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.

_____
Mayor Rebecca Olness

ATTEST:

_____
Brenda Martinez, City Clerk

APPROVED AS TO FORM:

_____
Chris Bacha, City Attorney

Published: _____
Effective Date:_____

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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.

. . .

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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 W. 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.

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

Signature

Daina 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.

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

Signature

Daina 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 "E").

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 ~~buildings~~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.

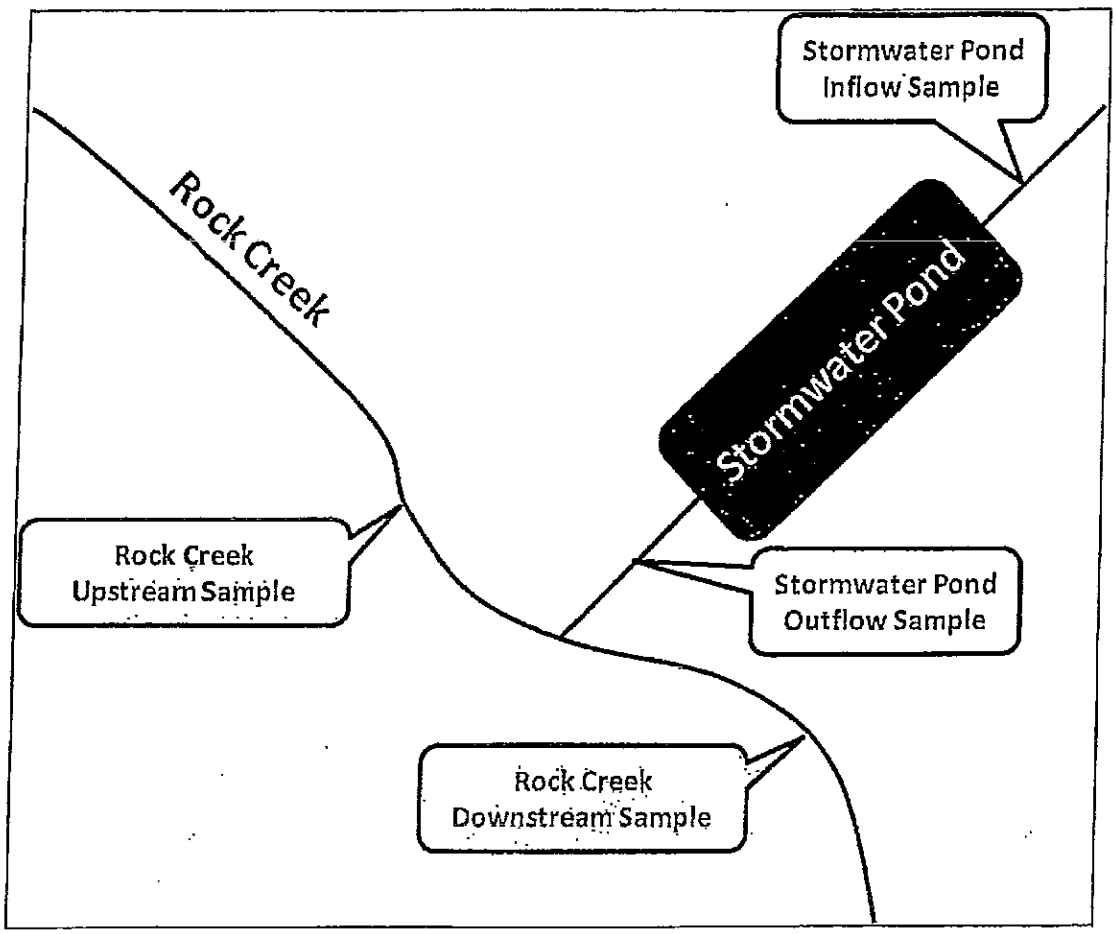

Figure 5.2-1. Proposed sample sites and locations for collection of surface water data.

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 Kin 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 developed 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 MDP 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. Water and Sewer Availability

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. Schools.

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.

ORDINANCE NO. 11-971

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE LAWSON HILLS MASTER PLANNED DEVELOPMENT DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND AND BD LAWSON 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 13, 2010 and March 16, 2011, BD Lawson Partners, LP ("the Applicant") submitted applications for a Development Agreement to implement the Lawson Hills 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. 10-947, approving a Master Planned Development Permit for the Lawson Hills MPD; and

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

WHEREAS, in June, 2011, the Applicant submitted the fourth, revised version of the Lawson Hills 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 Lawson Hills MPD Permit; and

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

WHEREAS, pursuant to BDMC 18.08.070(C)(2), the proposed Lawson Hills 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, 2011, during which members of the public were provided the following: up to 10 minutes per person to testify, with the ability 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 Lawson Hills 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 Lawson Hills 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, Saas, Mulvihill and Goodwin announced that they would recuse themselves from further participation in the closed record hearing; and

WHEREAS, the recusals by Council members Hanson, Saas, Mulvihill 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, Saas, Mulvihill 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 City treated the Development Agreement 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 (although not made part of the record itself), 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 the parties of record, 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills Master Planned Development Development Agreement Between the City of Black Diamond and BD Lawson 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 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 Lawson Hills 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 Lawson Hills 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 12th day of December, 2011.

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

_____
Mayor Rebecca Olness

ATTEST:

_____
Brenda Martinez, City Clerk

APPROVED AS TO FORM:

_____
Chris Bacha, City Attorney

Published: _____
Effective Date:_____

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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 W. 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 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 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 "E").

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. 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.

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.

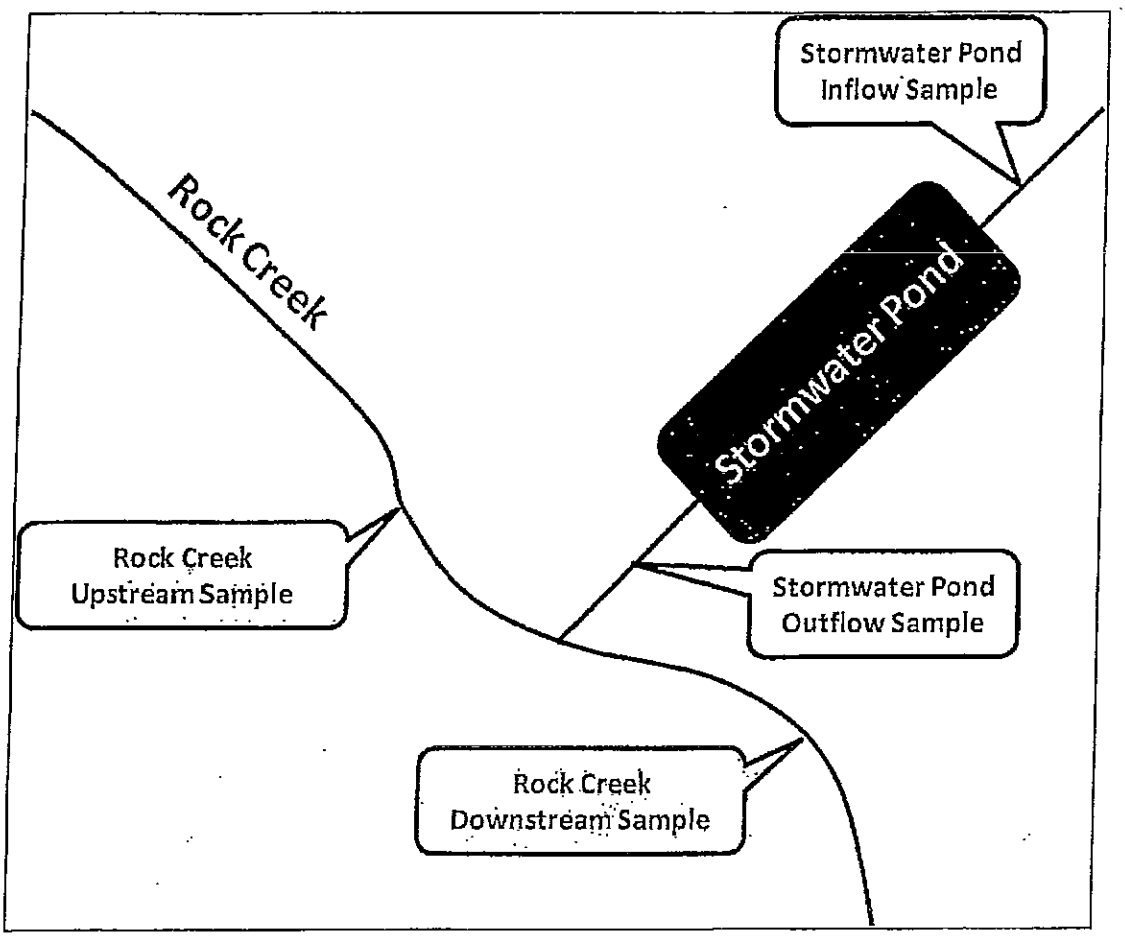

Figure 5.2-1. Proposed sample sites and locations for collection of surface water data.

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 Lawson Hills 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 Lawson Hills Master Planned Development Development Agreement between the City of Black Diamond ("City") and BD Village Partners, LP ("Lawson Hills DA"). The Lawson Hills DA is a project permit and/or is related to the project permit approved in Ordinance No. 10-947 ("Lawson Hills MPD Permit Ordinance") for the Lawson Hills Master Planned Development ("Lawson Hills MPD"). As set forth in The Lawson Hills DA, Section 2.1, the Lawson Hills DA "governs and vests the development, use, and mitigation for The Lawson Hills [MPD] . . . ."

3.2. The Lawson Hills DA implements the terms and conditions of the Lawson Hills 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 Lawson Hills DA meets the requirements of BDMC Section 18.98.090. The Lawson Hills 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 Lawson Hills MPD Permit Ordinance. The Lawson Hills DA, Section 2.1, states that " Land within the boundaries of the Lawson Hills 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 Lawson Hills MPD 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 Lawson Hills 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 Lawson Hills street, utility, and other public infrastructure. The Lawson Hills 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 Lawson Hills Master Planned Development ("Lawson Hills MPD"). The relationship between the Lawson Hills DA and these other project permits, defined in Section 14.0 of the Lawson Hills 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 Lawson Hills DA Land Use.

Because the Lawson Hills DA is implementing the Lawson Hills MPD Permit Ordinance, the land uses and structures whose use, development and mitigation is described and authorized in the Lawson Hills DA are the same as those described in the Lawson Hills MPD Permit Ordinance, including in Finding of Fact No. 2 to Ord. 10-947. That is, the proposal includes 371 acres, to be developed with the following uses: a maximum of 1,250 low, medium and high density dwelling units (not including the first 40 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 110 additional accessory units counted as 1/3 of a dwelling unit each); a maximum of 390,000 square feet of retail, offices, commercial and light industrial development; schools; and recreation and open space.

5. The Lawson Hills DA Project Area.

As with the Lawson Hills MPD Permit Ordinance, the project area for the Lawson Hills DA consists of two subareas, the Main Property and the North Triangle Property. The "Main Property" is located primarily south of Lawson Street and east of SR-169, along the eastern city limits. The "North Triangle Property" (approx. 80 acres) is located along the west side of SR 169, approximately two miles northwest of the Main Property and north of the intersection of South Summit Drive and SR 169. The North Triangle Property is north of and adjacent to the North Property that is part of the proposed Villages MPD project. The Lawson Hills MPD project area is shown on the Site Plan contained in Exhibit U to the Lawson Hills DA.

6. The Lawson Hills Project Density.

Because the proposal authorized by the Lawson Hills DA is the same proposal authorized by the Lawson Hills MPD Permit Ordinance, the density authorized by the Lawson Hills DA is the same, urban density as that authorized by the MPD Permit Ordinance; *i.e.*, the Lawson Hills MPD will have an average density of 3.36 units per gross acre (1,250 units ÷ 371 acres = 3.36) and an average density of 3.90 units per net acre (1,250 units ÷ 318 acres with residential designations = 3.90).

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 Lawson Hills MPD. (The density of the Lawson Hills 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 Lawson Hills MPD Permit Ordinance and Ordinance No. 10-946 ("The Villages 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 Kin 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 Lawson Hills DA.

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

Several commenters asserted that the scale of developed expected of the Lawson Hills MPD authorized by the Lawson Hills 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 Lawson Hills DA is governed by the Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD meets the objectives of his book.

9. SEPA and Alleged MPD Project Environmental Impacts.

9.1. The environmental impacts of the Lawson Hills 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 Lawson Hills 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 Lawson Hills DA, the FEIS "covers almost every conceivable environmental impact . . . ."

9.3. Nevertheless, many of the parties of record to the Lawson Hills 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 Lawson Hills DA is the same development proposal approved in the Lawson Hills MPD Permit, the environmental impacts of the Lawson Hills DA are the same as those of the Lawson Hills MPD Permit, except to the extent that additional impacts might possibly arise from the additional detail or specificity contained in the Lawson Hills DA, where such specificity is directed by the conditions contained in Exhibit C to the Lawson Hills MPD Permit Ordinance.

9.5. The claims of environmental impact concerning the Lawson Hills DA did not identify environmental impacts that were not previously raised during proceedings related to the Lawson Hills MPD Permit and associated FEIS and mitigated by the conditions of approval contained in Exhibit C to the Lawson Hills 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 Lawson Hills 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 Lawson Hills 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. *Potential Phosphorus Discharges to Lake Sawyer.*

11.1.1. The Lawson Hills 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." The requirements of Section 7.4.3.A are more stringent than 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 Lawson Hills MPD Permit Ordinance.

11.1.2. The Lawson Hills 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 Lawson Hills DA, and is known as "the Fure Monitoring Plan."

11.1.3. 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 . . . ."

11.1.4. 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).

11.1.5. 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 Lawson Hills DA, is released or expires for a given facility.

11.1.6. 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.

11.1.7. Mitigation required by The Lawson Hills 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 Lawson Hills 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.

11.2. *Other Water Quality Parameters.*

11.2.1 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 Lawson Hills MPD. As detailed in Finding of Fact No. 7 of the Lawson Hills MPD Permit Ordinance, the Lawson Hills MPD incorporates certain low-impact development principals which will prevent significant water quality impacts, specifically including those impacts generated by stormwater. And, both the Lawson Hills 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 62-66, 68-70, 72-74, 76-79, and

82-83, and 85 of the Lawson Hills MPD Permit Ordinance, and Conditions 62-66, 69-70, 73-74, and 84-86 of the Lawson Hill MPD Permit Ordinance.

11.2.2. Some parties of record stated concern with the length of time required for monitoring of potential water quality impacts. Exhibit O to the Lawson Hills 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 Lawson Hills 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."

11.2.3. In light of the findings in 11.1.1 – 11.2.2, and the substantial mitigation provided by the Lawson Hills MPD Permit Ordinance and the Lawson Hills DA for potential surface water quality impacts, additional mitigation as part of the Lawson Hills Development Agreement is not warranted.

11.3. *Stormwater Quantity.*

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

11.3.2. 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.

11.3.3. In general, the evidence summarized in Finding No. 11.3.2 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)).

11.3.4. 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 . . . ."

11.3.5. 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).

11.3.6 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.

11.3.7. 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.

11.3.8. 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.

11.3.9. 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.

11.4. *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 MDP 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 (Lawson Hills FEIS, pp. 3-59, 4-29; Lawson Hills FEIS, pp. 3-55, 4-38). Finding of Fact No. 7.M of The Lawson Hills 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 Lawson Hills DA contains detailed provisions concerning transportation improvements, and mitigation of potential impacts of The Lawson Hills MPD. Section 11.5 of The Lawson Hills DA addresses the timing, construction and funding of a detailed list of regional transportation faculties, to implement Conditions of Approval Nos. 9 and 17 of The Lawson Hills MPD Permit Ordinance. The Lawson Hills 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 Lawson Hills DA.

12.2 *Summary of Transportation-Related Concerns.* Concerns over traffic impacts of the proposed MPDs consumed a significant portion of The Lawson Hills 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 Lawson Hills and Lawson Hills MPD Permit Ordinances' conditions of approval. No new information or evidence was presented concerning specific traffic impacts arising from The Lawson Hills DA, or from the use of the transportation demand model required by The Lawson Hills 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 Lawson Hills 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 Lawson Hills DA did not provide for transportation concurrency, the Hearing Examiner overlooked Condition No. 9 of The Lawson Hills MPD Permit Ordinance, which already required concurrency. Condition No. 9 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 24 and 19 . . . ." In addition to Condition 10 of The Lawson Hills MPD Permit Ordinance, the Traffic Monitoring Plan (Exhibit F to The Lawson Hills 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. *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.

12.7. *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 Lawson Hills DA, Section 6.3, requires infrastructure for bicycles on the routes shown on Figure 6-3. 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 Lawson Hills 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.

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

12.8.1 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 Lawson Hills MPD Permit proceedings. In addition, the requested mitigation exceeds that required by The Lawson Hills 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.

12.8.2. Ms. Carrier (in Exhibit 187) and Ms. Lisa Schmidt (in Exhibit 197) claim that the proposed Development Agreements do not comply with Condition No. 29 of The Lawson Hills MPD Permit ordinance.

Condition 29 states that "The Applicant shall prepare a study, at its expense, for review and approval by the City, 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 Lawson Hills 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.

12.8.3. *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.

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 Lawson Hills MPD Permit Ordinance School-related Condition of Approval.* Condition No. 9 of The Lawson Hills 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. 99 of the Lawson Hills 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 Lawson Hills DA School-Related Provision.*

13.3.1. Of the two options provided by Condition No. 99, the Applicant selected option 1. The Lawson Hills DA, Section 13.3, states that "Pursuant to Condition of Approval No. 99 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. 99 of the Lawson Hills 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. 99 of the Lawson Hills 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 parallel the impact fee rates set in the ESD's Capital Facilities Plan (attached to Exhibit 54), which impact fee amounts set 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 rates set forth in the School Agreement. No evidence was submitted into the record demonstrating that the either 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills and The Villages 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 99 of the Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Permit Ordinance, Condition 99, 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 Lawson Hills or The Villages 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. *Lawson Hills MPD Permit Fiscal-Related Requirements.* The Lawson Hills MPD Permit Ordinance, Condition 160, calls for the preparation of fiscal analyses at stated intervals during MPD construction. Condition 160 accordingly requires the Lawson Hills 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 *Lawson Hills DA Terms and Process For Performing Fiscal Analyses.* The Lawson Hills 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. 160 of the Lawson Hills 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 160 of the Lawson Hills 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 *Lawson Hills DA Funding Agreement.* Section 13.6 of the Lawson Hills 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. 160 of the Lawson Hills MPD Permit Ordinance. Exhibit N reasonably assures that the Lawson Hills MPD will not

impose a financial burden on Black Diamond residents, and complies Condition No. 160'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 160 of The Lawson Hills MPD Permit Ordinance and Section 13.6 of The Lawson Hills DA.

14.4. *Funding Agreement-Related Comments.* Some commenters testified that the Lawson Hills 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 Lawson Hills 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 Lawson Hills DA to certify adequate water supply. Nevertheless, for the reasons explained in Findings of Fact 14.2 – 14.9 below, The Lawson Hills DA demonstrates that there is an adequate water supply to serve the Lawson Hills MPD, and that water supply and related water facilities will be available to serve The Lawson Hills 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 Lawson Hills 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 Lawson Hills and The Villages 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 Lawson Hills 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 Lawson Hills FEIS, p. 3-36, 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 Lawson Hills 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 Lawson Hills MPD shall be designed and Constructed by the Master Developer . . . ."

15.2.2. The Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills DA detailed in Findings of Fact 15.1 – 15.2 above ensure that there is an adequate water supply to serve all of The Lawson Hills 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 Lawson Hills MPD Implementing Projects as they are constructed and occupied. Statements in the Hearing Examiner Recommendation, page 31, noting that the Lawson Hills FEIS and Lawson Hills 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 Lawson Hills are valid and have been perfected. The comments misconstrue The Lawson Hills 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 and a "perfection" process, followed ultimately by issuance of a water right certificate. Section 7.2.1 of The Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Implementing Projects as they are constructed and occupied.

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 Lawson Hills DA, and the Hearing Examiner Recommendation (page 32-34) recommended additional changes.

Following City Council direction, staff negotiated additional changes to Lawson Hills DA addressing the Examiner's recommendation, and these changes are set forth in Section 7.2.5.

17. Potential Impact On Existing Water Systems.

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, the alleged potential for stormwater impacts (*i.e.*, runoff from construction) to those groundwater sources, and long term water quality impacts related to infiltration of pollutants into the water sources. Finding of Fact No. 19 of The Lawson Hills MPD Permit Ordinance states that the Lawson Hills MPD has been designed "to avoid any risk of adverse impact to private wells and springs. . . ." Therefore, the Lawson Hills MPD Permit Ordinance conditions of approval do not require this issue to be addressed in The Lawson Hills 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 Lawson Hills MPD Permit Ordinance proceedings. Conversely, Finding No. 19 of The Lawson Hills MPD Permit Ordinance, that the Lawson Hills MPD project has been designed to avoid any risk of adverse impact to 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.

18. Sanitary Sewer.

18.1. *DA Provisions For Sewer Service.*

18.1.1. The Lawson Hills DA, Section 7.3.1, states that it "provides sewer availability to service 4,800 Dwelling Units on The Lawson Hills 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 Lawson Hills DA, as detailed below.

18.1.2. The Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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. 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.

18.2. *Adequacy of Sewer Supply and Availability of Sewer Facilities.* Collectively, the provisions of The Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Implementing Projects as they are constructed and occupied. Statements in the Hearing Examiner Recommendation, pages 36-37, noting that The Lawson Hills 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 Lawson Hills 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.

18.4.2 The Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 and/or Lawson Hills sites 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills FEIS, at pages 3-58 - 3-60, and 4-10. Finding of Fact No. 7.J in The Lawson Hills 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.

20.1. *Mine Hazards on Lawson Hills MPD.* The Lawson Hills MPD site contains severe, moderate and low mine hazards, as depicted on the Sensitive Areas Constraints Map, Exhibit G to the Lawson Hills DA. The Lawson Hills Permit Ordinance Finding of Fact 15 states that the FEIS identifies mine hazard areas, and indicates that mine hazards will be adequately addressed by application of the City's Sensitive Areas Ordinance (SAO). The FEIS, p. 4-20, indicates that mine hazards to structures and road and utility crossings can be avoided by designating the most severe hazard areas as open space and by routing roads and utilities to avoid such areas. The Lawson Hills MPD follows the FEIS' guidance

by classifying areas designated as severe mine hazards as open space. The school site proposed on the Lawson Hills MPD site is located outside of any severe mine hazard area. And, based on the FEIS and testimony during the FEIS and Lawson Hills MPD Permit proceedings, four conditions of approval in the Lawson Hills MPD Permit Ordinance (Nos. 114-118) addressed mine hazards, stating that additional mitigation may be required in moderate mine hazard areas (based on evaluation during the implementing project stage), mandating the use of flexible utility lines above mine hazard areas, designation of severe mine hazard areas as open space and requiring that roads and utilities avoid these areas as much as is feasible, required conformance with BDMC 19.10 (Sensitive Areas), and a requirement that homeowners in hazard areas sign a release indemnifying the City from any liability related to mine hazards.

20.2. *Concerns Regarding Delineation of Mine Hazards.* Several exhibits expressed concern about Section 8.2.3 of the Lawson Hills DA's provision treating maps of mine hazards as final and complete. See Exhibits 3-13e, 3-13n, 34, 45, 113, 124, 143, and 249 as well as the verbal testimony of Mr. Steve Pilcher, Dr. Chris Breeds, Ms. Pat Pepper, Ms. Cindy Wheeler, and Ms. Carol Lynn Harp. Commenters mentioned possible missing information due to small mines (Ex. 3-13e), recommended the use of "earth scanning" technology to find unknown mines (Ex. 143), and pointed out that some areas on the hazard map (Lawson Hills DA, Exhibit G) were marked "approximate" (Ex. 249). One exhibit was submitted by Dr. Chris Breeds, president of SubTerra, Inc., a geotechnical engineering firm (Ex. 45). Dr. Breeds stated that mine hazards would be significant and suggested additional requirements for the MPDs, including additional subsurface exploration and peer-review of mine hazards analyses.

20.3. *Responses to Concerns Regarding Mine Hazards.* In response to concerns, Yarrow Bay proposed additional language by which the Lawson Hills DA may address mine hazard concerns. That language is contained in the Lawson Hills DA, Section 8.2.3, and requires additional exploration of mine conditions and hazards in the same areas of uncertainty identified in the original technical reports and referred to by Dr. Breeds. This additional exploration will provide the basis for "final" maps for mine hazard areas, which, upon agreement by both the City and YB that they are adequate, will become fixed. As the Hearing Examiner found on pages 61-62 of the Recommendation, the revised Section 8.2.3 goes a long way to address the issues raised by Dr. Breeds by (1) requiring further investigation in all the areas to which Dr. Breeds stated he had a concern; and (2) requiring reapplication of the Sensitive Areas Ordinance if any new mine hazards are discovered during the term of the DA. Revised Section 8.2.3 also addresses the Hearing Examiner's recommendation for additional assurances during Implementing Project review, by stating that "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." Further, "[a]ny 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 [the Lawson Hills DA] Exhibit "N", at the Implementing Project applicant's expense, to perform peer review of mine hazard reports."

21. Open Space.

21.1 *Amount of Open Space.*

21.1.1. As set forth in the Lawson Hills DA at Section 9.1, pursuant to BDMC 18.98.140 (Exhibit "E") and the MPD Permit Approval, the Main Parcel on 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 (Main Parcel 267 gross acres x .50 = 134 acres). In addition, the 50-acre East Annexation Area and the North Triangle are subject to the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Open Space Agreement ("BDOSA"). The open space requirement for the Lawson Hills MPD under the BDUGAA and BDOSA is the dedication of the 50-acre In-City Forest land to the City and preservation of a view corridor on the North Triangle.

21.1.2. In total, the Lawson Hills MPD will ultimately include 153.3 acres of on-site open space, or 41% of the total Lawson Hills MPD site (134 acres Main Parcel open space + 19.3 acres of North Triangle sensitive areas, buffers and view corridor = 153.3 acres), subject to potential parcel boundary adjustments described in Finding of Fact 21.2 below. When the Lawson Hills MPD Permit Ordinance was adopted, the Main Parcel included 119.2 acres of open space, which prompted Condition 145 requiring the Applicant to provide an additional 14.8 acres of open space on the Lawson Hills Main Parcel. As the Lawson Hills DA, Section 9.1 states, Development Parcels L1 and L2 have been designated as Open Space, resulting in 5.5 acres of additional open space, so that 124.7 acres is shown on the MPD Site Plan attached as Exhibit U to the Lawson Hills DA. This leaves an additional 9.3 acres (of the 14.8 acres required by Lawson Hills MPD Permit Ordinance Condition 145), which per Section 9.1 of the DA will be provided as part of individual Implementing Project approvals. Taken together with all on- or off-site open space that has already been dedicated or will be dedicated associated with the Lawson Hills and The Villages 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Permit Ordinance Conditions 96and 97 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 Lawson Hills 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 Condition of Approval No. 94 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills DA contains the details for in-lieu payments required by these two conditions. Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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. <u>Phasing of Improvements</u>.

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 Lawson Hills 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 Lawson Hills DA, Section 13.7, incorporates verbatim the requirements of the Lawson Hills MPD Permit Ordinance Condition 43 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 Lawson Hills 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 Lawson Hills MPD Permit Ordinance Condition 45 is anticipated to be formed at approximately the start of construction. The Lawson Hills MPD Permit Ordinance Condition 45 does not specify that the Committee be formed prior to approval of The Lawson Hills 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 Lawson Hills MPD Permit Ordinance Condition 43 states that work hours of operation shall be established and made part of the Development Agreement. The Lawson Hills 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 Lawson Hills 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.

23.4. *Construction Haul Route*. One commenter, Mr. Peter Rimbos, raised concerns about the proposed construction haul route required by Condition 44 of the Lawson Hills MPD Permit Ordinance. In addition to requiring the construction haul route, Condition 44 prohibits the use of Lawson, Baker and Morgan streets for construction hauling. The construction haul route will be on private property, and serve the limited purpose of providing a construction haul route, to avoid construction traffic and/or road surface impacts to Lawson, Baker and Morgan Streets. Mr. Rimbos did not provide any rationale as to why more City control over the construction of that street is necessary, and none is evident from the record. As the Hearing Examiner found on page 103, without further information, there is no basis to determine that additional control is necessary or appropriate.

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 Lawson Hills MPD that is authorized by The Lawson Hills 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 Lawson Hills DA, Section 3.1, have not been complied with.

24.2. *Single-Family and Multi-Family Dwelling Units.* The Lawson Hills 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 Lawson Hills MPD, as per the Lawson Hills 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 Lawson Hills DA.

24.3. *Mix of Development.* As called for by the Lawson Hills MPD Permit Ordinance Condition 140, The Lawson Hills DA, Section 4.3, outlines the commercial split for the Lawson Hills MPD, as follows: 390,000 square feet of commercial space, 200,000 of office and light industrial with a maximum of 100,000 square feet for light industrial.

24.4. *Land Use Plan Boundaries.* The Land Use Plan map in Exhibit "L" to the Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Permit Ordinance Condition 139 and RCW 36.70B.170(1) and (3)(d), and BDMC 18.66.020(A), project-specific design standards governing physical development of the Lawson Hills MPD are outlined in The Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills Master Planned Development Development Agreement ("The Lawson Hills 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 Lawson Hills DA is required to incorporate the conditions of approval of the underlying MPD Permit, approved in Ordinance No. 10-946 ("the Lawson Hills MPD Permit Ordinance"), and as the Hearing Examiner concluded at page 6 of his Recommendation, because the Lawson Hills MPD Permit Ordinance conditions of approval were approved by ordinance they have binding legal effect, so the analysis of whether the Lawson Hills 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 Lawson Hills 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. The Lawson Hills DA Is Consistent With Development Agreement Requirements.

Based on Finding of Fact No. 3 in Exhibit 2, the Lawson Hills DA meets the requirements of RCW 36.70B.170, BDMC 18.66.020 and BDMC 18.98.090. the Lawson Hills DA is also consistent with the City's applicable development regulations. This includes but is not limited to Section 15.1 of the Lawson Hills 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 Lawson Hills DA may not modify the conditions of approval in The Lawson Hills 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 Lawson Hills DA, BD Lawson 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD and, based on the FEIS, approved the Lawson Hills MPD Permit in The Lawson Hills MPD Ordinance, subject to 169 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 Lawson Hills MPD Ordinance, the Council concluded that significant adverse environmental impacts of the Lawson Hills MPD had been appropriately identified and mitigated. During review of the Lawson Hills 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 Lawson Hills MPD Permit Ordinance provide adequate analysis of and mitigation for the specific adverse environmental impacts of the Lawson Hills MPD as implemented through the Lawson Hills 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 Lawson Hills MPD Permit Ordinance. And, the Black Diamond City Council itself (not a different agency, as in *Lake Lawrence*) concluded in The Lawson Hills 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 Lawson Hills DA as it did when it approved and mitigated the Lawson Hills 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 Lawson Hills MPD Project Density.

8.1. As the Hearing Examiner concluded, on pages 11, 12, 13, and et seq., the Lawson Hills 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 Lawson Hills DA, Exhibit E. The Comprehensive Plan's density standard is carried forward in BDMC 18.98.120(E). Condition 131 of The Lawson Hills MPD Permit Ordinance requires that "A minimum density of 4 du/per net acre for residential development shall be required for implementing projects . . .," and the City Council approved the Lawson Hills MPD Permit at the proposed density (see Finding No. 6 above). Having set minimum density conditions in the Comprehensive Plan and MPD Permit criteria, and in the Lawson Hills MPD Permit Ordinance, the City Council cannot adopt any DA provisions that would lower the Lawson Hills MPD project densities, because under BDMC 18.98.090 the DA must incorporate the conditions of approval of The Lawson Hills 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 Lawson Hills 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. Traffic

9.1 As outlined in Finding of Fact 12.5, The Lawson Hills MPD Permit Ordinance Conditions 9 provides for timely mitigation of impacts to transportation levels of service; i.e., it provides an acceptable form and degree of transportation concurrency. The Lawson Hills DA complies with the applicable conditions of The Lawson Hills MPD Permit Ordinance. Condition 19 of The Lawson Hills 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 Lawson Hills DA, Exhibit F, which is the Traffic Monitoring Plan, complied with Condition 19 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."

9.2. 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 Lawson Hills DA, in the same way that RCW 36.70A.110(4) does not apply to The Lawson Hills DA (see Conclusion 9 above).

9.3. Nevertheless, even though The Lawson Hills 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 Lawson Hills DA, to more clearly state in the traffic monitoring plan an express concurrency requirement mirroring what was already provided in Conditions 9 and 19 to The Lawson Hills MPD Permit Ordinance. The amended language appears on pages 31-33 of Exhibit F to The Lawson Hills DA.

9.4 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. 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.

9.5. With respect to mitigation for state-owned facilities (SR 169 and SR 516), The Lawson Hills MPD Permit Ordinance, Condition 20 of The Lawson Hills MPD Permit Ordinance addresses the timing of construction of

transportation improvements on facilities other than state-owned facilities. Condition 19 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 Lawson Hills DA, mirrors the language of Condition 19 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 Lawson Hills 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.

10. Water and Sewer Availability

10.1. 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 Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Implementing Projects as they are constructed and occupied. Likewise, collectively the provisions of The Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Implementing Projects as they are constructed and occupied. Statements in the Hearing Examiner Recommendation, pages 31 and 36-37, noting that The Lawson Hills 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.

10.2 As detailed in Findings 15.5 and 18.4.2, The Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Implementing Projects as they are constructed and occupied.

11. 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 Lawson Hills MPD Permit Ordinance conditions have been formed, and that input on The Lawson Hills DA from such committees is required. Conditions 30 and 86 of The Lawson Hills 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 Lawson Hills DA.

12. Other Land Use Issues.

12.1. *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 Lawson Hills DA. Even so, the Lawson Hills DA complies. The North Triangle property is primarily commercial, as shown on Exhibit U to the Lawson Hills DA, with some environmentally sensitive areas and open space along the eastern boundary. 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 Lawson Hills North Triangle property, for example, is predominantly commercial, with 35.4 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 Triangle property to be non-contiguous with the remainder of The Lawson Hills MPD site.

12.2. *Accessory Dwelling Units.* The Lawson Hills 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 Lawson Hills 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 Lawson Hills DA treats accessory units in a parallel fashion; Section 4.7.3 of The Lawson Hills 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."

12.3. *Property Boundaries and Interface With Adjoining Development.* Through its approval of The Lawson Hills MPD Permit Ordinance, the City Council previously determined that The Lawson Hills 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 Lawson Hills 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.

12.4. *Level of Detail.* The level of detail provided in The Lawson Hills DA is legally sufficient, and supports a conclusion that The Lawson Hills 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 Lawson Hills 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 Lawson Hills MPD Permit Ordinance. The conditions of approval are further clarified, and incorporated into The Lawson Hills DA. Chapter 18.98 of the BDMC, and The Lawson Hills 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 Lawson Hills DA is appropriate and sufficient given the place of The Lawson Hills DA in the iterative, phased project permit approval process.

12.5. *Future Site Plan Amendments.* Pursuant to Conditions 132 and 133 of The Lawson Hills MPD Permit Ordinance, Section 4.4 of The Lawson Hills MPD provides for amendments to The Lawson Hills 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 Lawson Hills DA and, contrary to the argument of some commenting parties of record, do not constitute a legislative zoning or re-zoning action.

13. Schools.

13.1. *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."

13.2. *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.

13.3. *MPD Permit Options for School Mitigation.* As detailed in Finding of Fact 13.2, Condition No. 99 of The Lawson Hills 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 Lawson Hills DA, Section 13.3 describes the tri-party School Agreement, thereby fulfilling the requirements of Condition 99 and, in turn, BDMC 18.98.080(A)(14). The City Council's approval of Condition 99 of The Lawson Hills 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.

13.4. *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 99 of The Lawson Hills 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 99 was selected, and not the second, the substantive terms of the School Agreement are not at issue in the Council's approval of The Lawson Hills 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. 99 of The Lawson Hills MPD Permit Ordinance; no commenters contended otherwise.

13.5. *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 Lawson Hills 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 Lawson Hills 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.

13.6 *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 Lawson Hills 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 Lawson Hills MPD Permit Ordinance and The Lawson Hills 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 9.5 above), The Lawson Hills 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.

13.7. *Location of School Sites*. The Lawson Hills MPD Permit Ordinance Condition 99 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 99, 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 Lawson Hills MPD Permit Ordinance. In addition, per Condition 99 of The Lawson Hills MPD Permit Ordinance, all other schools must be located "within the MPDs or within one mile of the MPDs . . . ."

13.8. *School Siting Under Essential Public Facilities Process.* The Lawson Hills 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.

14. Funding.

14.1. *Fiscal Analyses.* Condition 160 of The Lawson Hills MPD Permit Ordinance requires The Lawson Hills DA to outline the terms and process for performing the fiscal analyses and evaluating fiscal impacts. Condition 160 does not require an exact specification of all terms that may be employed in a future fiscal analysis; rather, Condition 160 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 Lawson Hills 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 Lawson Hills 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. 160 of The Lawson Hills MPD Permit Ordinance.

14.2. *MPD Funding Agreement.* Condition 160 of The Lawson Hills MPD Permit Ordinance also requires The Lawson Hills DA to include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. Condition 160 does not require the MPD Funding Agreement to be included within the fiscal analyses; instead, Condition 160 requires the MPD Funding Agreement to be included within The Lawson Hills DA. As set forth in Finding of Fact 14.3, Section 13.6 of The

Lawson Hills 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. 160 of The Lawson Hills MPD Permit Ordinance. This complies Condition No. 160'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.

14.3 *MPD Funding Agreement Effective Date.* As provided in Section 6 of the Ordinance to which these Conclusions of Law are attached, The Lawson Hills 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.

14.4. *Surcharge.* The Lawson Hills 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.

15. Open Space.

15.1 *Amount of Open Space.* As set forth in the Lawson Hills DA at Section 9.1, pursuant to BDMC 18.98.140 (Exhibit "E") and the MPD Permit Approval, the Main Parcel on 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 (Main Parcel 267 gross acres x .50 = 134 acres). In addition, the 50-acre East Annexation Area and the North Triangle are subject to the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Open Space Agreement ("BDOSA"). The other open space requirement for the Lawson Hills MPD under the BDUGAA and BDOSA is the dedication of the 50-acre In-City Forest land to the City and preservation of a view corridor on the North Triangle.

15.2. In total, the Lawson Hills MPD will ultimately include 153.3 acres of on-site open space, or 41% of the total Lawson Hills MPD site (134 acres Main Parcel open space + 19.3 acres of North Triangle sensitive areas, buffers and view corridor = 153.3 acres), subject to potential parcel boundary adjustments described in Finding of Fact 21.2 below. When the Lawson Hills MPD Permit Ordinance was adopted, the Main Parcel included 119.2 acres of open space, which prompted Condition 145 requiring the Applicant to provide an additional 14.8 acres of open space on the Lawson Hills Main Parcel. As the Lawson Hills DA, Section 9.1 states, Development Parcels L1 and L2 have been designated as Open Space, resulting in 5.5 acres of additional open space, so that 124.7 acres is shown on the MPD Site Plan attached as Exhibit U to the Lawson Hills DA. This leaves an additional 9.3 acres (of the 14.8 acres required by Lawson Hills MPD Permit Ordinance Condition 145), which per Section 9.1 of the DA will be provided as part of individual Implementing Project approvals. Taken together with all on- or off-site open space that has already been dedicated or will be dedicated associated with the Lawson Hills and The Villages MPDs, 1,895.3 acres, or 67% of all MPD-related land, is being retained as open space.

15.2 *Changes to Open Space Areas.* Per the Hearing Examiner's recommendation on page 67, The Lawson Hills 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.

15.3. *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.

15.4. *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."

16. 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.

17. Appeals.

Because The Lawson Hills 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 Lawson Hills 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 Lawson Hills 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.