

RESOLUTION NO. 09-627

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND, PALMER COKING COAL COMPANY, LLP, AND BD LAWSON PARTNERS, LP RELATING TO THE DEVELOPMENT OF THE LAWSON HILLS EAST ANNEXATION AREA

BD Lawson Partners, LP, pursuant to RCW 35A.14.120 has notified the City of its intent to commence annexation proceedings for the area known as the East Annexation Area, the legal description of which is set forth in Exhibit A to the attached Pre-Annexation and Development Agreement; and

WHEREAS, RCW 36.70B.170 authorizes a city to enter into an agreement regarding the development of real property outside its boundaries as part of a proposed annexation with any person having an ownership interest or control of such real property; and

WHEREAS, the City, Palmer Coking Coal Company, LLP and BD Lawson Partners, LP, have negotiated a Pre-Annexation and Development Agreement, substantially in the form attached hereto as Exhibit A; and

WHEREAS, the City, Palmer Coking Coal Company and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 (“BDUGAA”); and

WHEREAS, BD Lawson Partners, LP is a successor in interest to some of the real property that is subject to the BDUGAA, and the attached Pre-Annexation and Development Agreement is consistent with the terms of the BDUGAA; and

WHEREAS, the City Council held a public hearing on the proposed Pre-Annexation and Development Agreement on August 20, 2009; and

WHEREAS, the Council has reviewed the attached Pre-Annexation and Development Agreement and finds it is in the best interests of the City and its citizens to authorize the Mayor to execute the Agreement; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the Mayor to execute a Pre-Annexation and Development Agreement between the City of Black Diamond, Palmer Coking Coal, LLP and BD Lawson Partners, LP relating to the development of the Lawson Hills East Annexation Area, in substantially the form attached hereto (the “Agreement”),

upon receipt of an original of the Agreement signed by Palmer Coking Coal Company, LLP and BD Lawson Partners, LP.

ADOPTED by the City Council at an open meeting on the 20th day of August, 2009.

  
Howard Botts, Mayor

Attest:

  
Brenda Martinez, City Clerk

After Recording Return To:

Jami Kuzaro-Balint  
10220 NE Points Drive, Suite 120  
Kirkland, WA 98033

**PRE-ANNEXATION AND DEVELOPMENT AGREEMENT**

**BY**

**AND**

**BETWEEN**

**THE CITY OF BLACK DIAMOND**

**AND**

**PALMER COKING COAL COMPANY, LLP**

**AND**

**BD LAWSON PARTNERS, L.P.**

**RELATING TO THE DEVELOPMENT OF THE LAWSON HILLS**

**EAST ANNEXATION AREA**

**PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF BLACK DIAMOND, WASHINGTON,  
BD LAWSON PARTNERS, L.P., AND PALMER COKING COAL COMPANY,  
RELATING TO THE DEVELOPMENT OF THE LAWSON HILLS  
EAST ANNEXATION AREA**

**1. DATE, PARTIES AND TERMS.**

This Pre-Annexation and Development Agreement (“**Agreement**”) is entered into this 20th day of August, 2009, (“**Effective Date**”), 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**”), BD LAWSON PARTNERS, L.P., a Washington Limited Partnership (“**Lawson**”), and Palmer Coking Coal Company, LLP (“**Palmer**”). Lawson, Palmer and Black Diamond are collectively referred to herein as the “**Parties**.” All capitalized terms in this Agreement shall have the meanings set forth herein, and if not defined herein such terms shall have the meaning given to them in that certain Black Diamond Urban Growth Area Agreement, dated December 31, 1996 (the “**BDUGAA**”).

**2. GENERAL RECITALS.**

2.1 Authority. RCW 36.70B.170 authorizes a city to enter into an agreement regarding the development of real property outside its boundaries as part of a proposed annexation with any person having an ownership interest or control of such real property. RCW 35A.14.330, after two public hearings at least 30 days apart, as required by RCW 35A.14.340, authorizes a city to establish the zoning that will become effective upon annexation of real property.

2.2 BDUGAA. The City and Palmer Coking Coal Company are parties to the BDUGAA. Lawson is a successor in interest to some of the real property that is subject to the BDUGAA. Land uses, zoning and development standards for the East Annexation Area shall be consistent with the terms of the BDUGAA.

2.3 Lawson Hills Property. Lawson, pursuant to RCW 35A.14.120 has notified the City of its intent to commence annexation proceedings for the East Annexation Area, the legal description to said property having been approved by the Parties and is attached hereto as

EXHIBIT A and illustrated in EXHIBIT B, each incorporated herein by this reference (the “**Lawson Hills Property**”). The Lawson Hills Property is included in the Lawson Hills Master Planned Development application submitted to the City by Lawson on May 11, 2009 (the “**Lawson Hills MPD Application**”).

2.4 Material Consideration. The Parties acknowledge that they enter into this Agreement in consideration of the mutual promises contained in the BDUGAA and that this Agreement implements the terms and conditions of the BDUGAA.

**3. EFFECTIVE DATE AND TERM.**

The Agreement shall be in full force and effect from the Effective Date until August 20, 2014 unless earlier terminated pursuant to the provisions of paragraph 16 below.

**4. PERMITTED LAND USES AND ZONING.**

4.1 The land uses allowed on the Lawson Hills Property shall be those allowed in the R-4 zone in effect on the Effective Date, and shall remain in effect for 5 years, except as modified by the Lawson Hills MPD, if approved by the City. The Lawson Hills Property is and shall remain included in the Lawson Hills MPD Application. If the Lawson Hills MPD Application is approved then the zoning and applicable uses for the Lawson Hills Property shall be subject to the conditions of approval and the vesting period set forth in the Lawson Hills Master Planned Development conditions of approval and associated development agreement.

4.2 Any development on the Lawson Hills Property shall take into consideration the need to maintain the City’s fair share of affordable housing, taking into account the City’s existing housing stock. If affordable housing is required in order to maintain the appropriate level of affordable housing stock, and the Lawson Hills Property is part of the approved Lawson Hills Master Planned Development, then the obligation may be met by providing the necessary affordable housing on any of the lands included within the approved Lawson Hills Master Planned Development, and not necessarily on the Lawson Hills Property itself.

**5. DEVELOPMENT STANDARDS AND VESTING.**

The Lawson Hills Property shall be developed in accordance with the development standards in effect on the Effective Date, and shall remain vested to those standards for 5 years. The Lawson Hills Property is and shall remain included in the Lawson Hills MPD Application. If the Lawson Hills MPD Application is approved, then the Lawson Hills Property shall be

developed in accordance with the development standards that are applicable to the Lawson Hills MPD Application, and shall be vested to those development standards as set forth in the Lawson Hills Master Planned Development conditions of approval and the associated development agreement. The requirement regarding affordable housing set forth in paragraph 4 above shall be applicable.

**6. DENSITY.**

The portion of the Lawson Hills Property to be developed for residential uses shall have a minimum average residential density of four units per acre. The base residential density shall be two (2) dwelling units per acre and any and all additional residential density shall be achieved by acquiring Development Rights through the City's Transferable Development Right ("TDR") Program. The maximum allowed density shall be as determined by the applicable codes and conditions of development approval as set forth in paragraphs 4 and 5 above.

**7. OPEN SPACE.**

7.1 The BDUGAA Open Space requirements applicable to the Lawson Hills Property have been met as of the Effective Date.

7.2 The provisions of paragraph 7.1 notwithstanding, the City may require additional parks, playfields, and other recreational amenities as part of the MPD and/or subdivision process to the extent those requirements are consistent with the applicable City policies and regulations, as determined under the provisions of paragraphs 4 and 5 above.

**8. WATER.**

All potable water shall be provided by the City through the City's public water system. The Parties, and others, entered into an agreement dated the 11th day of August, 2003 entitled the Water Supply and Facilities Funding Agreement ("WSFFA"). Water service for the Lawson Hills Property shall be provided in accordance with the terms of the WSFFA. Lawson, upon the Effective Date, shall be deemed to have irrevocably waived its right to terminate the WSFFA as authorized by WSFFA paragraph 28.4. Any water system improvements, other than those specified in the WSFFA that are necessary to provide water service to serve any portion of the Lawson Hills Property, shall be constructed by Lawson, under the standards in effect at the time a complete preliminary plat application is submitted for the affected portion of the Lawson Hills Property, unless a separate vesting date is specified in an applicable MPD Permit.

## 9. ROADS.

9.1 Major Road Access. Lawson commits to construct and provide major road access to the Lawson Hills Property so major road access service for the East Annexation Area can be provided at the time of project completions. The details, timing, and phasing for the construction of said major road access improvements shall be determined during the MPD Permit approval process and shall be incorporated into the MPD Permit and/or approval conditions.

9.2 Other Roads. Lawson shall construct such other roads as are required to adequately serve the development on the Lawson Hills Property, as authorized in any MPD Permit approvals.

9.3 Road Design and Construction Standards. The road design and construction standards that will be applied shall be those determined during the MPD Permit approval process. Since road construction may be phased, as determined by the MPD Permit, different road design and construction standards may apply to subsequent road phases.

## 10. SANITARY SEWER SERVICE.

10.1 Public Sanitary Sewer Service. All sanitary sewer service shall be by the City's public sewer system. Lawson shall be responsible for constructing such sanitary sewer improvements as are necessary to serve the Lawson Hills Property. If Lawson constructs sanitary sewer service improvements that will benefit other properties, Lawson shall be entitled to recapture a pro-rata portion of the costs as authorized by State law.

10.2 System Capacity. The City currently does not have sufficient capacity to serve all of the Lawson Hills Property and that the City is relying upon the Soos Creek Utility District and King County to provide needed sanitary sewer treatment capacity, and the main collection lines to wheel the sanitary sewage to the treatment facility. Lawson acknowledges that if service capacity is not available the City may have to restrict development on some or all of the Lawson Hills Property until the capacity becomes available. The City reserves the right to ration the current City capacity to assure that equal opportunity for access to available capacity is provided. Lawson may have to construct facilities necessary to create additional capacity.

10.3 Design Standards. The sanitary sewer design and construction standards that will be applied shall be those determined during the MPD Permit approval process.

## 11. FUNDING FOR REQUIRED WATER, SEWER AND ROAD IMPROVEMENTS.

Lawson is responsible for funding improvements necessary to develop the Lawson Hills Property. Consistent with BDUGAA section 6.5 the Parties will seek federal, state, local government and public/private funding for the infrastructure planning, engineering and construction necessary to implement the BDUGAA. Lawson consents to, and agrees not to protest, the formation of local improvement districts (“LIDs”) to finance said improvements to the extent the Lawson Hills Property is benefited. The City shall have the right, but not the obligation, to use LID’s as a funding mechanism.

**12. PHASING.**

Phasing of all development activities on the Lawson Hills Property, including constructing infrastructure, is anticipated. Phasing shall be allowed. Timing of said phasing, and the improvements to be constructed in each phase, shall be determined in the MPD Permit approval process.

**13. PROCESSING FEES.**

Unless specified otherwise in the Agreement, or in other written agreement between the Parties, the processing fees charged by the City for an application shall be those included in the City’s fee resolution that applies to all applicants within the City and that is in effect on the date a complete application is submitted.

**14. NOTICE.** Any demand, request or notice which any party hereto desires or may be required to be 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:

If to the City, to:

Mayor or City Administrator  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010  
Telephone: (360) 886-2560  
Facsimile: (360) 886-2562

With copies to:

Loren Combs  
City Attorney  
3600 Port of Tacoma Road, Suite 311

Tacoma, Washington 98424  
Telephone: (253) 922-5464  
Facsimile: (253) 922-5848

If to Lawson, to: Brian Ross  
Yarrow Bay Development LLC  
10220 NE Points Drive, Suite 102  
Kirkland, WA 98033  
Telephone: (425) 898-2100  
Facsimile: (425) 898-2139

And to: Ryan Kohlmann  
Yarrow Bay Development LLC  
P.O. Box 690  
Black Diamond, WA 98010  
Telephone: (206) 280-7937  
Facsimile: (425) 202-3694

With copies to: Cairncross & Hempelmann, P.S.  
524 Second Avenue  
Seattle, WA 98104-2323  
Attn: Nancy Rogers  
Telephone: (206) 587-0700  
Facsimile: (206) 587-2308

If to Palmer: Palmer Coking Coal Company, LLP  
P.O. Box 10 / 31407 Highway 169  
Black Diamond, WA 98010  
Telephone: (425) 432-4700  
Facsimile: (425) 432-3883

## 15. MISCELLANEOUS.

15.1 Threats to Public Health and Safety. Consistent with RCW 36.70B.170(4), the City may impose new or different regulations to the extent required by a serious threat to public health and safety.

15.2 Additional Development Agreements. The Parties anticipate that additional, more detailed, development agreements will be necessary during the development process and/or MPD application process to address, among other things, vesting to the City's development regulations and standards.

15.3 Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest.

15.4 Assignment. Lawson shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement.

15.5 Severability. If any term or provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

15.6 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.

15.7 Covenants Running with the Land. All of the provisions contained in this Agreement shall constitute covenants running with the land.

15.8 Remedies. The Parties may, in addition to any other rights or remedies, institute an equitable 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.

15.9 Washington Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Washington.

15.10 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, the substantially prevailing party shall be entitled to any award of attorneys' fees.

15.11 Counterparts. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original.

**16. Agreement Termination.** This Agreement may only be terminated if, through no fault of Palmer Coking Coal Company, LLP and BD Lawson Partners, L.P. the East Annexation Area is not annexed into the City by June 30, 2010. Provided if an appeal of the annexation is pending, then the Agreement shall remain in full force and effect until the appeal has been

concluded. If the results of the appeal is that the East Annexation Area can be annexed consistent with the terms of this Agreement, then the Agreement shall remain in full force and effect. If the results of the appeal is otherwise, then the Agreement may be terminated. If any condition precedent to the termination of the Agreement occurs, than Palmer Coking Coal Company, LLP and BD Lawson Partners, L.P. may terminate the Agreement upon providing the Parties with 10 days notice. The termination shall be effective at the end of the 10 day period.

**CITY OF BLACK DIAMOND**



By: Howard Botts  
Its: Mayor

Attest:

  
Brenda L. Martinez, City Clerk

Approved As To Form:

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Loren D. Combs, City of Black Diamond Attorney

**BD LAWSON, L.P.**, a Washington limited partnership  
By: Yarrow Bay Development LLC, General Partner

  
By: Brian Ross  
Its: CEO

**PALMER COKING COAL COMPANY, LLP**

  
By: William Kombol, Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 1<sup>st</sup> day of October, 2009, Brian Ross did personally appear before me, the undersigned Notary Public in and for the State of Washington, and acknowledged to me that he is the CEO of Yarrow Bay Development LLC, a Washington Limited Liability Company (the "Company") and that on behalf of said Company, further acknowledged that he has authority to act on behalf of said Company to execute the foregoing instrument and acknowledged it as the voluntary act and deed of said Company.

GIVEN under my hand and official seal this 1<sup>st</sup> day of October, 2009.



Rachel J. Pitzel  
Rachel J. Pitzel  
NOTARY PUBLIC in and for the State of  
Washington, residing at Black Diamond  
My commission expires 8/13/12

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 1 day of Oct., 2009, William Kombol did personally appear before me, the undersigned Notary Public in and for the State of Washington, and acknowledged to me that he is the Managing Member of Palmer Coking Coal Company LLP, (the "Company") and that on behalf of said Company, further acknowledged that he has authority to act on behalf of said Company to execute the foregoing instrument and acknowledged it as the voluntary act and deed of said Company.

GIVEN under my hand and official seal this 1 day of Oct., 2009.



Shelley Eichelberger  
Shelley Eichelberger  
NOTARY PUBLIC in and for the State of  
Washington, residing at Winston  
My commission expires 5-1-10

EXHIBIT A

EXHIBIT A

LAWSON HILLS  
EAST ANNEXATION AREA LEGAL DESCRIPTION:

TRIAD JOB # 04-058  
NOVEMBER 7, 2008

THAT PORTION OF THE EAST HALF OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST,  
W.M., IN KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION;

TOGETHER WITH THAT PORTION OF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER  
OF THE NORTHEAST QUARTER OF SAID SECTION DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTH HALF, THENCE NORTH 00°17'23"  
EAST, ALONG THE WEST LINE OF SAID SOUTH HALF, 493.15 FEET;  
THENCE SOUTH 35°28'21" EAST 817.91 FEET TO THE SOUTH LINE OF SAID SOUTH HALF,  
THENCE NORTH 88°24'03" WEST, ALONG THE SOUTH LINE OF SAID SOUTH HALF, 361.22  
FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST  
QUARTER OF SAID SECTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER,  
THENCE NORTH 01°06'43" EAST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER,  
1324.33 FEET TO THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER;  
THENCE SOUTH 88°24'03" EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER,  
69.04 FEET;  
THENCE SOUTH 55°11'17" EAST 488.42 FEET;  
THENCE SOUTH 01°50'22" WEST 240.07 FEET;  
THENCE SOUTH 31°16'37" WEST 939.98 FEET TO THE POINT OF BEGINNING.

TOTAL AREA = 50.00 ACRES

WRITTEN: ARJ  
CHECKED: CHS

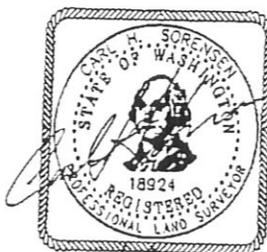
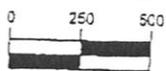


EXHIBIT B

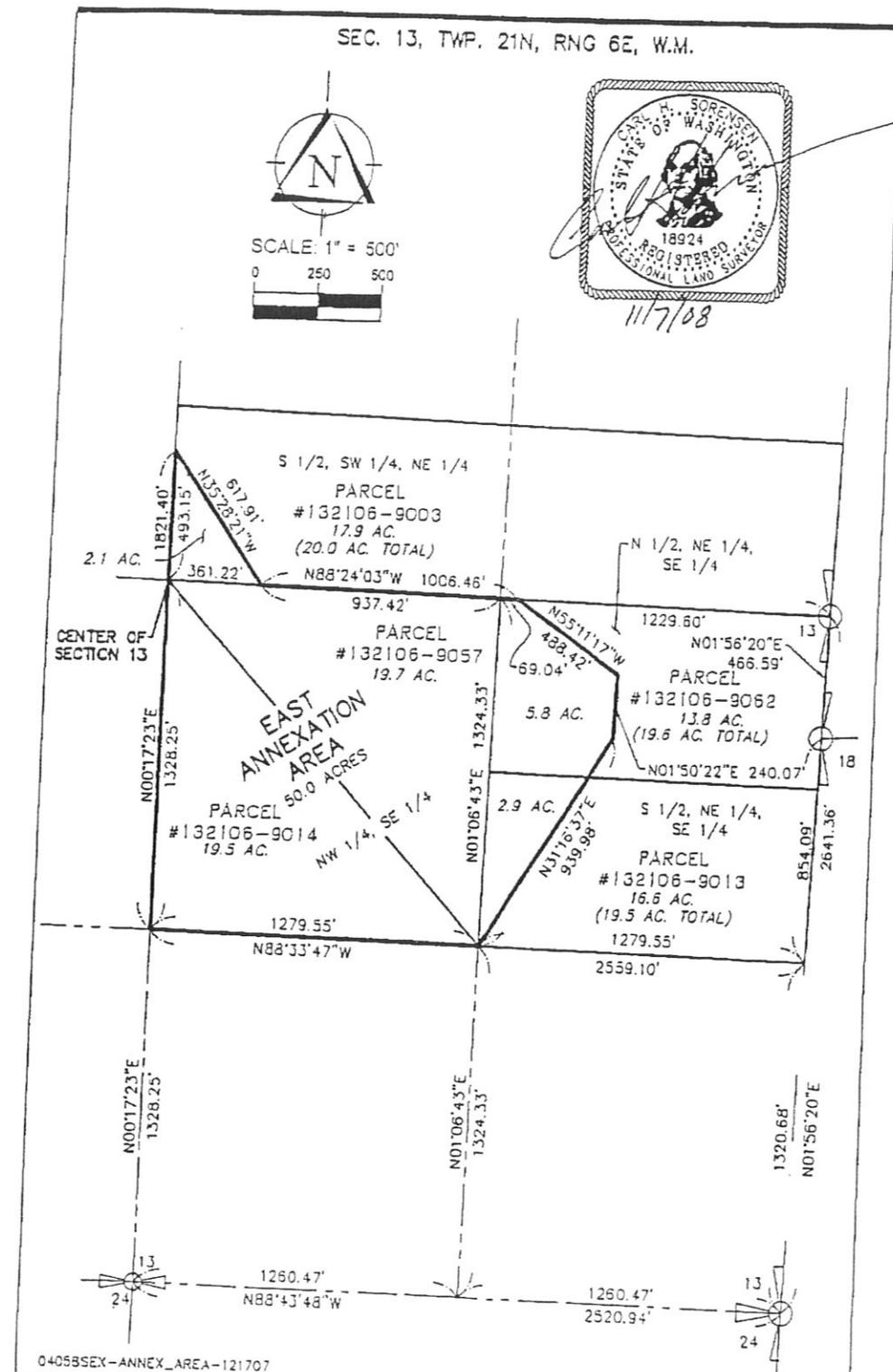
SEC. 13, TWP. 21N, RNG 6E, W.M.



SCALE: 1" = 500'



11/7/08



04058SEX-ANNEX\_AREA-121707

DATE:	12/19/07
SCALE:	HORIZ: 1"=500'
VERT:	N/A
JOB NUMBER:	04-058
SHEET NUMBER:	1 OF 1

### EAST ANNEXATION AREA EXHIBIT B

## LAWSON HILLS

CITY OF BLACK DIAMOND, WASHINGTON

**TRIAD ASSOCIATES**

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