

**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 Requirement	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

		infeasibility of softer alternatives through a geotechnical analysis.
Critical Area Regulations	No critical area regulations are identified	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

		access to watercraft.
Ecological protection	Requirements to avoid and minimize impacts of some projects.	Implementation of the concepts of no net loss of shoreline ecological function and mitigation sequencing.

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 shown 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 in 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.