ORDINANCE NO. 11-970

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE VILLAGES MASTER PLANNED DEVELOPMENT DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND AND BD VILLAGE PARTNERS, LP; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 36.70B.170(1) authorizes a city to "enter into a development agreement with a person having ownership or control of real property within its jurisdiction"; and

WHEREAS, Chapter 18.66 of the Black Diamond Municipal Code ("BDMC") also "authorize[s] the use of development agreements, as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed"; and

WHEREAS, BDMC Section 18.66.010 also provides that "Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development, per Chapter 18.98"; and

WHEREAS, BDMC Section 18.98.090 authorizes a particular, more limited type of development agreement concerning a master planned development ("MPD"), in which "MPD conditions of approval shall be incorporated. . . as authorized by RCW 36.70B.170"; and

WHEREAS, BDMC Section 18.98.090 imposes the legal standard applicable to a development agreement related to a MPD, by providing that a MPD development agreement "shall be binding on all MPD property owners and their successors, . . . shall require that they develop the subject property only in accordance with the terms of the MPD approval . . .[and] shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals"; and

WHEREAS, on September 10, 2010 and March 16, 2011, BD Village Partners, LP ("the Applicant") submitted applications for a Development Agreement to implement The Villages Master Planned Development ("MPD") Permit, then under consideration by the City of Black Diamond City Council; and

WHEREAS, on September 20, 2010, the Black Diamond City Council adopted

Ordinance No. 10-946, approving a Master Planned Development Permit for The Villages MPD; and

WHEREAS, City staff and the Applicant negotiated various changes to and multiple drafts of The Villages MPD Development Agreement; and

WHEREAS, in June, 2011, the Applicant submitted the fourth, revised version of The Villages MPD Development Agreement; and

WHEREAS, on June 2, 2011, the Applicant requested that the City issue a SEPA Determination of Significance ("DS") for the proposed Development Agreement, and proceed to adopt the Final Environmental Impact Statement previously issued in December 2009 for The Villages MPD Permit; and

WHEREAS, on June 3, 2011 the Black Diamond SEPA Responsible Official issued a Determination of Significance and Adoption of Existing Environmental Document, adopting The Villages Master Planned Development Final Environmental Impact Statement dated December 11, 2009; and

WHEREAS, pursuant to BDMC 18.08.070(C)(2), the proposed Villages MPD Development Agreement was considered by the Black Diamond Hearing Examiner as a Type 4, quasi-judicial decision; and

WHEREAS, the Hearing Examiner held a prehearing conference on May 23, 2011, and held a public, open record hearing on July 11-14, July 16, and July 21, during which members of the public were provided the following: up to 10 minutes per party to testify with some allowed to speak for up to sixty (60) minutes if up to five (5) other parties of record ceded their time to the speaker; the opportunity to present expert witnesses and cross-examine expert witnesses presented by other parties; the opportunity to object to evidence or testimony presented by others; and the opportunity to respond in writing to the written submittals of City staff, the Applicant and other parties;

WHEREAS, at each session of the public, open record hearing, testimony concluded prior to the scheduled end of the hearing session; and

WHEREAS, the Hearing Examiner held the record open following the conclusion of oral testimony, for submission of additional written testimony and exhibits, until August 22 2011; and

WHEREAS, the Hearing Examiner heard over 20 hours of testimony and admitted a total of 273 exhibits totaling over 3,500 pages during the course of the open record hearing on the proposed Development Agreement; and

WHEREAS, on September 14, 2011, the Hearing Examiner issued his 113-page Recommendation on The Villages Development Agreement, recommending that the Black Diamond City Council approve the proposed Development Agreement subject to twenty-four (24) recommended "Implementing Conditions"; and

WHEREAS, on September 21, 2011, pursuant to BDMC Section 18.08.070(A)(2), the City Council convened a public, closed record hearing to consider the Hearing Examiner's Recommendation on The Villages MPD Development Agreement; and

WHEREAS, at the start of the public, closed record hearing, the Applicant and certain parties of record raised objections under the Appearance of Fairness Doctrine to the participation of all Council members except Council member Boston; and

WHEREAS, on September 26 2011, upon deliberation and after disclosure of the basis of the objections and their respective individual views thereof, Council members Hanson, Mulvihill, Saas, and Goodwin announced that they would recuse themselves from further participation in the closed record hearing; and

WHEREAS, the recusals by Council members Hanson, Mulvihill, Saas, and Goodwin deprived the City Council of a quorum needed to proceed with the closed record hearing, thus triggering the "Doctrine of Necessity" codified in RCW 42.36.090 and thereby allowing Council members Hanson, Mulvihill, Saas and Goodwin to fully participate in the proceeding and vote as though the challenge had not occurred; and

WHEREAS, notwithstanding the provisions of the Doctrine of Necessity as codified in RCW 42.36.090, Council members Saas and Goodwin announced that they would not (and, thereafter, they did not) participate further in any way in the City Council's closed record hearing or consideration of the proposed Villages MPD Development Agreement; and

WHEREAS, on September 29, 2011, the City Council adopted Resolution No. 11-766, suspending certain Council Rules of Procedure and adopting new rules of procedure to govern the conduct of the Council's public, closed record hearing to consider the proposed Villages MPD Development Agreement; and

WHEREAS, the Council held the public, closed record hearing on September 29, and

October 3-6, 8 and 10, 2011, during which it heard and considered oral argument by parties of record for 9.5 hours; and

WHEREAS, pursuant to the rules of procedure adopted in Exhibit A to Resolution No. 11-766, parties of record were allowed up to 10 minutes per party, with some allowed to speak for up to sixty (60) minutes if up to five (5) other parties of record ceded their oral argument time to that party as allowed by the Council's adopted rules; and

WHEREAS, at each session of the public, closed record hearing, testimony concluded prior to the scheduled end of the hearing session; and

WHEREAS, the City Council also allowed parties of record additional time to submit up to twenty-five, double-spaced pages of written comment along with their oral argument, and then allowed each party of record an additional ten (10) pages to reply to City staff's and the Applicant's written responses to the other parties' 25-page written submissions; and

WHEREAS, the City Council received a total of 67 Exhibits totaling 1,069 pages containing the written submissions from parties of record, City staff and the Applicant; and

WHEREAS, the quasi-judicial process utilized before the Hearing Examiner and City Council for consideration of The Villages MPD Development Agreement provided for significantly greater citizen involvement and participation in the City's consideration of the proposed Development Agreement than would have been available under the Black Diamond Municipal Code and City Council Rules of Procedure had the Development Agreement been processed as a Type 5 discretionary, legislative approval under BDMC 18.08.080, as requested by several parties of record; and

WHEREAS, parties of records and members of the public contacted City Council members ex parte, off the record, during the pendency of the quasi-judicial, closed record hearing process, and the existence and substance of those ex parte contacts were disclosed by City Council members on the record and an announcement made of the opportunity for the parties to those communications to rebut the substance of the disclosure, as provided in RCW 42.36.060

WHEREAS, on October 24, 2011, the City Council commenced its deliberations on the proposed Development Agreement, and continued those deliberations from day to day from October 24-28, October 31, and November 1, 2011, for 19.75 hours of deliberation; and

WHEREAS, during the course of its deliberations, the City Council considered

arguments from parties of record and each of the Hearing Examiner's recommended "Implementing Conditions," as well as other suggestions included in the body of the Hearing Examiner's 113-page Recommendation document but not within the text of the twenty-four (24) specific "Implementing Conditions"; and

WHEREAS, during the course of its deliberations, the City Council directed staff to negotiate additional language changes to the proposed Villages MPD Development Agreement, to address a substantial number of the Hearing Examiner's suggestions and the City Council's concerns; and

WHEREAS, on November 1, 2011, the City Council again reviewed each of the proposed changes to the Development Agreement that Council had directed staff to negotiate with the applicant based on the Hearing Examiner's recommendation and/or the City Council's review of the Development Agreement, and the catalog of those requested changes is set forth in Exhibit 1 hereto; and

WHEREAS, at the conclusion of the City Council's review of November 1, 2011, the Council voted 3-0 to direct the City Attorney to prepare Findings of Fact, Conclusions of Law and an ordinance memorializing the Council's decision to approve the proposed Villages MPD Development Agreement; and

WHEREAS, the City Council has considered this Ordinance and its attached Findings of Fact, Conclusions of Law, and attached exhibits, and desires to approve The Villages MPD Development Agreement subject to the changes to the Development Agreement negotiated between City staff and the Applicant pursuant to the Council's direction;

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

Section 1. Findings of Fact. The City Council hereby adopts the Findings of Fact set forth in Exhibit 2 attached hereto and incorporated herein by this reference.

Section 2. Conclusions of Law. The City Council hereby adopts the Conclusions of Law set forth in Exhibit 3 attached hereto and incorporated herein by this reference.

Section 3. Approval of The Villages Master Planned Development Development Agreement. Based on the Findings of Fact and Conclusions of Law adopted in Sections 1 and 2 above, the City Council hereby approves the Villages Master Planned Development Development Agreement Between the City of Black Diamond and BD Village Partners, LP as

set forth in Exhibit 4 attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

Section 4. Approval of MPD Funding Agreement. Based on the Findings of Fact and Conclusions of Law adopted in Sections 1 and 2 above, the City Council hereby approves the MPD Funding Agreement between the City of Black Diamond, BD Village Partners, LP and BD Lawson Partners, LP as set forth in Exhibit N to Exhibit 4 attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

Section 5. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 6. Effective Date. This Ordinance shall be in full force and effect after the occurrence of all of the following events: (a) the passage of five (5) days after passage and publication of this Ordinance as required by law; (b) execution by the Mayor of both Exhibit 4 to this Ordinance and Exhibit N thereto; and (b) receipt by the City Clerk, within thirty (30) days of passage of this Ordinance, of executed signature pages to both The Villages Master Planned Development Development Agreement and Exhibit N thereto (the MPD Funding Agreement), signed and sworn to by a general partner of the Applicant before a Notary Public. Such executed signature pages shall constitute and be evidence of the unconditional acceptance by the Applicant of the terms of The Villages Master Planned Development Development Agreement and Exhibit N thereto (the MPD Funding Agreement), and a promise to comply with and abide by those terms and conditions. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 6th day of December, 2011.

Passed by the City Council on the 12th day of December, 2011.

Rebecca Olness

Mayor Rebecca Olness

ATTEST:

Brenda L Martinez

Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha, City Attorney

Published: 12/16/11
Effective Date: 12/21/11

Exhibit 1

Table of Contents

I. Request for Approval 1

II. Development Agreement Revisions 2

Staff Errata 2
Condition "A" – Open Space Boundary Amendments 7
Condition "B" – Land Use Plan (changes) 8
Condition "C" – ADUs 9
Condition "D" – City Enforcement of Privately Adopted Sign Standards 10
Condition "E" – Covington Water District 11
Condition "G" – Baseline for Water Conservation Plan 12
Condition "I" – Stormwater Enforcement 14
Condition "J" – Fish and Wildlife Buffer 16
Condition "K" – Details of Constraint Maps 17
Condition "L" – Mine Hazard Areas 21
Condition "M" – Open Space Assessment 22
Condition "N" – Park Dedication Plan 23
Condition "O" – Park Standards 25
Condition "P" – High School in Commercial Area 26
Condition "Q" – Police and Fire LOS 27
Condition "R" – MPD subject to COAs 29
Condition "S" – Conceptual Site Plan 30
Condition "T" – City Approval of Traffic Reports 31
Condition "U" – Project Level Concurrency 31
Condition "V" – Land Use Plan Legend 35
Condition "W" – Funding Agreement 38
Condition "X" – Stormwater Monitoring 39
Other (Y) 40
Housing Types 40
Interface With Adjoining Development 40
Phasing of Improvements 41
Forest Practices 41
Pipeline Road 43
WSFFA 43
Scrivener's errors 44
Buildout Period 45
Amendments to Exhibits 46
Definitions for Single Family and Multi Family Dwelling Units 48
Funding Agreement 49
Public Access to Parks 54
Buffer Landscaping 55
Exhibit "O" 56

I. Request for Approval

Yarrow Bay asks that the Council act to approve the Development Agreements for both The Villages and Lawson Hills. Yarrow Bay recommends the Council move to authorize the City Attorney to draft an Ordinance including findings of fact and conclusions of law, that approves the Development Agreements and authorizes the Mayor to execute the Development Agreements for The Villages (PLN10-0020/11-0013) and for Lawson Hills (PLN10-0021/11-0014) in the form of Exhibit 1 (The Villages) and Exhibit 2 (Lawson Hills), as revised by the following pages, which include Staff's Errata (Exhibit 4), the Hearing Examiner's recommended conditions including changes proposed by Council, revisions offered by the applicant in Exhibit 139 (shown in the following pages as Y#), and Council supplemental language. Changes proposed prior to the Council Closed Record Hearing are shown in the following pages as single underlined or ~~strikethrough~~ text. Changes made during Council Closed Record Hearing are shown as double underlined or ~~strikethrough~~ text.

II. Development Agreement Revisions

Staff Errata

The Villages MPD Development Agreement

a. Section 7.4.3, First Paragraph (pg. 56):

7.4.3 Stormwater Management ~~Goals~~
The Master Developer shall comply with the stormwater management ~~goals~~ provisions provided below. In the event of a conflict between these ~~goals~~ provisions and the Stormwater Management Design Standards set forth in Section 7.4.4 of this Agreement, the Stormwater Management Design Standards shall prevail.

b. Exhibit "A", Project Boundaries and MPD Site Plan:
Development Parcel V30 was incorrectly depicted as MPD-M Medium Density Residential on the MPD Site Plan contained in Exhibit "A" of The Villages Development Agreement dated June 2011 that was submitted to the Black Diamond Hearing Examiner. Attached to this Errata is an updated Exhibit "A" correctly showing Development Parcel V30 as MPD-L Low Density Residential.

c. Exhibit "0", Storm water Monitoring Requirements: Lawson Hills and The Villages MPDs (pg. 1):

Background: Total phosphorus (TP) concentrations in Lake Sawyer are limited to 16 μg/L as a steady state in-lake mean total P concentration (total external and internal P load following WTP diversion) during any time of the year[1]. This concentration is a predicted value based on hypothetical exclusion of the WTP that was present during the time of the TMDL Model development. Further, the TP limit of 16 μg/L was selected, using a probability function, in order to minimize the chance (<5%) for a lake shift to a eutrophic state. Contributions of TP load from additional development in any of the 3 Sub-basins (e.g., Lake Sawyer surrounding area, Ravensdale Creek, and Rock Creek) have been limited and cannot result in increasing TP concentrations beyond the Load Allocation (LA). A 50 percent TP removal goal from the influent pollutant is the basic treatment performance goal identified by Ecology's 2005 *Stormwater Management Manual for Western Washington.* The target concentrations for TP in each of these sub-watersheds is well below the load allocation predicted by the TMDL model. Influent concentrations are based on published values for phosphorus leaching from Puget Sound land use types identified in the Lake Sawyer Basin. Estimates for influent total phosphorus were consistent with land use contributions reported in the Ecology (2009) Water Quality Implementation Plan and the EIS for the MPDs (Kindig 2008). Ecology's 2009 Water Quality Implementation Plan ~~states~~ provides that, for the City of Black Diamond, compliance with the applicable stormwater permit, which requires compliance with the 2005 *Stormwater Management Manual for Western Washington,* constitutes compliance with the TMDL. Triad Associates has estimated that to achieve the 50 percent TP removal goal, TP concentrations from the stormwater BMPs may not exceed 0.048 mg/L[2] from the Lawson Hills development and 0.055 mg/L[2] from The Villages development. This monitoring plan is consistent with and includes all of the elements identified in the MPD Approval Conditions as Ex. NR-TV-7, except that it adds additional explanation and water quality parameters to the monitoring program.

d. Exhibit "Q", Maple Valley Transportation Mitigation Agreement (pgs. 29-31):

In the copies of the Maple Valley Transportation Mitigation Agreement, Exhibit "Q" of The Villages and Lawson Hills Development Agreements dated June 2011, that were submitted to the Black Diamond Hearing Examiner the signature and notary blocks failed to clearly show the handwritten signatures.

Attached to this Errata are updated signature and notary pages for Exhibit "Q" from the recorded copy of the Maple Valley Transportation Mitigation Agreement at AFN 20110422000249 off of the King County Recorder's Office website correctly showing the executed signature and notary blocks.

Lawson Hills MPD Development Agreement

a. Section 7.4.3, First Paragraph (pg. 53):

7.4.3 Stormwater Management ~~Goals~~

The Master Developer shall comply with the stormwater management ~~goals~~ provisions provided below. In the event of a conflict between these ~~goals~~ provisions and the Stormwater Management Design Standards set forth in Section 7.4.4 of this Agreement, the Stormwater Management Design Standards shall prevail.

. . .

b. Exhibit "0", Storm water Monitoring Requirements: Lawson Hills and The Villages MPDs (pg. 1):

Background: Total phosphorus (TP) concentrations in Lake Sawyer are limited to 16 µg/L as a steady state in-lake mean total P concentration (total external and internal P load following WTP diversion) during any time of the year[1]. This concentration is a predicted value based on hypothetical exclusion of the WTP that was present during the time of the TMDL Model development. Further, the TP limit of 16 µg/L was selected, using a probability function, in order to minimize the chance (<5%) for a lake shift to a eutrophic state. Contributions of TP load from additional development in any of the 3 Sub-basins (e.g., Lake Sawyer surrounding area, Ravensdale Creek, and Rock Creek) have been limited and cannot result in increasing TP concentrations beyond the Load Allocation (LA). A 50 percent TP removal goal from the influent pollutant is the basic treatment performance goal identified by Ecology's 2005 *Stormwater Management Manual for Western Washington.* The target concentrations for TP in each of these sub-watersheds is well below the load allocation predicted by the TMDL model. Influent concentrations are based on published values for phosphorus leaching from Puget Sound land use types identified in the Lake Sawyer Basin. Estimates for influent total phosphorus were consistent with land use contributions reported in the Ecology (2009) Water Quality Implementation Plan and the EIS for the MPDs (Kindig 2008). Ecology's 2009 Water Quality Implementation Plan ~~states~~ provides that, for the City of Black Diamond, compliance with the applicable stormwater permit, which requires compliance with the 2005 *Stormwater Management Manual for Western Washington,* constitutes compliance with the TMDL. Triad Associates has estimated that to achieve the 50 percent TP removal goal, TP concentrations from the stormwater BMPs may not exceed 0.048 mg/L[2] from the Lawson Hills development and 0.055 mg/L[2] from The Villages development. This monitoring plan is consistent with and includes all of the elements identified in the MPD Approval Conditions as Ex. NR-TV-7, except that it adds additional explanation and water quality parameters to the monitoring program.

c. Exhibit "Q", Maple Valley Transportation Mitigation Agreement (pgs. 29-31):

In the copies of the Maple Valley Transportation Mitigation Agreement, Exhibit "Q" of The Villages and Lawson Hills Development Agreements dated June 2011, that were submitted to the Black Diamond Hearing Examiner the signature and notary blocks failed to clearly show the handwritten signatures. Attached to this Errata are updated signature and notary pages for Exhibit "Q" from the recorded copy of the Maple Valley Transportation Mitigation Agreement at AFN 20110422000249 off of the King County Recorder's Office website correctly showing the executed signature and notary blocks.

EXHIBIT C: Property legally described in option recorded under King County Recording No. 20061012001735.

IN WITNESS WHEREOF, the parties have executed this Mitigation Agreement on the date first set forth above.

BD Lawson Partners, LP,
a Washington limited partnership

By: YARROW BAY DEVELOPMENT, LLC, its general partner

By: BRNW, Inc., its Member

By: _____
Brian Ross, President

BD Village Partners, LP,
a Washington limited partnership

By: YARROW BAY DEVELOPMENT, LLC, its general partner

By: BRNW, Inc., its Member

By: _____
Brian Ross, President

City of Maple Valley, a
Washington municipal
Corporation

By: _____
David Johnston, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Christy Todd, City Attorney

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 8th day of October 2010, before me personally appeared David Johnston to me know to be the City Mgr. of the City of Maple Valley, Washington, a municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/~~she~~ was authorized to execute said instrument and that the seal affixed thereto (if any) is the seal of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

BONNIE GILLEN BARNEY
NOTARY PUBLIC
COMMISSION EXPIRES 5-09-12
STATE OF WASHINGTON

Print name: Bonnie Gillen Barney
NOTARY PUBLIC in and for the St. of WA
Residing at Kent
Commission expires 05/09/2012

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On this 7th day of October, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Brian Ross, known to me to be the President of BRNW, Inc., a Member of Yarrow Bay Development, LLC, the general partner of BD Village Partners, L.P., a Washington limited partnership, the limited partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

DANA LYNN MERENESS NOTARY PUBLIC COMMISSION EXPIRES 03-28-13 STATE OF WASHINGTON

Signature

Dana Lynn Mereness
Print Name
NOTARY PUBLIC in and for the State of Washington, residing at Edmonds
My commission expires 3/28/13

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On this 7th day of October, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Brian Ross, known to me to be the President of BRNW, Inc., a Member of Yarrow Bay Development, LLC, the general partner of BD Lawson Partners, L.P., a Washington limited partnership, the limited partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

DANA LYNN MERENESS NOTARY PUBLIC COMMISSION EXPIRES 03-28-13 STATE OF WASHINGTON

Signature

Dana Lynn Mereness
Print Name
NOTARY PUBLIC in and for the State of Washington, residing at Edmonds
My commission expires 3/28/13

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "A"

The Villages Development Agreement

4.4.6 MPD Site Plan amendments to Open Space areas as shown on Exhibit "~~A~~U" shall be allowed with a Minor Amendment to the MPD Permit Approval provided all of the criteria outlined in BDMC 18.98.100(A)-(H) for a minor amendment are met.~~,~~ Such amendments~~which~~ may only be processed concurrently with the submittal to the City of an Implementing Project application; ~~and~~ shall not modify the overall Open Space requirement set forth in Section 9.1;~~. Such amendments~~ are exempt from the annual docketing requirement set forth in Section 4.4 above; and may include converting entire Development Parcels to Open Space.

Lawson Hills Development Agreement

4.4.4 MPD Site Plan amendments to Open Space areas as shown on Exhibit "~~A~~U" shall be allowed with a Minor Amendment to the MPD Permit Approval provided all of the criteria outlined in BDMC 18.98.100(A)-(H) for a minor amendment are met.~~,~~ Such amendments~~which~~ may only be processed concurrently with the submittal to the City of an Implementing Project application; ~~and~~ shall not modify the overall Open Space requirement set forth in Section 9.1;~~. Such amendments~~ are exempt from the annual docketing requirement set forth in Section 4.4 above; and may include converting entire Development Parcels to Open Space.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "B"

The Villages Development Agreement

4.4.8 Although the Design Concept and Land Use Plan shown in Exhibit "L" was not a specifically surveyed map, approximate acreages were assigned to each Development Parcel to aid in understanding the Design Concept and Land Use Plan. The stated acreage of any Development Parcel may be increased or decreased up to five percent (5%) concurrent with the City's processing of an Implementing Project application without an amendment to the MPD Permit Approval or this Agreement. The stated acreage of any Development Parcel may be increased or decreased five-to-ten percent (5-10%) concurrent with the City's processing of an Implementing Project application with a Minor Amendment to the MPD Permit Approval. Typical reasons for altering the acreage of a Development Parcel include but are not limited to accommodating on the ground surveying, accommodating detailed engineering designs for necessary infrastructure, improving the location and/or access to a Park or active Open Space area, enhancing protections for a sensitive Open Space area, and providing better clustering, buffers, or trail connections between neighborhoods. The acreage of a Development Parcel may not be increased or decreased without a Major Amendment to the MPD Permit Approval if doing so alters the maximum total residential units and square footage of commercial space, or target densities for the Project Site as a whole, as were approved in Condition of Approval No. 128.

Lawson Hills Development Agreement

4.4.6 Although the Design Concept and Land Use Plan shown in Exhibit "L" was not a specifically surveyed map, approximate acreages were assigned to each Development Parcel to aid in understanding the Design Concept and Land Use Plan. The stated acreage of any Development Parcel may be increased or decreased five percent (5%) concurrent with the City's processing of an Implementing Project application without an amendment to the MPD Permit Approval or this Agreement. The stated acreage of any Development Parcel may be increased or decreased five-to-ten percent (5-10%) concurrent with the City's processing of an Implementing Project application with a Minor Amendment to the MPD Permit Approval. Typical reasons for altering the acreage of a Development Parcel include but are not limited to accommodating on the ground surveying, accommodating detailed engineering designs for necessary infrastructure, improving the location and/or access to a Park or active Open Space area, enhancing protections for a sensitive Open Space area, and providing better clustering, buffers, or trail connections between neighborhoods. The acreage of a Development Parcel may not be increased or decreased without a Major Amendment to the MPD Permit Approval if doing so alters the maximum total residential units and square footage of commercial space, or target densities for the Project Site as a whole, as were approved in Condition of Approval No. 132.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "C"

The Villages Development Agreement

4.7.3 Accessory Dwelling Units (ADUs)

The Villages MPD is limited to three hundred (300) Accessory Dwelling Units (ADUs) on the Project Site. The Master Developer is the only party that may submit ADUs applications for the Project Site unless the Master Developer assigns or transfers this right (or a portion thereof) to a third party. The City shall not accept an ADU application for the Project Site from a third party unless such application is accompanied by written approval from the Master Developer. Accessory Dwelling Unit applications must also be reviewed and approved by the DRC prior to submittal to the City for approval. The first one hundred sixty (160) ADUs constructed within the Project Site shall not count towards the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement. Each ADU constructed after this 160 ADU threshold is reached shall be counted as one-third (1/3) of a Dwelling Unit for purposes of the City's tracking ~~towards~~ the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement. ~~So long as this 160 ADU threshold (i.e., to count ADUs toward the total number of Dwelling Units) is effective, it is anticipated that the Master Developer will not grant approval for any more than 160 ADU applications.~~ The 3:1 ADU ratio established in this subsection is inapplicable to the Maple Valley Transportation Mitigation Agreement (Exhibit "Q").

Lawson Hills Development Agreement

4.7.3 Accessory Dwelling Units (ADUs)

The Lawson Hills MPD is limited to one hundred fifty (150) Accessory Dwelling Units (ADUs) on the Project Site. The Master Developer is the only party that may submit ADUs applications for the Project Site unless the Master Developer assigns or transfers this right (or a portion thereof) to a third party. The City shall not accept an ADU application for the Project Site from a third party unless such application is accompanied by written approval from the Master Developer. Accessory Dwelling Unit applications must also be reviewed and approved by the DRC prior to submittal to the City for approval. The first forty (40) ADUs constructed within the Project Site shall not count towards the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement. Each ADU constructed after this 40 ADU threshold is reached shall be counted as one-third (1/3) of a Dwelling Unit for purposes of the City's tracking ~~towards~~ the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement. ~~So long as this 40 ADU threshold (i.e., to count ADUs toward the total number of Dwelling Units) is effective, it is anticipated that the Master Developer will not grant approval for any more than 40 ADU applications.~~ The 3:1 ADU ratio established in this subsection is inapplicable to the Maple Valley Transportation Mitigation Agreement (Exhibit "Q").

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "D"

The Villages Development Agreement

5.4.3 Real Estate and Construction Sign Program

The Design Review Committee will create a Construction and Real Estate Sign Program that includes standards for the size, number, location and removal of construction and real estate signs within The Villages MPD. This sign program shall at a minimum meet all requirements related to construction and real estate signs within BDMC Chapter 18.82 (Exhibit "E"~~), including the requirement to obtain a sign permit from the City and review and approval by the Design Review Committee~~. The Master Developer or Homeowners' Association (HOA) shall provide enforcement for the Construction and Real Estate Sign Program ~~signage on private property~~. ~~The City shall enforce the standards within public right-of-way and may enforce the standards on private property.~~

Lawson Hills Development Agreement

5.4.3 Real Estate and Construction Sign Program

The Design Review Committee will create a Construction and Real Estate Sign Program that includes standards for the size, number, location and removal of construction and real estate signs within The Lawson Hills MPD. This sign program shall at a minimum meet all requirements related to construction and real estate signs within BDMC Chapter 18.82 (Exhibit "E"~~), including the requirement to obtain a sign permit from the City and review and approval by the Design Review Committee~~. The Master Developer or Homeowners' Association (HOA) shall provide enforcement for the Construction and Real Estate Sign Program ~~signage on private property~~. ~~The City shall enforce the standards within public right-of-way and may enforce the standards on private property.~~

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "E"

The Villages Development Agreement

7.2 WATER SYSTEM STANDARDS

This Agreement shall not apply within the Covington Water District to the extent that this Section unlawfully conflicts with the authority of the Covington Water District.

...

New Section 7.2.7

This Agreement governs MPD Development and, as such, nothing in this Agreement shall have any effect on, nor constitute legal support for, any right of either the Covington Water District to provide water service to that portion of the MPD Development lying within Covington Water District's water service area boundaries as shown in the South King County Coordinated Water System Plan (SKCCWSP), or the City of Black Diamond to provide water service to that same area as shown in the City's Water System Plan.

All MPD Development that is located within Covington Water District's water service area boundaries and that is ultimately connected to and physically served by Covington Water District facilities shall comply with the District's adopted standards, procedures and system extension requirements for water service and connection to District facilities.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "G"

The Villages Development Agreement

7.2.5 Water Conservation and Monitoring Plan

The Villages MPD's Water Conservation Plan at Chapter 8 of the MPD Permit Application was approved in the MPD Permit Approval. Pursuant to Condition of Approval No. 53 of the MPD Permit Approval, this Section restates the Water Conservation Plan approved in the MPD Permit Approval Conditions for The Villages. The intent of this plan is to create a 10% reduction in water consumption compared to the current existing average use per ERU use standard of ~~230~~187 gallons per day (GPD). If the 10% savings target is not achieved, then resulting constraints on water supply allocated to The Villages MPD may limit ultimate build-out of the MPD.

In order to ensure the water conservation techniques proposed for The Villages MPD will in fact obtain a 10% reduction, a monitoring plan will be implemented by the Master Developer. Monitoring residential water use can only be attained through direct meter reading of individual homes. Pursuant to Condition of Approval No. 54 of the MPD Permit Approval, following occupancy of the 500th Dwelling Unit, a representative block of occupied homes, representing 5% of the total (25 Dwelling Units), will be selected by the Designated Official from the different home types. Water use for those 25 Dwelling Units shall be tracked for a period of one year. If the Designated Official determines, in his reasonable discretion, that the water monitoring plan described above is not adequately tracking MPD water usage, the Designated Official may select a method for monitoring water use including review of City meter records. The resulting data will be compared to the baseline of ~~230~~187 gallons per day to determine if the 10% reduction is being achieved. The results of the water monitoring plan shall be completed within thirty (30) days following the conclusion of meter reading and be maintained by the Designated Official.

This same monitoring method will be repeated following the completion of future Phases. If the data results show water use of any particular Phase has not been reduced by at least ~~23~~18.7 GPD (10% below the City's current existing ~~City~~ average use per ERU use standard of ~~230~~187 GPD), then an updated mitigation plan reasonably acceptable to the City will be developed by the Master Developer at that time to bring the future Development within the required standard and to offset any excess water usage from prior Development that did not meet this standard.

...

Lawson Hills Development Agreement

7.2.5 Water Conservation and Monitoring Plan

The Lawson Hills MPD's Water Conservation Plan at Chapter 8 of the MPD Application was approved in the MPD Approval. Pursuant to Condition of Approval No. 55 of the MPD Permit Approval, this Section restates the Water Conservation Plan approved in the MPD Approval Permit Conditions for The Lawson Hills. The intent of this plan is to create a 10% reduction in water consumption compared to the current existing average use per ERU use standard of ~~230~~187 gallons per day (GPD). If the 10% savings target is not achieved, then resulting constraints on water supply allocated to The Lawson Hills MPD may limit ultimate build-out of the MPD.

In order to ensure the water conservation techniques proposed for The Lawson Hills MPD will in fact obtain a 10% reduction, a monitoring plan will be implemented by the Master Developer. Monitoring residential water use can only be attained through direct meter reading of individual homes. Pursuant to Condition of Approval No. 56 of the MPD Permit Approval, following occupancy of the 500th Dwelling Unit, a representative block of occupied homes, representing 5% of the total (25 Dwelling Units), will be selected by the Designated Official from the different home types. Water use for those 25 Dwelling Units shall be tracked for a period of one year. If the Designated Official determines, in his reasonable discretion, that the water monitoring plan described above is not adequately tracking MPD water usage, the Designated Official may select a method for monitoring water use including review of City meter records. The resulting data will be compared to the baseline of ~~230~~187 gallons per day to determine if the 10% reduction is being achieved. The results of the water monitoring plan shall be completed within thirty (30) days following the conclusion of meter reading and be maintained by the Designated Official.

This same monitoring method will be repeated following the completion of future Phases. If the data results show water use of any particular Phase has not been reduced by at least ~~23~~18.7 GPD (10% below the City's current existing ~~City~~ average use per ERU use standard of ~~230~~187 GPD), then an updated mitigation plan reasonable acceptable to the City will be developed by the Master Developer at that time to bring the future Development within the required standard and to offset any excess water usage from prior Development that did not meet this standard.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "I"

The Villages Development Agreement

7.4.5 Stormwater Monitoring and Phosphorus Load Calculation

The Master Developer shall monitor stormwater for the following parameters: Total Phosphorus (Tp), Temperature, pH, Turbidity, Conductivity, and Dissolved Oxygen (DO). Monitoring of a specific stormwater facility shall continue for five (5) years following the completion of development that discharges into that facility. Completion shall be defined as the date the City's maintenance bond (which follows the time period of the City's performance bond), as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for a given facility. A tabular list of stormwater monitoring requirements is included at Exhibit "O". The monitoring parameters include annual volumes of total phosphorus (Tp) from The Villages MPD that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring indicates that the MPD site is discharging more Tp than indicated, the Master Developer shall modify existing practices or facilities (source control) within thirty (30) days of obtaining a substandard sampling measure. If annual monitoring data shows Tp levels are exceeding pre-development background levels the Master Developer shall~~,~~ modify the design of existing and~~any~~ proposed ~~new~~ stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that individually or collectively provide an offsetting reduction in Tp. The selected compensating measures shall be implemented within six (6) months, subject to City approval. Pursuant to Condition of Approval No. 79 of the MPD Permit Approval, Exhibit "O" also contains a memorandum describing how the Master Developer will meet the Stormwater Management ~~Goal~~provision set in Section 7.4.3(A).

Lawson Hills Development Agreement

7.4.5 Stormwater Monitoring and Phosphorus Load Calculation

The Master Developer shall monitor stormwater for the following parameters: Total Phosphorus (Tp), Temperature, pH, Turbidity, Conductivity, and Dissolved Oxygen (DO). Monitoring of a specific stormwater facility shall continue for five (5) years following the completion of development that discharges into that facility. Completion shall be defined as the date the City's maintenance bond (which follows the time period of the City's performance bond), as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for a given facility. A tabular list of stormwater monitoring requirements is included at Exhibit "O". The monitoring parameters include annual volumes of total phosphorus (Tp) from the Lawson Hills MPD that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring indicates that the MPD site is discharging more Tp than indicated, the Master Developer shall modify existing practices or facilities (source control) within thirty (30) days of obtaining a substandard sampling measure. If annual monitoring data shows Tp levels are exceeding pre-development background levels the Master Developer shall~~,~~ modify the design of existing and~~any~~ proposed ~~new~~ stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that individually or collectively provide an offsetting reduction in Tp. The selected compensating measures shall be implemented within 6 months, subject to City approval. Pursuant to Condition of Approval No. 82 of the MPD Permit Approval, Exhibit "O" also contains a memorandum

describing how the Master Developer will meet the Stormwater Management ~~Goal~~provision set in Section 7.4.3(A).

IMPLEMENTING EXHIBIT

(Updated Exhibit "O" for The Villages and Lawson Hills Development Agreements provided in Exhibit C-7 and herein)

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "J"

IMPLEMENTING MAPS/DIAGRAMS

(Updated Exhibit "G" provided in Exhibit C-7 for The Villages and Lawson Hills Development Agreements and new map showing FWHCAs defined in the SAO along with the King County Wildlife Habitat Network)

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "K"

The Village Development Agreement

8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY

All Development within The Villages MPD shall be subject to the standards, requirements and processes of the Sensitive Area Ordinance. The sensitive areas ~~jurisdictional~~ boundary determinations ~~and sensitive area reports~~ have been completed and verified for the Project Site and are depicted on the Constraint Maps attached hereto as Exhibit "G". ~~Consistent with the Sensitive Areas Ordinance, any Implementing Project that does not propose any changes or alterations to sensitive areas or their buffers as shown in the reports described in Subsection 8.2 has met the jurisdictional determination requirement of BDMC 19.10.120(C) Sensitive Area Jurisdiction Decision, such that no additional reports under BDMC 19.10.130, BDMC 19.10.337, BDMC 19.10.435, and BDMC 19.10.445 (Exhibit "E") need to be submitted with the Implementing Project application.~~ Buffers for the sensitive areas, as well as categories for the wetlands and classification of fish and wildlife habitat conservation areas, mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2 SENSITIVE AREAS DETERMINATIONS

Consistent with the Sensitive Areas Ordinance, at the time of construction, sensitive areas and their established buffers shall be clearly identified and marked in the field by GPS coordinates or GPS mapping where feasible.

8.2.1 Wetland ~~Determinations and~~ Boundary Delineations Final

The presence and absence of wetlands, wetland typing, and delineations, ~~consistent with the Sensitive Areas Ordinance,~~ are shown on the Constraint Maps attached hereto as Exhibit "G". The wetland typing shown on the Constraints Maps is for planning purposes only and is not yet final. The wetland delineations ~~and types~~ outlined in the Constraints Map as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped and described boundary shall prevail. Buffers and categories for the wetlands mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.2 Fish and Wildlife Habitat Conservation Areas Final

The presence ~~and typing~~ of Fish and Wildlife Conservation Areas within ~~the onsite wetland areas of~~ The Villages MPD are shown on the Constraints Map. ~~These Fish and Wildlife Habitat Conservation Areas, types and buffers as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger, than what was mapped, the mapped boundary shall prevail.~~ Classifications for fish and wildlife conservation areas in the Project Site will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.3 Mine Hazard Areas

Mine hazard areas for The Villages MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Maps. These mine hazard areas for The Villages MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

8.2.4 Seismic Hazard Areas

Seismic hazard areas for The Villages MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Map. The seismic hazard areas for The Villages MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

8.2.5 Steep Slopes

Steep slope areas for The Villages MPD are shown on the Constraints Map. The steep slope areas for The Villages MPD are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. Buffers for steep slopes in the Project Site will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.6 Wildlife Corridor

Pursuant to Condition of Approval No. 125 of the MPD Permit Approval and page 6-11 of the Villages Final Environmental Impact Statement dated December 2009, the Master Developer shall provide a 300-foot wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. This required wildlife corridor is shown on the Constraints Map and is deemed final and complete through the term of this Agreement.

Lawson Hills Development Agreement

8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY

All Development within The Lawson Hills MPD shall be subject to the standards, requirements and processes of the Sensitive Area Ordinance. The sensitive areas ~~jurisdictional~~ boundary determinations ~~and sensitive area reports~~ have been completed and verified for the Project Site and are depicted on the Constraint Maps attached hereto as Exhibit "G". ~~Consistent with the Sensitive Areas Ordinance, any Implementing Project that does not propose any changes or alterations to sensitive areas or their buffers as shown in the reports described in Subsection 8.2 has met the jurisdictional determination requirement of BDMC 19.10.120(C) Sensitive Area Jurisdiction Decision, such that no additional reports under BDMC 19.10.130, BDMC 19.10.337, BDMC 19.10.435, and BDMC 19.10.445 (Exhibit "E") need to be submitted with the Implementing Project application.~~ Buffers for the sensitive areas, as well as categories for the wetlands and classification of fish and wildlife habitat conservation areas.

mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2 SENSITIVE AREAS DETERMINATIONS

Consistent with the Sensitive Areas Ordinance, at the time of construction, sensitive areas and their established buffers shall be clearly identified and marked in the field by GPS coordinates or GPS mapping where feasible.

8.2.1 Wetland ~~Determinations and~~ Boundary Delineations Final

The presence and absence of wetlands, wetland typing, and delineations~~, consistent with the Sensitive Areas Ordinance,~~ are shown on the Constraint Maps attached hereto as Exhibit "G". The wetland typing shown on the Constraints Maps is for planning purposes only and is not yet final. The wetland delineations ~~and types~~ outlined in the Constraints Map as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement, except for Wetland K. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. Buffers and categories for the wetlands mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E"). Wetland K boundaries are subject to additional reporting that must be completed by the Master Developer and reviewed and approved by the City prior to any proposed Implementing Project in the vicinity of or including Wetland K and its boundaries.

An ~~O~~off-site wetland adjoining the North Triangle has ~~have~~ not been fully delineated~~;~~. ~~additional~~ A delineation ~~may be needed~~ pursuant to the City's Sensitive Areas Ordinance, and addition of the location of that wetland and buffer on the Constraint Maps (Exhibit "G") shall be conducted at the time an Implementing Project is proposed on the North Triangle, and the Constraint Maps shall be updated prior to issuance of the Implementing Approval for the first Implementing Project application on the North Triangle.

8.2.2 Fish and Wildlife Habitat Conservation Areas Final

The presence ~~and typing~~ of Fish and Wildlife Conservation Areas within ~~the onsite wetland areas of~~ The Lawson Hills MPD are shown on the Constraints Map as surveyed on 7/27/09. ~~These Fish and Wildlife Habitat Conservation Areas, types and buffers are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.~~ Classifications for fish and wildlife conservation areas in the Project Site will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.3 Mine Hazard Areas

[see language under Recommended Implementing Condition L below]

8.2.4 Seismic Hazard Areas

Seismic hazard areas for The Lawson Hills MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Map. The seismic hazard areas for The Lawson Hills MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

8.2.5 Steep Slopes

Steep slope areas for the Lawson Hills MPD are shown on the Constraints Map. The steep slope areas for the Lawson Hills MPD are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. Buffers for steep slopes in the Project Site will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "F").

IMPLEMENTING MAPS

(*See* Updated Exhibit "G" for The Villages and Lawson Hills Development Agreements provided in Exhibit C-7)

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "L"

Lawson Hills Development Agreement

8.2.3 Mine Hazard Areas

Mine hazard areas for The Lawson Hills MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Maps. ~~These~~Subject to the exceptions described below, the mine hazard areas for The Lawson Hills MPD as surveyed on 7/27/09~~, including the High Mine Hazard area buffer which the Master Developer mapped to protect even though such a buffer is not required in the City's Sensitive Areas Ordinance, BDMC 19.10 (Exhibit "E")~~, are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, except as provided below, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

As of the time of execution of this Agreement, the mine hazard area boundaries for the following areas have been generally agreed to by the Designated Official, but additional subsurface exploration and analysis is necessary in order to further evaluate: (1) the location and extent of the Macks Mine hazard area near the northern end of the Project Site; (2) the mine hazard boundary for the McKay Section 12 Surface Mine and older underground mines beneath it; and (3) the width of the Moderate Mine Hazard zone above the Lawson Mine. Additional work to identify the Macks Mine hazard zone, the McKay Section 12 area, and the width of the Moderate Mine Hazard area for the Lawson Mine was described in the MPD materials as to be conducted pursuant to the standards set in the City's Sensitive Areas Ordinance, BDMC 19.10 (Exhibit "E"). That work will be conducted together with Implementing Project applications involving Development in or near these locations, and will define the nature and extent of those mine hazard areas. Once the boundaries of (1) the location and extent of the Macks Mine hazard zones near the northern end of the Project Site; (2) the location of the hazard zone for the McKay Section 12 Surface Mine and older underground mines beneath it; and (3) the width of the Moderate Mine Hazard above the Lawson Mine have been agreed to, these boundaries shall also be fixed.

Finally, based on the level of surface exploration, historical document review, and mine exploration work conducted at the Project Site, it is unlikely that any new mine hazard areas will be discovered outside those areas mapped and referenced in this section. However, in the event that a new or higher classification of mine hazard area is discovered during the term of this Agreement, that area will be assessed and protected pursuant to the City's Sensitive Areas Ordinance, BDMC 19.10 (Exhibit "E") and no Implementing Project within such affected area will be approved until agreement between the City and Master Developer is reached on the boundaries of the new or higher classification of mine hazard area.

Any additional work provided with Implementing Project applications shall be reviewed by an independent qualified third party reviewer as part of the MDRT review process described in Exhibit "N", at the Implementing Project applicant's expense, to perform peer review of mine hazard reports.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "M"

Lawson Hills Development Agreement

9.1 OVERALL OPEN SPACE REQUIREMENT

Pursuant to BDMC 18.98.140 (Exhibit "E") and the MPD Permit Approval, The Lawson Hills MPD is required to provide at least 134 acres of open space in addition to preservation of a view corridor on the North Triangle. The 50 acre East Annexation Area and the North Triangle are subject to the BDUGAA and the Black Diamond Open Space Agreement. The open space requirement for the MPD under these agreements is the dedication of the 50-acre In-City Forest land to the City and preservation of a view corridor on the North Triangle. The Master Developer shall provide the additional, approximately 134 acres of Open Space for those properties not subject to the BDUGAA within the MPD Project Site. Approximately 124.7 acres of Open Space meeting these requirements is shown on the MPD Site Plan (Exhibit "A"). Pursuant to Condition of Approval No. 145 of the MPD Permit Approval, an additional 14.8 acres of Open Space shall be provided. (Development Parcels L1 and L2 have been designated as Open Space, resulting in 5.5 acres of additional Open Space; accordingly, 9.3 acres is the required additional Open Space). Each Implementing Project on the Lawson Hills Main Property shall account for how much Open Space has been provided throughout the MPD, how much Open Space is being proposed within the Implementing Project, and how much remaining Open Space is required to be provided. When the final Implementing Project is proposed, all remaining Open Space shall be provided prior to approval of the final Implementing Project. <u>The City may, however, require an earlier Implementing Project to accommodate the required additional Open Space if there is a potential that property suited for Open Space will not be available in later Implementing Projects.</u>

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "N"

The Villages Development Agreement

9.9.1 Environmentally Sensitive Areas and Buffers

Pursuant to Condition of Approval No. 153 of the MPD Permit Approval, ownership and maintenance of sensitive areas and buffers shall be consistent with the requirements of the Sensitive Area Ordinance, which allows sensitive area tracts to be held in undivided ownership by all lots within The Villages MPD, dedicated to the City or other governmental entity, protected with conservation easements or conveyed to a non-profit land trust. If the Master Developer elects not to dedicate an Open Space to the City, a permanent public access easement or other means of access shall be provided to the Open Space as part of the Implementing Project. To assure that the sensitive areas and buffers are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a sensitive area buffer shall include that entire sensitive area and buffer within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval.

Lawson Hills Development Agreement

9.9.1 Environmentally Sensitive Areas and Buffers

Pursuant to Condition of Approval No. 157 of the MPD Permit Approval, ownership and maintenance of sensitive areas and buffers shall be consistent with the requirements of the Sensitive Area Ordinance, which allows sensitive area tracts to be held in undivided ownership by all lots within The Lawson Hills MPD, dedicated to the City or other governmental entity, protected with conservation easements or conveyed to a non-profit land trust. If the Master Developer elects not to dedicate an Open Space to the City, a permanent public access easement or other means of access shall be provided to the Open Space as part of the Implementing Project. To assure that the sensitive areas and buffers are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a sensitive area buffer shall include that entire sensitive area and buffer within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval.

The Villages Development Agreement

9.2 PARK AND OPEN SPACE PLAN

The approximate location and type of Parks to be provided by the Master Developer are shown on the Park and Trail Plan (Figure 9.2) above. The Master Developer shall design and construct the Parks shown on the Parks and Trail Plan (Figure 9.2). The actual location and boundaries of Parks may vary (provided that the minimum Open Space requirement is met) and will be defined through Implementing Approvals and Projects (for example, adjacent subdivision or site plan). Parks within each Phase of The Villages MPD shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the Phase, whichever occurs first, to the extent necessary to meet park level of service standards for the Implementing Approval or Project. In the event a bond is in place, construction of all Parks within Phase 3 will be triggered when Certificates of Occupancy or final inspection have been issued for 40% of the Dwelling Units on lots located within ¼ mile of a given

Park located in Phase 3. Parks must be completed when Certificates of Occupancy or final inspection has been issued for 60% of the Dwellings Units located within ¼ mile of a given Park in any Phase. Recreation facilities shall be constructed as required by Table 9-5. The Master Developer may elect to build Parks in advance of the triggers set forth in this subsection. To assure that the Parks are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a Park shall include that entire Park within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval.

Lawson Hills Development Agreement

9.2 PARK AND OPEN SPACE PLAN

The approximate location and type of Parks to be provided by the Master Developer are shown on the Parks and Trail Plan (Figure 9.2) below. The Master Developer shall design and construct the Parks shown on the Parks and Trail Plan. The actual location and boundaries of Parks may vary (provided that the minimum Open Space requirement is met) and will be defined through Implementing Projects (for example, adjacent subdivision or site plan). Parks within each Phase of The Lawson Hills MPD shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the Phase, whichever occurs first, to the extent necessary to meet park level of service standards for the Implementing Approval or Project. In the event a bond is in place, construction of all Parks within Phase 3 will be triggered when Certificates of Occupancy or final inspection have been issued for 40% of the Dwellings Units on lots located within ¼ mile of a given Park in Phase 3. Parks must be completed when Certificates of Occupancy or final inspection has been issued for 60% of the Dwellings Units located within ¼ mile of a given Park in any Phase. Recreation facilities will be constructed as per Table 9.5.5. The Master Developer may elect to build Parks in advance of the triggers set forth in this subsection. To assure that the Parks are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a Park shall include that entire Park within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "O"

The Villages Development Agreement

9.5 RECREATION AND USEABLE OPEN SPACE STANDARDS

All Implementing Projects must comply with the City's Parks, Recreation and Open Space Plan dated December 18, 2008 (Exhibit "E") as well as the standards and guidelines imposed in this Agreement.

Lawson Hills Development Agreement

9.5 RECREATION AND USEABLE OPEN SPACE STANDARDS

All Implementing Projects must comply with the City's Parks, Recreation and Open Space Plan dated December 18, 2008 (Exhibit "E") as well as the standards and guidelines imposed in this Agreement.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "P"

The Villages Development Agreement

13.3 SCHOOLS

Pursuant to Condition of Approval No. 98 of the MPD Permit Approval, school mitigation is accomplished through the Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727 ("School Agreement").

Amendments to the Comprehensive School Mitigation Agreement shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2; provided, such amendments are: (i) executed by the City, the Enumclaw School District, BD Lawson Partners, L.P., and the Master Developer, and (ii) otherwise satisfies Condition of Approval No. 98 of the MPD Permit Approval.

Per the terms of the School Agreement, a portion of Parcel C (as described in Exhibit "B") may be developed as a high school "no earlier than ten (10) years after [January 24, 2011] . . ." A portion of the 40-acre High School Site (as shown on Exhibit I of the School Agreement) is designated on the MPD Site Plan (Exhibit "U") as "Commercial/Office/Retail". The location of this High School Site may be modified consistent with the terms of the School Agreement. Pursuant to MPD Condition of Approval No. 99 of the MPD Permit Approval and subsection 4.4.7 of this Agreement, if any party submits an Implementing Project application that seeks to locate a high school as a conditional use within any lands designated on the MPD Site Plan (Exhibit "U") for commercial/office/retail use, then the application for the Minor Amendment to MPD Permit Approval shall also include an updated fiscal analysis prepared by the Master Developer pursuant to Section 13.6 of this Agreement.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "Q"

The Villages Development Agreement

13.6 FISCAL IMPACTS ANALYSIS

The terms and process for performing the fiscal analysis and evaluating fiscal impacts outlined in the MPD and this Agreement are as follows:

Concurrent with submittal of the first Implementing Project within a Phase, the Master Developer shall submit for the Designated Official's review and approval a fiscal analysis for the entire Phase. The Designated Official shall, with the assistance of such professional fiscal analysis consultant(s) selected by the Designated Official in his/her sole reasonable discretion pursuant to Exhibit N, review and approve each fiscal analysis submitted by the Master Developer for consistency with~~The fiscal analysis shall be based on~~ the following methodologies and assumptions.

...

i. Revenues and expenses for general fund departments that are determined to be one time in nature will not be included in the fiscal analysis. These may include the costs of planning, inspection and permit activities along with planning, inspection, permitting and development impact fees. Provided, however, if the building division is removed from the MDRT pursuant to the terms of the Funding Agreement, only then would the revenues and expenses of the building division be included in the fiscal analysis.

j. Each updated fiscal analysis shall confirm that revenue from The Villages MPD is sufficient to maintain levels of service for police and fire services as such levels of service are adopted in the Comprehensive Plan (Exhibit "E").

2. Operating revenues will be calculated for the following sources using the methods described for each source of revenue.

...

Lawson Hills Development Agreement

13.6 FISCAL IMPACTS ANALYSIS

The terms and process for performing the fiscal analysis and evaluating fiscal impacts outlined in the MPD and this Agreement are as follows:

Concurrent with submittal of the first implementing project within a phase, the master developer shall submit for the designated official's review and approval a fiscal analysis for the entire phase. The designated official shall, with the assistance of such professional fiscal analysis consultant(s) selected by the designated official in his/her sole reasonable discretion pursuant to exhibit n, review and approve each fiscal analysis submitted by the master developer for consistency with ~~the fiscal analysis shall be based on~~ the following methodologies and assumptions.

...

i. Revenues and expenses for general fund departments that are determined to be one time in nature will not be included in the fiscal analysis. These may include the costs of planning, inspection and permit activities along with planning, inspection, permitting and development impact fees. Provided, however, if the building division is removed from the MDRT pursuant to the terms of the Funding Agreement, only then would the revenues and expenses of the building division be included in the fiscal analysis.

j. Each updated fiscal analysis shall confirm that revenue from the Lawson Hills MPD is sufficient to maintain levels of service for police and fire services as such levels of service are adopted in the Comprehensive Plan (Exhibit "E").

2. Operating revenues will be calculated for the following sources using the methods described for each source of revenue.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "R"

The Villages and Lawson Hills Development Agreements

15.1 BINDING EFFECT & VESTING

This Agreement constitutes and shall be recorded as a covenant running with the land, benefiting and burdening the Project Site. This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City. All Development subject to the MPD Permit Approval shall be developed in conformance with the MPD Conditions of Approval as set forth in "Ex. C – Conditions of Approval" of Exhibit "C" attached hereto and incorporated herein by this reference.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "S"

The Villages and Lawson Hills Development Agreements

(1) Revise the Cover Page for Exhibit "A" as follows. Copies of the revised cover pages for The Villages and Lawson Hills Development Agreements are ~~included herein~~provided in Exhibit C-7.

Exhibit A

Project Boundaries and MPD Site Plan

(Removed Pursuant to Examiner's Recommended Implementing Conditions. Please see Exhibit "U").

(2) Revise Section 14.0 Definitions as follows:

- MPD Site Plan – The site plan attached to this Agreement as Exhibit "~~A~~U".

(3) All references to ~~Exhibit "A"~~ within this Agreement are replaced and superseded with a reference to Exhibit "U" except for the Table of Contents and Section 15.7.

(4) Add Figure 6-4 as the last page of Section 6 showing the anticipated locations of streets that have a classification greater then neighborhood collector. Copies of new Figure 6-4 for both The Village and Lawson Hills are ~~included herein~~provided in Exhibit C-7.

(5) Revise Section 4.4.9 of The Villages Development and Section 4.4.7 of the Lawson Hills Development Agreement as follows:

> The road way alignments shown on the MPD Site Plan (Exhibit "~~A~~U"), and as further refined in Figure 6-4, may be modified pursuant to and concurrent with an Implementing Project application (e.g., subdivision or binding site plan) without an amendment to the MPD Permit Approval or this Agreement. Such amendments are exempt from the annual docketing requirement set forth in Section 4.4. above.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITIONS "T" and "U"

The Villages and Lawson Hills Development Agreements

EXHIBIT "F"

TRAFFIC MONITORING PLAN

The transportation mitigation measures imposed on The Villages MPD include projects that address the potential full transportation impacts of complete build-out of The Villages MPD together with build-out of the Lawson Hills MPD. The build-out of both MPDs will occur over a period of years and, therefore, the transportation mitigation also should be implemented over a period of years. To assure that the mitigation keeps pace with MPD Development and appropriate improvements are constructed at the appropriate time, the following monitoring and trigger protocol is established.

A. Required Timing for Modeling and Monitoring

Before submitting Implementing Project applications for each Phase of the combined MPDs, and in the middle of each Phase, the Master Developer shall model and monitor traffic to identify the expected traffic impacts of that Phase~~.~~ and to determine what improvements or strategies, if any, will be necessary to comply with the City's transportation concurrency requirements as defined in the City of Black Diamond's Comprehensive Plan (2009). The middle of a Phase is defined as the point at which occupancy has been granted for the mid-point ERUs[1] for the MPDs. The modeling shall take into account the number of new homes and commercial buildings that are actually occupied and generating traffic. In the event that one MPD is not proceeding, the modeling and monitoring need only be conducted for the active MPD. In the event that there are separately controlled Master Developers for each MPD, and both are proceeding, the Master Developers shall be required to coordinate to model and monitor traffic and submit a joint report. In the event that a subsequent Phase is submitted prior to full build-out of an existing Phase, the subsequent Phase shall establish as its baseline what is constructed and occupied as of the date of submittal of the report. The subsequent Phase shall also assume buildout of the remainder of the existing Phase as part of the modeling in addition to what is being submitted in the Implementing Project application.

When the City has completed its regional transportation model, all subsequent modeling and monitoring shall be done with that regional model.

[1] ERU means an Equivalent Residential Unit, which is intended to equate all land uses to equivalent single-family dwelling units in terms of trips generated. The ITE trip generation rates designate that a single-family dwelling unit generates one trip during the PM peak hour. Therefore, if, for example, the ITE trip generation rates applied to a commercial office building result in 60 PM peak hour trips, that building would be deemed to generate 60 ERUs.

B. Report Requirements

The results of the traffic modeling and monitoring shall be presented to the City in a written report. The traffic monitoring report shall be prepared by a registered professional engineer chosen by the Master Developer and licensed to practice in the State of Washington with experience in traffic engineering and transportation planning. The written report shall document the findings including an evaluation of the existing conditions~~, and~~ (including traffic counts), a forecast of future traffic volumes based on the next Phase's (or the remaining portion of the Phase's) projected level of development~~.~~, and identification of expected Implementing Projects' impacts. The report shall also evaluate the phase using the City's transportation concurrency requirements (as defined in the City of Black Diamond's Comprehensive Plan (2009)) so as to identify any improvements or strategies necessary to maintain the City's then-applicable, adopted level of service (LOS) standard on transportation facilities within the City of Black Diamond.

The existing conditions section of each traffic monitoring report shall include a summary of updated peak hour turning movement counts for intersections or two-direction roadway counts for roadway segments for all of the transportation mitigation projects included in the traffic monitoring plan (refer to Section C below). Existing level of service shall also be calculated for each transportation mitigation project included in the traffic monitoring plan. Traffic counts shall be conducted on representative weekdays (Tuesday, Wednesday, or Thursday during weeks not affected by holidays, bad weather such as snow, or other days with unusually high or low traffic volumes) and when school is in session. To enable comparisons back to prior monitoring reports, traffic counts shall be conducted during the same month to the extent feasible—alternatively, seasonal adjustment factors shall be applied to counts conducted during different months.

Evaluation of potential future traffic volumes from other Black Diamond development shall not be required because the City will independently require other projects to evaluate and mitigate their own impacts. However, infill traffic growth (exempt from SEPA) and background traffic growth from outside of Black Diamond (also exempt from SEPA) shall be included in modeling.

For intersection improvements, the report shall compare the results with the LOS threshold for each existing facility to determine whether and at what time any improvement to an existing facility is required.

The report shall also evaluate the extent to which MPD traffic would cause or contribute to any level of service failure on an existing facility in Black Diamond or need for access to or circulation within the MPD. The City, in its reasonable discretion, may use the report to determine whether to request that the Master Developer modify its proposed timing for construction of any new roadway alignments or intersection improvements described in MPD Condition of Approval No. 10 of the MPD Permit Approval.

As described in Development Agreement Section 11.4.A, all documents that result from the Traffic Monitoring Plan, including traffic monitoring reports, are required to be "submitted to the Designated Official for approval." The ~~City of Black Diamond~~ Designated Official, with assistance from such professional transportation engineering consultants selected by the Designated Official in his/her

reasonable discretion as provided in Exhibit "N", shall be responsible for reviewing and approving each traffic monitoring report submitted by the Master Developer pursuant to the requirements of this Traffic Monitoring Plan. Moreover, the City shall not approve an Implementing Project unless the most recent traffic monitoring report prepared by the Master Developer per this Exhibit ~~and approved by the City~~ demonstrates compliance with the City's transportation concurrency requirements (as defined in the City of Black Diamond's Comprehensive Plan (2009)).

C. Transportation Projects to be Monitored and Modeled

The following projects shall be monitored and/or included in the model of the Phase's future traffic impacts: all projects listed in Table 11-~~3~~5-1 of the Development Agreement, (and any modifications to that list following the periodic review process of Condition of Approval No. 17 of the MPD Permit Approval), together with existing facilities in the City of Black Diamond where the level of service impacts of the MPD may be addressed by construction of a new roadway alignment or intersection improvements inside Black Diamond as described in Condition of Approval No. 10 of the MPD Permit Approval. However, if the Master Developer has entered into a mitigation agreement with an outside jurisdiction that either sets the timing for payment towards or construction of the mitigation projects, or exempts that jurisdiction's projects from later monitoring, modeling or other review, that mitigation agreement is deemed to satisfy all mitigation and no further monitoring or modeling of facilities within that jurisdiction are required. In addition, any projects listed on Table 11-5-1 of the Development Agreement that are outside the City of Black Diamond are not subject to the transportation concurrency testing.

The monitoring plan and model need not analyze a specific improvement after that improvement has been constructed.

D. Triggers and Timing for Construction of Transportation Projects

For intersection improvements, the threshold trigger is when the intersection ~~level of service (~~LOS~~)~~ (as defined in the Highway Capacity Manual, TRB, 2000) for the entire PM peak hour would (1) no longer meet the City's then-applicable, adopted LOS standard ~~(as defined in the City of Black Diamond's Comprehensive Plan, 2009,~~ or other jurisdiction's standard applicable to the MPD Permit Approval~~)~~ or (2) in the event that the LOS is already below the applicable threshold, the trigger shall be when traffic volumes from the new MPD Phase begin to increase delay at the intersection causing an additional impact.

For new roadway improvements inside Black Diamond, the MPD Phasing Plan anticipates that the transportation mitigation projects will be constructed to service the new MPD development of each Phase, including for access to and circulation within the MPD. For purposes of the modeling and monitoring plan, the threshold trigger to construct the improvement is when MPD traffic would increase delay or impact LOS at any intersection on existing roadways to a point at which the new roadway would be warranted. This trigger does not supersede other City standard requirements such as providing two points of access or the obligations for constructing the Pipeline Road.

The Master Developer shall only be required to perform an improvement if the applicable threshold is triggered.

The specific construction timing shall be set in each report, based on the results of the required monitoring and modeling. For City of Black Diamond projects, by execution of the Development Agreement, the City commits to prompt permit review, such that the Master Developer's prompt construction of transportation improvements shall commence before the impacted street or intersection falls below the applicable level of service. For projects within Black Diamond that are also within the State right-of-way, the report shall set a deadline for commencement of only engineering and design of the improvement but not a deadline for commencement of construction. For projects outside the City of Black Diamond where additional permitting from another jurisdiction is required, the report shall set the time at which the Master Developer must commence the permitting and/or engineering and design process, but shall not set a deadline for commencement of construction. Within the City of Black Diamond, if additional public right-of-way should be needed for the design of a particular improvement, the Master Developer shall first demonstrate a good faith effort to acquire the right-of-way needed. If, after making an offer equal to the fair market value, the Master Developer is unable to purchase the needed right of way, the City shall be responsible for acquiring the needed right-of-way.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "V"

Exhibit U
Updated MPD Site Plan
(Added Pursuant to Examiner's Recommended Implementing Conditions.)

Copies of Exhibit "U" for both The Villages and Lawson Hills Development Agreements are ~~included herein~~ as provided in Exhibit C-7. Copies of the cover pages for both The Villages and Lawson Hills Development Agreements Exhibit "U" are provided herein. This new Exhibit "U" shall be added to the Table of Contents of each Development Agreement as well as incorporated into Section 15.7 as follows:

15.7 EXHIBITS

The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this ~~a~~Agreement. The exhibits are:

Exhibit "A" –	~~Project Boundaries and MPD Site Plan:~~ [Removed. Please see Exhibit "U"]
Exhibit "B" –	Legal Description and Parcel Map
Exhibit "C" –	MPD Permit Approval
Exhibit "D" –	Summary of Prior Agreements
Exhibit "E" –	City of Black Diamond Municipal Code
Exhibit "F" –	Traffic Monitoring Plan
Exhibit "G" –	Constraint Maps
Exhibit "H" –	MPD Project Specific Design Standards and Guidelines
Exhibit "I" –	High Density Residential Supplemental Design Standards and Guidelines
Exhibit "J" –	Construction Waste Management Plan
Exhibit "K" –	MPD Phasing Plan
Exhibit "L" –	Excerpts from Chapter 3 of MPD Permit Application
Exhibit "M" –	Mine Hazard Release Form
Exhibit "N" –	~~Villages~~ MPD Funding Agreement
Exhibit "O" –	Stormwater Monitoring
Exhibit "P" –	Green Valley Road Measures
Exhibit "Q" –	Maple Valley Transportation Mitigation Agreement
Exhibit "R" –	Covington Transportation Mitigation Agreement
Exhibit "S" –	Potential Expansion Areas
Exhibit "T" –	Impact Fees for Fire Protection Facilities dated 1-13-2011
Exhibit "U" –	Updated MPD Site Plan

...

IMPLEMENTING EXHIBITS
(Addition of new Exhibit "U" to The Villages and Lawson Hills Development Agreements ~~included herein~~provided in Exhibit C-7)

Exhibit U

~~Project Boundaries and MPD Site Plan~~
Updated MPD Site Plan
(added pursuant to Examiner's Recommended Implementing Conditions)

Exhibit U

~~Project Boundaries and MPD Site Plan~~
Updated MPD Site Plan
(Added pursuant to Examiner's Recommended Implementing Conditions)

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "W"

The Hearing Examiner's Recommended Implementing Condition did not require any changes. Other changes discussed by Council are included later in this document.

HEARING EXAMINER'S RECOMMENDED IMPLEMENTING CONDITION "X"

IMPLEMENTING EXHIBIT

(Excerpts of revised Exhibit "O" to The Villages and Lawson Hills Development Agreements as shown in underlined and ~~strike through~~ text included herein)

OTHER

Y(1)- On page 18 of his Recommendation, the Hearing Examiner stated that "DA 11.8 should be clarified that affordable housing requirements "shall" be adopted at some point in MPD review and that these requirements may include specified affordable housing measures to apply to implementation projects."

IMPLEMENTING LANGUAGE
(Revise Section 11.8 of The Villages and Lawson Hills Development Agreements as shown in underlined and ~~strike-through~~ text)

The Villages Development Agreement

11.8 HOUSING TYPES

Targets for housing types in each Phase of The Villages MPD are shown in Table 4-8-4. These are only targets not requirements. Pursuant to Condition of Approval No. 138 of the MPD Permit Approval, after each Phase of The Villages MPD is completed, the City shall prepare an analysis of affordable housing City-wide. For purposes of this Agreement, Dwelling Units shall be deemed "affordable housing" if the upper median income limits as determined by King County are satisfied. That analysis may be used to set specifications for affordable housing in any on-going or future Phase of The Villages MPD. Specifications for affordable housing needs within the MPD shall be determined as a result of the Phase-by-Phase analysis and ~~may~~ shall be applied to Implementing Projects prospectively.

Lawson Hills Development Agreement

11.8 HOUSING TYPES

Targets for housing types in each Phase of The Lawson Hills MPD are shown in Table 4-8-1. These are only targets, not requirements. Pursuant to Condition of Approval No. 142, after each Phase of The Lawson Hills MPD is completed, the City shall prepare an analysis of affordable housing City-wide. For purposes of this Agreement, Dwelling Units shall be deemed "affordable housing" if the upper median income limits as determined by King County are satisfied. That analysis may be used to set specifications for affordable housing in any on-going or future Phase of The Lawson Hills MPD. Specifications for affordable housing needs within the MPD shall be determined as a result of the Phase-by-Phase analysis and ~~may~~ shall be applied to Implementing Projects prospectively.

Y(2) – In his Recommendation on page 21, the Examiner recognizes that the revisions proposed by YarrowBay to Section 4.5 in Exhibit 139 resolve some of the concerns raised during public testimony. YarrowBay's modified language in Section 4.5, as drafted in Exhibit 139, is provided below.

IMPLEMENTING LANGUAGE
(Revise Section 4.5 of The Villages and Lawson Hills Development Agreements as shown in underlined and ~~strike-through~~ text)

When an Implementing Project application for a Development Parcel along the Project Site perimeter is submitted, and the abutting property outside the MPD to such Development Parcel is ~~already developed on that submittal date~~not owned by the

Master Developer, then the Development Parcel is subject to the section of the MPD Framework Design Standards and Guidelines entitled "Interface with Adjoining Development," which provides guidelines to ensure a transition between the Development within The Villages MPD that abuts Development outside the Project Site but within the City limits.

Y(3) – On page 90, the Hearing Examiner notes that "[w]hile the phasing plan appears to address utilities, transportation and parks, other required concurrency elements are missing (open space, trails and other recreational amenities) . . ." YarrowBay notes that these "missing" elements, however, are in fact addressed in Section 9 of each Development Agreement. Therefore, in order to address the Hearing Examiner's concern, YarrowBay drafted the following addition to Section 11.2 of both Development Agreements.

IMPLEMENTING LANGUAGE
(Revise Section 11.2 of The Villages and Lawson Hills Development Agreements as shown in underlined and ~~strike through~~ text)

The Villages Development Agreement

11.2 PHASING OF IMPROVEMENTS

Pursuant to Conditions of Approval Nos. 4, 63, and 163 of the MPD Permit Approval, this Section describes the phasing and timing of infrastructure within and outside of The Villages MPD. The phasing and timing of Open Space, trails, and other recreational amenities is addressed in Section 9 of this Agreement. However, as noted on p. 9-1 of the approved MPD Phasing Plan (Exhibit "K"):

. . .

Lawson Hills Development Agreement

11.2 PHASING OF IMPROVEMENTS

Pursuant to Conditions of Approval Nos. 4 and 162 of the MPD Permit Approval, this Section describes the phasing and timing of infrastructure within and outside of the Lawson Hills MPD. The phasing and timing of Open Space, trails, and other recreational amenities is addressed in Section 9 of this Agreement. However, as noted on p. 9-1 of the approved MPD Phasing Plan (Exhibit "K"):

. . .

Y(4) – At page 91 of his Recommendation, the Examiner recommended changes to the timing for Forest Practices.

IMPLEMENTING LANGUAGE
(Revise Section 13.2 of The Villages and Lawson Hills Development Agreements as shown in underlined and ~~strike through~~ text)

The Villages Development Agreement

13.2 FOREST PRACTICES
Pursuant to Conditions of Approval Nos. 87 and 121 of the MPD Permit Approval, clearing and tree removal will be necessary and may only be proposed after an application for an Implementing Project is proposed, and preferably after

Implementing Approval is issued, for a Development Parcel, or when grading is proposed on another Development Parcel in the vicinity of an Implementing Project to assure a balance of cut and fill for the proposed Implementing Project (as is required by Condition of Approval No. 110 in the MPD Permit Approval). The preference for clearing and tree removal to occur after Implementing Approval is intended to assure the minimum amount of time that a Development Parcel will be cleared prior to Implementing Project construction. However, clearing and tree removal is preferably conducted during certain times of the year (i.e., to avoid fire danger, clearing and tree removal is sometimes not desirable during hot summer months, and to avoid erosion, clearing and tree removal is not desirable during the rainiest months of the year). Accordingly, the timing for clearing and tree removal will be proposed by the Master Developer for review and approval by the Designated Official. In his or her review and approval, the Designated Official shall seek, to the extent reasonable and practical, to minimize the time period during which a Development Parcel remains cleared and undeveloped; however, such time limitations shall not be applicable in circumstances where the Master Developer logs a Development Parcel but does not clear and/or grade said parcel, due to the potential for tree removal combined with preservation of the existing vegetation to enhance wildlife foraging opportunities. All tree removal shall be done in accordance with BDMC 19.30 (Exhibit "E"). In some cases, tree removal necessitated by an Implementing Project or the need to balance cut and fill may have result in enough timber value to result in timber revenue, and in those cases a separate Forest Practices Act approval will be required. To the extent that a Development Parcel or portion thereof is logged for timber revenue, the time period for which the parcel may remain cleared and undeveloped shall be set by condition of the Implementing Project or of the Forest Practices Approval, whichever is more strict. Development Parcels being cleared or logged that are easily accessible to the public will be secured with fencing and signage.

Lawson Hills Development Agreement

13.2 FOREST PRACTICES

Pursuant to Conditions of Approval Nos. 88 and 124 of the MPD Permit Approval, clearing and tree removal will be necessary and may only be proposed after an application for an Implementing Project is proposed, and preferably after Implementing Approval is issued, for a Development Parcel, or when grading is proposed on another Development Parcel in the vicinity of an Implementing Project to assure a balance of cut and fill for the proposed Implementing Project. The preference for clearing and tree removal to occur after Implementing Approval is intended to assure the minimum amount of time that a Development Parcel will be cleared prior to Implementing Project construction. However, clearing and tree removal is preferably conducted during certain times of the year (i.e., to avoid fire danger, clearing and tree removal is sometimes not desirable during hot summer months, and to avoid erosion, clearing and tree removal is not desirable during the rainiest months of the year). Accordingly, the timing for clearing and tree removal will be proposed by the Master Developer for review and approval by the Designated Official. In his or her review and approval, the Designated Official shall seek, to the extent reasonable and practical, to minimize the time period during which a Development Parcel remains cleared and undeveloped; however, such time limitations shall not be applicable in circumstances where the Master Developer logs a Development Parcel but does not clear and/or grade said parcel, due to the potential

for tree removal combined with preservation of the existing vegetation to enhance wildlife foraging opportunities. All tree removal shall be done in accordance with BDMC 19.30 (Exhibit "E"). In some cases, tree removal necessitated by an Implementing Project or the need to balance cut and fill may result in enough timber value, and in those cases a separate Forest Practices Act approval will be required. To the extent that a Development Parcel or portion thereof is logged for timber revenue, the time period for which the parcel may remain cleared and undeveloped shall be set by condition of the Implementing Project or of the Forest Practices Approval, whichever is more strict. Development Parcels being cleared or logged that are easily accessible to the public will be secured with fencing and signage.

Y(5) – In Exhibit 139, the following revisions to Section 6.4.3 of The Villages Development Agreement (as show in the underlined text) were provided to further ensure that Pipeline Road will be constructed by the Master Developer before Level of Service on Roberts Drive is significantly adversely affected by MPD traffic (as shown in underlined and ~~strike through~~ text):

IMPLEMENTING LANGUAGE

The design of Pipeline Road is to extend from Parcel C at the intersection of the Community Connector and Lake Sawyer Rd SE, easterly towards SR-169, intersecting SR-169 in the vicinity of Black Diamond-Ravensdale Rd, or where the future improved intersection of SR-169 and Black Diamond-Ravensdale Road lies, as determined by the City. Pursuant to Condition of Approval No. 31 of the MPD Permit Approval, the preliminary design and alignment of the Pipeline Road shall be completed by the Master Developer and the right of way dedicated to the City prior to the City's approval of a building permit for the 1200th Dwelling Unit of The Villages MPD. The Pipeline Road shall be constructed by the Master Developer and open for traffic prior to the earlier of: (i) City's approval of a building permit for the 1746th Dwelling Unit of The Villages MPD; or (ii) when the Traffic Monitoring Plan (Exhibit "F") shows that construction is necessary to prevent a significantly adverse degradation of Level of Service on Roberts Drive. The Master Developer is required to monitor and, if triggered by the Traffic Monitoring Plan (Exhibit "F"), improve the following intersection improvements along Roberts Drive per Table 11-5-1: (i) Roberts Drive/Morgan Street; (ii) SR 169/Roberts Drive; and (iii) Lake Sawyer Road SE/Roberts Drive. For purposes of this Section 6.4.3, "significantly adverse degradation of Level of Service" shall mean that the Master Developer is unable to make further improvements to these three identified intersections to meet adopted LOS (as defined in the City of Black Diamond's Comprehensive Plan, 2009, or other jurisdiction's standard applicable to the MPD Permit Approval) without widening Roberts Drive to provide an additional eastbound travel lane and/or westbound travel lane.

Y(6) – As set forth in Exhibit 139, YarrowBay and City Staff agree to the following changes to Section 7.1.9 of both The Villages and Lawson Hills Development Agreements to correct certain scrivener's errors (as shown in underlined and ~~strike through~~ text).

IMPLEMENTING LANGUAGE

Pursuant to BDMC 13.04 and 13.20 (Exhibit "E"), the purpose of the City's water capital facilities charge and sewer connection and reserve capacity capital charges (the "Capital Facilities Charges") is to collect funds to assure new users pay an equitable share of the City's water and sewer facilities. The Master Developer, however, will not be using the City's existing system to serve the MPD's Implementing Projects, other than on a limited basis and will instead be constructing the water and sewer infrastructure necessary to serve the Project Site. Further, if the City were to assess Capital Facilities Charges against the Implementing Projects and then, as required by state law, provide a credit to the Master Developer for the cost of its facility infrastructure construction, the total amount of the credit due would exceed the total Capital Facilities Charges to be collected. Therefore, in consideration for the Master Developer's construction of the water and sewer infrastructure necessary to serve the Project Site, the City shall not collect Capital Facilities Charges for Implementing Project approvals sought for [The Lawson Hills MPD/The Villages MPD] provided the City Council adopts an ~~resolution~~ordinance exempting Implementing Projects from the City's Capital Facilities Charges, and the Master Developer shall not seek credit or reimbursement from the City under the Water Supply and Facilities Funding Agreement. If the City Council does not adopt such an ~~resolution~~ordinance, general facilities charges will be assessed against Implementing Projects of [The Lawson Hills MPD/The Villages MPD] and the Master Developer will receive a credit against such charges for the cost of its construction of facility infrastructure.

...

Y(7) – As set forth in Exhibit 139, YarrowBay and City Staff agree to the following clerical changes to Section 7.2.3 of both The Villages and Lawson Hills Development Agreements (as shown in underlined and ~~strike-through~~ text).

IMPLEMENTING LANGUAGE

Pursuant to Section 7.1.9 above and in recognition: (i) that [The Lawson Hills MPD's/The Villages MPD's] water system and the improvements to the City's water system necessary for Development have been or will be installed at the Master Developer's cost; ~~and~~ (ii) of the substantial investment in water infrastructure resulting from the WSFFA; and (iii) that the Master Developer shall not seek credit or reimbursement from the City under the Water Supply and Facilities Funding Agreement, Implementing Projects within [The Lawson Hills MPD/The Villages MPD] shall not be required to pay the City's general facilities charges, connection charges, or system development charges, including any amendments thereto except as provided for in Section 7.2.1.

Y(8) – As set forth in Exhibit 139, there is a scrivener's error in Section 10.3 of the Lawson Hills Development Agreement. YarrowBay and City Staff agree to the following revisions to the last sentence of this section (as shown in underlined text).

IMPLEMENTING LANGUAGE

...The appealing party shall exhaust its remedies as set forth herein prior to exercising its remedies as set forth in Subsection 15.13.

Y(9) – As set forth in Exhibit 139, there is a scrivener's error is Section 11.4(A) of the Lawson Hills Development Agreement. YarrowBay and City Staff agree that the following revisions be made to this subsection (as shown in underlined and ~~strike-through~~ text).

IMPLEMENTING LANGUAGE

Phasing. Off-Site Regional Facilities are Regional Facilities that are located outside the Project Site and the boundaries of The Villages MPD. Off-Site Regional Facilities necessary to serve the Lawson Hills MPD and The Villages are described in ~~Tables 11-3-1 through 11-3-4~~ Tables 11-4-1 through 11-4-4. Transportation improvements located in the Cities of Maple Valley and Covington, however, are not included in Table 11-5-1 and 11-5-2 because these improvements are addressed in the separate mitigation agreements attached as Exhibits "Q" and "R", respectively.

Y(10) – As set forth in Exhibit 139, to alleviate apparent concerns, YarrowBay and City Staff agree to the inclusion of additional language to the end of this Section 15.16 of both The Villages and Lawson Hills Development Agreements (as shown in underlined text).

IMPLEMENTING LANGUAGE
(Add as last sentence of Section 15.16 of both Development Agreements)

In no event, shall the Build-Out Period for all Development and construction exceed twenty (20) years.

Amendments to Exhibits

The Villages and Lawson Hills Development Agreements

15.7 EXHIBITS

The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this ~~a~~Agreement. The exhibits are:

Exhibit "A" – ~~Project Boundaries and MPD Site Plan~~ [Removed. Please see Exhibit "U".]

Exhibit "B" – Legal Description and Parcel Map

Exhibit "C" – MPD Permit Approval

Exhibit "D" – Summary of Prior Agreements

Exhibit "E" – City of Black Diamond Municipal Code

Exhibit "F" – Traffic Monitoring Plan

Exhibit "G" – Constraint Maps

Exhibit "H" – MPD Project Specific Design Standards and Guidelines

Exhibit "I" – High Density Residential Supplemental Design Standards and Guidelines

Exhibit "J" – Construction Waste Management Plan

Exhibit "K" – MPD Phasing Plan

Exhibit "L" – Excerpts from Chapter 3 of MPD Permit Application

Exhibit "M" – Mine Hazard Release Form

Exhibit "N" – ~~Villages~~ MPD Funding Agreement

Exhibit "O" – Stormwater Monitoring

Exhibit "P" – Green Valley Road Measures

Exhibit "Q" – Maple Valley Transportation Mitigation Agreement

Exhibit "R" – Covington Transportation Mitigation Agreement

Exhibit "S" – Potential Expansion Areas

Exhibit "T" – Impact Fees for Fire Protection Facilities dated 1-13-2011

Exhibit "U" – Updated MPD Site Plan

Amendments to the Exhibits shall be approved through the process (if any) set forth in that Exhibit or, if no process for amendment is set forth in the Exhibit, as a Minor Amendment pursuant to Section 10.4.2. Amendments to this Agreement to reflect changes to Exhibits H, J, K, M, N, Q and R shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2. Many of the Exhibits to this Agreement, as well as some of the figures contained in this Agreement's text are in color or include other features that provide clear illustration; however, this format is not yet acceptable by the King

County Recorder's Office for permanent recording. Accordingly, the parties agree that following mutual execution of this Agreement, any non-recordable format Figures and Exhibits will be replaced in the Agreement with a page stating: "Figure X-Y [Exhibit X] is kept on file with the City of Black Diamond and is available for public review at the Community Development Department during business hours."

Definitions for Single Family and Multi Family Dwelling Units

The Villages and Lawson Hills Development Agreements
14.0 DEFINITIONS

. . .

- **Multi-Family** – Any residential structure that contains 5 or more Dwelling Units. . . .
- **Single Family** – Any residential ~~building~~structure that contains four (4) or fewer ~~residences~~Dwelling Units.

. .

The Villages Development Agreement

4.2 TOTAL NUMBER OF DWELLING UNITS

As approved by Condition of Approval No. 128 of the MPD Permit Approval, the total number of Dwelling Units allowed on the Project Site is 4,800 Dwelling Units. The predominant housing type will be Single Family residential. Except as may be modified by Section 10.4.2 and pursuant to Condition of Approval No. 136 of the MPD Permit Approval, the Dwelling Unit mix is 3,600 Single Family units (MPD-L and MPD-M) consisting of Single Family detached, courtyard homes, Single Family attached buildings containing four (4) or fewer units, and Cottages; and 1,200 Multi-Family Units (MPD-M and MPD-H) consisting of townhomes and stacked flats. For purposes of determining the number of Single Family and Multi-Family Dwelling Units, a residential structure that contains four (4) Dwelling Units shall be counted as four (4) Single Family Dwelling Units; a residential structure that contains five (5) Dwelling Units shall be counted as five (5) Multi-Family Dwelling Units. Live/Work Unit locations are identified on the MPD Site Plan. The Project Site consists of 1,196 acres, of which at least 481.4 acres of Open Space shall be provided.

Lawson Hills Development Agreement

4.2 TOTAL NUMBER OF DWELLING UNITS

As approved by Condition of Approval No. 132 of the MPD Permit Approval, the total number of Dwelling Units allowed on the Project Site is 1,250 Dwelling Units. The predominant housing type is Single Family residential. Except as may be modified by Section 10.4.2 and pursuant to Condition of Approval No. 140 of the MPD Permit Approval, the Dwelling Unit mix is 930 Single Family Units (MPD-L and MPD-M) consisting of Single Family detached, courtyard homes, single family attached buildings containing four (4) or fewer units, and Cottages; and 320 Multi-Family Units (MPD-H and MPD-M) consisting of townhomes and stacked flats. For purposes of determining the number of Single Family and Multi-Family Dwelling Units, a residential structure that contains four (4) Dwelling Units shall be counted as four (4) Single Family Dwelling Units; a residential structure that contains five (5) Dwelling Units shall be counted as five (5) Multi-Family Dwelling Units. The Project Site consists of 371 acres, of which at least 153.3 acres of Open Space shall be provided.

Funding Agreement

Various revisions were made to Exhibit "N" that are provided herein in as excerpts.

City staff positions identified on Exhibit C or through the Annual Review, and will be solely responsible for all development permit and/or personnel decisions, including compensation amounts which shall be competitive with similar positions in the municipal community.

a. **Reduction of City Staffing Shortfalls**. If the most recent Fiscal Analysis (as defined below) or Annual Review (as defined below), whichever is more current, projects a fiscal benefit for the City, then the City and Developer shall promptly meet and negotiate in good faith to determine whether and when the salary and benefit costs of one or more City staff positions identified on Exhibit C should be funded by the City. If so, then the City shall identify the appropriate City staff position to be removed from the Developer's Total Funding Obligation under this Agreement whether or not the Wind-Down timing threshold associated with such City staff position (identified in Section 2(c)) has been triggered.

b. **Voluntary Agreement**. The parties acknowledge that the Developer's commitment to fund City Staffing Shortfalls is a voluntary agreement into which the Developer freely enters pursuant to state law.

c. **Wind-Down and Wind-Up**. In recognition that: a) the Villages MPD and Lawson Hills MPD build-out may fluctuate to follow market demands; and b) the voluntary nature of the Developer's City Staffing Shortfalls funding obligation, BD Village or BD Lawson may provide notice to the City of Wind-Downs and Wind-Ups of certain City staff positions outlined in Exhibit C.

   i. Wind-Down Notices shall be delivered to the City and shall state that BD Village and/or BD Lawson intends on a date certain to cease paying for certain City Staffing Shortfall positions. In order to be effective, a Wind-Down Notice must comply with the following provisions:

   ii. No Wind-Down Notice may be delivered to the City or otherwise be effective during the first twelve months following the Effective Date of this Agreement. Thereafter, the date certain required to be identified in a Wind-Down Notice may not be sooner than six months after delivery of the Wind-Down Notice to the City. No Wind-Down Notice may be based upon the substance of any prior development permit decision made by the Designated Official or MDRT member(s).

   iii. During months 13 through 18 following the Effective Date, only Support Staff positions identified on Exhibit C may be subject to a Wind-Down Notice from BD Village or BD Lawson.

   iv. During months 19 through 24 following the Effective Date, some or all Support Staff positions and/or Essential Staff positions identified on Exhibit C may be subject to a Wind-Down Notice from BD Village or BD Lawson. This notice

City's sole, reasonable discretion after consultation with the Developer; and (vi) additional City staff as identified by the Developer through the Annual Review described in Section 6, e.g. building official. The MDRT composition may be modified by mutual agreement of the parties. In recognition of the advantage of both parties of ensuring continuity through the review and processing of implementing development permits, the City may choose to offer multiyear employment contracts to some or all members of the MDRT; provided, however, that such contracts shall not increase Developer's Total Funding Obligation nor impair Developer's ability to exercise its rights pursuant to Section 2(c) ("Wind-Down and Wind-Up") as set forth herein.

i. For purposes of this Agreement, consultants include, but are not limited to, professional engineering firms, planning and transportation firms, fiscal or financial consultants, and the City Attorney (which, for purposes of this Agreement, includes any attorney or professional staff in the City Attorney's law firm) and other legal consultants when performing services related to The Villages MPD and Lawson Hills MPD.

b. **MDRT Costs**. The Developer shall fund one hundred percent (100%) of the costs of the MDRT by paying: (i) the salary and benefit costs of City Staff MDRT members identified in Section 3(a), less any amounts actually received by the City from others pursuant to Section 2; (ii) the actual amounts invoiced by consultants; and (iii) the FFE associated with such City Staff MDRT members (the "**MDRT Costs**"). MDRT Costs shall also initially include the purchase of three (3) vehicles exclusively for the MDRT – two (2) pool vehicles and one (1) inspection vehicle – the costs of which shall not exceed $125,000.00 in total. In determining such vehicle purchases, the City shall consider the purchase of hybrid or similar "green" vehicles. Thereafter, the MDRT's FFE shall include all costs associated with the ongoing expense and maintenance of these three (3) vehicles.

i. MDRT Cost Allocation. The City shall allocate MDRT Costs to BD Village and BD Lawson on a proportionate share basis based on time spent.

c. **Reduction or Elimination of MDRT Costs**. In recognition that the Villages MPD and Lawson Hills MPD build-out may fluctuate to follow market demands, the Parties acknowledge and agree that BD Village and/or BD Lawson may elect to reduce, or eliminate, MDRT staffing during the Annual Review described in Section 6. If, during Annual Review, BD Village and/or BD Lawson elect to cease paying all MDRT Costs for a given calendar year, the City's obligations under this Section 3 shall also cease for such calendar year.

d. City Fee Provision. In consideration for the Developer's funding of the MDRT and paying the MDRT Costs, the City shall not collect permit or administrative fees or deposits otherwise applicable to implementing project permits sought for the Villages MPD or the Lawson Hills MPD, except for fees or other charges as required by this Agreement; provided, however, that this subsection 3(d) shall be void and Developer

8. **Non-MPD Related Credit Procedure**. As part of the Quarterly Accounting, the City shall account for any non-Villages MPD and non-Lawson Hills MPD related permit revenue over five hundred dollars ($500.00) that was received by the City as a result of City staff positions listed on Exhibit C. The Quarterly Accounting shall show the City providing the Developer a credit towards the following month's Monthly Fixed Amount by that amount of non-Villages MPD and non-Lawson Hills MPD related permit revenue received by the City, provided City staff positions funded by this Agreement worked on that non-Villages MPD and non-Lawson Hills MPD permit.

9. **Building Permit Surcharge**. As anticipated in the Staff and Facilities Funding Agreement, but only to the extent permitted by law, a voluntary agreement under RCW 82.02.020 or other agreement between Developer and its purchasers in which said purchasers release and hold the City harmless from any claims related thereto, and only then if the City Council adopts a resolution, the City hereby agrees to apply a per dwelling unit or equivalent fee on each future building permit issued within the Villages MPD and the Lawson Hills MPD. This fee is intended to recapture the costs incurred by the Developer under the Staff and Facilities Funding Agreement (the "**Surcharge**"), and shall only be assessed on building permits for new construction within The Villages MPD or the Lawson Hills MPD. Remodels, tenant improvements, or reconstruction due to fire damage or other catastrophe shall not be assessed the Surcharge. This Surcharge shall also not apply to Public Uses as defined in The Villages Development Agreement or Lawson Hills Development Agreement.

   a. **Surcharge Calculation**. The Surcharge for the Villages MPD (the "**Village Surcharge**") shall be calculated based on the costs incurred by BD Village from execution date of the Staff and Facilities Funding Agreement to the execution date of The Villages Development Agreement divided by the number of dwelling units or an equivalent thereof. BD Village shall determine the unit number to be included within the calculation of the Village Surcharge prior to the City's issuance of the first building permit for the Villages MPD. As part of the Annual Review, BD Village may request to modify how the Village Surcharge is assessed, such as removing commercial development from the Village Surcharge. The Surcharge for the Lawson Hills MPD (the "**Lawson Surcharge**") shall be calculated based on the costs incurred by BD Lawson from execution date of the Staff and Facilities Funding Agreement to the execution date of the Lawson Hills Development Agreement divided by the number of dwelling units or an equivalent thereof. BD Lawson shall determine the unit number to be included within the calculation of the Lawson Surcharge prior to the City's issuance of the first building permit for the Lawson Hills MPD. As part of the Annual Review, BD Lawson may request to modify how the Lawson Surcharge is assessed, such as removing commercial development from the Lawson Surcharge

   b. **Surcharge Accounting**. Within sixty (60) days following execution of The Villages Development Agreement or the Lawson Hills Development Agreement, the City shall provide BD Village or BD Lawson, respectively, with an accounting of all costs incurred by such party under the Staff and Facilities Funding Agreement and the First Amendment. Within thirty (30) days of receipt of the City's accounting, BD Village or

written agreement. No amendment to this Agreement shall be effective until approved by the City Council by resolution.

14. Notices. Any notice or other communication to any party given under this Agreement will be effective only if in writing and delivered (1) personally, (2) by certified mail, return receipt requested and postage prepaid, (3) by facsimile transmission with written evidence confirming receipt, or (4) by overnight courier (such as UPS, FedEx, or Airborne Express) to the following addresses:

If to BD Village:

BD Village Partners, LP
10220 NE Points Drive, Suite 310
Kirkland, WA 98033
Attn: Brian Ross
Fax: 425-898-2139

With Copy to:

Cairncross & Hempelmann
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Attn: Nancy Rogers
Fax: 206-587-2308

If to BD Lawson:

BD Lawson Partners, LP
10220 NE Points Drive, Suite 310
Kirkland, WA 98033
Attn: Brian Ross
Fax: 425-898-2139

With Copy to:

Cairncross & Hempelmann
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Attn: Nancy Rogers
Fax: 206-587-2308

To the City:

City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Attn: Mayor
Fax: 360-886-2592

With Copy to:

Public Access to Parks

The Villages Development Agreement

9.9.3 Public Access

Pursuant to Condition of Approval No. 94 of the MPD Permit Approval, public access is authorized to all Parks and trails (whether public or private) unless otherwise determined by the Designated Official for reasons of public safety, welfare and convenience, or for maintenance reasons.

Lawson Hills Development Agreement

9.9.3 Public Access

Pursuant to Condition of Approval No. 92 of the MPD Permit Approval, public access is authorized to all Parks and trails (whether public or private) unless otherwise determined by the Designated Official for reasons of public safety, welfare and convenience, or for maintenance reasons.

Buffer Landscaping

The Villages Development Agreement
NEW SECTION 5.5.10

5.5.10 Buffer Landscaping
On the eastern boundary of The Villages MPD Development Parcel #V13, the Master Developer shall provide a 50-foot wide vegetative buffer as shown in Exhibit "U". The Master Developer shall leave existing vegetation within this 50-foot-wide buffer where reasonable and practical. Should the Master Developer remove existing vegetation within this 50-foot-wide buffer due to either the health of the vegetation or other reasons, landscaping consistent with BDMC 18.72.030 (Exhibit "E") shall then be required by the City.

Excerpt Pages With Redlines to Exhibit "O"

TRIAD ASSOCIATES

MEMORANDUM

Date:	September 19, 2011
To:	City of Black Diamond
From:	Alan D. Fure, PE
Re:	No Net Phosphorous Implementation Plan
Triad Job No.:	05-336
Copies To:	Yarrow Bay Holdings

Requirement: Minimize impacts to water quality in Lake Sawyer by assuring no net increase in phosphorous to Lake Sawyer occurs associated with The Villages and Lawson Hills MPD development within basins that drain to Lake Sawyer. No net increase can be accomplished by on-site or off-site source control or physical/chemical/biological interception (treatment and removal from water system).

Summary of Approach: Establish existing baseline phosphorous contributions from relevant project drainage basins[1] and from potential compensating projects located outside the developed MPD that currently contribute phosphorous to Lake Sawyer. Determine strategies for meeting the no net phosphorous goal ahead of project construction. Implement strategies and then monitor post implementation phosphorous levels to confirm compliance with the requirement. If onsite measures do not meet the requirement, implement compensatory project mitigation. Measure post implementation phosphorous reductions from compensatory projects to confirm the amount of offset.

Monitoring: Prior to construction of the first MPD Implementing Project, the Master Developer shall cause to occur three water quality samples in three separate months during the wet season at three locations within Rock Creek to be mutually agreed to by the City and Master Developer. The City and Master Developer agree that one location will be on the south side of the bridge on Roberts Drive where it crosses Rock Creek. This sampling data shall be provided to the City and be used to establish an interim baseline phosphorous load that will then be further refined by the Baseline Monitoring section below.

Baseline Monitoring: Prior to construction of the first implementing project within the Lake Sawyer drainage basin, the Master Developer, in conjunction with the City of Black Diamond shall review, plan and institute the following:

1. Monitor pre-development phosphorous levels at pre-determined locations within the project drainage basins. Monitoring is to occur consistently over the course of at least one water year

[1] The first areas of The Villages project planned to be developed are in drainage basins that do not drain to Lake Sawyer.

(October to September) in accordance with the procedures and criteria outlined in Chapters 6 through 12 of the QAPP (see Attachment 1). Use data collected over the water year to establish a baseline phosphorous load from the project. This load should be factored to an average year rainfall volume for future comparisons of phosphorous loads for years where the rainfall is more or less than the average.

2. Select one or two possible compensation projects. Offsite compensation projects will be on land not being actively developed for the MPD but that includes features that

   currently contribute phosphorus to Lake Sawyer that are amenable to reductions of phosphorus, such as roadway segments or intersections, pastures with farm animals, or existing developed property all lacking modern stormwater controls, or erosive slopes or streams. Monitor pre-mitigation phosphorous levels at pre-determined locations within the compensating project drainage basin. Monitoring is to occur consistently over the course of at least one water year (October to September) in accordance with the procedures and criteria outlined in Chapters 6 through 12 of the QAPP (see Attachment 1). Use data collected over the water year to establish a baseline phosphorous load from the compensating project. This load should be factored to an average year rainfall volume for future comparisons of phosphorous loads for years where the rainfall is more or less than the average.

Project Design Phase: In conjunction with City of Black Diamond review, prepare on-site drainage designs with phosphorous mitigation solutions which include the following:

1. Phosphorous control menu items from the 2005 DOE Manual (or later manuals if adopted and imposed for later Project phases).
2. Any additional AKART (all known and reasonable technologies) not identified in 1. above, that are in compliance with The Villages MPD Permit Approval Condition No. 76 or the Lawson Hills MPD Permit Approval Condition No. 79.
3. Drainage designs should include contingency planning for augmentation of treatment so that future interventions can be made if needed.

Project Construction Phase: Upon commencement of implementing project construction the following shall be instituted:

1. Monitoring shall be performed at all drainage facility outlet points to establish post-construction~~mitigation~~ phosphorous levels. This monitoring is to occur consistently over the course of the water year in accordance with the procedures and criteria outlined in the QAPP (see Attachment 1).
2. Regular comparisons shall be made to determine if stormwater management~~mitigation~~ strategies are achieving goals established in the design phase. If levels are exceeding goals, source control interventions shall be implemented within 30 days of obtaining a substandard sampling measurement~~immediately~~.
3. Upon completion of the water year compare actual loads to pre-development loads. If loads are exceeding pre-development loads, institute compensatory project(s) within 6 months (subject to City approvals). Mitigation projects can include on-site or off-site measures that reduce the Tp input to the Lake Sawyer Basin.

Project Build-Out Phase: Continue monitoring of drainage outlets for five years following the completion of development that discharges into that facility to confirm compliance with the no net phosphorous goal as per procedures noted above. Completion shall be defined as the date the City's maintenance bond, as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for a given facility. ~~following acceptance of each constructed facility to confirm compliance with the no net phosphorous goal as per procedures noted above.~~ If data show variations from the standard, institute source control or improved maintenance solutions. If these interventions are insufficient, institute alternate compensatory projects or mitigations.

sampling (at discrete sites) are presented in descriptive and map form (Figure 5.2-1). The proposed discrete sites for sampling will be field-verified prior to final location. Once selections are made for sites they will be monumented by using a GPS locational unit.

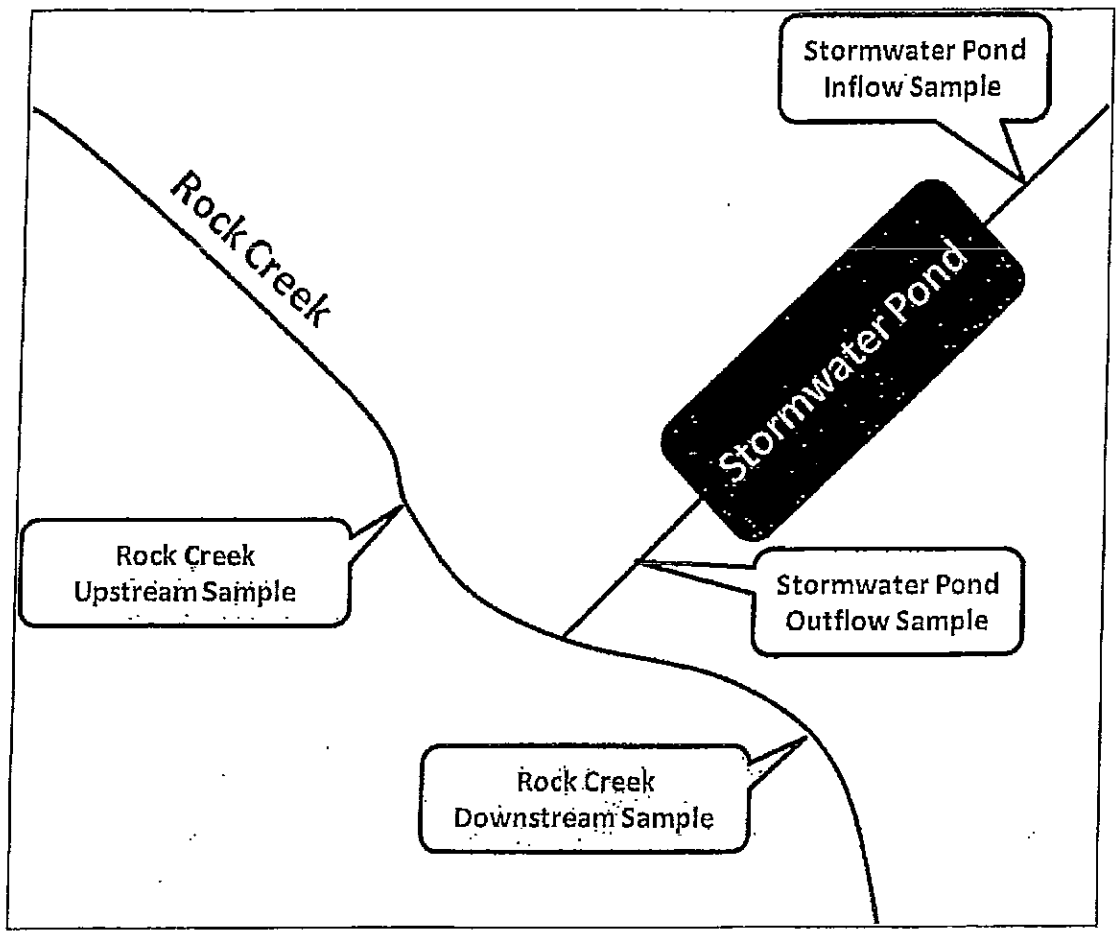


Figure 5.2-1. Proposed sample sites and locations for collection of surface water data.

Task 1. The Villages Stormwater Structure(s)

A. Frequency of Sample Collection:

Sample collection timing and frequency is determined by the occurrence of storm events. Ideally, monitoring will be completed at 6-8 storm events; each with varying intensities of rainfall and longevity of the storm event. Monitoring based on these 2 factors provides some level of detail in understanding optimum effectiveness of the BMP (stormwater structures) under varying storm conditions. The period of monitoring is established from October 1st through March 31st of each calendar year for five years following the completion of development that discharges into this stormwater structure. Completion shall be defined as the date the City's maintenance bond, as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for such facility.

Grab samples will be collected in order for sample integrity to be maintained and for making observations about environmental conditions when an investigator is present.

Task 1. Wet Pond #1

B. Frequency of Sample Collection:

Sample collection timing and frequency is determined by the occurrence of storm events. Ideally, monitoring will be completed at 6-8 storm events; each with varying intensities of rainfall and longevity of the storm event. Monitoring based on these 2 factors provides some level of detail in understanding optimum effectiveness of the BMP (Wet Pond) under varying storm conditions. The period of monitoring is established from October 1st through March 31st of each calendar year for five years following the completion of development that discharges into Wet Pond #1. Completion shall be defined as the date the City's maintenance bond, as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for such facility.

Grab samples will be collected in order for sample integrity to be maintained and for making observations about environmental conditions when an investigator is present. Information gathered about physical characteristics of the water, how water travels to and from the Wet Pond, and surrounding information that might explain why specific water quality problems might arise are reasons why being present and sampling affords a greater opportunity to construct information for the critical feedback loop.

Task 2. Lawson Creek

C. Upstream of Discharge

b. Surface Water Parameters (Continuous data)

The upstream site for monitoring surface water quality will serve as the control for determining if the Wet Pond discharge is a cause for increased downstream temperatures. The monitoring frequency is recommended at 15 minute intervals so that 7-day average of the daily maximum temperatures (7-DADMax) can be calculated from the continuous monitoring data. Additional monitoring effort will be conducted at both the upstream and downstream site; including continuous monitoring with a HydroLab® unit. Additional parameters that will be collected are:

- Water Temperature
- Dissolved Oxygen concentration
- Conductivity
- pH

These additional parameters are important for understanding how the receiving water assimilates effects from additional nutrient input. Conversely, the receiving water may, at times, have higher concentrations of nutrient input that uses up the assimilative capacity. By generating a greater amount of information about water quality characteristics, identification of nutrient sources will assist in making drainage-level management decisions to meet the goals of the TMDL Implementation Strategy.

D. Downstream of Discharge

a. Surface Water Parameters (Continuous data)

Comparison between upstream and downstream (of the Wet Pond outfall) water quality characteristics will evaluate the effect Wet Pond water has on receiving water. The upstream/downstream sample design with site located in close proximity to the outfall will isolate effects from the BMP output. Water quality parameter measurements will be sampled identical to those described for the upstream site above. In addition, flow

The Villages Development Agreement

13.10 New Transportation Demand Model

MPD Condition of Approval No. 11 requires the creation of a new transportation demand model. In addition to the intersections and arterials outlined in MPD Condition of Approval No. 11, this new model shall include the intersection of Kanaskat Drive and Black Diamond-Ravensdale Road.

Lawson Hills Development Agreement

13.10 New Transportation Demand Model

MPD Condition of Approval No. 10 requires the creation of a new transportation demand model. In addition to the intersections and arterials outlined in MPD Condition of Approval No. 10, this new model shall include the intersection of Kanaskat Drive and Black Diamond-Ravensdale Road.

EXHIBIT 2

FINDINGS OF FACT

1. The recitals contained in the body of the ordinance to which these Findings of Fact are attached are hereby adopted as findings of fact.

2. The Villages Master Planned Development Development Agreement was considered using a Type IV, quasi-judicial process as provided in Black Diamond Municipal Code ("BDMC") Section 18.08.030 and .070(C)(2). A record was compiled during an open record hearing before the Hearing Examiner, and that record along with the Hearing Examiner's recommendation was considered by the City Council as part of a closed record hearing. The record considered by the City Council consists of the following:

2.1 Exhibits and documents related to the Hearing Examiner proceeding, as follows:

2.1.1. Two hundred seventy-three (273) exhibits admitted into evidence by the Hearing Examiner. These exhibits are listed in Exhibit B to the Hearing Examiner's Recommendation;

2.1.2. Prehearing motions filed by parties of record to the Hearing Examiner proceeding;

2.1.3. E-mails from the Hearing Examiner to parties of record related to pre- and post-hearing procedures;

2.1.4. Prehearing Orders from the Hearing Examiner; and

2.1.5. Audio recordings of proceedings before the Hearing Examiner.

2.2. Resolution No. 11-766, including Exhibit A, as amended on October 4, 2011;

2.3. Audio recordings of the closed record before the City Council, on September 21, 26 and 29, and October 3-6, 8, 10, 24-28, 31, and November 1, 2011;

2.4. Written materials and objections submitted by the parties of record to the City Council during the City Council's closed record hearing; and

2.5. The catalog of changes to the Development Agreement that Council directed City staff to negotiate with the Applicant.

3. Proposal Description.

3.1. The proposal is The Villages Master Planned Development Development Agreement between the City of Black Diamond ("City") and BD Village Partners, LP ("Villages DA"). The Villages DA is a project permit and/or is related to the project permit approved in Ordinance No. 10-946 ("The Villages MPD Permit Ordinance") for The Villages Master Planned Development ("Villages MPD"). As set forth in The Villages DA, Section 2.1, the Villages DA "governs and vests the development, use, and mitigation for The Villages [MPD] . . . ."

3.2. The Villages DA implements the terms and conditions of The Villages MPD Permit Ordinance. BDMC Section 18.98.090 requires that a development agreement implementing a MPD shall incorporate a MPD Permit's conditions of approval, must be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. The Villages DA meets the requirements of BDMC Section 18.98.090. The Villages DA, Section 15.1, states that "This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City. All Development subject to the MPD Permit Approval shall be developed in conformance with the MPD Conditions of Approval as set forth in "Ex. C – Conditions of Approval"" to The Villages MPD Permit Ordinance. The Villages DA, Section 2.1, states that " Land within the boundaries of The Villages MPD shown on Exhibit "U", together with the associated off-site improvements, shall be physically developed only pursuant to the terms and conditions of this Agreement." In addition, the Development Agreement also contains all of the provisions specifically required by certain individual Villages MPR Permit Ordinance conditions; these are detailed in the Compliance Matrix that is Attachment 4 to the City's Staff Report (Exhibit 3).

3.3. The Villages DA also relates to other project permits, in the form of utility and/or construction permits that will be issued for physical development of The Villages street, utility, and other public infrastructure. The Villages DA also relates to project permits, in the form of construction permits and land use permits, that will be issued for the subdivisions single- and multi-family residential structures, and commercial development that are part of The Villages Master Planned Development ("Villages MPD"). The relationship between The Villages DA and these other project permits, defined in Section 14.0 of The Villages DA as "Implementing Projects,") is set forth in Sections 2.1 and 15.1, as described in Finding of Fact 3.2 above.

4. The Villages DA Land Use.

Because The Villages DA is implementing the Villages MPD Permit Ordinance, the land uses and structures whose use, development and mitigation is described and authorized in the Villages DA are the same as those described in the Villages MPD Permit Ordinance, including in Finding of Fact No. 2 to Ord. 10-946. That is, the proposal includes 1,196 acres, to be developed with the following uses: a maximum of 4,800 low, medium and high density dwelling units (not including the first 160 accessory dwelling units as permitted under the terms of Section 4.7.3 of the Development Agreement and Chapter 18.56 of the Black Diamond Municipal Code, but including up to 140 accessory units counted as 1/3 of a dwelling unit each); a maximum of 775,000 square feet of retail, offices, commercial and light industrial development; schools; and recreation and open space.

5. The Villages DA Project Area.

As with The Villages MPD Permit Ordinance, the project area for the Villages DA consists of two subareas, the Main Property and the North Property (also known as Parcel B). The "Main Property" is located primarily south of Auburn-Black Diamond Road at Lake Sawyer Road, extending approximately 2 miles south and eventually east to SR-169 along the southern city limits. A portion of the Main Property (a.k.a. Parcel C) is located on the north side of Auburn-Black Diamond Rd., west of Lake Sawyer Rd. The "North Property" (approx. 80 acres) is located to the west of SR 169, approximately two miles north of the Main Property and north of SE 312th Street (if extended). The North Property is south of and adjacent to the North Triangle property that is part of the proposed Lawson Hills MPD project. The Villages MPD project area is shown on the Site Plan contained in Exhibit U to the Villages DA.

6. The Villages Project Density.

Because the proposal authorized by the Villages DA is the same proposal authorized by the Villages MPD Permit Ordinance, the density authorized by the Villages DA is the same, urban density as that authorized by the MPD Permit Ordinance; *i.e.*, the Villages MPD will have an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133) and an average density of 8.71 units per net acre (4,800 units/551 acres with residential or mixed use designations = 8.711).

7. Challenges to MPD Project Density.

There is evidence in the record that some commenters opposed to the MPD projects sought to use proceedings related to the Development Agreement as a vehicle to challenge, for the second time, the density of The Villages MPD. (The density of The Villages MPD was challenged for the first time during proceedings related to the MPD Permit). Website pages (Exhibit 268) associated with The Diamond Coalition, a nonprofit organization that donated funds to groups and individuals for litigation against The Villages MPD Permit Ordinance and Ordinance No. 10-947 ("Lawson Hills MPD

Permit Ordinance") and for their participation in Development Agreement proceedings, stated that its "goal is to see a significant reduction in the MPD proposed density/scale from the proposed 6,050 new dwelling units to be more consistent with current King County Growth Management Act standards of 1,900 new households for the City of Black Diamond. More importantly, we envision using the Development Agreement as a tool that requires phased incremental growth balanced throughout the 20 year GMA guideline whose impacts can be measured to determine the prudent extent of any further build out." The website pages in Exhibit 268 also state "Copyright © 2010 Diamond Coalition All rights reserved." While one individual party of record who is also an officer of the Diamond Coalition denied that the Diamond Coalition has a goal of seeing a significant reduction in the MPD proposed density or scale (Exhibit 232), the written statements of other parties of record, for example, in Exhibits 40, 44, 98, 113, 118, 129, and 197 did state they were highly opposed to the MPD projects' density and/or did advocate reductions in project density and/or scale as mitigation for approval for The Villages DA.

8. Urban Density, Natural Setting and Small Town Character.

Several commenters asserted that the scale of development expected of The Villages MPD authorized by The Villages DA is inconsistent with the Comprehensive Plan goal of preserving the quality of the City's natural setting, its scenery and views (Exhibits 113, 209 and 269), and inconsistent with what they perceive as Black Diamond's "rural" character (Exhibits 12 and 48). Apart from the fact that The Villages DA is governed by the The Villages MPD Permit Ordinance conditions, rather than by the Comprehensive Plan, any goals concerning preservation of natural setting and/or small town character must be construed along with the City's obligation to grow at urban densities and, as the Hearing Examiner found at page 109, the extensive amount of open space and other design features of The Villages MPD preserves the natural setting and small town character of Black Diamond as much as can reasonably be expected within the context of the urban densities of The Villages MPD. As the Hearing Examiner found at page 110, Randall Arendt, the author of the book "Rural By Design" referenced in BDMC 18.98.010(L), testified that The Villages MPD meets the objectives of his book.

9. SEPA and Alleged MPD Project Environmental Impacts.

9.1. The environmental impacts of The Villages MPD project were analyzed in a detailed, Final Environmental Impact issued in December, 2009 ("FEIS"). The FEIS was adopted by the City's SEPA Responsible Official for use concerning The Villages DA, pursuant to a June 3, 2011 Determination of Significance and Adoption of Existing Environmental Document.

9.2. The FEIS was challenged in an administrative appeal and held to be legally adequate by the City's Hearing Examiner. As noted on page 9 of the Recommendation of the Hearing Examiner concerning The Villages DA, the FEIS "covers almost every conceivable environmental impact . . . ."

9.3. Nevertheless, many of the parties of record to The Villages DA proceedings asserted that approval of the Development Agreements would have significant, adverse environmental impacts, and requested that the City require mitigation for those impacts as a condition of approval of the Development Agreements. By way of example, such assertions and requests for additional mitigation are evident in Exhibits 113 and 224 (written statements of Peter Rimbos requesting revisions to new traffic demand model, analysis of peak hour factor, queuing, travel time, etc.); Exhibit 187 (written statement of Judith Carrier requesting additional analysis and mitigation measures to reduce traffic volumes on Green Valley Road and provide additional protections for bicyclists); and Exhibits 67, 68, and 198 (written statements of Jack Sperry requesting additional mitigation to prevent a potential increase in the level of Lake Sawyer).

9.4. Because the proposal at issue in The Villages DA is the same development proposal approved in The Villages MPD Permit, the environmental impacts of The Villages DA are the same as those of The Villages MPD Permit, except to the extent that additional impacts might possibly arise from the additional detail or specificity contained in The Villages DA, where such specificity is directed by the conditions contained in Exhibit C to The Villages MPD Permit Ordinance.

9.5. The claims of environmental impact concerning The Villages DA did not identify environmental impacts that were not previously raised during proceedings related to The Villages MPD Permit and associated FEIS and mitigated by the conditions of approval contained in Exhibit C to The Villages MPD Permit Ordinance. This is true for the claims of environmental impact in Exhibits 113, 224, 187, 67, 68, and 198 described above, as well as for claims of environmental impacts made during oral testimony and in other written statements presented both to the Hearing Examiner as well as to the City Council. In addition, as reflected in The Villages DA, Section 4.10, the DA does not preclude subsequent environmental review of Implementing Projects under SEPA, and Implementing Projects are expected to undergo additional SEPA review.

10. Level of Specificity.

Condition No 128 of The Villages MPD Permit Ordinance provides that "Approval of the design concept and land use plan (Chapter 3) shall be limited to the plan map (Figure 3-1). All other specifics shall be resolved through the Development Agreement process." The general level of detail in the land use and other provisions of the DA, including provisions that prescribe the future processes for review and approval of MPD Implementing Projects, is sufficient and appropriate for the iterative, phased project permit process (MPD Permit – Development Agreement – subdivision – utility, clearing and grading and building permits) required for Master Planned Developments by Chapter 18.98 and other chapters of the Black Diamond Municipal Code.

11. Stormwater Management.

11.1. *Location of Regional Stormwter Facility.* The Villages MPD proposes to locate a regional stormwater detention facility off-site, outside of the MPD boundary to the west, in unincorporated King County. This location was described in the FEIS (Ex. 3-25, page 3-53). As noted on pages 37-38 of the Hearing Examiner Recommendation, the FEIS (p. 3-59 and 4-41 to 4-43) concluded that the direct environmental effects resulting from construction and operation of stormwater infrastructure would be effectively managed and mitigated by the application of the current Stormwater Management Manual for Western Washington. Substantial evidence in Exhibits 209 and 212 demonstrates that this is the ideal location for such a facility due to topographic, geologic, geographic, hydrologic, and economic considerations. The Greater Maple Valley Four Creeks and Upper Bear Creek Unincorporated Area Councils ("UAC"), offered Exhibit 259 in rebuttal Exhibits 209 and 212. Exhibit 259 did not contradict the contentions of Exhibits 209 and 212, however; instead, Exhibit 259 argued that other factors should be considered, such as the potential for the large stormwater facility to induce additional growth in the unincorporated county. Neither Exhibit 259 or other similar arguments were supported by any specific evidence concerning how the regional stormwater facility's location would induce additional growth in the unincorporated area. For example, no properties were identified that are not currently developable but that would become developable, or that would become more easily developable, by virtue of the proposed facility's location in the unincorporated area.

11.2 *Potential Phosphorus Discharges to Lake Sawyer.*

11.2.1. The Villages DA, Section 7.4.3.A, requires the Master Developer to "minimize impacts to water quality in Lake Sawyer by assuring no net increase in phosphorus to Lake Sawyer associated with MPD development within basins that drain to Lake Sawyer. No net increase can be accomplished by on-site or off-site source or mechanical controls, control of phosphorus from off-site compensating projects, or other methods approved by the Designated Official." This provision exceeds the Total Maximum Daily Load ("TMDL") set by the Washington Department of Ecology and applicable via the Stormwater Management Manual adopted by the Black Diamond Municipal Code stormwater-related requirements of The Villages MPD Permit Ordinance.

11.2.2. The Villages DA requires monitoring of stormwater quality to ensure compliance with the "no net increase" standard contained in Section 7.4.3.A. That monitoring plan is set forth in Exhibit O to The Villages DA, and is known as "the Fure Monitoring Plan."

11.2.3. The Fure Monitoring Plan also requires that, "prior to construction of the first MPD Implementing Project, the Master Developer shall cause to occur three water quality samples in three separate months during the wet season at three locations within Rock Creek to be mutually agreed to by the City and Master Developer. The City and Master Developer agree that one location will be on the south side of the bridge on Roberts Drive where it crosses Rock Creek. This sampling data shall be provided to the City and be used to establish an interim baseline phosphorus load that will then be further refined by the Baseline Monitoring . . . ."

11.2.4. The Fure Monitoring Plan includes a requirement that the total phosphorus entering the stormwater system that drains to Lake Sawyer be monitored annually. If phosphorus levels exceed goals, the Master Developer must implement source control modifications within 30 days of obtaining a substandard sampling measurement. The Fure Monitoring Plan also requires that, upon completion of the water year, the Master Developer must compare actual loads to pre-development loads and, if phosphorus loads exceed pre-development loads, the Master Developer must institute compensatory project(s) within 6 months (subject to City approvals).

11.2.5. As amended following a request by the City Council, the Fure Monitoring Plan requires that monitoring of drainage outlets continue for five years following the completion of development that discharges into that facility, to confirm compliance with the no net increase of total phosphorus standard. Completion shall be defined as the date the City's maintenance bond, as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards in Exhibit E to The Villages DA, is released or expires for a given facility.

11.2.6. The provisions of the Fure Monitoring Plan, described in the above findings, address the vast majority of concerns stated by parties of record. To the extent that certain parties of record requested that monitoring extend beyond five years after full occupation of the MPD project, there is no technical or expert evidence demonstrating that this is necessary, as the Hearing Examiner's Recommendation found at page 40. As the Hearing Examiner further found at page 41, the expert testimony of Mr. Fure credibly addressed the inconsistencies asserted by Mr. Rothschilds and, in any event, any inconsistencies will become moot because the Fure Monitoring Plan requires the Applicant to off-set any phosphorus loading exceeding the TMDL for total phosphorus.

11.2.7. Mitigation required by The Villages MPD Permit Ordinance conditions of approval, including detailed information on monitoring and phosphorus controls mandated for future implementing projects, is

included in the body of The Villages DA (Sections 7.4.3 and 7.4.4) as well as in Exhibit O, at a sufficient level of detail for Development Agreement review and for review of potential project-level impacts.

11.3. *Other Water Quality Parameters.*

11.3.1 Several parties of record stated concerns with surface water quality, in addition to concerns about total phosphorus. Most of these were general in nature, with a few specific concerns. No new technical information or expert testimony was presented, however, that was not already presented or discussed during proceedings related to the FEIS appeal and/or the MPD Permit Ordinance. The FEIS concludes that the 2005 Stormwater Management Manual adopted by the Black Diamond Municipal Code is sufficient to address potential water quality impacts from development of The Villages MPD. As detailed in Finding of Fact No. 7 of The Villages MPD Permit Ordinance, The Villages MPD incorporates certain low-impact development principals which will prevent significant water quality impacts, specifically including those impacts generated by stormwater. And, both The Villages MPD Permit Ordinance and the Lawson Hills MPD Permit Ordinance (Ordinance No. 10-947) include conditions of approval providing for the protection and monitoring of water quality, and mitigation for water quality impacts; these include Conditions 60, 66-68, 70-71, 82, and 85 of The Villages MPD Permit Ordinance, and Conditions 62-66, 69-70, 73-74, and 84-86 of the Lawson Hill MPD Permit Ordinance.

11.3.2. Some parties of record stated concern with the length of time required for monitoring of potential water quality impacts. Exhibit O to The Villages DA also includes a monitoring plan for other water quality parameters (temperature, pH, turbidity, and dissolved oxygen) in addition to total phosphorus; this monitoring plan is referred to as the Kindig Monitoring Plan. The Kindig Monitoring Plan was also amended following a request by the City Council, to clarify that the monitoring called for by the Kindig Plan will continue for a sufficient length of time following actual construction, to ensure valid monitoring results. As amended, The Villages DA, Section 7.4.5, states that "The Master Developer shall monitor stormwater for the following parameters: Total Phosphorus (Tp), Temperature, pH, Turbidity, Conductivity, and Dissolved Oxygen (DO). Monitoring of a specific stormwater facility shall continue for five (5) years following the completion of development that discharges into that facility. Completion shall be defined as the date the City's maintenance bond (which follows the time period of the City's performance bond), as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for a given facility."

11.3.3. In light of the findings in 11.2.1 – 11.3.2, and the substantial mitigation provided by The Villages MPD Permit Ordinance and The Villages DA for potential surface water quality impacts, additional mitigation as part of The Villages Development Agreement is not warranted.

11.4. *Stormwater Quantity.*

11.4.1. Finding of Fact No. 8 of The Villages MPD Permit Ordinance clearly and unequivocally determined that The Villages and Lawson Hills MPDs would not create any flooding of Lake Sawyer.

11.4.2. A number of parties of record testified and/or provided written statements about their concerns for potential flooding of Lake Sawyer due to claimed increased runoff from the MPD project areas. These include Exhibits 67, 198, 215, 248, and 258, the verbal testimony of Mr. Jack Sperry, and unspecified, general concerns about flooding on Lake Sawyer in form letters sent by the Sierra Club on behalf of individual commenters (Exhibits 80, 82-86, 88-93, 100-106, 112, 114, 134 and 140). Mr. Sperry provided lengthy calculations of his own regarding the claimed potential rise in Lake Sawyer levels, and stated that existing flow constrictions downstream of the Lake's outlet weir prevent drainage of the Lake at times of high water.

11.4.3. In general, the evidence summarized in Finding No. 10.4.2 above did not contain any new allegations or information beyond that presented during the FEIS appeal and MPD Permit Ordinance proceedings. To the extent that Mr. Sperry's calculations and statements in Exhibits 67, 198, 225 and 248 contained new information not presented during the FEIS appeal and MPD Permit Ordinance proceedings, they were rebutted by expert testimony from the City's Dan Ervin (Exhibits 215 and 257) and the Applicant's Alan Fure (Exhibit 139, Att. 9 and Exhibit 245, Att. 2 (Third Declaration of Alan Fure)).

11.4.4. As explained in Exhibit 139, Att. 9, Exhibit 245 and Exhibit 215, the increase in Lake Sawyer levels during flood events is projected to be on the order of .06 of an inch per day, which is virtually imperceptible. This projection is based on calculations by the Applicant's Alan Fure outlined in Exhibit 139, Att. 9. Mr. Fure's calculations were recreated and closely matched by the City's engineering consultant, RH2 Engineering, Inc., as detailed in Exhibit 215. Exhibit 248 agrees that "runoff to Lake Sawyer from the MPDs should cause only a relatively small rise in water level based upon flow analysis of water over the weir and through outlet culverts . . . ."

11.4.5. By contrast, the calculations and assertions contained in Exhibits 67, 198 and 225 are generally incorrect, and lack scientific or engineering validity, for the reasons explained in Exhibits 215 and 257. The calculations outlined in Exhibits 67 and 198 were based on the assumption that there would be an additional 615 acre-feet of water due to the MPD developments. This is acknowledged on page 1 of Exhibit 248. While the 615 acre-feet total would be correct if one assumed that 100% of the total amount of surface water generated by the MPDs will wind up in the Lake either via direct flow or tributary streams, Mr. Fure's calculations indicated that a large portion of the MPD-generated surface water will be infiltrated as opposed to being sent directly to Lake Sawyer or a tributary. By not taking infiltration into account, the assumptions in Exhibits 67, 198 and 225 substantially overstated the volume of water potentially available to contribute to lake levels (615 acre-feet vs. 372 acre-feet).

11.4.6 The calculations in Exhibit 67, 198 and 225 also assume that the additional runoff from the MPDs will flow into Lake Sawyer and remain in the lake as if it is a bathtub plugged by a stopper. Table 1 of Exhibit 198 calculated the Equivalent Increase in Lake Sawyer Water Level in December as 3.5 inches and in January as 3.3 inches, for a total increase of 6.8 inches over these two months, allegedly attributable to the MPDs. These depths are based on the proportional distribution of the 615 acre-feet based on the timing of precipitation. The asserted depths are incorrect, however, because as long as the Lake's water level is above the crest of the weir, water will be leaving the lake – and reducing the Lake's level -- through surface water discharge to Covington Creek. The higher the lake level is, the higher the corresponding discharge rate to Covington Creek will be, which will prevent Lake levels from rising in the manner or to the extent predicted. Even assuming some constriction in downstream flows during storm events, water continues to flow out of the lake. This is provable because water levels in the lake and creek have been observed to recede rapidly at the conclusion of storm events. If there was no outflow at all, as contended, this would not occur. Outflow continues to occur even during high flows; it may simply appear to be moving more slowly from the surface.

11.4.7. Although Mr. Sperry expressed concern about Lake Sawyer functioning as a detention pond for the MPDs, the Lake already functions as a retention pond due to the presence of an artificially-constructed overflow weir. As explained in Exhibit 215 and described in the 2000 Lake Sawyer Management Plan, the Lake's overflow weir was installed as the result of a petition by lakefront property owners under RCW 90.24, that resulted in an order by the King County Superior Court in 1952 that set the overflow weir level at an elevation of 518.94 feet above mean sea level. The weir is owned and maintained by the two property owners

adjacent to either side of the weir. The overflow weir's purpose, as described in an inspection letter issued by the Washington Department of Ecology on July 28, 2011, is "for elevation control of Lake Sawyer," that "provides a recreational benefit, primarily for lake side residents and facilities," by keeping water levels higher during summer months. If the weir were not present, water levels in the lake would be lower to start with when fall rains typically begin (because more of the lake would empty in the absence of the weir), and outflow rates from the lake would be increased during winter months. The weir's existence makes Lake Sawyer already function as a detention facility, and is a necessary corollary to the summer recreation benefits obtained from the weir's limitation of lake outflow and ensuring summer lake levels high enough for boating, convenient dock access, and the like.

11.4.8. Options exist to lower lake levels, and can be pursued by both lakeshore residents and/or the City. As explained in Exhibit 215, lakeshore residents may petition the King County Superior Court to reopen the 1952 order and adjust the lake level. Under RCW 90.24.040, "the court shall have continuing jurisdiction after a petition is once granted and shall, upon subsequent petition filed and heard in accordance with the preceding sections, make such further findings and conclusions and enter such further orders as are necessary to accomplish fully the objectives sought in the initial petition. . . ." As part of such a petition, lakeshore residents could ask that the lake level be lowered to provide more potential storage during winter months. They could also request that a modern, more adjustable weir be installed, that could allow for preservation of certain lake levels during the winter, while lowering weir height to obtain greater lake outflow during winter months. Obtaining a revised lake level order from the Superior Court along with installation of an adjustable weir would allow lakeshore residents to better do what they are already doing.

11.4.9. A second option for lowering lake levels could be for the City to construct the project shown in the City's current Capital Improvement Program (CIP) calling for replacement of the culverts under 224th Avenue SE (Lake Sawyer Road) with a new, bottomless box culvert. To the extent that the existing culverts limit flows in Covington Creek downstream of the weir during winter storm events, replacement of the culverts would facilitate continued and increased lake outflow during those storms.

11.5. *Additional Stormwater Quality and/or Quantity Mitigation.* Some commenters expressed general concerns about stormwater quantity impacts to downstream properties, as outlined in Exhibits 44, 56, 124, and 135. Still other exhibits and testimony requested expanded and/or more stringent mitigation than required by MPD Permit Ordinance conditions of approval. These included Exhibits 3-13f, 3-13p, 313q, 113, 132, 253 and the verbal testimony of Mr. Dan Streiffert, Ms. Kristen Bryant, and Ms. Patricia Sumption. These exhibits and

testimony did not present any new information concerning alleged stormwater impacts beyond what was already considered during the FEIS appeal and MPD Permit Ordinance proceedings. The FEISes prepared for the two MPDs included discussion of impacts related to stormwater quality and quantity, and concluded that application of the 2005 Stormwater Manual and the use of Low Impact Development (LID) technology would be adequate to address any stormwater quantity impacts (Villages FEIS, pp. 3-59, 4-29; Lawson Hills FEIS, pp. 3-55, 4-38). Finding of Fact No. 7.M of The Villages MPD Permit Ordinance parallels this conclusion by finding that LID technology reduces stormwater impacts. And, the conditions of approval of both MPD Permit Ordinances included a substantial number of requirements to avoid or mitigate water quality and quantity impacts, both on the surface and below the ground, as well as general protective measures and adaptive management options in the event that environmental advantages are identified in the future. Given the absence of any new information concerning impacts, the extensive mitigation required by the 2005 Stormwater Management Manual and MPD Permit Ordinance conditions of approval, and the prior determinations of FEIS adequacy, additional or supplemental mitigation for stormwater quantity or quality impacts is not warranted.

12. Transportation.

12.1. *Summary of DA Transportation Provisions.* The Villages DA contains detailed provisions concerning transportation improvements, and mitigation of potential impacts of The Villages MPD. Section 11.5 of The Villages DA addresses the timing, construction and funding of a detailed list of regional transportation faculties, to implement Conditions of Approval Nos. 10, 18, and 34 of The Villages MPD Permit Ordinance. The Villages DA, Sections 11.5.C, 12.10 and 12.11, and Exhibits Q and R, require regional transportation improvements to be constructed within the Cities of Maple Valley and Covington, respectively, to mitigate potential traffic impacts in those cities arising from construction of The Villages DA.

12.2 *Summary of Transportation-Related Concerns.* Concerns over traffic impacts of the proposed MPDs consumed a significant portion of The Villages DA proceedings. As detailed on page 78 of the Hearing Examiner's recommendation, esp. n. 6, comments related to transportation were present in over a fifth of the total testimony to the Hearing Examiner. Major themes addressed the transportation demand model, the concept of concurrency with respect to the timing, effectiveness and funding of transportation mitigation strategies, and potential impacts to Green Valley Road. Minor themes included the impact of construction traffic, non-motorized uses, greenhouse gasses, and the use of transit and vehicle trip reduction schemes.

12.3. *No New Concerns.* Concerns were expressed about the timing of the creation, validation, calibration of the MPD transportation demand model, and about its underlying assumption. The concerns expressed were the same

concerns that were the subject of the FEIS appeal and MPD Permit Ordinances proceedings. The concerns expressed also sought to alter underlying assumptions of the demand model, and the conditions governing the timing of its creation, validation, calibration, and use, all of which were set by The Villages and Lawson Hills MPD Permit Ordinances' conditions of approval. No new information or evidence was presented concerning specific traffic impacts arising from The Villages DA, or from the use of the transportation demand model required by The Villages MPD Permit Ordinance, that was distinct from the traffic impacts alleged during the FEIS appeal and MPD Permit Ordinances proceedings. As the Hearing Examiner found on page 81, further modeling assumptions are unwarranted at this time. Notwithstanding this, the City Council did direct staff to negotiate, and the Applicant voluntarily agreed to include, a new Section 13.10 of The Villages DA clarifying that the transportation demand model will include the intersection of Kanaskat Drive and Black Diamond-Ravensdale Road, to address the concerns of some commenters.

12.4. *Expert Transportation Testimony.* To the extent that any new information or evidence alleging traffic impacts was submitted, it was rebutted by expert testimony from the City's expert, John Perlic of Parametrix (Exhibits 216 and 257) and the Applicant's Kevin Jones of Transpo Group (Exhibit 139, Att. 6 and Exhibit 245 (Yarrow Bay's Reply to Transportation-Related Response Testimony and Declaration of Kevin L. Jones in support of same)), the provisions of which are hereby adopted by reference as findings of fact.

12.5. *Concurrency.* A significant portion of the Hearing Examiner's Recommendation, at pages 81-85, addresses transportation concurrency. Although the Hearing Examiner indicated his belief that The Villages DA did not provide for transportation concurrency, the Hearing Examiner overlooked Condition No. 10 of The Villages MPD Permit Ordinance, which already required concurrency. Condition No. 10 mandates that the Applicant "Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion is (i) necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service deficiency as determined by the City's adopted level of service standard, or (ii) to provide access to or circulation within the project; (b) functionally equivalent to any said alignment or improvement; or (c) otherwise necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard, or to provide access to or circulation within the project, as determined by the City in its reasonable discretion based on the monitoring and modeling provided for in Conditions 25 and 20 . . . ." In addition to Condition 10 of The Villages MPD Permit Ordinance, the Traffic Monitoring Plan (Exhibit F to The Villages DA) has been amended in response to the Hearing Examiner's concurrency-related recommendations, to expressly

require transportation concurrency, and to require City approval of the traffic monitoring reports called for by the Traffic Monitoring Plan.

12.6. *South Connector Road.* A very small portion of the overall length of the South Connector Road passes through unincorporated King County, outside of The Villages' boundaries. The proposed alignment follows the alignment of a former logging road/trail, and utilizes an existing crossing of an environmentally sensitive area, thereby minimizing wetland impacts. Although some commenters (Exhibit 51 and testimony by King County's Matthew Nolan) alleged that the South Connector's passage through the unincorporated area could result in impacts to the rural area, but only in what Mr. Nolan referred to as "the technical, wonky sense." No evidence was provided documenting the likelihood or extent of alleged traffic impacts to the unincorporated area. Only a very small portion of the proposed South Connector roadway will pass through the unincorporated area. There are no driveways, roadways or other access provided from the South Connector into the unincorporated area. And, the South Connector's alignment does not affect the number of vehicle trips that would enter and exit The Villages project area from the South Connector / SR 169 intersection. Therefore, there will be no traffic impacts to the rural area, as documented in Exhibit 216, paras. 9-11. King County, not the City of Black Diamond, will have permitting authority over the portion of the South Connector proposed in the unincorporated area, and the UGA boundary may be revised to include that area, as King County's Mr. Nolan testified.

12.7. *Transit, Vehicle Trip Reduction and Reduction of Greenhouse Gasses.* Several commenters testified concerning their beliefs in the need to reduce the production of greenhouse gasses (Sierra Club and Tim Gould), and lessen the impact of general traffic through the use of vehicle trip reduction (Peter Rimbos), High Occupancy Vehicles (King County), and transit alternatives (Exhibit 87). The MPDs, as proposed, provide many vehicle trip reduction strategies in the forms of trails and in the mix of uses. And, conditions of approval in the MPD Permit Ordinances (Condition 12 of The Villages and Condition 13 of Lawson Hills) require the creation of a new transportation demand model with a mode split analysis that "reflects the transit service plans of Sound Transit, King County Metro and any other transit provider likely to provide service in the study area ... This analysis must be presented to the City, the applicable transit agencies, and the jurisdictions in which trips are likely to use park and ride, Sound Transit parking garages or other facilities." The Master Developer will have a financial incentive to maximize transit use, because the traffic demand model, after 850 units are permitted, will be calibrated to actual traffic counts, and if vehicle trip counts are reduced due to higher transit use, the Master Developer will incur fewer mitigation requirements which will lower its costs.

12.8. *Non-Motorized Users.* Five commenters expressed concern about provision of bicycle lanes on non-internal roads, and the general need for

consideration for non-motorized users (Ex. 13b, 39, 57, 117, and 130). The design of the internal portions of the MPD includes many provisions for non-motorized users. The Villages DA, Section 6.3, requires infrastructure for bicycles on the routes shown on Figure 6-3. The bicycle routes shown on Figure 6-3 include not just internal MPD streets, but the South Connector and a portion of Auburn-Black Diamond Road. With respect to project improvements outside of the MPD, the design of streets (with or without non-motorized improvements) will depend on the standards imposed by the applicable jurisdiction (namely the City of Black Diamond, the City of Maple Valley, the City of Covington, King County, and WSDOT). The Villages DA requires the Applicant to comply with the City's adopted codes and standards. Where the Applicant is required by the MPD Permit Ordinances and the DAs to construct transportation improvements, those improvements will be required to be constructed in accordance with applicable street standards. The City of Black Diamond has no jurisdiction to impose alternative standards, including standards requiring bicycle facilities, outside its municipal limits.

12.9. *Green Valley Road.* Some commenters (Mr. Matthew Nolan, and Ms. Judith Carrier) expressed concern about increased projected traffic levels on SE Green Valley Road.

12.9.1 Mr. Nolan called for additional mitigation, for example, in the form of quarterly traffic monitoring regardless of the level of permitting activity, and a prohibition on the recording of any new lots if traffic volume monitoring indicated that traffic on Green Valley Road had increased by more than 50%, until additional mitigation is identified to decrease traffic volumes along SE Green Valley Road below baseline traffic volumes. No additional traffic impact to Green Valley Road was identified to justify the additional mitigation request, beyond the potential traffic impacts identified during the FEIS Appeal and The Villages MPD Permit proceedings. In addition, the requested mitigation exceeds that required by The Villages MPD Permit Ordinance conditions of approval, and was not supported by reference to any generally accepted transportation engineering principle or the transportation impact analysis included in the FEIS. The requested additional mitigation is not warranted, for reasons explained in paras. 4-8 of Exhibit 216, which are hereby adopted and incorporated by reference as part of this Finding of Fact.

12.9.2. Ms. Carrier (in Exhibit 187) and Ms. Lisa Schmidt (in Exhibit 197) claim that the proposed Development Agreements do not comply with Condition No. 33(a) of The Villages MPD Permit ordinance. Condition 33(a) states that "The City shall commission a study, at the Applicant's expense, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic calming devices within the existing improved right-of-way. The study shall also

include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements, and with a proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review committee." As discussed in Exhibit 257, the required study was completed (Exhibit 30). It identified certain traffic calming measures as having the potential to decrease speeds, and thereby increase safety, along SE Green Valley Road. Exhibit 30's recommended measures are incorporated as Exhibit P to The Villages DA. Exhibits 187 and 197 did not dispute this; instead, they argued that the SE Green Valley Road Traffic Calming Strategies Report (Exhibit 30) does not "differentiate use by current residents and those of the MPD," (Exhibit 197 at page 9, Section 13.8), or "ensure safety and compatibility of the various uses of the road" (same) or include "analyses of any safety issues specific to GVR of the many referred to during previous hearings" such as bicycles. Ex. 187 at 2. These arguments were rebutted by expert testimony, in paras. 3-8 of Exhibit 257, which are adopted and incorporated as part of this Finding of Fact.

12.10 *Dump Truck Safety.* Ms. Vicki Harp expressed concern (Exhibit 3-13i) about the safety effects of dump trucks in the regional traffic stream. As the Hearing Examiner recognized on page 110, there is no evidence in the record that dump truck traffic will be a safety issue.

12.11. *Pipeline Road.* To address certain other comments, the City Council requested staff to negotiate clarification to The Villages DA Section 6.4.3, specifying when Pipeline Road must be designed and constructed. Section 6.4.3 clarifies that "The Master Developer is required to monitor and, if triggered by the Traffic Monitoring Plan (Exhibit "F"), improve the following intersections along Roberts Drive per Table 11-5-1: (i) Roberts Drive/Morgan Street; (ii) SR 169/Roberts Drive; and (iii) Lake Sawyer Road SE/Roberts Drive. For purposes of this Section 6.4.3, "significantly adverse degradation of Level of Service" shall mean that the Master Developer is unable to make further improvements to these three identified intersections to meet adopted LOS (as defined in the City of Black Diamond's Comprehensive Plan, 2009, or other jurisdiction's standard applicable to the MPD Permit Approval) without widening Roberts Drive to provide an additional eastbound travel lane and/or westbound travel lane."

13. Schools.

13.1. *Black Diamond Municipal Code MPD Provisions.* BDMC 18.98.080(A)(14) states that a MPD shall meet the intent of various criteria and objectives, including a requirement that "school sites shall be identified so that all

school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district's adopted standard." As this same code section states, "the requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference."

13.2. *The Villages MPD Permit Ordinance School-related Condition of Approval.* Condition No. 98 of The Villages MPD Permit Ordinance fulfills the requirement of BDMC 18.98.080(A)(14) by requiring that the Applicant address potential impacts to schools by one of two ways. First, the Applicant may "enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If approved, such agreement shall be incorporated into the Development Agreement by reference." This first option parallels the option expressly stated in BDMC 18.98.080(A)(14). The second option provided in Condition No. 98 of the Villages MPD Permit Ordinance states: "Alternatively, school mitigation may be addressed in the Development Agreement, using terms similar to those contained in Exhibit 6, or through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws)."

13.3. *The Villages DA School-Related Provision.*

13.3.1. Of the two options provided by Condition No. 98, the Applicant selected option 1. The Villages DA, Section 13.3, states that "Pursuant to Condition of Approval No. 98 of the MPD Permit Approval, school mitigation is accomplished through the Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727 ("School Agreement").

13.3.2. The School Agreement has substantially the same key terms as the agreement found in the MPD Permit Ordinance record as Exhibit 6, as provided by and consistent with Condition No. 98 of The Villages MPD Permit Ordinance; no commenters contended otherwise. The School Agreement was approved by the ESD and the Black Diamond City Council, also as provided by and consistent with Condition No. 98 of The Villages MPD Permit Ordinance. The School Agreement provides in Section 6, among other things, that the Applicant will convey to the ESD

certain identified school sites, at no cost to the District; further, conveyance of one of the school sites (Elementary School site C) must be accompanied by either performance of certain site work, or funding of the same (up to a maximum of $3,000,000.00). The School Agreement, Section 9, also provides that subject to credits for the value of the school sites land conveyed as required by Ch. 82.02 RCW, the Applicant will pay certain agreed amounts as school mitigation fees. School mitigation fees are to be a minimum of $4,670.00 per single-family dwelling unit and $1,501.00 per multi-family dwelling unit for the first five years, and a minimum of $7,783.00 per single-family dwelling unit and $2,502.00 per multi-family dwelling unit thereafter. Section 9 provides that such fees may be increased to correspond to the amount imposed by the City of Black Diamond as school impact fees, up to a maximum of $12,453.00 per single-family dwelling unit and $4,003.00 per multi-family dwelling unit. These amounts closely parallel those set forth in the ESD's Capital Facilities Plan fee calculation formula setting forth the pro rata share contribution needed on a per dwelling unit basis to mitigate impacts on school facilities. No evidence was submitted into the record challenging the calculation formula or the mitigation fee amounts set forth in the School Agreement. No evidence was submitted into the record demonstrating that the mitigation fee amounts in the School Agreement do not represent a proportionate share, per single-family or per multi-family dwelling unit, of the cost of mitigating the impact on school capacity from the additional students generated by those dwelling units.

13.3.3. Section 3.1 of the School Agreement provides that the Agreement constitutes "full, total, complete and sufficient mitigation of the impact of full build out of The Villages project on school facilities in the District," and Section 3.2.2 provides that in the event of any administrative appeal or lawsuit seeking additional mitigation, the ESD upon request "will present either oral or written testimony indicating that, in the District's perspective, the [School] Agreement provides for the mitigation of impacts to schools and that adequate provision has been made for schools and school grounds." Per Section 1.12, a material consideration of the Parties entering into the School Agreement "is to support and encourage the passage of school construction bonds in the near and long-term for the financing of schools in the City and on the Agreed School Sites."

13.3.4. There is no better or more comprehensive school mitigation in the state; ESD Board President Chris Van Hoof testified that he knows of no better agreement, and while citizens testified concerning school crowding and bond measure failures in other districts, none identified a any better school mitigation arrangement.

13.4. *School-related Concerns During the DA Hearing.*

13.4.1 *School capacity.* Several commenters, including Mr. Rich Ostrowski, Ms. Cindy Proctor, and Pat Pepper testified concerning their belief that the School Agreement does not adequately address impacts to school capacity or school construction. This testimony did not raise any impacts that were not raised and/or could not have been raised during the FEIS appeal or MPD Permit Ordinance proceedings, given that the School Agreement has substantially the same key terms as the school agreement admitted into the MPD Permit Ordinance record as Exhibit 6 which was a subject of both the FEIS appeal and The Villages MPD Permit Ordinance. In addition, some of the testimony contended that there would be overcrowding in ESD schools because anticipated student totals might necessitate the use of portables and busing. The ESD Capital Facilities Plan, an attachment to Exhibit 54, expressly anticipates new student growth from The Villages and Lawson Hills MPDs (page 1), sets a Level of Service ("LOS") that utilizes portables on an interim basis to provide capacity (pages 4, 6 and 8), and anticipates purchase of additional portables within the CFP's planning period (page 9). The ESD's impact fee calculations include costs for portables. Exhibit 54 - CFP at page 13.

13.4.2. *Potential School Bond Measures.* Other commenters testified concerning their belief that ESD bond measures needed to pay for new school construction were likely to fail, because bond measures had failed in other school districts, and because (the commenters claimed) property owners residing within the ESD but inside the corporate boundary of the City of Enumclaw were unlikely to vote for school bond measures to pay for schools located inside the ESD but within the corporate boundaries of the City of Black Diamond. This testimony assumed that the Applicant should be required to pay for school construction. As the Hearing Examiner found, however, BDMC Section BDMC 18.98.080(A)(14) requires only that the number and sizes of school sites shall be designed to accommodate the number of school children generated by an MPD project. No MPD regulation specifically requires the Applicant to address school construction in the MPD approval process, and Condition 98 of The Villages MPD Permit Ordinance concluded that the School Agreement provided adequate mitigation of potential impacts to school facilities. In addition, testimony concerning potential bond measure failure was speculative. First, as the Hearing Examiner found at page 92, as the MPDs develop the majority of the ESD population will become Black Diamond residents. Second, no evidence was presented documenting any connection between school bond approval rates in other communities, and school bond approval rates in the ESD. No evidence was presented documenting that voters residing within the ESD (as opposed to the voters in the districts described in attachments to Exhibit 54) would necessarily reject proposed bond measures for needed new

schools simply because they may reside within the district but in a different city. If that contention were true, no bond measure in a multi-city district could ever pass, because voters in the portion of the district not receiving new schools would (by the logic of the commenters) always reject funding for schools located in another city elsewhere in the district. Substantial evidence was not presented demonstrating any connection between ESD voter preferences and Enumclaw vs. Black Diamond municipal boundaries. Statements by the Hearing Examiner to the contrary, on pages 91 and 92 of the Recommendation, are not supported by substantial evidence are rejected, and are not incorporated into this Finding of Fact. Finally, testimony by Mr. Ostrowski concerning the amount of school construction that could be funded by impact fees paid by the Applicant did not address the amount of bonds that could be funded by the school mitigation fee income stream and/or or the amount of additional property tax revenue the District will receive from construction of new homes and businesses within The Villages project area. There was no evidence submitted challenging the adequacy of the calculation formula for the mitigation fees contained in the School Agreement.

13.4.3. *Location of Some School Sites in Unincorporated Area.* A number of commenters objected to Sections 6.4 and 6.6 of the School Agreement, which identifies three potential school sites in the unincorporated area outside of the Black Diamond Urban Growth Area. The School Agreement does not require that schools be located in the unincorporated area outside of the Black Diamond Urban Growth Area, however. The School Agreement provides two options for acquiring alternative school sites should the ESD be unable to acquire approval for schools located outside the UGA. One option (Section 6.6) involves relocating the fourth elementary school on an alternative elementary school site identified in the School Agreement; the second option (Sections 6.4 and 6.6.1(b)) authorizes the ESD to sell the school site and use the proceeds to purchase an alternative site, or to fund capacity improvements at existing school sites located within the MPD Service Area. While there were some comments to the effect that schools to serve students from an urban area such as the MPDs should not be located in the unincorporated area, there was no evidence in the record as to the likelihood, if any, that location of any schools in the unincorporated area would have the potential to induce urban growth in the rural area.

13.4.4. *Walkable Distance Standard.* The Villages MPD Permit Ordinance, Condition 98, requires all schools to be located "within the MPDs or within one mile of the MPDs" and, "to the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas." All of the school sites identified in the School Agreement are within the either The Villages or Lawson Hills MPD project areas or within one mile of the MPDs and, to the extent reasonable

and practical, identified elementary school sites are located within a half-mile walk of proposed MPD residential areas. One commenter, Ms. Cindy Proctor, testified that the proposed school locations fail to comply with BDMC 18.98.080(A)(14) because some identified school sites are not within what she viewed as a walkable distance; Ms. Proctor interpreted that provision as requiring all schools to be located within 0.5 miles from residential areas.

14. Fiscal Impacts.

14.1. *Villages MPD Permit Fiscal-Related Requirements.* The Villages MPD Permit Ordinance, Condition 156, calls for the preparation of fiscal analyses at stated intervals during MPD construction. Condition 156 accordingly requires the Villages DA to outline the terms and process for performing the fiscal analyses and evaluating fiscal impacts, and to include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.

14.2 *Villages DA Terms and Process For Performing Fiscal Analyses.* The Villages DA, Section 13.6, outlines the exact terms and process for performance of the fiscal analyses and evaluating fiscal impacts, as called for and consistent with Condition No. 156 of The Villages MPD Permit Ordinance. Section 13.6 was negotiated with the assistance of Mr. Randall Young of Henderson & Young, a nationally-recognized firm in the area of impact/mitigation fees and municipal fiscal issues. As explained in Mr. Young's declaration (Exhibit 217), the terms and process for performance of the fiscal analyses outlined in Section 13.6 do leave the City some flexibility to make future decisions about some technical details of the fiscal analyses, for good reason. There may be important changes in the best sources of information, and the best methods of analysis, between the time of execution of the Development Agreement and the time of preparation of fiscal analyses for future project phases. To ensure an accurate fiscal analysis, these changes need to be addressed at the time each fiscal analysis is prepared, rather than specified in full at the time of DA execution. The flexibility provided by Section 13.6's terms and process for fiscal analyses allows for the appropriate exercise of professional judgment by the City and its consultants, so as to ensure the most accurate fiscal analysis and thereby best protect the City. One commenter (Exhibit 62) testified that the flexibility provided in Section 13.6 prevents it from "outlin[ing] the exact terms and process" for preparation of the fiscal analyses, as required by Condition 156 of the Villages MPD Permit Ordinance. The concerns expressed in Exhibit 62 are not supported by expert experience, training or credentials, and were rebutted in detail by Mr. Randall Young in Exhibit 217. Because Mr. Young is a nationally-recognized expert, and Exhibit 62 is unaccompanied by evidence of expert experience, training or credentials, Mr. Young's rebuttal is more credible, and Exhibit 217 is therefore adopted and incorporated herein by reference as part of this Finding of Fact. In making this Finding, the Council was not influenced by,

and did not rely upon, oral comments made by Mr. Young in response to Council questions during the Council's closed record hearing.

14.3 *Villages DA Funding Agreement.* Section 13.6 of The Villages DA incorporates by reference a new Funding Agreement as Exhibit N, to replace the Black Diamond Staff and Facilities Funding Agreement, as required by and consistent with Condition No. 156 of The Villages MPD Permit Ordinance. Exhibit N reasonably assures that The Villages MPD will not impose a financial burden on Black Diamond residents, and complies Condition No. 156's requirement that the MPDs have "no adverse impact" requirement on the City, as determined after each phase of development and at full build-out. Among other things, Exhibit N provides for the City's use of outside expert consultants, including fiscal or financial consultants, as part of the Master Development Review Team, whose costs are to be paid by the Master Developer as provided in Exhibit N. This will enable the City to have outside, expert assistance, via Mr. Young or such other third party expert as the City may select, to assist in the City's review of the fiscal analyses called for by Condition 156 of The Villages MPD Permit Ordinance and Section 13.6 of The Villages DA.

14.4. *Funding Agreement-Related Comments.* Some commenters testified that The Villages DA Funding Agreement (Exhibit N to the DA) creates a conflict of interest by allowing the Applicant to fund City staff positions. The comments are contained in Exhibits 31, 37, 62, and 199. Conflict of interest, if any, would be minimal, because the Funding Agreement does not provide the Applicant with control over City personnel or their decisions. Section 2 of the Funding Agreement, as amended following direction by the City Council, contains the parties' acknowledgment that "the City will solely determine the method and manner of hiring and retaining the City staff positions identified on Exhibit C or through the Annual Review, and will be solely responsible for all development permit and/or personnel decisions, including compensation amounts which shall be competitive with similar positions in the municipal community." The only control over personnel the Funding Agreement leaves to the Applicant is to withdraw funding through a process that involves months of advance notice (See Sections 2(c) and 3(c)). In that event, should the Applicant withdraw funding but continue to submit a substantial amount of permit review work, the positions of the review personnel would continue to be funded by permit fees; this reduces the likelihood of any conflict of interest. To further reduce the conflict, the City Council requested and the Applicant agreed to an amendment to Section 2(c) of the Funding Agreement, which now provides that "[n]o Wind-Down Notice may be based upon the substance of any prior development permit decision made by the Designated Official or MDRT member(s)."

14.5. *Maintaining Level of Service for Police, Fire and Emergency Services.* Some commenters, including Ms. Alison Stern in Exhibit 81 and Mr. Michael Irrgang in Exhibit 121, questioned whether the City would be able to maintain its level of service for police and/or fire services as a result of MPD

development. The Villages DA addresses fire, police, emergency services and general governmental services in multiple ways: (a) Section 13.4 requires the Applicant to pay fire mitigation fees (or fire impact fees, if adopted by the City Council); (b) Section 13.4 requires the Applicant to construct or cause to be constructed a new satellite fire station, and to provide fire and/or emergency response apparatus necessary to equip the satellite station, subject to a credit against fire mitigation/impact fees as required by Ch. 82.02 RCW; (c) Section 13.9 requires the Applicant to pay general government facilities mitigation fees (to fund facilities including a police station); and (d) Section 13.6 provides assurance that YB will fund any city deficit created as a result of MPD-related fire, police, or emergency services staffing demands pursuant to the fiscal analysis and MPD Funding Agreement in DA 13.6 and DA Exhibit N.

15. Water Supply and Water Supply Facilities.

No State or local law, including MPD permitting standards, requires The Villages DA to certify adequate water supply. Nevertheless, for the reasons explained in Findings of Fact 14.2 – 14.9 below, The Villages DA demonstrates that there is an adequate water supply to serve The Villages MPD, and that water supply and related water facilities will be available to serve The Villages MPD Implementing Projects at the time they are approved and constructed.

15.1. *Water Supply.*

15.1.1. The City's Water System Plan, included as part of Exhibit E to the Villages DA, states at page 4-11 that The City of Black Diamond has sufficient water rights to serve the projected growth that the City of Black Diamond is anticipated to experience over the next twenty years, and that projected water needs over that twenty year period were analyzed in Chapter 3 of the Water System Plan. Chapter 3, at page 3-5, states that the City's water system demands were calculated based on 6,000 proposed new residential units as part of The Villages and Lawson Hills MPDs, and that the City has entered into agreements with major landholders that in essence reserve capacity for a total of 7,400 equivalent residential units (ERUs).

15.1.2. The Villages DA, Section 7.2.1, provides that "The Master Developer controls property with the rights to approximately 1,080,310 gallons of water per day ," and that "[t]his is determined through the "Three Party Agreement" between the Applicant and the same major landholders whose agreements with the City are referred to in the Water System Plan, page 3-5.

15.1.3. The Villages FEIS, p. 3-37, concluded that the City's current water entitlement (both springs and the Tacoma intertie) were more than adequate to serve The Villages and Lawson Hills MPDs.

15.2. *Water Supply Facilities.*

15.2.1. The Villages DA, Section 7.2.2.A provides that "[e]xcept as specified in the WSFFA, all water system facilities (on and off-site) required for service to The Villages MPD shall be designed and Constructed by the Master Developer . . . ."

15.2.2. The Villages DA, Section 11.3.A provides that "The capacity of the existing . . . water . . . systems serving a specific Implementing Project proposal must be evaluated during the development review process for that Implementing Project. Implementing Approvals are allowed up to the point of existing capacity. If, based on an Implementing Project specific evaluation, there are insufficient infrastructure facilities or capacity to serve some or all of the specific Implementing Project, infrastructure improvements necessary to provide adequate capacity shall be required as a condition of that project. Section 11.3.B goes on to provide that "the Master Developer shall design and Construct (or cause to be Constructed) the on-site Regional Facilities identified in. . .Table 11-3-4 . . .below," which includes on-site water Regional Facilities.

15.2.3. The Villages DA, Section 11.4.A provides that "Prior to the approval of the first Implementing Project in a defined Phase, a detailed table of the Regional Facilities supporting that Phase, similar to Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2, which shall include a "construction threshold," . . .shall be submitted to the Designated Official for approval. Occupancy of an Implementing Project that exceeds the construction threshold is allowed after the necessary Regional Facility has been permitted. This ensures that necessary off-site Regional Facilities are provided to serve Implementing Projects as they occur." Section 11.4.B provides that "the Master Developer shall design and Construct (or cause to be Constructed) the off-site Regional Facilities identified in. . .Table 11-4-2 . . . below," which includes off-site Water Regional Facilities.

15.2.4. The Villages DA, Section 11.7 provides that "The sequencing of Implementing Projects, Implementing Approvals, construction completeness and City acceptance of facilities shall be confirmed by the Designated Official, who shall make a finding within each staff report for proposed preliminary plats or binding site plans within The Villages MPD whether required infrastructure and amenities have been scheduled to meet the demands of the future occupants of that specific plat or binding site plan."

15.3. *Adequacy of Water Supply and Availability of Water Supply Facilities.* Collectively, the provisions of The Villages DA detailed in Findings of

Fact 15.1 – 15.2 above ensure that there is an adequate water supply to serve all of The Villages MPD, and that on and off-site water supply and related facilities and on- and off-site water Regional Facilities will be constructed and available to serve The Villages MPD Implementing Projects as they are constructed and occupied. Statements in the Hearing Examiner Recommendation, page 31, noting that The Villages FEIS and MPD Permit Ordinance did not include a determination that water will be available at the time project permit applications will be submitted for approval, did not take the DA provisions detailed in Findings of Fact 15.2.2 – 15.2.4 into account. Those statements by the Hearing Examiner are expressly rejected and not adopted as a finding of fact.

15.4. *Comments Concerning Water Supply.* Some commenters expressed concern (in Exhibits 117, 120, 138 and 197) that water supply is inadequate, and that certificates and/or other additional "proof" was required to demonstrate that water rights that will supply The Villages are valid and have been perfected. The comments misconstrue The Villages DA, Section 7.2.1's statement that "The Master Developer controls property with the rights to approximately 1,080,310 gallons of water per day." Section 7.2.1 refers not to "water rights" as that term is used in RCW Chapters 90.03 or 90.44, which involve issuance of a water right permit by the Department Ecology, a "perfection" process, followed ultimately by issuance of a water right certificate. Section 7.2.1 of The Villages DA refers instead to the Master Developer's contractual right to receive wholesale water, from the City of Black Diamond. That contractual right is not subject to the statutory requirements for validation and perfection applicable to water rights. The City's water right certificates and rights to receive wholesale water under an Intertie Agreement with the City of Tacoma, detailed in the Water System Plan contained in the DA, Exhibit E, are municipal water rights, have already been perfected and, as such, are statutorily protected from relinquishment and against the validation process pursuant to the 2003 Municipal Water Law's amendments to RCW 90.03.015 and .330.

15.5. *Satisfying Certificate of Availability Process.* The Villages DA, Section 7.2.1, states that "Any Implementing Project application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement." This provision is not intended to and does not waive or nullify any process calling for provision of a certificate of water availability but, instead, to recognize that such a process may be satisfied by reference to The Villages DA given that its more detailed provisions (documented in Findings 14.1 – 14.3 above) finding that there is adequate water supply and adequate assurances that on and off-site water supply and related facilities and on- and off-site water Regional Facilities will be constructed and available to serve The Villages MPD Implementing Projects as they are constructed and occupied.

15.5. *Entity Providing Water Service.* The Covington Water District expressed concern, in Exhibits 25 and 50, regarding which entity will provide

water service to 98 acres along the western boundary of The Villages site. The District's attorney, Mr. Eric Frimodt, testified that the Covington Water District is not opposed to the development, but was simply stating concern about water service issues. Mr. Frimodt further stated that the District is "supportive of additional language that city staff and applicant suggested in Exhibit. 6." This language which the District testified that it supports is now reflected in Sections 7.2 and 7.2.7 of The Villages DA.

16. Water Conservation.

Several commenters sought imposition of additional water conservation and/or mitigation requirements. These are outlined in Exhibits 3-13e, 52, and 117. During the hearing, the Applicant offered amendments to Section 7.2.6 of The Villages DA, and the Hearing Examiner Recommendation (page 32-34) recommended additional changes. Following City Council direction, staff negotiated additional changes to Villages DA addressing the Examiner's recommendation, and these changes are set forth in Section 7.2.5.

17. Potential Impact On Existing Water Systems.

17.1 *Individual water systems.* Several commenters (Exhibits 3-13h and 78, and verbal testimony by Mr. Max Beers and Mr. Gil Bortleson) expressed concern over perceived potential impacts to private water systems adjacent to the MPDs. Concerns centered on water quality impacts to those property owners whose water sources are located in the vicinity of the MPDs, and the alleged potential for stormwater impacts to those groundwater sources (runoff from construction) and long term water quality impacts related to infiltration of pollutants into the water sources. Potential impacts to springs, aquifers, and sources of water (wells) were analyzed and presented in Appendix D of the Villages EIS (pp. 7-8 through 7-12), which found that no measurable impact would occur to ground water resources and no additional mitigation was required. This conclusion was further documented in the body of the FEIS and in Finding of Fact No. 19 of The Villages MPD Permit Ordinance, which expressly stated that the MPD would avoid any risk of adverse impact to private wells and springs and therefore do not require this issue to be addressed in The Villages DA. Concerns expressed during DA-related proceedings for potential impacts to private water systems consisted of personal testimony by local residents and anecdotal evidence, and did not provide any new information not already considered by the City Council during the FEIS appeal and The Villages MPD Permit Ordinance proceedings. Conversely, the finding in the FEIS, and Finding No. 19 of The Villages MPD Permit Ordinance, that The Villages MPD project would have no significant impact to water systems, including private wells and springs, is based on technical reports and analysis provided during the preparation of the two EISes for the MPD permits, is therefore more credible, and is adopted and incorporated by reference in this Finding of Fact.

17.2 *Diamond Springs Water System.* In their comments on the MPDs (Exhibit 142 and verbal testimony of Ms. Angela Jennings), the Diamond Springs Water Association asserted that the Villages MPD would pose a potential hazard to their clean water supply and would impact their wellhead protection area. Based on testimony by Mr. Curtis Koger, a licensed professional geologist (Exhibit 211), and The Villages FEIS and supporting technical reports, no significant impact to the Diamond Spring Wellhead Protection Area is likely. Attached to Exhibit 211 is a report by Associated Earth Science, which stated that the Diamond Springs Water Association water sources were documented in the technical report attached to the EIS and that those sources are hydraulically separated from The Villages and the area of potential effects, thereby precluding any possible impacts to the Diamond Springs Water Association water sources. In addition, The Villages FEIS, Appendix D considered potential impacts to the wellhead protection areas (including the Diamond Springs wellhead protection area) as part of the analysis of impacts to all water sources. The FEIS, Appendix D and Finding No. 19 of The Villages MPD Permit Ordinance provide further support for the finding that there will not be significant adverse impacts to the Diamond Springs Water Association wells and/or wellhead areas.

18. Sanitary Sewer.

18.1. *DA Provisions For Sewer Service.*

18.1.1. The Villages DA, Section 7.3.1, states that it "provides sewer availability to service 4,800 Dwelling Units on The Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement." This is accomplished by multiple sections of The Villages DA, as detailed below.

18.1.2. The Villages DA, Section 7.3.2, states that "[a]ll sewer system facilities (on and off-site, except those existing or proposed facilities owned or maintained by King County) required to provide service to The Villages MPD shall be designed and Constructed by the Master Developer in accordance with the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and will become part of the City's system upon acceptance by the City."

18.1.3. The Villages DA, Section 11.3.A provides that "The capacity of the existing . . . sewer . . . systems serving a specific Implementing Project proposal must be evaluated during the development review process for that Implementing Project. Implementing Approvals are allowed up to the point of existing capacity. If, based on an Implementing Project specific evaluation, there are insufficient infrastructure facilities or capacity to serve some or all of the specific Implementing Project, infrastructure improvements necessary to provide adequate capacity shall

be required as a condition of that project. Section 11.3.B goes on to provide that "the Master Developer shall design and Construct (or cause to be Constructed) the on-site Regional Facilities identified in. . .Tables 11-3-2 and 11-3-3 . . . below," which include on-site wastewater Regional Facilities.

18.1.4. The Villages DA, Section 11.4.A provides that "Prior to the approval of the first Implementing Project in a defined Phase, a detailed table of the Regional Facilities supporting that Phase, similar to Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2 . . . shall be submitted to the Designated Official for approval. Occupancy of an Implementing Project that exceeds the construction threshold is allowed after the necessary Regional Facility has been permitted. This ensures that necessary off-site Regional Facilities are provided to serve Implementing Projects as they occur." Section 11.4.B provides that "the Master Developer shall design and Construct (or cause to be Constructed) the off-site Regional Facilities identified in. . .Table 11-4-1 . . . below," which includes the off-site Wastewater Regional Facility.

18.1.5. As outlined in testimony in Exhibit 215 by the City's engineering expert, Mr. Daniel Ervin of RH2 Engineering, Inc., the City is party to an agreement with King County requiring King County to accept sewage from Black Diamond and build facilities as necessary to accept the sewage. The details of design of that facility are not a prerequisite to approval of The Villages DA, but can be deferred to project implementation. Section 11.4.A ("construction of off-site Regional Facilities is tied to thresholds that trigger construction of the infrastructure facility as described in the following tables") and Table 11-4-1 indicate that if King County does not construct the off-site Wastewater Regional Facility in a timely manner and such facility is needed to serve Implementing Projects, the Master Developer must construct said off-site Regional Facility.

18.2. *Adequacy of Sewer Supply and Availability of Sewer Facilities.* Collectively, the provisions of The Villages DA detailed in Findings of Fact 18.1 above ensure that there is an adequate sewer capacity and sewer facilities to serve all of The Villages MPD, and that on and off-site sewer capacity and related facilities and on- and off-site wastewater Regional Facilities will be constructed and available to serve The Villages MPD Implementing Projects as they are constructed and occupied. Statements in the Hearing Examiner Recommendation, pages 36-37, noting that The Villages FEIS and MPD Permit Ordinance did not include a determination that sewer will be available at the time project Implementing Project permit applications will be submitted for approval, did not take the DA provisions detailed in Findings of Fact 18.1 into account. Those statements on page 36-37 by the Hearing Examiner are expressly rejected and not adopted as a finding of fact.

18.3. *Comments on Sewer Supply.* Several commenters questioned whether there is adequate sewer capacity to serve buildout of the MPDs. See exhibits 68, 108, 117, 120, 197, and 205. Aside from general statements that sewer is inadequate, the following comments were made:

18.3.1. Additional details as to the reliability and feasibility of the peak flow storage facility are required prior to approval of the DAs and there is no basis for DA 7.3.1, that sewer is available for the project (Ex. 68). Similarly, a commenter stated that permission from property owners whose property will be crossed by new sewer lines must be secured prior to approval of the DAs, namely the Palmer Coking Coal property (ex 117).

18.3.2. Certificates of sewer availability should be required of all future implementing projects prior to approval (Ex. 108, 197, and 205).

18.4. *Resolution of Comments.*

18.4.1 For the reasons explained in Exhibit 215 by the City's engineering expert Mr. Ervin, which are hereby adopted and incorporated by reference as part of this Finding of Fact, the details of design of that facility are not a prerequisite to approval of The Villages DA, but can be deferred to project implementation. With respect to any requirement that the Applicant or Master Developer obtain permission to construct the off-site sewer lines, such permission can be obtained and demonstrated at the time of project review. If any significant alterations to the proposed location of sewer lines would be necessary because necessary permissions are not acquired, that can be addressed in an MPD amendment. In making this Finding, the Council was not influenced by, and did not rely upon, oral comments made by Mr. Ervin in response to Council questions during the Council's closed record hearing.

18.4.2 The Villages DA, Section 7.3.1, states that "Any Implementing Project application process that calls for a certificate of sewer availability shall be satisfied by reference to this Agreement." This provision is not intended to and does not waive or nullify any process calling for provision of a certificate of sewer availability but, instead, to recognize that such a process may be satisfied by reference to The Villages DA given that its more detailed provisions (documented in Findings 17.1 above) finding that there will be adequate sewer capacity, and adequate assurances that on and off-site sewer facilities and on- and off-site wastewater Regional Facilities to provide it will be constructed and available to serve The Villages MPD Implementing Projects as they are constructed and occupied.

19. Sensitive Areas.

19.1. *Sensitive Areas Constraints Map.* The Sensitive Areas Constraints Map, Exhibit G to The Villages DA, depicts the following environmentally sensitive and other areas:

19.1.1 Wetlands (per Section 8.1 and 8.2.1);

19.1.2 Fish and Wildlife Conservation Areas (FWCAs) (per Section 8.1 and 8.2.2);

19.1.3 Mine hazard areas (per Section 8.1 and 8.2.3);

19.1.4 Seismic hazard areas (per Section 8.1 and 8.2.4);

19.1.5 Steep slopes, greater than 40% and 10 feet high or higher (per Sections 8.1 and 8.2.5); and

19.1.6 300-foot wide fish and wildlife corridor (per Section 8.1 and 8.2.6), extending from western edge of core-stream-wetland Black Diamond Lake complex to the western edge of The Villages MPD site.

19.2. *Information Not Fixed By Constraints Map.* Wetland categories, wetland buffer widths, FWCA classifications, and buffers for steep slope areas will be determined and approved by the City on an Implementing Project by Implementing Project basis, as set forth in Sections 8.2.1, 8.2.2 and 8.2.5 of The Villages DA. Per Section 8.2.1, wetland typing information shown on the Constraints Map is for planning purposes only and is not yet final.

19.3. *Siting of Roadways and Utilities.* Roadways and utilities have been sited and designed to use existing stream crossings and avoid wetlands to the maximum extent.

19.4. *Wetland Boundaries.* Wetland boundaries were delineated by Wetland Resources, Inc. (WRI), and then reviewed in the field by Scott Brainard of WRI and then subjected to peer review by the City's consultant, Parametrix. Mr. Brainard and Parametrix reviewed the individual wetland flags, data and wetland ratings forms. The wetland delineation was based on the Washington State Identification and Delineation Manual (1997) adopted by the Washington Department of Ecology ("DOE"), as prescribed by BDMC 19.10.210(A). This was the Delineation Manual in effect at the time the Applicant vested its applications for the MPD Permits and DAs. As explained in Exhibits 272 (Fourth Declaration of Brainard) and 139, Att. 1, the delineation is consistent with Figure 1-1 of the Best Available Science document adopted in the City's Sensitive Areas Ordinance. Given the review and confirmation by Parametrix, the only neutral

reviewer in the process, the wetland boundaries are deemed accurate and are hereby accepted.

19.5. *Comments on Wetland Boundaries.* One commenter, Dr. Sarah Cooke, offered the opinion that the wetland boundary delineation was inadequate, for several reasons, because:

19.5.1 The wetland boundary delineation was not been reviewed by the U.S. Army Corps of Engineers ("the Corps") and DOE;

19.5.2 WRI had allegedly used an outdated delineation manual, which "increases the chance that some of the wetland boundaries are incorrect . . . . "; and

19.5.3 Dr. Cooke interpreted certain written comments by Parametrix as an indication that some of the wetlands on The Villages site are part of a larger system, which she believed supported her conclusion that the wetland boundary delineation was inadequate.

19.6. *Resolution of Comments on Wetland Boundaries.*

19.6.1 The BDMC does not require wetland boundary review by either the Corps or DOE. The absence of review by those agencies is not evidence that the WRI wetland boundary delineation and confirmation thereof by Parametrix is either inaccurate or inadequate. If any proposed Implementing Project will result in wetland impacts, preconstruction notice to the Corps and DOE will be required, and this will result in boundary review by those agencies.

19.6.2 Use of the 1997 Manual did not affect the accuracy of the wetland boundary delineation. As detailed in Exhibit 272 (Fourth Decl. of Brainard, 8/23/2011 attached letter at 2), the substantive criteria for delineating wetlands remains the same; the intent of the new Manual adopted by DOE in 2011 was to bring the Manual "up to date with current knowledge and practice. . .and not to change the way wetlands are defined or identified." The DOE website, under Frequently Asked Questions, explains that "when used correctly, the two manuals should result in the same boundary." Further, in Exhibit 270, para. 7, Dr. Cooke testified only that use of the 1997 State Manual "increases the chance" of an inaccurate boundary; Dr. Cooke did not provide evidence of any specific instances where the wetland boundary delineated by WRI and confirmed by Parametric would be different due to application of the manual adopted in 2011 by DOE.

19.6.3. Field verified studies, detailed in Att. 1 to Exhibit 139, concluded that the on-site wetlands are isolated, and are not connected to a

larger, off-site wetlands," as Dr. Cooke hypothesized. Specifically, Wetland F and all wetlands to the west in the area designated as the Core are not associated with Black Diamond Lake or Black Diamond Creek. They are separated by approximately 100 feet of non-wetland area. Wetland F and all wetlands west of it are in a different sub basin than Black Diamond Lake and Black Diamond Creek, and the hydrology of Wetland F flows to the northwest, away from Black Diamond Lake and the Black Diamond Creek system.

19.7. *Resolution of Comments Regarding Wetland Buffer Widths, Steep Slope Buffers and Fish and Wildlife Habitat Conservation Area Classifications.* A number of comments addressed expressed concern about the functions and integrity of wetland and other buffers, and the propriety of fixing those buffers as part of the DA. See Exhibits 143 (Ms. Morgan), 150 (Dr. Cooke), 214 (Ms. Bryant), and the oral testimony of Dr. Cooke). These concerns were resolved by the City Council's direction, and staff-negotiated change to the DA to provide that wetland buffer widths, wetland categories (which affect buffer widths) FWCA classifications, and buffers for steep slope areas will be determined and approved by the City on an Implementing Project by Implementing Project basis, as set forth in Sections 8.2.1, 8.2.2 and 8.2.5 of The Villages DA and in Finding of Fact 19.2 above.

19.8. *Resolution of Comments Seeking Mitigation For Potential Sensitive Areas Impacts In Addition to That Provided by The Villages MPD Permit Ordinance Conditions.* A number of commenters requested additional requirements and/or mitigation for perceived erosion and/or landslide effects of the projects. See Exhibits 56, 57, 117, 132, 139, 150, 205, 210, 250, and 254. With the exception of Exhibit 150, With the exception of Ex. 150, the concerns expressed by the commenters are personal opinions and do not provide any new information that has not already been considered in the MPD Permit Ordinances and FEIS appeal proceedings. Some of the claimed deficiencies cited by commentators are not specific to any unique attributes of the MPDs to be authorized by the DA, but address the adequacy of the City's standards in general. For example, Ex. 150 argument is based on the idea that the FEIS and the MPD Permit Ordinance Conditions are inadequate to address wetland impacts, including those from erosion and siltation, but the adequacy of the FEIS and the underlying MPD Permit Ordinance Conditions are not at issue and cannot be challenged in this proceeding. Also, the MPD Permit Ordinance Conditions require compliance with the City's sensitive areas ordinance, codified in BDMC Ch. 19.10, so complaints about the MPD Permit Conditions with respect to sensitive areas are equivalent to a complaint about the adequacy of the sensitive areas ordinance.

19.9. *Wet Season Definition.* Ms. Erika Morgan states in Ex. 143 that the term "wet season" is too vague as it regards grading restrictions, and that a fixed date for such a season ignores differences in ground conditions in any given

year. The term "wet season" appears in The Villages MPD Permit Ordinance Condition 104, which also specifically references City's Engineering Design and Construction Standards Section 2.2.05. That section states that work between October 1 and March 31 requires a winterization plan approved by the City Engineer, and that the City Engineer cannot approve work in those dates where erosion risks are "significant." These provisions adequately address the concerns stated in Exhibit 143.

19.10. *MPD-Wide Consideration of Impacts.* Ms. Llyn Doremus, licensed hydrogeologist, states in Exhibits 144 and 254 that consideration of stormwater mitigation at the implementing project stage is inappropriate given the scale of the MPDs and the fact that The Villages FEIS was "general" in nature and did not include adequate specificity of analysis. She goes on to say that the DA's general statements of guidelines and goals is inadequate and that specific calculation of and mitigation for stormwater effects should be included in the DAs. Stormwater impacts, including erosion, were addressed in The Villages FEIS, at pages 3-58 - 3-60, and 4-10. Finding of Fact No. 7.J in The Villages MPD Permit Ordinance found that the MPDs would comply with the DOE Stormwater Manual as required by the BDMC, and Finding of Fact Nos. 13 and 14 found that the SAO would address any impacts to wetlands or stormwater effects which could cause erosion and landslide. The findings are not in dispute, nor did Ms. Doremus provide any new technical information that would indicate that stormwater impacts that were previously unaddressed would occur.

20. Mine Hazards.

The Villages MPD does not include any severe or other classified mine hazard areas. All areas identified for potential school construction within The Villages MPD project site are well outside any identified mine hazard areas.

21. Open Space.

21.1 *Amount of Open Space.*

21.1.1. As set forth in The Villages DA at Section 9.1, pursuant to BDMC 18.98.140 (Exhibit "E") and the MPD Permit Approval, the Villages MPD is required to provide at least 484 acres of open space, as shown by the calculations set forth in Table 9-1 (Open Space Calculations). Per Villages MPD Permit Ordinance Conclusions 57 and 58, this is the amount of open space required by BDMC Section 18.98.140(F).

21.1.2. In total, The Villages MPD will ultimately include 505 acres of on-site open space (42% of the Villages MPD site), (43 acres of parks + 34 acres of other critical areas and open space + 251 acres of buffers + 177 acres of wetlands = 505 acres), subject to potential parcel

boundary adjustments described in Finding of Fact 21.2 below. Taken together with all on- or off-site open space that has already been dedicated or will be dedicated associated with The Villages and Lawson Hills MPDs 1,895.3 acres, or 67% of all MPD-related land, is being retained as open space.

21.2 *Changes to Open Space Areas.* Per the Hearing Examiner's recommendation on page 67, The Villages DA Section 4.4.6 has been amended to provide that MPD Site Plan amendments to Open Space areas as shown on Exhibit "U" shall be allowed with a Minor Amendment to the MPD Permit Approval provided all of the criteria outlined in BDMC 18.98.100(A)-(H) for a minor amendment are met. As the Examiner found on pages 20 and 67, this change ensures that there will not be any significant impacts resulting from a change to an open space boundary, because the requirements in BDMC 19.98.100(E) include the requirement that a minor amendment not increase any adverse environmental impacts.

21.3 *Construction and Bonding of Parks.* The Villages DA, Section 9.2, provides that "parks within each phase . . . shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the Phase, whichever occurs first, to the extent necessary to meet level of service standards for the Implementing Approval or Project . . . .Parks must be completed when the Certificates of Occupancy or final inspection has been issued for 60% of the dwelling units located within ¼ mile of a given park in any Phase." These provisions are more restrictive than The Villages MPD Permit Ordinance Conditions 95 and 96. Per Section 9.5.1, "All Dwelling Units shall have access to and be located within ¼ mile walking distance of a Park."

21.4 *Recreational Facilities Levels of Service.* Table 9-5 contains a list of recreational facilities that, pursuant to Section 9.5.4 of The Villages DA, must be constructed by the Master Developer. Table 9-5 also contains levels of service that trigger their construction. As described in Section 9.5.4, "Pursuant to Conditions of Approval Nos. 89 and 92, of the MPD Permit Approval, the Master Developer's obligation to provide the Recreational Facilities outlined in Table 9-5 is based on the Level of Service standards set forth in the City's Park and Open Space Plan dated December 18, 2008 (Exhibit "E"). To determine the number of Recreational Facilities required, the number of housing units was multiplied by the following population generation rates: 2.7 persons per Single Family Dwelling Units and 1.85 persons for Multi-Family Dwelling Units." As the Hearing Examiner found on page 20, the level of detail provided by Table 9.5 provides a sufficient level of detail to ensure that The Villages MPD will provide parks that satisfy the City's level of service standards, notwithstanding the fact that Section 9.2 provides only an approximate locations for parks. The location of recreational facilities is governed by Section 9.5.2 of The Villages DA, and the locations authorized by Section 9.5.2 include, but are not limited to, "within off-site Regional Parks (subject to City agreement) or another mutually acceptable off-site

location. Contrary to the contention of some parties of record (expressed in Exhibit 73), Section 9.5.2 does not permit the Applicant to receive a credit against open space requirements if it constructs recreational facilities in Lake Sawyer Regional Perk; instead, Section 9.5.2 only allows the Applicant to construct certain recreational facilities in off-site locations, with the City agreement, and those facilities would count toward the Master Developer's recreational facilities (not open space) obligations set forth in Table 9-5. Section 9.5.1's requirement that all dwelling units have access to and be located within ¼ mile of a park will effectively limit the number of off-site facilities that could be constructed.

21.5. *Fees In-Lieu of Park or Recreational Facility Construction.* The Villages MPD Permit Ordinance Condition 94 provides that "details regarding the timing and construction and optional off-site construction or payment of fee in-lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement." Section 9.5.3 of The Villages DA contains the details for in-lieu payments required by these two conditions. Villages Permit Ordinance Condition 94 does not require that the DA establish a lump-sum limit on in-lieu payments; this discretion is left to the City. Section 9.5.3 of The Villages DA also contains sufficient protections against inflationary increases in the cost of recreational facility construction, by utilizing a bid process that provides a sound means of ensuring that lump sum payments will be adequate to pay for park facilities. Section 9.5.3 provides that the lump sum amount will correspond to the bid amount accepted by the City. The lump sum will be deposited by the Master Developer following execution of a contract for design and construction of the recreational facility, which means that construction costs will be locked at that point. There are no deficiencies in this process.

21.6. *Trails.* BDMC 18.98.150(B) states that "[t]he MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance." Sizes of the recreational facilities and trails are defined in the City's Parks, Recreation and Open Space Plan contained in Exhibit E of the Development Agreements. The Villages DA, Section 9.5, provides that "All Implementing Projects must comply with the City's Parks, Recreation and Open Space Plan . . .(Exhibit E) as well as the standards and guidelines imposed in this Agreement." Where the MPD recreation facilities listed in Table 9-5 provide amenities in addition to those set out in the Parks, Recreation, and Open Space Plan, additional definitions are found in The Villages DA, Section 14.0 (Definitions). Provisions for sizes of trails and ownership and maintenance are described in Sections 9.7 and 9.9, respectively, consistent with the requirements of BDMC 18.98.150(B). Section 9.9 also incorporates language to address the Hearing Examiner's recommendation, on page 75, stating "To assure that the sensitive areas and buffers are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a sensitive area buffer shall include that entire

sensitive area and buffer within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval."

22. Phasing of Improvements.

Some commenters (*e.g.*, M. Bertsch in Exhibit 3-13o) commented in opposition to allowing the Applicant full approval of all its construction without the opportunity to see what it does with a smaller amount of the housing and surrounding impact to the community. Mr. Bertsch recommended that smaller amount of development be approved first, and then award another parcel to be developed. As the Hearing Examiner found on page 77, the MPDs as a whole have already been approved, and The Villages MPD Permit Ordinance Conditions do not contemplate the kinds of limitations on phased development Mr. Bertsch requests. The MPDs necessitate several regional infrastructure improvements that could not be planned or funded if full build out was subject to the uncertainties of Mr. Bertsch's approach. Further, monitoring requirements for traffic, stormwater, and other infrastructure utilize the adaptive management principles that underlie Mr. Bertsch's proposal for phasing.

23. Noise.

23.1 *Noise Attenuation Requirements.* The Villages DA, Section 13.7, incorporates verbatim the requirements of The Villages MPD Permit Ordinance Condition 44 concerning Noise Attenuation. As recognized by the Hearing Examiner on page 102, The City's noise regulations already require a significant amount of noise protection, and The Villages MPD Permit Ordinance Conditions of Approval do not require the DA to add any additional mitigation measures.

23.2. *Noise Committee.* The Noise Committee required by The Villages MPD Permit Ordinance Condition 45 is anticipated to be formed at approximately the start of construction. The Villages MPD Permit Ordinance Condition 45 does not specify that the Committee be formed prior to approval of The Villages DA. The composition of the Noise Committee is specified by Condition 45. The community has a minority position but so does the Applicant. Because the Applicant and members of the community have an equal number of seats, the City is in a position to cast tie breaking votes if the community and Applicant disagree. As the Hearing Examiner recognized at page 103, given that the City is responsible for imposing the requirements of the committee onto the developer, the City's role in this regard is appropriate. The Noise Committee makes recommendations only to the City Council. Per Condition 45, the Applicant is responsible, at its expense, for drafting the annual report. And, again as per Condition 45, the annual report must will summarize the Committee's findings regarding compliance, include recommendations, if any, for improved

performance and, if the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. Because the report will describe any matters still under debate, and because other members of the community may comment on the report as well as provide public comment to the City Council during the public comment period of any Council meeting, member of the committee and/or members of the community who disagree with the report's conclusions will have a sufficient opportunity to communicate their position to the City Council.

23.3 *Work Hours.* The Villages MPD Permit Ordinance Condition 43 states that work hours of operation shall be established and made part of the Development Agreement. The Villages DA, Section 12.8.13 incorporates the work hour standards from BDMC Section 8.12.040.C, stating "BDMC 8.12.040.C (Exhibit "E") establishes the following noise standards: "Sounds originating from construction sites, including but not limited to sounds from construction equipment, power tools and hammering between seven a.m. and eight p.m. on weekdays, between eight a.m. and six p.m. on Saturdays, and between nine a.m. and six p.m. on Sundays shall also be exempt." The Villages DA Section 12.8.13 also states that the Master Developer also "agrees that it shall comply with the following, more restrictive noise standard: any sound made by the construction, excavation, repair, demolition, destruction, or alteration of any building or property or upon any building site anytime shall be prohibited on Sundays and City holidays and outside the hours of 7:00 am through 7:00 pm, Monday through Friday and 9:00 am through 5:00 pm on Saturday, subject to emergency construction and repair needs as set forth in BDMC 8.12.040.C (Exhibit "E"). And, although Section 12.8.13 does allow work on Sundays, it does so only "[o]n a case by case basis," "if authorized by the Noise Review Committee," and only between the hours of 9:00 am through 5:00 pm on Sundays.

24. Miscellaneous.

24.1. *Prior Agreements.* As shown by Attachment 4 to Exhibit 245, and based on testimony by King County's Paul Reitenbach, the Black Diamond Urban Growth Area Agreement ("BDUGAA") expressly anticipated Master Planned Developments just like The Villages MPD that is authorized by The Villages DA. The BDUGAA's requirements for provisions of open space for which the Applicant is responsible have been met, again based on testimony by Mr. Reitenbach shown in Attachment 4 to Exhibit 245. No testimony or evidence was presented alleging that any of the agreements described as "Prior Agreements" in The Villages DA, Section 3.1, have not been complied with.

24.2. *Single-Family and Multi-Family Dwelling Units.* The Villages DA, Section 14.0, defines single-family development as "[a]ny residential structure that contains four (4) or fewer residences Dwelling Units," and multi-

family development as "Any residential structure that contains 5 or more Dwelling Units." For purposes of calculating the number of Single Family and Multi-Family Dwelling Units within The Villages MPD, as per The Villages DA, Section 4.2, a residential structure that contains four (4) Dwelling Units shall be counted as four (4) Single Family Dwelling Units; a residential structure that contains five (5) Dwelling Units shall be counted as five (5) Multi-Family Dwelling Units. This means that attached single-family structures of four or fewer units will pay school mitigation fees at the higher, single-family rate, as directed by the City Council during its deliberations on The Villages DA.

24.3. *Mix of Development.* As called for by The Villages MPD Permit Ordinance Condition 136, The Villages DA, Section 4.3, outlines the commercial split for the Villages MPD, as follows: 325,000 square feet of commercial space, 450,000 of office and light industrial with a maximum of 200,000 square feet for light industrial.

24.4. *Land Use Plan Boundaries.* The Land Use Plan map in Exhibit "L" to The Villages DA does not include specific surveyed boundaries. It would be an unnecessary burden to require the Applicant to survey the boundary lines and then have to accommodate its development proposals to those artificial boundaries, especially when topographical features and other site constraints may make the boundaries impractical for various types of development at the Implementing Project stage. Nevertheless, consistent with the Hearing Examiner's recommendation, page 23, The Villages DA, Section 4.4.8, limits the percentage amount by which any acreage of any Development Parcel may be increased or decreased without an amendment of The Villages MPD. Section 4.4.8 states: "[t]he stated acreage of any Development Parcel may be increased or decreased up to five percent (5%) concurrent with the City's processing of an Implementing Project application without an amendment to the MPD Permit Approval or this Agreement. The stated acreage of any Development Parcel may be increased or decreased five-to-ten percent (5-10%) concurrent with the City's processing of an Implementing Project application with a Minor Amendment to the MPD Permit Approval."

24.5. *Project Specific Design Guidelines and Standards.* Consistent with The Villages MPD Permit Ordinance Condition 135 and RCW 36.70B.170(1) and (3)(d), and BDMC 18.66.020(A), project-specific design standards governing physical development of the Villages MPD are outlined in The Villages DA at Exhibit H.

24.6. *Dimensional Standards.* The dimensional standards outlined in Chapter 18.30 of the BDMC apply only to the R-4 and R-6 zoning districts, and not to property zoned MPD. Given the open space and other amenities provided by property in the MPD district and developed under an MPD Permit, comparatively smaller setbacks described in The Villages DA, Table 5-2-1, are justifiable from a policy standpoint, as the Hearing Examiner found at page 24.

24.7. *Landscaping Plans and Wildlife Forage Preferences.* The Villages DA, Section 5.5.2, requires the City's Director of Natural Resources and

Parks to review any landscaping plan for compliance with FEIS mitigation measures and Villages MPD Permit Ordinance Condition 124's requires for inclusion of mast producing species and other native vegetation preferred by wildlife. As the Hearing Examiner found at page 26 of his recommendation, there is no evidence in the record documenting why any additional implementation details are necessary.

25. Findings Deemed Conclusions of Law.

Any Findings of Fact set forth herein that are deemed to be conclusions of law should be considered as such. Any Conclusions of Law set forth in Exhibit 3 below that are deemed to be Findings of Fact are adopted herein by reference as if fully set forth.

EXHIBIT 3

CONCLUSIONS OF LAW

1. Quasi-Judicial Nature of Development Agreement Approval.

The Villages Master Planned Development Development Agreement ("The Villages DA") was required to be considered using a Type 4, quasi-judicial land use process. BDMC Section 18.08.030 provides that development agreements are reviewed using a "Type 4 – Quasi-Judicial" process. BDMC 18.08.070(C)(2) and (3) state that "The following decisions, actions and permit applications require a Type 4 decision: . . .2. Development agreements; and 3. Master planned developments." When the BDMC requires a particular land use approval process, the City must use that process, because "is bound to follow its own ordinances," as the Supreme Court held in *Phoenix Development, Inc. v. City of Woodinville*, 171 Wn.2d 820, 836, 256 P.3d 1150 (2011). In addition, as discussed in Conclusion 3 below, The Villages DA is required to incorporate the conditions of approval of the underlying MPD Permit, approved in Ordinance No. 10-946 ("The Villages MPD Permit Ordinance"), and as the Hearing Examiner concluded at page 6 of his Recommendation, because The Villages MPD Permit Ordinance conditions of approval were approved by ordinance they have binding legal effect, so the analysis of whether The Villages DA implements them is a quasi-judicial determination.

2. Authority and Requirements for Development Agreement.

RCW 36.70B.170 and BDMC 18.66.020 generally authorize the City of Black Diamond to enter into development agreements. RCW 36.70B.170 states that "a development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW." Likewise, BDMC 18.66.020(B) states that "Any development agreement shall be consistent with applicable city development regulations except as such regulations may be modified in the development agreement."

3. Development Agreement Required For Master Planned Development.

BDMC 18.98.090 requires the use of a development agreement to implement the terms and conditions of a Master Planned Development ("MPD") approval. BDMC 18.98.090 requires that a development agreement implementing a MPD incorporate a MPD Permit's conditions of approval, be binding on all MPD property owners and their successors, and require that they develop the subject property only in accordance with the terms of the MPD approval.

4. MPD Development Agreement Requirements.

Taken together, RCW 36.70B.170, BDMC 18.66.020 and BDMC 18.98.090 require that The Villages DA must: (a) set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement; (b) be consistent with applicable city development regulations except as such regulations may be modified in the development agreement; and (c) incorporate a MPD Permit's conditions of approval, be binding on all MPD property owners and their successors, and require that they develop the subject property only in accordance with the terms of the MPD approval.

5. Villages DA Consistent With Development Agreement Requirements.

Based on Finding of Fact No. 3 in Exhibit 2, The Villages DA meets the requirements of RCW 36.70B.170, BDMC 18.66.020 and BDMC 18.98.090. The Villages DA is also consistent with the City's applicable development regulations. This includes but is not limited to Section 15.1 of The Villages DA, which is consistent with the applicable provisions of the City's MPD development regulations in BDMC Section 18.98.195.

6. Development Agreement May Not Modify MPD Conditions of Approval.

Because BDMC 18.98.090 expressly requires that "[t]he MPD conditions of approval shall be incorporated into a development agreement," and because BDMC 18.98.195(A) states that "the MPD permit approval vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval, The Villages DA may not modify the conditions of approval in The Villages MPD Permit Ordinance or require action or mitigation that is inconsistent with those conditions of approval. Under RCW 36.70B.170 and BDM 18.66.020, some additional or supplementary terms may be added, if the project applicant agrees; the applicant for The Villages DA, BD Villages Partners, LP ("Applicant") may and in some cases did voluntarily agree to provide additional mitigation or take actions in addition to those required by The Villages MPD Permit Ordinance conditions of approval, as reflected in the Findings of Fact. Given the requirements of BDMC 18.98.090 and the provisions of BDMC 18.98.195, however, such additional mitigation or actions may not be unilaterally imposed on the Applicant except as part of the exercise of the City's substantive SEPA authority under RCW 43.21C.060 and WAC 197-11- 660. (*see* Conclusion of Law No. 7 below). And, any additional mitigation or actions, or supplemental conditions to the DA, must be consistent with the conditions of The Villages MPD Permit Ordinance; while the Applicant may agree to reduce the development rights conveyed by the MPD Permit Ordinance, or take on more responsibility than required by that Ordinance, the DA may not include terms that contradict the terms of The Villages MPD Permit Ordinance conditions of approval. Given the foregoing, the numerous requests by parties of record for revisions to or mitigation in addition to that required in The Villages MPD Permit

conditions of approval, as documented throughout the Hearing Examiner's recommendation, must be and are rejected.

7. SEPA substantive authority.

7.1 Notwithstanding the limitations described in Conclusion of Law No. 6 above, the State Environmental Policy Act, Chapter 43.21 RCW ("SEPA") provides an additional layer of substantive authority, known as "substantive SEPA authority," to condition a governmental approval to mitigate environmental impacts, or to deny approval if impacts cannot be mitigated. RCW 43.21C.060 states that "Any governmental action may be conditioned or denied pursuant to this chapter . . . ."

7.2. The exercise of substantive SEPA authority is substantially limited by the requirements of RCW 43.21C.060 and its implementing SEPA Rule, WAC 197-11-660. These limitations include the following:

7.2.1 Any conditions imposed pursuant to substantive SEPA authority shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority.

7.2.2. The governmental approval may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared for the proposal, and conditions must be stated in writing by the decision maker.

7.2.3. Mitigation measures shall be reasonable and capable of being accomplished.

7.2.4. Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal, although voluntary additional mitigation may occur. In the context of The Villages DA, this means any mitigation measures must be related to and proportionate to the mandatory scope of the DA, *i.e.* as a tool to implement The Villages MPD Permit Ordinance conditions, as the Hearing Examiner concluded at page 2 of the prehearing Order on Yarrow Bay Objections.

7.2.5. Before requiring mitigation measures, a city shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

7.2.6. If, during project review, a city determines that the requirements for environmental analysis, protection, and mitigation measures in the governmental body's development regulations or comprehensive plan adopted under chapter 36.70A RCW, or in other applicable local, state or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action, the city shall not impose additional mitigation.

7.3. The City previously issued a Final Environmental Impact Statement (FEIS) for The Villages MPD and, based on the FEIS, approved The Villages MPD Permit in The Villages MPD Ordinance, subject to 164 extensive mitigating measures and conditions imposed both pursuant to provisions in Chapter 18.98 of the BDMC as well as pursuant to the City's substantive SEPA authority under RCW 43.21C.060 and WAC 197-11-660. Accordingly, in Conclusions 9, 11(B) and 28 of The Villages MPD Ordinance, the Council concluded that significant adverse environmental impacts of The Villages MPD had been appropriately identified and mitigated. During review of The Villages DA, the City Council determined that the requirements for environmental analysis, protection, and mitigation measures in the City's development regulations as well as those imposed in The Villages MPD Permit Ordinance provide adequate analysis of and mitigation for the specific adverse environmental impacts of The Villages MPD as implemented through The Villages DA. And, as discussed at length in the Hearing Examiner's recommendation and in the Findings of Fact above, requests by parties of record for additional mitigation with very limited exception were the same requests the parties had made during the FEIS appeal and MPD Permit Ordinance proceedings, and were not supported by any new information, technical data or expert testimony sufficient to warrant additional mitigation. Therefore, per WAC 197-11-660(1)(g) the City Council declines to exercise its substantive SEPA authority to impose additional mitigation.

7.4. It is true that Washington appellate courts have, on occasion, upheld the exercise of substantive SEPA authority as part of a decision conditioning or denying a permit approval. These cases include *State v. Lake Lawrence Public Lands Protection Ass'n*, 92 Wn.2d 656 (1979) and *Victoria Tower Partnership v. Seattle*, 59 Wn.App. 592 (Div. I 1990), the latter of which was cited by the Hearing Examiner. Neither of cases, however, involved the situation, as in this case, in which the permitting agency itself had previously issued a permit <u>for the exact same proposal</u> (see Findings 4-6 above) , along with extensive mitigation imposed pursuant to SEPA substantive authority and conclusions of law stating that significant adverse environmental impacts were appropriately mitigated.

7.4.1. In *Lake Lawrence*, a case not cited by the Hearing Examiner, the Shorelines Hearings Board (SHB) granted a shoreline substantial development permit for a proposed plat, based on mitigation measures described in an Environmental Impact Statement (EIS) for potential impacts to bald eagles known to perch and feed on the project site. Later, a different agency, Thurston

County, denied the plat based on the same EIS. The Supreme Court held that the shoreline permit decision, issued by a different governmental body (the SHB) did not bind the County, because the SHB considered only a limited portion of the site (the shoreline) and a narrow set of shoreline criteria, rather than broader public interest considerations mandated by the platting statute. In this case, the DA criteria are narrower than the broad criteria the City Council previously applied in determining to approve The Villages MPD Permit Ordinance. And, the Black Diamond City Council itself (not a different agency, as in *Lake Lawrence*) concluded in The Villages MPD Permit Ordinance that significant adverse environmental impacts were appropriately mitigated.

7.4.2. In *Victoria Tower*, as the Hearing Examiner recognized at page 11 of the Recommendation, even though the City of Seattle's zoning code permitted an apartment building at the height proposed, the Seattle City Council did not have the exact proposed apartment complex before it when the Council approved the building heights in that city's zoning code. In this case, however, the Black Diamond City Council reviewed the exact same proposal in The Villages DA as it did when it approved and mitigated The Villages MPD Permit Ordinance, and concluded that significant adverse environmental impacts were appropriately mitigated.

7.4.3. In *Quality Rock Products, Inc. v. Thurston County*, 139 Wn. App. 125 (Div. II 2007), the other case cited by the Hearing Examiner, the exercise of substantive SEPA authority was not actually at issue. Instead, Thurston County denied a Special Use Permit based on county code criteria calling for it to review environmental impacts. The Court ruled this was permissible even though the County had previously issued a threshold environmental determination (Mitigated Determination of Nonsignficance, or "MDNS"). The Court held that such a determination was conclusive only as to whether an EIS was required, and did not prohibit the County from otherwise applying its code criteria. And, as Hearing Examiner Olbrechts concluded in this case, in Quality Rock, the permit denial was upheld in large part because the County was presented during the permit hearing with a detailed hydrogeologic analysis that was not available to the County when it issued the MDNS. In this case, as the Hearing Examiner and the Findings of Fact above indicate, the claims of environmental impact and calls for additional mitigation were not supported with new information or analysis sufficient to justify imposition of additional mitigation pursuant to SEPA substantive authority.

8. The Villages MPD Project Density.

8.1. As the Hearing Examiner concluded, on pages 11, 12, 13, and et seq., The Villages MPD is subject to a minimum density requirement of four units per acre. The minimum density standard derives from the City Comprehensive Plan, Section 5.4.1, page 5-13, which specifies a minimum density of four units per gross acre for MPDs. See Comprehensive Plan at The Villages DA, Exhibit

E. The Comprehensive Plan's density standard is carried forward in BDMC 18.98.120(E). Consistent with those requirements, The Villages MPD is approximately 4.01 units per gross acre (see Finding 6 above), and Condition 131of The Villages MPD Permit Ordinance requires that "A minimum density of 4 du/per net acre for residential development shall be required for implementing projects . . . ." The City Council has conclusively set a minimum density of four units per acre in its MPD approvals; the City Council cannot adopt any DA provisions that would require the lower densities, because under BDMC 18.98.090 the DA must incorporate the conditions of approval of The Villages MPD Permit Ordinance.

8.2. Many commenting parties of record highly opposed the MPD project density, and some evidence indicated that some have a goal of seeing a significant reduction of the MPDs' unit total from a combined 6,000 units to closer to 1,900 units. (see Finding 7). In *Feil v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 367 (2011), the Supreme Court ruled that after the 60-day period for challenging a GMA comprehensive plan or development regulation passes, the substance of the Plan or development regulation may not be collaterally challenged in another forum. Because The Villages MPD density and unit count is based on unchallenged Comprehensive Plan provisions and the development regulations in BDMC 18.98.120(E), the challenges to The Village DA's density and unit count raised by multiple commenters is such a collateral attack, and is not permitted. As the Court of Appeals ruled in another case, "Any finding that existing rural life styles might be disrupted by the proposed use is insufficient to support denial of the plat in view of a comprehensive plan which authorizes the population density requested by the developer." *Kenart & Associates v. Skagit County*, 37 Wn.App. 295, 302 (Div. I 1984).

9. Stormwater

Conditions 63 and 78 of The Villages MPD Permit Ordinance recognized and approved an off-site location for a regional stormwater facility, outside of city limits. Some commenters contended that this location would induce urban growth outside of the urban growth area, contrary to provisions of the GMA in RCW 36.70A.110(4). The Villages DA, however, is not required to comply with RCW 36.70A.110(4), because that statute applies to consideration of a land use regulations, as opposed to its implementation via project permits such as The Villages DA, as the Hearing Examiner recognized at page 38 of the Recommendation. In any event, as discussed in Finding 11.1, there was no evidence that location of the stormwater facility outside them MPD boundary would provide urban services to the rural area or induce urban growth in the rural area. There was evidence that the regional stormwater facility could accept overflow from Horseshoe Lake during heavy rainfall events, and that this could help avoid existing flooding at residences adjacent to Horseshoe Lake. To the extent that RCW 36.70A.110(4) applies, the regional facility location's assistance with reduction in the likelihood or severity of existing flooding demonstrates compliance with RCW

36.70A.110(4) (urban services may be provided in rural area where "necessary to protect basic public health and safety and the environment").

10. Traffic

10.1 As outlined in Finding of Fact 12.5, The Villages MPD Permit Ordinance Conditions 10 provides for timely mitigation of impacts to transportation levels of service; i.e., it provides an acceptable form and degree of transportation concurrency. The Villages DA complies with the applicable conditions of The Villages MPD Permit Ordinance. Condition 20 of The Villages MPD Permit Ordinance provides that "The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service." The Villages DA, Exhibit F, which is the Traffic Monitoring Plan, complied with Condition 20 exactly; it calls for the timing of construction to be determined for each MPD phase prior to the submission of Implementing Project applications, and requires "that the Master Developer's prompt construction of improvements necessary to avoid LOS impacts shall commence before an impacted street or intersection falls below the applicable level of service."

10.2. The Hearing Examiner's analysis and conclusions at pages 82-86, concluding that the DA's traffic monitoring plan "lacks assurances that traffic mitigation will comply with GMA mandated concurrency requirements," is erroneous and is not adopted. The GMA's concurrency requirement contained in RCW 36.70A.070(6)(b) applies to a city's development regulations; it does not apply to implementing project permits such as The Villages DA, in the same way that RCW 36.70A.110(4) does not apply to The Villages DA (see Conclusion 9 above).

10.3. Nevertheless, even though The Villages DA's Traffic Monitoring Plan already ensured that construction of improvements would commence before the impacted street or intersection falls below the applicable level of service, and even though the GMA does not require a development agreement to contain a "concurrency" provision, the Applicant voluntarily amended the Traffic Monitoring Plan, Exhibit F to The Villages DA, to more clearly state in the traffic monitoring plan an express concurrency requirement mirroring what was already provided in Conditions 10 and 20 to The Villages MPD Permit Ordinance. The amended language appears on pages 31-33 of Exhibit F to The Villages DA.

10.4 The Hearing Examiner's recommendation suggests at page 85 that "adherence to GMA concurrency could require a reconsideration of the approved densities for the project. . . ." Under the concurrency standards contained in the City's 2009 Comprehensive Plan, strategies and improvements necessary to maintain the City's then-applicable Level of Service (LOS) can be identified. *See, e.g.*, Exhibit F (Traffic Monitoring Plan). The Hearing Examiner's Recommendation, page 85-86, supposes that lowering of LOS is one of the

options to consider if the LOS cannot continue to be met while development projects are being constructed. The Examiner explains that because under the DA the Applicant is vested to current LOS standards, a lowering of LOS would require an amendment to the DA which, the Examiner reasons, would then enable the City to "re-evaluate" and possible lower MPD project densities. This supposition is incorrect. The Traffic Monitoring Plan, Exhibit F, calls for evaluation of project traffic measured by the then-applicable LOS, as opposed to the current LOS. Thus, if the LOS is lowered, the lower LOS will be utilized during concurrency review called for by the amended Traffic Monitoring Plan language. No MPD amendment will be necessary to utilize a lowered LOS. Thus, there will not be the opportunity for consideration of reduction in MPD project density anticipated at page 85-86 of the Hearing Examiner's Recommendation.

10.5. With respect to mitigation for state-owned facilities (SR 169 and SR 516), The Villages MPD Permit Ordinance, Condition 20 of The Villages MPD Permit Ordinance addresses the timing of construction of transportation improvements on facilities other than state-owned facilities. Condition 20 states that, "for projects within the State right-of-way, the monitoring plan shall establish timing for commencement of only engineering and design of improvement and shall not including deadlines for commencement of construction." The Traffic Monitoring Plan, Exhibit F to The Villages DA, mirrors the language of Condition 20 at page 34 of the Monitoring Plan. The reason for this limitation is that the City of Black Diamond does not have jurisdiction over state-owned facilities, and cannot compel the State to cooperate with the Master Developer to construct project impact mitigation measures. The City can, however, compel the Master Developer to provide its proportionate share contribution to mitigation projects on state-owned facilities if and when the State is ready to authorize or construct those improvements. Sections 11.5.A and .B, and Tables 11-5-1 and 11-5-2 accomplish this by providing that the Master Developer is responsible for funding certain specified transportation improvements on state-owned facilities. The only methodology available to the City to correct project-created impacts to the LOS of state-owned facilities might have been to limit the density of the MPDs, but The Villages MPD Permit Ordinance Conditions have already authorized the density for the MPD; and density reduction is not available for the reasons stated in Conclusions 6-8 above.

11. <u>Water and Sewer Availability</u>

11.1. No state or local law, including MPD permitting standards in BDMC Ch. 18.98, requires that a MPD Development Agreement certify adequate water supply or adequate sewer capacity. Nevertheless, collectively, the provisions of The Villages DA as detailed in Findings of Fact 15.1 – 15.2 above ensure that there is an adequate water supply to serve all of The Villages MPD, and that on and off-site water supply and related facilities and on- and off-site water Regional Facilities will be constructed and available to serve The Villages

MPD Implementing Projects as they are constructed and occupied. Likewise, collectively the provisions of The Villages DA detailed in Findings of Fact 18.1 above ensure that there is an adequate sewer capacity and sewer facilities to serve all of The Villages MPD, and that on and off-site sewer capacity and related facilities and on- and off-site wastewater Regional Facilities will be constructed and available to serve The Villages MPD Implementing Projects as they are constructed and occupied. Statements in the Hearing Examiner Recommendation, pages 31 and 36-37, noting that The Villages FEIS and MPD Permit Ordinance did not include a determination that water will be available at the time project permit applications will be submitted for approval, did not take the DA provisions detailed in Findings of Fact 15.2.2 – 15.2.4 and 18.1 into account. The City's Water System Plan details that adequate water supply is available to serve both MPD projects, and the DA provisions detailed in those Findings ensure that necessary facilities will be constructed prior to or as part of Implementing Projects.

11.2 As detailed in Findings 15.5 and 18.4.2, The Villages DA, Sections 7.2.1 and 7.3.1 provide that "Any Implementing Project application process that calls for a certificate of water [or sewer] availability shall be satisfied by reference to this Agreement." These provisions are not intended to and do not waive or nullify any process calling for provision of a certificate of water or sewer availability but, instead, recognize that such a process may be satisfied by reference to The Villages DA given that its more detailed provisions (documented in Findings 14.1 – 14.3 above) finding that there is adequate water supply and sewer capacity, and adequate assurances that on and off-site water and sewer and related facilities and on- and off-site water and sewer Regional Facilities will be constructed and available to serve The Villages MPD Implementing Projects as they are constructed and occupied.

12. Water Quality and Green Valley Road Committees.

Certain commenting parties of record pointed out that neither the Water Quality nor Green Valley Road Committees required by The Villages MPD Permit Ordinance conditions have been formed, and that input on The Villages DA from such committees is required. Conditions 33(b) and 85 of The Villages MPD Permit Ordinance do not specify a particular time by which the committees must be formed, and neither condition requires or authorizes the committee to provide input on the contents of The Villages DA.

13. Other Land Use Issues.

13.1. *Contiguous Properties.* BDMC Section 18.98.030(C) states that "All properties to be included in an MPD must be contiguous, excepting those areas intended to be used for commercial purposes, other than neighborhood commercial." This code provision applies to an MPD Permit; it does not apply separately to review of The Villages DA. One commenter, Mr. Robert Edelman, noted that The Villages has a non-contiguous commercial area, known as the

"North Property" or Parcel B, that includes a 9-acre strip of high density residential. Mr. Edelman contended that the high density residential portion is not intended for commercial purposes, and therefore violates BDMC Section 18.98.090(C). There is no violation of BDMC 18.98.030(C), for the following reasons:

13.1.1. BDMC Section 18.98.030(C) applies to consideration of an MPD Permit. It does not separately apply to consideration of an MPD development agreement, which is required to incorporate the terms and conditions of an underlying MPD Permit approval.

13.1.2. Condition 128 of The Villages MPD Permit Ordinance expressly approves The Villages Land Use Map, which included multi-family residential uses on a portion of the North Property. The Land Use Plan Map may not be amended or altered without an amendment to the MPD approval, which cannot be accomplished by The Villages DA.

13.1.3. BDMC 18.98.090(C) does not require a non-contiguous "area intended to be used for commercial purposes" to be used solely for commercial uses. The Villages North Property, for example, is predominantly commercial, with 33.7 acres of Commercial/Office//Retail, and 9.0 acres of High Density Residential. This qualifies the parcel as "intended to be used for commercial purposes," and it is permissible for the North Property to be non-contiguous with the remainder of The Villages MPD site.

13.2. *Accessory Dwelling Units.* The Villages MPD Permit Ordinance Condition 128 limits the total number of dwelling units, but that dwelling unit limit did not anticipate inclusion of accessory units, because accessory dwelling units are not regulated as a separate dwelling unit under Title 18 of the BDMC; For example, accessory dwelling units are not counted as a "unit" for purposes of counting the number of units on a parcel zoned single-family; under BDMC 18.30.020, a single-family detached structure is permitted on an individual lot, but an accessory dwelling unit is also permitted as a matter of right on the same lot. And, accessory dwelling units are regulated separately, not as single-family dwelling units, but subject to stringent size and other limitations as set forth in Ch. 18.56 of the BDMC. Similarly, the Maple Valley Mitigation Agreement, which is Exhibit Q to The Villages DA, does not treat accessory dwelling units as a separate dwelling unit. The Maple Valley Mitigation Agreement does not assess traffic mitigation fees against accessory dwelling units until after the first 200 accessory dwelling units. The Villages DA treats accessory units in a parallel fashion; Section 4.7.3 of The Villages DA states that "The first one hundred sixty (160) ADUs constructed within the Project Site shall not count towards the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement. Each ADU constructed after this 160 ADU threshold shall be counted as one-third (1/3) of a Dwelling Unit for purposes of the City's tracking

the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement."

13.3. *Property Boundaries and Interface With Adjoining Development.* Through its approval of The Villages MPD Permit Ordinance, the City Council previously determined that The Villages MPD complies with the requirements of BDMC Section 18.98.140(B). Therefore, no additional requirements under this section of the BDMC may be imposed to require additional open space interfaces along interior MPD property parcels. In any event, BDMC 18.98.140(B) does not require interior property parcel buffers; instead, that code section requires open to be "located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers," so as to minimize the visual impacts **on exterior properties** of development within the MPD. In addition, with respect to interface with development adjoining the MPD, The Villages DA Section 4.5 requires MPD perimeter development to comply with the section entitled "Interface with Adjoining Development" of the MPD Framework Design Standards and Guidelines. Given the comprehensive nature of these design standards, additional interface design requirements are unwarranted.

13.4. *Level of Detail.* The level of detail provided in The Villages DA is legally sufficient, and supports a conclusion that The Villages DA is adequate and complete, and that final design/location/timing of water, sewer, infrastructure, and other may properly be addressed as part of future implementing project approvals. The Villages DA is part of an iterative, phased project permit approval process (see Finding of Fact 3.3) that commenced with the City Council's approval of The Villages MPD Permit Ordinance. The conditions of approval are further clarified, and incorporated into The Villages DA. Chapter 18.98 of the BDMC, and The Villages DA Sections 2.1 and 15.1, anticipate that additional details will be specified in future short and long subdivisions, and building, utility and clearing and grading permits, known as "Implementing Projects." The level of detail of The Villages DA is appropriate and sufficient given the place of The Villages DA in the iterative, phased project permit approval process.

13.5. *Future Site Plan Amendments.* Pursuant to Conditions 132 and 133 of The Villages MPD Permit Ordinance, Section 4.4 of The Villages MPD provides for amendments to The Villages MPD Site Plan. Such changes amend the site plan for the MPD Permit, may be accomplished administratively within limitations specified in Section 4.4 and 12.8.3 of The Villages DA and, contrary to the argument of some commenting parties of record, do not constitute a legislative zoning or re-zoning action.

14. <u>Schools</u>.

14.1. *School Sites as Mitigation.* BDMC 18.98.080(A)(14) does not require a MPD to mitigate all conceivable impacts on schools; instead, it requires that "school sites shall be identified so that all school sites meet the walkable

school standard set forth in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district's adopted standard." Per that same code section, "the requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference."

14.2. *School Construction.* No MPD regulation specifically requires the Applicant to address actual construction of schools in the MPD approval process. The omission of any reference to construction in this school specific language is a result of the Council's intent to exclude this consideration from the MPD review process, except to the extent that construction costs are addressed by mitigation or impact fees set forth in a separate agreement among the applicant, the city and the school district as contemplated by BDMC 18.98.080(A)(14). Likewise, RCW 58.17.110, which governs approval of subdivisions, requires a finding of adequate provision for schools and school grounds, and consideration of other relevant facts "including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school . . . ." RCW 58.17.110 does not require consideration of school construction or school bond levy passage or failure rates.

14.3. *MPD Permit Options for School Mitigation.* As detailed in Finding of Fact 13.2, Condition No. 98 of The Villages MPD Permit Ordinance provide two options for satisfaction of BDMC 18.98.080(A)(14). The Applicant chose the first option, which was to "enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If approved, such agreement shall be incorporated into the Development Agreement by reference." The Villages DA, Section 13.3 describes the tri-party School Agreement, thereby fulfilling the requirements of Condition 98 and, in turn, BDMC 18.98.080(A)(14). The City Council's approval of Condition 98 of The Villages MPD Permit determined that the agreement in the MPD Permit Ordinance record as Exhibit 6 "provides adequate mitigation of impacts to school facilities," as does the language of the School Agreement itself. For the reasons explained in Conclusion 6 above, this determination cannot be revisited here.

14.4. *Comments Concerning Mitigation for School Impacts.* Much of the testimony and argument during the open and closed record hearings appeared to have been premised on the notion that the Development Agreement itself prescribed the substantive terms of school mitigation, as if the Applicant had followed the second option provided by Condition 98 of The Villages MPD Permit Ordinance, and therefore the substantive terms of the School Agreement were open to critique and challenge. Because the first option providing by

Condition 98 was selected, and not the second, the substantive terms of the School Agreement are not at issue in the Council's approval of The Villages DA, except to the extent necessary to determine that the School Agreement contains the same key terms as Exhibit 6 in the MPD Permit record. Finding of Fact 13.3.2 finds that "The School Agreement has substantially the same key terms as the agreement found in the MPD Permit Ordinance record as Exhibit 6, as provided by and consistent with Condition No. 98 of The Villages MPD Permit Ordinance; no commenters contended otherwise.

14.5. *School Agreement Constitutes Adequate Mitigation for School Impacts*. Even if the substance of the terms of the School Agreement were at issue in the Council's approval of The Villages DA, there is substantial evidence in the record to support the conclusion here that the School Agreement adequately mitigates potential adverse effects on schools and school grounds. As stated in Finding of Fact 13.3.3, "Section 3.1 of the School Agreement provides that the Agreement constitutes "full, total, complete and sufficient mitigation of the impact of full build out of The Villages project on school facilities in the District," and Section 3.2.2 provides that in the event of any administrative appeal or lawsuit seeking additional mitigation, the ESD upon request "will present either oral or written testimony indicating that, in the District's perspective, the [School] Agreement provides for the mitigation of impacts to schools and that adequate provision has been made for schools and school grounds." Per Section 1.12, a material consideration of the Parties entering into the School Agreement "is to support and encourage the passage of school construction bonds in the near and long-term for the financing of schools in the City and on the Agreed School Sites." And, as stated in Finding of Fact 13.3.4, "There is no better or more comprehensive school mitigation in the state; ESD Board President Chris Van Hoof testified that he knows of no better agreement, and while citizens testified concerning school crowding and bond measure failures in other districts, none identified a any better school mitigation arrangement." These facts provide substantial support for the City Council's determination, expressed in Conclusion No. 7 above, to decline to exercise its substantive SEPA authority to require further mitigation for impacts to schools or school grounds.

14.6 *Adequacy of Mitigation for School Impacts Not Tied to Bond Measures*. Testimony and argument about the relative likelihood of passage of an ESD bond levy to fund new school construction does not require a different conclusion. Mitigation required pursuant to SEPA remains subject to RCW 82.02.020, which limits mitigation to that which is "reasonably necessary" "to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat." *See, e.g., City of Federal Way v. Town & Country Real Estate*, LLC, 161 Wn.App. 17 (Div. II 2011). Even assuming that the testimony concerning the likelihood of passage of school bond measures within the ESD was not speculative (see Finding of Fact 13.4.2), whether voters in the ESD will or will not support a particular bond levy now or at some time in the future is not a "direct impact" of The Villages DA. Requiring additional

mitigation, such as withholding future development approvals as suggested by Mr. Ostrowski during verbal testimony and described at page 96 of the Recommendation, would run counter to the limitations of RCW 82.02.020. Such a mitigation measure would improperly make the Applicant responsible for the success of ESD bond measures, notwithstanding the school sites and mitigation fee payments already called for by the School Agreement and that represent the Applicant's pro rata share of mitigation of potential school impacts (See Finding of Fact No. 13.3.2). For the same reasons that The Villages MPD Permit Ordinance and The Villages DA require the Applicant to pay its proportionate share of costs for improvement on state-owned transportation facilities, but do not require the Applicant to actually construct improvements to them (see Conclusion 10.5 above), The Villages DA incorporates requirements from the School Agreement mandating the Applicant to pay mitigation fees constituting its proportionate share of school impacts, but does not require the Applicant or Master Developer to actually construct schools or be responsible for the timing of School District's construction. In addition, it would improperly provide veto authority to voters within the ESD over physical construction of previously-authorized MPD development phases.

14.7. *Location of School Sites.* The Villages MPD Permit Ordinance Condition 98 requires all schools to be located "within the MPDs or within one mile of the MPDs" and, "to the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas." The language of Condition 98 sets the applicable Villages MPD standard for school location. The interpretation offered by one commenter, to the effect that all schools are required to be located within 0.5 miles from residential areas (see Finding of Fact 13.4.4), is incorrect. Under Condition 98, the one-half mile walk standard applies to elementary schools, to the extent reasonable and practical. Condition 98 controls over any language to the contrary in the findings and/or conclusions in The Villages MPD Permit Ordinance. In addition, per Condition 98 of The Villages MPD Permit Ordinance, all other schools must be located "within the MPDs or within one mile of the MPDs . . . ."

14.8. *School Siting Under Essential Public Facilities Process.* The Villages DA is not subject to the King County Countywide Planning Policies, contrary to the arguments by Ms. Cindy Proctor in Exhibit 47. Under RCW 36.70A.210(1), the King County Countywide Planning Policies are to be "used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to [the GMA]." The Countywide Planning Policies do not apply to a development agreement incorporating the terms and conditions of a MPD Permit. Ms. Proctor's argument was aimed at the fact that some sites identified as school sites under the School Agreement are located within the unincorporated area, and Ms. Proctor maintains that school sites may not be located in the unincorporated area under the Countywide Planning Policies. To the extent that schools qualify as an "essential public facility" under the Growth Management Act, Chapter 18.58 BDMC, which

governs the siting of GMA Essential Public Facilities (EPFs), creates a separate review process that will be reviewed independently from the MPD process. If the proposed school locations are denied under the EPF process, the alternative school locations in the School Agreement may be utilized, or the MPDs, DAs and/or the School Agreement may be amended to accommodate a new location.

15. Funding.

15.1. *Fiscal Analyses.* Condition 156 of The Villages MPD Permit Ordinance requires The Villages DA to outline the terms and process for performing the fiscal analyses and evaluating fiscal impacts. Condition 156 does not require an exact specification of all terms that may be employed in a future fiscal analysis; rather, Condition 156 provides that "the terms and process" be "outlined" in the DA. The use of the term "outlined," and "terms and process," were intended to and do allow The Villages DA to reserve to City staff some flexibility as to the particular methodology and components of future fiscal analyses. The reasons such flexibility is needed were explained by the City's expert, Randall Young, as detailed in Finding of Fact 14.2 above. The Villages DA, Section, 13.6, does outline the exact terms and process for performance of the fiscal analyses and evaluating fiscal impacts, and is consistent with Condition No. 156 of The Villages MPD Permit Ordinance.

15.2. *MPD Funding Agreement.* Condition 156 of The Villages MPD Permit Ordinance also requires the Villages DA to include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. Condition 156 does not require the MPD Funding Agreement to be included within the fiscal analyses; instead, Condition 156 requires the MPD Funding Agreement to be included within The Villages DA. As set forth in Finding of Fact 14.3, Section 13.6 of The Villages DA incorporates by reference a new Funding Agreement as Exhibit N, to replace the Black Diamond Staff and Facilities Funding Agreement, as required by and consistent with Condition No. 156 of The Villages MPD Permit Ordinance. This complies Condition No. 156's requirement that the MPDs have "no adverse impact" requirement on the City, as determined after each phase of development and at full build-out.

15.3 *MPD Funding Agreement Effective Date.* As provided in Section 6 of the Ordinance to which these Conclusions of Law are attached, The Villages DA will not be effective until the MPD Funding Agreement has been executed by the Applicant and returned to the City Clerk. This adequately addresses the comments by the Hearing Examiner to the effect that the MPD Funding Agreement has not been executed and its terms as proposed are necessary to find that the DA has adequately implemented fiscal requirements, in particular that the increased demand for City staff services is adequately compensated.

15.4. *Surcharge.* The Villages DA, Exhibit N, Section 9 provides a possibility for a surcharge or per dwelling unit fee on future building permits, intended to recapture the costs incurred by the Developer under the Staff and Facilities Funding Agreement. Such a fee is permissible, however, only if: (a) approved by the City Council via a resolution; and (b) to the extent permitted by law and a voluntary agreement under RCW 82.02.020 or other agreement between Developer and its purchasers in which said purchasers release and hold the City harmless from any claims related thereto. Contrary to the contentions of one commenter, Mr. Edelman, the DA's potential allowance for such a future fee does not violate RCW 82.02.020 or other applicable law. The fee may be imposed only if expressly authorized by a future City Council resolution, and only then if permitted by applicable law via a voluntary agreement under RCW 82.02.020 or other agreement between the Master Developer and its purchasers, in which the City is held harmless.

16. Open Space.

16.1 *Amount of Open Space.* The Villages MPD will provide 505 acres of on-site open space (42% of the Villages MPD site), as detailed in Villages MPD Permit Ordinance Finding of Fact 18.B. Per Villages MPD Permit Ordinance Conclusions 57 and 58, this is the amount of open space required by BDMC Section 18.98.140(F). Taken together with all on-open space that has already been dedicated or will be dedicated associated with The Villages and Lawson Hills MPDS, 1,895.3 acres, or 67% of all MPD-related land, is being retained as open space.

16.2 *Changes to Open Space Areas.* Per the Hearing Examiner's recommendation on page 67, The Villages DA Section 4.4.6 has been amended to provide that MPD Site Plan amendments to Open Space areas as shown on Exhibit "U" shall be allowed with a Minor Amendment to the MPD Permit Approval provided all of the criteria outlined in BDMC 18.98.100(A)-(H) for a minor amendment are met. As the Examiner found on pages 20 and 67, this change ensures that there will not be any significant impacts resulting from a change to an open space boundary, because the requirements in BDMC 19.98.100(E) include the requirement that a minor amendment not increase any adverse environmental impacts.

16.3. *Trails.* BDMC 18.98.150(B) states that "[t]he MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance." As detailed in Finding of Fact 21.6, sizes of the recreational facilities and trails are defined in the City's Parks, Recreation and Open Space Plan contained in Exhibit E of the Development Agreements. With respect to trails, the requirement in BDMC 18.98.150(B) for the specification of "size" does not require that the length of a trail be specified. "Size" with reference to a trail refers to the trail's horizontal cross section. The length of any particular trail will

necessarily depend upon other factors such as location, topography, the presence or absence of sensitive areas, and the like.

16.4. *Public Access to Parks.* As stated in Villages DA, Section 9.9.3, "Pursuant to Condition of Approval No. 94 of the MPD Permit Approval, public access is authorized to all Parks and trails (whether public or private) unless otherwise determined by the Designated Official for reasons of public safety, welfare and convenience, or for maintenance reasons." This standard mirrors the authority given to the City's parks/natural resource's director under BDMC Section 9.86.230, to "promulgate and adopt reasonable rules and regulations pertaining to the operation, management and use of the parks,", which rules and regulations "may include the establishment of hours during which any park or portion thereof as designated by signs located within the designated portion, shall be closed to the general public; such closures may be for reasons of public safety, welfare and convenience, or for reasons of park maintenance."

17. Conclusions as Findings.

Any Conclusion of Law set forth herein that is deemed to be a Finding of Fact should be considered as such. Any Findings of Fact set forth in Exhibit 2 above that is deemed to be a Conclusion of Law is adopted herein by reference as a Conclusion of Law as if fully set forth.

18. Appeals.

Because The Villages DA is a project permit and/or is related to project permits (see Finding of Fact 3 above), Ordinance No. 11- 970 to which these Conclusions of Law are attached and The Villages DA approved and adopted therein is appealable only to the King County Superior Court pursuant to RCW 36.70B.200 and Ch. 36.70C RCW. Ordinance No. 11-970, to which these Conclusions of Law are attached, and The Villages DA approved and adopted therein, are not reviewable by the Growth Management Hearings Board, because the Board has held that it lacks jurisdiction to review development agreements. *See, e.g., Sno-King Environmental Alliance v. Snohomish County*, 2006 WL 1668256, CPSGMHB No. 06-3-0005, Order on Motions at 5.

Exhibit 4

THE VILLAGES MASTER PLANNED DEVELOPMENT
DEVELOPMENT AGREEMENT
BETWEEN
CITY OF BLACK DIAMOND, WASHINGTON and
BD VILLAGE PARTNERS, L.P.

A. Parties, Date, Recitals, and Mutual Consideration 1

B. Terms 5

1.0 Definitions and Consistency 5

1.1 Definitions 5

1.2 Consistency with Law 5

2.0 Project Description 6

2.1 Project Envelope 6

2.2 Project Elements 6

2.3 MPD Site Plan and Parcel Boundaries Approximate 6

3.0 Prior Agreements 8

3.1 Effect of Development Agreement 8

4.0 Land Use and Project Elements 10

4.1 MPD Site Plan 10

4.2 Total Number of Dwelling Units 13

4.3 Total Amount of Non-Residential Development 14

4.4 MPD Site Plan Amendments 14

4.5 Interface with Adjoining Development 17

4.6 Expansion Parcels 17

4.7 Additional Use Standards 17

4.8 Process To Track Total Dwelling Units and Floor Area 19

4.9 Transfer of Development Rights 19

4.10 Developer Improvements 21

5.0 Additional Bulk, Landscape and Sign Standards 23

5.1 DRC Review Required for Design Guidelines and Standards 23

5.2 Dimensional Standards 23

5.3 Parking Standards 29

5.4 Signage Standards 33

5.5 Landscape Standards 34

6.0 Internal Street Standards Within The Villages MPD 41

6.1 Purpose 41

6.2 Applicability 41

6.3 Street Design 42

6.4 Street Connectivity 45

6.5 Ownership and Maintenance 46

7.0 Water, Sewer and Stormwater Utility Standards 51

7.1 General Requirements 51

7.2 Water System Standards 53

7.3 Sanitary Sewer Design Standards 58

7.4 Stormwater Management Standards 59

8.0 Sensitive Areas Standards 72

8.1 Sensitive Areas Ordinance Applicability 72

8.2 Sensitive Areas Determinations 72

8.3 Alteration of Geologically Hazardous and Landslide Hazard Areas 74

8.4 Hazardous Tree Removal 74

9.0 Parks, Open Space and Trail Standards 75

9.1 Overall Open Space Requirement 75

9.2 Park and Open Space Plan 77

9.3 Sensitive Areas and Buffers 77

9.4 Non-Sensitive Open Space 77
9.5 Recreation and Useable Open Space Standards 78
9.6 Trail Plan 84
9.7 Trail Standards 85
9.8 Park, Open Space and Trail Deviations 86
9.9 Ownership and Maintenance 86
9.10 Park Characteristics 87

10.0 Determinations, Amendments & Expansion Parcel Review Process 89

10.1 Reserved 89
10.2 Applicability 89
10.3 Determinations 89
10.4 Amendments 90
10.5 Expansion Parcels 90

11.0 Project Phasing 93

11.1 MPD Phasing Plan Approved 93
11.2 Phasing of Improvements 93
11.3 Phasing and Construction of On-site Regional Facilities 94
11.4 Phasing and Construction of Off-Site Regional Infrastructure Improvements 99
11.5 Transportation Regional Facilities 102
11.6 Off-Site Pedestrian Regional Facilities 107
11.7 Phasing of Development 107
11.8 Housing Types 107

12.0 Development Review Process 109

12.1 Purpose 109
12.2 Applicability 109

12.3 Design Review Committee 109
12.4 Reserved 109
12.5 Application Review Procedures 109
12.6 Notice Requirements 110
12.7 Amendments to Implementing Approvals 111
12.8 Applicability, Decision Criteria and Approval Specific Requirements 111
12.9 Bonding for Improvements 115
12.10 Maple Valley Transportation Mitigation Agreement 116
12.11 Covington Transportation Mitigation Agreement 117

13.0 Miscellaneous Additional Standards and Requirements 119

13.1 Construction Waste Management Plan 119
13.2 Forest Practices 119
13.3 Schools 120
13.4 Fire Mitigation 120
13.5 Mine Hazard Release 125
13.6 Fiscal Impacts Analysis 125
13.7 Noise Attenuation 134
13.8 Green Valley Road 136
13.9 General Government Facilities Mitigation 136
13.10 New Transportation Demand Model 138

14.0 Definitions 139

15.0 General Provisions 148

15.1 Binding Effect & Vesting 148
15.2 Duties of Master Developer 149
15.3 Assignment 149

15.4 Governing Law 150
15.5 Severability and Waiver 150
15.6 Authority 150
15.7 Exhibits 150
15.8 Time is of the Essence 152
15.9 Interpretation 152
15.10 Integration 152
15.11 No Third-Party Beneficiary 152
15.12 Other Necessary Acts 152
15.13 Remedies 152
15.14 Notice 153
15.15 Counterparts 154
15.16 Term 154

Exhibits

Exhibit "A" – Removed. Please see Exhibit "U".

Exhibit "B" – Legal Description and Parcel Map

Exhibit "C" – MPD Permit Approval

Exhibit "D" – Summary of Prior Agreements

Exhibit "E" – City of Black Diamond Municipal Code & Other City Standards

Exhibit "F" – Traffic Monitoring Plan

Exhibit "G" – Constraint Maps

Exhibit "H" – MPD Project Specific Design Standards and Guidelines

Exhibit "I" – High Density Residential Supplemental Design Standards and Guidelines

Exhibit "J" – Construction Waste Management Plan

Exhibit "K" – MPD Phasing Plan

Exhibit "L" – Excerpts from Chapter 3 of MPD Permit Application

Exhibit "M" – Mine Hazard Release Form

Exhibit "N" –MPD Funding Agreement

Exhibit "O" – Stormwater Monitoring

Exhibit "P" – Green Valley Road Measures

Exhibit "Q" – Maple Valley Transportation Mitigation Agreement

Exhibit "R" – Covington Transportation Mitigation Agreement

Exhibit "S" – Potential Expansion Areas

Exhibit "T" – Impact Fees for Fire Protection Facilities dated 1-13-2011

Exhibit "U" – Updated MPD Site Plan

A. Parties, Date, Recitals, and Mutual Consideration

This Development Agreement is entered into this 12th day of December, 2011, by and between the CITY OF BLACK DIAMOND, a non charter code city in the State of Washington, operating under the provisions of Chapter 35A RCW ("Black Diamond" or "City") and BD Village Partners, L.P., a Washington limited partnership ("Master Developer").

RECITALS

A. The City includes large areas of undeveloped lands, and the City has spent many years evaluating and planning for future coordinated development of those lands.

B. To strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic cost of development, the legislature of the State of Washington enacted RCW 36.70B.170 through 36.70B.210 (the "Development Agreement Statute"), which authorizes a local government to enter into a development agreement with the owner of real property within its jurisdiction. Under the Development Agreement Statute, "A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW." In addition, RCW 36.70B.170(3) defines "development standards" for a development agreement as including:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

Pursuant to state law, development agreements are not development regulations but are required to be and this Agreement is, in fact, consistent with the City of Black Diamond's adopted development regulations.

C. The City has adopted a process for review and approval of applications for a Master Planned Development Permit ("MPD Permit"), which process is contained in the City's MPD Permit development regulations codified at Black Diamond Municipal Code ("BDMC") Chapter 18.98 (attached as Exhibit "E"). The City's process for review and approval of a MPD Permit includes the requirement for a development agreement that shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD Permit approval.

D. The City has also adopted a process for review and approval of development agreements, which process is codified at BDMC Ch. 18.66 (Exhibit "E"). This Agreement has been processed, considered and executed in accordance with the City's development regulations in BDMC Chapter 18.66 (Exhibit "E"), and state law requirements, including RCW 36.70B.170 through .210. Identical copies of this

Development Agreement were submitted and processed under application numbers PLN10-0020 and PLN11-0013.

E. The Master Developer owns certain real property consisting of approximately 1,196 acres located in the City of Black Diamond, as generally diagrammed in Exhibit "U", the MPD Site Plan, and more particularly described in Exhibit "B" (the "Villages Property").

F. Consistent with BDMC Chapter 18.98 and the City's adopted MPD Framework Design Standards and Guidelines, the Master Developer designed The Villages MPD on the Villages Property to utilize the natural land forms, including protection of wetlands and open space areas, to define a compact and clustered development pattern. The City's MPD Permit process allows the Villages Property to be developed in a thoughtful and fully integrated manner and provides certainty to the City, existing and future residents, and the Master Developer. The Villages MPD community design includes a wide variety of housing, shopping and recreational opportunities. The Villages MPD also includes a comprehensive system of Parks, Open Spaces and trails that will further connect and integrate the clusters of development and promote the natural beauty of the Project Site.

G. The City approved the Master Developer's MPD Permit Application subject to certain conditions and desires to enter into this Agreement. This Agreement will, among other things, provide for the conditions of MPD Permit Approval to run with the land that is the subject of the MPD Permit Approval and bind the Master Developer's heirs, successors and assigns; provide greater certainty about the character and timing of residential and commercial development within The Villages MPD; provide for the orderly development of The Villages MPD on a comprehensive basis consistent with the MPD Permit Approval (copy attached as Exhibit "C"); allow for timely mitigation of probable significant adverse environmental impacts; provide services appropriate for development of The Villages MPD; encourage an economic and employment base within the City; contribute to the City's fiscal performance; and otherwise achieve the goals and purposes for which the MPD permit development regulations (BDMC Ch. 18.98) (Exhibit "E") and the ordinance approving the MPD Permit Application were enacted.

H. The Master Developer desires to enter into this Agreement in exchange for the benefits to the City described in Recital G, together with other public benefits that will result from the development of The Villages MPD. Moreover, entering into this Agreement provides assurance to the Master Developer and its successors and assigns that: (i) any and all Implementing Projects necessary to build out The Villages MPD will be processed under the terms and conditions of The Villages MPD Permit Approval and this Agreement; (ii) that all Implementing Projects will be vested to and processed in accordance with the standards described in this Agreement and otherwise applicable federal law; (iii) that this Agreement and its standards will be in effect for 15 years with the possibility of further extension; (iv) that mitigation measures for the Implementing Projects, including protections to the natural environment and improvements to the built environment necessary to appropriately mitigate probable, significant adverse impacts and accommodate the build out of The Villages MPD, are fully described in this Agreement; and (v) that cost recovery mechanism are in place to assist the Master Developer with construction of public infrastructure when appropriate.

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties hereby voluntarily mutually agree as follows:

B. Terms

1.0 DEFINITIONS AND CONSISTENCY

1.1 DEFINITIONS

All capitalized terms in this Agreement shall have the meaning set forth in Section 14, or, if not defined in Section 14, capitalized terms shall have the meaning set forth in the City of Black Diamond Municipal Code ("BDMC") as attached hereto and incorporated herein as Exhibit "E". If there is a conflict between the capitalized terms used in this Agreement and the terms defined in the BDMC, the definition set forth in the BDMC (Exhibit "E") shall prevail.

1.2 CONSISTENCY WITH LAW

The Villages MPD is consistent with the City of Black Diamond Comprehensive Plan and City's development regulations (Exhibit "E"). This Agreement is consistent with the terms and conditions of The Villages MPD Permit Approval.

2.0 PROJECT DESCRIPTION

2.1 PROJECT ENVELOPE

This Agreement governs and vests the development, use, and mitigation for The Villages Master Planned Development ("MPD") legally described within Exhibit "B" and graphically shown on Exhibit "U". Land within the boundaries of The Villages MPD shown on Exhibit "U", together with the associated off-site improvements, shall be physically developed only pursuant to the terms and conditions of this Agreement.

2.2 PROJECT ELEMENTS

The Villages MPD includes a mix of the following uses: residential, Commercial, Office, Light Industrial, Retail, educational, civic, Recreational Uses, trails and Open Space on 1,196 acres. This mix of uses will be comprised of the following, except as may be modified pursuant to Section 10.4.2: a maximum of 4,800 Dwelling Units (3,600 Single Family (MPD-L and MPD-M) and 1,200 Multi-Family (MPD-H and MPD-M) Dwelling Units; a maximum of 775,000 square feet Floor Area of Commercial/Retail/Office/Light Industrial uses, which includes 325,000 square feet of destination and Neighborhood Commercial uses and 450,000 square feet of Office and Light Industrial uses; multiple school sites, public and civic uses as described in part by the School Agreement; and at least 481.4 acres of Open Space; and other Recreational Uses.

2.3 MPD SITE PLAN AND PARCEL BOUNDARIES APPROXIMATE

2.3.1 The MPD Site Plan, attached hereto as Exhibit "U" and Figure 3-1 in Exhibit "L" are derived from a scaled survey, but are at too small a scale to depict surveyed boundaries on the ground. Accordingly, the Development Parcel boundaries and their associated acreages shown on Exhibit "U" and/or Figure 3-1 in Exhibit "L" are approximate. A large version of the MPD Site Plan, with surveyed exterior boundaries and sensitive areas, shall be kept on file with the City. Surveys of internal Implementing Project boundaries will be submitted with Implementing Project applications. The Development Parcel boundaries shown on the MPD Site Plan may be adjusted and/or consolidated pursuant to the processes set forth in Sections 4.4, 10.4.1, 12.8.3, and/or 12.8.14 of this Agreement, so long as the general character, Open Space and Density of the MPD Site Plan is implemented and all open space minimum requirements are met.

2.3.2 The boundaries and categories of sensitive areas, as shown on the scaled Constraints Map contained in the section entitled "Existing Conditions" of the MPD Permit Application and attached hereto as Exhibit "G," are based on actual field data presented in The Villages Final Environmental Impact Statement ("EIS") dated December 2009. The City and Master Developer both agree to the boundaries set forth in the Constraints Map, attached hereto as Exhibit "G". (The full size version of the Constraints Map shall be kept on file with the City.) Sensitive areas may be modified from those shown on Exhibit "G" only as allowed by and in compliance with the City's Sensitive Areas Ordinance (SAO). See Section 8.0, Sensitive Area Standards for additional discussion of sensitive areas. A copy of the SAO is contained in Exhibit "E".

3.0 PRIOR AGREEMENTS

3.1 EFFECT OF DEVELOPMENT AGREEMENT

Annexation of several portions of the property included in The Villages MPD was preceded by and subject to several multi-party agreements, including:

A. The Black Diamond Urban Growth Area Agreement between the City of Black Diamond, King County, Plum Creek, and Palmer Coking Coal Company dated December 31, 1996 ("BDUGAA");
B. The Black Diamond Area Open Space Protection Agreement between Plum Creek Land Company, the City of Black Diamond, King County and Cascade Land Conservancy dated June 6, 2005 (the "Open Space Agreement");
C. Black Diamond Ordinance No. 515 dated December 5, 1994;
D. The Pre-Annexation Development Agreement for the West Annexation Area between Plum Creek Land Company and the City of Black Diamond dated December 8, 2005 (the "West PAA"); and
E. The Pre-Annexation Development Agreement for the South Annexation Area between BD Village Partners LP and City of Black Diamond dated August 20, 2009 (the "South PAA").

These agreements are hereinafter collectively referred to as the "Prior Agreements." The Prior Agreements set forth pre-conditions for annexation of a portion of the Project Site, including requirements for dedication of open space, and development standards. A summary of the Prior Agreements is contained in attached Exhibit "D". With respect to the property included in The Villages MPD, this Agreement fulfills and implements all provisions related to development standards, infrastructure, Open Space and land use within The Villages MPD contained within the Prior Agreements. If the property identified in Black Diamond Ordinance No. 517 dated December 7, 1994, is included in The Villages MPD as an approved Expansion Parcel, Black Diamond Ordinance 517 shall be included herein as a Prior Agreement. To the extent there is any conflict between this Agreement and any of the Prior Agreements, the terms of this Agreement shall control, as between the City and the Master Developer. This Agreement incorporates many of the terms of the Prior Agreements and to the extent any provision or

requirement of a Prior Agreement is not included in this Agreement said provision or requirement shall be construed as not applicable to the Development of The Villages MPD.

4.0 LAND USE AND PROJECT ELEMENTS

4.1 MPD SITE PLAN

Per Condition of Approval No. 128 of the MPD Permit Approval, the City Council approved the following components of Chapter 3 entitled "Design Concept and Land Use Plan" of the MPD Permit Application: (i) the Land Use plan map (Figure 3-1, as updated July 8, 2010); (ii) description of categories (beginning on page 3-18); a maximum of 4,800 total residential units and 775,000 square feet of commercial space; and target densities (Table 3.2). These approved components of Chapter 3 are attached hereto and incorporated herein by reference as Exhibit "L".

As provided in Condition of Approval No. 128 of the MPD Permit Approval, "all other specifics shall be resolved through the Development Agreement process." Since the date of the MPD Permit Approval, the Master Developer has added additional detail to, and further refined, Figure 3-1 (see Exhibit "L"). This more detailed and specific figure is the MPD Site Plan attached hereto as Exhibit "U." Neither the Land Use Plan Map shown at Exhibit "L" nor the MPD Site Plan shown at Exhibit "U" is a surveyed map; the scale of each exhibit prevents that level of detail. The MPD Site Plan shown on Exhibit "U" refines the Design Concept and Land Use Plan in Exhibit "L" to shift and improve road alignments to further minimize impacts on sensitive area buffers, to reflect more accurately, sensitive area buffer widths, to show possible lot layouts, building footprints, parking and circulation areas, and to show the vacation of certain right-of-way. The lot layouts, building footprints, parking and circulation areas shown on Exhibit "U" are only conceptual and may be modified pursuant to Implementing Projects (e.g., subdivisions and binding site plans) without an amendment to this Agreement.

Pursuant to Condition of Approval No. 128 of the MPD Permit Approval, further specificity is provided in Table 4-1 below which shows the Dwelling Unit range, range of commercial/office/retail/light industrial square footage, and anticipated additional possible uses of each Development Parcel in The Villages MPD. The data included within this Table 4-1 may only be modified pursuant to the MPD Site Plan amendment processes outlined in Section 4.4 below.

Table 4-1

Site Plan Parcel ID	Site Plan Phase	Range of Res'l Units for Parcel[1]	Square Feet Range for Commercial/ Office/Retail on Parcel	Additional Possible Uses[2]
V1	1B	59-79	N/A	E, F, G, H, I, J[3]
V2	1B	41-54	N/A	E, F, G, H, I, J[3]
V3	1B	52-72	N/A	E, F, G, H, I, J[3]
V4	1B	18-25	N/A	E, F, G, H, I, J[3]
V5	1B	40-93	N/A	E, F, G, H, I, J[3]
V6	1B	53-123	N/A	E, F, G, H, I, J[3]
V7	1B	N/A	86,000 - 344,000 SF	A, B, C, E, F, G, H[3]
V8	1B	N/A	61,000 - 240,000 SF	A, B, C, E, F, G, H[3]
V9	1B	N/A	46,000 - 183,000 SF	A, B, C, F, G, H
V10	1A	88-204	N/A	E, F, G, H, I, J
V11	1A	59-106	64,000 – 257,000 SF	A, B, C, F, G, H
V12	1A	99-178	108,000 – 431,000 SF	A, B, C, F, G, H
V13	1A	121-167	N/A	E, F, G, H, I, J
V14	1A	27-63	N/A	E, F, G, H, I, J
V15	1A	28-55	N/A	E, F, G, H, I, J
V16	1A	102-136	N/A	E, F, G, H, I, J
V17	1A	57-122	N/A	E, F, G, H, I, J
V18	1A	148-197	N/A	E, F, G, H, I, J
V19	1A	66-88	N/A	E, F, G, H, I, J
V20	2	114-228	N/A	E, F, G, H, I, J
V21	1A	0-0	N/A	E
V22	2	84-112	N/A	E, F, G, H, I, J
V22-S	2	23-30	N/A	E, F, G, H, I, J
V23	2	56-111	N/A	E, F, G, H, I, J
V24	1A	66-92	N/A	E, F, G, H, I, J
V25	2	77-106	N/A	E, F, G, H, I, J
V26	2	25-34	N/A	E, F, G, H, I, J
V27	2	231-308	N/A	E, F, G, H, I, J
V28	2	229-305	N/A	E, F, G, H, I, J
V29	2	64-127	N/A	E, F, G, H, I, J
V30	2	48-96	N/A	E, F, G, H, I, J
V31	2	117-156	N/A	E, F, G, H, I, J

Site Plan Parcel ID	Site Plan Phase	Range of Res'l Units for Parcel[1]	Square Feet Range for Commercial/ Office/Retail on Parcel	Additional Possible Uses[2]
V32	3	21-29	N/A	E, F, G, H, I, J
V33	3	9-13	N/A	E, F, G, H, I, J
V34	3	164-218	N/A	E, F, G, H, I, J
V35	3	18-24	N/A	E, F, G, H, I, J
V36	3	33-66	N/A	E, F, G, H, I, J
V37	3	101-202	N/A	E, F, G, H, I, J
V38	3	80-159	N/A	A, E, F, G, H, I, J
V39	3	50-101	N/A	A, E, F, G, H, I, J
V40	3	61-82	N/A	A, E, F, G, H, I, J
V41	3	140-187	N/A	A, E, F, G, H, I, J
V42	3	55-76	N/A	A, E, F, G, H, I, J
V43	3	10-13	N/A	A, E, F, G, H, I, J
V44	3	20-26	N/A	A, E, F, G, H, I, J
V45	3	23-30	N/A	A, E, F, G, H, I, J
V46	3	10-13	N/A	A, E, F, G, H, I, J
V47	3	35-49	N/A	A, E, F, G, H, I, J
V48	3	90-180	N/A	A, E, F, G, H, I, J
V49	3	26-53	N/A	E, F, G, H, I, J
V50	3	0-0	N/A	E
V51	3	60-121	N/A	E, F, G, H, I, J
V51-S	3	10-20	N/A	E, F, G, H, I, J
V52	3	33-66	N/A	E, F, G, H, I, J
V53	3	43-86	N/A	E, F, G, H, I, J
V54	3	84-112	N/A	E, F, G, H, I, J
V55	3	79-110	N/A	E, F, G, H, I, J
V56	3	89-178	N/A	E, F, G, H, I, J
V57	3	0-0	N/A	E
V58	3	0-0	N/A	E
V59	3	42-83	N/A	E, F, G, H, I, J
V60	3	18-36	N/A	E, F, G, H, I, J
V61	3	100-199	N/A	E, F, G, H, I, J
V62	3	8-15	N/A	E, F, G, H, I, J
V63	3	31-62	N/A	E, F, G, H, I, J

Site Plan Parcel ID	Site Plan Phase	Range of Res'l Units for Parcel[1]	Square Feet Range for Commercial/ Office/Retail on Parcel	Additional Possible Uses[2]
V64	3	14-27	N/A	E, F, G, H, I, J
V65	3	12-25	N/A	E, F, G, H, I, J
V66	3	N/A	82,000 – 326,700 SF	A, B, C, D, E, F, G
V67	3	N/A	130,000 – 522,000 SF	A, B, C, D, E, F, G
V68	1B	N/A	52,000 – 209,000 SF	A, B, C, D, E, F, G
V69	1B	N/A	51,000 – 205,000 SF	A, B, C, D, E, F, G
V70	3	N/A	51,000 – 205,000 SF	A, B, C, D, E, F, G
V71	3	117-162	N/A	E, F, G, H, I, J

1. MPD-L results in 4 – 8 du/acre. MPD-M results in 7 – 12 du/acre. MPD-H results in 13-18 du/acre. MPD-H (18-30) results in 18 – 30 du/acre.
2. Additional uses as described below:
   A. Neighborhood Commercial – NC (BDMC 18.36.020-030 Exhibit "E")
   B. Community Commercial – CC (BDMC 18.38.020-030 Exhibit "E")
   C. Town Center – TC (BDMC 18.40.020-030 Exhibit "E")
   D. Industrial – I (BDMC 18.44.020-030 Exhibit "E")
   E. Public – PUB (BDMC 18.46.020-030 Exhibit "E")
   F. Accessory Uses and Structures (BDMC 18.030-060 Exhibit "E")
   G. Temporary Uses (BDMC 18.52.020-040 Exhibit "E")
   H. Home Occupations (BDMC 18.54 Exhibit "E")
   I. Accessory Dwelling Units (BDMC 18.56 Exhibit "E")
   J. Major and Minor Utility Facilities
3. The identification of these additional possible uses shall not preclude or otherwise conflict with the Enumclaw School District's intended use of these parcels for a high school, notwithstanding Section 4.4.7 below, should a portion of these parcels be transferred to the Enumclaw School District under the terms of the School Agreement.

4.2 TOTAL NUMBER OF DWELLING UNITS

As approved by Condition of Approval No. 128 of the MPD Permit Approval, the total number of Dwelling Units allowed on the Project Site is 4,800 Dwelling Units. The predominant housing type will be Single Family residential. Except as may be modified by Section 10.4.2 and pursuant to Condition of Approval No. 136 of the MPD Permit Approval, the Dwelling Unit mix is 3,600 Single Family units (MPD-L and MPD-M) consisting of Single Family detached, courtyard homes, Single Family attached buildings containing four (4) or fewer units, and Cottages; and 1,200 Multi-Family Units (MPD-M and MPD-H) consisting of townhomes and stacked flats. For purposes of determining the number of Single Family and Multi-Family Dwelling Units, a

residential structure that contains four (4) Dwelling Units shall be counted as four (4) Single Family Dwelling Units; a residential structure that contains five (5) Dwelling Units shall be counted as five (5) Multi-Family Dwelling Units. Live/Work Unit locations are identified on the MPD Site Plan. The Project Site consists of 1,196 acres, of which at least 481.4 acres of Open Space shall be provided.

4.3 TOTAL AMOUNT OF NON-RESIDENTIAL DEVELOPMENT

As approved by Condition of Approval No. 128 of the MPD Permit Approval, the total square feet of non-residential Development allowed on the Project Site is 775,000 square feet of Floor Area. Except as may be modified by Section 10.4.2 and pursuant to Condition of Approval No. 136 of the MPD Permit Approval, the mix is 325,000 square feet of Commercial (Mixed Use, Retail, and neighborhood commercial) and 450,000 square feet of Office and Light Industrial. Except as may be modified by Section 10.4.2, Light Industrial shall comprise no more than 200,000 square feet. Public Uses and schools as identified in the School Agreement shall not count towards the total allowed square feet of non-residential Development.

4.4 MPD SITE PLAN AMENDMENTS

The following future MPD Site Plan amendments are allowed pursuant to the process and standards found in Section 12 of this Agreement. Pursuant to Condition of Approval No. 133 of the MPD Permit Approval, the frequency of MPD Site Plan amendments is limited to once per calendar year and shall be requested by the Master Developer by June of each year, with the exception of year one, when an amendment may be requested later than June, and except as noted below. MPD Site Plan amendments shall not allow Development of more Dwelling Units or square feet of non-residential Development than the total amounts permitted under Subsections 4.1 and 4.2.

4.4.1 The residential density ranges (i.e., MPD-L, MPD-M, and MPD-H) of any Development Parcel can be adjusted one category up or down pursuant to the MPD Permit Approval Minor Amendment process outlined in Subsection 12.8.14. For example, MPD-L may move up to MPD-M, or MPD-H may move down to MPD-M. In no instance may a Development Parcel move up or down more than one density range from its original designation as depicted on

Exhibit "U" unless a Major Amendment to the MPD Permit Approval is approved pursuant to BDMC 18.98.100 (Exhibit "E").

4.4.2 Pursuant to Conditions of Approval Nos. 132 and 161 of the MPD Permit Approval, no Development Parcel abutting the perimeter of the Project Site can increase its density range without a Major Amendment to the MPD Permit Approval pursuant to BDMC 18.98.100 (Exhibit "E"). Further, no Development Parcel can increase to MPD-H 18-30 du/acre without a Major Amendment to the MPD Permit Approval pursuant to BDMC 18.98.100 (Exhibit "E").

4.4.3 Any Development Parcel abutting or across a road from a Mixed Use designation as shown on Exhibit "U" may be changed to the Mixed Use designation pursuant to a Minor Amendment to the MPD Permit Approval Minor Amendment per Subsection 12.8.14(A) of this Agreement.

4.4.4 Pursuant to Condition of Approval No. 130 of the MPD Permit Approval, any Development Parcel designated as Mixed Use can be converted to Live/Work Units pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A) of this Agreement.

4.4.5 A Development Parcel that is designated as school in Exhibit "U", but is not dedicated to the Enumclaw School District pursuant to the School Agreement, may revert to the MPD-M density range pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A). Or, the Master Developer may elect to keep the Development Parcel designated school and proceed with Development provided the proposed use is authorized in the City's Public (PUB) zoning district per BDMC Ch. 18.46 (Exhibit "E") without any amendment to the MPD Permit Approval or this Agreement. The Master Developer shall inform the Designated Official of its election by written notice prior to submitting an application for an Implementing Project on such a Development Parcel.

4.4.6 MPD Site Plan amendments to Open Space areas as shown on Exhibit "U" shall be allowed with a Minor Amendment to the MPD Permit Approval provided all of the criteria outlined in BDMC 18.98.100(A)-(H) for a minor amendment are met. Such amendments may only be processed concurrently with the submittal to the City of an Implementing Project application; shall not modify the overall Open Space requirement set forth in Section 9.1; are

exempt from the annual docketing requirement set forth in Section 4.4 above; and may include converting entire Development Parcels to Open Space.

4.4.7 Any Development Parcel, or portion thereof, may be converted to School use pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A) of this Agreement. Pursuant to Condition of Approval No. 99 of the MPD Permit Approval, however, if any party submits an Implementing Project application that seeks to locate a high school as a conditional use within any lands designated on the MPD Site Plan (Exhibit "U") for commercial/office/retail use, then the application for the Minor Amendment to MPD Permit Approval shall also include an updated fiscal analysis prepared by the Master Developer pursuant to Section 13.6 of this Agreement. Moreover, if this updated analysis shows a deficit, the Master Developer, not the Enumclaw School District, shall be required to mitigate the deficit pursuant to Section 13.6 of this Agreement.

4.4.8 Although the Design Concept and Land Use Plan shown in Exhibit "L" was not a specifically surveyed map, approximate acreages were assigned to each Development Parcel to aid in understanding the Design Concept and Land Use Plan. The stated acreage of any Development Parcel may be increased or decreased up to five percent (5%) concurrent with the City's processing of an Implementing Project application without an amendment to the MPD Permit Approval or this Agreement. The stated acreage of any Development Parcel may be increased or decreased five-to-ten percent (5-10%) concurrent with the City's processing of an Implementing Project application with a Minor Amendment to the MPD Permit Approval. Typical reasons for altering the acreage of a Development Parcel include but are not limited to accommodating on the ground surveying, accommodating detailed engineering designs for necessary infrastructure, improving the location and/or access to a Park or active Open Space area, enhancing protections for a sensitive Open Space area, and providing better clustering, buffers, or trail connections between neighborhoods. The acreage of a Development Parcel may not be increased or decreased without a Major Amendment to the MPD Permit Approval if doing so alters the maximum total residential units and square footage of commercial space, or target densities for the Project Site as a whole, as were approved in Condition of Approval No. 128.

4.4.9 The road way alignments shown on the MPD Site Plan (Exhibit "U"), and as further refined in Figure 6-4, may be modified pursuant to and concurrent with an Implementing Project application (e.g., subdivision or binding site plan) without an amendment to the MPD Permit Approval or this Agreement. Such amendments are exempt from the annual docketing requirement set forth in Section 4.4 above.

4.4.10 Any other MPD Site Plan amendment (not listed above) may be processed as a Minor Amendment to the MPD Permit Approval provided the criteria outlined in BDMC 18.98.100(A)-(H) (Exhibit "E") are met; otherwise, a MPD Site Plan amendment constitutes a Major Amendment to the MPD Permit Approval.

4.5 INTERFACE WITH ADJOINING DEVELOPMENT

When an Implementing Project application for a Development Parcel along the Project Site perimeter is submitted, and the abutting property outside the MPD to such Development Parcel is not owned by the Master Developer, then the Development Parcel is subject to the section of the MPD Framework Design Standards and Guidelines entitled "Interface with Adjoining Development," which provides guidelines to ensure a transition between the Development within The Villages MPD that abuts Development outside the Project Site but within the City limits.

4.6 EXPANSION PARCELS

Pursuant to Conditions of Approval Nos. 134 and 162 of the MPD Permit Approval, any or all of the Expansion Parcels as set forth in Exhibit "S" may be developed during the Build-Out Period subject to the process and standards set forth in Sections 10 and 12 of this Agreement.

4.7 ADDITIONAL USE STANDARDS

4.7.1 Construction/Field Offices

Construction/field offices are allowed to be located within existing buildings or modular structures throughout the Project Site subject to the City's approval. There is no time limit for such uses, provided that until the use is terminated, the use shall count towards the maximum amount of non-residential Development within The Villages MPD.

4.7.2 Neighborhood Commercial Designed as Corner Stores

Pursuant to Condition of Approval No. 128 of the MPD Permit Approval, the Neighborhood Commercial uses are the permitted uses authorized in the City's Neighborhood Center (NC) zone as specifically outlined in BDMC 18.36.020 (Exhibit "E"). An Implementing Project application that includes Neighborhood Commercial cannot be approved by the City without a Minor Amendment of the MPD Permit Approval. The following additional criteria shall also apply to Neighborhood Commercial uses:

1. Automobile fueling stations, limited to four pumps, and limited to no more than four thousand square feet for a convenience store.
2. Parking areas shall not be located between the building and the street frontage. Parking should be accessed from a side street if available, or located to the side(s) or back of the retail uses. On-street parallel parking or head in angle parking in front of the retail uses is encouraged and may be included in counting towards the required parking.
3. Direct pedestrian connections from the sidewalk to the stores are strongly encouraged.
4. Drive-through facilities are not allowed.

4.7.3 Accessory Dwelling Units (ADUs)

The Villages MPD is limited to three hundred (300) Accessory Dwelling Units (ADUs) on the Project Site. The Master Developer is the only party that may submit ADUs applications for the Project Site unless the Master Developer assigns or transfers this right (or a portion thereof) to a third party. The City shall not accept an ADU application for the Project Site from a third party unless such application is accompanied by written approval from the Master Developer. Accessory Dwelling Unit applications must also be reviewed and approved by the DRC prior to submittal to the City for approval. The first one hundred sixty (160) ADUs constructed within the Project Site shall not count towards the total number of Dwelling Units allowed on the Project Site as set forth in Section 4.2 of this Agreement. Each ADU constructed after this 160 ADU threshold shall be counted as one-third (1/3) of a Dwelling Unit for purposes of the City's tracking the total number of Dwelling Units allowed on the Project Site as set forth in Section

4.2 of this Agreement. The 3:1 ADU ratio established in this subsection is inapplicable to the Maple Valley Transportation Mitigation Agreement (Exhibit "Q").

4.8 PROCESS TO TRACK TOTAL DWELLING UNITS AND FLOOR AREA

The Designated Official and Master Developer shall develop a process to track Dwelling Unit counts and non-residential square feet based on approved Construction Permits. Pursuant to Condition of Approval No. 129 of the MPD Permit Approval, Table 4-8-4 below shows the anticipated approximate number of Dwelling Units and non-residential square footage within each Phase of The Villages MPD. As part of the Annual Review described in the Funding Agreement (Exhibit "N"), the Designated Official and Master Developer shall confirm the number of Dwelling Units and amount of non-residential Development square footage that has been developed within The Villages MPD.

Table 4-8-4 Target Unit Count by Phase

Phase	Target Single Family Dwelling Units	Target Multi-Family Dwelling Units	Target Commercial/Office/Retail (Square Feet)	Total (Units)
1A	436	334	200,000	770
1B	110	205	320,000	315
2	1155	165	0	1,320
3	1899	496	255,000	2,395
Total	**3,600**	**1,200**	**775,000**	**4,800**

4.9 TRANSFER OF DEVELOPMENT RIGHTS

To achieve the proposed Densities on the Project Site, the Master Developer shall purchase TDRs and transfer them to the Project Site. The phasing of the purchase and transfer of TDRs to the Project Site must be consistent with the process and requirements found in the City's TDR and MPD Ordinances (Exhibit "E"). Pursuant to the MPD Ordinance, BDMC 18.98.040.A.18 (Exhibit "E"), The Village MPD's phasing plan for the acquisition of TDRs must demonstrate that for each Phase, no more than 60% of the proposed residential Density is based upon the land area included in that Phase. Pursuant to Conclusion of Law No. 62 of the MPD Permit Approval, The Village MPD's TDR phasing plan is set forth in Table 4-9 and demonstrates that the Master Developer's proposed phasing of the purchase and transfer of TDRs meets the requirements of

BDMC 18.98.040.A.18 (Exhibit "E"), since the ratio of base Density to planned Density for the land within each Phase is less than or equal to 60%. The Master Developer will update the TDR phasing plan, Table 4-9, as necessary and submit it to the City with subsequent Implementing Project applications. If the proposed Density for an Implementing Project application does not result in the utilization of more than 60% of the land area for the particular Phase in which the Implementing Project is proposed, TDRs are not required to be purchased.

The Master Developer and Designated Official shall work cooperatively to create an efficient process for TDR transactions consistent with BDMC Ch. 19.24 (Exhibit "E"). The Master Developer shall identify to the City a primary contact for TDR acquisitions. This TDR acquisition process shall be reviewed annually as part of the Annual Review as identified in Funding Agreement (Exhibit "N").

The Master Developer shall include a summary of "Base Density Used" and "TDRs Needed" with each Preliminary Plat application or Site Plan application submitted to the City, and these values shall be shown on such application's cover sheet. The City may process and approve a Preliminary Plat or Site Plan subject to a condition requiring the Master Developer to demonstrate ownership of all TDRs required for the Preliminary Plat or Site Plan, but the City will not issue Utility Permits for any road or stormwater improvements for any division of a Preliminary Plat or Site Plan until the Master Developer has demonstrated ownership of any TDRs needed for that division of the Preliminary Plat or Site Plan. Any division of a Final Plat requiring TDRs will not be processed or approved until the Master Developer has acquired title to the needed TDRs and they have been assigned by the Master Developer to the applicable division of the Final Plat.

Table 4-9. TDR Phasing Plan

Phase	Planned Density	Base Density used[1]	TDRs needed	Percent of proposed Density based upon land area within that Phase
Phase 1A	770	452	318	59%
Phase 1B	315	189	126	60%
Phase 2	1320	295	1025	22%
Phase 3	2395	993	1,407	42%

Note 1

Phase 1A Base Density from Parcel D

Phase 1B Base Density from Parcel C and Parcel B, 70 Dwelling Units of base Density transferred to Phase 2

Phase 2 Base Density from Parcel E and Guidetti Parcel TDRs, plus 70 Dwelling Units base Density from Phase 1B

Phase 3 Base Density from BDA, Parcel F-North, and Parcel G

4.10 DEVELOPER IMPROVEMENTS

The Villages MPD design and mitigation measures described in this Agreement, including the MPD Permit Approval and its Conditions of Approval in Exhibit "C", mitigate any probable significant adverse environmental impact directly identified as a consequence of MPD Permit Approval and this Agreement. Additionally, some elements of the MPD Permit Approval and mitigation measures include provisions relating to system improvements identified in the City's Comprehensive Plan (Exhibit "E"), for which the City might adopt impact fees under RCW 82.02.050 *et seq*. As designed and with full implementation of all the mitigation measures, The Villages MPD build-out will fully and adequately mitigate the probable significant adverse environmental impacts of The Villages MPD and, that through such mitigation measures, provisions will be made for: (i) the facilities needed to serve new growth as a result of The Villages MPD within the City and (ii) the Master Developer to construct or pay a proportionate share of the cost of completing certain system improvements. Unless otherwise provided elsewhere in this Agreement or in the MPD Permit Approval, the mitigation measures listed this Agreement and in Exhibit "C" are in lieu of the payment of any impact fees that the City has the authority to impose pursuant to RCW 82.02.050 *et seq.*, including any amendments thereto, such that no impact fees shall be imposed on any Implementing Project during the term of this Agreement except for those impact fees explicitly allowed in this Agreement. This section

applies to the MPD Permit Approval and to City infrastructure and City fees associated with the Build-Out of the MPD. Nothing in this section applies to preclude subsequent environmental review of Implementing Projects under the State Environmental Policy Act ("SEPA"), and Implementing Projects are expected to undergo additional SEPA review.

5.0 ADDITIONAL BULK, LANDSCAPE AND SIGN STANDARDS

Pursuant to Condition of Approval No. 135 of the MPD Permit Approval, the MPD Project Specific Design Standards and Guidelines and High Density Residential Supplemental Design Standards and Guidelines are attached hereto and incorporated herein as Exhibits "H" and "I", respectively. The Engineering Design and Construction Standards also are attached hereto and incorporated herein in Exhibit "E". This Section of the Agreement sets additional standards that impose restrictions beyond the City's applicable codes on The Villages MPD Development. All Implementing Projects must comply with these standards and guidelines, as well as the MPD Framework Design Standards and Guidelines.

5.1 DRC REVIEW REQUIRED FOR DESIGN GUIDELINES AND STANDARDS

The DRC shall review and approve each Implementing Project application, except for Utility Permits and permits for Schools as set forth in the School Agreement, for compliance with the MPD Project Specific Design Standards and Guidelines prior to submittal to the City for review and approval. The DRC's approval shall be noted in each such application, which shall be submitted to the City for review and processing. In the event that the City determines that an Implementing Project application does not comply with Exhibits "H" and "I" or the MPD Framework Design Standards and Guidelines, or that the DRC has failed to provide approval, the Designated Official may require changes to or deny the application.

5.2 DIMENSIONAL STANDARDS

Consistent with BDMC 18.66.020(A) (Exhibit "E") and RCW 36.70B.170, Condition of Approval No. 144 of the MPD Permit Approval provides that: "Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement." This subsection outlines the dimensional standards applicable within the Project Site consistent with the MPD Permit Approval to impose restrictions beyond the City's applicable code provisions.

5.2.1 Lot Size and Lot Width

A. The MPD Ordinance does not impose a minimum lot size. The minimum lot size for Detached Single Family is 2,200 sq. ft. The minimum lot size does not apply to

alternative lot configurations per Section 5.2.6, Cottages, townhomes or Multi-Family. Lot sizes are dictated by product type, Setbacks, and other specific lot standards described in Section 5 of this Agreement.

B. The minimum width of a flag lot is 14 feet for the portion of the lot that serves as access. One "flag" driveway may access up to two (2) lots.

5.2.2 Residential Setbacks and Maximum Height

Table 5-2-1

Density Range	Required Setbacks and Maximum Height[6, 8, 9]					Maximum Building Height[5,7]
	Front Yard @ Street[1]/Garage	Front Yard @ Common Green[1]	Side Yard[2,3]	Side Yard @ Corner Lot[4]	Rear Yard	
MPD –H	10'/NA	16'	7'[10]	10'	10'	45'
MPD – M	10'/20'	10'	5'	10'	5'	45'
MPD – L	10'/20'	10'	5'	10'	5'	45'

Notes:

1. Measured to property line.
2. Note that side yard Setback does not apply to common wall on townhome, duplex, other similar attached Dwelling Units or alternative lot configurations as provided in Subsection 5.2.7.
3. Use easements may be utilized for provision of private yards. Use easements shall not be used for building code fire separation distance.
4. Setbacks at corner lots with buildings with wrap around porches may be reduced to 5'.
5. Maximum building height may be exceeded by 10' for tower rooms less than 300 sq. ft., and distinctive architectural elements such as towers, cupolas and spires.
6. Table 5-2-1 does not apply to flag lots, see Section 5.2.5(F).
7. On at least one side of the building there shall be a 32' or lower accessible eave.
8. Access to escape and rescue windows shall be provided for in building design as required by the then-applicable City building code.
9. Buildings over 35' in height shall provide a minimum 7' by 12' permanent, useable staging area on at least one side of the building for fire access to the roof. The staging area shall be located adjacent to the accessible eave.
10. Single Family side yard Setbacks shall be a minimum of 5' in MPD-H.

All residential construction shall be designed in accordance with the then-applicable City building code.

Live/Work Units shall be provided with a NFPA 13 fire sprinkler system. The residential portion of the Live/Work Unit shall be provided with quick response sprinkler heads, with a separation between the residential and non-residential uses by a barrier, wall, lintel, or draft curtain.

5.2.3 Allowed Encroachments into Setbacks

A. When a primary egress window on the second floor of a building is directly above an encroachment on the first floor of the same building, such encroachment in that location within the 5' side yard Setback shall be limited to eighteen inches (18") measured horizontally from the outside wall of the foundation.

B Uncovered decks, patios, walkways, and other minor structural elements less than 30 inches in height; and fences six (6) feet in height or less; are exempt from Setback requirements.

C. Retaining walls and rockeries and other similar landscape features are allowed within Setbacks.

D. Monument signs may be located within Setbacks.

E. Encroachments shall only be allowed as long as a minimum thirty inch wide (30") access path at the ground level is maintained for emergency purposes. For example, decks may require stairs, or fences may require a gate.

5.2.4 Measurement of Setbacks

Setbacks are measured perpendicular from the property line to the outside wall of the foundation of a structure.

5.2.5 Determining Residential Setbacks on Irregular Lots

Irregular Lots are defined as lots that are non-rectangular, lots with three sides, or more than four sides, and require special measurement techniques in order to achieve the purpose of the specific Setbacks. The Designated Official may allow alternate Setbacks on irregular lots, other than those described below, in order to promote unique design opportunities.

A. Front Setbacks: Front Setbacks shall be measured from the property line that abuts the street from which the lot is addressed or takes primary public access. For an alley loaded lot, the front Setback is measured from the lot line furthest from the alley.

B. Rear Setbacks: In the case of an irregularly shaped lot, a ten-foot line which is within the lot and parallel to and most distant from the front lot line shall be considered the rear lot line.

C. Side Setbacks: All lot lines, which are not defined as front or rear lot lines, shall be considered side lot lines.

D. Pie-Shaped Lots: Setbacks on pie-shaped lots shall be measured at the closest point between the proposed building and the angled lot line, perpendicular to that lot line.

E. Cul-De-Sac Lots: Setbacks shall be taken from the nearest proposed foundation corner, and measured perpendicular to the property lines.

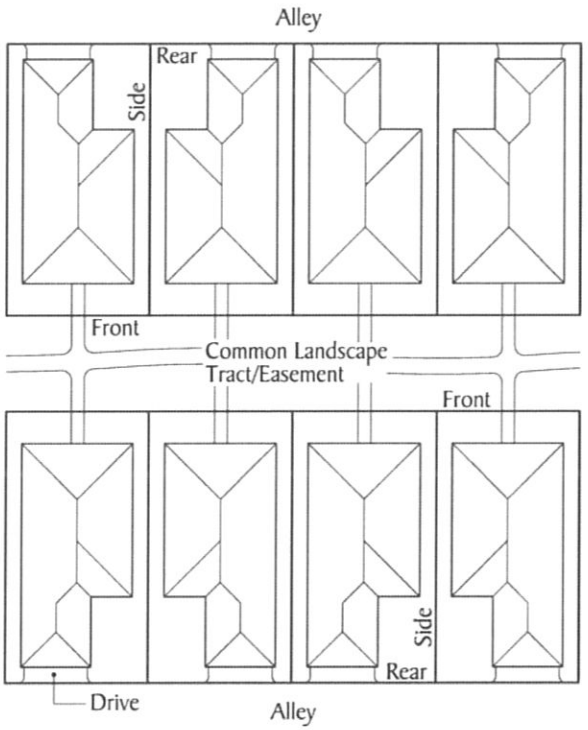
F. Flag Lots: A flag lot is a lot so shaped that the building area (the "flag") is not adjacent to the street or alley on which the lot fronts, and which includes an access strip (the "pole") connecting the building area to the street or alley. Setbacks shall be applied at the enlarged area of the lot ("flag"), and all Setbacks shall be a minimum of five feet, except that one side of a two-story or taller building shall have a minimum 7' Setback for fire access.

5.2.6 Alternative Lot Configurations

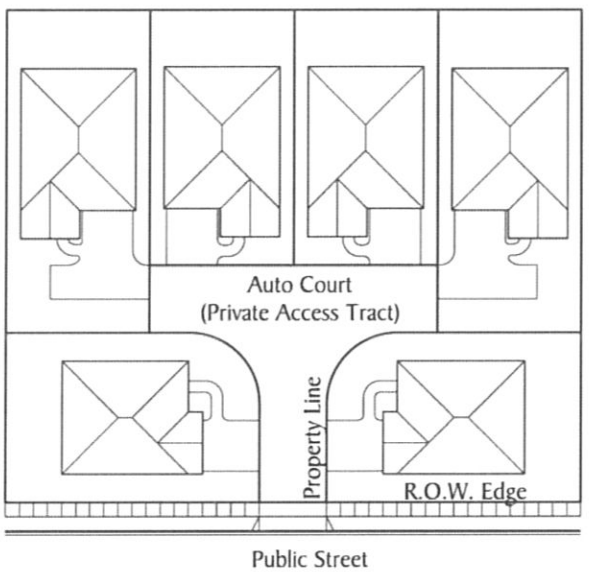
In order to promote creative and unique site designs, Alternative Lot Configurations are allowed within The Villages MPD. Alternative Lot Configurations include, but are not limited to:

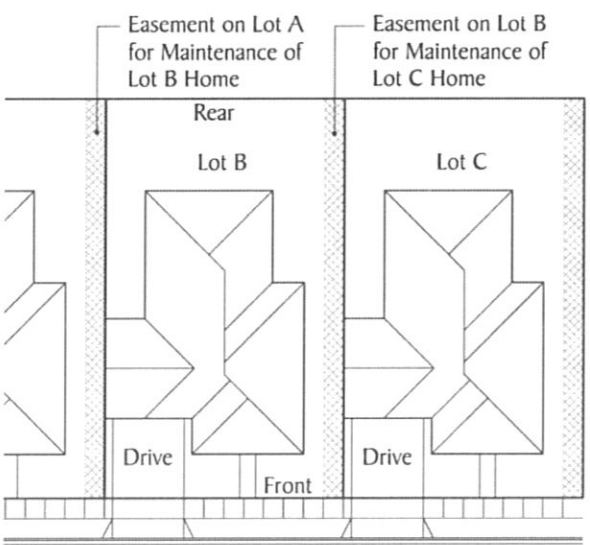
1. Zero lot line development
2. "Z" lot configuration
3. Common access easements/tracts configuration
4. Courtyard

Common access easement/tract configuration

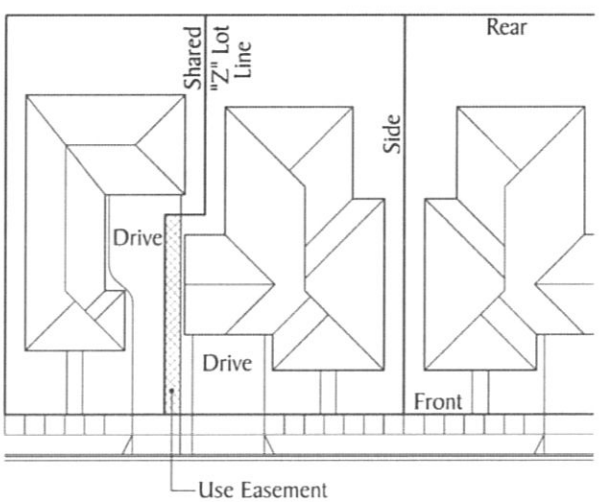


Courtyard





Zero lot line development



"Z" lot configuration

Illustrative examples of some alternative lot configurations; not to scale

5.2.7 Floor Area Ratio (FAR)

Consistent with BDMC 18.36.040(A)(1) ("structures without residential uses"), BDMC 18.38.040(A)(1) ("structures or sites without residential uses"), BDMC 18.40.040(B)(1) ("structures without residential uses"), BDMC 18.42.040, and BDMC 18.44.040 (Exhibit "E") and pursuant to Condition of Approval No. 145 of the MPD Permit Approval, non-residential Implementing Projects within The Villages MPD shall not exceed the following Floor Area Ratio ("FAR") standards:

1. Retail: FAR 1.0
2. Light Industrial: FAR 1.0
3. Commercial: FAR 1.0

5.2.8 Non-Residential Uses: Setbacks and Height

A. Setbacks for Mixed Use, Commercial/Office/Retail/Light Industrial, schools or Parks and Open Space Development shall be consistent with the International Building Code (IBC), DRC Design Guidelines, the MPD Project Specific Design Standards and Guidelines (incorporated herein as Exhibit "H") and applicable MPD Framework Design Standards and Guidelines (Exhibit "E") and subject to review by the Design Review Committee as established in Section 12.3.

B. Non-Residential Building Height

Table 5-2-2. Non-Residential Building Height

Site Plan Category	Max. Building Height*
Mixed-Use	45'
Commercial/Office/Retail	45'
Schools	45'
Parks and Open Space	30'
Light Industrial	45'

* Maximum building heights do not apply to Major Utility Facilities.

5.3 PARKING STANDARDS

The standards for parking facilities are intended to promote vehicular and pedestrian safety and efficient land use. The standards in this section match or are in addition to those set by BDMC 18.80.030, 18.80.040, 18.80.045, 18.80.050, and 18.80.060 (Exhibit "E").

5.3.1 Minimum Parking Requirements

Parking shall comply with BDMC Chapter 18.80 (Exhibit "E"), and the additional standards provided below.

A. Residential Uses within the MPD-L, MPD-M and MPD-H Categories

Residential uses within the MPD-L, MPD-M and MPD-H density ranges shall provide off-street parking spaces pursuant to the chart found at BDMC 18.80.030(E) (Exhibit "E"). In addition, attached Dwelling Units less than or equal to four (4) Dwelling Units shall provide two spaces per unit. These requirements are restated here:

Use	Required Spaces Per Unit
Dwelling Unit, detached or attached less than or equal to four (4) Dwelling Units	2
Dwelling Unit, attached more than four (4) dwelling units	1.75
Multi-Family studio units	1
Senior Housing	0.75

B. Mixed Use - Village Center

Pursuant to Condition of Approval No. 148 of the MPD Permit Approval, parking spaces shall be provided within the Village Center as follows, all other areas shall comply with the City's parking standards, BDMC Chapter 18.80 (Exhibit "E"):

1. <u>Commercial, Restaurant, Office, Institutional Use</u>
   Parking spaces shall be provided at a minimum ratio of 1 space per 500 square feet of floor area excluding mechanical areas and storage; unless modified through a shared parking agreement. Parking spaces need not be provided on

the same Development Parcel. Institutional Uses shall provide spaces as required under Subsection 5.2.1.C of this Agreement.

2. Hotel
   Hotel uses shall be provided a minimum of 0.75 spaces per room. These spaces may be shared with another use with non-competing hours of operation such as Office space.

3. Mixed -Use Residential
   Residential units, except for senior housing, in the Mixed Use designation shall be provided a minimum 1.5 off-street parking spaces per Dwelling Unit. Multi-Family studio units shall provide 1 off-street space per Dwelling Unit. Guest parking for residential uses shall be satisfied by on-street or shared lot parking with no specified number of spaces per Dwelling Unit.

4. Senior Housing
   Senior housing shall be provided a minimum 0.60 spaces per Dwelling Unit.

C. Institutional Uses

Institutional Uses shall provide the following minimum parking spaces unless a separate parking analysis for the specific use is provided to the City. These parking minimums match or exceed those set by BDMC 18.80.030 (Exhibit "E"):

1. Elementary Junior High/Middle School: 1.75 spaces per classroom
2. High School: 5 spaces per classroom

Religious facilities, community clubs, theaters, performing art centers and other similar facilities: (i) 1 space for every 4 fixed seats or 1 space for every 100 square feet of assembly space; plus (ii) 1 space for every 500 square feet of Office; and (iii) 1.75 spaces per classroom.

Daycare Center serving more than 12 children: 6 spaces plus 1 space for each required employee.

D. Stacking and Loading Spaces

1. As required under BDMC 18.80.045 (Exhibit "E"), stacking for six cars shall be provided for each drive-up window: each stacking space shall be a minimum of 15 lineal feet.

2. Loading spaces for Commercial, business park, and Light Industrial uses shall be provided pursuant to BDMC 18.80.040 (Exhibit "E"), except for Commercial uses located within Mixed Use designated areas.

3. Commercial buildings located within Mixed Use designated areas shall provide loading spaces as follows:

   a. Uses taking access from Main Street shall not be required to provide off-street loading spaces.

   b. Commercial uses between 5,000 and 25,000 sq. ft. in size, when located off of Main Street, shall provide a minimum of one (1) off-street loading space.

   c. Commercial uses located off of Main Street greater than 25,000 sq. ft. in size shall provide a minimum of two (2) off-street loading spaces.

   d. Dimensions shall be consistent with BDMC 18.80.040 (Exhibit "E").

E. Temporary Use, Major and Minor Utility Facilities and Recreational Uses

Minimum parking requirements for Temporary Use, Major and Minor Utility Facilities and Recreational Uses will be determined by the Designated Official pursuant to the process established for certain conditional uses in BDMC 18.80.030(B) (Exhibit "E").

5.3.2 Parking Dimensions

Parking dimensions shall meet or exceed the standards of BDMC 18.80.050(B)(3) (Exhibit "E"), as follows:

A. Parking spaces shall be as follows:

1. Standard space: 9 ft x 19 ft, including a permitted 2 ft overhang into non-pedestrian areas.

2. Compact space: 8.5 ft x 16 ft, including a permitted 2 ft overhang into non-pedestrian areas; up to 50% of total required spaces may be compact subject to Designated Official approval.

3. Motorcycle space: 4.5 ft x 12 ft.

4. Parallel parking space: 24 ft x 7 ft.

B. Drive aisle widths for parking lots with perpendicular parking is 24' minimum, and for angled parking is 20' minimum. All dimensions not addressed here shall be as specified in BDMC Chapter 18.80 (Exhibit "E").

5.3.3 Location of Parking

All required parking spaces shall be located as described in BDMC 18.80.050(C) (Exhibit "E"), including the additional restriction set forth below:

A. For all non-residential uses, parking shall be provided within 500 feet of measured walking distance of the site upon which the use is located unless otherwise provided by the Designated Official.

5.3.4 Motorcycle and Bicycle Parking

Motorcycle and bicycle parking shall meet or exceed the standards of BDMC 18.80.060 (Exhibit "E"), as follows:

A. All Multi-Family Developments and nonresidential uses may provide one motorcycle space for every 25 required automobile parking spaces in lieu of a required automobile space.

B. All Commercial, Light Industrial, Institutional, and Recreational Uses which require 25 or more parking spaces shall provide a designated bicycle parking area to accommodate a minimum of five (5) bicycles. Such bicycle parking areas shall provide a secure facility to which to lock bicycles and shall be located so as to be reasonably convenient to the on-site use and not interfere with pedestrian or automobile traffic. The Designated Official may require additional bicycle parking for facilities requiring more than 100 spaces with high expected bicycle traffic, such as schools.

5.3.5 Reduced Parking Demand Study

Reductions in parking standards may be authorized pursuant to the process outlined in BDMC 18.80.050(E) (Exhibit "E").

5.4 SIGNAGE STANDARDS

5.4.1 Sign Standards Applicability

All Implementing Projects within The Villages MPD shall be subject to the definitions, standards, requirements and processes found within BDMC Chapter 18.82 (Exhibit "E") as well as the additional standards further detailed herein.

5.4.2 Sign Permits Review Process

Sign permits shall be reviewed pursuant to BDMC Chapter 18.82 (Exhibit "E") and Section 12 of this Agreement.

5.4.3 Real Estate and Construction Sign Program

The Design Review Committee will create a Construction and Real Estate Sign Program that includes standards for the size, number, location and removal of construction and real estate signs within The Villages MPD. This sign program shall at a minimum meet all requirements related to construction and real estate signs within BDMC Chapter 18.82 (Exhibit "E"). The Master Developer or Homeowners' Association (HOA) shall provide enforcement for the Construction and Real Estate Sign Program.

5.4.4 Design Review Committee Review

The Master Developer and/or Design Review Committee may require stricter sign standards and limits than those contained in BDMC Chapter 18.82 (Exhibit "E").

5.4.5 Retail Area Identification Sign(s)

A. Allowed Sign Area

Tenants within a retail area consisting of eight or more tenants may consolidate the total allowed area of ground signs for all tenants within the retail area into one or more retail area identification signs. The allowed sign area per tenant for a ground sign is 50 sq. feet one side, 100 sq. feet both sides. Individual tenants within a retail area for which there is a retail area

identification sign shall not be allowed individual ground signs. Regardless of the number of tenants, the maximum sign area for each retail area identification sign shall be 200 sq. feet, 100 sq. feet per side. A retail area identification sign may contain only the name of the retail area, the names of tenants and directional text or arrows.

B. Number of Retail Area Identification Signs Allowed

Two retail area identification signs are allowed adjacent to each major roadway that the retail area has frontage on provided the allowed sign area is not exceeded.

C. Design Standards

i. Retail area identification signs shall be designed with similar materials and architectural character as the buildings within the retail area so as to provide a cohesive appearance.

ii. Water features, masonry, and/or landscaping should be incorporated into the design to create visual interest.

iii. Signs may be indirectly lit or have internally illuminated channel letters. Internally illuminated plastic faced box signs are not allowed.

5.4.6 Neighborhood Identification Signs

Neighborhood Identification Signs identifying The Villages MPD are allowed within land zoned MPD by the City pursuant to the processes and standards set forth within the City's Sign Ordinance, BDMC Chapter 18.82 (Exhibit "E").

5.4.7 Sign Standard Variances

The review procedures and standards for variances from sign standards are pursuant to the process and standards set forth in BDMC 18.82.040(C) (Exhibit "E").

5.5 LANDSCAPE STANDARDS

5.5.1 Applicability

The provisions of this Section establish the landscape standards for The Villages MPD, and shall apply to all Implementing Projects within The Villages MPD except for detached Single Family residences, Accessory Dwelling Units, attached residential dwellings in buildings up to and

including four (4) Dwelling Units, home occupations, Temporary Uses, accessory uses, Minor Utilities, and clearing and grading associated with these uses. All Implementing Projects, including those excepted above, are still subject to review by the Design Review Committee (except for Utility Permits and permits for Schools as set forth in the School Agreement) and to any applicable landscape proportion and percentage requirements of BDMC 18.72.030 (Exhibit "E").

5.5.2 Review Process

A. Pursuant to BDMC 18.72 (Exhibit "E"), a landscaping plan or alternative landscaping plan designed or approved by either a landscape architect licensed in the State of Washington or a Washington State Nurseryman shall be submitted by an applicant to the Designated Official for review and approval as a Construction Permit. Pursuant to Condition of Approval No. 124 of the MPD Permit Approval, prior to approval, the Designated Official shall review each submitted landscape plan with the City's Director of Natural Resources and Parks for compliance with the following FEIS mitigation measure: "Mast-producing species (such as hazelnut) and such other native, preferred vegetation shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings."

B. The landscaping plans shall contain generally accepted industry standards and direction for planting and maintenance such as, but not limited to, tree and shrub planting, staking, irrigation as necessary, and soil preparation.

5.5.3 Landscape Materials

Landscape materials shall be consistent with BDMC 18.72.020 (Exhibit "E"), with the following additional restriction: sixty-five percent (65%) of all plant materials must be drought tolerant.

5.5.4 Landscape Design

Except for landscape plans included as part of permits for schools as set forth in the School Agreement, landscaping plans shall be approved by the Design Review Committee prior to submittal to the City for review and approval.

5.5.5 Right-of -Way and Associated Landscape Tracts

A. Consistent with BDMC 18.72.030(F) (Exhibit "E"), the Master Developer shall provide trees at a ratio of one tree for each 30 lineal feet of street frontage. In addition, trees can be staggered, and/or planted in drifts or groves so long as the total number of required trees is provided. Street trees must be a minimum caliper of 2-inches diameter at breast height (DBH).

B. The Master Developer shall plant medians and planter strips with landscape materials per Subsection 5.5.3 of this Agreement. Trees, shrubs and groundcovers may be planted in drifts or other arrangements to allow for stormwater quality/Low Impact Development.

C. Landscaping within planter strips adjacent to parking spaces must include a low growing plant palette with a variety of textures, such as, but not limited to, low grasses, groundcovers and perennials.

5.5.6 Parking Lots

Consistent with BDMC 18.72.030(F) (Exhibit "E"), and with the further restrictions provided herein, the purpose of Parking Lot landscaping is to soften the visual appearance, soften off-site views of Parking Lots, add shade and reinforce safe pedestrian access routes to buildings and connecting sidewalks. The Master Developer shall ensure that all Parking Lots with 12 or more stalls comply with the following:

A. Provide trees at a ratio of one tree to six stalls. Such trees may be located in planter islands or in landscape beds that intrude into the parking lot from the perimeter; and

B. The total of all interior landscaped areas shall be at least 10 percent of the total parking area (including parking, maneuvering and loading areas); and

C. All landscape areas must be planted with landscape materials per Subsection 5.4.3, except where pedestrian access is provided. Landscaping adjacent to parking spaces must include a low growing plant palette with a variety of textures, such as, but not limited to, low grasses, groundcovers and perennials; and

D. A landscape area shall be provided at the end of parking aisles; and

E. The minimum width of all landscape areas is four (4) feet. To accommodate the limited circumstance of tapers and unusual geometry, the Designated Official may approve a minimum width of two (2) feet for interior landscape areas (not adjacent to right-of-way), provided the total required area specified in Section 5.5.6.B above is provided; and

F. A minimum six-foot wide perimeter landscaping area is required adjacent to right-of-ways, except where vehicular ingress and egress is proposed. The perimeter landscaping may also include decorative walls, solid fences or vegetation to obscure views of parking areas. Reductions in the minimum width may be allowed by the Designated Official when the intent of the perimeter landscaping can be accommodated using alternative methods (for example a dense formal hedge or trellis structure).

5.5.7 Maintenance

A. Consistent with BDMC 18.72.040 (Exhibit "E"), to the extent necessary to remain healthy and attractive, the Master Developer shall ensure that all non-native landscaping shall be watered, weeded, pruned, freed of pests, and replaced as necessary. Shrubs near parking lots or driving lanes shall be pruned to prevent blockage of vision necessary for safe driving. Shrubs shall not be allowed to grow so as to reduce the width of public sidewalks or required pedestrian walkways.

B. In addition to BDMC 18.72.040 (Exhibit "E"), the Master Developer shall maintain (and bond), for a period of three years from the date of installation, all public and private landscape improvements, as approved from time to time by the City and/or DRC in accordance with plans and specifications accompanying each Implementing Approval. The maintenance bond requirement provided herein shall be limited to three (3) years. The Master Developer shall maintain all public and private landscape improvements beyond the initial three year obligation, unless the Master Developer determines, in its sole discretion, to transfer the maintenance obligation to a Homeowners' Association or, for private landscaping, to a subsequent owner. A Homeowners' Association shall

bear the cost of landscape maintenance for any stormwater facilities associated with Low Impact Development techniques as well as public landscaping along streets or associated with stormwater facilities, unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners' Association). The parties may elect to modify the landscape maintenance obligations for public property pursuant to a Minor Modification to the Development Agreement. The Master Developer's landscape maintenance obligation shall be limited to the following: mowing, watering, weeding, replacing dead plants, trimming, pruning, maintaining irrigation systems, mulch and other reasonably related landscape maintenance activities.

C. The Master Developer's failure to adequately maintain the landscape improvements in accordance with this Development Agreement may result in written notice from the City to the Master Developer requiring compliance. If the landscaping is not maintained in accordance with the standards set forth herein, in the reasonable determination of the Designated Official, after giving the Master Developer ten days (10) written notice, the City may perform maintenance at the Master Developer's expense.

D. Street Side Landscaping Specific Maintenance Requirements. Pursuant to Condition of Approval No. 23 of the MPD Permit Approval, the Master Developer or applicable Homeowners' Association shall maintain all street side landscaping, unless otherwise agreed upon by the City and the Master Developer or applicable Homeowners' Association. In the event the Master Developer or applicable Homeowners' Association fails to maintain such street-side landscaping, the City may enter into the property, repair or maintain the landscaping as the City determines in its reasonable discretion is necessary, and the costs of such maintenance shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the street-side landscaping is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in

RCW 35.67.220 – .280, as amended. The following note language shall be added to the face of each recorded plat or binding site plan:

> *In the event that the Owners' Association / Homeowners' Association fails to perform any maintenance of private alley, auto court or public street-side landscaping feature as required by Section 5.5.7 of this Agreement and, as a result, the City of Black Diamond performs said maintenance, the lot owners of the [plat/binding site plan] acknowledge and agree on behalf of themselves and all successors and assigns that, if not paid within thirty (30) days of invoicing by the City, the City's total cost arising from the City's performance of said required landscaping maintenance plus any penalties and interest thereon as provided by The Villages MPD Development Agreement recorded under recording No. _____ shall be a lien against all property, including individual lots, within the [plat/binding site plan], and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – .280, as amended.*

5.5.8 Timing of Landscape Improvements

A. The required parking lot landscaping must be in place prior to issuance of a certificate of occupancy of the building or use for which the parking lot is required. Alternatively, a performance bond guaranteeing landscape installation within six (6) months of date of issuance of a certificate of occupancy may be provided by the Master Developer.

B. Landscaping within right-of-ways or associated landscape tracts must be bonded for or in place prior to City acceptance of the right-of-way.

5.5.9 Landscape Plan Modifications

Consistent with BDMC 18.72.050 (Exhibit "E"), an approved landscape plan may be modified through the procedures set forth in BDMC Chapters 18.08 and 18.16 (Exhibit "E").

5.5.10 Buffer Landscaping

On the eastern boundary of The Villages MPD Development Parcel #V13, the Master Developer shall provide a 50-foot wide vegetative buffer as shown in Exhibit "U". The Master Developer

shall leave existing vegetation within this 50-foot-wide buffer where reasonable and practical. Should the Master Developer remove existing vegetation within this 50-foot-wide buffer due to either the health of the vegetation or other reasons, landscaping consistent with BDMC 18.72.030 (Exhibit "E") shall then be required by the City.

6.0 INTERNAL STREET STANDARDS WITHIN THE VILLAGES MPD

6.1 PURPOSE

Consistent with the transportation-related conditions of approval set forth in the MPD and, more specifically, Condition of Approval No. 148, this Section establishes standards for the design, configuration, maintenance and performance of all public and private streets within The Villages MPD. Pursuant to Condition of Approval No. 21 of the MPD Permit Approval, these internal street standards are designed to foster the development of a street grid system throughout the Project Site.

6.2 APPLICABILITY

This Section is applicable to all streets, alleys, private drives and other vehicular accessways proposed within the MPD. This section is not applicable to intersections of MPD streets with other City of Black Diamond streets, which are governed by the City's Street Standards (Exhibit "E"). Specific land uses, site conditions, visibility limitations and sensitive areas may result in variations to the minimum street sections described in Subsection 6.3 of this Agreement and authorized by the Black Diamond Engineering Design and Construction Standards (Exhibit "E"). Such variations shall be reviewed and approved pursuant to the standards and processes set forth in Black Diamond Engineering Design and Construction Standards (Exhibit "E"). Standards not defined in this Section shall be governed by the City's Street Standards attached hereto and incorporated herein as Exhibit "E".

Adequate roadway capacity shall be provided by the Master Developer within the Project Site to provide reasonable access to all Development Parcels while also minimizing impervious surfaces and roadway impacts. Roadway capacity shall be determined as follows: Each travel lane is assumed to provide capacity for 600 vehicle trips in the am and pm peak hour. Each land use category is assumed to produce the following pm peak hour trips:

- Single Family residential: 1.01 trips/per Dwelling Unit (Single Family housing rate)
- Multi-Family residential: 0.57 trips/per Dwelling Unit (average between apartment and condominium rates)
- Commercial (general): 1.49 trips/1,000 sq. ft. Floor Area (general office rate)
- Commercial (campus): 1.48 trips/1,000 sq. ft. Floor Area (office park rate)

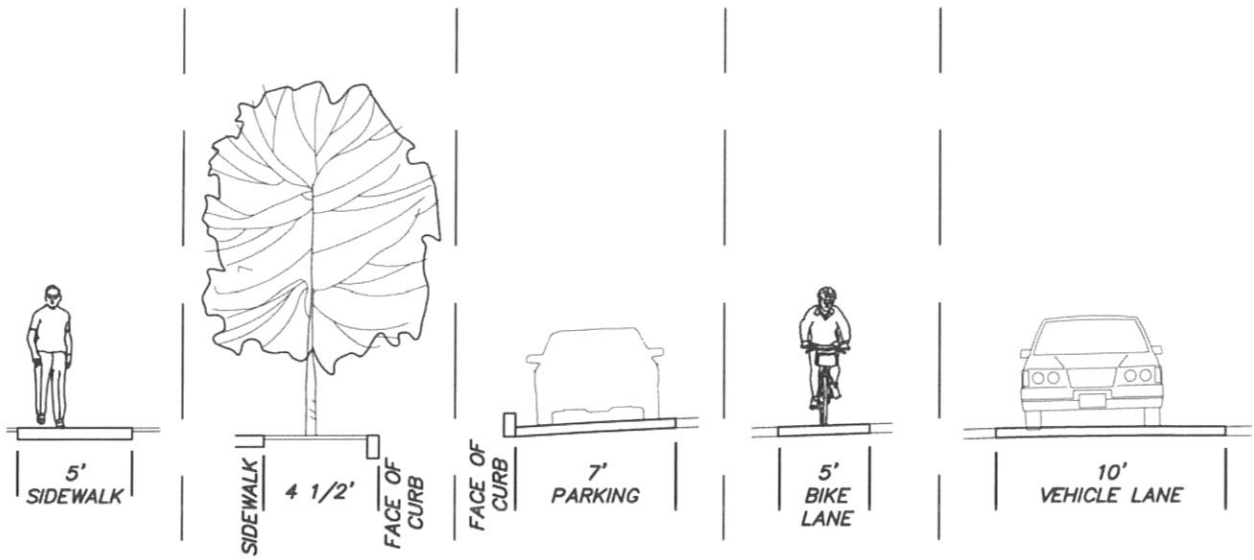
- Retail: 3.73 trips/1,000 sq.ft. Floor Area (shopping center rate)

Unless an alternative, which is supported by a traffic impact analysis report, is proposed by the Master Developer, the number of trips shall be multiplied by the appropriate number of units to determine the number of lanes that must be provided to serve each area of the Project Site. For example, 2,400 single family units could be served by one four-lane road (two lanes in each direction) or two, two-lane roads (each with one lane in each direction). (Note, additional roads might be required for emergency services purposes). Categories not listed above shall be based on the appropriate and applicable ITE trip generation rates as approved by the Designated Official in his reasonable discretion. The Designated Official may, in his reasonable discretion, require the use of a traffic model as part of review of any Implementing Project to evaluate the performance of intersections and roadways within The Villages MPD. Parameters for the use of a traffic model to evaluate impacts outside the Project Site are set forth elsewhere in this Agreement.

6.3 STREET DESIGN

As authorized by Condition of Approval No. 128 of the MPD Permit Approval, street alignment for The Villages MPD shall be as shown on the MPD Site Plan in Exhibit A hereto; provided, however, that the Designated Official may approve road alignment(s) that differ from that shown on Figure 3.1 where necessary to meet the Black Diamond Engineering Design and Construction Standards (Exhibit "E").

As authorized by Condition of Approval No. 148 of the MPD Permit Approval, street sections for all street types within The Villages MPD are set by this Agreement. The various elements that may be found in public streets within The Villages MPD are shown below:



The Master Developer will provide each required element on all streets. Bike lanes are only required on those roadways designated as a bicycle route on Figure 6-3 (or as modified in individual Implementing Approvals) set forth herein. A roadway carrying traffic in excess of 600 (AM or PM) peak hour trips may require an additional vehicle lane to provide the necessary capacity.

The Designated Official may approve alternate road sections as part of an Implementing Project, to respond to specific site characteristics and design constraints. Examples of variations that may be considered by the Designated Official include but are not limited to:

- Design speeds
- Road grades and slopes
- Curb return radius
- Lane geometry (cross-slope, crowns, inverted crowns, etc.)
- Curb types and locations
- Materials and surfacing requirements
- Road section standards
- Provisions for alternate access via private streets when minimum fire access is provided
- Traffic calming measures

- Removal of parking (On-street parking is required within an Implementing Approval to the extent necessary to provide guest parking for the Implementing Approval. This means that some streets within an Implementing Approval may have street parking and some may not.)
- Removal of sidewalks – A sidewalk is required on both sides of all roadways. However, the Designated Official may consider the elimination of a sidewalk in the following circumstances:
    - Where roadways pass through Open Space, the sidewalk may be eliminated on one side, with the provision that pedestrian crossings are provided at the terminus of each dropped sidewalk section;
    - On roads where a paved or hard surface multi-purpose trail is provided parallel to and within sight of the roadway and connections are periodically provided between the roadway and the trail; or
    - A sidewalk on one or both sides may be eliminated in cul-de-sac or hammerhead type of street ends where fewer than five residences on each side are proposed.
- Removal of planter strips – Planter strips may be reduced or eliminated within or adjacent to a critical area or buffer; along the side of a street that is adjacent to a Park or Open Space area; in Commercial/Office and Mixed-Use areas; or where the planter strip would in the determination of the Designated Official create a threat to public safety (for example, sight distance or pedestrian visibility). In Commercial/Office and Mixed-Use areas, tree wells may be provided instead if approved by the Designated Official pursuant to BDMC 18.72.020(G) (Exhibit "E").
- Avoidance of sensitive area impacts
- Bicycle lanes – Bicycle lanes are only required to be included on street sections that are shown as Bike Routes on Figure 6.3. Bicycle lanes as shown on Figure 6.3 may be eliminated if an adequate off-street trail facility is provided as a replacement, in the reasonable discretion of the Designated Official.

Private streets shall provide at least the minimum fire access required by the then applicable City building code. Private street geometry and design specifics will be reviewed and approved by the Designated Official with each Implementing Project.

6.4 STREET CONNECTIVITY

6.4.1 On-Site Connections

A. The street layout for a proposed Implementing Project shall include connections to all street stub-outs provided by abutting Development as shown on Figure 6.3 within The Villages MPD. Connections to existing road stubs within King County are not required, unless they are necessary to provide fire access. As required by Condition of Approval No. 28 of the MPD Permit Approval, no Implementing Projects located east of MPD Site Plan Development Parcel V48 shall be approved prior to completion of the South Connector roadway to its intersection with SR-169 provided single point of access standards are met or alternative secondary access is provided. (Note: No connection to Green Valley Road is proposed.)

6.4.2 Off-Site Connections

The Villages MPD shall stub streets to the boundaries of abutting off-site property as generally shown on the Bike Route and Future Connection Plan (Figure 6.3). The connection points on the Bike Route and Future Connection Plan are approximate. The actual design and location of connection points will be determined at the preliminary implementing plat or final engineering stage of Implementing Projects by the Master Developer and Designated Official using a collaborative process.

6.4.3 Pipeline Road

The design of Pipeline Road is to extend from Parcel C at the intersection of the Community Connector and Lake Sawyer Rd SE, easterly towards SR-169, intersecting SR-169 in the vicinity of Black Diamond-Ravensdale Rd, or where the future improved intersection of SR-169 and Black Diamond-Ravensdale Road lies, as determined by the City. Pursuant to Condition of Approval No. 31 of the MPD Permit Approval, the preliminary design and alignment of the Pipeline Road shall be completed by the Master Developer and the right of way dedicated to the City prior to the City's approval of a building permit for the 1200th Dwelling Unit of The Villages MPD. The Pipeline Road shall be constructed by the Master Developer and open for

traffic prior to the earlier of: (i) City's approval of a building permit for the 1746th Dwelling Unit of The Villages MPD; or (ii) when the Traffic Monitoring Plan (Exhibit "F") shows that construction is necessary to prevent a significantly adverse degradation of Level of Service on Roberts Drive. The Master Developer is required to monitor and, if triggered by the Traffic Monitoring Plan (Exhibit "F"), improve the following intersections along Roberts Drive per Table 11-5-1: (i) Roberts Drive/Morgan Street; (ii) SR 169/Roberts Drive; and (iii) Lake Sawyer Road SE/Roberts Drive. For purposes of this Section 6.4.3, "significantly adverse degradation of Level of Service" shall mean that the Master Developer is unable to make further improvements to these three identified intersections to meet adopted LOS (as defined in the City of Black Diamond's Comprehensive Plan, 2009, or other jurisdiction's standard applicable to the MPD Permit Approval) without widening Roberts Drive to provide an additional eastbound travel lane and/or westbound travel lane.

6.5 OWNERSHIP AND MAINTENANCE

A. Ownership and Maintenance.

Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, all street right-of-way will be dedicated to, owned and maintained by the City except for private streets which include alleys, autocourts serving less than 20 Dwelling Units and Main Street. Maintenance of landscape tracts and planting strips associated with streets within the MPD will be provided by the Homeowners' Association or subset thereof pursuant to the provisions of Subsection 5.5.7 of this Agreement. Provided, however, requirements of this Subsection may be superseded by Subsection 13.6 of this Agreement.

B. Maintenance of Private Street(s).

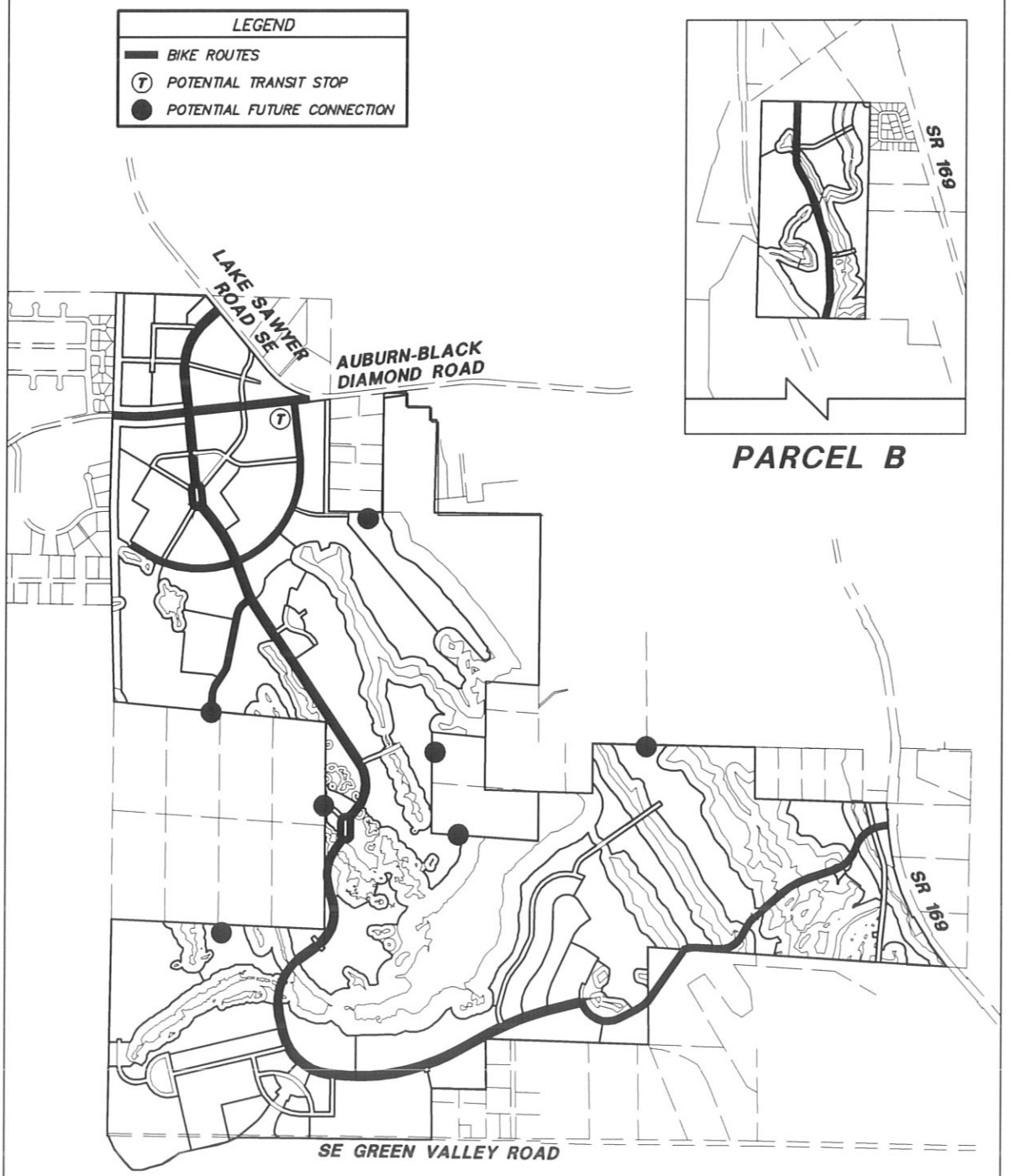
Master Developer agrees to maintain all private streets, alleys and autocourts serving 20 units or less as constructed in accordance with each approved Implementing Project, for a period of three years from final plat recording or other Implementing Approval. Unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners' Association), the Master Developer's street maintenance obligation, as set forth herein, shall automatically renew for an additional two year period, and continue every two years thereafter. The Master Developer, in its sole discretion, may elect to transfer the private street maintenance obligation to a Homeowners' Association or other acceptable entity following its initial three year obligation. The Master Developer's failure to adequately maintain private streets in accordance

with this Agreement will result in written notice from the City to the Master Developer requiring compliance. If a private street is not maintained in a manner adequate to maintain safe passage, in the reasonable determination of the Designated Official within ten (10) days of delivery of the written notice the City may perform the required maintenance with the reasonable costs associated therewith charged to the Master Developer. In the event of an emergency, the applicable notice period shall be reduced to twenty-four (24) hours and the City may provide notice via a phone call to the Master Developer's designated representative. Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, if the Master Developer fails to perform such maintenance as required herein and, as a result, the City performs such required maintenance, the City's total costs arising from its performance of the maintenance shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the private street, alley or autocourt is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended. The following note language shall be added to the face of each recorded plat or binding site plan:

> *In the event that the Owners' Association / Homeowners' Association fails to perform any maintenance of private street, alley, or auto court as required by Section 6.5 of The Villages MPD Development Agreement recorded under recording No. _____ and, as a result, the City of Black Diamond performs said required maintenance, the lot owners of the [plat/binding site plan] acknowledge and agree on behalf of themselves and all successors and assigns that, if not paid within thirty (30) days of invoicing by the City, the City's total cost arising from the City's performance of said required private street maintenance plus any penalties and interest thereon as provided by The Villages MPD Development Agreement shall be a lien against all property, including individual lots, within this [plat/binding site plan], and said lien may be*

foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended.

FIGURE 6.3: BIKE ROUTE AND FUTURE CONNECTION PLAN



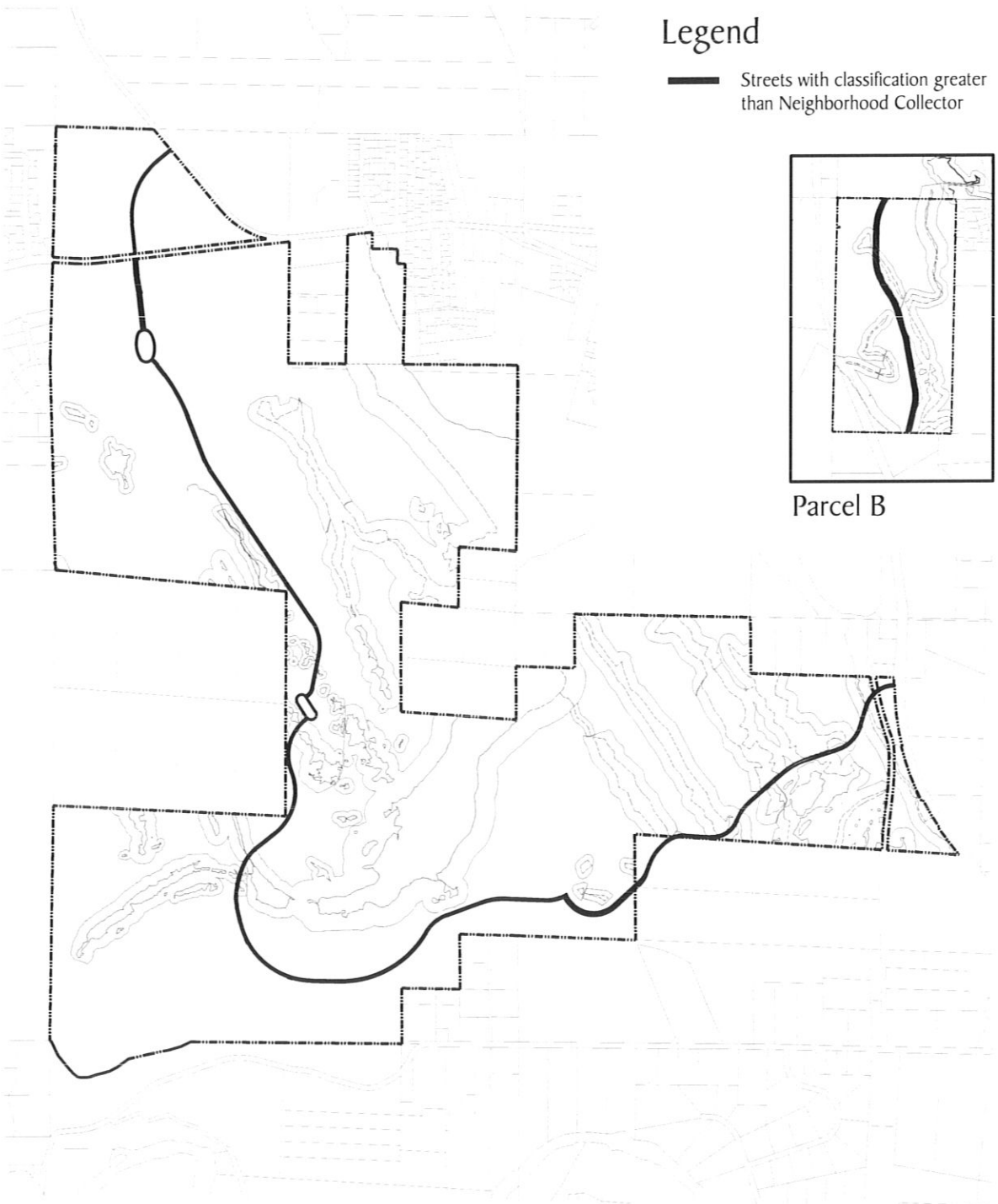


Figure 6-4
Streets With Classification Greater Than Neighborhood Collector

7.0 WATER, SEWER AND STORMWATER UTILITY STANDARDS

7.1 GENERAL REQUIREMENTS

7.1.1 Regional Facilities

Regional Facilities are necessary for Development to occur on the Project Site. The Master Developer shall design and construct the Regional Facilities that are necessary to serve the Implementing Projects, consistent with the City's adopted level of service, or as otherwise specified by Prior Agreements.

7.1.2 Project-Level Facilities

Project-Level Facilities are items such as on-site water mains, sewer and stormwater facilities. Project-Level Facilities will be Constructed by the Master Developer as Development progresses across the Project Site consistent with the Black Diamond Engineering Design and Construction Standards (Exhibit "E") as further detailed in this Section.

7.1.3 Location and Type of Facilities Approximate

The location and type of Regional Facilities shown on the Conceptual Water, Sewer, Stormwater and Phasing Plans (attached hereto as Exhibit "K") are approximate and may change during the design phase provided that the intent of the plans is met as reasonably determined by the Designated Official. Alternate means of achieving utility service to and within the Project Site on a temporary or permanent basis will be considered by the Designated Official through a Utility Permit application.

7.1.4 Bonding for Improvements

The Master Developer may defer improvements so long as the completion of the work is guaranteed by a performance/payment bond or other financial guarantee and is not required by permit conditions or necessary for utility service or safety conditions of the public. Consistent with the Black Diamond Engineering Design and Construction Standards (Exhibit "E"), Section 1.5, the bond, or other financial guarantee, must be in a form acceptable to the City in an amount equal to one hundred fifty percent (150%) of the expected construction cost of all of the uncompleted work. The City Engineer shall review Master Developer's estimate of the cost of the improvements, identified in an approved set of civil construction drawings, guaranteeing the actual construction and installation of such improvements and payment for

such improvements within a time frame to be set by the City Engineer consistent with this Section. The construction estimate (for bond calculation purposes) shall include 15% for soft costs and 10% for administrative costs.

7.1.5 Inspection and Acceptance of Improvements

The City shall make a reasonable effort to inspect improvements within one (1) business day of the inspection request, as long as the improvements are complete. The inspector shall determine whether the improvements are substantially complete, and provide a written list of any corrections or additional work necessary for physical completion of the improvements within 7 Days of the date of the inspection. The City shall make reasonable effort to provide one comprehensive written list upon which all subsequent inspections shall be based. The improvements shall be accepted by the City Council.

7.1.6 Release of Bond or Financial Guarantee

The City shall make a reasonable effort to fully release original bond or financial guarantee amounts within fourteen (14) Days of City Council acceptance of the improvements according to the Black Diamond Engineering Design and Construction Standards (Exhibit "E").

Original bond or financial guarantee amounts may be reduced at the reasonable discretion of the Designated Official. Financial guarantees will be fully released only after final acceptance of the subject improvements by the City Council.

7.1.7 Ownership

All water, sewer and stormwater facilities within public right-of-way or public easement will become part of the City's system upon acceptance by the City Council pursuant to the Black Diamond Engineering Design and Construction Standards (Exhibit "E"). Some facilities within the right-of-way may be privately owned and operated as long as the entity that owns and operates the facilities has a valid franchise agreement with the City.

7.1.8 Deviation Review Criteria

Deviations from standards are allowed consistent with the process and standards for Deviations found in the Black Diamond Engineering Design and Construction Standards (Exhibit "E").

7.1.9 Capital Facilities Charges

Pursuant to BDMC 13.04 and 13.20 (Exhibit "E"), the purpose of the City's water capital facilities charge and sewer connection and reserve capacity capital charges (the "Capital Facilities Charges") is to collect funds to assure new users pay an equitable share of the City's water and sewer facilities. The Master Developer, however, will not be using the City's existing system to serve the MPD's Implementing Projects, other than on a limited basis and will instead be constructing the water and sewer infrastructure necessary to serve the Project Site. Further, if the City were to assess Capital Facilities Charges against the Implementing Projects and then, as required by state law, provide a credit to the Master Developer for the cost of its facility infrastructure construction, the total amount of the credit due would exceed the total Capital Facilities Charges to be collected. Therefore, in consideration for the Master Developer's construction of the water and sewer infrastructure necessary to serve the Project Site, the City shall not collect Capital Facilities Charges for Implementing Project approvals sought for the Villages MPD provided the City Council adopts an ordinance exempting Implementing Projects from the City's Capital Facilities Charges, and the Master Developer shall not seek credit or reimbursement from the City under the Water Supply and Facilities Funding Agreement. If the City Council does not adopt such an ordinance, general facilities charges will be assessed again Implementing Projects of The Villages MPD and the Master Developer will receive a credit against such charges for the cost of its construction of facility infrastructure.

7.2 WATER SYSTEM STANDARDS

This agreement shall not apply within the Covington Water District to the extent that this section unlawfully conflicts with the authority of the Covington Water District.

7.2.1 Water Availability

The Master Developer controls property with the rights to approximately 1,080,310 gallons of water per day ("GPD"). This is determined through the "Three Party Agreement" between Plum Creek Land Company, Black Diamond Associates, Ltd., and Palmer Coking Coal Company dated August 8, 2003.

Any Implementing Project application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement. Improvements necessary to provide water service to each Implementing Project must be provided by the Master Developer consistent

with this Agreement, and the MPD Conditions of Approval. Connections are allowed up to the point of existing capacity as arranged for in the Water Supply and Facilities Funding Agreement dated August 11, 2003, as amended by the First Addendum dated July 22, 2004 ("WSFFA"). If there are insufficient facilities or capacity to serve some or all of a proposed Implementing Project, then the Designated Official may require the Master Developer to obtain such additional water supply capacity and/or design and construct new water mains, upgrades to existing mains, a reservoir, pressure reducing valves or such other facilities necessary to serve the Implementing Project. In addition, consistent with MPD Condition of Approval Nos. 51 and 52, in the event functionally equivalent water distribution facilities are proposed by the Master Developer, for example, to accommodate service from another provider, and those new distribution alternatives necessitate an amendment to the City's Water System Plan, the Master Developer shall be responsible to pay for the cost of that update.

7.2.2 Water System Design and Construction

A. Except as specified in the WSFFA, all water system facilities (on and off-site) required for service to The Villages MPD shall be designed and Constructed by the Master Developer, in accordance with The Villages Conceptual Water Plan (Figure 7.2A), and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and will become part of the City's system upon acceptance by the Designated Official.

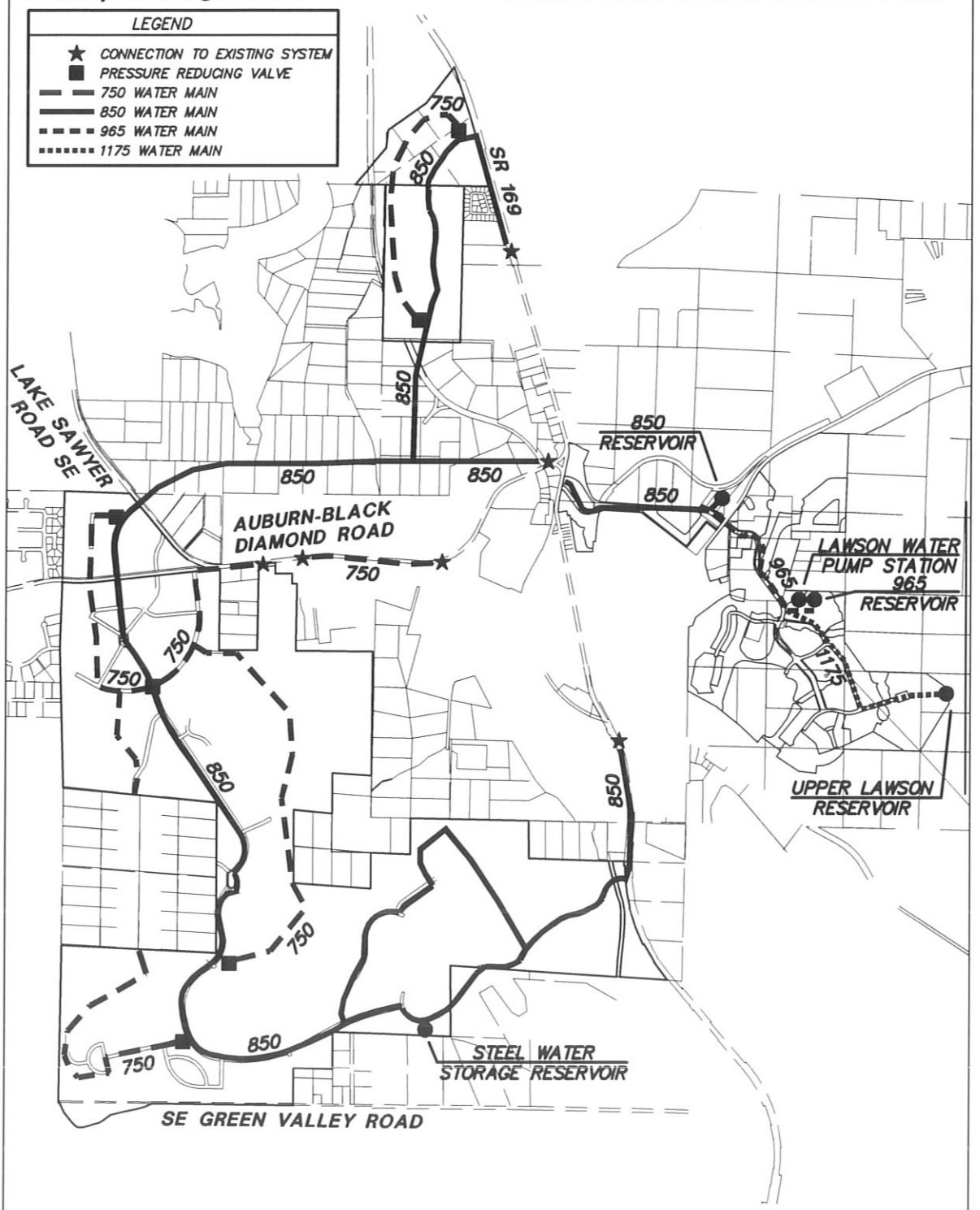
B. Fire flows, hydrant locations and distribution must comply with the then applicable City building code.

C. Pursuant to Section 6.1.05.4 of the Black Diamond Engineering Design and Construction Standards (Exhibit "E"), sufficient quantity and duration of fire flows shall be available prior to the start of any combustible construction. Such requirements apply to the areas actually under construction; areas under construction but without structures are not required to have fire flows until combustible construction begins.

7.2.3 Water Connection Charges Not Applicable

Pursuant to Section 7.1.9 above and in recognition: (i) that The Villages MPD's water system and the improvements to the City's water system necessary for Development have been or will be installed at the Master Developer's cost; and (ii) of the substantial investment in water

FIGURE 7.2A: CONCEPTUAL WATER SYSTEM PLAN



infrastructure resulting from the WSFFA; and (iii) that the Master Developer shall not seek credit or reimbursement from the City under the Water Supply and Facilities Funding Agreement, Implementing Projects within The Villages MPD shall not be required to pay the City's general facilities charges, connection charges, or system development charges, including any amendments thereto except as provided for in Section 7.2.1.

7.2.4 Remaining Water Capacity

If, after three years from the final Implementing Approval, the Master Developer has not submitted a development project within the City's water service area that will use any remaining water capacity from the 1,080,310 GPD, the City will have the first right of refusal to repurchase the water supply at the then current capital facility charge rate reduced by the conservation factor achieved within The Villages MPD.

7.2.5 Water Conservation and Monitoring Plan

The Villages MPD's Water Conservation Plan at Chapter 8 of the MPD Permit Application was approved in the MPD Permit Approval. Pursuant to Condition of Approval No. 53 of the MPD Permit Approval, this Section restates the Water Conservation Plan approved in the MPD Permit Approval Conditions for The Villages. The intent of this plan is to create a 10% reduction in water consumption compared to the current existing average use per ERU use standard of 187 gallons per day (GPD). If the 10% savings target is not achieved, then resulting constraints on water supply allocated to The Villages MPD may limit ultimate build-out of the MPD.

In order to ensure the water conservation techniques proposed for The Villages MPD will in fact obtain a 10% reduction, a monitoring plan will be implemented by the Master Developer. Monitoring residential water use can only be attained through direct meter reading of individual homes. Pursuant to Condition of Approval No. 54 of the MPD Permit Approval, following occupancy of the 500th Dwelling Unit, a representative block of occupied homes, representing 5% of the total (25 Dwelling Units), will be selected by the Designated Official from the different home types. Water use for those 25 Dwelling Units shall be tracked for a period of one year. If the Designated Official determines, in his reasonable discretion, that the water monitoring plan described above is not adequately tracking MPD water usage, the Designated Official may select a method for monitoring water use including review of City meter records. The resulting data will be compared to the baseline of 187 gallons per day to determine if the

10% reduction is being achieved. The results of the water monitoring plan shall be completed within thirty (30) days following the conclusion of meter reading and be maintained by the Designated Official.

This same monitoring method will be repeated following the completion of future Phases. If the data results show water use of any particular Phase has not been reduced by at least 18.7 GPD (10% below the City's current existing City use standard of 187 GPD), then an updated mitigation plan reasonably acceptable to the City will be developed by the Master Developer at that time to bring the future Development within the required standard and to offset any excess water usage from prior Development that did not meet this standard.

The approved water conservation plan is set forth below.

The following appliances and plumbing fixtures must meet the EPA WaterSense specifications in effect at the time of building permit application. Specifications equivalent to the EPA WaterSense specifications may be used with the concurrence of the City and Master Developer. The current EPA WaterSense specifications are summarized below:

A. Toilets

1. Single Flush Toilets - The effective flush volume shall not exceed 1.28 gallons (4.8 liters).
2. Dual Flush Toilets - The effective flush volume shall not exceed 1.28 gallons (4.8 liters). The effective flush volume is defined as the composite, average flush volume of two reduced flushes and one full flush.

B. Lavatory Faucets

1. The maximum flow rate shall not exceed 1.5 gallons per minute (gpm) at a pressure of 60 pounds per square inch (psi) at the inlet, when water is flowing; and
2. The minimum flow rate shall not be less than 0.8 gpm (3.0 L/min) at a pressure of 20 psi at the inlet, when water is flowing. A lavatory faucet is also considered to meet this flow rate requirement if equipped with a lavatory faucet accessory that meets this requirement.

C. Kitchen Faucet

Maximum flow rate of 2.2 gpm at 60 psi.

D. Showerheads

Maximum flow rate of 2.5 gpm at 80 psi.

E. Appliances

Dishwashers must be ENERGY STAR qualified or equivalent.

Clothes washers must be ENERGY STAR qualified with a water factor of less than or equal to 6.0 gallons of water per cycle per cubic foot of capacity.

7.2.6 Regional Water Facilities

The Villages MPD Conceptual Water Plan (Figure 7.2A) provides one alternative for the general location of on and off-site water mains, pressure reducing valves and reservoirs to be Constructed by the Master Developer. The Villages MPD Main Property is located primarily within the 750 pressure zone. Water from existing City facilities will be delivered to the Project Site using pressure reducing valves to reduce the water to the appropriate pressure zone.

The Master Developer may seek alternate means of achieving water service to and within The Villages MPD through the Utility Permit application and approval process set forth in the BDMC (Exhibit "E") and Black Diamond Engineering Design and Construction Standards (Exhibit "E").

7.2.7

This Agreement governs MPD Development and, as such, nothing in this Agreement shall have any effect on, nor constitute legal support for, any right of either the Covington Water District to provide water service to that portion of the MPD Development lying within Covington Water District's water service area boundaries as shown in the South King County Coordinated Water System Plan (SKCCWSP), or the City of Black Diamond to provide water service to that same area as shown in the City's Water System Plan.

All MPD Development that is located within Covington Water District's water service area boundaries and that is ultimately connected to and physically served by Covington Water District facilities shall comply with the District's adopted standards, procedures and system extension requirements for water service and connection to District facilities.

7.3 SANITARY SEWER DESIGN STANDARDS

7.3.1 Sewer Availability

This Agreement provides sewer availability to service 4,800 Dwelling Units on The Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement. Any Implementing Project application process that calls for a certificate of sewer availability shall be satisfied by reference to this Agreement.

7.3.2 Sewer Design and Construction Standards

All sewer system facilities (on and off-site, except those existing or proposed facilities owned or maintained by King County) required to provide service to The Villages MPD shall be designed and Constructed by the Master Developer in accordance with the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and will become part of the City's system upon acceptance by the City.

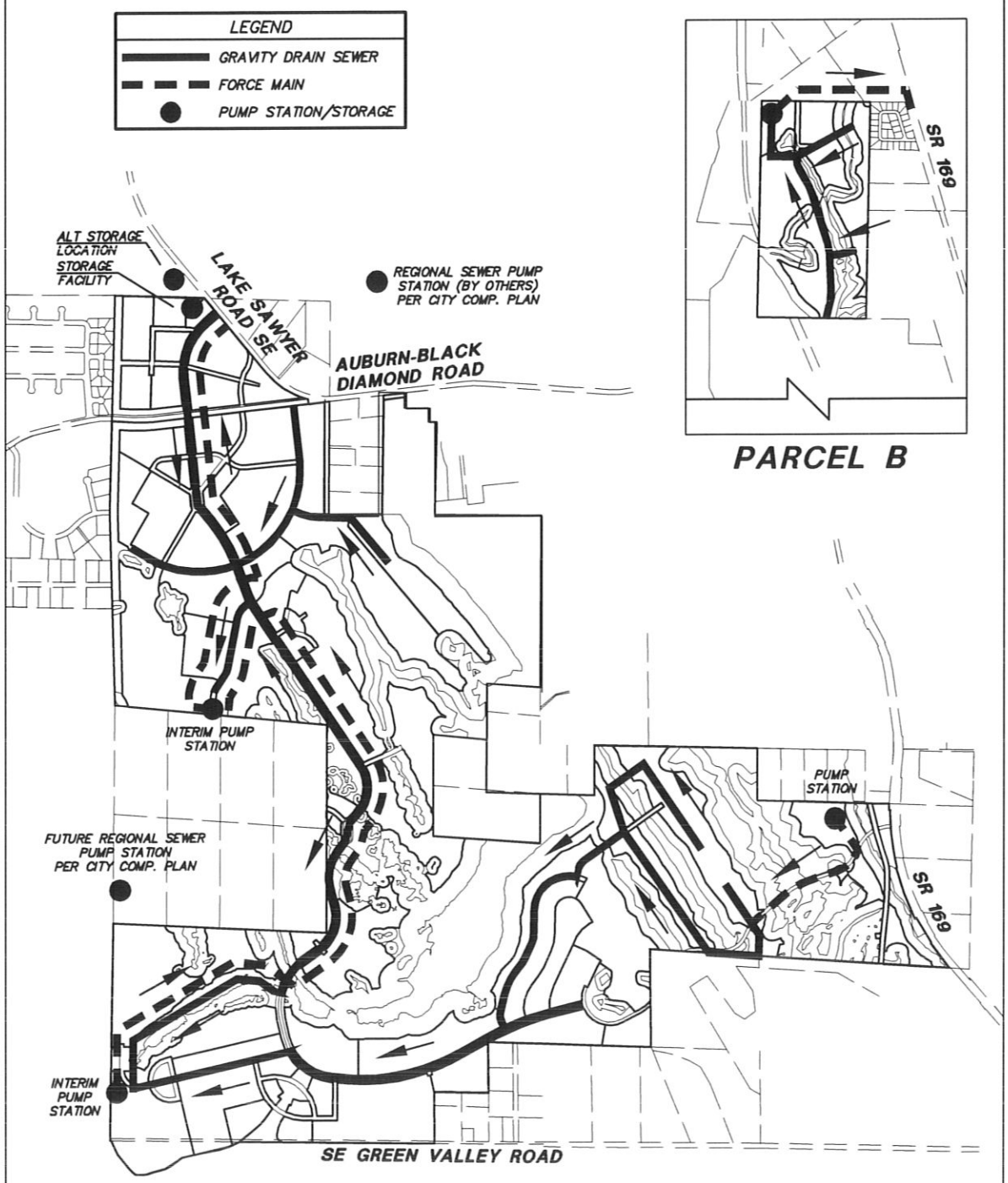
7.3.3 Connection to City Sewer

Pursuant to Section 7.1.9 above, Implementing Projects within The Villages MPD shall not be required to pay the City's general facilities charge or other connection fees provided: (i) all supporting sewer infrastructure necessary to serve The Villages MPD is provided for by the Master Developer and Implementing Project developers; and (ii) the mitigation projects listed in Tables 11-3-1 through 11-3-4 and 11.4.1 in Section 11 are Constructed by the Master Developer prior to the end of the Build-Out Period. The Master Developer shall deliver the sewage from The Villages MPD to the City sewer system or direct to a King County facility as directed by the City.

7.3.4 Regional Sewer Facilities

The Villages MPD Conceptual Sewer Plan (Figure 7.3) shows the general location of the proposed sewer collection system, force mains and up to four (4) new pump stations that will

FIGURE 7.3:
CONCEPTUAL SEWER PLAN



pump wastewater to a City designated discharge location. Approximate facility locations are shown on attached Figure 7.3, final locations are subject to City review and approval.

7.4 STORMWATER MANAGEMENT STANDARDS

7.4.1 Stormwater Facilities Availability

Stormwater facilities must be provided consistent with the standards in the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and further detailed in Section 7.4. When constructing an Implementing Project, the Master Developer (and successors-in-interest) must comply with both the stormwater standards applicable to all zones for all Phases (see Section 7.4.4.A), as well as the specific stormwater standards applicable to the stormwater zone in which the Implementing Project is located. For each proposed Implementing Project, a storm drainage report providing for preliminary sizing of facilities must be provided that evaluates the proposal and specifies the facilities necessary to meet the standards in the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and this Agreement. Construction of temporary or permanent water quality and/or detention ponds, infiltration facilities, storm drains, water quality facilities, wetland recharge or other stormwater facilities may be required by the Designated Official to ensure that the facilities necessary to serve an Implementing Project are in place or will be provided.

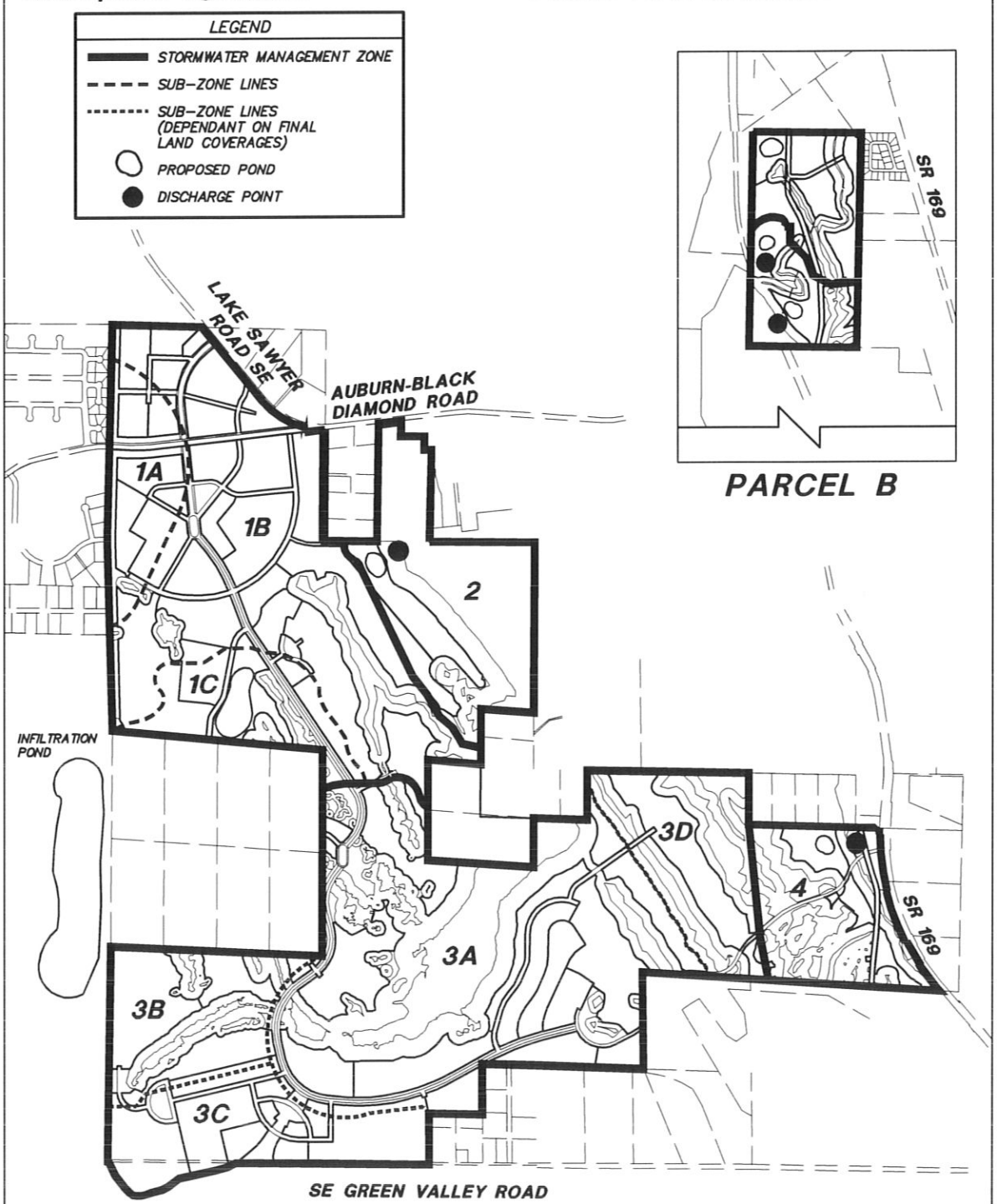
Prior to submitting applications for Implementing Projects for Phase 3 of The Villages MPD, the Master Developer shall demonstrate that King County has permitted Project III-13. Alternatively, the Master Developer and the City shall agree on an alternative method of stormwater treatment within the City limits.

7.4.2 Regional Stormwater Facilities

The components of the stormwater management plan for the Project Site include infiltration of stormwater into the shallow aquifer (Qvr) through Low Impact Development facilities; infiltration into the deep aquifer (Qpog) through infiltration facilities; conventional ponds; wetland recharge; water quality treatment facilities and regional stormwater management facilities.

Facilities to serve the entire Villages MPD have been planned and approximate locations determined (see attached Conceptual Stormwater Plan, Figure 7.4). There will be two

FIGURE 7.4: CONCEPTUAL STORMWATER PLAN



stormwater facilities which will infiltrate into the deeper aquifer (Qpog). One of the stormwater facilities will be used to treat the excess stormwater created by the need for water balance to Horseshoe Lake. The second will be an off-site Regional Facility to treat and infiltrate the excess stormwater created by the need for water balance to the shallow aquifer, Black Diamond Lake, and the wetlands on the southern portion of the Project Site. The Master Developer shall be required to obtain all necessary permits from King County for construction, including any necessary approval or agreement authorizing the City to perform maintenance of the large regional storm pond proposed west of the Project Site. The Master Developer shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County.

Pursuant to Condition of Approval No. 77 of the MPD Permit Approval, alternate means of achieving stormwater service within the MPD may be authorized through a Utility Permit, including deviations from stormwater facilities listed in the EIS, when justified by a technical analysis, risk assessment.

7.4.3 Stormwater Management

The Master Developer shall comply with the stormwater management provisions provided below. In the event of a conflict between these provisions and the Stormwater Management Design Standards set forth in Section 7.4.4 of this Agreement, the Stormwater Management Design Standards shall prevail.

A. Minimize impacts to water quality in Lake Sawyer by assuring no net increase in phosphorus to Lake Sawyer occurs associated with MPD development within basins that drain to Lake Sawyer. No net increase can be accomplished by on-site or off-site source or mechanical controls, control of phosphorus from off-site compensating projects, or other methods approved by the Designated Official.

B. Pursuant to BDMC 14.04.020 (Exhibit "E"), maintain surface water and groundwater quality and quantities consistent with the requirements of the Department of Ecology's 2005 Stormwater Manual ("2005 DOE Manual") for Western Washington.

C. Recharge groundwater with stormwater infiltrated using Low Impact Development techniques and infiltration facilities.

D. Utilize clean roof run-off to recharge wetlands, streams and groundwater to the greatest extent feasible.

E. Provide a menu of stormwater treatment options ranging from ponds to rain gardens.

F. Minimize impacts to Horseshoe Lake water levels by ensuring that the volume of stormwater infiltrated into the shallow outwash upgradient of Horseshoe Lake is approximately the same as that which infiltrates under predeveloped conditions.

G. Maintain hydrology for Black Diamond Lake and wetlands on the site by recharging them with approximately the same volume of stormwater as would occur under predeveloped conditions.

H. Maintain pH levels and water quality in Black Diamond Lake.

I. Avoid impacts to steep slopes by routing excess stormwater away from slopes to a stormwater management facility.

J. Pursuant to Condition of Approval No. 71 of the MPD Permit Approval, provide a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction Phase.

K. Construct a stormwater system that does not burden the City with excessive maintenance costs.

L. Pursuant to Condition of Approval No. 74 of the MPD Permit Approval, maintain a stormwater system that allows for adaptive management of detention and discharge rates and allows for redirection of stormwater overflows when environmental advantages become apparent.

7.4.4 Stormwater Management Design Standards

The Villages MPD has been divided into stormwater management zones shown on the Conceptual Stormwater Plan (Figure 7.4). Each stormwater management zone has a unique set of specific stormwater requirements. Developable area, areas of impervious and pervious surface, area of rooftops, the amount of stormwater that can be infiltrated into the shallow outwash (Qvr) and the amount of recharge required for wetlands and Black Diamond Lake must be determined for ultimate stormwater balance calculations. Water balance calculations will need to be performed based on actual developed conditions to ensure water balance goals are met. Alternative Stormwater Management Design Standards may be approved by the Designated Official through the deviation process set forth in the Black Diamond Engineering Design and Construction Standards (Exhibit "E").

Individual Implementing Projects shall meet the overall requirements set forth in Subsection 7.4.4(A), as well as the stormwater requirements unique to the stormwater zone in which each is located. Each Implementing Project shall provide calculations of the amount of stormwater discharged. The Master Developer shall maintain a running tally and will manage the water balance requirements for each stormwater zone to ensure that the water balance goals are met.

A. Standards Applicable to All Stormwater Zones for All Phases:

1. Pursuant to BDMC 14.04.020 (Exhibit "E"), stormwater facilities shall be designed to meet the requirements of the Department of Ecology, 2005 DOE Stormwater Management Manual for Western Washington ("Manual"). Pursuant to Condition of Approval No. 76 of the MPD Permit Approval, in the event that new phosphorous treatment technology is discovered and is either certified by the Department of Ecology as authorized for use in meeting requirements of the Manual, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known, available, and reasonable methods of prevention, control, and treatment ("AKART") as defined in WAC 173-201A-020, then the Master Developer shall incorporate that new phosphorous treatment technology in all new ponds and facilities applied for as part of an Implementing Project. Pursuant to BDMC 18.98.195 (Exhibit "E"), in the event that new stormwater standards are adopted by the City prior to the beginning of a new Phase, Implementing Projects within

the new Phase shall comply with the new standards; provided, however, that the Master Developer shall not be required to resize storm ponds already constructed except as required by the City's Department of Ecology discharge permit and state law.

2. Pursuant to Condition of Approval No. 70 of the MPD Permit Approval, all Implementing Projects in a given Phase shall comply with the conditions of the then current NPDES permits (issued to the City by the Washington State Department of Ecology) in effect at the time of submittal of the first Implementing Project application in that Phase.

3. Pursuant to Condition of Approval No. 68 of the MPD Permit Approval, galvanized and copper and similar roof and gutter materials, as well as roof treatments such as chemical moss killers are prohibited for any rooftop draining directly to wetlands, streams, or their associated buffers without treatment. Stormwater from non-copper or non-galvanized rooftops do not require water quality treatment prior to infiltration or discharge unless combined with stormwater from pollution-generating surfaces.

4. Pursuant to BDMC 14.04.020 (Exhibit "E"), the Master Developer shall treat stormwater collected from pollution generating surfaces so that it complies with the water quality requirements of the 2005 DOE Manual, or any subsequent Manual adopted by the City of Black Diamond and in effect at the start of a Phase.

5. Pursuant to BDMC 14.04.020 (Exhibit "E"), all treatment options allowed under the 2005 DOE Manual or Manuals subsequently adopted by the City, such as ponds, vaults, media filter strips, biodetention and rain gardens, are allowed, except as otherwise provided in any Manual subsequently adopted by the City that may be in effect at the start of any Phase.

6. Pursuant to Condition of Approval No. 67 of the MPD Permit Approval, the following mechanisms shall be utilized where feasible in Implementing Project applications so as to integrate Low Impact Development techniques into The Villages MPD build-out:

i. Reduced roadway widths
ii. Infiltration wells
iii. Rain gardens

iv. Bioswales
v. Media filter strips
vi. Reduced driveway lengths
vii. Pervious asphalt and concrete in alleys
viii. Pervious pavers
ix. Install pet waste stations in common areas

7. Pursuant to Condition of Approval No. 70 of the MPD Permit Approval, the Master Developer shall fund any reasonable and necessary costs for the training of City staff or a contractor so that the City may provide inspection services for City actions related to any NPDES permits granted by Ecology for The Villages MPD Development.

8. Pursuant to Condition of Approval No. 79 of the MPD Permit Approval, the Master Developer shall pay 60% of all costs from the King County Lake Stewardship Program through the duration of construction for Phase 1A of The Villages MPD. Thereafter, all costs will be covered by stormwater utility fees collected by the City.

B. Stormwater Management Zone 1

Stormwater Management Zone 1 consists of the north portion of the Project Site. Under existing conditions, all stormwater infiltrates in the outwash soils present within Stormwater Management Zone 1. The main constraint for Stormwater Management Zone 1 is Horseshoe Lake, which lies directly to the west of the Project Site. Horseshoe Lake has a history of flooding problems, and may be sensitive to groundwater fluctuations, but it also requires flows to maintain summer use. To address this issue, stormwater infiltration to the shallow outwash soils tributary to Horseshoe Lake is proposed to meet the predeveloped infiltration volume. By matching this volume, impacts to both the low flows and high flows are mitigated. Remaining stormwater will be infiltrated into the deeper outwash soils which bypass Horseshoe Lake through the use of a regional water quality and infiltration facility.

Stormwater Management Zone 1 has been divided into three sections based on the stormwater management requirements. Stormwater Management Zones 1A and 1B are tributary to Horseshoe Lake, while Stormwater Zone 1C is cross gradient from Horseshoe Lake. To ensure that the predeveloped volume of water conveyed to Horseshoe Lake is matched, an accounting

of the infiltrated water volume (based on pervious area, rooftop area and impervious area infiltrated) within this zone must be maintained through The Villages MPD build-out.

Stormwater conveyed to Horseshoe Lake via the shallow outwash soils will include:

1. All stormwater in Stormwater Management Zone 1A from areas underlain by outwash soils. Stormwater from rooftops that comply with Section 7.4.4.A(3) above maybe infiltrated directly, while any additional stormwater collected from non-complying rooftops or other pollution-generating surfaces shall be treated to meet the water quality requirements applicable to that Phase prior to infiltration.
2. All stormwater from Stormwater Management Zone 1B until the predeveloped average annual infiltrated volume is met. Stormwater from rooftops that comply with Section 7.4.4.A(3) above may be infiltrated directly while any additional stormwater collected from non-complying rooftops or other pollution-generating surfaces shall be treated to meet the basic water quality requirements applicable to that Phase prior to infiltration.
3. Stormwater from rooftops and pervious surfaces used to recharge wetlands.

Stormwater conveyed to the deeper outwash deposits (Qpog) will include:

4. All stormwater within Stormwater Management Zone 1 and not conveyed to Horseshoe Lake as provided in subsections 1-3 above.

The stormwater management requirements for each section of Stormwater Management Zone 1 are as follows:

1. Stormwater Management Zone 1A Standards

i. All stormwater shall be infiltrated into the shallow aquifer (Qvr) unless underlying soils are till (including any till fill area), provided the average annual volume to be infiltrated has not yet been met.

ii. Surfaces requiring basic water quality treatment per the 2005 DOE Manual may be infiltrated in Stormwater Management Zone 1A after basic water quality treatment.

iii. Surfaces requiring enhanced water quality treatment per the 2005 DOE Manual may be infiltrated in Stormwater Management Zone 1A after enhanced water quality treatment or may be infiltrated in Stormwater Management Zone 1B after basic water quality treatment.

iv. All stormwater that cannot be infiltrated due to the underlying soil conditions, will be routed to the regional stormwater facility located in the southern portion of Stormwater Management Zone 1C.

2. *Stormwater Management Zone 1B Standards*

i. Stormwater from rooftops and pervious surfaces shall be used to recharge wetlands where required. All remaining stormwater shall be infiltrated to the shallow aquifer (Qvr) provided that the predeveloped average annual volume to be infiltrated has not yet been met.

ii. Stormwater from pollution generating surfaces (roads, parking lots, driveways etc.) shall be treated for basic water quality and infiltrated, provided the predeveloped average annual volume to be infiltrated has not yet been met. Once the predeveloped average annual volume has been met, all remaining stormwater shall be conveyed to the stormwater facility located in the southern portion of Stormwater Management Zone 1C.

3. *Stormwater Management Zone 1C Standards*

i. Stormwater from rooftops and pervious surfaces shall be used to recharge wetlands where required. All other runoff will be conveyed to the regional stormwater facility within this drainage zone (Stormwater Management 1C, see Figure 7.4) unless the runoff is needed to meet the water balance needs to Horseshoe Lake.

C. Stormwater Management Zone 2 Standards

Stormwater Management Zone 2 consists of the eastern portion of the Project Site, which drains directly to Rock Creek. All stormwater runoff flows to Rock Creek, which flows into Lake Sawyer. Lake Sawyer is a phosphorous sensitive lake which is located approximately three quarters of a mile north of the Project Site. In addition to basic water quality treatment requirements per the 2005 DOE Manual, phosphorous treatment is required to be provided for all basins that drain towards Lake Sawyer. A detention/water quality pond will be used to manage stormwater for this zone. A large wet pond is proposed to provide basic water quality and phosphorus treatment for this zone (Stormwater Management Zone 2).

Runoff from rooftops shall be used to recharge wetlands and maintain wetland hydrology. All other runoff will be conveyed to the regional detention/water quality pond in this drainage zone (Stormwater Management Zone 2).

D. Stormwater Management Zone 3

Stormwater Management Zone 3 consists of the southern portion of the Project Site. A large portion of Stormwater Management Zone 3 is tributary to Black Diamond Lake. A portion along the southwest border of Stormwater Management Zone 3 is underlain with outwash soils, where stormwater runoff infiltrates under existing conditions. The remainder of Stormwater Management Zone 3 is underlain with till soils, with stormwater runoff flowing to wetlands throughout the zone. In order to maintain hydrology and mitigate the effects of Development, only runoff from rooftops may be used to recharge Black Diamond Lake. Predeveloped stormwater volumes will be provided to Black Diamond Lake with rooftop runoff. In order to minimize potential erosion south of the Project Site, the predeveloped infiltration volume for this area will be matched. Finally, many of the wetlands within Stormwater Management Zone 3 discharge to steeply sloping areas surrounding Black Diamond Lake. To minimize erosion potential, the existing volume conveyed to each wetland will be matched to maintain wetland hydrology. Remaining stormwater will be infiltrated into the deeper outwash soils through the use of a regional water quality and infiltration facility.

Stormwater Management Zone 3 has been divided into four sections based on the stormwater management requirements. To ensure that the predeveloped volumes of water conveyed to Black Diamond Lake, onsite wetlands, and the outwash soils are matched, the Master

Developer must maintain an accounting of the water volumes conveyed to each (based on pervious area, rooftop area and impervious area) within this zone through the Build-Out Period.

Stormwater conveyed to Black Diamond Lake will include:

1. Stormwater runoff from rooftops only.

Stormwater infiltrated in the outwash soils along the south boundary will include:

2. All stormwater from Stormwater Management Zone 3C until the predeveloped average annual infiltrated volume is met. The rooftops will be infiltrated directly while the remaining stormwater will be treated for basic water quality before infiltration.

Stormwater conveyed to deeper outwash deposits (Qpog) will include:

3. All other stormwater not needed for shallow aquifer recharge, Black Diamond Lake recharge or wetland recharge.

The stormwater management requirements for each section of Stormwater Management Zone 3 are as follows:

1. Stormwater Management Zone 3A Standards

i. Stormwater from rooftops meeting the requirements of Section 7.4.4.A(3) shall be used for wetland recharge and recharge to Black Diamond Lake to match predeveloped volumes.

ii. Clean stormwater from backyards may also be used for wetland recharge if needed but may not be used for recharge to Black Diamond Lake.

All stormwater from pollution generating surfaces shall be conveyed to the large regional infiltration facility to the west.

iii. Once the wetland recharge and Black Diamond Lake recharge requirements have been met, all other stormwater will be conveyed to the regional stormwater facility to the west.

2. *Stormwater Management Zone 3B Standards*

   i. Stormwater from rooftops and/or backyards will be used for wetland recharge. All other stormwater not required for wetland recharge will be conveyed to the regional stormwater facility to the west (Figure 7.4).

3. *Stormwater Management Zone 3C Standards*

   i. Stormwater from rooftops and pervious surfaces shall be infiltrated to the shallow aquifer (Qvr) provided that the predeveloped average annual volume to be infiltrated has not yet been met.

   ii. Stormwater from pollution generating surfaces (roads, parking lots, driveways etc.) shall be treated for basic water quality and infiltrated, provided the predeveloped average annual volume to be infiltrated has not yet been met. Once the predeveloped average annual volume has been met, all remaining stormwater shall be conveyed to the regional stormwater facility located to the west (Figure 7.4).

4. *Stormwater Management Zone 3D Standards*

   i. If Black Diamond Lake requires more recharge volume after the build-out of Stormwater Management Zone 3A, runoff from rooftops will be conveyed to Black Diamond Lake to provide the remainder of the volume required.

   ii. Stormwater from rooftops and backyards will be used for wetland recharge.

   iii. All remaining stormwater will be conveyed to the regional stormwater facility located to the west (Figure 7.4).

E. Stormwater Management Zone 4 Standards

Stormwater Management Zone 4 consists of the eastern portion of the Project Site, which drains directly to Jones Lake. All stormwater runoff flows to Jones Lake which flows into Lake Sawyer via Rock Creek. In addition to basic water quality treatment requirements, phosphorous treatment is required to be provided for all basins that drain towards Lake Sawyer. A detention/water quality pond will be used to manage stormwater. A large wet pond is proposed to provide basic water quality and phosphorus treatment.

All stormwater will be conveyed to the detention/water quality pond in this Stormwater Management Zone.

F. Stormwater Management Zone 5A and 5B Standards

Stormwater Management Zone 5 consists of Parcel B of The Villages MPD. The northwest corner of Stormwater Management Zone 5 is located on outwash soils with good infiltration rates. The remainder of Stormwater Management Zone 5 (approximately two-thirds of the basin) is located on till soils. Stormwater runoff from the northern portion of Stormwater Management Zone 5 drains to the north and northwest overland and through a series of wetlands and a stream to the outwash soils in the northwest corner where it infiltrates. The infiltrated stormwater flows towards Ravensdale Creek. In addition to the till portions of the Project Site, runoff from adjacent offsite parcels to the east also drains to the wetlands and stream on the till portion of the Project Site and infiltrates into the outwash soils in the northwest corner of the Project Site. The existing volume tributary to each of the wetlands will be matched in developed condition with runoff from rooftops to maintain wetland hydrology. Runoff from the remaining rooftops and other non-pollution generating surfaces are proposed to be infiltrated directly. All remaining stormwater runoff will be directed to an infiltration and water quality facility located in the outwash in the northwest corner of Stormwater Management Zone 5. Based on available soils information, the existing soils do not meet Ecology soil requirements for water quality treatment. Due to this fact, the stormwater from the northern portion of Stormwater Management Zone 5 requires treatment for phosphorous removal and enhanced water quality treatment based on the currently proposed land use.

Stormwater runoff from the southern portion of Stormwater Management Zone 5 drains to the south and southwest where it enters an existing wetland, located along the south and southwest boundaries of the Project Site, and eventually infiltrates. There are several wetlands within this portion of the Project Site. The existing volume conveyed to each of the wetlands will be matched in developed condition with runoff from rooftops to maintain wetland hydrology. The remaining stormwater runoff will be conveyed to two stormwater facilities, which will provide detention, phosphorous treatment, and basic water quality treatment.

7.4.5 Stormwater Monitoring and Phosphorus Load Calculation

The Master Developer shall monitor stormwater for the following parameters: Total Phosphorus (Tp), Temperature, pH, Turbidity, Conductivity, and Dissolved Oxygen (DO). Monitoring of a specific stormwater facility shall continue for five (5) years following the completion of development that discharges into that facility. Completion shall be defined as the date the City's maintenance bond (which follows the time period of the City's performance bond), as required by BDMC 14.04.360 and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") Section 1.5, is released or expires for a given facility. A tabular list of stormwater monitoring requirements is included at Exhibit "O". The monitoring parameters include annual volumes of total phosphorus (Tp) from The Villages MPD that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring indicates that the MPD site is discharging more Tp than indicated, the Master Developer shall modify existing practices or facilities (source control) within thirty (30) days of obtaining a substandard sampling measure. If annual monitoring data shows Tp levels are exceeding pre-development background levels the Master Developer shall modify the design of existing and proposed stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that individually or collectively provide an offsetting reduction in Tp. The selected compensating measures shall be implemented within six (6) months, subject to City approval. Pursuant to Condition of Approval No. 79 of the MPD Permit Approval, Exhibit "O" also contains a memorandum describing how the Master Developer will meet the Stormwater Management provision set in Section 7.4.3(A).

8.0 SENSITIVE AREAS STANDARDS

8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY

All Development within The Villages MPD shall be subject to the standards, requirements and processes of the Sensitive Area Ordinance. The sensitive areas boundary determinations have been completed and verified for the Project Site and are depicted on the Constraint Maps attached hereto as Exhibit "G". Buffers for the sensitive areas, as well as categories for the wetlands, as well as categories for the wetlands and classification of fish and wildlife habitat conservation areas, mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2 SENSITIVE AREAS DETERMINATIONS

Consistent with the Sensitive Areas Ordinance, at the time of construction, sensitive areas and their established buffers shall be clearly identified and marked in the field by GPS coordinates or GPS mapping where feasible.

8.2.1 Wetland Boundary Delineations Final

The presence and absence of wetlands, wetland typing, and delineations are shown on the Constraint Maps attached hereto as Exhibit "G". The wetland typing shown on the Constraints Maps is for planning purposes only and is not yet final. The wetland delineations outlined in the Constraints Map as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped and described boundary shall prevail. Buffers and categories for the wetlands mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.2 Fish and Wildlife Habitat Conservation Areas Final

The presence of Fish and Wildlife Conservation Areas within The Villages MPD are shown on the Constraints Map. Classifications for fish and wildlife conservation areas in the Project Site will

be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.3 Mine Hazard Areas

Mine hazard areas for The Villages MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Maps. These mine hazard areas for The Villages MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

8.2.4 Seismic Hazard Areas

Seismic hazard areas for The Villages MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Map. The seismic hazard areas for The Villages MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

8.2.5 Steep Slopes

Steep slope areas for The Villages MPD are shown on the Constraints Map. The steep slope areas for The Villages MPD are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. Buffers for steep slopes in the Project Site will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2.6 Wildlife Corridor

Pursuant to Condition of Approval No. 125 of the MPD Permit Approval and page 6-11 of the Villages Final Environmental Impact Statement dated December 2009, the Master Developer shall provide a 300-foot wide wildlife corridor from the western edge of the Core Complex to

the City's western boundary. This required wildlife corridor is shown on the Constraints Map and is deemed final and complete through the term of this Agreement.

8.3 ALTERATION OF GEOLOGICALLY HAZARDOUS AND LANDSLIDE HAZARD AREAS

The Designated Official may allow alteration and/or elimination of geologic hazard and landslide hazard areas through the clearing and grading permit process provided that the standards of BDMC 19.10.410(C)(1)(b)(i) through (v) (Exhibit "E") are met. This provision does not apply to alteration of geologically hazardous or landslide hazard areas within wetlands or fish and wildlife conservation areas or their associated buffers.

8.4 HAZARDOUS TREE REMOVAL

The Master Developer or Homeowners' Association may engage a certified arborist to review potential hazard trees located within sensitive areas and buffers. Pursuant to Condition of Approval No. 86 of the MPD Permit Approval, The Master Developer or Homeowners' Association may submit a request to the City to remove hazardous trees consistent with BDMC 19.30 (Exhibit "E"). If tree removal is required the replacement ratio shall be a minimum of a 2:1 tree replacement ratio. If appropriate, trees may be left as snags or dropped and left in the buffer for habitat purposes with the goal to leave the majority of the sensitive areas designated as passive Open Space, but appearing like a native forest, while protecting adjoining uses from the risks of falling trees.

9.0 PARKS, OPEN SPACE AND TRAIL STANDARDS

9.1 OVERALL OPEN SPACE REQUIREMENT

Pursuant to BDMC 18.98.140 (Exhibit "E") and the MPD Permit Approval, The Villages MPD is required to provide at least 481.4 acres of Open Space. The Black Diamond Urban Growth Area Agreement between King County, the City, Palmer Coking Coal Company, and Plum Creek Timber Company dated December 31, 1996 ("BDUGAA") requires 145 acres of Open Space on those Development Parcels subject to the BDUGAA. The Master Developer shall provide the additional, approximate 336.4 acres for those properties not subject to the BDUGAA within the Project Site. Open Space meeting these requirements is shown on the MPD Site Plan (Exhibit "U") and in the following table.

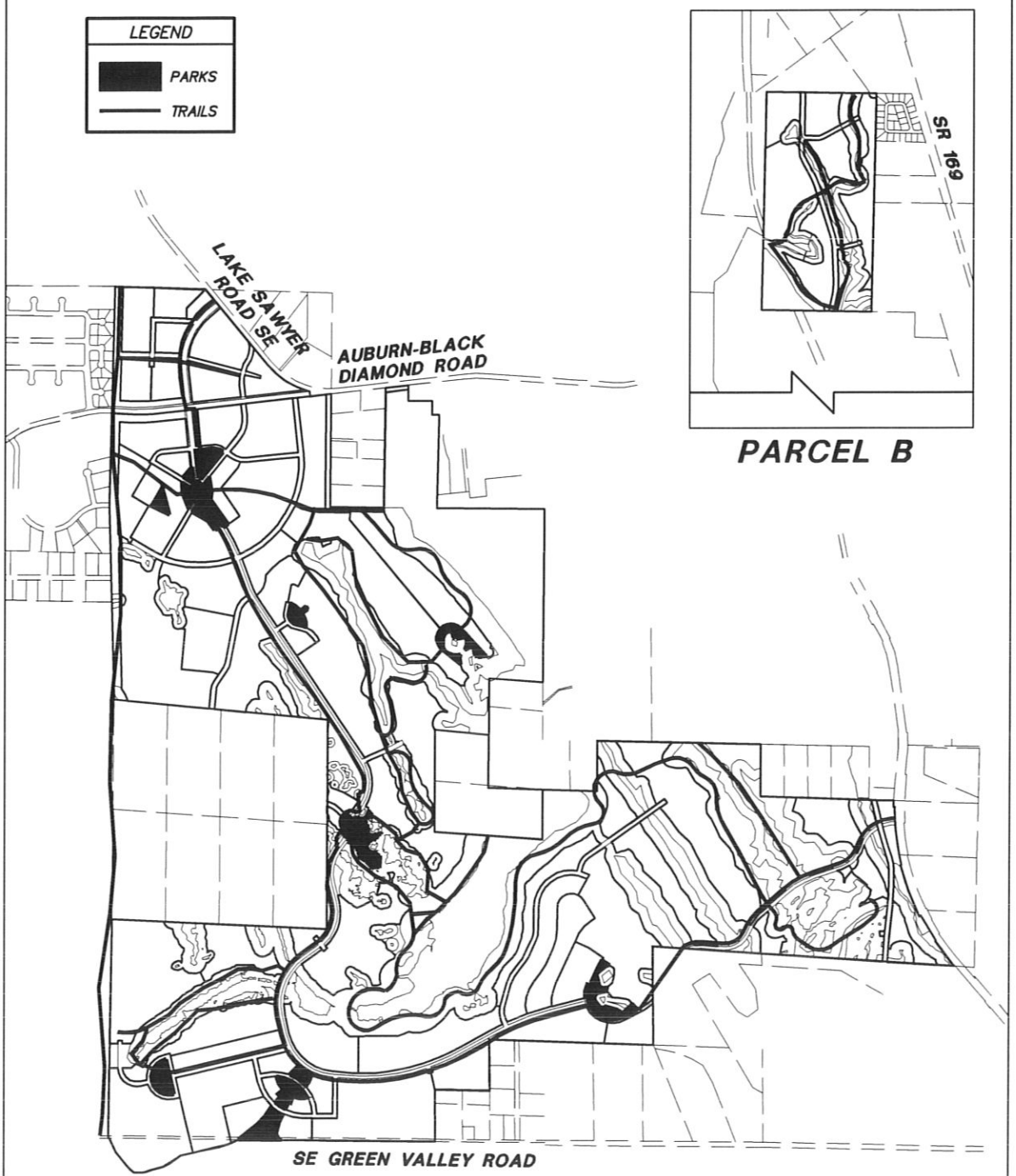
Table 9-1 Open Space Calculations

	Gross Acres	BDUGAA/ Open Space requirement	MPD requirement (if applicable)	**Required Open Space***
Parcel B	81.53	0	40.77	40.77
West Annexation Area Parcel C Parcel D Parcel G	 54.62 225.99 8.06	63.30	0	63.30
Guidetti Parcel	20.38	0	10.19	10.19
Parcel E	151.15	0	75.58	75.58
Parcel F-North	258.90	81.70	**12.00	93.7
BDA	395.74	0	197.87	197.87
Total In City/UGA MPD Open Space	1196.40	145	336.4	**481.4**

*Required Open Space to be met within the Project Site

**Reflects 24 acres of property within City boundaries prior to BDUGAA

FIGURE 9.2:
PARK AND TRAIL PLAN



9.2 PARK AND OPEN SPACE PLAN

The approximate location and type of Parks to be provided by the Master Developer are shown on the Park and Trail Plan (Figure 9.2) above. The Master Developer shall design and construct the Parks shown on the Parks and Trail Plan (Figure 9.2). The actual location and boundaries of Parks may vary (provided that the minimum Open Space requirement is met) and will be defined through Implementing Approvals and Projects (for example, adjacent subdivision or site plan). Parks within each Phase of The Villages MPD shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the Phase, whichever occurs first, to the extent necessary to meet park level of service standards for the Implementing Approval or Project. In the event a bond is in place, construction of all Parks within Phase 3 will be triggered when Certificates of Occupancy or final inspection have been issued for 40% of the Dwelling Units on lots located within ¼ mile of a given Park located in Phase 3. Parks must be completed when Certificates of Occupancy or final inspection has been issued for 60% of the Dwellings Units located within ¼ mile of a given Park in any Phase. Recreation facilities shall be constructed as required by Table 9-5. The Master Developer may elect to build Parks in advance of the triggers set forth in this subsection. To assure that the Parks are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a Park shall include that entire Park within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval.

9.3 SENSITIVE AREAS AND BUFFERS

All sensitive areas and buffers will be protected consistent with the Sensitive Areas Ordinance and as further described in this Agreement. Trails, crossings and encroachments may be allowed within sensitive areas and buffers, if such placement is consistent with the Sensitive Areas Ordinance and appropriate mitigation identified therein.

9.4 NON-SENSITIVE OPEN SPACE

Open Space outside of sensitive areas and buffers includes, but is not limited to, the plaza, Community Parks, trails, Neighborhood and Pocket Parks, natural areas and stormwater ponds

and infiltration facilities. Additional Parks may be provided as individual Implementing Projects are developed.

Stormwater ponds and facilities shall be designed as either passive or active Open Space when practical. Passive Open Space facilities consisting of stormwater ponds shall be designed to appear as a natural wetland or pond and shall provide at least one location for public viewing. Vegetation shall consist of no less than 70% native plant material typically found in and around South King County. Any fencing required by BDMC regulations (Exhibit "E") shall be designed and located such that it does not detract from the natural character of the facility. If natural landscaping is intended to provide a long-term barrier to human intrusion, temporary fencing may be permitted until such time as the landscaping has matured to the point of providing the barrier. Stormwater facilities designed as active Parks shall accommodate at least one active use. This may include at least one of the following: a trail extending no less than 75% of the perimeter of the pond; play fields; play structures; and basketball and other sport courts within an infiltration gallery or maximum water elevation designed to accommodate occasional high water level events. Pursuant to Condition of Approval No. 69 of the MPD Permit Approval, to be considered as Open Space, active play areas shall be free of inundation for a minimum of three (3) months out of the year, preferably longer. The Public Works and Natural Resources directors shall make the final determination of whether the stormwater pond or facility proposed may qualify as active or passive recreation (and thus counting towards The Villages MPD's Open Space requirement), or a portion of active recreation, based on submitted plans associated with an Implementing Project.

9.5 RECREATION AND USEABLE OPEN SPACE STANDARDS

All Implementing Projects must comply with the City's Parks, Recreation and Open Space Plan dated December 18, 2008 (Exhibit "E") as well as the standards and guidelines imposed in this Agreement.

9.5.1 All Dwelling Units shall have access to and be located within ¼ mile walking distance of a Park. If an existing or planned Park is not accessible and is not located within ¼ mile (walking distance) of a proposed Implementing Project, then the Implementing Project shall include a new Park at a rate of 100 square feet per Dwelling Unit to be served by the Park. Parks must be at least 1,500 square feet in size to be counted against The Villages MPD's Park requirements.

9.5.2 Unless otherwise noted on Table 9-5, Recreational Facilities constructed by the Master Developer, may be located: (1) within The Villages MPD in Community Parks, community center or Neighborhood Parks; (2) on joint use school sites (if agreed to by the City and School District as provided in the School Agreement); (3) within off-site Regional Parks (subject to City agreement); or (4) on a mutually acceptable off-site location. The Recreational Facilities may be provided in combination with one another and other informal space or each facility may be provided as a standalone amenity. Pursuant to Condition of Approval No. 88 of the MPD Permit Approval, if a joint use facility is proposed on a school site or on an alternative site consistent with the School Agreement, the Master Developer shall provide for one or more youth/adult softball fields, soccer fields, tennis courts or basketball courts in such joint use facility.

9.5.3 The Master Developer shall have the option to request that the Designated Official accept a lump sum payment in lieu of constructing any of the individual Recreational Facilities in Table 9-5. The request shall be made prior to triggering the need for the next Recreation Facility. Pursuant to Condition of Approval No. 93 of the MPD Permit Approval, the Designated Official retains sole discretion to determine when and if a lump sum payment will be accepted in lieu of the Master Developer constructing a Recreational Facility. The Designated Official's determination shall be based on the following three criteria: (i) availability of land; (ii) adequacy of funds to construct City-approved recreational facilities; and (iii) City's ability to maintain recreational facilities. Pursuant to Condition of Approval No. 91 of the MPD Permit Approval, the amount of the payment that may be provided in lieu of construction shall be set through the following process:

A. Commencing upon the Designated Official's agreement to accept a lump sum amount for a specific Recreational Facility, the City shall publish a bid request for design and construction of the Recreational Facility. The bid request shall be based on reasonable standards agreed to by the Master Developer and City. The City reserves the right to include additional elements in the bid beyond what the Master Developer is required to construct for the facility. Such additional elements shall not be the responsibility for the Master Developer to fund. For instance, additional elements may include lighting, concession areas, or other elements as determined by the Designated Official.

B. Upon acceptance of a bid, the Designated Official and Master Developer shall agree to set the lump sum amount in accordance with the accepted bid. Upon execution of a contract accepting the bid for design and construction, the Master Developer shall deposit with the City the agreed to lump sum amount.

In the event the Master Developer makes a lump sum payment, the City shall use the funds for the sole purpose of constructing the Recreational Facility. If the Master Developer provides off-site Recreational Facilities and/or Parks, it shall receive credit equivalent to the credit it would have received if that Recreational Facility and/or Park had been provided on the Project Site.

9.5.4 Pursuant to Conditions of Approval Nos. 89 and 92, of the MPD Permit Approval, the Master Developer's obligation to provide the Recreational Facilities outlined in Table 9-5 is based on the Level of Service standards set forth in the City's Park and Open Space Plan dated December 18, 2008 (Exhibit "E"). To determine the number of Recreational Facilities required, the number of housing units was multiplied by the following population generation rates: 2.7 persons per Single Family Dwelling Units and 1.85 persons for Multi-Family Dwelling Units.

9.5.5 Recreation Facilities

TABLE 9-5

Facility Type	Level of Service	Required Facilities	Timing of Facilities	Fee-in-Lieu
Basketball Court	1:2000	6	Master Developer shall provide a minimum of one (1) Basketball Court facility per every 800 Dwelling Units constructed. One such facility must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800th, 1600th, 2400th, 3000th, 3600th, and 4800th Unit receiving a Certificate of Occupancy.	The Master Developer may elect to request that the City accept a fee-in lieu of constructing the required Basketball Courts. The fee shall be set per Section 9.5.3.
Soccer Field	1:2000	6	Master Developer shall provide a minimum of one (1) soccer field per every 800 Dwelling Units constructed. One soccer field must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800th, 1600th, 2400th, 3000th, 3600th, and 4800th Unit receiving a Certificate of Occupancy. Up to three (3) of the required soccer fields shall be designed as Micro Soccer Fields.	The Master Developer may elect to request that the City accept a fee-in lieu of constructing the required soccer fields. The fee shall be set per Section 9.5.3.

Facility Type	Level of Service	Required Facilities	Timing of Facilities	Fee-in-Lieu
Tennis Court	1:2000	6	Master Developer shall provide a minimum of one (1) tennis court per every 800 Dwelling Units constructed. One tennis court must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800th, 1600th, 2400th, 3000th, 3600th, and 4800th Unit receiving a Certificate of Occupancy.	The Master Developer may elect to request that the City accept a fee-in lieu of construction for up to 3 of the tennis courts. The fee shall be set per Section 9.5.3.
Youth Baseball/Adult Softball field	1:2000	6	Master Developer shall provide a minimum of one (1) Youth Baseball / Adult Softball field per every 800 Dwelling Units constructed. One such field must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800th, 1600th, 2400th, 3000th, 3600th, and 4800th Unit receiving a Certificate of Occupancy.	The Master Developer may elect to request that the City accept a fee in lieu of constructing the necessary facility. The fee shall be set per Section 9.5.3.

Facility Type	Level of Service	Required Facilities	Timing of Facilities	Fee-in-Lieu
Adult Baseball Diamond	1:5000	2	Master Developer shall provide a minimum of one (1) Adult Baseball Diamond per every 2,400 Dwelling Units constructed. One Adult Baseball Diamond must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 2400th and 4800th Unit receiving a Certificate of Occupancy.	The Master Developer may elect to request that the City accept a fee in lieu of constructing the necessary facility. The fee shall be set per Section 9.5.3.
Community Center	1:10,000	1	Master Developer shall provide a Community Center prior to the 3,000th Dwelling Unit receiving a Certificate of Occupancy. The Community Center may be co-located with other Recreational Facilities.	The Master Developer may elect to request that the City accept a fee in lieu of constructing a Community Center and the City accepts the request, the process set forth in Section 9.5.3 shall be followed to determine the fee. A Community Center may be a YMCA, Boys and Girls Club, or other similar facility as determined by the City in its reasonable discretion.

Facility Type	Level of Service	Required Facilities	Timing of Facilities	Fee-in-Lieu
Youth Football Field	1:10,000	1	Master Developer shall provide a minimum of one (1) Youth Football Field prior to the 3,000th Dwelling Unit receiving a Certificate of Occupancy.	The Master Developer may elect to request that the City accept a fee in lieu of construction of the Youth Football Field. The fee shall be set per Section 9.5.3.
Gymnasium	1:5,000	2	If authorized by the Enumclaw School District, the Master Developer shall provide a minimum of two (2) gymnasium facilities in conjunction with the school facilities described in the School Agreement.	The Master Developer may elect to request that the City accept a fee in lieu of constructing a gymnasium. The fee shall be set per Section 9.5.3.
Track	1:10,000	1	If authorized by the Enumclaw School District, the Master Developer shall provide a minimum of one (1) track in conjunction with the school facilities described in the School Agreement.	The Master Developer may elect to request that the City accept a fee in lieu of constructing a track. The fee shall be set per Section 9.5.3.

9.6 TRAIL PLAN

The approximate location and type of trails are shown on the Park and Trail Plan (Figure 9.2). The Master Developer is responsible for the design and construction of the trails shown on the Park and Trail Plan (Figure 9.2). The actual location of trails may vary and will be defined

through Implementing Approvals and Projects (for example, adjacent subdivision or site plan). The trail system should be designed to minimize trail locations within sensitive area buffers. Any construction within sensitive areas shall be mitigated in accordance with the City's Sensitive Areas Ordinance. Where feasible, trail design and trail construction should avoid dead ends and incomplete segments.

Pursuant to Condition of Approval No. 95 of the MPD Permit Approval, any trail construction necessary to complete the Park and Trail Plan (Figure 9.2) shall be done on an Implementing Project by Implementing Project basis. If any Implementing Project contains a trail segment shown on the Park and Trail Plan (Figure 9.2), then such trail segment shall be designed and constructed up to the boundaries of such Implementing Project. Thus, trails on the Project Site shall be constructed or bonded prior to issuance of a certificate of occupancy, final site plan approval or final plat approval (whichever occurs first) for the Implementing Project within which the particular trail segment is to be built. The construction of trails located outside of the Project Site that are necessary to achieve connectivity may be required by the City prior to the issuance of a certificate of occupancy, final plat approval, or final site plan approval for an Implementing Project to the extent authorized by law. The Master Developer may elect to build trails in advance of the triggers described herein.

9.7 TRAIL STANDARDS

The following criteria shall apply to the construction of trails set forth in this Agreement in addition to, and consistent with, the trail standards set forth in BDMC and Black Diamond Engineering Design and Construction Standards (Exhibit "E"):

9.7.1 Trails shall be built to the standards set forth below.

A. Hiking trail standards
   - i. Clearing height – 8 feet
   - ii. Clearing width – 4-6 feet (light use); 8-12 feet (heavy, two-way use)
   - iii. Surface – 2-3' wide natural surface with gravel or wood chips in wet areas (light use); 4-8' wide natural surface if possible, otherwise woodchips, gravel, or other suitable material (heavy use)

B. Bicycle trail standards
   - i. Clearing height – 10 feet maximum

ii. Clearing width – 6-8 feet (mountain bike); 8 feet (one way touring bicycle), 12 feet (two-way touring bicycle traffic)

iii. Surface – 2-3' wide natural surface (mountain bike); 2" asphalt surface with 3" compacted gravel base (touring bicycle) 4-6' wide (one way traffic) OR 8' wide (two way traffic)

C. Multi-use trail standards

i. Clearing height – 8 feet for bicycle and pedestrian, 14 feet maximum for equestrian

ii. Clearing width - 14-26 feet, depending on use

iii. Surface – Paved or natural, similar to standards in A and B above, depending on uses intended. Equestrian uses, where proposed, shall be provided a natural surface separate from a paved surface by at least 3'.

9.7.2 Trails shall be designed to minimize construction impacts to wetlands, streams and their associated buffers.

9.7.3 The following amenities may be included within trail corridors subject to mutual agreement between the Master Developer and the Designated Official: rest stops, sculpture and other art, pedestrian lighting, exercise stations, picnic tables, barbeque grills, interpretive areas, Pocket Parks/tot lots, drinking fountains, restrooms, and covered sheds, and other similar amenities.

9.8 PARK, OPEN SPACE AND TRAIL DEVIATIONS

All Park, Recreation Facility, Open Space and trail standards, cross sections and locations may be modified through the deviation process set forth in Section 1.3 of the Black Diamond Engineering Design and Construction Standards (Exhibit "E").

9.9 OWNERSHIP AND MAINTENANCE

9.9.1 Environmentally Sensitive Areas and Buffers

Pursuant to Condition of Approval No. 153 of the MPD Permit Approval, ownership and maintenance of sensitive areas and buffers shall be consistent with the requirements of the Sensitive Area Ordinance, which allows sensitive area tracts to be held in undivided ownership by all lots within The Villages MPD, dedicated to the City or other governmental entity,

protected with conservation easements or conveyed to a non-profit land trust. If the Master Developer elects not to dedicate an Open Space to the City, a permanent public access easement or other means of access shall be provided to the Open Space as part of the Implementing Project. To assure that the sensitive areas and buffers are properly assigned for purposes of ownership and maintenance, any Implementing Project that includes within its boundaries or abuts at least 25% of the border of a sensitive area buffer shall include that entire sensitive area and buffer within its boundaries, so that ownership and maintenance will be determined by the Designated Official as part of the Implementing Approval.

9.9.2 Non-Sensitive Area Open Space

All Neighborhood Parks, trails and Community Parks will be owned and maintained by the homeowners' association (HOA) or Master Developer pursuant to the provisions of Subsection 5.5.7 of this Agreement, except for any owned by the school district. Regional Parks may be dedicated to the City at the time of an Implementing Project.

9.9.3 Public Access

Pursuant to Condition of Approval No. 94 of the MPD Permit Approval, public access is authorized to all Parks and trails (whether public or private) unless otherwise determined by the Designated Official for reasons of public safety, welfare and convenience, or for maintenance reasons.

9.10 PARK CHARACTERISTICS

Pursuant to Conditions of Approval Nos. 97 and 151 of the MPD Permit Approval, the characteristics and uses of passive Open Space and active Open Space are as follows:

A. Active Open Space includes:
   - areas that provide for organized sport and recreational functions such as sports fields;
   - tot lots;
   - net-games and tennis courts;
   - gathering areas;
   - other similar outdoor sports facilities as allowed by the Designated Official.

B. Passive Open Space outside of sensitive areas regulated by the SAO provides for all other recreational needs, including:
   - scenic purposes;
   - landscape amenities where users can relax and enjoy the space without a specifically organized sporting activity;
   - trails;
   - picnic areas;
   - open fields, wildlife viewing areas or other informal Open Spaces.

The City and Master Developer acknowledge that the characteristics and uses of Open Space will differ throughout The Villages MPD's various Implementing Projects.

10.0 DETERMINATIONS, AMENDMENTS & EXPANSION PARCEL REVIEW PROCESS

10.1 RESERVED

10.2 APPLICABILITY

This Section applies to requests to clarify the requirements or meaning of this Agreement by the Designated Official, the Master Developer, or the Master Developer Transferee; the addition of Expansion Parcels, and to proposed changes ("Amendments") to the provisions contained within the MPD Permit Approval or this Agreement. Provided, however, that nothing in this Agreement provides the City with the authority to clarify the requirements of or issue an interpretation regarding Exhibit "Q" or Exhibit "R".

10.3 DETERMINATIONS

Any dispute between the Master Developer (or the Master Developer Transferee) and the Designated Official over the terms of this Agreement shall be resolved first by the Mayor or the Mayor's designee. The Mayor shall decide in writing within fourteen (14) days of receiving a written request for clarification of this Agreement. The Mayor's written decision may be appealed by the Designated Official or the Master Developer to the Hearing Examiner within ten (10) Days. The City shall hold a hearing on the appeal within thirty (30) Days following the date upon which the request for an appeal to the Hearing Examiner is filed. Any subsequent appeals of the written decision shall be by declaratory judgment pursuant to Chapter 7.24 RCW. The appealing party shall exhaust its remedies as set forth herein prior to exercising its remedies as set forth in Subsection 15.13.

10.3.1 Determination of Use Category

In addition to determinations regarding the terms of this Agreement as provided above in Section 10.3, all questions from the Master Developer regarding what use category a particular use falls within shall be determined pursuant to BDMC 18.04.070 (Exhibit "E").

10.4 AMENDMENTS

10.4.1 Amendments to the MPD Permit Approval

An Amendment to The Villages MPD Permit Approval may be requested by the Master Developer or Master Developer Transferee pursuant to the standards adopted in BDMC 18.98.100 (Exhibit "E") and as further described herein. An Amendment to the MPD Permit Approval shall be considered Minor if it meets all of the criteria set forth in BDMC 18.98.100 (Exhibit "E").

The processes for reviewing Major and Minor Amendments to the MPD Permit Approval are outlined in Subsection 12.8.14 of this Agreement.

10.4.2 Amendments to the Development Agreement

An Amendment to this Agreement may be requested by either the Master Developer or the City pursuant to the standards outlined herein. Amendments to this Agreement that materially modify the intent and policy of this Agreement shall be considered "Major" and shall be reviewed by the same procedures applicable to a new development agreement request. Amendments that do not materially modify the intent and policy of this Agreement shall be considered "Minor" and may be approved by the Mayor. The final determination regarding whether an Amendment to this Agreement is Minor or Major shall rest with the Designated Official, subject to appeal to the Hearing Examiner.

10.5 EXPANSION PARCELS

The Master Developer may acquire and add certain Expansion Parcels to the MPD requiring either a Minor or Major Amendment of the MPD Permit Approval and additional State Environmental Policy Act ("SEPA") review. If a defined Expansion Parcel is neither designated with an MPD Overlay on the City's Comprehensive Plan Future Land Use Map nor is zoned MPD, then a Comprehensive Plan Amendment and rezone shall be required.

10.5.1 Expansion Parcel Review Process

Pursuant to Conditions of Approval Nos. 134 and 162 of the MPD Permit Approval, any or all of the Expansion Parcels may be developed during the Build-Out Period subject to the following process and requirements:

A. Written notice ("Expansion Proposal") is provided to the City by the Master Developer of its intention to develop the Expansion Parcel(s); and

B. The Master Developer must have ownership or control of the Expansion Parcel(s) or the Master Developer and the owner(s) of the Expansion Parcel must agree that the Expansion Parcel will be subject to the requirements of the MPD Permit Approval and this Agreement; and

C. The Expansion Proposal from the Master Developer shall include the location of proposed uses (including density ranges, i.e. MPD-L, MPD-M, and MPD-H) and Open Space on the Expansion Parcel(s); a conceptual street plan showing the location of any proposed minor arterials and collectors on the Expansion Parcel(s); and conceptual water, sewer and stormwater plans of the Expansion Parcel(s); and

D. The Expansion Proposal complies with the requirements of the State Environmental Policy Act as described in Subsection 10.5.2; and

E. The Expansion Proposal shall be reviewed using the process and procedures for either a Minor or Major Amendment to the MPD Permit Approval pursuant to Section 12.8.14 and BDMC 18.98.100 (Exhibit "E"), respectively.

F. The Master Developer shall provide the following:
   i. An updated Exhibit "U" which shall show the uses (including density ranges, i.e. MPD-L, MPD-M, and MPD-H) for the Expansion Parcels to be included; and
   ii. An updated Phasing Plan as provided in Exhibit "K" which shall either amend existing Phases or propose additional Phases for the Expansion Parcels. In addition to updating the exhibit, appropriate revisions to Section 11 of this Agreement shall be provided; and
   iii. An updated fiscal analysis, which will include any additional or new infrastructure that is necessary to serve the Expansion Parcels; and
   iv. Updated constraints maps showing constrained areas pursuant to the City's Sensitive Areas Ordinance (Exhibit "E"); and
   v. Updated figures in Sections 7 and 9 of this Agreement.

10.5.2 Compliance with the State Environmental Policy Act (SEPA)

Adding one or more Expansion Parcels to the Project Site, without a proposal for an increase in Dwelling Units or nonresidential Development above the limits set forth in Sections 4.1 and 4.2 of this Agreement, constitutes a proposal that is substantially similar to that covered in the EIS for The Villages MPD. Therefore, the SEPA review process for adding Expansion Parcels shall follow WAC 197-11-600(4)(e) and WAC 197-11-630(3)(c). To complete this process, the Master Developer shall prepare a SEPA addendum or other appropriate document, as determined by the City's SEPA Responsible Official, which discloses and evaluates impacts, if any, which were not addressed in the EIS for the original Project Site, such as impacts to elements of the natural environment located on the Expansion Parcels or additional traffic impacts. The City shall review the SEPA addendum or other appropriate document and then either accept it or request additional information and analysis from the Master Developer. When the SEPA addendum or other appropriate document is complete, the City shall issue appropriate notification together with the appropriate documentation and circulate both as required under WAC 197-11-630(3)(c) and (3)(a), to add the Expansion Parcels.

10.5.3 The Impact of the Addition of Expansion Parcels to the Vested Status of the MPD Permit Approval

The addition of one or more Expansion Parcels to the Project Site shall have no effect on the vested status of the MPD Permit Approval.

11.0 PROJECT PHASING

11.1 MPD PHASING PLAN APPROVED

Per Condition of Approval No. 3 of the MPD Permit Approval, the MPD Phasing Plan contained in Chapter 9 of the MPD Permit Application, and attached hereto as Exhibit "K", was approved by the Black Diamond City Council with the exception of the bonding proposal at p. 9-3, the proposal for off-site trails p. 9-2 (to the extent not already considered a regional facility), and the proposal for parks at p. 9-10. Exhibit "K" shows as stricken the portions of Chapter 9 not approved by the City Council.

As noted on the approved MPD Phasing Plan on p. 9-1 (Exhibit "K"), the MPD Phasing Plan is "subject to change" and is only "an estimate of the improvements that will be needed for the project. It may change as a result of final mitigation agreements resulting from the MPD..." Conditions of Approval Nos. 10, 49, 51, 52, and 58 of the MPD Permit Approval all anticipate that alternative or functionally equivalent transportation, water, and sewer infrastructure improvements may be approved by City staff. Based on existing conditions (including market demand and City infrastructure) and current technology, the City and Master Developer have agreed to the infrastructure improvements listed in the tables included in this Section 11.

11.2 PHASING OF IMPROVEMENTS

Pursuant to Conditions of Approval Nos. 4, 63, and 163 of the MPD Permit Approval, this Section describes the phasing and timing of infrastructure within and outside of The Villages MPD. The phasing and timing of Open Space, trails, and other recreational amenities is addressed in Section 9 of this Agreement. However, as noted on p. 9-1 of the approved MPD Phasing Plan (Exhibit "K"):

> The order is not intended to be absolute and represents likely phases based on current market conditions. Phases may be started concurrently. . . . In general, the infrastructure necessary for each phase for each MPD is dependent on the infrastructure built in preceding phases for that MPD. . .

Phases may ultimately be built simultaneously. Accordingly, infrastructure and timing of Development different from the MPD Phasing Plan (Exhibit "K") may be proposed by the

Master Developer, without an amendment to the MPD Permit Approval or this Agreement, based on the needs and timing of specific Implementing Projects and technological advancements.

Pursuant to Conditions of Approval Nos. 29 and 164, before the first Implementing Project of any Phase is approved by the City, a more detailed implementation schedule of the Regional Facilities supporting that Phase shall be submitted to the City for approval. The timing of construction of the Regional Facilities shall be tied to the number of Dwelling Units and/or square feet of commercial in Implementing Projects.

11.3 PHASING AND CONSTRUCTION OF ON-SITE REGIONAL FACILITIES

A. Phasing. On-site Regional Facilities are Regional Facilities located within the Project Site and/or the Lawson Hills MPD site. Some on-site Regional Facilities located within the Project Site provide service to the Lawson Hills MPD site and vice versa. Therefore, on-site Regional Facilities shall be evaluated and provided as Development of The Villages MPD and the Lawson Hills MPD occurs. The capacity of the existing transportation, water, sewer, stormwater and Park systems serving a specific Implementing Project proposal must be evaluated during the development review process for that Implementing Project. Implementing Approvals are allowed up to the point of existing capacity. If, based on an Implementing Project specific evaluation, there are insufficient infrastructure facilities or capacity to serve some or all of the specific Implementing Project, infrastructure improvements necessary to provide adequate capacity shall be required as a condition of that project. Timing, design, and necessity of such infrastructure improvements must be consistent with provisions of Sections 6 and 7 of this Agreement and the Traffic Monitoring Plan (Exhibit "F"). Model Homes are exempt from this requirement.

B. Construction and Funding. Except as provided in the WSFFA and Municipality of Metropolitan Seattle City of Black Diamond Agreement for Sewage Disposal dated September 12, 1990, the Master Developer shall design and Construct (or cause to be Constructed) the on-site Regional Facilities identified in Tables 11-3-1, 11-3-2, 11-3-3, and 11-3-4 below. For purposes of this Section 11 and because Regional Facilities were evaluated based upon both the needs of The Villages MPD and the Lawson Hills MPD, anytime funding or construction responsibility for Regional Facilities is assigned to the Master Developer, the Master Developer

may, pursuant to a separate agreement and with written notice to the City, transfer or allocate such responsibility (or a portion thereof) to the master developer of the Lawson Hills MPD. While the Master Developer of either the Lawson Hills MPD or The Villages MPD may elect to construct certain facilities prior to a demonstrated need to obtain adequate capacity, nothing in this Section 11 shall be construed to require the Master Developer of either Lawson Hills MPD or The Villages MPD to Construct any infrastructure facility, or pay one hundred percent (100%) of any infrastructure facility cost, which is unnecessary to provide adequate capacity for an Implementing Project of the Lawson Hills MPD or The Villages MPD, respectively.

If the Master Developer elects to construct Regional Facilities or projects from the City's Capital Improvements Plan ("CIP"), it may seek reimbursement for costs incurred to Construct any or all of the necessary on-site Regional Facilities in excess of the Master Developer's proportionate share (except from "Exempt Properties," as defined below). The Master Developer may recover costs in excess of its proportionate share (except from "Exempt Properties," as defined below) using methods approved and allowed by City Code, state law, and existing agreements (e.g., WSFFA), including grant funding and mitigation payments received by the City for growth-related impacts, including impacts occurring outside the City's boundaries. The following parameters shall govern any Master Developer request for reimbursement:

The City and Master Developer acknowledge that the practical and efficient application of reimbursement based on the Master Developer's proportionate share might not provide complete equity for small-scale infill-type development where there is existing City infrastructure. For this reason, small-scale infill-type development shall be exempt from proportionate share cost recovery for on-site Regional Facilities provided by the Master Developer. "Exempt Properties" are defined as single lot land use applications (with less than 4 ERUs of development), less than 5-lot land use applications (with less than 4 ERUs of development) and commercial Land Use Permits (with less than 4 ERUs of development), up to a maximum of 550 ERUs (outside of The Villages and Lawson Hills MPDs). Exempt Properties shall be charged the appropriate and applicable City connection charges, impact fees and development charges consistent with City Code, but shall not be charged their proportionate share of costs for on-site Regional Facilities Constructed by the Master Developer.

If and only if the benefit area cannot be unambiguously assigned (e.g., an intersection project that provides service to the entire City), the Master Developer's reimbursement for on-site

Regional Facility construction costs in excess of its proportionate share shall be calculated based on the assumption that 10,500 ERUs are benefitted. For example, a 10-lot residential subdivision that was required to pay its proportionate share costs to the Master Developer for a given on-site Regional Facility would pay 0.000952 times the Master Developer's cost for the applicable infrastructure facility (10/10,500).

Notwithstanding anything to the contrary above, the City shall work in good faith and use reasonable best efforts to: (i) apply for grants and use funds awarded under such grants; and (ii) seek mitigation payments for impacts associated with growth occurring outside the City boundaries pursuant to the State Environmental Policy Act ("SEPA"), to reimburse the Master Developer for the on-site Regional Facilities construction costs it incurs in excess of its proportionate share.

Table 11-3-1
Lawson Hills and The Villages MPDs Phase 1A On-Site Regional Facilities

Project Description (see Exhibit "K" MPD Phasing Plans)	**Funding Responsibility**		
	City	**Master Developer**	**King County**
The Villages MPD Community Connector which is the first segment of roadway providing access and utilities to Development in Phase 1A.		X	
Neighborhood street with bike lane providing The Villages MPD secondary Phase 1A access.		X	
Frontage improvements in SE-Auburn-Black Diamond Road. These will be constructed in phases as Phase 1A develops.		X	
Intersection improvements at the intersection of Community Connector and SE Auburn-Black Diamond Road.		X	
Intersection improvements at Auburn-Black Diamond Road/Lake Sawyer Road and neighborhood street.		X	
The Villages MPD small interim wastewater pumping station.		X	
Interim stormwater pond and infiltration facility (The Villages MPD Phase 1A).		X	
Park at roundabout in The Villages MPD Parcel C.		X	
Central park in The Villages MPD Parcel C.		X	

Table 11-3-2
Lawson Hills and The Villages MPDs Phase 1B On-Site Regional Facilities

Project Description (see Exhibit "K" MPD Phasing Plans)	Funding Responsibility		
	City	Master Developer	King County
Community Connector between Lake Sawyer Road and Auburn-Black Diamond Road through Parcel C.		X	
North connector serving North Triangle and Parcel B.		X	
Frontage improvements on Parcel C along Lake Sawyer Road.		X	
Small, interim wastewater pumping station in The Villages MPD Parcel B.		X	
Wastewater storage facility, if required.		X	
Wastewater force main and rough grade access.		X	
Dual transmission main in Roberts Drive (850 loop) to The Villages MPD Main Property.	See WSFFA		

Table 11-3-3
Lawson Hills and The Villages MPDs Phase 2 On-Site Regional Facilities

Project Description (see Exhibit "K" MPD Phasing Plans)	Funding Responsibility		
	City	Master Developer	King County
Extend Community Connector on South to serve The Villages MPD Phase II development area.		X	
Construct neighborhood street from community connector to interim pumping station in The Villages MPD Parcel D.		X	
Construct north connector through Parcel B.		X	
Lawson Parkway serving Lower Lawson Hill MPD and rough grade haul road.		X	
Lawson street frontage improvements along Lawson St.		X	

Project Description (see Exhibit "K" MPD Phasing Plans)	Funding Responsibility		
	City	Master Developer	King County
Lawson Hills MPD wastewater storage facility, if required.		X	
Stormwater quality and infiltration pond on The Villages MPD Parcel D.		X	
Lawson Hills MPD South stormwater detention and water quality pond.		X	
The Villages MPD Parcel E stormwater detention and water quality pond.		X	
Stormwater facility on Lawson Hills MPD hammerhead.		X	
The Villages MPD Parcel B South stormwater detention and water quality pond.		X	
Intersection improvements at Lawson Parkway/Lawson Street/Botts Drive intersection.		X	

Table 11-3-4
Lawson Hills and The Villages MPDs Phase 3 On-Site Regional Facilities

Project Description (see Exhibit "K" MPD Phasing Plans)	Funding Responsibility		
	City	Master Developer	King County
Water line extension from The Villages MPD Parcel BDA to SR 169.		X	
Interim large wastewater pump station on The Villages MPD Parcel BDA.		X	
Small wastewater pump station on The Villages MPD Parcel F.		X	
Lawson Hills MPD water pump station.		X	
Upper Lawson Hills MPD zone 1175 reservoir.		X	
Regional Stormwater Facility for The Villages MPD Main Property.		X	
Stormwater facility for The Villages MPD east basin.		X	
Parcel B west stormwater facility.		X	

Project Description (see Exhibit "K" MPD Phasing Plans)	Funding Responsibility		
	City	Master Developer	King County
North Lawson Hills MPD stormwater ponds.		X	
North Main Lawson Hills MPD stormwater facility.		X	
Upper Lawson Hills MPD stormwater pond.		X	

11.4 PHASING AND CONSTRUCTION OF OFF-SITE REGIONAL INFRASTRUCTURE IMPROVEMENTS

A. Phasing. Off-Site Regional Facilities are Regional Facilities that are located outside the Project Site and the boundaries of the Lawson Hills MPD. Off-Site Regional Facilities necessary to serve The Villages MPD and Lawson Hills MPD are described in Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2. Transportation improvements located in the Cities of Maple Valley and Covington, however, are not included in Tables 11-5-1 and 11-5-2 because these improvements are addressed in the separate mitigation agreements attached as Exhibits "Q" and "R", respectively.

Since the off-Site Regional Facilities necessary to serve The Villages MPD and the Lawson Hills MPD at the end of the Build-Out Period are substantially more than will be needed to serve The Villages MPD during its initial Phases, construction of off-site Regional Facilities is tied to thresholds that trigger construction of the infrastructure facility as described in the following tables. Prior to the approval of the first Implementing Project in a defined Phase, a detailed table of the Regional Facilities supporting that Phase, similar to Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2, which shall include a "construction threshold," or as to transportation, documents that result of the Traffic Monitoring Plan (Exhibit "F"), shall be submitted to the Designated Official for approval. Occupancy of an Implementing Project that exceeds the construction threshold is allowed after the necessary Regional Facility has been permitted. This ensures that necessary off-site Regional Facilities are provided to serve Implementing Projects as they occur. Model Homes are exempt from this requirement.

B. Construction and Funding. Except as provided in the WSFFA and Municipality of Metropolitan Seattle City of Black Diamond Agreement for Sewage Disposal dated September 12, 1990, the Master Developer shall design and Construct (or cause to be Constructed) the off-

site Regional Facilities identified in Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2 below. For purposes of this Section 11 and because Regional Facilities were evaluated based upon both the needs of The Villages MPD and the Lawson Hills MPD, anytime funding or construction responsibility for Regional Facilities is assigned to the Master Developer, the Master Developer may, pursuant to a separate agreement and with written notice to the City, transfer or allocate such responsibility (or a portion thereof) to the master developer of the Lawson Hills MPD. While the Master Developer of either the Lawson Hills MPD or The Villages MPD may elect to construct certain facilities prior to a demonstrated need to obtain adequate capacity, nothing in this Section 11 shall be construed to require the Master Developer of either Lawson Hills MPD or The Villages MPD to Construct any infrastructure facility, or pay one hundred percent (100%) of any infrastructure facility cost, which is unnecessary to provide adequate capacity for an Implementing Project of the Lawson Hills MPD or The Villages MPD, respectively.

If the Master Developer elects to construct Regional Facilities or projects from the City's Capital Improvements Plan ("CIP"), it may seek reimbursement for costs incurred to Construct any or all of the necessary off-site Regional Facilities in excess of the Master Developer's proportionate share (except from "Exempt Properties"). The Master Developer may recover costs in excess of its proportionate share (except from "Exempt Properties") using methods approved and allowed by City Code, state law, and existing agreements (e.g., WSFFA), including grant funding and mitigation payments received by the City for growth-related impacts, including impacts occurring outside the City's boundaries. The following parameters shall govern any Master Developer request for reimbursement:

The City and Master Developer acknowledge that the practical and efficient application of reimbursement based on the Master Developer's proportionate share might not provide complete equity for small-scale infill-type development where there is existing City infrastructure. For this reason, small-scale infill-type development shall be exempt from proportionate share cost recovery for off-site Regional Facilities provided by the Master Developer. "Exempt Properties" are defined as single lot land use applications (with less than 4 ERUs of development), less than 5-lot land use applications (with less than 4 ERUs of development) and commercial land use permits (with less than 4 ERUs of development) up to a maximum of 550 ERUs (outside of The Villages and Lawson Hills MPDs). Exempt Properties shall be charged the appropriate and applicable City connection charges, impact fees and

development charges consistent with City Code, but shall not be charged their proportionate share of costs for off-site Regional Facilities Constructed by the Master Developer.

If and only if the benefit area cannot be unambiguously assigned (e.g., an intersection project that provides service to the entire City), the Master Developer's reimbursement for off-site Regional Facility construction costs in excess of its proportionate share shall be calculated based on the assumption that 10,500 ERUs are benefitted. For example, a 10-lot residential subdivision that was required to pay its proportionate share costs to the Master Developer for a given on-site Regional Facility would pay 0.000952 times the Master Developer's cost for the applicable infrastructure facility (10/10,500).

Notwithstanding anything to the contrary above, the City shall work in good faith and use reasonable best efforts to: (i) apply for grants and use funds awarded under such grants; and (ii) seek mitigation payments for impacts associated with growth occurring outside the City boundaries pursuant to the State Environmental Policy Act ("SEPA"), to reimburse the Master Developer for the off-site Regional Facilities construction costs it incurs in excess of its proportionate share.

11.4.1 Off-Site Sewer Regional Facilities

Table 11-4-1

Phase	Description (see Exhibit "K" MPD Phasing Plans)	Construction Threshold	Funding Responsibility	Construction Responsibility***
1A	Wastewater storage facility sufficient to serve proposal (facility may be phased)	Prior to issuance of the Certificate of Occupancy for the Dwelling Unit that uses the 1150th ERU	Master Developer	Master Developer or King County Wastewater Treatment Division

11.4.2 Off-Site Water Regional Facilities

Table 11-4-2

Phase	Description (see Exhibit "K" MPD Phasing Plans)	Construction Threshold	Funding Responsibility	Construction Responsibility***
1A	Water Main Upgrade/Extension Roberts Rd. and SE Auburn Black Diamond Rd	First Dwelling Unit or commercial/multi-family occupancy	WSFFA Funding Responsibility	City
1B	Off-Site water main parallel loop	Prior to issuance of the Certificate of Occupancy for the Dwelling Unit that uses the 1019th ERU, as necessary to supply fire flow required for a specific Implementing Project, or as updated modeling may allow	WSFFA Funding Responsibility	City
1B	Off-Site Water main extension in SR 169	As necessary to supply fire flow required for a specific Implementing Project	Master Developer	Master Developer

** Need determined based on water system modeling
*** Parties may reassign or delegate construction responsibility by mutual agreement

11.5 TRANSPORTATION REGIONAL FACILITIES

A. **Timing:** Pursuant to Conditions of Approval Nos. 10, 18, and 34 of the MPD Permit Approval, the timing associated with the construction of the transportation improvements outlined in Tables 11-5-1 and 11-5-2 is subject to the Traffic Monitoring Plan set forth in Exhibit "F". While some of these transportation improvements are shown on the figures associated with Phases contained in Exhibit "K," the timing shown is only approximate. Pursuant to Condition of Approval No. 20 of the MPD Permit Approval, the actual timing of construction of

the transportation improvements outlined in Tables 11-5-1 and 11-5-2 shall be governed by the Traffic Monitoring Plan.

B. **Construction and Funding:** The transportation impacts of the Villages MPD were assessed based on the cumulative impacts of The Villages MPD and the Lawson Hills MPD in the EIS. During any time period in which The Villages MPD proceeds before the Lawson Hills MPD or vice versa, the transportation mitigation obligations shown in Tables 11-5-1 and 11-5-2 and triggered by the Traffic Monitoring Plan shall be borne by the MPD that is proceeding alone. During any time period in which both MPDs are proceeding, the transportation mitigation obligations outlined in Tables 11-5-1 and 11-5-2 will be shared by The Villages and the Lawson Hills MPDs on a proportionate share basis. Pursuant to Condition of Approval No. 19 of the MPD Permit Approval, for each potential signal listed below, the Master Developer shall first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control.

Table 11-5-1. Transportation Intersection Improvements

Phase	Study Intersection	Jurisdiction	Mitigation	Funding Responsibility[1]
1B	SE 288th Street/216th Avenue SE	Black Diamond	Signalize. Add NBR turn pocket.	Master Developer
3	SE 288th Street/232nd Avenue SE	Black Diamond	Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach.	Master Developer
1B / 3	SR 169/SE 288th Street	WSDOT	Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).	Master Developer
2	SE Covington Sawyer Road/ 216th Avenue SE	Black Diamond	Add EBL, NBL and SBR turn pockets.	Master Developer

Phase	Study Intersection	Jurisdiction	Mitigation	Funding Responsibility[1]
1B / 2	SE Auburn Black Diamond Road/ 218th Avenue SE	King County	Provide a refuge for NBL turning vehicles on EB approach.	Master Developer
1A	SE Auburn Black Diamond Road/ Lake Sawyer Road SE	Black Diamond	Signalize. Add WBL turn pocket.	Master Developer
1A	Roberts Dr[1]/ Morgan Street	Black Diamond	Roundabout.	Master Developer
1A / 3	SR 169/Roberts Drive	Black Diamond/ WSDOT	Add second SBT and NBT lanes. Add SBL and NBL turn pockets.	Master Developer
1A / 3	SR 169/SE Black Diamond Ravensdale Road (Pipeline Road)	Black Diamond/ WSDOT	Add second SBT and NBT lanes. Add SBL turn pocket.	Master Developer
3	SR 169/Baker Street	Black Diamond/ WSDOT	Signalize.	Master Developer
3	SR 169/Lawson Road	Black Diamond/ WSDOT	Signalize. Add SBL turn pocket.	Master Developer
3	SR 169/Jones Lake Road (SE Loop Connector)	Black Diamond/ WSDOT	Signalize. Add WBL, NBL, and SBL turn pockets.	Master Developer
3	SR 169/SE Green Valley Road	WSDOT	Signalize.	Master Developer
1B	SE Auburn-Black Diamond Road/ SE Green Valley Road	King County	Provide a refuge on EB approach for NBL turning vehicles.	Master Developer

[1] Referred to as "SE Auburn Black Diamond Road" in Exhibit 6-1 of Condition of Approval No. 15 of the MPD Permit Approval.

Phase	Study Intersection	Jurisdiction	Mitigation	Funding Responsibility[1]
1B / 3	SR 169/North Connector	Black Diamond/ WSDOT	Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional NBT lane 1,000 feet north of intersection.	Master Developer
1B/ 2	Lake Sawyer Road/Pipeline Road	Black Diamond	Signalize. Add EBL, WBL, NBL, and SBR turn pockets.	As defined in the BDUGAA
3	SR 169/South Connector	Black Diamond/ WSDOT	Signalize. Add SBR and NBL turn pockets.	Master Developer
1B	SE Kent Kangley Rd/Landsburg Rd SE	King County	Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.	Master Developer
1A	SE Auburn Black Diamond Road / Annexation Road	Black Diamond	Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.	Master Developer

[1] See Sections 11.3(B) and 11.4(B) for reimbursement due to Master Developer.

Table 11-5-2. Transportation Roadway Improvements

Phase	Roadway Improvement[2]	Funding Responsibility[1]
1A	Construct portion of Annexation Road (Community Connector) from Auburn-Black Diamond Rd south to boundary of Phase IA area	Master Developer
1A	Construct portion of Lake Sawyer Extension (Neighborhood Street) from Auburn-Black Diamond Rd south and west to Annexation Road	Master Developer
1B	Construct portion of Annexation Road (Community Connector) from Auburn-Black Diamond Rd north to Lake Sawyer Rd SE	Master Developer

Phase	Roadway Improvement[2]	Funding Responsibility[1]
1B	Construct portion of North Connector from SR-169 south to boundary of Phase IB area	Master Developer
2	Continue construction of Annexation Road (Community Connector) from end of Phase IA construction south to boundary of Phase 2 area	Master Developer
2	Continue Construction of North Connector from end of Phase IB construction to Pipeline Road	Master Developer
2	Construct Pipeline Road from SR-169 to Lake Sawyer Rd SE	Master Developer
2	Construct portion of Lawson Connector (Lawson Parkway) from Lawson Street west to boundary of Phase II area	Master Developer
2	Construct portion of Southeast Loop Connector (Lawson Parkway) from Lawson Street east to boundary of Phase II area	Master Developer
3	Continue construction of Lawson Connector (Lawson Parkway) west from end of Phase 2 construction to SR-169	Master Developer
3	Continue construction of Southeast Loop Connector (Lawson Parkway) east from end of Phase 2 construction to project boundary, or pursuant to Conditions of Approval in Ordinance No. 10-947 Nos. 9 and 25 of the MPD Permit Approval, to SR-169 or alternate intersection.	Master Developer
3	Complete construction of Annexation Road (Community Connector) and continue with construction of South Connector (Community Connector Extension) to SR-169.	Master Developer
3	Pursuant to Condition of Approval No. 10 of the MPD Permit Approval, construct any remaining roadway alignment improvement, or functionally equivalent alternative, identified in the 2009 City Comprehensive Plan.	Master Developer

[1] See Sections 11.3(B) and 11.4(B) for reimbursement due to Master Developer.
[2] Pursuant to Condition of Approval No. 10 of the MPD Permit Approval.

C. Pursuant to Condition of Approval No. 15 of the MPD Permit Approval, transportation facilities to be constructed within the Cities of Maple Valley and Covington will be provided pursuant to the terms of Exhibits "Q" and "R".

11.6 OFF-SITE PEDESTRIAN REGIONAL FACILITIES

Pursuant to Condition of Approval No. 32 of the MPD Permit Approval, and provided an expert study, prepared by the City and paid for by the Master Developer, confirms engineering feasibility and that construction costs will be reasonable and customary, the Master Developer shall provide, prior to issuance of the Certificate of Occupancy for The Village MPD's 200th Dwelling Unit, a connecting sidewalk and safe pedestrian connection from the frontage improvements along parcel V13 to the northeast corner of the Guidetti Parcel along Roberts Drive. The City and Master Developer shall work in good faith to seek grants and other funding mechanisms to construct this improvement; however, all construction costs not covered by such grants or funding mechanisms shall be the responsibility of the Master Developer.

11.7 PHASING OF DEVELOPMENT

The sequencing of Implementing Projects, Implementing Approvals, construction completeness and City acceptance of facilities shall be confirmed by the Designated Official, who shall make a finding within each staff report for proposed preliminary plats or binding site plans within The Villages MPD whether required infrastructure and amenities have been scheduled to meet the demands of the future occupants of that specific plat or binding site plan. Pursuant to Condition of Approval No. 153, the details of Open State protection and dedication follow. Currently, portions of the Project Site are protected by recorded temporary conservation easements in favor of the City. Required Open Spaces shall be identified with each Implementing Project and conserved or conveyed to the City during the final plat process, site plan approval or engineering review. Once Open Space has been adequately conserved or dedicated for the Implementing Project, the City shall, within ten (10) business days, execute a partial release and reconveyance of the conservation easements created pursuant to the Open Space Agreement (as defined in Section 3 of this Agreement) as necessary for the remaining undeveloped lands of the Project Site.

11.8 HOUSING TYPES

Targets for housing types in each Phase of The Villages MPD are shown in Table 4-8-4. These are only targets not requirements. Pursuant to Condition of Approval No. 138 of the MPD Permit Approval, after each Phase of The Villages MPD is completed, the City shall prepare an analysis of affordable housing City-wide. For purposes of this Agreement, Dwelling Units shall

be deemed "affordable housing" if the upper median income limits as determined by King County are satisfied. That analysis may be used to set specifications for affordable housing in any on-going or future Phase of The Villages MPD. Specifications for affordable housing needs within the MPD shall be determined as a result of the Phase-by-Phase analysis and shall be applied to Implementing Projects prospectively.

12.0 DEVELOPMENT REVIEW PROCESS

12.1 PURPOSE

This Section is consistent with the requirements of Condition of Approval No. 158 of the MPD Permit Approval.

12.2 APPLICABILITY

This Section applies to all Implementing Projects within The Villages MPD.

12.3 DESIGN REVIEW COMMITTEE

A Design Review Committee (DRC) shall be established by the Master Developer. The DRC shall ensure that Implementing Projects within The Villages MPD are consistent with the MPD Project Specific Design Standards and Guidelines (Exhibit "H") and the High Density Residential Supplemental Design Standards and Guidelines (Exhibit "I") as applicable, and shall have sole responsibility for ensuring compliance with the DRC Design Guidelines. Except for Utility Permits and permits for Schools as set forth in the School Agreement, all Implementing Project applications, including any formal modifications to Implementing Approvals and ADU applications, must be reviewed by the DRC before the application or formal modification is submitted to the City. All Implementing Project applications (except for School or Utility Permits) must be accompanied by written documentation of DRC approval at the time of submittal to the City. In the event of a conflict, City review requirements supersede those of the DRC. An Implementing Project application submitted without written documentation of DRC approval is not complete and may be rejected by the City.

12.4 RESERVED

12.5 APPLICATION REVIEW PROCEDURES

12.5.1 Procedures Applicable to All Implementing Projects

A. Informal Feasibility Consultation

Potential Implementing Project applicants are required to hold a project feasibility meeting with the Master Developer and City staff prior to detailed work by an engineer, architect,

landscape architect or planner. The purpose of this meeting is to work collaboratively with City staff and to eliminate as many potential issues as possible in order for the Implementing Project application to be processed without delay and undue expense. The City will make available all pertinent information that may relate to the proposal and take a collaborative approach to addressing any issues.

B. Pre-Application Meeting

A pre-application conference is recommended for all Implementing Permit applications, and is required for all Land Use Applications, Site Plan Review, Commercial Development and residential Development consisting of more than four (4) Dwelling Units per structure. At least one week prior to the pre-application meeting, the Implementing Project applicant shall provide to the City preliminary studies, conceptual sketches, draft text and other materials listed on the pre-application checklist. The purpose of the meeting is to obtain direction from City staff on the consistency of the proposed Implementing Project with the MPD Permit Approval and this Agreement, as well applicable federal, state and local laws.

C. Submittal Requirements

Submittal requirements for each permit type are contained in the BDMC (Exhibit "E"). For ease of reference, the applicable submittal requirements are shown in Exhibit "E", including type, detail, and number of copies for an application to be determined to be complete.

12.6 NOTICE REQUIREMENTS

12.6.1 Notice

Notice shall be provided pursuant to the provisions set forth in BDMC 18.08.120-.180 (Exhibit "E"). For clarification:

A. Minor Amendments to Development Agreement or MPD Permit Approval:

Minor Amendments to the Development Agreement or MPD Permit Approval shall be noticed as a Type 2 decision type pursuant to BDMC 18.08.125 (Exhibit "E").

B. Major Amendments to Development Agreement or MPD Permit Approval:

Notice of Application shall be provided pursuant to BDMC 18.08.120 and 18.08.125 (Exhibit "E"). Public notice of the Major Amendment decision and public hearing on the Major

Amendment shall be provided pursuant to BDMC 18.08.150 and 18.08.180 (Exhibit "E") respectively.

C. Expansion Proposals:

1. Expansion Proposals that qualify as Minor Amendments to the MPD Permit Approval: Notice shall be provided pursuant to subsection A above.

2. Expansion Proposals that qualify as Major Amendments to the MPD Permit Approval: Notice shall be provided pursuant to subsection B above.

D. MPD Site Plan Amendments:

Amendments to the MPD Site Plan that qualify as Minor Amendments to the MPD Permit Approval shall be noticed pursuant to subsection A above. Amendments to the MPD Site Plan that qualify as Major Amendments to The Villages MPD shall be noticed pursuant to subsection B above.

12.7 AMENDMENTS TO IMPLEMENTING APPROVALS

Amendments to Implementing Approvals may be allowed pursuant to applicable sections of BDMC (Exhibit "E").

12.7.1 Minor Amendments

Minor Amendments shall be processed pursuant to BDMC 18.14.040.A (Exhibit "E").

12.7.2 Major Amendments

Major Amendments shall be processed pursuant to BDMC 18.14.040.B (Exhibit "E").

12.8 APPLICABILITY, DECISION CRITERIA AND APPROVAL SPECIFIC REQUIREMENTS

12.8.1 Construction Permits

A. Building Permits

The International Residential Code, International Building Code, International Fire Code and other construction codes in effect in the City, or amendments thereto, on the date of filing a complete building permit application in The Villages MPD shall apply to such application.

Provided, however, that any building permits necessitated by the terms of Exhibit "Q" are governed by Exhibit "Q" itself.

B. Utility Permits

All improvements within public right-of-way and/or public easements, and all improvements intended for ownership, operations or maintenance by the City shall be consistent with BDMC Chapter 15.08 (Exhibit "E") and the Black Diamond Engineering Design and Construction Standards (Exhibit "E"); provided, however, that the street design standards for streets internal to the Project Site are set in this Agreement as required by Condition of Approval No. 148 and further provided, that any Utility Permits necessitated by the terms of Exhibit "Q" are governed by Exhibit "Q" itself.

C. Clearing and Grading

All clearing and grading activities shall be consistent with the clearing and grading standards of BDMC Chapter 15.28 (Exhibit "E"). The Designated Official shall be responsible for administration of clearing and grading permits.

12.8.2 Lot Line Adjustments, Short Subdivisions, Subdivisions, Plat Alterations / Vacations

All lot line adjustments, short subdivisions, subdivisions, and plat alterations/vacations shall be consistent with requirements of BDMC Title 17 (Exhibit "E").

12.8.3 MPD Site Plan Amendments

MPD Site Plan amendments consistent with Subsection 4.4 of this Agreement shall be allowed upon the following findings by the Designated Official:

A. Transportation, stormwater, water and sewer system improvements necessary to support the change are in place or will be provided at the time of occupancy; and

B. The MPD Site Plan amendment will not result in the maximum number of residential units or combined commercial/Office/Retail square feet to be exceeded or the total area of required Open Space to be reduced unless a Major Amendment to the MPD Permit Approval is approved pursuant to BDMC 18.98.100 (Exhibit "E").

12.8.4 Site Plan Review

Site plan review shall be conducted pursuant to BDMC 18.16 (Exhibit "E"), except the application and any amendments shall be reviewed as a Type 2 decision.

12.8.5 Binding Site Plan

Binding Site Plan applications shall be consistent with the requirements of BDMC Chapter 17.34 (Exhibit "E").

12.8.6 Home Occupation

Home Occupations shall be consistent with the requirements of the BDMC Chapter 18.54 (Exhibit "E").

12.8.7 Administrative Conditional Use Permit

Administrative Conditional Use Permits shall be consistent with the requirements of the BDMC Chapter 18.12 (Exhibit "E").

12.8.8 Accessory Dwelling Unit (ADU)

ADUs shall be consistent with process and requirements of BDMC Chapter 18.56 (Exhibit "E").

12.8.9 RESERVED

12.8.10 Variance

Variances shall be consistent with BDMC 18.12.030 (Exhibit "E").

12.8.11 Rezone

Rezones shall be consistent with BDMC 18.12.020 (Exhibit "E").

12.8.12 Comprehensive Plan Amendments

Comprehensive Plan Amendments shall be consistent with BDMC Title 16 (Exhibit "E").

12.8.13 Work Hours

BDMC 8.12.040.C (Exhibit "E") establishes the following noise standards: "Sounds originating from construction sites, including but not limited to sounds from construction equipment,

power tools and hammering between seven a.m. and eight p.m. on weekdays, between eight a.m. and six p.m. on Saturdays, and between nine a.m. and six p.m. on Sundays shall also be exempt."

Pursuant to Condition of Approval No. 43, Master Developer nonetheless agrees that it shall comply with the following, more restrictive noise standard: any sound made by the construction, excavation, repair, demolition, destruction, or alteration of any building or property or upon any building site anytime shall be prohibited on Sundays and City holidays and outside the hours of 7:00 am through 7:00 pm, Monday through Friday and 9:00 am through 5:00 pm on Saturday, subject to emergency construction and repair needs as set forth in BDMC 8.12.040.C (Exhibit "E").

On a case by case basis, work may be permitted on Sundays if authorized by the Noise Review Committee; however, no work shall occur outside the hours of 9:00 am through 5:00 pm on Sundays.

12.8.14 Amendments to MPD Permit Approval

A. Minor Amendments: Per BDMC 18.98.100(I) (Exhibit "E"), applications for Minor Amendments to the MPD Permit Approval (as defined in BDMC 18.98.100) shall be reviewed by the Designated Official as a Type 2 decision as described in BDMC 18.08 (Exhibit "E").

B. Major Amendments: Applications for Major Amendments shall be reviewed pursuant to BDMC 18.98.100 (Exhibit "E").

12.8.15 Consolidation of Major Amendments

Pursuant to BDMC 18.08.130 (Exhibit "E"), if a proposal by the Master Developer requires a Major Amendment to both the MPD Permit Approval and this Agreement, the applications shall be processed concurrently unless the Designated Official determines that separate processing will result in a more efficient or effective review process.

12.9 BONDING FOR IMPROVEMENTS

Financial surety for improvements required within Section 7 shall be subject to the Black Diamond Engineering Design and Construction Standards (Exhibit "E") as referenced in Subsection 7.1.4. All other permits shall provide bonding surety or other financial guarantee as required by BDMC 17.20.050.B (Exhibit "E") and the Black Diamond Engineering Design and Construction Standards Section 1.5 (Exhibit "E"). Provided, however, that any bonding or inspections for improvements constructed pursuant to Exhibit "Q" will be governed by the terms of Exhibit "Q".

12.9.1 Bonding for Improvements

The Master Developer may defer any required improvement so long as the completion of the work is guaranteed by a performance bond or other financial guarantee. The bond, or other financial guarantee, must be in a form acceptable to the City in an amount equal to one hundred fifty percent (150%) of the Designated Official's estimated cost of the improvements, as determined by reference to the Black Diamond Engineering Design and Construction Standards Section 1.5 (Exhibit "E"). The actual construction and installation of such improvements shall be completed within a time frame to be set by the Designated Official consistent with this Section.

12.9.2 Inspection and Acceptance of Improvements

The City shall exercise its best efforts to inspect improvements within one (1) business day of the inspection request. The inspector shall determine whether the improvements are substantially complete, and provide a written list of any corrections or additional work necessary for physical completion of the improvements within seven (7) business days of the date of the inspection. The City shall make every effort to provide one comprehensive written list upon which all subsequent inspections shall be based. The improvements shall be presented to the City Council for final action accepting or rejecting the improvements after final inspection and determination of complete construction.

12.9.3 Release of Bond or Financial Guarantee

Original bond or financial guarantee amounts will be fully released within fourteen (14) Days of acceptance of the improvements by the City Council.

12.10 MAPLE VALLEY TRANSPORTATION MITIGATION AGREEMENT

12.10.1 Maple Valley Transportation Mitigation Agreement Effect

On October 6, 2010, the City of Maple Valley and BD Village Partners, LP and BD Lawson Partners, LP entered into a negotiated agreement regarding traffic mitigation inside the City of Maple Valley (the "Maple Valley Transportation Mitigation Agreement"), a copy of which is included as Exhibit Q to this Agreement. Pursuant to MPD Permit Approval Condition No. 15, Ordinance 10-946, the Maple Valley Transportation Mitigation Agreement "supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement." More specifically, Conditions of Approval 10 through 14, and 16 through 34 within Exhibit C of the Villages MPD, Ordinance No. 10-946, are superseded by the Maple Valley Transportation Mitigation Agreement in regards to transportation improvements within the City of Maple Valley.

12.10.2 City of Black Diamond response in the Event of Maple Valley Litigation

In the event that the City of Maple Valley provides notice to the City of Black Diamond that the City of Maple Valley has filed a lawsuit alleging breach of the Maple Valley Transportation Mitigation Agreement, and providing that the Maple Valley lawsuit seeks injunctive relief, the City of Black Diamond shall not issue any additional building permits for the MPD until that lawsuit is resolved, or BD Village Partners, LP and/or BD Lawson Partners, LP, and their respective successors and assigns, has paid, under protest, the disputed amount to the City of Maple Valley. If BD Village Partners, LP and/or BD Lawson Partners, LP, and their respective successors and assigns, provides notice to the City of Black Diamond that it has paid, under protest, the disputed amount to Maple Valley, it shall concurrently provide a copy of such notice to the City of Maple Valley.

12.10.3 Notation on Plats and Binding Site Plans

The City of Black Diamond shall require that the Master Developer place a note on all preliminary plats, final plats, and binding site plans that references the obligations under the Maple Valley Transportation Mitigation Agreement by BD Village Partners, LP and BD Lawson Partners, LP and their respective successors and assigns.

12.10.4 Third Party Beneficiary Status

The City of Black Diamond and BD Village Partners, LP and BD Lawson Partners, LP and their respective successors and assigns agree that the City of Maple Valley is a third party beneficiary of those conditions or provisions, and only those conditions or provisions, of this Development Agreement that require BD Village Partners, LP and BD Lawson Partners, LP, and their respective successors and assigns to abide by the terms of the Maple Valley Transportation Mitigation Agreement. This subsection of this Agreement is intended as a specific exception to subsection 15.11 of the Development Agreement.

12.10.5 Permit issuance numbers

The Maple Valley Transportation Mitigation Agreement obligates BD Village Partners, LP and BD Lawson Partners, LP and their respective successors and assigns to submit to the City of Maple Valley a quarterly accounting showing the number of preliminary plat and final plat applications filed for the Property; the number of preliminary plat and final plat approvals issued for the Property, the number of building permits issued to date for dwelling units on the Property, the number of ADUs approved by building permit or otherwise (including a limit of the number of building permits issued for Accessory Dwelling Units to an aggregate total of 450 permits for the Villages and the Lawson Hills MPDs, together), and the number of preliminary plats, final plats, and building permits projected to be approved in the subsequent quarter. The Maple Valley Transportation Mitigation Agreement grants Maple Valley the right to require verification of this information from the City of Black Diamond. The City of Black Diamond agrees to cooperate in response to any such request for verified information.

12.11 COVINGTON TRANSPORTATION MITIGATION AGREEMENT

On December 14, 2010, the City of Covington and BD Village Partners, LP and BD Lawson Partners, LP entered into a negotiated agreement regarding traffic mitigation inside the City of Covington (the "Covington Transportation Mitigation Agreement"), a copy of which is included as Exhibit "R" to this Agreement. Pursuant to Condition of Approval No. 15 of the MPD Permit Approval, the Covington Transportation Mitigation Agreement "supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement." More specifically, Conditions of Approval 10 through 14, and 16 through 34 within Exhibit C of the MPD Permit Approval are superseded by the Covington

Transportation Mitigation Agreement in regards to any potential transportation improvements within the City of Covington.

13.0 MISCELLANEOUS ADDITIONAL STANDARDS AND REQUIREMENTS

13.1 CONSTRUCTION WASTE MANAGEMENT PLAN

Pursuant to Condition of Approval No. 8 of the MPD Permit Approval, the Master Developer shall comply with the Construction Waste Management Plan attached hereto as Exhibit "J".

13.2 FOREST PRACTICES

Pursuant to Conditions of Approval Nos. 87 and 121 of the MPD Permit Approval, clearing and tree removal will be necessary and may only be proposed after an application for an Implementing Project is proposed, and preferably after Implementing Approval is issued, for a Development Parcel, or when grading is proposed on another Development Parcel in the vicinity of an Implementing Project to assure a balance of cut and fill for the proposed Implementing Project (as is required by Condition of Approval No. 110 in the MPD Permit Approval). The preference for clearing and tree removal to occur after Implementing Approval is intended to assure the minimum amount of time that a Development Parcel will be cleared prior to Implementing Project construction. However, clearing and tree removal is preferably conducted during certain times of the year (i.e., to avoid fire danger, clearing and tree removal is sometimes not desirable during hot summer months, and to avoid erosion, clearing and tree removal is not desirable during the rainiest months of the year). Accordingly, the timing for clearing and tree removal will be proposed by the Master Developer for review and approval by the Designated Official. In his or her review and approval, the Designated Official shall seek, to the extent reasonable and practical, to minimize the time period during which a Development Parcel remains cleared and undeveloped; however, such time limitations shall not be applicable in circumstances where the Master Developer logs a Development Parcel but does not clear and/or grade said parcel, due to the potential for tree removal combined with preservation of the existing vegetation to enhance wildlife foraging opportunities. All tree removal shall be done in accordance with BDMC 19.30 (Exhibit "E"). In some cases, tree removal necessitated by an Implementing Project or the need to balance cut and fill may have result in enough timber value to result in timber revenue, and in those cases a separate Forest Practices Act approval will be required. To the extent that a Development Parcel or portion thereof is logged for timber revenue, the time period for which the parcel may remain cleared and undeveloped shall be set by condition of the Implementing Project or of the Forest Practices Approval,

whichever is more strict. Development Parcels being cleared or logged that are easily accessible to the public will be secured with fencing and signage.

13.3 SCHOOLS

Pursuant to Condition of Approval No. 98 of the MPD Permit Approval, school mitigation is accomplished through the Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727 ("School Agreement").

Amendments to the Comprehensive School Mitigation Agreement shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2; provided, such amendments are: (i) executed by the City, the Enumclaw School District, BD Lawson Partners, L.P., and the Master Developer, and (ii) otherwise satisfies Condition of Approval No. 98 of the MPD Permit Approval.

Per the terms of the School Agreement, a portion of Parcel C (as described in Exhibit "B") may be developed as a high school "no earlier than ten (10) years after [January 24, 2011] . . ." A portion of the 40-acre High School Site (as shown on Exhibit I of the School Agreement) is designated on the MPD Site Plan (Exhibit "U") as "Commercial/Office/Retail". The location of this High School Site may be modified consistent with the terms of the School Agreement. Pursuant to MPD Condition of Approval No. 99 of the MPD Permit Approval and subsection 4.4.7 of this Agreement, if any party submits an Implementing Project application that seeks to locate a high school as a conditional use within any lands designated on the MPD Site Plan (Exhibit "U") for commercial/office/retail use, then the application for the Minor Amendment to MPD Permit Approval shall also include an updated fiscal analysis prepared by the Master Developer pursuant to Section 13.6 of this Agreement.

13.4 FIRE MITIGATION

The City commissioned the "Impact Fees for Fire Protection Facilities" study dated January 13, 2011 (Exhibit "T") (the "Fire Impact Fee Study"), to establish the rates for impact fees for fire protection facilities in the City of Black Diamond. As of the date of this Agreement, the City has not yet adopted City-wide fire impact fees. Pursuant to Condition of Approval No. 100 of the

MPD Permit Approval, impacts to fire services throughout the MPD shall be mitigated as follows:

A. Mitigation Fees. Payment of fire mitigation fees at the rate described in Table 4 of the Fire Impact Fee Study ($1,783.13 per Dwelling Unit, and $2.29/square foot of non-residential construction) until the City adopts a City-wide fire impact fee program. Such mitigation fees shall be due at building permit issuance for each single-family and multi-family Dwelling Unit and commercial structures. Provided, however, the fire mitigation fees paid by the applicant must be expended by the City on the needed Additional Fire Protection Facilities outlined in the Fire Impact Fee Study. To confirm such expenditures, the City shall prepare an annual report of collections and expenditures and provide said report to the Master Developer during the Annual Review as defined in Exhibit "N". Provided, further, the fire mitigation fees paid by the applicant must be expended or encumbered for such permissible use within nine years of the City's receipt or thereafter returned to the applicant, unless a longer period of time is mutually agreed to by the City and Master Developer, or the City makes findings of extraordinary or compelling need to extend the nine-year period.

B. Impact Fees. When the City adopts a City-wide fire impact fee program that complies with RCW Chapter 82.02, payment of fire impact fees shall be at the rate adopted by the City fire impact fee.

C. Land for a Fire Station on the Project Site. The Master Developer may also provide land for the purpose of construction of a minimum 2-bay fire station (with the possibility of future expansion) and living quarters for an appropriate number of FTE fire fighters. The Master Developer shall elect whether to provide land by the time of issuance of a Certificate of Occupancy for the 1,500th Dwelling Unit, or such later date as is reasonably acceptable to the City. The location of the land will be in the vicinity of either Parcel C or Parcel D within the Project Site. The value of the land shall be established at the time of dedication and shall be appraised, by an MAI certified appraiser, at the fair market value of the underlying zoning and land use. The value of the land shall be credited against any existing or future fire mitigation or impact fees. The credit shall not exceed

the total value of a Villages and Lawson Hills MPD-wide fire mitigation or impact fee collected at the rates described above.

D. Satellite Fire Station. The Master Developer shall provide one (1) satellite fire station for the City pursuant to the terms, conditions, and provisions below:

i. Design. The design of the satellite fire station described in this subsection D shall be selected, completed, and mutually agreed to by the City and Master Developer no later than the time of issuance of a Certificate of Occupancy for the 250th Dwelling Unit pursuant to the following conditions:

a. Pursuant to the Fire Impact Fee Study, the Master Developer's obligation is limited to a satellite fire station consisting of two bays and not exceeding 4,915 square feet.

ii. Site Selection. The site for the satellite fire station described in this subsection D shall be selected and mutually agreed to by the City and Master Developer no later than the time of issuance of a Certificate of Occupancy for the 250th Dwelling Unit pursuant to the following conditions:

a. The City currently owns the following two potential satellite fire station sites described as follows: (i) Parcel No. 1421069014, i.e., site adjacent to existing City shop site; and (ii) Parcel Nos. 1221069081 and 1221069082. The City and BD Lawson Partners, LP currently own the third following potential satellite fire station site described as follows: Parcels Nos. 1221069081, 1221069082, and 1321069036. The City and Master Developer acknowledge and agree that these three sites are the preferred location for the satellite fire station and that one such site shall be used for the satellite fire station subject to due diligence and the reasonable discretion of the City.

b. If and only if the three sites described in subsection D(ii)(1) above are deemed infeasible at the reasonable discretion of the City and Master

Developer, then the Master Developer shall provide and/or acquire a site for the satellite fire station as credit against existing or future fire mitigation or impact fees.

iii. Construction. The Master Developer shall construct or cause to construct, the satellite fire station designed pursuant to subsection D(i) above on the site selected pursuant to subsection D(ii) above as credit against existing or future fire mitigation or impact fees. Master Developer shall cause the letting of a contract for construction of such fire station as follows:

a. If the construction of the satellite fire station is financed pursuant to a Community Facilities District (CFD) established under RCW Ch. 36.145, the construction contract shall be awarded no later than the time of issuance of a Certificate of Occupancy for the 500th Dwelling Unit; or

b. If the construction of the satellite fire station is not financed pursuant to a Community Facilities District established under RCW Ch. 36.145, the construction contract shall be awarded no later than the time of issuance of a Certificate of Occupancy for the 750th Dwelling Unit.

iv. Equipment. The Master Developer shall provide the fire and/or emergency response apparatus reasonably necessary for operation of the satellite fire station described in this subsection D prior to such station commencing operation as credit against existing or future fire mitigation or impact fees subject to the following conditions:

a. Pursuant to the Fire Impact Fee Study, apparatus shall not exceed the following: an engine ($726,856), aid car ($251,420), staff vehicle ($55,000), and brush truck ($90,000).

v. Funding. The design, site selection, construction, and equipment described in this subsection, shall be funded as follows:

a. City Funding Obligation. The City shall first provide, use, and/or apply any: (i) fire mitigation or impact fees it receives from the Master Developer or other third parties following the execution of this Agreement; and (ii) grant funds and/or REET revenues allocated to the provision of a fire station.

b. Master Developer Funding Obligation. Any deficit remaining after the application of the City's funds pursuant to the subsection above, shall be funded by the Master Developer which may include use of a Community Facilities District established under RCW Ch. 36.145.

c. Master Developer Credit. Costs incurred by the Master Developer (including cost of funds) for the design, site selection, construction, or equipping of the satellite fire station pursuant to this Subsection D shall be credited against any existing or future fire mitigation or impact fees of the Master Developer. If the Master Developer dedicates land for the satellite fire station site (including the purchase of a new site), the value of the land shall be established at the time of dedication and shall be appraised, by an MAI certified appraiser, at the fair market value of the underlying zoning and land use. The credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide fire mitigation or impact fee collected at the rates described above.

E. Fire Station Construction and Related Equipment. In addition to the satellite fire station described in subsection D above, the Master Developer may elect to construct an additional fire station on the Project Site, at a date reasonably acceptable to the City, and/or purchase fire and emergency response equipment, vehicles, or apparatus as a credit against existing or future fire mitigation or impact fees. Any credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide fire mitigation or impact fee collected at the rates described above.

F. Credit Assignment.

i. The Master Developer may elect at its sole discretion to transfer or assign any credit it receives pursuant to this Section 13.4 to BD Lawson Partners, LP, or its successors and assigns. The Master Developer and City agree that BD Lawson Partners, LP, or its successors and assigns, may use such credit against existing or future fire mitigation or impact fees for the Lawson Hills Master Planned Development approved pursuant to City of Black Diamond Ordinance No. 10-947 dated September 20, 2010.

ii. The City agrees that the Master Developer, or its successors and assigns, may use any fire mitigation or impact fee credit it receives from BD Lawson Partners, LP, or its successors and assigns, against existing or future fire mitigation or impact fees for The Villages MPD.

G. The City acknowledges and agrees that the fire mitigation contained in this Section 13.4 "ensures protection concurrent with project build out" (per Condition of Approval No. 100 of the MPD Permit Approval) and is consistent with the Black Diamond Comprehensive Plan.

13.5 MINE HAZARD RELEASE

All houses sold in classified or declassified coal mine hazard areas require a liability release from the homeowner to the City consistent with BDMC 17.20.040.H (Exhibit "E") and pursuant to Condition of Approval No. 116 of the MPD Permit Approval. A copy of the release form is included in Exhibit "M".

13.6 FISCAL IMPACTS ANALYSIS

The terms and process for performing the fiscal analysis and evaluating fiscal impacts outlined in the MPD and this Agreement are as follows:

Concurrent with submittal of the first Implementing Project within a Phase, the Master Developer shall submit for the Designated Official's review and approval a fiscal analysis for the entire Phase. The Designated Official shall, with the assistance of such professional fiscal

analysis consultant(s) selected by the Designated Official in his/her sole reasonable discretion pursuant to Exhibit N, review and approve each fiscal analysis submitted by the Master Developer for consistency with the following methodologies and assumptions.

1. The following sections provide parameters for the fiscal analysis.

    a. Expenses and revenues for the following general fund departments will be included in the fiscal analysis:

        i. Legislative
        ii. Executive
        iii. Administration
        iv. City Clerk
        v. Finance
        vi. Information Services
        vii. Facilities
        viii. Legal
        ix. Municipal Court
        x. Police
        xi. Fire
        xii. EMS Supplies
        xiii. Animal Control
        xiv. Community Development
        xv. Natural Resources
        xvi. Economic Development
        xvii. Parks & Recreation
        xviii. Cemetery
        xix. Central Services & Employee Recognition

    b. Expenses and revenues for the following special revenue and utility funds will be included in the fiscal analysis:

        i. Street Fund

        ii. Real Estate Excise Tax I & II

iii. Criminal Justice Fund

iv. Stormwater Department

c. Expenses and revenues for the funds listed in subsections 1(a) and 1(b) to be included in the fiscal analysis can be organized and presented to correspond to the funds identified in the City's budget, but this format is not required, and the preparer of the fiscal analysis may use a different format.

d. The following will be excluded from the fiscal analysis:

   i. Internal Service Funds – interfund transfers that are assumed to have no net impact on total revenues and total expenses
   ii. Cable television – franchised activity assumed to be funded by user fees
   iii. Electric power – provided by regulated public utility assumed to be funded by user fees
   iv. Natural gas – provided by regulated public utility assumed to be funded by user fees
   v. Schools – separate governmental entity
   vi. Solid waste – franchised activity assumed to be funded by user fees
   vii. Water (operations, capital and debt service) – enterprise activity assumed to be funded by user fees
   viii. Wastewater (operations, capital and debt service) – enterprise activity assumed to be funded by user fees

e. Expenses and revenues for the funds listed above in subsections 1(a) and 1(b) will be included in the fiscal analysis using one or more of the following methods to be selected by the preparer of the fiscal analysis as reasonably agreed to by the Designated Official and Master Developer:

   i. A separate analysis for each fund (case study), or
   ii. Apply a per capita rate to the funds, or
   iii. Apply an indirect cost rate to the funds. The indirect cost rate shall be reasonably acceptable to the Designated Official and Master Developer, or

iv. Level of service methodology, or

v. Comparable city methodology. For the purpose of this fiscal impact analysis "comparable cities" are, in part or in whole, one or more cities in the State of Washington that are comparable to Black Diamond's characteristics when the development in the Phase is completed. For example, if the specific development phase being analyzed will increase Black Diamond's population to 8,000, the comparable cities used in the fiscal analysis should have populations in a reasonable range from moderately less than 8,000 to moderately more than 8,000. Population is not the only determinant of comparability. Different comparable cities may be used for different departments or functions in order to provide the greatest comparability to Black Diamond's characteristics when the development in the Phase is completed. The selection of alternative cities is subject to reasonable agreement by the Designated Official and Master Developer.

- Selection of comparable cities to be used in the fiscal analysis shall identify the factors used to identify and determine comparability, including such factors as population, employment, levels of service, services provided by city or by contract, etc.
- The comparable cities to be used in the fiscal analysis shall be reasonably acceptable to the Designated Official and Master Developer.

As of the date of this Agreement, the parties agree that the comparable city/case study method shall be used for police, fire, public works and parks and recreation departments and the per capita method shall be used for the remaining general fund departments. The parties agree that the case study method shall be used for the remaining special funds. Once a methodology is selected, subsequent analyses should follow the same methodology unless otherwise reasonably agreed to by the Designated Official and Master Developer.

f. The analysis shall present revenue, expenses and net position (surplus or deficit) for each year of construction and carry two years beyond build-out of the Phase being analyzed.

g. Year-end surplus or deficit of each fund shall be reported for each year. Annual surpluses or deficits shall not be carried forward as fund balances. A separate calculation of cumulative surplus or deficit shall be calculated for the end of each year.

h. The completed fiscal impact analysis to be delivered to the City shall include the study or report, and a copy of the spreadsheets used to calculate the revenue, expenses, and net position. The study and/or spreadsheets shall identify the source(s) or example(s) for data and clearly identify assumptions for which no data sources or examples are provided.

i. Revenues and expenses for general fund departments that are determined to be one time in nature will not be included in the fiscal analysis. These may include the costs of planning, inspection and permit activities along with planning, inspection, permitting and development impact fees. Provided, however, if the building division is removed from the MDRT pursuant to the terms of the Funding Agreement, only then would the revenues and expenses of the building division be included in the fiscal analysis.

j. Each updated fiscal analysis shall confirm that revenue from The Villages MPD is sufficient to maintain levels of service for police and fire services as such levels of service are adopted in the Comprehensive Plan (Exhibit "E").

2. Operating revenues will be calculated for the following sources using the methods described for each source of revenue.

   a. Property tax revenue will be calculated based on the estimated taxable value of development multiplied by the levy rate for each applicable property tax paid to the City, including any levy lid lifts that have been authorized.

   b. Sales tax revenue will be calculated for (i) sales by businesses in the new development, (ii) sales to residents and businesses in the City from businesses

outside the City, (iii) sales to new development by existing businesses in the City, and (iv) sales of construction materials for new construction:

i. Sales taxes from businesses in the City will be calculated based on typical retail sales per square foot or per employee from the type(s) of businesses expected in the new development. A separate tax rate shall be used for restaurants and taverns. Since Black Diamond has too little commercial property to serve as an accurate predictor of future taxable sales, the sales taxes per square foot or per employee for this analysis can be from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed.

ii. Sales taxes from sales to residents and businesses in the City from businesses outside the City ("streamlined sales tax") will be calculated based on typical sales taxes per capita (or household) and per employee or square foot in the new development from sales from businesses outside the City. Since Washington's experience with this revenue is relatively new, sales taxes per capita, per household, and per business can be from state or regional averages, or from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed. The analysis of streamlined sales tax revenue should exclude sales taxes from new construction of the new development which will be presented separately, as described below.

iii. Sales taxes from sales to new residents in the City from existing businesses in the City will be calculated based on the lesser of (i) typical sales taxes per capita and per employee of new development from sales from existing businesses in the City or (ii) the percentage of household income spent on retail goods captured by the existing businesses in the City.

iv. Sales taxes from new construction will be calculated based on value of taxable materials for construction of the new development.

c. Utility tax revenue will be calculated for (i) utility taxes from residential property and (ii) utility taxes from commercial property:

i. Utility taxes from residential property will be calculated based on typical utility tax revenue per dwelling or per capita from residential units in the new development.
ii. Utility taxes from commercial property will be calculated based on typical utility tax revenue per square foot or per employee from the type(s) of businesses expected in the new development. Since Black Diamond has too little commercial property to serve as an accurate predictor of future utility usage, the utility taxes square foot or per employee for this analysis can be from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed.

d. Cable franchise revenue will be calculated based on per-person (Per Capita).

e. Business license revenue will be calculated based on the number of business establishments in the new development.

f. Intergovernmental revenue will be calculated for (i) entitlements and other formulaic revenue, and (ii) grants and other non-formulaic revenue.

i. Entitlements and other formulaic revenue will be calculated based on the basis used for distribution of each entitlement and other formulaic source of revenue or on per-person (Per Capita).
ii. Grants and other non-formulaic revenue will be calculated based on per-person (Per Capita).

g. Charges for service revenue, excluding Central Service allocation, will be calculated based on per-person (Per Capita).

h. Central Service allocation will be calculated based on the City's current method of allocating central service costs. Any central service allocation that is for an internal service fund shall be excluded (to be consistent with the parameters listed in Section 1, above).

i. Municipal court revenue will be calculated based on per-person (Per Capita).

j. Stormwater utility revenue will be calculated based on Equivalent Residential Units (ERUs) from new development in a manner comparable to the City's existing system of ERUs for stormwater.

k. Other revenue will be calculated based on per-person (Per Capita). Other revenue includes B & O Tax, Pull Tabs and Punch Board Tax, Gun Permits & Fingerprinting, Interest, Surplus Equipment and Other Miscellaneous.

3. Operating expenses will be calculated using one of the methods in subsection 1(e).

   a. Efficiency factors or level of service adjustments may be applied to general fund departments and special revenue funds as reasonably agreed to by the Designated Official and Master Developer.

   b. Calculate a reserve for operating funds equal to the current, calculated as a percent of the fund, reserve as reflected in the City budget used for the fiscal analysis.

4. Assumptions to be used in the fiscal analysis shall include the following.

   a. All revenues and expenses shall be in current dollars. No inflation adjustment will be made to any revenues or expenses unless otherwise agreed to by the Designated Official and Master Developer.

   b. No revenues or expenses shall be calculated for "multiplier" impacts of indirect increases in economic activity.

   c. The value for residential units shall be based on market studies prepared by the applicant and reasonably acceptable to the City, and shall examine the projected sale or rental value of the proposed units.

   d. The values for non-residential development shall be based on market studies prepared by the applicant and reasonably acceptable to the City, and shall examine the projected market value of the proposed nonresidential development.

e. The retail sales tax per square foot assumed for retail development will be consistent with the amount of taxable sales typically required to justify retail tenants occupying such properties.

f. Persons per household (pph) for the City and any comparable cities shall be as indicated by the most recent U.S. Census unless more recent data is available that is reliable and the source is clearly identified.

g. Square feet per employee shall be documented from sources reasonably acceptable to the City.

h. Affordable units are provided through the diverse mix of product types for the Implementing Projects, subject to the review and other requirements set forth in the Condition of Approval Nos. 138 and 139, and Agreement section 11.8.

i. If another Implementing Project for another Phase is submitted prior to completion of a previous Phase, the new fiscal analysis shall take into consideration the incomplete portion of the previous Phase and re-analyze that portion. Adjustments to the previous Phase may be necessary, and shall be considered on a case by case basis.

5. Fiscal analysis results:

a. If the results of the fiscal analysis show a revenue deficit after application of a credit equal to the Developer's Total Funding Obligation pursuant to the terms of the Funding Agreement, then the Master Developer shall prepare a supplemental analysis proposing how any projected City fiscal shortfall should be addressed. Possible options for addressing the shortfall may include, but are not limited to:

i. The Master Developer may request to privatize certain facilities within the project. The decision to accept any such request remains within the sole, reasonable discretion of the City. The facilities may include:

- Retaining the right-of-way landscape maintenance obligation with the Master Developer or a Homeowners' Association;

- Not dedicating some Parks to the City or by dedicating the Parks, but retaining Park maintenance obligations with the Master Developer or a Homeowners' Association; or
- Not dedicating some private streets and/or cul-de-sacs serving less than 50 homes to the City or by dedicating the streets but retaining street maintenance obligations with the Master Developer or a Homeowners' Association.

ii. Pursuant to Condition of Approval No. 156, interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues. However, if a deficit is projected as part of the fiscal analysis for Phase 3, then a payment shall not be accepted by the City.

6. Annual review of Fiscal Results
   a. As part of the Annual Review pursuant to the terms of the Funding Agreement, the Designated Official and Master Developer shall meet to review the projections of the Fiscal Analysis compared to the City's budget.
      i. If interim funding is provided pursuant to subsection 5.a.ii above, then the Annual Review shall include development of a payment schedule. The payment schedule shall be determined by comparing the projected revenues and expenses shown in the fiscal analysis to the City's projected budget for the upcoming calendar year.

In addition, the Black Diamond Staff and Facilities Funding Agreement is replaced for The Villages MPD with The MPD Funding Agreement included in Exhibit "N".

13.7 NOISE ATTENUATION

Pursuant to Condition of Approval No. 44 of the MPD Permit Approval, to provide construction noise attenuation for existing residents adjoining The Villages MPD, the following shall apply to Villages Development Parcels V1, V2, V10, V13, V15, V20, V49, V57, V60, and V71. For each of the designated Development Parcels, the Master Developer, or its Transferee, shall:

i. Offer to meet with the affected existing resident(s) to seek a mutual agreement about mitigation to be provided, or if mutual agreement cannot be reached, then;

ii. The Master Developer shall have the choice to provide either:

1. Mitigation consisting of a buffer, trail easement or other separator between the edge of the development parcel and the property boundary that is 100-feet wide, provided that trails, recreational facilities, stormwater facilities and similar uses otherwise permitted for the MPD are allowed inside the 100-foot area; or
2. Mitigation consisting of all of the following:
   a. A construction noise attenuation barrier (i.e. berm, wall, or combination of the two) on the development parcel, provided that if a buffer or trail easement less than 100 feet adjoins the development parcel, the barrier may be placed within that area,
   b. Design, sizing, and placement of the noise attenuation barrier in a manner intended to reduce noise from long term construction activities (i.e. activities lasting 6 months or longer, such as construction hauling and including loading/unloading of dump trucks),
   c. Payment by the Master Developer to the City for its costs in commissioning and obtaining a study to evaluate the noise barrier design and placement,
   d. The noise study shall evaluate whether noise from long-term construction activities will comply with the environmental noise limits in WAC 173-060-040, and if the noise study concludes that an on-site noise barrier cannot effectively control long-term construction noise to the degree that it complies with WAC noise limits outside the adjoining existing homes, additional mitigation measures intended to reduce interior sound levels will be evaluated,
   e. Any additional noise mitigation measures determined to be effective at reducing interior sound levels (i.e. providing a reduction of exterior-to-interior noise transmission at least 7 dBa more than provided by the existing building envelope) shall be implemented so long as the adjoining owner provides permission if the mitigation requires work on their property, and
   f. At the applicant's discretion, the noise barrier may be temporary (i.e. removed after construction on one of the designated parcels is complete) or permanent.

Mitigation under subsection ii(2) above shall be installed before construction activities begin on the designated Development Parcel. In the event that lands adjacent to any of the designated Development Parcels are acquired by the Master Developer of this MPD, this condition shall not apply as to the acquired lands.

13.8 GREEN VALLEY ROAD

Pursuant to Condition of Approval No. 33(a) of the MPD Permit Approval, an expert study entitled "SE Green Valley Road – Traffic Calming Strategies" dated November 29, 2010, examined opportunities to limit MPD traffic using SE Green Valley Road, including an assessment of potential traffic calming devices that could be used within the existing improved right-of-way. Exhibit P includes the measures identified in that study, and describes the process and timing required for the Master Developer to seek permits from King County should King County allow installation of the improvements, including the proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review Committee established per Condition of Approval No. 33(b) of the MPD Permit Approval.

13.9 GENERAL GOVERNMENT FACILITIES MITIGATION

A. The City shall commission a study regarding general governmental facilities based, at a minimum, on the Black Diamond Comprehensive Plan that are necessary for the City to conduct its municipal business ("General Government Facilities Plan") in order to establish mitigation fee rates for such improvements. The General Government Facilities Plan shall be commissioned by the City following execution of this Agreement and shall be completed within twelve (12) months of commissioning the study. The scope of the General Government Facilities Plan shall be limited to the following improvements/facilities: City Hall, Municipal Court, Public Works (corporate yard including vehicle storage, material storage, and vehicle maintenance), Police Station, and associated equipment for each listed improvement/facility. The study shall be funded through the MPD Funding Agreement (Exhibit "N").

B. Impacts to general government facilities services resulting from the MPD shall be mitigated as follows:

i. Payment of general government facilities mitigation fees at the following rate: $1,750 per Single Family Dwelling Unit; $900 per Multi-family Dwelling Unit; and $1.50/square foot of non-residential construction until the City adopts a City-wide general government facilities mitigation fee schedule. Such mitigation fees shall be due at time of building permit issuance for each single-family and multi-family Dwelling Unit. Mitigation fees for non-residential construction shall be due at Binding Site Plan or at building permit, whichever occurs first, and shall be determined based on Floor Area. Provided, however, the general government facilities mitigation fees paid by the applicant must be expended by the City on the needed facilities outlined in the General Government Facilities Plan. To confirm such expenditures, the City shall prepare an annual report of collections and expenditures and provide said report to the Master Developer during the Annual Review as defined in Exhibit "N". Provided, further, the general government facilities mitigation fees paid by the applicant must be expended or encumbered for such permissible use within nine years of the City's receipt or thereafter returned to the applicant.

ii. When the City adopts a City-wide general government mitigation fee schedule pursuant to the General Government Facilities Plan, future payment of general government mitigation fees shall be at the rate adopted by the City general government mitigation schedule.

iii. If the City has not adopted a City-wide general government facilities mitigation fee within three (3) years from the execution of this Agreement pursuant to subsection (ii) above, then the Master Developer's obligation to pay the mitigation fees set forth in subsection (i) above shall be void and of no further effect.

C. The Master Developer may also provide land for the purpose of construction of any the facilities listed in the General Government Facilities Plan. The value of the land shall be established at the time of dedication and shall be appraised, by an MAI certified appraiser, at the fair market value of the underlying zoning and land use. The value of the land shall be credited against any existing or future general government mitigation fees. The credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide general government mitigation fee collected at the rates described above.

D. The Master Developer may elect to construct, by a date reasonably acceptable to the City, or contribute to the construction of any facility listed in the General Government Facilities Plan as credit against existing or future general government mitigation fees. Any credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide general government mitigation fee collected at the rates described above.

E. The Master Developer may elect at its sole discretion to transfer or assign any credit it receives pursuant to subsections C and D above to BD Lawson Partners, LP, or its successors and assigns. The Master Developer and City agree that BD Lawson Partners, LP, or its successors and assigns, may use such credit against existing or future general government mitigation fees for the Lawson Hills Master Planned Development approved pursuant to City of Black Diamond Ordinance No. 10-947 dated September 20, 2010.

F. The City agrees that the Master Developer, or its successors and assigns, may use any general government mitigation or impact fee credit it receives from BD Lawson Partners, LP, against existing or future general government mitigation fees for The Villages MPD.

13.10 NEW TRANSPORTATION DEMAND MODEL

MPD Condition of Approval No. 11 requires the creation of a new transportation demand model. In addition to the intersections and arterials outlined in MPD Condition of Approval No. 11, this new model shall include the intersection of Kanaskat Drive and Black Diamond-Ravensdale Road.

14.0 DEFINITIONS

- **Accessory Dwelling Unit (ADU)** – See BDMC 18.56.010(A)-(B) (Exhibit "E").
- **Agreement** – The Villages Master Planned Development Development Agreement between City of Black Diamond, Washington and BD Village Partners, LP dated _____ and any amendments thereto.
- **Baseball Diamond, Adult** – A baseball field with infield, grass outfield, backstop, wing fences and dugouts sufficient to meet fast pitch college/high school requirements. Does not include outfield fences or artificial turf.
- **Baseball field, Youth/Adult Softball** – A baseball field with infield, grass outfield, backstop, wing fences and dugouts sufficient to meet official Pony League requirements. Does not include outfield fences or artificial turf.
- **Basketball Court** – A full size court with a paved surface and two hoops, as accepted by the Designated Official. A half-sized court with paved surface and single hoop shall be counted as one-half (0.5) of a Basketball Court.
- **Black Diamond Engineering Design and Construction Standards** – The 2009 Black Diamond Engineering Design and Construction Standards as set forth in Exhibit "E" and incorporated herein by this reference as if fully set forth herein.
- **Black Diamond Municipal Code (BDMC)** – The Black Diamond Municipal Code as set forth in Exhibit "E" and incorporated herein by this reference as if fully set forth herein.
- **Build-Out Period** – A "Build-Out" Period of fifteen (15) years execution of this Agreement is established for all the Development and construction of uses in The Villages MPD. The Build-Out Period may be extended up to an additional five years for any Phase of the MPD pursuant to BDMC 18.98.195.E (Exhibit "E").
- **Commercial or Commercial Development** – A development project consisting of office, retail, restaurant or personal services.
- **Community Facilities District** – As provided in RCW Chapter 36.145, a district designed to provide financing for community facilities and local, subregional, and regional infrastructure.
- **Comprehensive Plan, Black Diamond** – The City of Black Diamond Comprehensive Plan dated June 2009 adopted by Black Diamond Ordinance No. 09-908.
- **Constructed** – Bonded for or substantially completed.

- **Construction Permits** – Building, Utility Permits (utilities and streets), clearing, grading, sign and landscaping approvals or similar administrative approvals and any modifications thereto.
- **Cottage** – A residential Dwelling Unit that is typically separate from its garage, and sometimes is not adjacent to vehicular access.
- **Covington Transportation Mitigation Agreement** - That certain agreement (titled "Settlement Agreement") entered into the 14th Day of December, 2010 by and between BD Village Partners, LP, BD Lawson Partners, LP, and the City of Covington. A copy is included as Exhibit "R".
- **Day** – Calendar day unless business day is specified.
- **Density** – Number of dwelling units proposed on a parcel or within a development project divided by its gross site area.
- **Design Guidelines, Design Review Committee (DRC)** – The design guidelines adopted and enforced by The Villages Homeowners' Association or subset thereof.
- **Design Review Committee (DRC)** – The committee established pursuant to Section 12.3.
- **Design Standards and Guidelines, MPD Framework** – The design standards for Master Planned Developments contained within the City's Design Standards and Guidelines adopted by reference in BDMC Chapter 18.74 dated June 18, 2009 set forth in Exhibit "E".
- **Design Standards and Guidelines, MPD Project Specific** – The design standards attached to this Agreement as Exhibit "H".
- **Designated Official** – The person, appointed by the City of Black Diamond Mayor, empowered, authorized, and charged with the duty to administer, interpret, process and approve plans as required by this Agreement and the BDMC.
- **Development** – All structures and other modifications of the natural landscape above and below ground or water, on a particular site.
- **Development Parcel** – A parcel shown generally as an individual parcel on the MPD Site Plan, Exhibit "U".
- **Dwelling Unit** – A building or portion thereof designed exclusively for residential purposes providing complete housekeeping services for one family, built on-site or with factory built components and meeting DRC Design Guidelines.
- **Ecology** – Washington State Department of Ecology.
- **EIS** – The Villages Final Environmental Impact Statement ("EIS") dated December 2009.

- **Expansion Parcels** – Parcels adjacent to The Villages MPD identified on Exhibit "S" that may be added to and developed as part of the MPD during the Build-Out Period pursuant to the process outlined in Section 10.5 of this Agreement.
- **Floor Area** See BDMC 18.100.310 (Exhibit "E").
- **Floor Area Ratio (FAR)**– The Floor Area (excluding Basements) of all buildings on a lot divided by the area of that lot (including lot areas subject to easement(s)); provided that, for Cottages, Single Family Attached and Multi-Family Buildings, FAR shall be calculated based upon the combined total Floor Area of all Dwelling Units in a building(s) divided by the combined total area of the building(s) development.
- **Football field, youth** – A 370' by 170' level grass field with goal posts at both ends.
- **Funding Agreement** - That certain agreement (titled "MPD Funding Agreement") entered into the ____ day of _____, 2011 by and between BD Village Partners, LP, BD Lawson Partners, LP, and the City of Black Diamond. A copy is included as Exhibit "N".
- **Green, common** – Semi-public, pedestrian-oriented passageways. They are intended for the use of the residents of the homes that face directly onto them and act as a collective front yard for them. They also serve as connectors between streets and serve as local pathways through the neighborhood. Common greens open onto neighborhood streets or directly onto residential boulevards.
- **Green Valley Road Review Committee** – The committee described in Condition of Approval No. 33(b) of Exhibit C to Ordinance No. 10-946 (attached hereto as Exhibit "C").
- **Guidetti Parcel** – That parcel labeled "Guidetti Parcel" on Exhibit "B".
- **Implementing Approval** – An Implementing Project approval granted by the City subsequent to the execution of this Agreement.
- **Implementing Project** – A development project subsequent to the execution of this Agreement, which implements or is otherwise consistent with this Agreement and the MPD Permit Approval, including but not limited to Construction Permits and Land Use Permits.
- **Institutional Use** – A quasi-public use or service including, but are not limited to, church, daycare, community center, clubhouse, schools (primary, secondary, high school, technical, university, business), cultural facilities (museum, performing arts center), YMCA, Boys' and Girls' Club, and libraries.
- **Kiosk** – A small structure, less than 200 gross square feet, often open on one or more sides, used as a newsstand or booth for selling tickets, espresso, candy, ice cream or other

sundries. Kiosks also include notice boards, community bulletin boards and similar structures upon which advertisements are posted.

- **Land Use Application** – The various applications listed in Table 18-1 of BDMC 18.08.125 (Exhibit "E").
- **Land Use Permit** – A Land Use Application approved by the City.
- **Lawson Hills MPD** – The master planned development entitled "Lawson Hills" approved by City of Black Diamond Ordinance No. 10-947 dated September 20, 2010.
- **Lawson North Triangle Property** – The property that lies west of SR-169, consisting of portions of Section 2 and 3, all in the city limits of Black Diamond.
- **Light Industrial** –Uses that include but are not limited to technology, biotechnology and medical equipment, light manufacturing, wholesaling, mini-storage, distillery, brewery, and winery.
- **Live/Work Unit** – A unit located within the Mixed Use land use category on the MPD Site Plan that is used for both a residence and a small business. For purposes of Dwelling Unit counts, Live/Work Units are considered Multi-Family Units. Per page 3-18 of Chapter 3 of the MPD Permit Application (Exhibit "L"), Live/Work Units are considered home occupations subject to BDMC Ch. 18.54 (Exhibit "E").
- **Lot, Flag** – A lot with a narrow lot frontage that serves as private road or driveway access to a serving roadway, with the buildable area located to the rear of the lot.
- **Low Impact Development** – A planning and engineering approach to site and stormwater design that emphasizes conservation and the use of on-site natural features to protect water quality.
- **Main Property** – The contiguous property that lies west and south of Lake Sawyer Rd SE and Auburn Black Diamond Rd, north of Green Valley Rd, and west of SR 169, all in the city limits of Black Diamond.
- **Main Street** – Street labeled as "Main Street" on Figure 6.3 of this Agreement.
- **Maple Valley Transportation Mitigation Agreement** - That certain agreement (titled "Mitigation Agreement") entered into the 6th Day of October, 2010 by and between BD Village Partners, LP, BD Lawson Partners, LP, and the City of Maple Valley and recorded on the 22nd day of April, 2011, in the records of King County, Washington at AFN 20110422000249. A copy is included as Exhibit "Q".
- **Master Developer** – BD Village Partners, LP, so long as BD Village Partners, LP, owns the majority of any then-undeveloped Development Parcel in The Villages MPD, or any

Master Developer Transferee. Upon a transfer from BD Village Partners to a Master Developer Transferee, all references in this Agreement to BD Village Partners shall be deemed to be references to such Master Developer Transferee, or its successors as the Master Development transferee.

- **Master Developer Transferee** – A person or entity other than BD Village Partners, LP, acquiring an interest or estate (except for security purposes only) in the majority of The Villages Property or The Villages Expansion Parcels then owned by the BD Village Partners, LP, including the then-undeveloped portion thereof, and including transfer of all interests through foreclosure (judicial or non-judicial) or by deed in lieu of foreclosure. "Master Developer Transferee" also means any successive person or entity similarly acquiring such an interest or estate from a previous Master Developer Transferee.
- **Mixed Use** – An area of pedestrian oriented development primarily intended for retail, restaurant, other commercial uses and residential uses.
- **Model Home** – Display home or apartment and related real estate sales and display offices/activities.
- **MPD Permit** – The City of Black Diamond's adopted process for review and approval of an application for a Master Planned Development Permit outlined in the City's MPD development regulations codified at BDMC Chapter 18.98 (Exhibit "E").
- **MPD Permit Application**– The Villages Master Planned Development Application dated May 11, 2009, and revised on December 31, 2009.
- **MPD Permit Approval** – City of Black Diamond Ordinance No. 10-946 dated September 20, 2010 attached hereto as Exhibit "C".
- **MPD Ordinance** – Chapter 18.98 of the Black Diamond Municipal Code (Exhibit "E").
- **MPD Site Plan** – The site plan attached to this Agreement as Exhibit "U".
- **MPD-H** – A density range primarily for Multi-family Dwelling Units; however, limited amounts of Single Family attached and detached Dwelling Units may also occur.
- **MPD-L** – A density range primarily intended for Single Family detached residential Development with a limited amount of Single Family attached residential.
- **MPD-M** – A density range that is intended to include a wide variety of Dwelling Unit types, including Single Family attached and detached and smaller Multi-Family buildings.
- **Multi-family Studio** – A Dwelling Unit within a multi-family structure with no separate bedroom space.
- **Multi-Family** – Any residential structure that contains 5 or more Dwelling Units.

- **Neighborhood Commercial** – Corner store-style neighborhood commercial uses within residential designated areas that are intended to enhance residents' access to goods and services needed daily in a setting that contributes to neighborhood character, encourages pedestrian activity, reduces automobile use, and serves as a focus of neighborhood life as described in Section 4.7.3 of this Agreement.
- **Noise Review Committee –** The committee described in Condition of Approval No. 45 of the MPD Permit Approval (attached hereto as Exhibit "C").
- **Office** – Office uses include, but are not limited to: general office, medical offices, research and development, and business support services.
- **Open Space** – Open Space means all areas shown as sensitive areas, Open Space, Trails or Parks on the MPD Site Plan, Exhibit "U", and any land subsequently designated as Park, Open Space, or aesthetic stormwater pond through an Implementing Approval.
- **Park** – A piece of land, whether publicly or privately owned, intended for passive or active recreation, gathering space or Open Space. Parks may include a wide range of uses and designs, including but not limited to: plazas, playfields, playgrounds, trails, gardens, pea patches, natural areas, interpretive centers, camping, picnic areas, restrooms, utilities and Open Space.
- **Park, Community** – 1 acre or greater in size and are recreational destinations that serve community-wide needs. They contain larger active recreational uses such as basketball, volleyball, tennis, playgrounds and informal play fields and are used by all residents of the community.
- **Park, Neighborhood** – 0.5- 1 acres in size and differ from community parks in that they serve the smaller recreational and social needs of a neighborhood. Smaller in scale and amenities, they are a collection of residential-scale green spaces that accommodate a range of neighborhood activities such as small playgrounds, sitting and picnic areas including barbecues, and court sports such as basketball.
- **Park, Passive Use** – An area or parcel of Open Space land either developed or undeveloped that is intended for non-organized Recreational Uses.
- **Park, Pocket** – One-half acre (0.5) or less in size and serve the informal needs of the immediately adjacent residents. They provide very small intimate gathering places and include tot-lots, seating areas or simply small gathering places for children to play. Pocket parks are located and sized to fit the unique characteristics of the neighborhood design.
- **Phase or Phases** – The MPD is planned in four Phases: Phase 1A, Phase 1B, Phase 2, and Phase 3. The land area for each Phase, together with infrastructure plans for each Phase, is shown in Exhibit "K".

- **Phasing Plan, MPD** – Chapter 9 of the MPD Permit Application and attached hereto as Exhibit "K".
- **Plaza, Village Center** – The plaza serves as the focal point of the Village Center and accommodates passive uses by shoppers and their children. It is a flexible space that is comfortable for intimate conversations or people-watching but can also accommodate larger gatherings of the entire community such as art festivals, sidewalk sales, and other community celebrations.
- **Project-Level Facility** – A street or utility facility that is necessary to serve only those land uses located within the Project Site, regardless of the location of the street or utility facility. If Project-Level Facilities for several Development Parcels are combined or shared, they are still considered Project-Level Facilities.
- **Project Site** – The entire area contained within The Villages MPD boundaries as described and visually depicted in Exhibit "B".
- **Public Use** – A land use or service operated by a public entity. These include, but are not limited to: schools, government offices, fire and police stations, water and sewer district offices, public works storage yards, teen clubs, senior centers, community centers and recreation centers, transit centers and park and ride lots.
- **Recreational Use** – Recreational Uses include, but are not limited to: Parks, clubhouse, open space, trails, golf courses, athletic, sports, and play fields, swimming pools, campgrounds, and other indoor and outdoor recreation facilities.
- **Regional Facility** – An on- or off-site street or utility facility that serves land uses located within and outside the Project Site, regardless of the location of the street or utility facility.
- **Retail** – Uses that provide services or sale of goods or merchandise to the public.
- **School –** Institution of learning offering instruction in the several branches of learning and study required by the Education Code of the State of Washington in grades kindergarten through twelve, including associated meeting rooms, auditoriums and athletic facilities.
- **School Agreement** – Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727.
- **Sensitive Areas Ordinance** – Black Diamond Municipal Code Chapter 19.10 as set forth in Exhibit "E" and incorporated herein by this reference as if fully set forth herein.
- **Setback** – A space, measured from the property line in, unoccupied by structures except where encroachments are specifically allowed by this Agreement.

- **Single Family** – Any residential structure that contains four (4) or fewer residences Dwelling Units.
- **Site Area** – Area of land (expressed in gross square feet or gross acres) contained within the boundary lines of an Implementing Project.
- **Site Plan Review** – Site plan review is an evaluation of development plans to identify compliance with applicable regulations, requirements and standards and to ensure that development will protect the health, safety and general welfare of residents of the City.
- **Soccer Field** – A 190' X 300' level, natural grass practice field.
- **Soccer Field, Micro** – A level natural grass field with a minimum dimension of 60' X 120' feet that may be combined with other informal space.
- **Street Standards** – The City of Black Diamond's street standards as set forth in Chapter 3 entitled "Transportation" of the Black Diamond Engineering Design and Construction Standards (Exhibit "E").
- **TDR Ordinance** – BDMC Chapter 19.24 adopted by Black Diamond Ordinance No. 895 dated 4/2/2009.
- **Temporary Use** – Uses of a non-permanent nature including but not limited to: outdoor art and craft shows and exhibits, retail sales of Christmas trees, agricultural or horticultural products, firewood, seafood, and other items typically marketed seasonally; mobile services such as veterinary services; group retail sales such as swap meets, flea markets, parking lot sales, farmers' markets, auctions etc; circuses, carnivals, fairs, or similar transient amusement or recreational activities; sales offices; construction offices; contractor staging areas and other similar activities.
- **Tennis Court** – A single court tennis facility is 60' X 120', a double court is 108' X 120' and four court facility is 204' X 120'. The court consists of chain link fence around the exterior of the facility, one net per court and a paved interior surface.
- **Utility Facility, Major** – Major Utility Facilities include, but are not limited to: water towers, wastewater storage facilities, sewer lift stations, regional stormwater facilities, electrical substations, telecommunication facilities and other similar utility facilities that serve more than one neighborhood or subdivision.
- **Utility Facility, Minor** – Minor Utility Facilities include, but are not limited to: Public or private utility distribution and collection lines, rainwater dispersion facilities, stormwater ponds, rain gardens and other similar facilities.
- **Utility Permit** – The plans, profiles, cross sections, elevations, details, and supplementary specifications signed by a licensed professional engineer and approved by the City that

shows the location, character, dimensions, and details of the work to be performed. *See also* Black Diamond Engineering Design and Construction Standards (Exhibit "E"), Section 1.2 entitled "Plans."

- **Villages MPD, The** – The master planned development entitled "The Villages" approved by City of Black Diamond ordinance 10-946 dated September 20, 2010.
- **Village Center** – The Villages Center consists of the mixed use Development Parcels shown on the MPD Site Plan (attached hereto as Exhibit "U").
- **Villages Property** – The real property described and visually depicted in Exhibit "B" and to which the MPD Permit Approval applies.
- **WSFFA** – Water Supply and Facilities Funding Agreement dated August 11, 2003, as amended by the First Addendum dated July 22, 2004.

15.0 GENERAL PROVISIONS

15.1 BINDING EFFECT & VESTING

This Agreement constitutes and shall be recorded as a covenant running with the land, benefiting and burdening the Project Site. This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City. All Development subject to the MPD Permit Approval shall be developed in conformance with the MPD Conditions of Approval as set forth in "Ex. C – Conditions of Approval" of Exhibit "C" attached hereto and incorporated herein by this reference.

Pursuant to MPD Condition of Approval No. 159 of the MPD Permit Approval and per the Pre-Application and Development Agreement between the Master Developer and City dated April 16, 2009, the MPD Permit Approval is vested to and governed by the City code and standards in effect on June 28, 2009, the date the moratorium imposed by the City pursuant to Ordinance No. 08-885, was lifted by the City Council's adoption of Ordinance No. 09-913. All Development within The Villages MPD shall be implemented through Implementing Projects. The Implementing Projects of The Villages MPD shall be vested to and governed by the applicable BDMC provisions and other City standards in effect as of the date of the MPD Permit Approval. The applicable codes and substantive standards are included as Exhibit "E" and the MPD Permit Approval is included as Exhibit "C". Pursuant to BDMC 18.98.195(B) (Exhibit "E"), vesting as to stormwater regulations shall be on a Phase by Phase basis as outlined in Section 7 of this Agreement. Pursuant to BDMC 18.98.195(C) (Exhibit "E"), vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis as outlined in Section 13.6 of this Agreement. Updated building codes will apply pursuant to Subsection 12.8.1.

In accordance with RCW 36.70B.180, during the Build-Out Period the City shall not impose upon The Villages MPD new or additional development standards except as set forth in this Agreement or to the extent required by a serious threat to public health and safety. Provided, however, that this Agreement can be amended during the Build-Out Period in accordance with the procedures in Section 10 of this Agreement and RCW 36.70B.170 through RCW 36.70B.210.

Amendments of the MPD Permit Approval or this Agreement pursuant to Section 10 of this Agreement do not affect vesting.

15.2 DUTIES OF MASTER DEVELOPER

Pursuant to Condition of Approval No. 6 of the MPD Permit Approval, a single Master Developer (or Master Developer Transferee) shall be maintained throughout the life of this Agreement. The Master Developer shall function as a single point of contact for City billing purposes, shall function as a single authority for Agreement revisions and modifications, shall provide to the City proof of Master Developer approval of all Implementing Project applications (except building permits) filed by other parties prior to or with submittal to the City, and shall be responsible for distributing Development Agreement entitlements and obligations and administering such.

15.3 ASSIGNMENT

The parties acknowledge that the Development of The Villages MPD likely will involve sale, conveyance or assignment of portions of the Project Site to third parties who will own, develop and/or occupy portions of the Project Site and buildings thereon. BD Village Partners, LP shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement or in The Villages MPD to a Master Developer Transferee acquiring an interest or estate in all or a portion of the Project Site, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure; provided: (i) BD Village Partners gives the City thirty (30) days prior written notice of such assignment or transference; and (ii) BD Village Partners provides the City with a copy of the executed assignment or transference document within ten (10) business days of execution. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

In any such transfer or assignment, if the transferee or assignee assumes the obligations herein pertaining to the property transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and BD Village Partners, LP shall thereupon be deemed released of liability under this Agreement for the portion of the property transferred or assigned, whether or not such release is expressly

stated in such transfer or assignment; provided, however, that BD Village Partners, LP shall remain obligated for any outstanding mitigation measures set forth in this Agreement or in the MPD Permit Approval as of the date of transfer or assignment that are not transferred or assigned. BD Village Partners, LP shall also remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Villages Property still owned by BD Village Partners, LP. BD Village Partners shall advise prospective transferees or assignees that obligations of this Agreement may apply to the property upon transfer or assignment.

15.4 GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

15.5 SEVERABILITY AND WAIVER

If any portion of this Agreement is determined by a court of law to be unenforceable or invalid, then the remaining portions of this Agreement shall remain in effect.

15.6 AUTHORITY

Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

15.7 EXHIBITS

The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this Agreement. The exhibits are:

Exhibit "A" – Removed. Please see Exhibit "U".

Exhibit "B" – Legal Description and Parcel Map

Exhibit "C" – MPD Permit Approval

Exhibit "D" – Summary of Prior Agreements

Exhibit "E" – City of Black Diamond Municipal Code

Exhibit "F" – Traffic Monitoring Plan

Exhibit "G" – Constraint Maps

Exhibit "H" – MPD Project Specific Design Standards and Guidelines

Exhibit "I" – High Density Residential Supplemental Design Standards and Guidelines

Exhibit "J" – Construction Waste Management Plan

Exhibit "K" – MPD Phasing Plan

Exhibit "L" – Excerpts from Chapter 3 of MPD Permit Application

Exhibit "M" – Mine Hazard Release Form

Exhibit "N" – MPD Funding Agreement

Exhibit "O" – Stormwater Monitoring

Exhibit "P" – Green Valley Road Measures

Exhibit "Q" – Maple Valley Transportation Mitigation Agreement

Exhibit "R" – Covington Transportation Mitigation Agreement

Exhibit "S" – Potential Expansion Areas

Exhibit "T" – Impact Fees for Fire Protection Facilities dated 1-13-2011

Exhibit "U" – Updated MPD Site Plan

Amendments to the Exhibits shall be approved through the process (if any) set forth in that Exhibit or, if no process for amendment is set forth in the Exhibit, as a Minor Amendment pursuant to Section 10.4.2. Amendments to this Agreement to reflect changes to Exhibits H, J, K, M, N, Q and R shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2. Many of the Exhibits to this Agreement, as well as some of the figures contained in this Agreement's text are in color or include other features that provide clear illustration; however, this format is not yet acceptable by the King County Recorder's Office for permanent recording. Accordingly, the parties agree that following mutual execution of this Agreement, any non-recordable format Figures and Exhibits will be replaced in the Agreement with a page stating: "Figure X-Y [Exhibit X] is kept on file with the City of Black Diamond and is available for public review at the Community Development Department during business hours."

15.8 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

15.9 INTERPRETATION

This Agreement has been reached as a result of arm's length negotiations with each party represented by counsel, and thus no presumption of draftsmanship shall be used in interpreting this Agreement.

15.10 INTEGRATION

This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other provision or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

15.11 NO THIRD-PARTY BENEFICIARY

This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement, with the sole exception of the City of Maple Valley as described in subsection 12.10.4.

15.12 OTHER NECESSARY ACTS

The parties shall execute and deliver to each other all other further instruments and documents that are reasonably necessary to carry out and implement the Agreement.

15.13 REMEDIES

The parties may, in addition to any other rights or remedies, take action to cure, correct, or remedy any default; enforce any covenant or agreement herein; enjoin any threatened or

attempted violation thereof; enforce by specific performance the obligations and rights of the parties hereto; or obtain any remedies consistent with the foregoing and the purposes of this Agreement.

15.14 NOTICE

Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City: _____, Mayor
City of Black Diamond
PO Box 599
Black Diamond, WA 98010
Facsimile: (360) 886-2592

Mike Kenyon
City Attorney
11 Front Street S
Issaquah, WA 98027-3820
Facsimile: (425) 392-7071

BD Village Partners: Brian Ross
BD Village Partners, L.P.
10220 NE Points Drive, Suite 310
Kirkland, WA 98033
Facsimile: (425) 898-2139

Nancy Bainbridge Rogers
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Facsimile: (206) 587-2308

15.15 COUNTERPARTS

This Development Agreement may be executed in counterparts, each of which shall be deemed an original.

15.16 TERM

"Build-Out" Period of fifteen (15) years following the date of the MPD Permit Approval is established for all the Development and construction of uses in The Villages MPD as authorized in BDMC 18.98.195(A) (Exhibit "E") and RCW 36.70B.170(3)(i). The Build-Out Period may be extended up to an additional five years for any Phase of The Villages MPD pursuant to BDMC 18.98.195(E) (Exhibit "E").

The Term of this Agreement shall be from the date written in the first paragraph of this Agreement till the expiration of the Build-Out Period, as may be extended. In no event, shall the Build-Out Period for all Development and construction exceed twenty (20) years.

[Signatures appear on the following page]

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

Attest:

Brenda Martinez, City Clerk

Approved as to Form:

Kenyon Disend PLLC, City Attorney

BD VILLAGE PARTNERS, L.P., a Washington limited partnership

By: Yarrow Bay Development, LLC, a Washington limited liability company, its General Partner

By: BRNW, Inc., a Washington corporation, its Member

By: _____
Brian Ross, President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 12th day of December, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared **Brian Ross**, known to me to be the President of BRNW, Inc., a member of Yarrow Bay Development, LLC, a general partner of **BD VILLAGE PARTNERS, LP**, the limited partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership, for the purposes therein mentioned, and on oath stated the he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

MEGAN NELSON RUBENSTEIN
NOTARY PUBLIC
COMMISSION EXPIRES 1-29-15
STATE OF WASHINGTON

Megan Nelson Rubenstein
Megan Nelson Rubenstein
(Print name of notary)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA
My commission expires 1-29-15

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me Rebecca Olness, to me known to be Mayor of the City of Black Diamond, a Washington non charter code city that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that Rebecca Olness is authorized to execute said instrument.

GIVEN under my hand and official seal this 15th day of December, 2011.

Rachel J. Pitzel
(Print name of notary)

NOTARY PUBLIC in and for the State of Washington, residing at Black Diamond
My commission expires 8/13/2012

RACHEL J. PITZEL
NOTARY PUBLIC
STATE OF WASHINGTON
My Comm. Expires Aug. 13, 2012