

ORDINANCE NO. 2010-04-023

**AN ORDINANCE RELATED TO LAND USE REGULATIONS, PROVIDING EXCEPTIONS TO THE SIZE LIMIT FOR RETAIL ESTABLISHMENTS WITHIN LIMITED AREAS OF THE CITY BY AMENDING BELLINGHAM MUNICIPAL CODE 20.00.080; 20.00.110; 20.10.025; 20.38.050.C. AND 20.38.050.D.**

**WHEREAS**, on February 12<sup>th</sup>, 2007 the City adopted an ordinance establishing a 90,000 square foot size cap on individual retail establishments; and

**WHEREAS**, the Planning and Community Development Director initiated an amendment at the request of the Mayor to provide exceptions the size limit within limited areas of the City if certain standards are met; and

**WHEREAS**, a Determination of Nonsignificance for the proposed amendment was issued under the State Environmental Policy Act; and

**WHEREAS**, as required by RCW 36.70A, notice of the City's intent to adopt the proposed code amendment was sent to the Dept. of Community, Trade and Economic Development on May 22, 2009; and

**WHEREAS**, after mailed and published notice as required by BMC Chapter 21.10, the Planning Commission held a public hearing on June 25, 2009 on the proposed code amendments; and

**WHEREAS**, the Planning Commission considered the staff report and comments received and thereafter transmitted their recommendation to the City Council; and

**WHEREAS**, after mailed and published notice as required by BMC 21.10, the City Council held a public hearing on the proposed code amendment on September 21, 2009 and agrees with and adopts the Planning Commission Findings of Fact and Conclusions with additions; and

**WHEREAS**, the City Council conducted work sessions on January 25, February 8, February 11, February 22 and March 15, 2010 and thereafter directed modifications to the proposed ordinance; and

**WHEREAS**, after mailed and published notice the City Council held a public hearing on the proposed modified ordinance on April 12, 2010;

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** The City Council adopts the following additional findings of fact and conclusions:

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1. There is evidence that proliferation of large stores consisting of a combined discount retail store and a full grocery sales department, sometimes know as "superstores," may negatively impact the vitality of the City's existing and proposed neighborhood and district centers.
2. This ordinance, by restricting the location and type of large-scale retail stores, serves as a means to enhance Bellingham's neighborhood shopping opportunities and urban villages, perpetuating the land use pattern established by the Comprehensive Plan.
3. The proposed regulations recognize that "membership warehouse clubs" typically sell in bulk to both businesses and individual households, have different impacts than "superstores" and should be allowed in the retail size limit exception area.

**Section 2.** Areas 17C, 18, 19, 20, 25, 26 and 26A of the Guide Meridian/Cordata Neighborhood Zoning Table (BMC 20.00.080) are hereby amended to add a Special Regulation as shown on Exhibit A.

**Section 3.** Areas 1, 1A, 2, 4, 5, 8, 9, 10, 12, 12A and 12B of the Meridian Neighborhood Zoning Table (BMC 20.00.110) are hereby amended to add a Special Regulation as shown on Exhibit B.

**Section 4.** Bellingham Municipal Code 20.10.025 is hereby amended as follows:

**20.10.025 – Retail Establishments - Maximum Size**

**A.** An individual retail establishment, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department stores, shall not exceed 90,000 square feet of gross floor area. This restriction shall apply in all zones, including all General Use Types and Use Qualifiers with the following exception:

In Guide Meridian/Cordata Neighborhood Zoning Map Areas 17C, 18, 19, 20, 25, 26 and 26A and Meridian Neighborhood Zoning Map Areas 1, 1A, 2, 4, 5, 8, 9, 10, 12, 12A and 12B the size limit may be exceeded if the proposal meets all of the following conditions:

1. The facility is not a superstore. "Superstore" means a retail establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer products primarily for household or personal use and devotes more than 10 percent of the total sales floor area to the sale of non-taxable merchandise. "Non-taxable merchandise" means products, commodities, or items the sale of which is not subject to Washington State sales tax. "Sales floor area" means only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. This definition excludes membership warehouse clubs where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as

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food, clothing, tires, and appliances and many items are sold in large quantities or bulk; and

2. The proposal satisfies the following environmental mitigation measures:

- a. Leadership in Energy and Environmental Design (LEED)™ certification at the silver level (or equivalent green building system). Projects shall apply for the LEED™ rating system the Director determines is most suitable for the project type; and
- b. The area of new or expanded impervious surfacing shall have a Green Factor score of at least 0.3.

**B.** For the purpose of Section 20.10.025, gross floor area shall consist of the sum of the gross horizontal areas of all floors within the inside perimeter of the exterior walls of the structure or tenant space and roofed or partially walled outdoor areas reserved for the display, storage, or sale of merchandise, including accessory uses inside the primary retail establishment. Structured parking is excluded. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or cooperative business enterprises.

**C.** A building space occupied by an existing single retail establishment larger than 90,000 square feet may change occupancy to a different retail establishment of the same or smaller size except the space may not be converted to a superstore as defined in BMC 20.10.025.A.1.

**D.** If this Section conflicts with any other provisions of this Title, this Section shall prevail except it shall not affect the minor expansion rights of nonconforming stores under BMC 20.14.010.E.

**Section 5.** Bellingham Municipal Code Subsection 20.38.050.C. regarding Planned Commercial zones is hereby amended as follows:

[ 1. and 2. No change.]

**3. Maximum Size/Density.**

- a. For planned projects within a commercial general use type, the maximum size of the floor area for retail buildings shall comply with any floor area restriction contained within the applicable Neighborhood Zoning Table under "Density".
- b. An individual retail establishment, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department

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stores, shall not exceed 90,000 square feet of gross floor area unless the proposal meets all of the following conditions:

- (1) It is located in an Area specifically exempted from the size limit in the Neighborhood Tables of Zoning Regulations; and
- (2) The facility is not a superstore. "Superstore" means a retail establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer products primarily for household or personal use and devotes more than 10 percent of the total sales floor area to the sale of non-taxable merchandise. "Non-taxable merchandise" means products, commodities, or items the sale of which is not subject to Washington State sales tax. "Sales floor area" means only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. This definition excludes membership warehouse clubs where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances and many items are sold in large quantities or bulk; and
- (3) The proposal satisfies the following environmental mitigation measures:
  - (a) Leadership in Energy and Environmental Design (LEED)<sup>™</sup> certification at the silver level (or equivalent green building system). Projects shall apply for the LEED<sup>™</sup> rating system the Director determines is most suitable for the project type; and
  - (b) The area of new or expanded impervious surfacing shall have a Green Factor score of at least 0.3.
- c. For the purpose of Subsections C.3.b. and C.3.d., gross floor area shall consist of the sum of the gross horizontal areas of all floors within the inside perimeter of the exterior walls of the structure or tenant space and roofed or partially walled outdoor areas reserved for the display, storage, or sale of merchandise, including accessory uses inside the primary retail establishment. Structured parking is excluded. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or cooperative business enterprises.
- d. A building space occupied by an existing single retail establishment larger than 90,000 square feet may change occupancy to a different retail

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establishment of the same or smaller size except the space may not be converted to a superstore as defined in BMC 20.38.050.C.3.b.(2).

- e. This Subsection C.3. shall not affect the minor expansion rights of nonconforming stores under BMC 20.14.010.E.

[4. through 12. No change.]

**Section 6.** Bellingham Municipal Code Subsection 20.38.050.D. regarding Planned Industrial zones is hereby amended as follows:

[1. and 2. No change.]

**3. Maximum Size/Density.**

- a. An individual retail establishment, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department stores, shall not exceed 90,000 square feet of gross floor area unless the proposal meets all of the following conditions:

- (1) It is located in an Area specifically exempted from the size limit in the Neighborhood Tables of Zoning Regulations; and

- (2) The facility is not a superstore. "Superstore" means a retail establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer products primarily for household or personal use and devotes more than 10 percent of the total sales floor area to the sale of non-taxable merchandise. "Non-taxable merchandise" means products, commodities, or items the sale of which is not subject to Washington State sales tax. "Sales floor area" means only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. This definition excludes membership warehouse clubs where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances and many items are sold in large quantities or bulk; and

- (3) The proposal satisfies the following environmental mitigation measures:

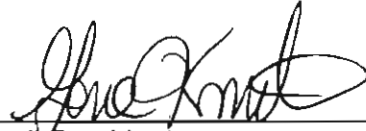
- (a) Leadership in Energy and Environmental Design (LEED)<sup>™</sup> certification at the silver level (or equivalent green building system). Projects shall apply for the LEED<sup>™</sup> rating system the Director determines is most suitable for the project type; and

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(b) The area of new or expanded impervious surfacing shall have a Green Factor score of at least 0.3.

- b. For the purpose of Subsection D.3., gross floor area shall consist of the sum of the gross horizontal areas of all floors within the inside perimeter of the exterior walls of the structure or tenant space and roofed or partially walled outdoor areas reserved for the display, storage, or sale of merchandise, including accessory uses inside the primary retail establishment. Structured parking is excluded. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or cooperative business enterprises.
- c. A building space occupied by an existing single retail establishment larger than 90,000 square feet may change occupancy to a different retail establishment of the same or smaller size except the space may not be converted to a superstore as defined in BMC 20.38.050.D.3.a.(2).
- d. This Subsection C.3. shall not affect the minor expansion rights of nonconforming stores under BMC 20.14.010.E.

**PASSED** by the Council this 26th day of April, 2010.



Council President

**APPROVED** by me this 3rd day of May, 2010.



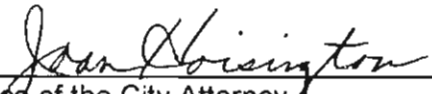
Mayor

**ATTEST**

  
Finance Director

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**APPROVED AS TO FORM:**

  
Office of the City Attorney

Published:  
April 30, 2010

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**EXHIBIT A**  
 Guide Meridian/Cordata Neighborhood Table of Zoning Regulations

Area	Zoning	Use Qualifier	Density	Special Conditions	Prerequisite Considerations	Special Regulations
17C	Commercial	Planned, Whatcom County PUD Ord., chapter 20.85; Whatcom County Subdivision Ord., Chapter 21.30	Density as specified in the Cordata Master Plan and Protective Covenants.	All development shall comply with the Cordata Master Plan Conditions, Protective Covenants, and all design and development guidelines; the Cordata Design Review Committee shall review all proposals and give final approval prior to issuance of a building permit.	All stage 1 conditions of the Cordata Master Plan shall be met as required in the phasing schedule.	This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
18	Industrial	Planned, Light	N/A	Access from Guide Meridian; coordinated internal street and pedestrian circulation	None	This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
19	Industrial/ Commercial	Planned, Mixed, Uses listed in Attachment #1A are allowed, as well as uses permitted in the City's Planned Industrial and Planned Commercial zones. (Attachment #1B). (Attachment #1A is intended to include all uses allowed in Whatcom County's Gateway Industrial zone as of April 1996.) Heavy industrial uses are not allowed. Adult entertainment uses are prohibited in this area.	N/A	Internal circulation; curb cuts on West Bakerview and Northwest Avenue should be 300 feet from intersections and 300 feet apart, with shared access encouraged. In accordance with Public Works administration policy, exceptions to the 300' curb cut policy may be approved; full access will be allowed to and from driveways; preservation of mature trees and vegetation whenever possible; required yards may be reduced to achieve pedestrian orientation; Landscaping buffer between industrial/ commercial and residential.	Utilities; Formation of a Local Improvement District for West Bakerview from Deemer Road to Interstate-5. Evaluation of development proposals for compatibility with airport operations, and for impacts on the I-5 corridor, and on the I-5/West Bakerview and I-5/Northwest Interchanges. A No Protest LID Agreement signed by property owners adjacent to Northwest Avenue and a 10-foot right-of-way dedication for future improvements to Northwest Avenue;	Development standards a) The building masses, open spaces around them, landscaping, and signage are integrated in a manner that recognizes the area's visibility from I-5. b) Portals, service loading areas, automobile access points, exterior public activity locations, parking areas and similar features are located in a manner that both maximizes the efficient use of these facilities and recognizes and addresses the developments visibility from Interstate-5,

cont.)

Home Road shall be realigned to connect to Northwest Avenue and serve as a central access road to the properties within this area. It shall be closed at West Bakerview.

Sewer service on West Bakerview Road will be extended by the City with the improvement of the roadway. Abutting property owners will be required to reimburse the City for their proportionate share of sewer and water installations upon connection to the system(s).

General water system improvements will be made by the City to provide the pressure and volume necessary for full development density, concurrent with construction of West Bakerview Road with a tentative completion date at the end of 1998. Properties abutting on a City owned water or sewer system must extend that system as a condition of development. Property owners along West Bakerview Road may extend and/or improve public utilities as approved by Public Works to allow for

Bakerview and Northwest Avenue.

c) Individual developments are designed to accommodate additional development on adjacent property in an integrated manner.

This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.

				<p>immediate development of their property, and may recover costs by latecomers agreement. Preservation of existing natural drainage ways and wetlands. Mitigation of stormwater impacts from development.</p>	
20	Industrial/ Commercial	<p>Planned, Mixed, Uses listed in Attachment #1A are allowed, as well as uses permitted in the City's Planned Industrial and Planned Commercial zones. (Attachment #1B). (Attachment #1A, is intended to include all uses allowed in Whatcom County's Gateway Industrial zone as of April 1996.) Heavy industrial uses are not allowed. Adult entertainment uses are prohibited in this area.</p>	N/A	<p>Internal circulation with limited curb cuts on West Bakerview 300 feet from intersections and 300 feet apart; shared access encouraged. In accordance with Public Works administration policy, exceptions to the 300' curb cut policy (right in/right out) may be approved by the Public Works Dept; preservation of mature trees and vegetation whenever possible; required yards may be reduced to achieve pedestrian orientation; Landscaping buffer between industrial/ commercial and residential uses.</p>	<p>Sign No Protest LID Agreement for possible future improvements to Pacific Highway. Sewer service on West Bakerview Road will be extended by the City with the improvement of the roadway.</p> <p>General water system improvements will be made by the City to provide the pressure and volume necessary for full development density. Properties abutting on a City owned water or sewer system must extend that system as condition of development.</p> <p>Evaluation of development proposals for compatibility with airport operations, and for impacts on the I-5 corridor, and on the I-5/West Bakerview and I-5/Northwest Interchanges. Preservation of existing natural drainage ways and wetlands. Mitigation of stormwater impacts from development.</p>
				<p>Development standards -</p> <p>a) The building masses, open spaces around them, landscaping, and signage are integrated in a manner that recognizes the area's visibility from I-5.</p> <p>b) Portals, service loading areas, automobile access points, exterior public activity locations, parking areas and similar features are located in a manner that both maximizes the efficient use of these facilities and recognizes and addresses the developments visibility from Interstate-5, Bakerview and Northwest Avenue.</p> <p>This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.</p>	

25	Commercial	Planned	N/A	Access; spacing of curb cuts along guide Meridian and Kellogg Road; drainage; buffers	Road improvements on Guide Meridian, Kellogg Avenue, internal access road	This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
26	Industrial	Planned, light	N/A	Clearing; access; internal circulation; buffers	Road improvements on Guide Meridian, Kellogg Avenue; internal circulation.	This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
26A	Industrial	Planned	N/A	Clearing; buffers	Road improvements to Meridian, Horton Road, Van Wyck Road, Deemer Road; vehicle access; internal circulation; drainage.	This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.

**EXHIBIT B**  
Meridian Neighborhood Table of Zoning Regulations

Area	Zoning	Use Qualifier	Density	Special Conditions	Prerequisite Considerations	Special Regulations
1	Commercial	Planned – See attached Meridian Commercial District Development Guidelines, Identity, Land Use subsection for a list of prohibited uses.	None *	Access; regulated stream; stormwater management; design guidelines*	None	* See Meridian Commercial District Development Guidelines, attached.  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
1A	Commercial	Planned – Limited light industrial uses allowed**  See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.	None	Access; interface between commercial and industrial uses; stormwater management; design guidelines*	None	*See Meridian Commercial District Development Guidelines, attached.  *The following uses compromise the category of limited light industrial uses: Manufacturing of: - Apparel and other products made from fabrics and similar material - Furniture and fixtures - Printing, publishing and allied industries - Electrical and electronic machinery, equipment and supplies - Measuring, analyzing and (cont.) controlling instruments; photographic, medical and optical good; watches and clocks; - Miscellaneous manufacturing industries which do not constitute a fire, explosion or safety hazard and are compatible with adjacent commercial development as determined by the Director of Planning and Community Development.  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.

2	Commercial	Planned – Limited light industrial uses allowed** See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.	N/A	Access; buffer residential areas; stormwater management; design guidelines*	None	* See Meridian Commercial District Development Guidelines, attached.  **The following uses comprise the category of limited light industrial uses: Manufacturing of: - Apparel and other products made from fabrics and similar material - Furniture and fixtures - Printing, publishing and allied industries - Electrical and electronic machinery, equipment and supplies - Measuring, analyzing and controlling instruments; photographic, medical and optical good; watches and clocks; - Miscellaneous manufacturing industries which do not constitute a fire, explosion or safety hazard and are compatible with adjacent commercial development as determined by the Director of Planning and Community Development.  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
4	Commercial	Planned, parking facilities for adjacent uses may be allowed. See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.	N/A	Access design; regulated stream and stormwater management; design guidelines*	Sanitary sewer improvement; Cordata Parkway widening for left turn storage; 10' right-of-way dedication for Cordata Parkway	*See Meridian Commercial District Development Guidelines  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
5	Commercial	Planned, See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited	N/A	Access; flood; protection of Spring Creek corridor from residential areas stormwater management; design guidelines*	None	*See Meridian Commercial District Development Guidelines  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.

8	Commercial	uses. Planned – Regional Retail Center (subject to the Concomitant Agreement with Res. 34-86 filed under AF 1518797 and 1555668). See Meridian Commercial District Development Guidelines, Identity, Land Use subsection for a list of prohibited uses.	No max. density	Design guidelines*; internal circulation; stormwater management; fire flow; landscaping; access	None	*See Meridian Commercial District Development Guidelines  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
9	Commercial	Planned, See Meridian Commercial District Development Guidelines, Identity, Land Use subsection for a list of prohibited uses.	N/A	Access; buffer; design guidelines*	None	*See Meridian Commercial District Development Guidelines  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
10	Commercial	Planned, mixed, residential/ Commercial buildings are allowed. All uses allowed and subject to the conditions specified in the Whatcom County General Commercial zoning as of August 1996 are allowed. Uses identified in the city's Planned Commercial zone are allowed. (Hotels, motels with convention facilities, permanent facilities for live and performing arts, and most types of government offices are prohibited as specified in more detail in the attached	None for commercial ; 3,600 sq.ft. increasing to 2,400 sq.ft./unit for residential development subject to meeting design criteria.	Internal circulation; curb cuts on Telegraph and Deemer; preservation of mature trees and vegetation whenever possible; vegetative buffer between commercial and residential development	Improvement of Telegraph and Deemer adjacent to property; driveway access limited and shall be a min. of 300' from intersection of Deemer and Telegraph; preservation of existing natural drainage ways and wetlands; mitigation of stormwater impacts; improvement of water facilities along Telegraph to meet min. fire flow requirements and system looping.	*See Meridian Commercial District Development Guidelines  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.

12	Commercial	Meridian Commercial District* Development Guidelines. Planned See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.	N/A	Access buffer; signs; water distribution design; stormwater management; flood; design guidelines*	None	*See attached Meridian Commercial District Development Guidelines  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
12A	Commercial	Planned, Mixed – residential units and mixed-use buildings are encouraged.  All uses allowed in the Whatcom County General Commercial District as of August 1996 are allowed. Uses in the city's Planned Commercial zone are allowed.  See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.	None for Commercial; 2,400 sq. ft. per unit for residential development.	Internal circulation; curb cuts approved by the Public Works Director; access directly across from Deemer Rd. requires right-of-way dedication and road improvement, otherwise locate access at eastern edge of Area 12A; preservation of mature trees and vegetation whenever possible; landscaping buffer between commercial and residential.	Improvement of Telegraph adjacent to property; pro rata share of improvements to Deemer/Telegraph intersection; preservation of existing natural drainage ways and wetlands; mitigation of stormwater impacts; improvement of water facilities along Telegraph to meet minimum fire flow requirements and system looping.	See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.
12B	Commercial	Planned, Mixed – residential units are encouraged.  See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.	None for commercial; 2,400 sq. ft. per unit for residential.	Access; drainage; wetlands; buffers	Access must be from McLeod Rd; water improvements necessary for fire flow; preservation of existing natural drainage ways and wetlands; mitigation of stormwater impacts	See attached Meridian Commercial District Development Guidelines - Identity, Land Use subsection for a list of prohibited uses.  This Area is exempt from retail size limits subject to conditions in BMC 20.10.025.