removal, to installing near shore plantings.

Concern was expressed over setback reduction incentives which require vegetation planting or bulkhead removal. In particular, that this type of incentive would go beyond the requirement of no net loss of shoreline ecological function and could lead to shoreline erosion.

In Ecology's initial review it indicated that incentive measures would need to be prioritized to emphasize near shore improvements. Based on the incentives proposed by the City these would involve some level of either bulkhead removal or near shore native vegetation plantings. This prioritization is consistent with the ecosystem needs identified in the Shoreline Analysis Report and is thus being required change as identified in Attachment B, required changes.

Damage from boat wakes – A number of citizens expressed concern over bulkhead removal standards. It was expressed that erosive forces caused by boat wakes threaten private property, and removal of a bulkhead would increase the risk. The City has standards which limit speed and usage to particular times of the day, yet those efforts seem to have raised the intensity of the use, and have failed to alleviate the concerns of shoreline landowners.

The City took steps to clarify that the SMP doesn't require bulkhead removal. Further, the City clarified that softer methods of stabilization have been show to provide comparable protections while providing ecological benefits and improved shoreline access while meeting the requirements of the SMA.

Public access standards – Concern was raised regarding public access requirements for subdivision creating four lots or greater. Specifically, that requiring public access would devalue the new lots by taking away one of the characteristics unique to typical shoreline landowners.

As a result of this concern, the City inserted new standards into the SMP. The Shoreline Administrator now has the ability to determine if the public access requirement is met by community or visual access rather than public access.

Flooding concerns – Concerns were expressed regarding flooding due the increasing amount of development and impervious surface in the watershed. The City noted that concern and correctly indicated that shoreline jurisdiction only extends two hundred feet from the OHWM.

Summary of Issues Raised by Ecology as Relevant To Its Decision:

Vegetation Conservation – As proposed, the vegetation conservation standards allow for removal of 'unhealthy' trees within the shoreline setback. This is on conflict with WAC 173-26-221(5). Limited vegetation removal is allowable for safety and view protection. Required changes have been included to ensure proper hazardous tree removal consistent with WAC 173-26-221(5).

Additional standards have been incorporated into the proposed SMP when a tree is considered 'significant'. The SMP does not have a definition for significant tree. Rather, it relies on a definition located in city code outside of the SMP. This definition has been incorporated into the SMP as a required change.

Shoreline Setbacks – Setbacks within the SMP vary by environment designation. The most common designation, applied to the majority of residential areas, is the Shoreline Residential environment

designation. As proposed, the Shoreline Residential environment designation requires a standard 40 foot setback from the ordinary high water mark.

This reach contains a wide variety of lot shapes and sizes. An analysis of lots in this designation shows that the majority range in size from less than 1/10th of an acre to greater than 3 acres. The average lot size is roughly ½ acre. More telling is that the standard deviation is greater than .4 acres, which indicates that 68% of the lots are between approximately .15 acres and .95 acres, with the remaining 32% being outside of that range. The minimum lot size that can be achieved through subdivision is 9600 square feet or .22 acres.

Existing setbacks from the ordinary high water mark also vary greatly. The Final Cumulative Impacts Analysis Component for the City of Black Diamond summarizes the residential setbacks as follows:

The Shoreline Analysis Report included an initial analysis of the median setback distance for all structures within the shoreline jurisdiction, which was approximately 57 feet. This analysis has been refined and updated to focus only on primary residential structures. A review of building footprint data and aerial photography indicated that approximately 112 primary structures in Segment A are located within 40 feet of the OHWM, which is the proposed standard setback in the SMP for the Shoreline Residential environment. Of these, 67 structures are located within the proposed 20-foot minimum setback. The remaining 155 structures within Segment A lie more than 40 feet from the shoreline, outside the proposed maximum setback. The median setback is approximately 48.7 feet based on available data. However, the mapped location of the ordinary high water mark does not always correspond well with the apparent shoreline edge in aerial photos and therefore we believe this number may not accurately reflect the true median setback. (AHBL, September 2012, Page 6)

As described, existing setbacks have been difficult to measure with confidence. WAC 173-26-201 (3) (g) requires that when less is known about a particular resource, provisions should be more protective to ensure resource protection. Further, WAC 173-26-201 (2) (e) requires avoidance of impacts as the primary step of resource protection.

Relative to other shoreline reaches, the ecological functions within this reach have been found to be limited (AHBL/Otak, August 6, 2012). However limited, replacing those functions with residential structures and appurtenances is a loss of ecological function.

Flexible Shoreline Setbacks – Flexible setbacks, or reduced setbacks with enhancement, have been incorporated into the Black Diamond SMP. Under the proposed system, up to a 25 foot reduction can be achieved by performing a combination of ‘enhancements’. The minimum achievable setback from the Ordinary High Water Mark is 25 feet.

As proposed, the enhancements listed in SMP Table III can be utilized in any order, regardless of ecological needs. These enhancements range from monetary contributions to a city restoration fund, to bulkhead removal, to connecting to the sanitary sewer system, to written agreement to follow a vegetation management plan.

Although somewhat similar approaches have been used by other jurisdictions, the City of Black Diamond has not provided a rationale of how shoreline ecological functions will be protected under a

reduced setback. Rather, the Final Cumulative Impacts Analysis Component for the City of Black Diamond acknowledges additional impacts, though minimized.

All development in the Shoreline Residential environment would be subject to a standard 40-foot setback from the OHWM. This setback can be reduced to a minimum of 25 feet when approved mitigation or restoration actions are taken, such as bulkhead removal, vegetation preservation, use of LID techniques, or keeping impervious surface significantly below allowances. (SMP 4.B.3 and 4.B.4) Implementation of these techniques will minimize impacts on ecological functions by limiting impervious surface and reducing stormwater runoff to the lake that could contain excess nutrients and toxic materials, as well as increasing the potential for natural filtration by preserving natural vegetation (AHBL, September 2012, Page 37)

Environment Designations – As drafted, the SMP contains five environment designations; Aquatic, Natural, Urban Conservancy, Shoreline Residential, and Shoreline Residential Limited. Concern was raised early in the drafting stage regarding the broad application of the Shoreline Residential designation. In particular, concern about the application to two large and lots in Shoreline Residential environment designation.

WAC 173-26-211 contains specific criteria for which areas may be considered for each environment designation. The Shoreline Residential designation criteria are as follows.

"Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single family or multifamily residential development or are planned and platted for residential development."

As previously described, residentially zoned lots on Lake Sawyer vary greatly in terms of size. The two lots in question are the largest lots in the designation and are 12.9 and 10 acres respectively. They are spatially diverse being located on the north and south ends of Lake Sawyer. Within the City of Black Diamond Shoreline Analysis Report these two areas were considered distinct enough to be separated for other residential areas.

The City of Black Diamond Shoreline Analysis Report describes the northern 12.9 acre lot as follows.

"The parcel appears to have a road that branches into two roads or driveways that lead to separate homes or outbuildings. There appears to be three significant structures on the parcel, as well as additional outbuildings. Personal communication with neighboring residents and visitors indicates that there is a larger historic house, a caretaker's house and a new cabin or conference building, plus small out buildings located on the site.

....

The property comes to a point out into the lake where there appears to be some very limited areas of armoring (approximately 2% of the total shoreline); however, the majority of the property has a natural shoreline with abundant, overhanging vegetation. There are three docks on the property that are visible in aerial photos." (AHBL/Otak, August 6, 2012, Page 32)

The Southern 10 Acre lot located adjacent to Lake Sawyer Regional Park was not specifically described in the City of Black Diamond Shoreline Analysis Report. In the report it was grouped with the Lake Sawyer Regional Park reach and conditions were analyzed as a whole. The Cumulative Impacts Analysis does provide some specific descriptions of the southern 10 acre lot.

"The residential parcel north of the park, which large enough for subdivision, is anticipated to remain vacant for the foreseeable future until sanitary sewer service is provided to the area. At such time, the parcel may convert to residential use. Although there are no current plans to do so, there is also the potential that this property could be converted to public recreational use as it is adjacent to the current Regional Park."

...

"This property has approximately 1,363 feet of shoreline frontage and, under the minimum lot dimension requirements of the proposed SMP and BDMC 18.30.040, could be subdivided to create up to 22 shoreline frontages." (AHBL, September 2012, Page 29)

Although not providing clear information about the specific properties physical characteristics, the information from the CIA does provide insight into the ecological uniqueness of the property.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's proposed comprehensive SMP update, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the City/County's existing critical areas ordinance.

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act

Ecology concludes that the City's comprehensive SMP update submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes is effective 14 days from Ecology's final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final. Approval of the updated SMP and proposed alternative/s is effective 14 days from Ecology's final action approving the alternative/s.

Attachment B:

Ecology Required Changes

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

ITEM	DRAFT SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1	Ch. 1.E § 3	Environment Designations	Black Diamond has designated its Lake Sawyer shorelines under four <u>five</u> shoreline environments: Aquatic, Natural, Urban Conservancy, <u>Shoreline Residential Limited</u> and Shoreline Residential.	WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMP contains five designations including Shoreline Residential Limited. Exceptions to public access standards are limited to those found in WAC 173-26-221 (1)(d)(iii).
2	Ch. 3.B.5.c.3	Public Access	h. The cost of providing the access easement or an alternative amenity is unreasonably disproportionate to the total long term cost of the proposed development or other <u>where constitutional</u> or legal limitations preclude public access.	
3	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Vegetation Conservation Standards	3. Any normal and routine maintenance of existing trees shall not be subject to these clearing and grading regulations, provided; that said maintenance does not involve removal of healthy trees and is not detrimental to the health of any trees.	The SMP allows the unmitigated removal of unhealthy non-hazardous trees. This is in conflict with WAC 173-26-221(5)(c), Shoreline vegetation conservation, WAC 173-26-201 (2) (e), Environmental

impact Mitigation, and the provisions of WAC 173-26-186(8), as they relate to a finding of no net loss of shoreline ecological functions.

The importance of vegetation in urban areas is addressed in the guidelines and the City's Inventory and Analysis. The Guidelines highlight the relative importance of vegetation in WAC 173 26-201(3)(d)(viii): While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity.

Specific to Black Diamond, the City's Inventory and Characterization creates lists of recommendations for shoreline management Chapter 7 1.2 states

- Conservation of existing native vegetation during land development and ongoing use is critical to maintaining the ecological processes and natural functions of shoreline

areas" and "The removal of mature trees and native vegetation should be regulated in a manner that provides protection that is equal to or greater than current Sensitive Area Regulations".

The Inventory and Characterization language above is supported by the concept of Mitigation Sequencing, WAC 173-26-201(2) (e), by first avoiding, then minimizing and mitigating for impacts. Further, the SMP itself contains policy language supporting the preservation of existing vegetation. Policy 5 states "Removal of non-hazardous mature trees and native vegetation within the required shoreline setback should be severely restricted regardless of lot size or use." Policy 1 supports the concept of mitigation sequencing. It reads: "Clearing and grading activities in shoreline areas should be limited to the minimum necessary to accommodate shoreline development and should result in the enhancement of vegetation over time to

4	<p>Ch. 3.B.7.c.5 Shoreline Vegetation Conservation Regulations</p>	<p>Vegetation Conservation Standards</p>	<p>provide a greater level of ecological functions, human safety, and property protection Allowing the unmitigated removal of unhealthy non-hazardous trees cannot be supported based on the analysis provided. Mitigation is required on a project by project basis which will provide equal or greater functions. See rational for required change #3</p>
5	<p>Ch. 3.B.7.c.13 Shoreline Vegetation Conservation Regulations</p>	<p>Maintenance and monitoring</p>	<p>b. Pruning consistent with accepted arboricultural practices that does not involve the removal of healthy trees and is not detrimental to the health of any trees, maintenance of existing ornamental landscapes and other activities allowed pursuant to these regulations, provided that said modification is conducted in a manner consistent with this Master Program and results in no net loss to ecological functions of critical fish and wildlife habitats. b. If the proposed removal of native vegetation is intended for the development of non-native landscaping outside of the required setback area, ornamental species may be used for the revegetation, provided impacts are mitigated by planting native vegetation elsewhere on the property. The required setback area shall be a priority location for mitigation plantings and mitigation plantings shall be subject to Regulation 4B.14 below</p>
6	<p>Ch. 3.D.7.c Shoreline Vegetation Conservation Regulations</p>	<p>Hazardous tree removal</p>	<p>Pursuant to WAC 173-26-221(5)(c), vegetation conservation standards required by referencing 'Regulation 18', which does not exist, this regulation would avoid maintenance and monitoring standards and appears to be an oversight as previous drafts of the SMP were properly referenced. The SMP doesn't allow tree removal within the shoreline setback except to mitigate hazard. To ensure consistency with WAC 173-26-201(2)(e), the application of hazardous tree standards must be</p>

15. Hazardous trees may be removed when determined by a member of the American Society of Consulting Arborists or similar professional organization in accordance with the International Society of Arboriculture method found in "2011 Tree Risk Assessment (part 0)" in its most recent or adopted form. If a hazardous tree is removed it shall be mitigated to result in no net loss of shoreline ecological functions.

7	Ch. 4.C.8.c.3 Residential Development Vegetation Conservation Standards	<p>c. Pruning consistent with accepted arboricultural practices shall be allowed within the open space tract to provide views of the water from and through the tract, but non-hazardous healthy native vegetation shall be retained consistent with Subsection b above.</p> <p><u>Significant Tree</u> – means any tree that is at least six inches diameter at breast height. A tree growing multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree planted that is planted to fulfill requirements of this chapter, shall be considered significant, regardless of size.</p>	<p>defined</p> <p>See also rationale for required change #2</p> <p>See rationale for required change #3</p> <p>WAC 173-26-221 (b) requires vegetation conservation standards in SMP's. This includes definitions. Although the term "Significant Tree" is defined in BDMC, that section of code could change resulting in unaccounted impacts within Shoreline Jurisdiction.</p> <p>See also rationale for required change #3</p>
8	Ch. 7 Definitions Significant Tree		

Shoreline Setbacks

9	Ch. 4.B.2 Basic Development Standards – Table II	<p>Setback Standards</p> <p>DEVELOPMENT STANDARD</p> <p>Shoreline Setback (from OHWM)? Please also see Regulation #2 related to non-conforming single family homes</p>	<p>NATURAL</p> <p>100 ft</p>	<p>URBAN CONSERVANCY</p> <p>100 ft. (standard) may be reduced to 75 ft (minimum) with enhancement</p>	<p>SHORELINE RESIDENTIAL</p> <p>40-50 ft. (standard) may be reduced to 25ft. (minimum) with enhancement</p>	<p>SHORELINE RESIDENTIAL LIMITED</p> <p>50 ft (standard) may be reduced to 25 ft (minimum) with enhancement</p>	<p>BOATLIFT</p> <p>N/A</p>	<p>Ecology has reviewed the City's Cumulative Impact Assessment (AIBL September 2012), but did not find conclusions or technical references supporting the proposed buffers, and their ability to contain sediment, nitrogen, nitrate or phosphorus from 40-foot down to 25-foot from the lakes edge. Further, the City's Cumulative Impact Assessment provides the following conclusion related to the impact of new</p>
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10	Ch. 4.B.3.1 Flexible Shoreline Setback Regulations	Setback Standards	<p>development:</p> <p>"Development of the 11 existing vacant lots, as well as new lots from subdivision, including associated construction of new overwater structures and shoreline armoring, has the potential to further degrade ecological function. As described in Chapter 2, Impervious cover in Segment A is estimated at approximately 25-30%, and construction of new residences and expansion of existing homes could potentially increase this coverage up to the maximum allowed (AHBL, 2012: 39). Therefore, Ecology requires the noted change to limit development to a minimum of 50-foot upland of the OHWM to minimize potential impacts related to the decline in buffer effectiveness consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(c)) and No Net Loss (WAC 173 26 186(A)) SMP-Guidelines requirements. See rationale for #9</p> <p>a. The forty-(40) foot <u>fifty (50)</u> foot standard setback in the Shoreline Residential and the fifty (50) foot Shoreline Residential Limited Environments may be reduced down to a</p>
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11	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	<p>minimum of twenty-five (25) feet when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions</p> <p>1. All structures associated with a recreational use, except water dependent structures, such as docks and boardwalks, and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40) feet in the Urban Conservancy Environment, forty (40) feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 25 feet in the Shoreline Residential, 30 feet in the Shoreline Residential Limited Environment and 75 feet in the Urban Conservancy Environment using setback reduction mechanisms in Table II in this Chapter. Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.</p>	Pursuant to WAC 173-26-020, a boardwalk is not considered a water-dependent use See also rationale for #9
12	Ch. 4.C.8.c.3 Residential Development	Setback Standards	<p>f. <u>New primary residential structures shall not be located within 100 feet of the Ordinary High Water Mark (OHWM).</u></p>	The Cumulative Impacts Analysis was performed under a development scenario where the minimum rear lot setback is 25 feet and an additional 75 foot public space running parallel to OHWM for large lot subdivision. Given that the 25 foot rear lot setback is only found in RDMC, and not within the SMP it then becomes essential in terms of meeting no net loss, as required by WAC 173-26-186(8), to include a provision maintaining the setback provided in the

Flexible Shoreline Setback Regulations

Ch. 4.B.2 Basic Development Standards – Table II	Setback Standards	Cumulative Impacts Analysis.				
<p>DEVELOPMENT STANDARD</p> <p>Shoreline Setback (from OHWM)? Please also see Regulation #2 related to non-conforming single family homes</p>	<p>NATURAL</p> <p>100 ft</p>	<p>URBAN CONSERVANCY</p> <p>100 ft. (standard) may be reduced to 75-ft. (minimum) with enhancement</p>	<p>SHORELINE RESIDENTIAL</p> <p>40 ft. (standard) may be reduced to 25-ft-(minimum) with enhancement</p>	<p>SHORELINE RESIDENTIAL LIMITED</p> <p>50 ft (standard) may be reduced to 25 ft. (minimum) with enhancement</p>	<p>AQUATIC N/A</p>	<p>Pursuant to WAC 173-26-201(3)(d)(i) it must be shown that the minimum setback (with buffer enhancement) will adequately protect water shoreline ecological functions. Ecology provided feedback to the City, citing concerns related to impacts and inadequate protection of shoreline ecological functions associated with the proposed flexible shoreline buffer/setbacks in an email sent on 8/19/2011 and the Checklist Ecology has reviewed the City's Final Shoreline Analysis Report (OTAK AHBL, 2010) and Final Cumulative Impacts Analysis (AHBL 2012), but did not find an analysis supporting small enhanced buffers. The impacts of future development under this scenario have not been shown to meet no net loss of shoreline ecological functions pursuant to WAC 173-26-201(2)(e). The following changes must be</p>
<p>The standard setback applies to all permanent and temporary primary and accessory structures unless specifically exempted below. Setbacks are measured landward, on a horizontal plane perpendicular to the shoreline. The setback may be reduced to the minimum setback indicated in Table II where the applicant agrees to implement voluntary enhancements as described in Sections B-3 and B.4 below, and the Shoreline Administrator determines the proposal is consistent with all other requirements of this SUMP. Please see zoning regulations for interior lot setbacks and other requirements that apply to specific zones. Development associated with water dependent uses, shoreline access and ecological restoration such as overwater structures, shoreline stabilization, trails, stairs and similar appearances are not required to meet the minimum setback. However, where such development is approved within the minimum setback, the placement of structures and hard surfaces shall be limited to the minimum necessary for the feasible operation of the use.</p>						

14	Ch. 4.C.7.c Recreational Development - Regulations	Setback Standards	incorporated to ensure adequate protections under the required setbacks. See rationale for required change #13
15	Ch. 4.D.3 Flexible Shoreline Setback Regulations	Flexible setbacks	See rationale for required change #13

All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40) feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 25 feet in the Shoreline Residential Limited Environment. Existing structures in Table II in this Chapter- Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application.

3. Flexible Shoreline Setback Regulations
 - In addition to the specific requirements for particular uses, the following standards shall apply:
 1. A standard setback shall be established from the ordinary high water mark for all lots within shoreline jurisdiction. The setback shall not apply to docks, piers, bridges and similar water dependent structures.
 - a. The forty-(40)-foot standard setback in the Shoreline Residential and the fifty (50) foot Shoreline Residential Limited Environment may be reduced down to a minimum of twenty-five (25) feet when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.
 - b. The one-hundred (100) foot setback within the Urban Conservancy Environment may be reduced to a minimum of seventy-five (75) feet; when setback reduction impacts are mitigated using a combination of the mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.
 - c. No setback reduction is allowed in the Natural Environment, where a one-hundred (100) foot setback shall be required.
 - d. At least one Water Related Action or 25 feet of reduction allowance from selected Upland Related reduction mechanisms in Table III must be undertaken in order to achieve the full setback

reduction allowed:

- e.—Alternative Setback Averaging – In instances of unique lot configurations, the Shoreline Administrator or his/her designee may allow modification either of the standard or mitigated shoreline setback, by allowing a partial reduced setback if a compensating increased setback for other portions of the development is provided. Modified setback averaging may only be allowed where a qualified professional demonstrates that all of the following conditions are met:
- i. Alternative setback averaging will not reduce shoreline functions or functional performance;
 - ii. The total area contained in the setback area after averaging is no less than that which would otherwise be required; and all increases in setback dimension for averaging are generally parallel to the shoreline edge;
 - iii. The setback depth at its narrowest point is not reduced to less than twenty-five feet;
 - iv. Under no circumstances shall a structure encroach more than five feet beyond either the standard or mitigated setback
2. Please see provisions for Nonconforming Uses and Development in Chapter 6: Administration
 3. All property owners who obtain approval for a reduction in the setback must record the final approved setback and corresponding conditions in a Notice on Title, and provide a copy of the Notice on Title to the Shoreline Administrator.
 4. Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions.
 5. Mitigation of native vegetation as discussed below shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. Preparation of a revegetation plan shall be completed by a qualified professional and include a monitoring and maintenance program that shall, at a minimum, include the following:
 - a. The goals and objectives for the mitigation plan;
 - b. The criteria for assessing the mitigation;
 - c. A monitoring plan that includes annual progress reports submitted to the Shoreline Administrator and that lasts for a period sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and
 - d. A contingency plan
 5. Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject

Ch. 4.B.4
Shoreline Setback
Reduction Mechanisms
- Table III

to further monitoring as necessary to ensure the success of requirement mitigation measures. Please see Chapter 3, Section B.7.C (Vegetation Conservation Regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success

REDUCTION MECHANISM	REDUCTION ALLOWANCE
<p>Water-Related Actions</p> <p>1 Removal of existing bulkhead located at below or within 5 feet landward of the shoreline ordinary high water mark (OHWL) and subsequent restoration of the shoreline to a natural or semi-natural state, including restoration of topography, beach/substrate composition and stabilization of disturbed soils with native vegetation.</p>	<p>Bulkhead Removal on 75% of shoreline: 15 feet 50% of shoreline: 10 feet 25% of shoreline: 5 feet</p>
<p>2 Restoration of natural shoreline conditions (e.g. the bulkhead or other unnatural shoreline features such as upland impervious surfaces or other structural alterations allowed within 10 feet of the OHWL) including restoration of native vegetation. The reduction will only be granted if ecological functions would be improved relative to the existing condition. Existing hard structural stabilization at or near the ordinary high water mark is removed and new hard structural shoreline stabilization measures are setback from the OHWL between 2 ft to 4 ft based on feasibility and existing conditions and are sloped at a maximum angle of 3 vertical to 1 horizontal to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow water habitat.</p>	<p>10 feet</p>
<p>3</p>	<p>5 feet</p>

See rationale for required change #13

4	<p>Soft-structural shoreline stabilization measures are installed seaward of the CHWM on a site currently containing only hard-stabilization. They shall include the use of gravels, boulders and/or logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind and boat-driven waves and shall be graded to a maximum slope of 4:1 vertical-4 horizontal.</p>	5 feet
5	<p>Contribution to a City restoration fund or bank for off-site shoreline restoration and implementation of measures contained in the setback-reduction mechanisms of the Water Related Actions, items 1 through 4, of Table III, above. Amount shall be determined by the Shoreline Administrator based upon the approximate cost that would be required to accomplish the applicant-selected water-related shoreline enhancement at the on-site area of improvement. The City shall establish the fund or bank and more specific operational rules to make this reduction mechanism available.</p>	5-15 feet
6	<p>Contribution to a City restoration fund or bank for on-site shoreline restoration in the City-owned parks on Lake Sawyer. Amount shall be determined based upon the cost per frontage foot shown below times the number of frontage feet on the applicant's parcel as shown in the current King County property tax assessment database. The City shall establish the restoration cost per foot for the three setback reductions below to make this reduction mechanism available.</p> <p>Setback Reduction of 5 ft. = \$XXX per foot of frontage at the on-site location.</p> <p>Setback Reduction of 10 ft. = \$XXX per foot of frontage at the on-site location.</p> <p>Setback Reduction of 15 ft. = \$ZZZ per foot of frontage at the on-site location.</p>	5-15 feet
Upland Related Actions		
7	<p>Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 75 percent of the reduced (i.e. that portion remaining after reductions are applied) setback area. The remaining 25 percent of the setback area can be comprised of existing non-invasive, non-</p>	10 feet

	<p>native-vegetation. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located in areas of greater sensitivity and habitat value and access areas may not be counted as part of the 25 percent restoration area. (Note: this incentive cannot be used by any properties that currently have substantial multi-layered native vegetation in 75% of the setback area. The reduction will only be granted if ecological functions would be improved relative to the existing condition.)</p>	5 feet
8	<p>Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 25 percent of the reduced setback area. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 25 percent restoration area. (Note: this incentive cannot be used by any properties that currently have substantial multi-layered native vegetation in 25% of the setback area. The reduction will only be granted if ecological functions would be improved relative to the existing condition.)</p>	5 feet
9	<p>Installation of biofiltration/infiltration mechanisms such as rain gardens, bioswales, created and/or enhanced wetlands, infiltration facilities, ponds or other approved Low Impact Development techniques that treat the majority of surface water run off from a site and exceed adopted stormwater requirements. (Note: stormwater ponds serving more than one property should be located outside of shoreline jurisdiction if possible);</p>	5 feet
1	Installation of a "green" roof in accordance with the standards of the LEED Green Building Rating System.	5 feet
0	Installation of pervious material for entire length of a driveway or infiltration systems that do not degrade ecological function.	5 feet
1	Limiting total impervious surface, e.g. pathways or patios for water access and enjoyment in the reduced setback area to less than 10 percent, provided the applicant complies with all other development requirements	5 feet
1		5 feet
2		5 feet

1	Reduction of 5 feet for impervious surface if 0 percent less than the SMP standard and 10 feet for impervious coverage 20 percent less than the SMP standard	5-10 feet
3		
1	For preparation of and agreement to adhere to a written shoreline vegetation management plan that includes appropriate limitations on the use of fertilizers, herbicides, and pesticides to protect water quality. This plan must be approved by the City prior to implementation of the plan.	5 Feet
4		
1	Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.	5 feet
5		
1	Contribution to a City mitigation fund or bank for off-site vegetation restoration and implementation of other measures contained in setback reduction mechanisms 6 and 7 of Table III above. Amount shall be determined by the Shoreline Administrator based upon what the approximate cost would be to accomplish the vegetation enhancement work in the on-site setback area. The City shall establish the fund or bank and more specific operational rules to make this reduction mechanism available.	5-10 feet
6		
1	Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.	5 feet
7		

WAC 173-26-211 provides purpose, management policies, and environment designation criteria. The areas depicted on the attached map do not meet the designation criteria for the Residential environment (WAC 173-26-211(5)(i)(iii)), but rather fit the designation criteria for

Environment Designations

Environment Designations

17 Figure 1 Shoreline Environment Designation Map

The Environment designations of the areas depicted on the attached map shall be changed from 'Residential' to 'Urban Conservancy'.

13	Ch. 2.D.3.c Designated Areas	Environment Designations	Urban Conservancy areas include shorelands within Lake Sawyer Boat Launch Park, portions of Lake Sawyer Regional Park that are not designated wetlands and large unplatted lots, as shown in Figure 1. This designation will preserve and enhance the ecological functions of publicly-owned properties and undeveloped portions of the shoreline, while retaining future options for passive and active shoreline recreation, limited residential development and public access. The publicly-owned Lake Sawyer Boat Launch and Lake Sawyer Regional Park offer potential for ecological restoration.	Urban Conservancy (WAC 173-26-211(5)(e)(iii)) Those areas identified shall be changed to the Urban Conservancy designation. Additional changes are needed throughout the SMP to ensure consistency with the purpose and management policies of WAC 173-26-211(5)(e). See rationale for required change #17																																			
19	Ch. 3.B.7.c Shoreline Vegetation Conservation Regulations	Environment Designations	7. Native understory vegetation and trees within the Urban-Conservancy and Natural Environment and within shoreline setback areas in all environments shall be retained, unless necessary to provide water access, to provide limited view corridors or to mitigate a hazard to life or property. Where limited removals are allowed pursuant to the conditions provided above, vegetation shall be replaced to assure no net loss is achieved.	See rationale for required change #17																																			
20	Ch. 4.B.1 Table 1	Environment Designations	<table border="1"> <tr> <td></td> <td>NATURAL</td> <td>URBAN CONSERVANCY</td> <td>SHORELINE RESIDENTIAL</td> <td>SHORELINE RESIDENTIAL</td> <td>SHORELINE RESIDENTIAL LIMITED</td> <td>AQUATIC</td> </tr> <tr> <td>SHORELINE USES</td> <td>X</td> <td>X^U</td> <td>X^P</td> <td>X^P</td> <td>X^P</td> <td>X^P</td> </tr> <tr> <td>Community Pier (Private Shared Use)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Single Family</td> <td>X</td> <td>X^U</td> <td>X^P</td> <td>X^P</td> <td>X^P</td> <td>X^P</td> </tr> <tr> <td>New Roads related to Permitted Shoreline Activities</td> <td>X</td> <td>X^C</td> <td>X^C</td> <td>X^C</td> <td>X^C</td> <td>X^C</td> </tr> </table>		NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC	SHORELINE USES	X	X ^U	X ^P	X ^P	X ^P	X ^P	Community Pier (Private Shared Use)							Single Family	X	X ^U	X ^P	X ^P	X ^P	X ^P	New Roads related to Permitted Shoreline Activities	X	X ^C	X ^C	X ^C	X ^C	X ^C	See rationale for required change #17
	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC																																	
SHORELINE USES	X	X ^U	X ^P	X ^P	X ^P	X ^P																																	
Community Pier (Private Shared Use)																																							
Single Family	X	X ^U	X ^P	X ^P	X ^P	X ^P																																	
New Roads related to Permitted Shoreline Activities	X	X ^C	X ^C	X ^C	X ^C	X ^C																																	

UPP can address a threatened and endangered species where a use would be located both in upland and in water, the more restrictive standard apply.

Ch. 4.B.2
Table II

This use is subject to further zoning restrictions in the Black Diamond Municipal Code.

Environment Designations	DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC
	Minimum lot width and water frontage	N/A	N/A 60 ft. ⁷	60 ft. ²	N/A ³	N/A ³
	Minimum Lot Size	No further subdivision is allowed	No further subdivision is allowed 9,600 sq. ft. Subdivision of unsewered properties is prohibited	9,600 sq. ft. ⁸ Subdivision of unsewered properties is prohibited	No further subdivision is allowed.	N/A ³

See rationale for required change #17

Ch. 4.E.3

Subdivision is subject to further zoning restrictions in the Black Diamond Municipal Code. Black Diamond has designated its Lake Sawyer shorelines under four five shoreline environments: Aquatic, Natural, Urban Conservancy, Shoreline Residential Limited and Shoreline Residential.

WAC 173-26-211 requires the application of shoreline environment designations. The Black Diamond SMLP contains five designations including Shoreline Residential Limited

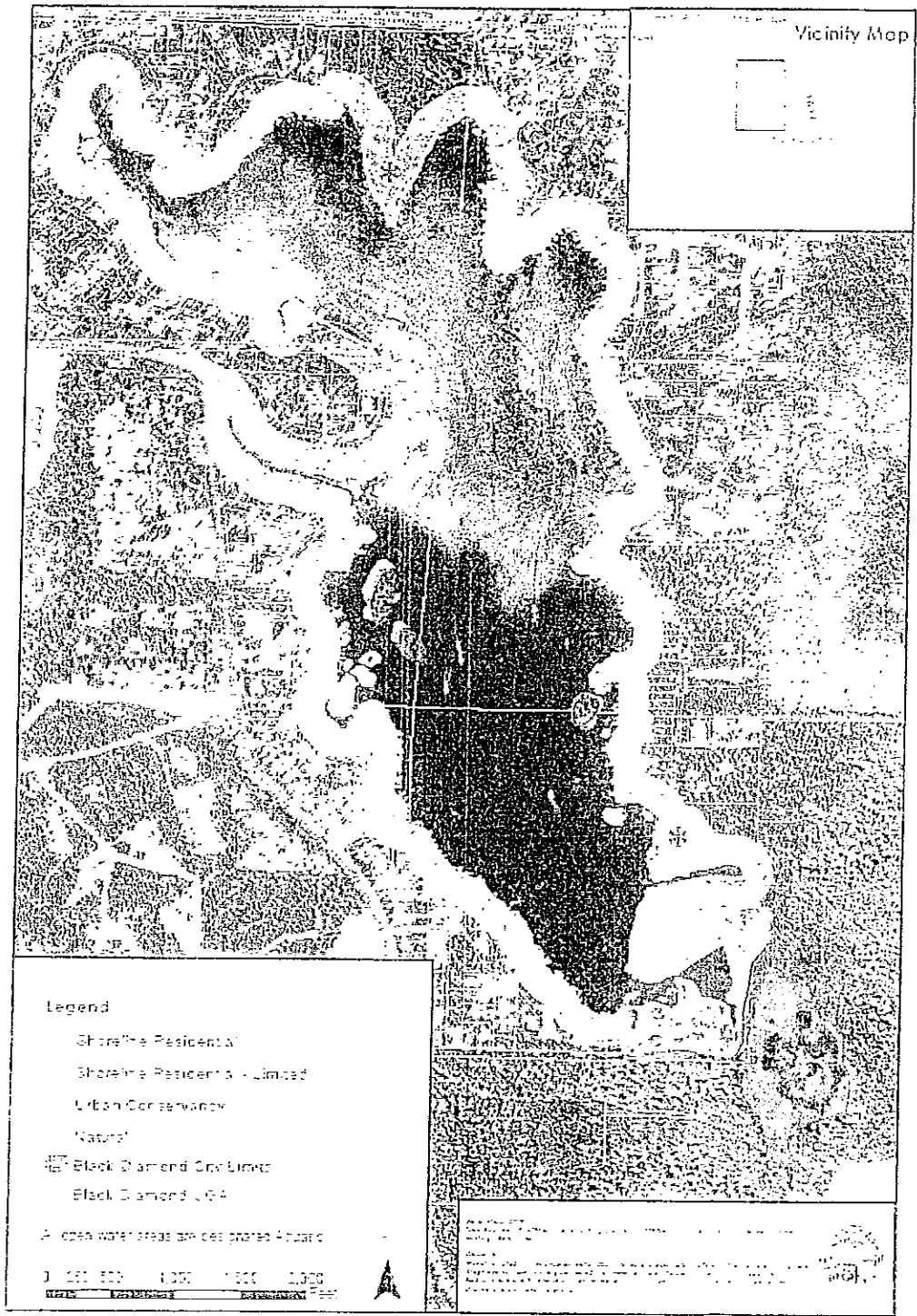
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Required Change # 17
 Parcels noted with Red Asterisk shall be designated Urban Conservancy.

City of Black Diamond
 Shoreline Master Program
 LAKE SAWYER

FIGURE 1
 Shoreline Environment Designations



Attachment C:

Ecology Recommended Changes

The following changes are recommended to clarify elements of the City's updated SMP

ITEM	SMP Submittal Provision (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1	Table of Contents	Referencing	<u>Chapter 7 Definitions</u>	The Table of Contents references all chapters and sections in the SMP with the exception of Chapter 7. For ease of use, <u>Chapter 7 Definitions</u> should be added to the Table of Contents
2	Ch. 2.D.2.a	Spelling	The Shoreline Residential Limited environment designation recognizes the higher level of ecological function and sensitivity associated with specific islands located in Lake Sawyer, when compared to other shoreline areas that are developed or planned for residential development. This designation also recognizes the presence of existing residential and recreational uses in these areas and is designed to provide for development and/or redevelopment that is compatible with the protection of ecological functions at such time when appropriate facilities are provided, such as potable water, electricity and waste disposal that complies with King County and State Health Department regulations <u>regulations.</u>	Spelling error.
3	Ch. 3.B.5.c.3	Subsection titles	f. <u>Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;</u> g. <u>Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;</u> h. <u>The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development or other constitutional or legal limitations preclude public access</u> i. <u>Unacceptable environmental harm will result from the public access which cannot be mitigated;</u> or j. <u>Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated</u>	The section references appear out of order. For consistency and ease of use, consider labeling as indicated

4 Ch. 4.C.11.b Utilities (Primary)

References
1. New primary utilities should be located outside of the SMA jurisdiction unless no other feasible option exists. Where allowed, they should utilize existing transportation and utility sites, rights-of-way and corridors whenever possible, rather than creating new corridors. Joint use of rights-of-way and corridors should be encouraged.

5 Flexible Shoreline Setbacks

DEVELOPMENT STANDARD	NATURAL	URBAN CONSERVANCY	SHORELINE RESIDENTIAL	SHORELINE RESIDENTIAL LIMITED	AQUATIC
Shoreline Setback (from OHWM) ² Please also see Regulation #2 related to non-conforming single family homes.	100 ft	100 ft. (standard) may be reduced to 75 ft. (minimum) with enhancement ⁶	50 ft. (standard) may be reduced to 30 ft. (minimum) with enhancement	50 ft. (standard) may be reduced to 25 ft. (minimum) with enhancement	N/A

²The standard setback applies to all permanent and temporary primary and accessory structures unless specifically exempted below. Setbacks are measured landward, on a horizontal plane perpendicular to the shoreline. The setback may be reduced to the minimum setback indicated in Table II where the applicant agrees to implement voluntary enhancements as described in Sections 3.3 and 3.4 below, and the Shoreline Administrator determines the proposal is consistent with all other requirements of this SMP. Please see zoning regulations for interior lot setbacks and other requirements that apply to specific zones. Development associated with water dependent uses, shoreline access and ecological restoration are not required to meet the minimum setback. However, where such development is approved within the minimum setback, the placement of structures and hard surfices shall be limited to the minimum necessary for the feasible operation of the use.

For ease of use and consistent application, consider the change indicated

Beginning with early versions of the SMP there has been an incentive based setback reduction system integrated into the SMP. There appears to be strong community support for such a system. The city proposed system was not consistent with Environmental Impact Mitigation (WAC 173-26-201(2)(e)) and No Net Loss (WAC 173-26-186(8)), and was required to be removed by required changes #12-15

This recommended change imbeds the principles of WAC 173-26-201(2)(e) while prioritizing enhancement consistent with the Final Cumulative Impacts Analysis (AHBL 2012) and Final Shoreline Analysis Report (OTAK AIDL, 2010). This recommended change is also consistent with KCW 00.58 and No Net Loss (WAC 173-26-186(8)).

6	Ch. 4.B.3	Off-site mitigation	<p>59. Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject to further monitoring as necessary to ensure the success of requirement mitigation measures</p> <p>60. Please see Chapter 3, Section R 7 C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success</p> <p>8. <u>Off-Site Mitigation. The City may provide a fund for off-site mitigation. If such a fund is created, the Shoreline Administrator or designee shall assess charges to new development when impacts to shoreline ecological functions cannot be fully mitigated on site. Charges assessed shall be of sufficient value to ensure off-site mitigation results in no net loss of shoreline ecological functions over time. Expenditures from such a fund shall be in accordance with the Black Diamond Restoration Plan.</u></p>	<p>There is both public and city interest in a mitigation fund. A version of a mitigation fund was included in the original submittal but was not kept due to conflicts with WAC 173-26-201(2)(e) Consistent with WAC 173-26-201(2)(e) (f)(h). This recommended change has been incorporated</p> <p>Numbering changes have been included to ensure consistent application</p>		<p>See rational in #6</p>
7	Ch. 4.C.7.c	Setback Standards	<p>1. All structures associated with a recreational use, except water dependent structures, such as docks and appurtenances that provide access to the water for that use, shall maintain a standard setback of fifty (50) feet in the Shoreline Residential Environment, forty (40)-feet in the Shoreline Residential Limited Environment and one-hundred (100) feet in the Urban Conservancy Environment from the OHWM. This setback may be reduced down to 30 feet in the <u>Shoreline Residential, 25 feet in the Shoreline Residential Limited Environment and 75 feet in the Urban Conservancy Environment using setback reduction mechanisms in Table II in this Chapter.</u> Existing structures may be replaced in their current location and configuration to the extent allowed by state and federal agencies with jurisdiction. Any further setback reduction shall require approval of a shoreline variance application</p>			
8	Ch. 4.B	Flexible Shoreline Setback Regulations	<p>3. Flexible Shoreline Setback Regulations</p> <p>In addition to the specific requirements for particular uses, the following standards shall apply</p> <ol style="list-style-type: none"> 1. A standard setback shall be established from the ordinary high water mark for all lots within shoreline jurisdiction. The setback shall not apply to docks, piers, bridges and similar water dependent structures. a. <u>The fifty (50) foot standard setback in the Shoreline Residential and Shoreline</u> 			<p>See rational in #6</p>

Residential Limited Environments may be reduced down to a minimum of thirty (30) and twenty-five (25) feet respectively when setback reduction impacts are mitigated using a combination of the voluntary mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.

b. The one-hundred (100) foot setback within the Urban Conservancy environment may be reduced to a minimum of seventy-five (75) feet when setback reduction impacts are mitigated using a combination of the mitigation options provided in Table III to achieve an equal or greater protection of lake ecological functions.

c. No setback reduction is allowed in the Natural environment where a one-hundred (100) foot setback shall be required.

d. Reductions are cumulative and must be utilized in the following priority order: 1. or 2., 3., 4., 5. or 6. if a bulkhead is present. After reductions 1-2 and 3-6, then reductions 7-10 may be utilized in any order.

e. Alternative Setback Averaging - In instances of unique lot configurations, the Shoreline Administrator Administrator or his/her designee may allow modification either of the standard or mitigated shoreline setback, by allowing a partial reduced setback if a compensating increased setback for other portions of the development is provided. Modified setback averaging may only be allowed where a qualified professional demonstrates that all of the following conditions are met:

i. Alternative setback averaging will not reduce shoreline functions or functional performance.

ii. The total area contained in the setback area after averaging is no less than that which would otherwise be required; and all increases in setback dimension for averaging are generally parallel to the shoreline edge.

iii. The setback depth at its narrowest point is not reduced to less than twenty-five feet; and

iv. Under no circumstances shall a structure encroach ~~on~~ more than five feet beyond either the standard or mitigated setback.

2. Please see provisions for Noncontaminating Uses and Development in Chapter 6, Administration.

3. All property owners who obtain approval for a reduction in the setback must record the final approved setback and corresponding conditions in a Notice on Title, and provide a copy of the Notice on Title to the Shoreline Administrator.

4.	Setback reductions shall not apply to enforcement actions, after the fact permits or similar actions	
5.	Mitigation of native vegetation as discussed below shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. Preparation of a revegetation plan shall be completed by a qualified professional and include a monitoring and maintenance program that shall, at a minimum, include the following: <ul style="list-style-type: none"> a. The goals and objectives for the mitigation plan; b. The criteria for assessing the mitigation; c. A monitoring plan that includes annual progress reports submitted to the Shoreline Administrator and that lasts for a period sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and d. A contingency plan. 	
6.	Whenever the Shoreline Administrator determines that monitoring has identified a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the property owner shall be required to institute corrective action, which shall be subject to further monitoring as necessary to ensure the success of requirement mitigation measures.	
7.	Please see Chapter 3, Section B.7.C (Vegetation Conservation regulations) for additional requirements, including maintenance, monitoring and criteria for mitigation success.	

See rational in #6

REDUCTION MECHANISM	REDUCTION ALLOWANCE
1	Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 75 percent of the reduced (i.e. that portion remaining after reductions are applied) setback area. The remaining 25 percent of the setback area can be comprised of existing non-invasive, non-native vegetation. Up to 10 feet of frontage may be used for improved shoreline access, provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 75

Flexible setbacks
Ch. 4.B.1
Shoreline Setback
Reduction
Mechanisms -
Table III

	<p>percent restoration area. (Note: this incentive cannot be used by any properties that currently have substantial multi-layered native vegetation in 75% of the setback area. The reduction will only be granted if ecological functions would be improved relative to the existing condition.)</p>	
5 feet	<p>Restoration of native vegetation (and preservation of existing trees and native vegetation) in at least 25 percent of the reduced setback area. Up to 10 feet of frontage may be used for improved shoreline access. Provided access areas are located to avoid areas of greater sensitivity and habitat value and access areas may not be counted as part of the 25 percent restoration area. (Note: this incentive cannot be used by any properties that currently have substantial multi-layered native vegetation in 25% of the setback area. The reduction will only be granted if ecological functions would be improved relative to the existing condition.)</p>	
Bulkhead Removal on shoreline: 15 feet 50% of shoreline: 10 feet 25% of shoreline: 5 feet	<p>Removal of existing bulkhead located at, below, or within 5 feet landward of the shoreline's ordinary high water mark (OHWM) and subsequent restoration of the shoreline to a natural or semi-natural state, including restoration of topography, beach/substrate composition and stabilization of disturbed soils with native vegetation.</p>	
10 feet	<p>Restoration of natural shoreline conditions (e.g. no bulkhead or other unnatural shoreline features such as riprap, impervious surfaces or other structural alterations allowed) within 10 feet of the OHWM, including restoration of native vegetation. The reduction will only be granted if ecological functions</p>	

5	<p>would be improved relative to the existing condition. Existing hard structural stabilization at or near the ordinary high water mark is removed and new soft structural shoreline stabilization measures are setback from the OHWM between 2 ft. to 4 ft. based on feasibility and existing conditions and are sloped a maximum angle of 3 vertical: 1 horizontal to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.</p>	10 feet
6	<p>Soft structural shoreline stabilization measures are installed waterward of the OHWM on a site currently containing only hard stabilization. They shall include the use of gravels, cobbles, boulders and/or logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind and boat-driven waves and shall be graded to a maximum slope of 1 vertical: 4 horizontal.</p>	5 feet
7	<p>Installation of a "green" roof in accordance with the standards of the LEED Green Building Rating System.</p>	5 feet
8	<p>Reduction of 5 feet for impervious surface, 10 percent less than the SMP standard and 10 feet for impervious coverage 20 percent less than the SMP standard.</p>	5-10 feet
9	<p>Preserving or restoring at least 20 percent of the total lot area outside of the setback area as native vegetation.</p>	5 feet
10	<p>Connection to the sanitary sewer system on a property that currently utilizes an onsite septic system.</p>	5 feet
<p>Alternative Setback Systems</p>	<p>5. Shallow lot exception. 1. Where a lot has the following conditions, the setback requirements set forth in Table II shall not apply and the minimum setback between the closest point of building and structures from the ordinary high water line shall be 25 feet: a. The depth of the lot is less than 160 feet; and b. The upland area of the lot is 9,600 square feet or less; and c. Sewer services are provided through an onsite sewer system and public sewer connections cannot be made within 300 feet of the subject property. 2. For the purposes of this provision, the depth of the lot shall be determined by: a. Measuring the distance of a horizontal line drawn midway between the side property lines</p>	<p>Given the number of small lots that lack access to the public sewer system, there is a need to have a streamlined approach to reduce the required setback. The proposed recommended language will allow those constrained lots the ability to develop, while providing mitigation.</p>

		<p>between the ordinary high water line and the front lot line; and</p> <p>b. If the lot is irregular in shape, or has fewer than two side lot lines, the midway will be determined in the most reasonable manner based on the lot lines that intersect the ordinary high water line.</p> <p>3. Restoration of native vegetation shall be provided (and preservation of existing trees and native vegetation) in at least 50 percent of the reduced setback area. Native vegetation restoration shall be located immediately adjacent to the O:W:W and may contain breaks for shoreline access.</p>	
Administration	Ch. 6.J.4 Nonconforming Lots	Nonconforming lot development criteria	For ease of use and consistent application, consider the change indicated.

EXHIBIT B

City of Black Diamond Proposed Changes to Draft SMP

Proposed Change 1

The City proposes to modify the DOE's Recommended paragraph 4.B.5 Alternative Setback Systems "Shallow lot exception" by extending the 160 foot lot length criteria for shallow lot exceptions to 190 feet.

Justification: Analysis of Lake Sawyer parcels indicates that there are a few 50 foot wide lots that have between 160 and 190 feet of length and no public sewer available that would therefore require a Variance to be able to develop or redevelop their property. This proposed increase in allowed lot length for this exception will prevent the need for an expensive Variance process.

Proposed Change 2

The City proposes an additional Water Related setback reduction mechanism for landowner use of a City-managed offsite shoreline restoration fund in accordance with WAC 173-26-201(2)(e)(ii)(B). The language below in bolded italics is proposed to be inserted after DOE Recommended reduction mechanism # 6 and would be added as new reduction mechanism #7 in Table III of Chapter 4.B.4. This will require re-numbering of the subsequent reduction mechanisms of Table III and a slight re-wording of DOE Recommended paragraph 4.B.3.1(d) to incorporate the additional #7 setback reduction mechanism.

"7. Contribution to a City restoration fund or bank for offsite shoreline restoration and implementation of measures contained in the setback reduction mechanisms of the Water Related Actions, items 3 through 6, of Table III above. Amount shall be determined by the Shoreline Administrator based upon the approximate cost that would be required to accomplish the applicant selected water-related, shoreline enhancement at the on-site area of improvement. The City shall establish the fund or bank and more specific operational rules, to make this reduction mechanism available. Reduction Allowance 5-15 feet"

The City proposes to modify Paragraph 4.B.3.1(d) as follows to accommodate the addition of the new number 7 setback reduction mechanism and renumbering of subsequent setback reduction mechanisms: ***"Reductions are cumulative and must be utilized in the following order: 1 or 2, then one of 3, 4, 5, 6, or 7 if a bulkhead is present. After reductions 1-2 and 3-7, then reductions 8-11 may be utilized in any order."***

As part of this change the City proposes addition of the following language to paragraph 4.B.3 of the SMP regarding the need to recognize the mitigation sequencing requirements of WAC 173-26-201(2)(e).

Evaluation of Mitigation Sequencing Required: An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:

- (a) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.*
 - (b) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.*
 - (c) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.*
 - (d) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.*
 - (e) Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and*
 - (f) Monitoring the adverse impact and taking appropriate corrective measures.”*
- Lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.*

When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized (see City shoreline restoration fund reduction mechanism number 7 in Table III).”

Justification: Use of offsite compensatory mitigation is permitted by WAC 173-26-201(e)(ii)(B) when higher priority measures are determined to be infeasible or inapplicable. This re-addition of the City’s setback reduction mechanism #5 is required to enable landowners to be able to receive a reduction allowance for use of the City’s offsite shoreline restoration fund. It can be used where shoreline modification is infeasible or undesirable and can help the City meet its commitments to shoreline restoration as detailed in the City’s Shoreline Restoration Plan.

Proposed Change 3

The City proposes the following statement to be added as item 4.B.3.1(f) to Chapter 4 of the SMP.

“The Shoreline Administrator may approve a maximum setback reduction to twenty-five (25) feet in the Shoreline Residential Segment according to the following review criteria:

- The applicant has demonstrated a hardship whereby the proposed use could not be accommodated without a reduced setback, and the approved buffer reduction is no more than that necessary to accommodate the proposed shoreline use.*
- The applicant’s mitigation plan demonstrates that the selected mitigation options in Table III achieve an equal or greater protection of ecological functions than the standard buffer.*
- The applicant’s mitigation plan demonstrates that existing conditions on the site, including existing uses, developments (developed prior to the adoption of this SMP), or naturally existing topographic barriers exist between the proposed development and the*

OHWM, substantially prevent or impair delivery of most riparian functions from the subject upland property to the waterbody.”

Justification: This will allow the Shoreline Administrator to prevent a very small number of hardship cases from needing to go to the time, trouble, risk, and expense of processing a Variance when unique instances of lot topography, shape, length, or width prevent development. It will also aid those situations where the shoreline runs alongside the side property line. In this situation, the setback distance cuts deeply into the lot width and can eliminate the possibility of reasonable development.

Proposed Change 4

The City proposes to include the 9.04 acre property at the southeast end of Lake Sawyer, north of the City's Regional Park, in the Shoreline Residential Segment and not in the Urban Conservancy Segment as currently proposed by the Department of Ecology. Figure 1 Shoreline Designation Map shall designate this property as Residential as previously adopted by the City, and any other property that is equal to or lesser than twenty (20) acres. In addition, insert the phrase “, which are defined as lots greater than twenty (20) acres” after the phrase "and large unplatted lots" in Chapter 2, D.3.c, Designated Areas. The “Definitions” section of the Shoreline Management Program in the Black Diamond Municipal Code shall be amended accordingly.

Justification: This 9.04 acre property was included in Segment E with Lake Sawyer Park property. This property does not share the same attributes as the Lake Sawyer Park property. This property is owned by a group of adjacent lake shore and near lake shore residents living in a private residential community which is predominantly single-family residential. This property has been planned and platted for residential development since at least 1967. Initial development work at the property took place from 1967-1971 pursuant to state permits with subsequent development from 1984-1986 pursuant to county permits. The current owner purchased the property in 1988 to expand a residential community they were developing on adjacent property. The property contains an appurtenant structure and provides recreational uses to adjacent residents with an ownership interest in the property. The subject property has been comprehensively planned and zoned for residential uses for over 45 years. The property is currently comprehensively planned and specifically zoned for low-density residential of four dwelling units per acre. The property has hardened timber bulkheads and/or rockeries armoring most of its shoreline, and is ideally suited for water-dependent uses. The property does not contain designated open space or flood plains and is generally free of sensitive areas. The property is underlain by well-drained Everett soils and supports stands of Douglas fir timber. The subject property meets the purpose language of WAC 173-26-211 5.(f)(i) and the specific designation criteria of WAC 173-26-211 5.(f)(D)(iii). Due to the lack of key ecological functions such as open space, flood plain and sensitive lands the property does not fit the specific purpose statement for urban conservancy as dictated by WAC 173-26-211 5.(e)(i). In addition, the subject property is highly suitable for water-dependent uses.

Proposed Change 5

The City proposes to include the 17.12 acre property at the north end of Lake Sawyer, and south of S.E. 288th Street, in the Shoreline Residential Segment and not in the Urban Conservancy Segment as currently proposed by the Department of Ecology. Figure 1 Shoreline Designation Map shall designate this property as Residential as previously adopted by the City, and any other property that is equal to or lesser than twenty (20) acres. In addition, insert the phrase “, which are defined as lots greater than twenty (20) acres” after the phrase "and large unplatted lots" in Chapter 2, D.3.c, Designated Areas. The “Definitions” section of the Shoreline Management Program in the Black Diamond Municipal Code shall be amended accordingly.

Justification: This 17.12 acre property was included as Segment C, the only property within Segment C. This property is owned by the Tagney-Jones / Ceredigion LLC and consists of a historic home, constructed in 1926, together with a caretaker’s cottage and appurtenant structure. This property consists of remnants of what is believed to be the oldest platted property on Lake Sawyer whose original plat derives from an 1891 deed signed by President Benjamin Harrison to Carl M. Hanson. The property has been planned and platted for residential development since at least the 1920s. Initial development work at the property took place in the 1890s with construction of a log cabin. A historic home was constructed in 1926 and owned by the Hanson family for over a century. The current owner purchased the property around 1998 and constructed additional improvements. The subject property has been comprehensively planned and zoned for residential uses since the 1960s. The property is currently comprehensively planned and specifically zoned for low-density residential of four dwelling units per acre. The property has two docks, and is ideally suited for water-dependent uses. The property does not contain designated open space or flood plains and is generally free of sensitive areas. The property is underlain by well-drained Everett soils and supports stands of Douglas fir timber. The subject property meets the purpose language of WAC 173-26-211 5.(f)(i) and the specific designation criteria of WAC 173-26-211 5.(f)(D)(iii). Due to the lack of key ecological functions such as open space, flood plain and sensitive lands, the property does not fit the specific purpose statement for urban conservancy as dictated by WAC 173-26-211 5.(e)(i). In addition, the subject property is highly suitable for water-dependent uses.

Proposed Change 6

The City proposes that the Standard shoreline setback in the Shoreline Residential segment in Table II of Chapter 4.B.2 be established as 45 feet and not 50 feet as recommended in Item 6 of the Recommended changes from the Department of Ecology.

Justification: Additional analysis has shown that the aerial photography used to determine the current average setback in the Shoreline Residential segment was not taken when the water was at its OHWM. The OHWM on Lake Sawyer is normally established during late January to mid-February when winter storms create peak water levels. Since the photography was taken when

the water level was much lower, the observed distance between structures and the observed OHWM was greater than what constitutes the true setback distance. Therefore, the value of 48.7 feet cited in the cumulative Impacts Analysis is overstated.

Additionally, general statements in the Cumulative Impacts Analysis that “impervious surface coverage in *Segment A* is estimated at approximately 25-30%, and construction of new residences and expansion of existing homes could potentially increase this coverage up to the maximum allowed” (which is 40%) are incorrect. New analysis has shown that while the current impervious surface area in the Shoreline Residential segment is 24.6% (composed of 18.2% from parcels and 6.4% from roads and right-of-ways) future impervious surface with growth cannot be expected to exceed 30%, even if every developed parcel added 500 square feet and every possible new undeveloped parcel (including those from new subdivisions) added 3,600 square feet. Furthermore, all future development will be required to comply with the setback regulations in SMP paragraph 4.B.4 to assure No Net loss.

There are extremely porous soils surrounding Lake Sawyer which are nearly gravel (Everett soils classification) as evidenced by a gravel pit at the south end of the lake. This soil can easily absorb water and undesirable nutrients even with a 25 foot setback buffer, so a five foot reduction of the Standard setback to 45 feet should cause no concern.

With the new regulations in the SMP, average building setback will be expected to increase since the current setback average in the Shoreline Residential segment was achieved during the entire history of Lake Sawyer residential development when there were either no setback requirements or everyone was allowed to build to 20 feet of the shoreline.