



CITY OF BLACK DIAMOND

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Date of Report: October 26, 2023
Date of Hearing: November 6, 2023

FACT SHEET/STAFF REPORT OPEN RECORD HEARING BEFORE THE HEARING EXAMINER

APPLICATION INFORMATION:

Name of Proposal: Palmer Rezone 3

Application Numbers: PLN22-0047 (Rezone) & PLN22-0048 (SEPA)

Owner/Applicant:

Palmer Coking Coal Co LLP
PO Box 10
Black Diamond, WA 98010

Project Description: Rezone from Business/Industrial Park (B/IP) to Medium Density Residential (MDR8). No development activity is proposed at this time. Further environmental evaluation will be required with any non-exempt future development applications.

Comprehensive Plan Designation: Medium Density Residential

Parcel Number: 102106-9111

Location: Address not assigned; located north of Fairfax Street and Dail Drive; located in a portion of the S1/2 of the S1/2 of the SE1/4 of Section 10, Township 21 North, Range 6 East, Willamette Meridian, King County, Washington.

Area: 1,217,937 square feet/27.96 acres

Legal Description¹: POR OF S 1/2 OF S 1/2 OF SE 1/4 SEC 10-21-6 DAF - BEG AT SE COR SD SEC 10 TH S 89-26-01 W 2488.60 FT ALG S LN THOF TH N 15-00-00 W 40 FT TH N 68-34-55 E 70.17 FT TH N 38-00-00 E 100 FT TH N 20-00-00 E 50 FT TH N 00-00-00 E 250 FT TH N 10-00-00 E 94.67 FT TH N 89-51-19 E 2257.65 FT TH S 04-53-35 E 20.09 FT TH S 03-40-17 E 204.91 FT TH S 12-48-45 E 297.28 FT TO POB - DESIGNATED FOREST LAND PURSUANT TO SUBSECTION (3) OF RCW 84.33.120 OR 84.33.130

¹ Per King County Online Assessor's Records

Page 2 of 17



EXHIBITS:

Note that exhibits marked with (*) are the same across all three rezone applications (PLN22-0022, PLN22-0045, PLN22-0047); however, this staff report focuses on Palmer Rezone 3 (PLN22-0047).

1. Application Materials
 - a. Rezone Cover Letter*
 - b. Site Maps and Legal Descriptions*
 - c. SEPA Checklist
2. Notice of Application (NOA) Materials
 - a. NOA and SEPA comment period
 - b. Affidavit of Publication for NOA and SEPA comment period
3. Maps of contiguous Palmer properties and properties within 300-foot buffer*
4. Public Comments
 - a. Four letters of support from citizens*
 - b. 18 email comments using Friends of Black Diamond template*
 - c. 20 comment letters using Friends of Black Diamond template*
 - d. Two email comments from Martin Fox, Department of Fish and Wildlife*
 - e. One comment letter from attorney representing the City of Maple Valley*
 - f. Eight Friends of Black Diamond comment letters*
 - g. Eight additional public comments*
 - h. One email comment from King County Wastewater Treatment Division*
 - i. One additional letter of support*
 - j. Three additional comments (only on Rezone 3)
5. Technical Memorandum from Parametrix
6. Resubmittal from Applicant
 - a. Cover Letter and Rezone 3 Criteria Analysis from Applicant
 - b. Comment Response Matrix*
 - c. Technical Memorandum from Transportation Engineers Northwest which addresses comment letter from attorney representing the City of Maple Valley*
7. SEPA Determination of Non-Significance (DNS) of Rezone 3 Materials
 - a. Affidavit of Mailing for DNS of Rezones*
 - b. Affidavit of Publication for DNS of Rezone 3
 - c. Affidavit of Posting for DNS of Rezones*
8. Appeals of DNS of Rezone 1, DNS of Rezone 2, and DNS of Rezone 3*
9. Order from Hearing Examiner dismissing Appeals*
10. Notice of Hearing for Rezone 3 Materials
 - a. Affidavit of Mailing for Notices of Public Hearing*
 - b. Affidavit of Posting for Notice of Hearing for Rezone 3

PROCESS OVERVIEW:

The following sets out the timeline for submittals from the applicant and City responses.

- On April 19, 2022, the City received an application for several Rezones and SEPA review.
- On May 16, 2022, the City determined the application to be incomplete and required accompanying maps, legal descriptions of the properties, and transportation capacity evaluations. In addition, the applicant was instructed to separate the rezones into three separate applications.
- On July 13, 2022, the City received the Rezone and SEPA applications for Palmer Rezone 3 (City File Numbers PLN22-0047 and PLN22-0048) with review fees paid on August 8, 2022.
- On August 8, 2022, the City determined the application to be complete and sent a formal letter of complete application on August 16, 2022.
- On August 17, 2022, a consolidated Notice of Application and SEPA comment period was issued using the optional DNS process (see Exhibit 2a). This notice was published in the Enumclaw Courier-Herald (see Exhibit 2b), posted on nearby street frontage of the subject property, mailed to property owners within 300 feet including any contiguous land owned by the same property owner per BDMC 18.08.120(C)(1) (see Exhibit 3), and posted on the City's website under public notices. It was also emailed to agencies with jurisdiction and uploaded to the Department of Ecology's SEPA Register.
- The City received 66 comments which are outlined in the list of exhibits and attached to this staff report as Exhibits 4a through 4j.
- On November 10, 2022, the City sent the first review letter to the applicant including public comments and a Technical Memorandum from Parametrix. A minor error in the Technical Memorandum was corrected, and the revised document has a date of October 13, 2023 (see Exhibit 5).
- On February 7, 2023, the applicant submitted a cover letter (see Exhibit 6a), comment response matrix (see Exhibit 6b), and Technical Memorandum from Transportation Engineers Northwest which addresses comment letter from attorney representing the City of Maple Valley (see Exhibit 6c).
- On June 14, 2023, a Determination of Non-Significance (DNS) was issued (see Exhibit 7a). Public notice of the DNS was published in the Enumclaw Courier-Herald (see Exhibit 7b), posted on nearby street frontage of the subject property (see Exhibit 7c), mailed to property owners within 300 feet including any contiguous land owned by the same property owner per BDMC 18.08.120(C)(1) (see Exhibit 7d), and posted on the City's website under public notices. It was also emailed to agencies with jurisdiction and parties of record and uploaded to the Department of Ecology's SEPA Register.
- On June 28, 2023, the City of Black Diamond received Appeals of the SEPA DNS from the City of Maple Valley (see Exhibit 8).
- On August 31, 2023, the City's Hearing Examiner signed an Order that dismissed the Appeals (see Exhibit 9).
- On October 18, 2023, a Notice of Public Hearing was issued (see Exhibit 10a). This notice was published in the Enumclaw Courier-Herald, posted on nearby street frontage of the subject property (see Exhibit 10b), mailed to property owners within 300 feet including any contiguous land owned by the same property owner per BDMC 18.08.120(C)(1) (see Exhibit 10c), and posted on the City's website under public notices. It was also emailed to parties of record.

A rezone, or reclassification, of property is a mechanism through which the city can ensure that development occurs consistent with the comprehensive plan. It also recognizes that conditions applicable to individual properties may change over time in response to new or differing land use needs or practices, or new land use policies.

Site specific rezones are a Type 4 – quasi-judicial decision. The process includes staff forwarding a recommendation to the Hearing Examiner regarding whether the proposal is consistent with applicable regulations and policies and whether the proposal should be approved, approved with modifications or conditions, or denied. The Hearing Examiner holds an open-record public hearing and reviews the proposal and staff recommendation and issues a recommendation to the City Council.

The final decision is then made following a closed-record hearing by the City Council. Only parties of record who testified at the open-record public hearing in front of the Hearing Examiner may speak at the closed-record hearing; however, testimony at the closed-record hearing is limited to discussion about the recommendation from the Hearing Examiner. All argument and discussion must be based on the factual record developed at the Hearing Examiner open-record hearing. Type 4 decisions are effective on the date that final findings and conclusions are adopted by City Council.

Pursuant to Section 18.08.200 of the Black Diamond Municipal Code (BDMC), Type 4 permits are appealable to the Superior Court in accordance with state law (RCW 36.70C.020(2) and 36.70C.030). Any appeal shall be filed within 21 calendar days after a final decision is issued by the City (see RCW 36.70C.040(3) and BDMC 18.08.230).

DESCRIPTION:

The applicant has applied to change one parcel from the current B/IP zoning designation (Business/Industrial Park) to the MDR8 zoning designation (Medium Density Residential District). No development activity is proposed at this time, and any subsequent development application will require additional review at the time of application. The City's Comprehensive Plan designates the parcel for "Medium Density Residential" land use, and the MDR8 zone complies with the land use designation.

Upon an approved rezone, the land would be permitted to submit subsequent development applications in accordance with the land uses and development options established by Black Diamond Municipal Code Chapter 18.32 (Medium Density Residential District – MDR8) as set out now or as may be later amended.

DISCUSSION:

A. Comprehensive Plan

The City of Black Diamond's current Comprehensive Plan, adopted in 2019, provides future land use designations on a future land use map. These land use designations are then implemented by respective zoning, which limit the uses of property throughout the City. The site of Rezone 3 is designated as **Medium Density Residential (MDR)** in the City's Comprehensive Plan, which describes MDR as the following (page 5-10 of the Comprehensive Plan):

"The Medium Density Residential Development designation provides for stable and attractive residential neighborhoods of small lot, single-family homes, or attached single- and multi-family residences on lands suitable for these residential intensities. Medium Density Residential areas should be located near commercial services, employment, and arterial roads, and may also be in mixed-use developments. The base residential density in these areas is 8 units per acre. Increased density may be approved up to 12 units per acre with the acquisition of TDRs."

The Comprehensive Plan further outlines that properties designated MDR should reflect all the following criteria:

- Existing or planned public facilities are adequate to support residential development at this density.
- The area is free of significant amounts of environmentally sensitive areas.
- The area fronts an arterial.
- The area is developed and consists of a mix of attached and detached housing types. A residential neighborhood that is primarily single family with a strip of multifamily housing along an arterial does not meet this criterion.
- Medium density housing can be developed to be compatible with existing development.
- The area is identified as a receiving site for density under the TDR program.

The MDR future land use is currently only implemented by the MDR8 zone. The existing B/IP zone and proposed MDR8 zones are further discussed in Section B of this report.

The Black Diamond Vision (page 1-14 of the Comprehensive Plan) states, "Residential development will be a mix of types, sizes, and densities, clustered to preserve maximum open space and to access a system of trails/bikeways/greenbelts which connect housing, shopping, and employment with nearby regional parks and recreational facilities." Further, the proposed zoning of MDR8 would comply with the Comprehensive Plan's future land use map whereas the current B/IP zoning is not consistent with the Medium Density Residential designation. In addition, the proposed rezone is supported based on Goal and Policy language established in the Comprehensive Plan, which is shown below in Table 1. Staff understands some goals and policies are more favorable of the requested rezone than others. There will always be tradeoffs when implementing the Comprehensive Plan.

Table 1: Selected Goals and Policies of Comprehensive Plan in Relation to Requested Rezone

Goal/Policy	Rationale
LAND USE	
LU Goal 3: Preserve the urban forest, significant trees, open spaces, views of Mt. Rainier, Treasured Places (e.g. historic and cultural places and structure), that are part of the community's identity.	Any development proposal would affect the site's current vacant state; however, development regulations exist to mitigate impacts to open space and similar assets.
Policy LU-10: Develop incentives for infill development, redevelopment, and reuse of existing buildings and sites, provided that they enhance the existing character of the areas around them.	The rezone would allow for development proposals that could qualify as infill development. Infill development reduces sprawl and makes economic sense from an infrastructure perspective (extension of roads and utilities).
LU Goal 6: Encourage urban growth in areas that can be serviced by adequate public facilities and services and protect natural resources and environmentally sensitive lands.	Future development applications will require adequate utility capacity. Landscaping requirements and environmental regulations exist to protect natural resources.
Policy LU-22: Give priority to infill development within the city limits and existing urbanized unincorporated areas.	The parcel is within city limits.
LU Goal 7: Protect and enhance the viability, livability, and affordability of residential neighborhoods while integrating multifamily development and higher residential densities where appropriate.	A rezone to MDR8 would allow a greater variety of housing types accessible to a larger variety of people. These types could include cottage housing and multi-family. This could help to offset the high cost of living seen in the Puget Sound region. Medium-density residential is logical in this area given the future Pipeline Road and existing residential neighborhood to the south.
Policy LU-28: Promote a variety of housing types to provide homes for all income levels and all family sizes on a mix of small and large lots.	Resulting development could increase the variety of housing types, including housing for different income levels and on differently sized lots.
Policy LU-29: Residential development patterns must allow for efficient provision of public services and utilities.	Capital facilities and utilities exist in the area. Any future development would need certificates of capacity.
Policy LU-30: Promote developments to achieve maximum zoned density through clustering to create compact new communities surrounded by open space.	Resulting development could achieve maximum zoned density through clustering to protect a greater amount of open space.
LU Goal 8: Provide sufficient opportunities for industrial and business park development sites within the community.	The proposal would decrease the total amount of land zoned for light industrial and business park development; however, the applicant noted a change in demand between light industrial and residential uses.

LU Goal 13: Preserve existing open space areas and continue to develop an open space network that offers opportunities for outdoor recreation and enjoyment and the provision of important ecological functions that contribute to the community's aesthetic beauty and character.	Any development proposal would affect the site's current vacant state; however, development regulations exist to mitigate impacts to open space and similar assets.
NATURAL ENVIRONMENT	
Policy NE-12: Minimize habitat fragmentation by linking wildlife habitats via corridors. Connect wildlife habitats with each other within the City and the region to achieve a continuous network.	This parcel is currently undeveloped and resulting development could have an impact on wildlife habitat and networks; however, Chapter 19 BDMC includes environmental regulations to protect wildlife habitats. Any subsequent development application will require additional review at the time of application.
HOUSING	
H Goal 1: Ensure adequate housing for all current and future residents of Black Diamond by achieving and maintaining quality housing and neighborhoods.	Resulting development could increase available housing for current and future residents.
Policy H-1: Promote a variety of residential densities and housing types.	Resulting development could include a greater variety of housing, including different densities and housing types.
Policy H-3: Provide a balance of dwelling unit types, residential densities, and prices within the City.	According to the City's Housing Action Plan, the City of Black Diamond is overwhelmingly single-family residential with some manufactured housing. This rezone would permit a greater diversity of dwelling unit types, residential densities, and prices.
Policy H-4: Provide flexibility in zoning and subdivision regulations to encourage a diversity of owner and rental housing types to ensure capacity to accommodate growth. A diversity of types and styles should include attached and detached units.	Resulting development could include a greater variety of housing types, including rental housing, attached units, and detached units.
H Goal 2: Encourage the availability of a wide range of affordable housing to meet the needs of households with varying economic status.	Resulting development could include units affordable to households of varying economic status.
Policy H-14: Promote affordable housing in close proximity to employment, services, amenities, and multi-modal transportation opportunities.	Resulting development could include units affordable to households of varying economic status. The site is close to commercial areas along Roberts Drive.
H Goal 3: Recognize the need for and support housing for special needs populations.	Senior housing, assisted elderly housing, and group homes are permitted in the MDR8 zone as conditional uses.

Policy H-23: Support development of emergency, transitional, and permanent supportive housing with appropriate services for people with special needs throughout the city and region.	Senior housing, assisted elderly housing, and group homes are permitted in the MDR8 zone as conditional uses.
Policy H-24: Support opportunities for older adults and people with disabilities to remain in the community as their housing needs change, by encouraging universal design or retrofitting homes for lifetime use.	Senior housing, assisted elderly housing, and group homes are permitted in the MDR8 zone as conditional uses.
ECONOMIC DEVELOPMENT	
Policy ED-1.7: Determine a reasonable “target” population-to-jobs ratio and strive to achieve a balance between available employment opportunities and the local population base.	Resulting development could increase the population of the city and have a negative effect on the population-to-jobs ratio. The properties would change from business/industrial park zoning to residential. With future development, this would increase the number of residential units and residents in the City while decreasing the amount of land available for office or light industrial uses.
Policy ED-4.1: Focus investment in infrastructure and services that align with projected population, housing and job growth targets.	As mentioned above, resulting development would increase the population of the city and affect the population-to-jobs ratio. Future development applications need to ensure there are adequate capital facilities and public services.
CAPITAL FACILITIES AND UTILITIES	
CFU Goal 1: Ensure that public facilities and services are available to support future development.	The applicant notes that public services like utilities will be available in the future.
Policy U-15: Require public sewer connections for all new residential and mixed-use subdivisions and new or expanded commercial or industrial developments.	Existing sewer service is available in the immediate vicinity and could be extended into the property in association with subsequent development activity.
Policy P-1: Ensure adequate provisions are made to accommodate the demands of new development on police services.	While city services like police currently exist, resulting development could significantly increase the demand. It is hard to analyze as there is no development application at this time. Future development applications need to ensure there are adequate capital facilities and public services.

B. Zoning

The requested rezone is for a lower intensity, medium density residential zoning district. There are important differences between the intents of the current and proposed zoning districts:

The MDR8 zone allows for a variety of residential uses, including single-family residential, cottage housing, duplexes, manufactured home parks, and multi-family buildings with up to six dwelling units per building. In comparison, B/IP allows for office and light industrial uses. In addition to what is outright permitted, there are some uses that would need to go through a conditional use permit process in MDR8. These conditional uses include senior housing, assisted elderly housing, manufactured home parks, and group homes. Some of the conditional uses of the B/IP zone are not compatible with adjacent residential areas including adult businesses and aboveground utilities.

Table 2 outlines the current zoning district of **B/IP** and the requested zoning district of **MDR8** for comparison. A discussion on the differences in development standards follows.

Table 2: Comparison of Existing and Requested Zones

	B/IP (Existing)	MDR8 (Requested)
Code Chapter	18.42	18.32
Intent of Chapter	<ul style="list-style-type: none">• Provide areas for the development and growth of non-retail businesses engaged in high technology and software development, research and development, general office, wholesale, distribution and limited manufacturing activities to expand the community's economic and employment base.• Promote concentrated, master-planned developments with cohesive design elements for architecture, landscaping, and circulation; development with high-visual quality and park-like site characteristics; functional and aesthetic compatibility with adjacent uses and neighborhoods; and enhanced opportunities for walking, biking and transit.• [Ensure] a mix of complementary support uses, including technical consulting, personnel and productivity support services, and limited retail and service uses to support the principal	<ul style="list-style-type: none">• Enhance the residential quality of the city by providing a high standard of development for multi-family residential areas.• Designate appropriate areas in which medium density residential structures on individual lots are the predominant type of dwelling unit.• Guide the development of multi-family residential dwellings to such areas and in such manner as to assure availability of public services and community facilities such as utilities, police and fire protection, schools, parks and recreation, and convenient access to public transportation consistent with city level of service standards.• Encourage the preservation of critical areas and other significant places identified in the city's transfer of development rights program (Chapter 19.24) by allowing increased densities when the TDR mechanism is used.

	business/industrial uses and reduce off-site vehicle trips to access business support services.	<ul style="list-style-type: none"> • Apply appropriate guidelines to ensure that structures developed for medium density residential use are well designed.
Permitted Uses	<ul style="list-style-type: none"> • Office, research and technology and light manufacturing activities [...] • General office [...] • Research and development • Technology, biotechnology and medical equipment • Wholesaling • Business support services [...] • Child care, including nursery schools and day care centers, when integrated within a development • Utilities, below ground • Private schools • Accessory uses as provided in Chapter 18.50 • Temporary uses as provided in Chapter 18.52 	<ul style="list-style-type: none"> • Single-family structures on individual lots, whether attached or detached • Multi-family residential structures, provided that no individual structure shall contain more than six dwelling units • Cottage housing as provided in Chapter 18.88 • Manufactured housing as provided in Chapter 18.90 • Accessory dwelling units as provided in Chapter 18.56 • Accessory buildings or structures as provided in Chapter 18.50 • Temporary uses as provided in Chapter 18.52 • Home occupations as provided in Chapter 18.54 • Underground utilities • Child day care for up to 12 children
Conditional Uses	<ul style="list-style-type: none"> • Adult-oriented businesses, consistent with the requirements of Chapter 18.60 • Religious institutions • Essential public facilities including secure community transition facilities • Major institutions • Parks and open space whether public and private • Public uses/facilities • Utilities, aboveground • Entertainment/culture facilities • Parking structures not associated with a primary, permitted uses 	<ul style="list-style-type: none"> • Child care [...] for more than 12 children • Aboveground utilities • Public uses/facilities • Religious institutions, not to exceed 10,000 square feet gross floor area • Bed and breakfasts • Senior housing • Elderly housing—assisted • Manufactured home parks • Group homes • Private schools, K-12
Minimum Lot Size	1.5 acres/65,340 square feet	Multi-family structures: 7,200 square feet Single-family structures on individual lots: 3,600 square feet
Maximum Density	Floor area ratio (FAR) of 1.0	Eight dwelling units per acre without transfer of development rights (TODs) 12 dwelling units with TODs

Minimum Lot Width	Not addressed due to the large minimum lot sizes and setbacks required	50 feet
Minimum Lot Depth	Not addressed due to the large minimum lot sizes and setbacks required	70 feet
Minimum Yards/Setbacks	Front: 40 feet Side: 30 feet (and 1 additional foot for each foot of height above 35 feet if abutting a residential zone) Rear: 30 feet (and 1 additional foot for each foot of height above 35 feet if abutting a residential zone)	Front on minor street: 20 feet Front on major street: 25 feet Side: 7 feet Side on flanking street: 10 feet Rear: 10 feet
Maximum Building Coverage	Not addressed (however the maximum building coverage would be included in the maximum impervious coverage)	50 percent
Maximum Impervious Surface Coverage	75 percent	Not addressed (however the minimum landscaping requirement for new development is 30 percent in MDR8)
Maximum Building Height	45 feet	Primary dwelling unit: 32 feet Accessory buildings: 26 feet
Minimum Landscaping Requirement for New Development	25 percent	30 percent
Off-Street Parking Minimums	Depends on use and not zone per Chapter 18.80	

The minimum development standards in the MDR8 district are as follows. The minimum lot size substantially decreases to 7,200 square feet for multi-family structures and 3,600 square feet square feet for single-family structures on individual lots compared to 65,340 square feet in B/IP. The maximum height of buildings decreases from 45 feet in B/IP to 32 feet in MDR8 (26 feet for accessory buildings). The maximum building coverage is 50 percent in MDR8 and is not addressed in B/IP but could not exceed 75 percent based on the impervious surface coverage. While the MDR8 district does not address maximum impervious surface, there is a minimum landscaping requirement for new development in MDR8 of 30 percent. This means the de facto maximum impervious surface coverage is 70 percent in MDR8. The setbacks decrease from B/IP to MDR8; however, this is less of a concern as the maximum building height is lower than B/IP. See Table 2 above for details on required setbacks (also referred to as yards).

Based on the surrounding area, the MDR8 zoning district is an appropriate designation for the site. The surrounding lots are zoned Business/Industrial Park (B/IP) to the north and west, Industrial (I) to the

east, and Single Family Residential (R6) and Medium Density Residential (MDR8) to the south. The requested zone of MDR8 is of a lower intensity than the existing B/IP and creates a better transition between the R6 properties to the south and the B/IP properties to the north and west. Table 1 of this staff report details how the proposed rezone meets applicable criteria of the Comprehensive Plan.

C. Traffic and Circulation

With all development, traffic impacts can occur. While there is no development application associated with this rezone, staff analyzed the estimated change in PM peak hour trips that could result in the proposed rezone (see Exhibit 5). Trip generation estimates for both the existing and proposed zoning were prepared based on trip rates identified using the Institute of Transportation Engineers (ITE) *Trip Generation Manual* 11th Edition (2022). Since the MDR8 zone permits a maximum of 12 units per acre when Transfer of Development Rights (TODs or TDRs) are applied, the analysis looked at the maximum potential traffic impact of two different uses for the B/IP district and 12 dwelling units per acre for the MDR8 district. The two uses included general office, which would generate the highest number of PM peak hour trips, and light industrial as a comparison. Calculated trips for the B/IP district were calculated using gross square footage with a maximum FAR of 1.0 which matches the maximum density (see also Table 2).

The memorandum found that, “The proposed rezone changes would result in fewer PM peak hour trips.” The potential decrease in PM peak trips ranges from 476 less PM peak trips when compared to light industrial and 1,754 less PM peak hour trips when compared to general office. From the date of the memo, it was found that, “The rezone is not expected to cause significant adverse impacts to the transportation system and no additional traffic analysis is needed at the time of this rezone application.”

The approval of this rezone does not reserve any capacity in the transportation facilities. A concurrency reservation certificate (CRC) will be required during any future development per BDMC 11.11.110. A traffic impact analysis will also be required in association with development applications subsequent to this rezone application.

D. Infrastructure and Public Services

The applicant cannot reserve capacity for a proposal that may come many years later. Utility certificates will be required at the time of development. If capacity does not exist there would be a condition of approval on the development that utilities need upgraded by the developer. The impact of public service demands such as police and fire protection and schools will be assessed in association with any future development application.

E. Review Criteria

Per Section 18.12.020(B) BDMC, “The city will consider the following criteria in reviewing applications for zoning reclassifications, and may only approve an application if the applicant demonstrates that all of the criteria are met:”

1. The proposal is consistent with the goals and policies of the comprehensive plan, and with the future land use map.

City Response:

The proposal is consistent with the goals and policies of the comprehensive plan and future land use map. The Comprehensive Plan's future land use map designates the areas as MDR, and the proposed rezone would implement that by applying the MDR8 zoning district. Future development would permit a greater variety of potential housing types like cottage housing and multifamily, in addition to traditional single-family housing and other permitted uses (see Table 2). This furthers several goals and policies of the City's Comprehensive Plan, including but not limited to promoting a variety of housing types for all income levels (Housing Goal 1) and promoting clustering to create compact new communities surrounded by open space (Land Use Goal 7).

2. The subject property is suitable for development in conformance with the standards applicable to the requested zoning designation.

City Response:

The property can be developed in conformance with development standards applicable to MDR8. Future development will have to go through additional review and will need to meet applicable sections of code.

3. The proposal will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the proposed zoning classification.

City Response:

The proposal complies. The proposed rezone, including uses allowed in the MDR8 zone, will not be materially detrimental to properties in the immediate vicinity or the community. The property is adjacent to arterial roads, land that is zoned for commercial uses, and land that is zoned Business/Industrial Park (similar to light industrial or office zones in other cities). This is an ideal location for higher density residential development.

4. Adequate services and facilities, including transportation facilities, will be available to serve the range of uses permitted in the proposed zoning classification.

City Response:

The proposal complies. The proposed site is fronts Lake Sawyer Road SE and Roberts Drive, which have existing utility services such as water, sewer, and electric. These utility services could be extended onsite in association with subsequent development activities. The subject property is located off the future Pipeline Road which will connect to Lake Sawyer Road SE and State Route 169. Any future development will need certificates of capacity.

5. The proposed reclassification is warranted because of a change in circumstances, or because of a demonstrated need for additional land within the proposed zoning classification.

City Response:

The proposal complies. The City's Comprehensive Plan, adopted in 2019, changed the future land use designation of the site to Medium Density Residential, and the proposed rezone would implement that designation with the MDR8 zone. The applicant also noted that the future buildout of the City's master planned developments and redevelopment of the historic gravel mine are changed circumstances warrant a change to zoning.

6. The reclassification does not reflect special treatment of the subject property.

City Response:

The proposed rezone would make this site conform to the future land use map that was adopted by City Council in 2019. City staff reviewed the proposal against the rezone criteria.

7. The reclassification will promote the general health, safety, and welfare of the community.

City Response:

The City of Black Diamond's housing stock is overwhelmingly single-family. Not everyone can afford a single-family home, especially given the recent increase in housing prices. In addition, communities that are largely single-family may exclude people who prefer to rent or those who do not want to or cannot maintain a single-family home, like people with disabilities and older adults. Anyone who wants to call Black Diamond home deserves the chance to do so. A rezone to MDR8 would allow a greater variety of housing types accessible to a larger variety of people. These types could include cottage housing and multi-family. This could help to offset the high cost of living seen in the Puget Sound region.

PUBLIC NOTICES, SEPA, AND COMMENTS:

A combined Notice of Application (NOA) and SEPA comment period was issued on August 17, 2022 in accordance with Section 18.08.120 BDMC. The notice was published in the Enumclaw Courier-Herald, posted to the subject property, mailed to property owners within 300 feet of the site's boundary, emailed to agencies with jurisdiction, and posted on the City's website under public notices.

Notice of the SEPA Determination of Non-Significance (DNS) was issued on June 14, 2023 in accordance with Section 19.04.210(2) BDMC. The notice was similarly published in the Enumclaw Courier-Herald, posted to the subject property, mailed to property owners within 300 feet of the site's boundary, emailed to agencies with jurisdiction and parties of record, and posted on the City's website under public notices.

Notice of Public Hearing was provided on October 18, 2023 in accordance with Section 18.08.180 BDMC. The notice was published in the Enumclaw Courier-Herald, posted to the subject property, mailed to property owners within 300 feet of the site's boundary, emailed to parties of record, and posted on the City's website under public notices.

As of the writing of this staff report, the city received 66 comments. The public notices and comments are included in the Exhibits of this staff report.

NEXT STEPS:

After holding an open-record public hearing on the proposal to obtain comment and testimony, the Hearing Examiner will have 10 business days to make a recommendation and subsequently forward his recommendation to the City Council. Next, the City Council will hold a closed-record hearing, review the recommendation of the Hearing Examiner, and may pass an ordinance to update the zoning. Only parties of record who testified at the open-record public hearing in front of the Hearing Examiner may speak at the closed-record hearing; however, testimony at the closed-record hearing is limited to discussion about the recommendation from the Hearing Examiner. All argument and discussion must be based on the factual record developed at the Hearing Examiner open-record hearing. The City Council

shall decide the application by motion and shall adopt formal findings and conclusions approving, denying, or modifying the proposal. Type 4 decisions are effective on the date that final findings are conclusions are adopted by City Council.

Pursuant to Section 18.08.200 of the Black Diamond Municipal Code (BDMC), Type 4 permits are appealable to the Superior Court in accordance with state law (RCW 36.70C.020(2) and 36.70C.030). Any appeal shall be filed within 21 calendar days after a final decision is issued by the City (see RCW 36.70C.040(3) and BDMC 18.08.230).

RECOMMENDATION:

Staff recommends that the Hearing Examiner forward to the City Council a **recommendation of approval** for the parcel to be rezoned from B/IP to MDR8 **without conditions** based on the following suggested findings:

1. On April 19, 2022, the applicant applied for Zoning Reclassification/Rezone pursuant to BDMC 18.12.020.
 - a. The application is known as “Palmer Rezone 3.”
 - b. The rezone area is comprised of King County parcel number 102106-9111 with a total size of 27.96 acres. The site is currently unaddressed.
2. On August 17, 2022, a combined Notice of Application (NOA) and SEPA was provided in accordance with Section 18.08.120 BDMC. The notice was published in the Enumclaw Courier-Herald, posted to the subject property, mailed to property owners within 300 feet of the site’s boundary, emailed to agencies with jurisdiction, and posted on the City’s website under public notices. While the initial land use notice sign was not posted to the site by the date of NOA publication, all other noticing procedures were followed, and the public still had adequate time to provide comment. In addition, the City accepted comments past this initial deadline. 66 public comments were received.
3. On June 14, 2023, a Notice of Determination of Non-Significance (DNS) was provided in accordance with Section 19.04.210(2) BDMC. The notice was published in the Enumclaw Courier-Herald, posted to the subject property, mailed to property owners within 300 feet of the site’s boundary, emailed to agencies with jurisdiction and parties of record, and posted on the City’s website under public notices.
4. On June 28, 2023, the City received one appeal on the DNS from the City of Maple Valley. The appeal was later dismissed by the Hearing Examiner on August 31, 2023, and the City of Maple Valley did not challenge the Hearing Examiner’s decision.
5. On October 18, 2023, a Notice of Public Hearing was provided in accordance with Section 18.08.180 BDMC. The notice was published in the Enumclaw Courier-Herald, posted to the subject property, mailed to property owners within 300 feet of the site’s boundary, emailed to parties of record, and posted on the City’s website under public notices.
6. The proposal is consistent with the Comprehensive Plan:
 - a. The Comprehensive Plan designates the proposal area as “Medium Density Residential.”

- b. The MDR8 district is an implementing zone of the “Medium Density Residential” designation.
- 7. The proposed zoning assignment of MDR8 Medium Density Residential is appropriate and in the public interest:
 - a. The proposed zoning district is compatible with the surrounding land uses and zoning districts.
 - b. Potential future residential development can be designed, conditioned, and permitted to address environmental factors, transportation impacts, and other impacts or factors that would be evaluated at the time of a development proposal.
- 8. The City will further evaluate the ability to provide municipal services for this site upon receipt of a development proposal. Any future development will need certificates of capacity.
- 9. As detailed in Section E of this Staff Report, all the rezone review criteria of BDMC 18.12.020(B) are met:
 - a. The proposal **IS** consistent with the goals and policies of the comprehensive plan, and with the future land use map.
 - b. The subject property **IS** suitable for development in conformance with the standards applicable to the requested zoning designation.
 - c. The proposal **WILL NOT** be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the proposed zoning classification.
 - d. Adequate services and facilities, including transportation facilities, **WILL** be available to serve the range of uses permitted in the proposed zoning classification. Any future development would need certificates of capacity.
 - e. The proposed reclassification **IS** warranted because of a change in circumstances, or because of a demonstrated need for additional land within the proposed zoning classification.
 - f. The reclassification **DOES NOT** reflect special treatment of the subject property.
 - g. The reclassification **WILL** promote the general health, safety, and welfare of the community.