

Testimony for Development Agreement Hearings
before Black Diamond City Council, October 2011

Kristen Bryant, 1006 139th Pl NE, #C-4, Black Diamond, WA 98010
Also on behalf of Save Black Diamond.

Wetlands Protection

The city of Black Diamond has tried to put in place tough requirements to protect sensitive areas, such as wetlands. Proper determination of wetlands is extremely important because wetlands clean our water, provide fresh air, give food and shelter to wildlife, and absorb water to help prevent flooding. If wetlands types or boundaries aren't determined correctly, they won't be protected adequately. The result is disastrous. Mature trees fall down. Weeds move in. People and wildlife suffer. Expensive restorations must occur.



Plat NF34 in Issaquah Highlands, 2005 (source: Dr. Sarah Cook)

EXHIBIT

The photo above shows what happened after recent development removed the surrounding forest and a wetland buffer was hit by a windstorm. Many trees fell. They then had to be removed, and new plants were planted in a costly restoration effort.

Problems undermining Black Diamond's desired wetlands protections have been uncovered.

This document describes the various issues with wetlands. The issues include:

- I. Wetland boundaries, categorization, and buffers.
- II. Language in the Development Agreement application
- III. Wetlands delineation methodology conflict.
- IV. Discrepancies With State And Federal Agency Review Requirements
- V. Costs of Unprotected Wetlands

I. Wetland boundaries, categorization, and buffers

If wetlands are not categorized and delineated properly, they will not receive enough protection. If the wetlands boundaries are determined correctly, but the wrong buffers are used, the same problem will occur.

The wetlands determinations in the Development Agreements, including the wetland category, its mapped boundary, and the associated buffers are all questionable and unable to be finalized at this time.

This is true for the following reasons:

1. Buffer widths not consistent with Sensitive Areas Ordinance
2. The required work to finalize buffers has not been done
3. Review of mapped information strongly suggests potential errors

Much of the research of Save Black Diamond into wetlands can be attributed to expert witness Dr. Sarah Cooke. Here is some background on Dr. Cooke. (Her full resume is part of the record.) In her work for King County she has visited areas in and around Black Diamond. She has written books on wetlands and taught classes at the University of Washington. Some of her experience includes being the wetlands scientist on Master Design Review Team for the Issaquah Highlands, Talus, and other development

projects. She is an International Fellow of the Society of Wetland Scientists, one of three recognized in the year 2003 for her contributions to the field.

Upon beginning her review of the Black Diamond MPDs, Dr. Cooke immediately looked for the Best Available Science Document. This is the city's document, paid for by the city in 2008. Taxpayers should expect it will be used protect their natural surroundings as much as possible within the law. The city council commissioned it with the best of intentions, and a sincere desire to protect the environment. The Hearing Examiner also recognized this document in his ruling as being an important neutral reference for the city.

Dr. Cooke quickly found discrepancies between the Best Available Science and the Development Agreement Constraint maps.

Issue 1: Buffer width not consistent with Sensitive Areas Ordinance.

From page 55 of the HE Recommendation:

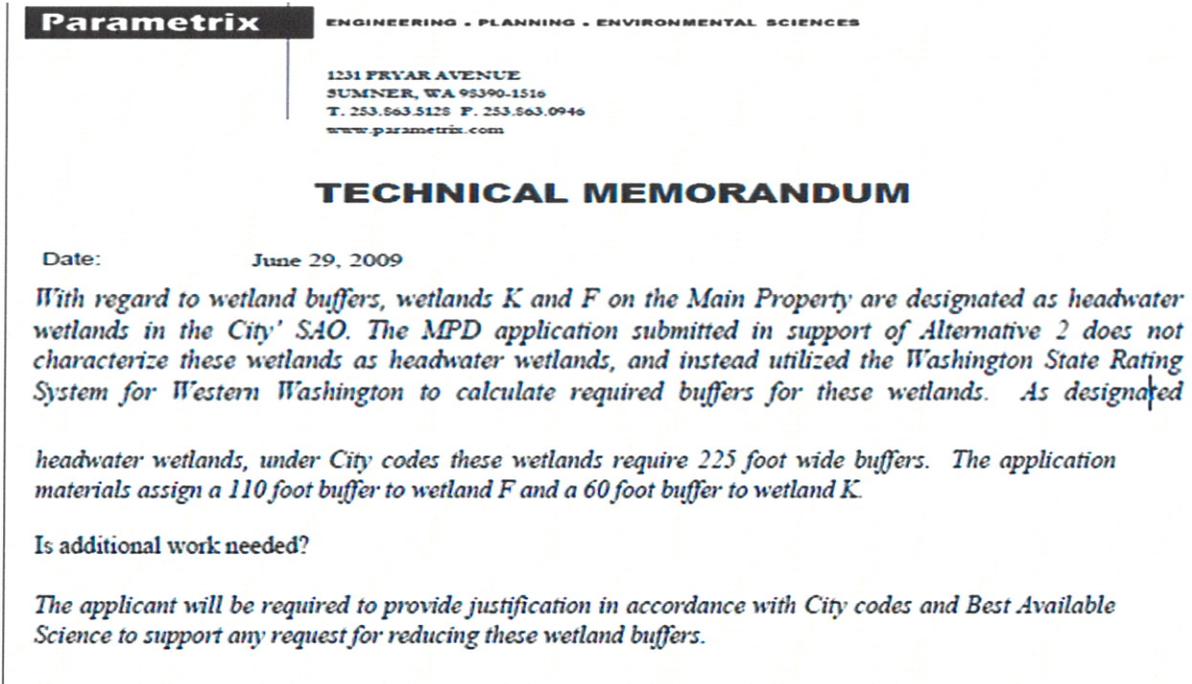
22 | 9. Buffer Width Not Consistent with Protocols. Dr. Sarah Cooke, in verbal testimony,
23 | noted wetlands ratings and buffer widths on the constraints map are not consistent with Black
24 | Diamonds sensitive areas maps as required by Section 8.2.1. As an example, she noted the large
25 | wetlands system running from Jones Lake to Black Diamond Lake. Black Diamond code would
require a 250 foot buffer for this wetland system, but the Development Agreements only assign a
60 or 110 foot buffer. In Exhibit 143, Erika Morgan notes that marker indicating the "setback"

In cases such as this, the buffer is simply wrong. It seems to be because the underlying wetland determination was altered to not match what the 2008 Best Available Science document determined. Dr. Cooke's comments from her August 22 Response document state:

"The actual wetland mapping is not consistent between maps produced by the City. An examination of the Best Available Science wetland mapping (Parametrix (attached) and the Constraint maps shows many areas where the wetlands and their buffers differ between the two. It is necessary to make a comparison of these two maps to see many examples of inconsistencies. There are areas where lobes of wetlands are cut off with no buffers assigned and no impact identified..."

Issue 2: Required work to designate wetlands is not finished.

One item not finished is noted in a Parametrix review document on June 29, 2009:



Parametrix called for explanation of wetlands determinations. Based on the lack of documented follow up, we conclude that the further review called for has not been done. But, the MPD application and now the Development Agreement application just carry the problem forward. Maps with incorrect or un-verified wetlands and buffers are in the proposed Development Agreement.

As further evidence that the verification work was not finished, read this summary from the Hearing Examiner's Recommendation, Page 53:

In Ex. 270, Dr. Cooke called into question the accuracy of several statements pertaining to third party review. Dr. Cook noted that Parametrix had acknowledged in its technical report, "Two biologists visited most of the accessible wetlands on the property." In Dr. Cooke's opinion, this does not constitute a thorough review that would be necessary for mapping wetlands whose boundaries would be without dispute for the next 15 to 20 years. Dr. Cook also asserted that YB had used an outdated manual to delineate the wetlands and the manual currently adopted by the Washington State Department of Ecology ("DOE") would yield different results. In Ex. 270, Dr. Cook also asserted that the wetland boundaries could have been much larger if the relationship of the wetland to off-site wetlands had been considered. She quoted from some comments from Parametrix that suggested that the some of the MPD wetlands are part of a larger system.

And the more complete text from the 3rd party review document (Parametrix Technical Memorandum dated August 27, 2008):

“**brief** field inspections of The Villages wetlands on June 9 and 10, 2008, I conclude that the Wetlands Report **generally** provides accurate mapping and description of wetlands on the Villages parcels. Two biologists visited **most** of the **accessible** wetlands on the property.”

Brief inspections are not adequate verification. One of the criteria for designating a wetland is “2 weeks of saturation to the surface or inundation from Feb 15 - Oct 15.” So, if you visit on April 1, and there is no water, that doesn't mean it's not wetlands.

Specifically: Lawson Wetlands

The city's SAO calls for 225 foot headwater buffers on Lawson wetlands F and K, consistent with the SAO.

There is no reason for Yarrow Bay not to agree to headwaters designation *if* a determination must be made at this time.

On Page 53 of the Hearing Examiner's Recommendation, the Hearing Examiner makes it clear that council can require further review where it has doubt on buffer widths.

24 || *the parties should clarify these points using the information in the record. If there is any reasonable doubt that the buffer widths are inaccurate due to associations with off-site wetlands, the Council should require further review by Parametrix or some other third party reviewer.*

The Cooke Testimony Demonstrates Issues, and was not Intended to be Comprehensive

The expert review by Dr. Cooke was not exhaustive. She was not given time nor was it her role to point out every discrepancy. The Issue on Lawson Hill noted above should not be taken to be the only issue. Dr. Cooke looked across what has been done so far, and compared it to what typically is done for developments. Her conclusions are that there are problems with what has been done, proper followup has not been completed, and it's not appropriate to lock any boundaries at this time. The city of Black Diamond needs to follow protocol and have all the recommendations from the Parametrix review followed up on. It needs to be clear that there will be meaningful project-level surveys with third-party review.

Issue 3: Review of mapped information strongly suggests errors

The doubt about buffer widths discussed above ultimately stems from doubt about proper categorization. The city's Sensitive Areas Ordinance identifies four different categories of wetlands. Category I are the most environmentally important, and IV are the least. Within each category, there are further distinctions. The wetland is "scored" based on field studies. Then, you must designate the "intensity" of the development that will occur near the buffer: Low, Moderate, or High. You must match the Wetlands Category score to the buffer table for the correct "intensity" buffer table and then you know the required buffer width.

1. From page 53 of the Hearing Examiner's Recommendation, the Hearing Examiner's attention was brought to the mis-categorized wetlands as the source of buffer problems:

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Another point of disagreement was apparently whether on-site wetlands are associated with off-site wetlands and this association could affect wetland boundaries. As noted above, Ms. Brainard referenced some Parametrix comments that apparently suggest on-site wetlands are associated because they are headwater wetlands. Mr. Bainard does not address the Parametrix

(above it appears the HE meant to say "Ms. Cooke" referenced some Parametrix...")

2. In addition, Dr. Cooke states,

"It is highly likely that the wetland boundaries are not accurate, especially with respect to those determined as "isolated" from the larger Category I wetland, but which are in very close proximity to the Category I wetland."

As further information, A proper delineation requires field visits from Feb 1-Oct 15 so that observations can be made in both the wet and dry season, and account for shifts with the weather. Wetlands that appear "isolated" during summer may become connected during the winter, with water flowing from one to the other.

3. Another problem in the constraint maps is use of the wrong development intensity, and thus the wrong matching of buffer widths. In the Villages, it appears the "Moderate" land use intensity buffer table was used. Development greater than one unit per acre is deemed high impact, and requires wider buffer widths.

4. I reviewed the Lawson Hills constraint map and counted the types of designations made. Every single wetland received the lowest buffer for its category. The only exception was “Wetland F.” Wetland F received a category II 110 feet instead of the lowest value, 75 feet, or highest value of 225 feet. This is the same Wetland F that was noted above by Parametrix as requiring a 225 foot buffer according to the Black Diamond SAO.

The *Appendix* to this document provides constraint maps showing all the areas that need to be revisited due to likely issues.

Removal of the buffers from the constraint maps does not correct the problem with the designation of these wetlands as the wrong category.

Conclusion: Wetland Designation Problems Exist

The Hearing Examiner ruling and the testimony of Dr. Cooke highlight a serious problem with wetlands review and delineation. Yarrow Bay understands the seriousness of the problem because they have offered to make a “change,” removing their buffers from the DA in their September 29 update. The applicant is not fixing the problem by removing buffers from constraint maps. The problem must be fixed by removing the “fixed” wetland boundaries and categorizations from the DA. If the DA is not changed to make it clear that the designation and boundary can change when the subdivision surveys are done, then the buffers will re-appear identical to the ones in the constraint maps previously.

Requested Development Agreement change:

The DA Constraint Maps should be amended to state that the wetlands boundaries and Wetlands Categories are “preliminary.”

The hearing examiner did not rule, “well , it’s in the EIS or the MPD, so you are stuck with those delineations.” He ruled that you can order a new wetlands inventory if you do not yet agree with the delineations.

Additional excerpts from the Hearing Examiner that apply are shown below.

Page 53 of the Hearing Examiner Recommendation:

6 | **Examiner Response:** *The City Council is encouraged to review the declarations of Dr. Cooke*
7 | *and Mr. Brainard, given the permanence of the proposed sensitive area boundaries. All of the*
8 | *wetland experts involved in this issue are highly credible. In the end, deference must be provided*
9 | *to the findings of Parametrix, as they served as the only neutral reviewers in the process. The*
10 | *Examiner finds the delineations to comply with City regulations, subject to the verification of a*
couple issues as identified below. If the Council has any concerns on the accuracy of the
delineation, it could certainly require in the DA that the wetland boundaries be subject to further
verification by Parametrix or another third party reviewer.

Page 53 of the Hearing Examiner Recommendation:

23 | *comments referenced by Dr. Cook have in that discussion. For the closed review by the Council,*
24 | *the parties should clarify these points using the information in the record. If there is any*
reasonable doubt that the buffer widths are inaccurate due to associations with off-site wetlands,
the Council should require further review by Parametrix or some other third party reviewer.

II. Language in the Development Agreement Application

In order to address the issues described, the city needs to correct the language in the Development Agreement Application.

The MPD Ordinances have a relevant condition of approval. In the Villages MPD, it is Condition of Approval 155, with an analogous Condition in the Lawson Hills MPD ordinance.

Page 27 of Exhibit C, MPD Conditions of Approval. Condition 155:

155. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

I researched, and this condition goes back to the staff report prior to MPD Approval. Wetlands are natural systems that change over time, and cannot be guaranteed by science to stay static for twenty years (especially with construction going on around them). But the above Condition was apparently not a concern for the wetlands expert Yarrow Bay used for their Environmental Impact Statement work, or for City Staff. Why would the staff and a scientist agree to make sensitive areas fixed? Then I realized that they only need to be fixed after **agreed to**. They will be agreed to at the smaller project level, closer to actual construction. At that point, it will make sense. It may not be fair to a builder to get all the way to the point of having home plans, equipment, and materials on site only to have the project stopped because they drove into a wetlands where the map said there wasn't one.

The Condition says, “once the mapped boundaries of sensitive areas have been agreed to, the DA shall include text that identifies that these areas are fixed.” It is important to recognize that the city council cannot agree to the sensitive areas at this time and does not have to. The language says the boundaries will not be changed “during construction,” but it is silent on the matter of changing them during subdivision application or permitting.

Washington state law provides that Development Agreements grant vesting of a development project under current law. Wetlands boundaries are not a law and do not need to be part of the vesting. Further, environmental practices, such as methodologies for wetlands determinations, are not part of what is allowed to vest under DA’s.

Let’s consider what has happened so far:

1. An Environmental Impact Statement was completed. Leading up to this, there were studies and technical information, including some review by Parametrix. Parametrix indicated a need for more verification. It would be typical to have a third-party review and agency review.
2. The MPD Ordinance was passed with language indicating that the boundaries were not yet agreed to (this is clear from COA 155 quoted above.)
3. No further verification was done. No additional surveys, verification, agency confirmation, work by staff, or work by city council was done to get the wetlands designations closer to “agreed to” after the time the programmatic EIS was submitted.
4. However, the authors of the DA wrote, in section 8.2.1, wrote, “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.”
5. The question for City Council is: what makes these “agreed to”? Are you agreeing? Do you have the information typically required and explicitly recommended by Parametrix to agree? If so, then the EIS could have stated they were final and immovable in 2009. The fact that it did not is because there was an expectation that more verification would be gathered over time.

The following language is proposed to correct the issue:

<p>Proposed Language for 8.2.1:</p> <p>8.2.1 Wetland Determinations and Delineations</p> <p>Final</p> <p>Sensitive Areas are fixed so that during construction, if it is discovered that the actual boundary is smaller or larger than mapped, the mapped boundary shall prevail. The mapped boundary will come from surveys required by both state law and city code to be included with subdivision and binding site plan applications.</p> <p>An independent 3rd party verification of sensitive areas must be completed, as well as required reviews by applicable government agencies, and required public notice and opportunity for comment. Once the city council deems these requirements are satisfied and agrees to the boundaries, those boundaries will be fixed.</p>	<p>Current section 8.2.1</p> <p>8.2.1 Wetland Determinations and Delineations Final</p> <p>The presenee 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".</p> <p>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.</p>
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The above language solves the problem for the city by agreeing to condition 155, that "once the boundaries are agreed to" then the "Sensitive Areas are fixed."

Compare proposed language to condition of approval:

155. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

It clarifies that the boundaries have not been agreed to yet and allows them to be agreed to at a more appropriate time. This also solves the problem that Erika Morgan testified about, regarding a cliff that did not have proper designation and therefore buffer width. It is consistent with changes regarding Mine Hazard sensitive areas, which were recommended by the Hearing Examiner.

This statement by the Hearing Examiner on page 2 of his September 20 Addendum applies:

20 | *implementing project review. This places the Council in the somewhat unusual position of having*
21 | *to address specific project wetland impacts during the more generalized level of DA review. All*
22 | *statements by concerned citizens that the proposed boundaries do not comply with the SAO must be*
23 | *carefully considered.*

And, from page 3 the Addendum:

11 | *issues. The Council should not agree to any permanent wetland boundaries if they cannot be*
12 | *reconciled with project level discrepancies such as those allegedly identified by Dr. Cooke and Ms.*
13 | *Morgan.*

3. Wetlands Delineation Methodology Conflict

We have experts that disagree on wetlands boundaries. One of the ways to resolve the dispute is to have additional test to find out whether a wetland determination is correctly. The delineations Yarrow Bay is using were from a methodology that has now been replaced with a newer manual that contains updated procedures for determining if wetlands determinations were applied accurately. This means it will catch more mistakes. Wouldn't it make sense to use these procedures?

The testimony of Yarrow Bay's wetlands scientist provided this description of the new manual:

soils, vegetation, and hydrology." The Regional Supplement did not provide additional or new criteria for wetland determinations. What it did do was **provide new procedures for determining if the three individual criteria are met.** Whether using the Washington State Delineation Manual or the Regional Supplement, the criteria for delineating wetland boundaries are the same.

The manual is called, "Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coasts". Since 2008, the state has recommended the new methodology and the Army Corps has required it. The EIS was submitted to the city in 2009.

As of March 14, 2011, the state requires the new methodology. Yarrow Bay submitted an updated Development Agreement draft on March 18, 2011 and the DA application was finalized on June 10, 2011. If you approve a development agreement application with an updated submission of March 18, 2011, it should contain wetlands delineations with the new required methodology. The applicant and the applicant's wetlands expert, knew, or should have known, that the state preferred this delineation method starting in 2008.

It is perfectly reasonable for the applicant to expect its expert to adjust to the new manual. This is especially true given that the expert, Wetland Resources, have themselves stated that the methodologies are not terribly different. It is only certain procedures that are different.

Proposed Change to the Development Agreement:

The city should require an updated wetlands study with the new manual to ensure it is in compliance with state law.

IV. Discrepancies with State And Federal Agency Review Requirements

You have in the record the full testimony of Dr. Sarah Cooke. Here is a quote:

“...The Corps requires either an individual or generalized permit authorization based on either a preliminary jurisdictional determination or a full jurisdictional determination and wetland boundary determination for all projects that are within waters of the US. Neither of which has been applied for or pursued for either the Villages or Lawson Hills (Pers Comm. Muffy Walker, regulatory head, Seattle Corps District) (US Army Corps of Engineers Regulatory Guidance Letter No 08-02)

AND The Corps of Engineers wetland boundary verification, statute of limitations is only 5 years.

The basis for this term is that wetlands are not static habitats. As groundwater discharge and recharge locations shift and surface water drainage patterns change wetland boundaries. The Corps and Department of Ecology would NEVER approve a boundary approval lasting longer than the 5 years. (Pers Comm. Muffy Walker, July 2011).”

Even if this were done, it still could get the city in trouble with agencies, whose experts know that it is simply unreasonable to lock in permanent boundaries because they naturally change over time.

Yarrow Bay has stated that it will use methodologies required by agencies. Because the issue of whether the correct methodology was used for the wetlands determinations was also brought up and noted by the Hearing Examiner, avoiding locking in wetlands delineations that do not use the state and the Army Corps' required manual is smart business for the city. The DA application was resubmitted in March 2011, shortly after state law changed and required the latest manual, which had been recommended since 2008, prior to the EIS submission date. The applicant would hopefully wish to avoid spending time and money sorting this out and agree that the boundaries are not fixed by the DA, but instead will be determined at the project level as stated above.

Hearing Examiner called approval by Army Corps and DOE a non-issue b/c they will have to comply wither addressed in the DA's or not. If the army corps/doe requirements result in a widening of buffers, YB will have to acquire an amendment to the MPD and impacts of changes will be fully addressed through the amendment process.

However, there are a few issues with this.

1. Notification to the Corps must occur when disturbance of wetlands is more than .1 (one tenth) of an acre. There are a number of very small "isolated" wetlands in parts of the MPDs. In general, these are quite near much larger wetlands. As noted earlier, these may not in fact be isolated. If you don't notify the Corps prior to project level, it may be possible for the applicant to divide projects in a way so as not to report these small wetlands at all. If they are part of a larger system, they could pass "under the radar" and not be properly identified. This would be an unfair loss to you and me and the people of Black Diamond.
2. The fact that BDMC does not require compliance with the Army Corps or DoE does not mean the city can agree to boundaries that will be project-specific without notifying them. They have jurisdiction and it is inappropriate for a city to designate some alternate jurisdiction, even if they know it will not stand.
3. If the city creates agrees to boundaries, but the agencies do not, what happens to Yarrow Bay's development agreement? The city has permitted building of a certain number of units at certain

densities. If the Army Corps' study takes away 50 acres, what then? The contract you are signing becomes problematic. The city agreed to something it cannot deliver. The developer could demand concessions. Don't assume the developer will not blame the city for agreeing to something (after this long and expensive application process) that could not be delivered.

Proposed Action:

If you are fixing these designations now, then you should contact the Corps and the DoE now.

If Wetlands Are Agreed To (Now or In The Future)

Although it seems very clear from the Hearing Examiner ruling that it is not necessary, council may wish to understand what they should do if the applicant strongly pushes them to set the sensitive area boundaries in the Development Agreements. They should commission a complete third party verification now as well as notification to all applicable agencies (Army Corp of Engineers and State Department of Ecology) before the Development Agreement can include fixed boundaries.

If City Council does agree to wetlands delineations, please add protective language for the city. The city will not be responsible for allowing additional building elsewhere to “make up for” buildings they couldn't build because the Army Corps or Department of Ecology required more protection.

Suggested Language for the Development Agreement:

If additional square footage of land for sensitive areas or buffers are required by an agency with jurisdiction, the planned number of units will be forfeited. The Master Developer will not be allowed additional density or units elsewhere in the MPD to make up for the lost units that would have been built on the land.

If the applicant is willing to accept the state and federal jurisdiction over wetlands, they should have no problem with this condition.

V. Costs of Unprotected Wetlands

We are trying to avoid a problem like the one below, where too little buffer was left behind. This image from Dr. Cooke shows an area in the Issaquah Highlands where trees fell, stumps had to be cut and removed, and restoration plantings done. Note the water retaining wall in the background, which would not be necessary if more wetlands were left and less grading were done.



Plat NF34 in Issaquah Highlands, 2005

A situation like the one above requires restoration. Restorations costing \$50,000 or more are not uncommon. Experts need to do studies, weeds need to be removed, and trees and vegetation re-planted. The city should include in the Development Agreements a mitigation requirement as follows:

Proposed Change to the Development Agreement:

To prepare for unexpected damage to sensitive areas, an impact fee of at least \$1000 per home should be

held by the city. If, 5 years after completion of construction, no sensitive areas restoration or hydrologic corrections are needed, the money will be returned to the developer.

Sensitive Areas - Fish and Wildlife Corridors

One additional topic I'd like to ask about is the following quote from the Hearing Examiner's

Recommendation below:

7 **Examiner Response:** *V MPD COL 53 concludes that the MPDs satisfy the requirements of*
8 *BDMC 18.98.140(B) and the constraints map depicts a 300 foot wildlife corridor as required by*
9 *V COA 125. However, concerns identified above suggest some problems with the corridor*
10 *system proposed for the MPDs. Any fish and wildlife habitat boundaries agreed to the Council*
11 *under V COA 155 must comply with the City's sensitive areas ordinance. It is recommended that*
12 *staff provide the Council an explanation, based upon the record, of whether the wildlife*
13 *corridors comply with the City's Sensitive Areas Ordinance and that the corridor boundaries be*
14 *revised as necessary if they do not. The suitability of some of the areas designated for wildlife*
15 *corridors, as addressed by Ms. Morgan above, should also be addressed. If the corridors are*
16 *consistent with the City's sensitive area ordinance requirements, the Council can probably only*
17 *add additional corridor requirements in the DA with the voluntary agreement of YB."*

The lack of delineated FWCA on the constraints map contributes to the inability to determine the adequacy of the wildlife corridors; in addition to the two extensions being provided by YB, the SAO-designated FWCA should be shown on the constraints map. The HE suggests that City staff prepare a map showing the FWCA's defined in the SAO along with the King County Wildlife Habitat Network. This map would be similar to combining Figure 4-2 in the Black Diamond Comprehensive Plan with Exhibit 4-10 in the V FEIS.

The above references another Sensitive Areas concern. If one can reasonably conclude that the wildlife corridor is not adequate, please do not agree to it in the Development Agreement and require more study. The Comprehensive Plan should guide the decision.

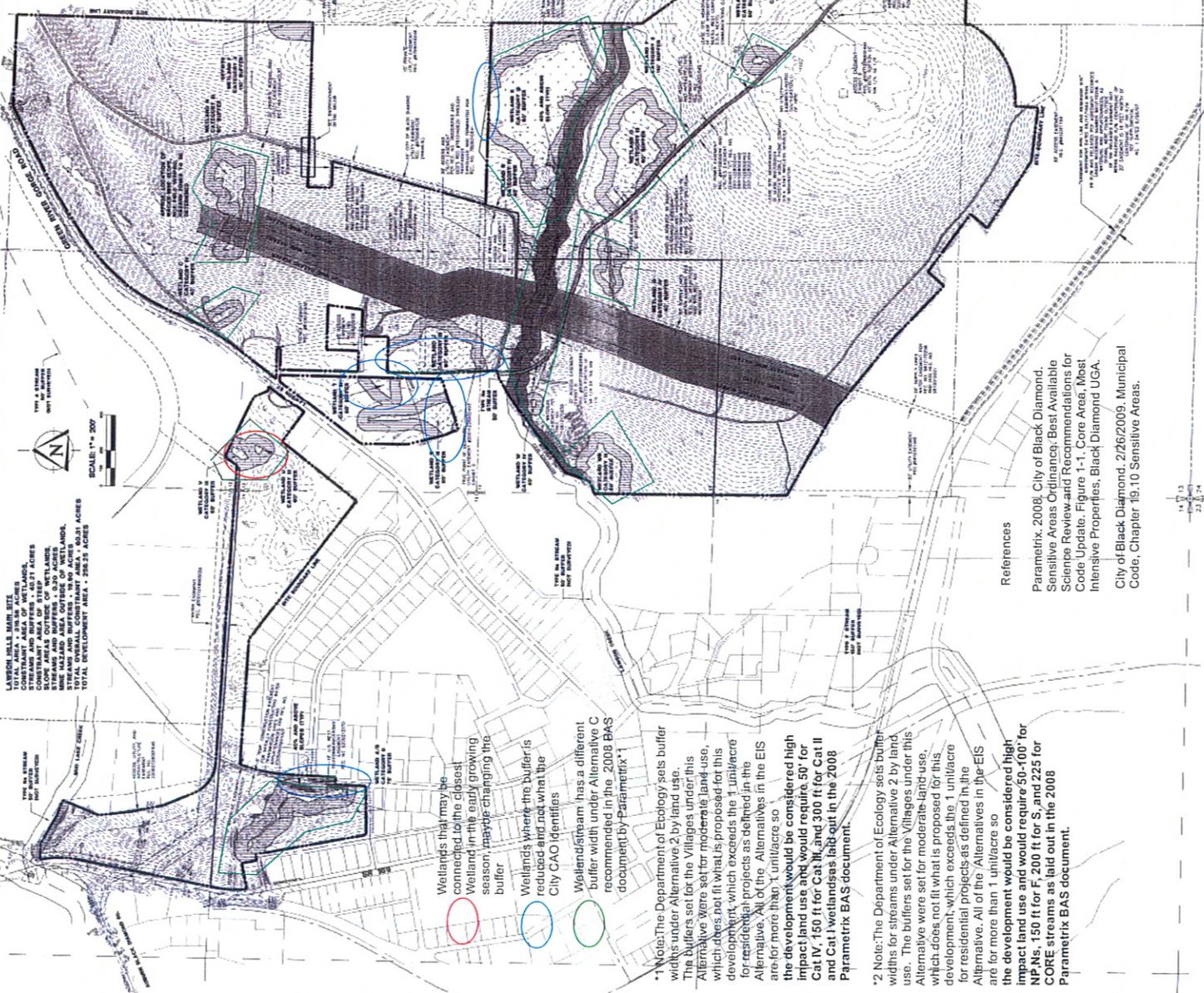
Thank You

Thank you for taking the time to listen to my testimony. I welcome any the chance to answer any questions or provide clarifications . By properly preserving wetlands, we can save wildlife, water resources, and some peace and tranquility.

Appendix

Following are the Constraints maps are with circles on potential wetland and buffer discrepancies from the SAO and other issues. These issues were noted by Dr. Cooke in her testimony.

LAWSON HILLS MAIN SITE
 TOTAL AREA: 4,318 ACRES
 CONSTRAINT AREA OF WETLANDS: 1,100 ACRES
 CONSTRAINT AREA OF STEEP SLOPES: 1,100 ACRES
 STREAMS AND BUFFERS: 0.30 ACRES
 TOTAL OVERALL CONSTRAINT AREA: 1,400 ACRES
 TOTAL DEVELOPMENT AREA: 2,918 ACRES



Wetlands that may be connected to the closest Wetland in the early growing season, maybe changing the buffer
 Wetlands where the buffer is reduced and not what the City CAO identifies
 Wetland stream has a different buffer width under Alternative C recommended in the 2008 BAS document by Parametrix¹

¹Note: The Department of Ecology sets buffer widths for streams under Alternative C use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development which exceeds the 1 unit/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so the development would be considered high impact land use and would require 50' for Cat IV, 150 ft for Cat III, and 300 ft for Cat II and Cat I wetlands as laid out in the 2008 Parametrix BAS document.

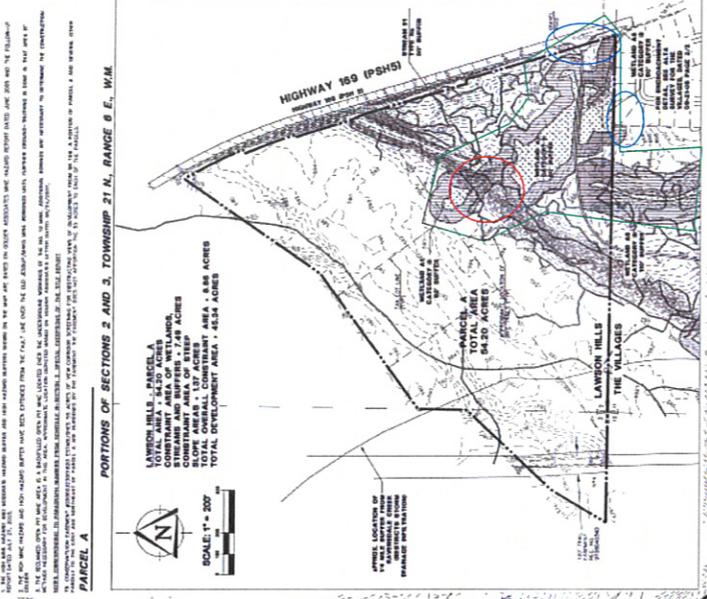
²Note: The Department of Ecology sets buffer widths for streams under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unit/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so the development would be considered high impact land use and would require 50'-100' for NP NS, 150 ft for F, 200 ft for S, and 225 for CORE streams as laid out in the 2008 Parametrix BAS document.

References

- Parametrix, 2008. City of Black Diamond Sensitive Areas Ordinance: Best Available Science Review and Recommendations for Code Update, Figure 1-1, Core Area. Most Intensive Properties, Black Diamond UGA.
- City of Black Diamond, 2/26/2009. Municipal Code, Chapter 19.10 Sensitive Areas.

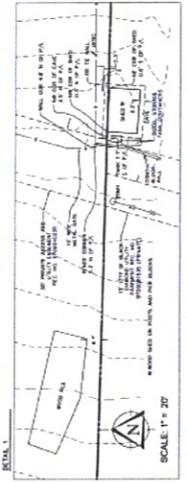
CONSTRAINT MAP ASSUMPTIONS
 1. THE STREAM BUFFERS ARE BASED ON THE CITY OF BLACK DIAMOND'S STREAM BUFFER REGULATIONS AND ASSUMPTIONS.
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 10. THE STREAM BUFFERS ARE BASED ON THE CITY OF BLACK DIAMOND'S STREAM BUFFER REGULATIONS AND ASSUMPTIONS.

PORTIONS OF SECTIONS 2 AND 3, TOWNSHIP 21 N., RANGE 6 E., W.M.
PARCEL A
 LAWSON HILLS - PARCELS A AND B
 CONSTRAINT AREA OF WETLANDS: 1,100 ACRES
 CONSTRAINT AREA OF STEEP SLOPES: 1,100 ACRES
 STREAMS AND BUFFERS: 0.30 ACRES
 TOTAL OVERALL CONSTRAINT AREA: 1,400 ACRES
 TOTAL DEVELOPMENT AREA: 2,918 ACRES

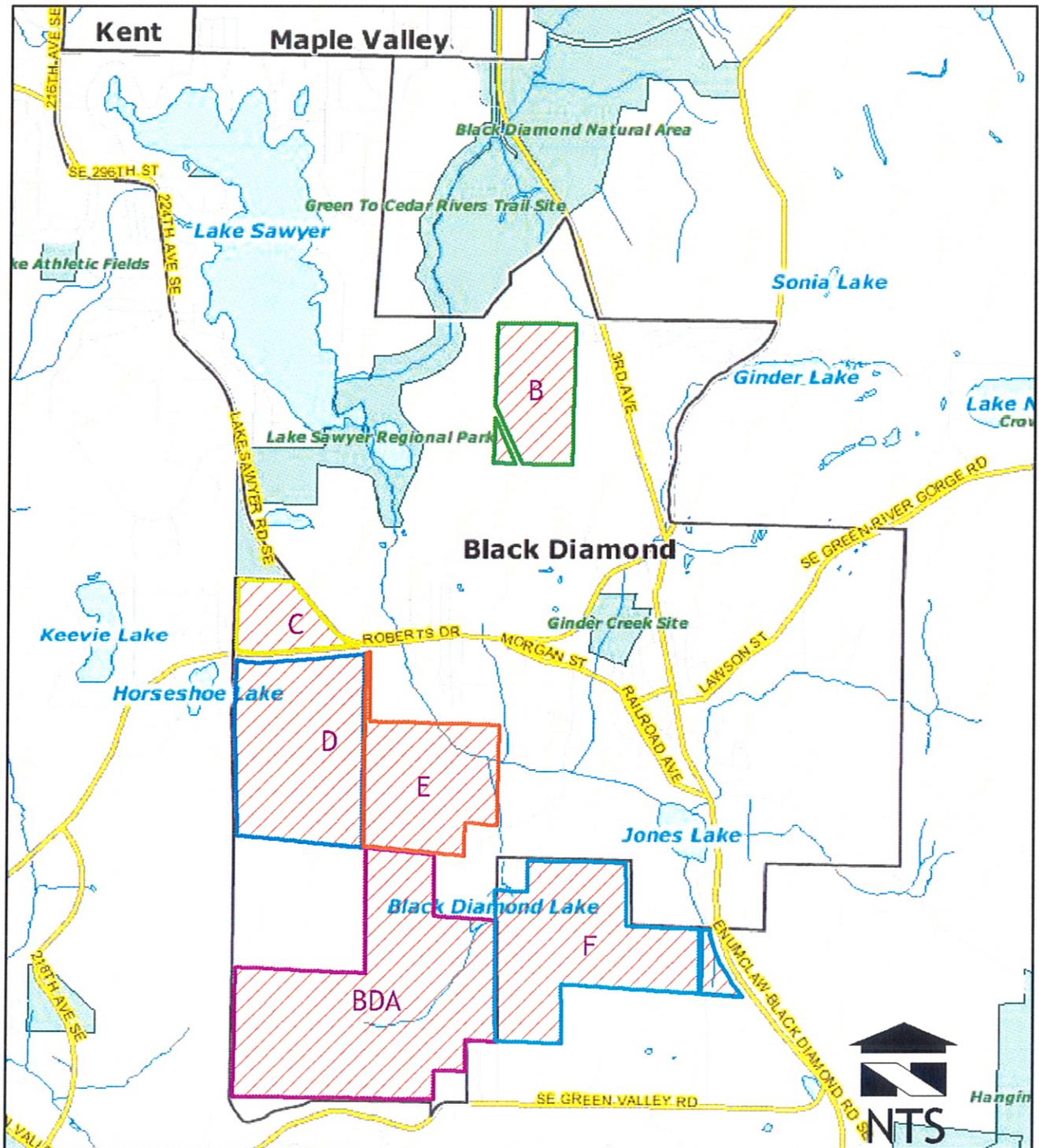


LEGEND
 1. DRIVE WETLAND AREA
 2. ASSOCIATED WETLAND BUFFER
 3. DRIVE STREAM BUFFER
 4. WETLAND AREA
 5. STEEP SLOPE AREA

EASEMENT KEY
 1. 20' WETLAND EASEMENT
 2. 50' WETLAND EASEMENT
 3. 100' WETLAND EASEMENT
 4. 150' WETLAND EASEMENT
 5. 200' WETLAND EASEMENT
 6. 300' WETLAND EASEMENT



VICINITY MAP
THE VILLAGES



Wetland Resources, Inc.

Delimitation / Mitigation / Restoration / Habitat Creation / Permit Assistance

9505 19th Avenue S.E. Suite 106
Everett, Washington 98208
Phone: (425) 337-3174
Fax: (425) 337-3045
Email: mailbox@wetlandresources.com

VICINITY MAP
THE VILLAGES
CITY OF BLACK DIAMOND, WA

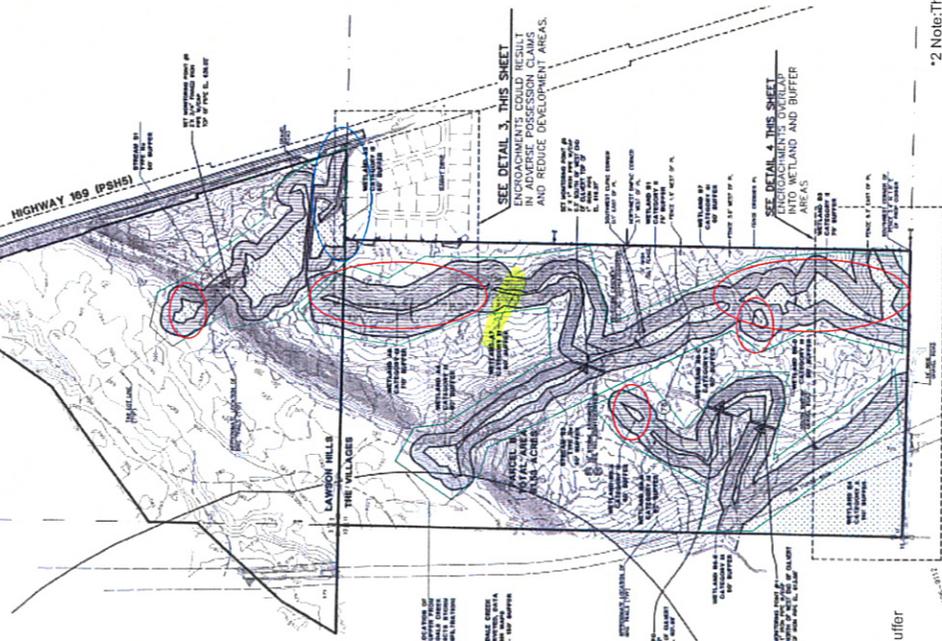
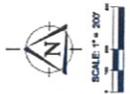
BD Villages Partners, LP
Attn: Colin Lund
825 5th Ave., Ste 202
Kirkland, WA 98033

FIGURE 1
WRI Job # 08035
Drawn by: E. Hirsch
Date: 07.21.09

Wetlands that may be connected to the closest wetland in the early growing season, maybe changing the buffer

Wetlands where the buffer is reduced and not what the City CAO identifies

LAWSON HILLS - PARCEL A
 TOTAL AREA - 8,229 ACRES
 CONSTRAINT AREA OF STEEP SLOPES - 7,249 ACRES
 TOTAL OVERALL CONSTRAINT AREA - 8,936 ACRES
 TOTAL DEVELOPMENT AREA - 4,834 ACRES



PARCEL B
 TOTAL AREA - 81.63 ACRES
 CONSTRAINT AREA OF WETLANDS, STREAMS AND BUFFERS - 33.06 ACRES
 CONSTRAINT AREA OF STEEP SLOPES - 48.57 ACRES
 TOTAL CONSTRAINT AREA - 33.40 ACRES
 TOTAL DEVELOPMENT AREA - 48.13 ACRES

References
 Parametrix, 2008. City of Black Diamond, Sensitive Areas Ordinance. Best Available Science Review and Recommendations for Code Update. Figure 1-1, Core Area, Most Intensive Properties, Black Diamond UGA.

City of Black Diamond, 2/26/2009. Municipality Code, Chapter 19.10 Sensitive Areas.

*1 Note: The Department of Ecology sets buffer widths under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use which does not fit what is proposed for this development, which exceeds the 1 unit/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so the development would be considered high impact land use and would require 50' for Cat IV, 150 ft for Cat III, and 300 ft for Cat II and Cat I wetlands as laid out in the 2008 Parametrix BAS document.

PORTION OF SECTIONS 2, 3 AND 11, TOWNSHIP 2, RANGE 6 E., W.M.

LEGEND

[Symbol]	WETLAND AREA
[Symbol]	ASSOCIATED WETLAND BUFFERS
[Symbol]	5 FEET TO 10 FEET BUFFER
[Symbol]	10 FEET TO 25 FEET BUFFER
[Symbol]	25 FEET TO 50 FEET BUFFER
[Symbol]	50 FEET TO 100 FEET BUFFER
[Symbol]	100 FEET TO 150 FEET BUFFER
[Symbol]	150 FEET TO 200 FEET BUFFER
[Symbol]	200 FEET TO 300 FEET BUFFER
[Symbol]	300 FEET TO 400 FEET BUFFER
[Symbol]	400 FEET TO 500 FEET BUFFER
[Symbol]	500 FEET TO 600 FEET BUFFER
[Symbol]	600 FEET TO 700 FEET BUFFER
[Symbol]	700 FEET TO 800 FEET BUFFER
[Symbol]	800 FEET TO 900 FEET BUFFER
[Symbol]	900 FEET TO 1000 FEET BUFFER

CONSTRAINT MAP ASSUMPTIONS

1. THE WETLANDS AND ASSOCIATED BUFFERS ARE BASED ON THE 2008 BAS SENSITIVE AREAS ORDINANCE (S.A.O.).

2. THE LOCATIONS OF WETLANDS AND ASSOCIATED BUFFERS WERE NOT REVISITED TO VERIFY THE ACCURACY OF THE 2008 BAS SENSITIVE AREAS ORDINANCE. THE 2008 BAS SENSITIVE AREAS ORDINANCE IS THE BASIS FOR THE CONSTRAINT MAP.

3. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

4. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

5. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

6. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

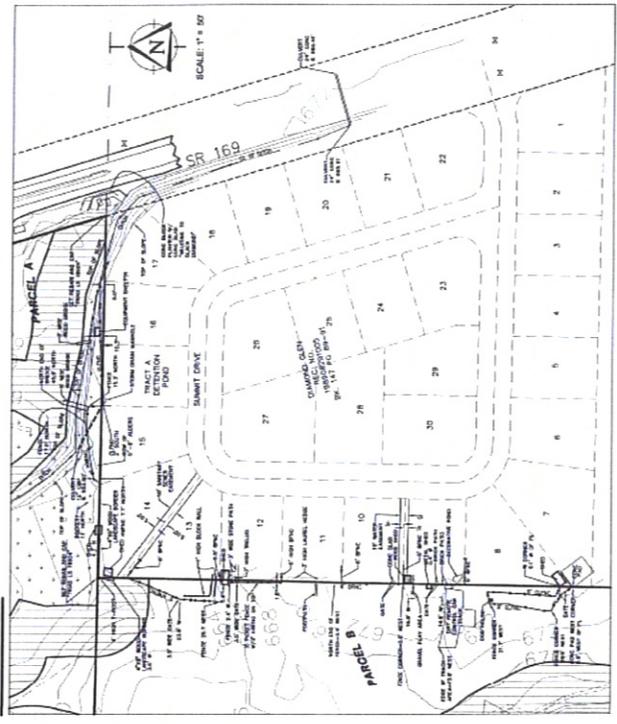
7. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

8. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

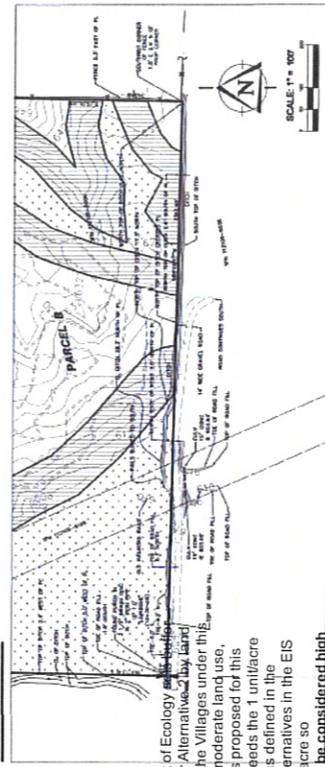
9. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

10. THE WETLANDS AND ASSOCIATED BUFFERS WERE CONSIDERED BY BUFFER AND BUFFER WIDTH AS DEFINED IN THE 2008 BAS SENSITIVE AREAS ORDINANCE.

DETAIL 3



DETAIL 4



*2 Note: The Department of Ecology sets buffer widths for streams under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unit/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so the development would be considered high impact land use and would require 50-100' for NP, NS, 150 ft for F, 200 ft for S, and 225 ft for CORE streams as laid out in the 2008 Parametrix BAS document.



WASHINGTON

THE VILLAGES - PARCEL B
 CONSTRAINT MAP - LAND USE WORKSHEET
 YARROW BAY COMMUNITIES

CITY OF BLACK DIAMOND

REVISIONS

NO.	DATE	DESCRIPTION
1	05/11/07	ISSUED FOR PERMITTING
2	05/11/07	ISSUED FOR PERMITTING
3	05/11/07	ISSUED FOR PERMITTING
4	05/11/07	ISSUED FOR PERMITTING
5	05/11/07	ISSUED FOR PERMITTING
6	05/11/07	ISSUED FOR PERMITTING
7	05/11/07	ISSUED FOR PERMITTING
8	05/11/07	ISSUED FOR PERMITTING
9	05/11/07	ISSUED FOR PERMITTING
10	05/11/07	ISSUED FOR PERMITTING



DATE: 05/11/07
 SHEET NO. 05-336
 1 of 4

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LEGEND

- SHADY WETLAND AREA
- ASSOCIATED WETLAND BUFFER
- WETLANDS THAT MAY BE CONNECTED TO THE CLOSEST WETLAND IN THE EARLY GROWING SEASON, MAYBE CHANGING THE BUFFER
- WETLANDS WHERE THE BUFFER IS REDUCED AND NOT WHAT THE CITY CAO IDENTIFIES
- WETLANDSTREAM HAS A DIFFERENT BUFFER WIDTH UNDER ALTERNATIVE C RECOMMENDED IN THE 2008 BAS DOCUMENT BY PARAMETRIX 1

1 Note: The Department of Ecology sets buffer widths under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unitacre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unitacre so the development would be considered high impact land use and would require 50' for Cat IV, 150 ft for Cat III, and 300 ft for Cat II and Cat I wetlands laid out in the 2008 Parametrix BAS document.

2 Note: The Department of Ecology sets buffer widths for streams under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unitacre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unitacre so the development would be considered high impact land use and would require 50' for Cat IV, 150 ft for Cat III, and 300 ft for Cat II and Cat I wetlands laid out in the 2008 Parametrix BAS document.



WASHINGTON
YARROW BAY COMMUNITIES
THE VILLAGES - PARCELS C, D & E AND THE GUIDETTI PARCEL
CONSTRAINT MAP - LAND USE WORKSHEET

NO.	DESCRIPTION
1	WETLANDS THAT MAY BE CONNECTED TO THE CLOSEST WETLAND IN THE EARLY GROWING SEASON, MAYBE CHANGING THE BUFFER
2	WETLANDS WHERE THE BUFFER IS REDUCED AND NOT WHAT THE CITY CAO IDENTIFIES
3	WETLANDSTREAM HAS A DIFFERENT BUFFER WIDTH UNDER ALTERNATIVE C RECOMMENDED IN THE 2008 BAS DOCUMENT BY PARAMETRIX 1

PARCELS C, D, & E (GUIDETTI PARCEL NOT INCLUDED)
TOTAL AREA 114.41 ACRES
TOTAL CONSTRAINT AREA 114.41 ACRES
TOTAL DEVELOPMENT AREA 317.35 ACRES

PARCEL A
TOTAL AREA 84.82 ACRES

PARCEL B
TOTAL AREA 225.99 ACRES

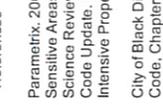
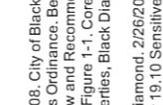
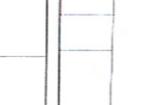
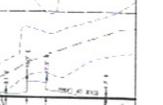
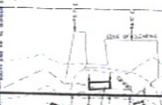
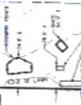
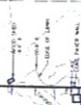
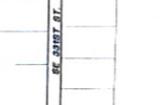
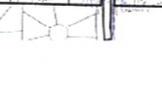
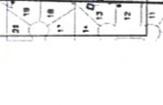
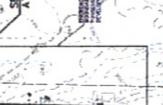
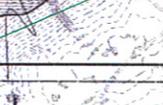
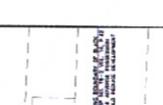
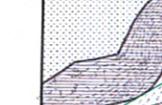
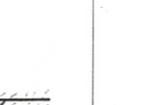
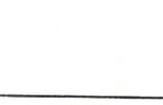
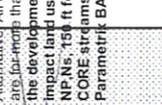
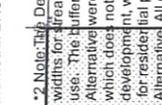
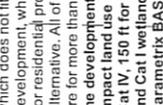
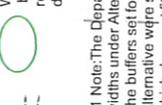
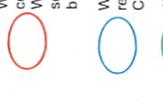
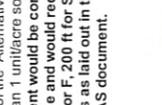
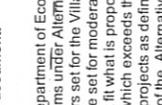
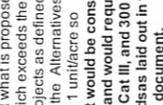
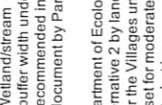
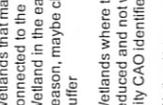
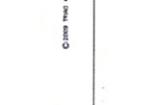
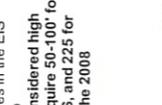
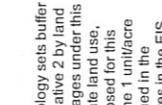
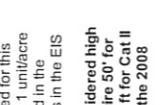
PARCEL C
TOTAL AREA 225.99 ACRES

PARCEL D
TOTAL AREA 225.99 ACRES

PARCEL E
TOTAL AREA 151.0 ACRES

PARCEL F
TOTAL AREA 151.0 ACRES

PARCEL G
TOTAL AREA 151.0 ACRES



**THE VILLAGES - BDA PARCEL AND PARCEL G
 CONSTRAINT MAP - LAND USE WORKSHEET**

YARROW BAY COMMUNITIES



10/17/10



LEGEND

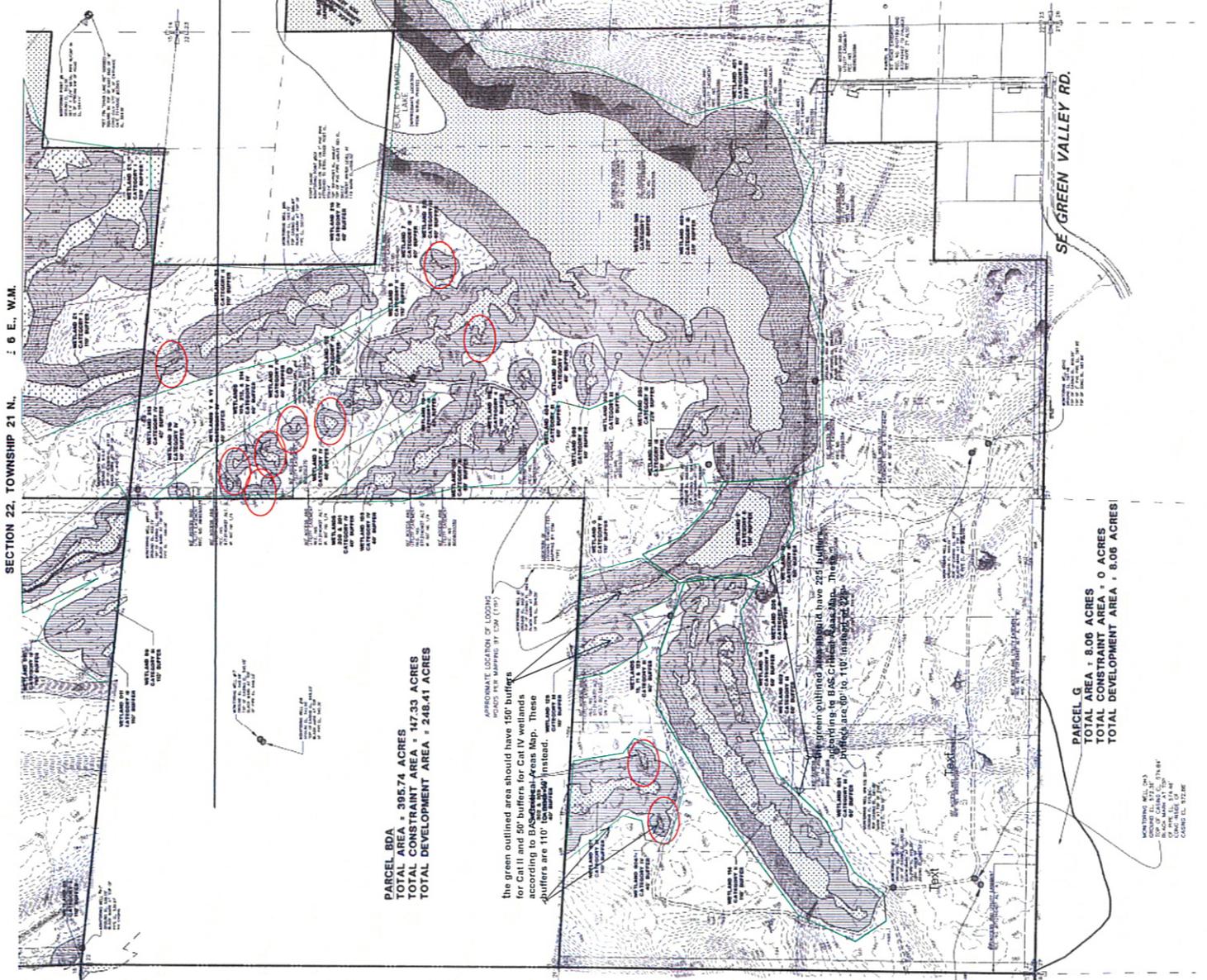
- CORE WETLAND AREA
- ASSOCIATED WETLAND BUFFER
- 50' WETLAND BUFFER
- 150' WETLAND BUFFER
- ONSITE STREAM BUFFER

- Wetlands that may be connected to the closest Wetland in the early growing season, maybe changing the buffer
- Wetlands where the buffer is reduced and not what the City CAO identifies
- Wetland has a different buffer width under Alternative C, recommended in the 2008 BAS document by Parametrix*1

References

Parametrix. 2008. City of Black Diamond, Sensitive Areas Ordinance, Best Available Science Review and Recommendations for Code Update, Figure 1-1, Core Area, Most Intensive Properties, Black Diamond UGA. City of Black Diamond, 2/26/2009. Municipal Code, Chapter 19.10 Sensitive Areas.

*1 Note: The Department of Ecology sets buffer widths under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unit/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so the development would be considered high impact land use and would require 50' for Cat IV, 150 ft for Cat III, and 300 ft for Cat II and Cat I wetlands laid out in the 2008 Parametrix BAS document.



PARCEL BDA
 TOTAL AREA = 385.74 ACRES
 TOTAL CONSTRAINT AREA = 197.33 ACRES
 TOTAL DEVELOPMENT AREA = 248.41 ACRES

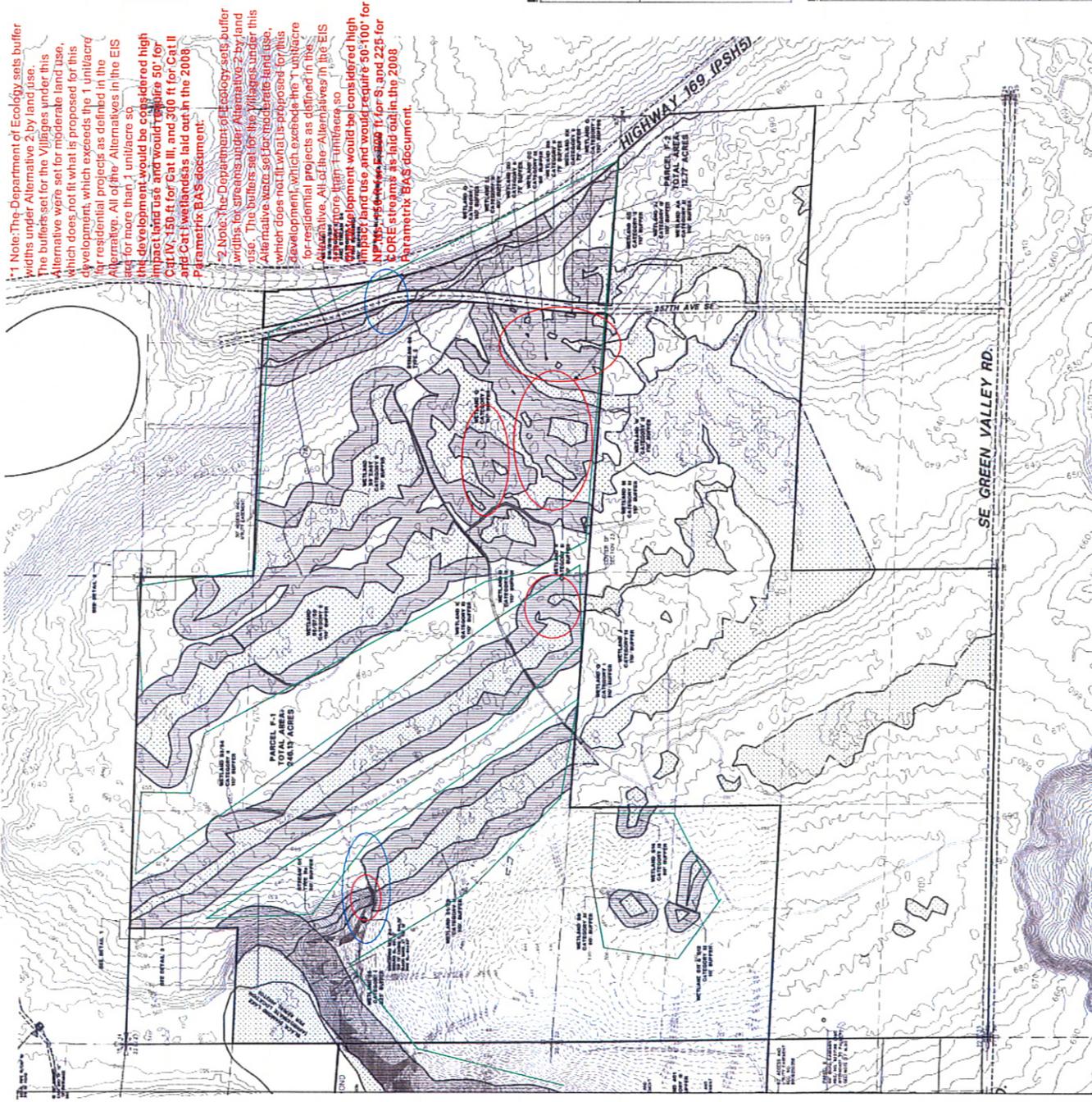
the green outlined area should have 150' buffers for Cat II and 50' buffers for Cat IV wetlands according to the Sensitive Areas Map. These buffers are 110' to 120' buffers.

APPROXIMATE LOCATION OF LOGGING PONDS PER MAPPING BY COW (1995)

the green outlined area should have 200' buffers according to BAS C: River Basins Map. The Cat II buffers are 60' to 110' in length of 120'

PARCEL G
 TOTAL AREA = 8.06 ACRES
 TOTAL CONSTRAINT AREA = 0 ACRES
 TOTAL DEVELOPMENT AREA = 8.06 ACRES

WASHINGTON, DC
 CITY OF BLACK DIAMOND
 10000 WASHINGTON AVENUE
 SUITE 100
 WASHINGTON, DC 20007
 (703) 433-8800
 WWW.TRIADASSOCIATES.COM



***1 Note:** The Department of Ecology sets buffer widths under Alternative 2, by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unitacre/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so this development would be considered high impact land use and would require 50' for Cat IV, 50' ft for Cat III, and 300' ft for Cat II and Cat I wetlands as laid out in the 2008 Parametrix BAS document.

***2 Note:** The Department of Ecology sets buffer widths for streams under Alternative 2 by land use. The buffers set for the Villages under this Alternative were set for moderate land use, which does not fit what is proposed for this development, which exceeds the 1 unit/acre for residential projects as defined in the Alternative. All of the Alternatives in the EIS are for more than 1 unit/acre so this development would be considered high impact land use and would require 50' for NPDES, 50' for non-NPDES I for S, and 225' for CORE streams as laid out in the 2008 Parametrix BAS document.

Wetlands that may be connected to the closest Wetland in the early growing season, maybe changing the buffer

Wetlands where the buffer is reduced and not what the City CAO identifies

Wetland/stream has a different buffer width under Alternative C recommended in the 2008 BAS document by Parametrix*1

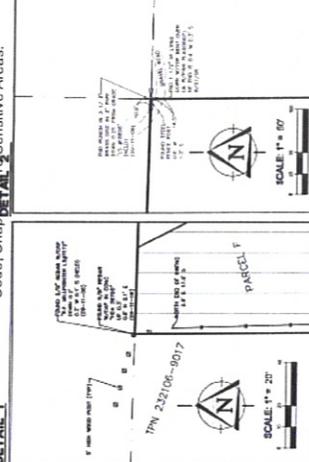


- PARCEL F NORTH
- PARCEL F-1 AREA = 246.13 ACRES
- PARCEL F-1 CONSTRAINT AREA = 122.83 ACRES
- PARCEL F-1 DEVELOPMENT AREA = 123.30 ACRES
- PARCEL F-2 AREA = 12.77 ACRES
- PARCEL F-2 CONSTRAINT AREA = 7.18 ACRES
- PARCEL F-2 DEVELOPMENT AREA = 5.59 ACRES
- PARCEL F-3 AREA = 130.01 ACRES
- PARCEL F-3 CONSTRAINT AREA = 130.01 ACRES
- PARCEL F-3 DEVELOPMENT AREA = 128.89 ACRES

REFERENCES

Parametrix, 2008. City of Black Diamond, Sensitive Areas Ordinance. Best Available Science Review and Recommendations for Code Update. Figure 1-1. Core Area, Most Intensive Properties, Black Diamond UGA.

City of Black Diamond, 2/26/2009. Municipal Code, Chapter 10. Sensitive Areas.





COOKE SCIENTIFIC

4231 NE 110TH ST, SEATTLE, WA 98125
PHONE: (206) 695-2267 FAX: 206-368-5430
COOKESS@COMCAST.NET WWW.COOKESCIENTIFIC.COM

August 4, 2011

Steve Pilcher
City of Black Diamond, Community Development Director
PO Box 599
Black Diamond, WA 98010

**RE: Comments on the Lawson Hills and The Villages Development
Agreements between the City of Black Diamond and BD Lawson Partners**

Dear Mr. Pilcher:

I have reviewed the documents listed below at the request of the citizens group "Save Black Diamond" in preparation for generating comments relating to critical areas and the potential for impacts from implementing the Lawson Hills and The Villages Development Agreements. My comments are as follows:

References Reviewed:

- City of Black Diamond. Staff report Lawson Hills MPD. File # PLN09-0016.
- City of Black Diamond. Staff report The Villages MPD. File # PLN09-0017.
- City of Black Diamond. June 2009. City of Black Diamond Comprehensive Plan.
- City of Black Diamond. December 2009. Lawson Hills MPD Final Environmental Impact Statement.
- City of Black Diamond. December 2009. The Villages MPD Final Environmental Impact Statement.
- City of Issaquah & Sougar Mountain East Village Partnership. 1999. Cougar Mountain East Village Development Agreement
- Otak, Inc. August 2010. Shoreline Analysis Report, Including Shoreline Inventory and Characterization for City of Black Diamond's Shoreline: Lake Sawyer. Prepared for the City of Black Diamond
- Parametrix. 2008. City of Black Diamond Sensitive Areas Ordinance Best Available Science Review, Summary, and Recommendations for Code Update
- Parametrix. November 16, 2009. Technical Memorandum, Peer Review, EIS Element, Wetlands. Lawson Hills and the Villages MPD, EIS. Additional information.

Parametrix, August 27, 2008. Technical Memorandum, Peer Review, EIS. Wetlands Element. Lawson Hills and the Villages MPD, EIS.

Parametrix, June 29, 2009. Lawson Hills and the Villages MPD EIS EIS Element Vegetation and Wetlands Technical Peer Review.

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Lawson Hills Master Plan Development, Development Agreement

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Villages Master Plan Development,

Wetland Resources. September 24, 2009. The Villages MPD Draft EIS Review.

Wetland Resources. July 17, 2008. The Villages Wetland Assessment- Draft EIS Report.

Wetland Resources. May 2, 2008. Lawson Hills Wetland Assessment- Draft EIS Report.

Wetland Resources. July 21, 2009. The Villages Sensitive Areas Study.

Wetland Resources. July 21, 2009. Lawson Hills Sensitive Areas Study.

General Comments

1. The EIS contains statements that plans to prevent erosion, protect trees, provide mitigation for wetland and buffer impacts "will be developed and be in compliance with the City of Black Diamond Sensitive Areas Ordinance" but lacks any details about exactly what will be done. The development agreement also does not outline how this will be done, just that it will be. If the City is planning on locking into a development agreement that provides no details from a sensitive areas perspective despite the fact that the stormwater provisions set the precedence that the stormwater standards and NPDES standards will be set by whatever are the current standards approved by the City at the beginning of a new phase (Section 7.4.4), then this gives the developers carte blanche to do what they please in the future because there promises to be no oversight as the permits has effectively already been granted.
2. I do not have the opportunity to go out and verify the wetland boundaries, but apparently the city staff have not done so either, other than a cursory site visit and the ultimate jurisdiction over wetland boundaries, the US Army Corps of Engineers has not done a verification for this project either. Acceptance of wetland boundaries by the City does not constitute approval by the Corps, and what's more, the Corps statute of limitations on wetland boundaries determinations is only 5 years so it is wholly inappropriate for the City to approve agreements for the Villages and Lawson Hills MPDs where the wetland delineation boundaries are grandfathered for 15 or 20 years.
3. Prior notification to the Corps is required before approval of wetland impacts. There is a Federal nexus needs to be addressed.
4. Wetland ratings for both MPD's have been established without examination of offsite wetlands, which appear to possibly be much higher wetland categories, and which also appear to be contiguous with wetlands on all parcels (A, B-G and

BDA). If this is correct, the ratings would be higher and the subsequent required buffers wider. No one has raised this issue in their review at either the city or 3rd party reviews, but it is certain that the Department of Ecology and Army Corps of Engineers would. An example of this is found in the Parametrix report where *“With regard to wetland buffers, wetlands K and F on the Main Property are designated as headwater wetlands in the City’ SAO. The MPD application submitted in support of Alternative 2 does not characterize these wetlands as headwater wetlands, and instead utilized the Washington State Rating System for Western Washington to calculate required buffers for these wetlands. As designated headwater wetlands, under City codes these wetlands require 225 foot wide buffers. The application materials assign a 110 foot buffer to wetland F and a 60 foot buffer to wetland K.*

5. Cumulative Impacts as identified in both the Lawson Hills and The Villages EIS documents do not cover the indirect effects of having these massive wetlands systems that are completely surrounded by development, some of it high density residential and industrial. Also Qualitative and quantitative descriptions of the impacts associated with each alternative need to be provided.
6. Additional studies need to be done before a decision is made. Wetland Boundaries and ratings have to be verified by the State (Washington State Department of Ecology) and Federal (US Army Corps of Engineers, US Environmental Protection Agency) agencies. The City can't approve these projects without these studies and review by the salient agencies. *As stated in the Parametrix peer review memorandum, “we will still need to confirm that the proposed wetland creation sites adjacent to Wetlands MM, J, and O, and offsite wetlands, have adequate buffers under alternative 2.”*
7. The villages and Lawson Hills MPD land use plan shows that there is a very large amount of wetland and stream throughout the site (for some of the parcels as much as 50%). These wetlands are surrounded by development, sometimes moderate (V27, V28, V31, V34) and high density (V3, V13) residential, and even some light industrial (V7, V9) . The massive wetland crosses from east to west across the development and will be completely surrounded by development.
8. Little to no work has been done on groundwater systems, especially as they feed the massive wetlands systems in the area. There has been no discussion of what happens when you completely surround these wetlands with development on the base flow of the wetland systems. This is not discussed in either of the EIS documents. For example there are four separate aquifer layers, with different water sources as well as runoff patterns. Although that reference is to "The Villages," there are even more mines on the Lawson site which is on a hill. How will these developments effect the wetlands that are fed by these aquifer
9. IN the words of Parametrix *“In addition, measures taken to avoid impacts or a quantitative assessment of impacts to the bog adjacent to Black Diamond Lake within the Villages MPD area needs to be discussed. According to the preliminary management guidelines for Sphagnum dominated peatlands, as attached to the Plants and Animals ‘existing conditions’ for The Villages (also prepared by Wetland Resources, Inc.), hydrology is one of the most important physical factors that can be altered by human activities in the watershed of a sphagnum dominated peatland. Avoiding conditions that increase water level fluctuations*

into or within a peatland is important in avoiding impacts. A more sophisticated hydrologic analysis/analysis of impacts from developed conditions of the bog needs to be completed to accurately determine/address impacts and determine appropriate mitigation, if necessary.”

Peer reviews

1. There has been no peer review by either the Washington State Department of Ecology nor the US Army Corps of Engineers. Neither agency has heard of this project (pers. Comm. Muff Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers). Patrick McGainer at the Department of Ecology who reviews projects in south King County, received the Draft EIS in December of 2009 but was unable to perform much of a review because there was not sufficient information in the Draft EIS to do that, especially with respect to mitigation offered, and he told me he was waiting until a permit was submitted for the two MPD's (Pers. Comm. July 8, 2011). Erik Stockdale senior technical advisor for the DEO's Bellevue office stated that no wetland boundaries should be approved prior to the Crops verifying the boundaries.
2. **The City of Black Diamond Staff review reports make no mention of performing a site verification for the wetlands boundaries nor do they discuss any details about review in the wetland reports.** They simply state that the wetland boundaries are approved as shown in the Wetland resources Reports (. However, “Even though an FEIS was issued for the Lawson Hills MPD project, and whether or not a Planned Action Ordinance is ultimately implemented, staff is recommending that all subsequent implementing city permits be subject to applicable SEPA requirements. At this time, given the conceptual nature of the proposal, **staff is not supportive of a Planned Action Ordinance action**”. (Pg 9 staff report). Unfortunately staff reviewed the mitigation concepts in the EIS and “The recommended MPD conditions of approval include a majority of the mitigation measures identified in the FEIS. Therefore, significant adverse environmental impacts can be appropriately mitigated.”
3. Parametrix provided a third party review of the wetlands work. This is the statement on their review *“technical report and brief field inspections of The Villages wetlands on June 9 and 10, 2008, I conclude that the Wetlands Report **generally** provides accurate mapping and description of wetlands on the Villages parcels. Two biologists visited **most of the accessible** wetlands on the property. And “No discussion of impacts was included in the document. Without addressing impacts, the document lacks sufficient information to identify mitigation. Qualitative and quantitative descriptions of the impacts associated with each alternative need to be provided. The area of identified wetlands needs to replace the placeholders (xxx) in various sections of the report.”*

Development Agreement and EIS Deficiencies

The development agreements for both The Villages and Lawson Hills state the MPD's are consistent with and implements Washington State's Growth management Act (GMA). From a perspective of sensitive areas this is not true. There is no evidence there has been:

1. **A comprehensive review process for the development impacts on wetlands and streams.** When a detailed wetlands boundary verification has not been done by the city or it's 3rd party reviewers (Parametricx November 2009 peer review) and certainly not by the Corps or the Washington State Department of Ecology, then a platted development cannot be finalized and buffers cannot be set. The Development agreement states that this has been done (Section 8.1) but a JD can only be done by the Army Corps of Engineers and the lead and regional staff have no knowledge of this project Ecology (Pers. Comm., Matt Bennett, Seattle District Army Corps of Engineers, July 8, 2011). Staff at the City states they have only taken a cursory glance at wetland boundaries. How can staff be sure there will be no changes to the wetlands over time or even that the current boundaries are accurate? How can the development agreement state "The wetland delineations and types outlined in the Constraints Map are deemed final and complete. (Section 8.2.1)?"
2. **An Identification) of significant environmental impacts and ensure appropriate mitigation,** when it is not known if the wetland boundaries are correct, and no mitigation plan has been offered at this time. "Master Planning concepts" are not provided in sufficient detail to make informed decisions. How do we know that "Implementing the project does not propose any changes or alterations to sensitive areas or their buffers as shown in the reports described in Subsection 8.2 is exempt from the requirements of BDMC 19.10.120(C) Sensitive Area Jurisdiction Decision, and the reports required by BDMC 19.10.130, BDMC 19.10.337, BDMC". There could be many more wetlands and therefore more wetland impacts than are identified in the report.
3. **Protection of wetlands and other sensitive areas and their associated buffers,** when it would be impossible to state this is being met with statements like "Sensitive areas and their buffers may be modified through updated wetland reports, buffer averaging, grading to eliminate steep slopes, and/or filling of wetlands or as otherwise allowed by and in compliance with the City's Sensitive Areas Ordinance (SAO). Further, steep slope Setbacks and coal mine hazard areas may be reduced as stated in The Villages Master Planned Development (Draft Development Agreement, The Villages 9/19/2010).
4. **Protection of wetlands and other sensitive areas and their associated buffers** that depends heavily on the effectiveness of the SAO and implementing the intent of the ordinance. The City of Black Diamond Comprehensive Plan Policy NE-9 states, "Protect sensitive areas from inappropriate land uses, activities, or development through continued application of periodic updates to the CAO [Critical Area Ordinance referred to by the City as the Sensitive Area Ordinance] and development regulations. The City [of the City] will monitor the effectiveness of its CAO and will modify this ordinance as necessary, based upon the information gathered during monitoring." (City of Black Diamond Comprehensive Plan, Chapter 4-26, June, 2009). As a Condition of approval it is

recommended the Development Agreement make provisions to monitor the effectiveness of the SAO during buildout. The SAO should not be diluted by variances and changes in standards that would result in adverse impacts to wetlands and sensitive areas.

5. **The development agreement states “The Villages MPD Land Use Map satisfies the avoidance criteria of BDMC 19.10.050 because it avoids impacting wetland, streams and associated buffers to the maximum extent possible, and any proposed alterations are the minimum necessary to allow for access and extension of utilities across the Project Site. BUT** Mitigation Sequencing can only be determined by the Army Corps of engineers and I have already established they have not reviewed this project. An actual impact and mitigation report would have to be submitted to the Corps for review and approval for this to occur. The City can approve this but the final approval must come from the Corps, DOEs and US EPA.
6. **Provision of environmentally sustainable development** are not being met since we have no idea what mitigation will be provided and we do not know if in the future the wetlands and streams will change and if they do, they would be impacted because the City is proposing to lock into the wetland boundaries and buffers for all future development as of the 2009 delineation. Neither the State nor the Feds who have ultimate jurisdiction over wetlands would agree to this.
7. **The Development Agreement does not include plans for the preservation and enhancement of wetlands and on mitigation measures to be implemented for the loss or alterations to wetlands caused by utility and road crossings and other encroachments.** BDMC 18.98.020 (A) states, “A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but not limited to: A. preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc) of the site”. One purpose of the Sensitive Area Ordinance is “To limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values.” (City of Black Diamond, SAO no. 08-875, p.5). Avoidance of adverse impacts is the action of preference according to BDMC 19.10.050 in order to achieve no net loss wetlands or their functions and values. It is recommended a Wetland Preservation Plan be incorporated in the Development Agreement to provide goals and implementation guidelines to protect all wetlands, especially the core stream-lake-wetland complexes on- and off-site. Goals for core stream-lake-wetland preservation may include:
 - **Protect plant and animal species and biological habitat of stream-lake-wetland complexes** associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek. This has been recommended by Parametrix in their BAS document “The Rock Creek/Jones Lake/Jones Creek corridor and the Black Diamond Lake/Stream corridors and the associated wetland complexes should be recognized as a core area that provides a variety of water supply, water quality, and habitat functions. These functions are essential to the preservation of water quality in Lake Sawyer, and to continue to

provide the rich ecological functions of these systems. To function as wildlife corridors, they should extend to Ravensdale Creek to the north and the UGA boundaries to the east and west. They should be preserved with a minimum buffer width of 225 feet and requirements for adjacent uses to incorporate measures to reduce proximity impacts from noise, light and glare, stormwater and predation from pets. These corridors also should extend to the boundaries of adjacent steep slopes and may be widened where possible through a transfer of a portion of the buffer area from lower priority stream complexes.”

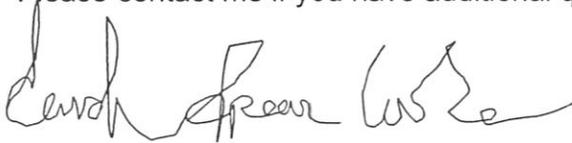
- **Prevent Degradation and Loss of Vegetation Condition 65.** “Where point discharges to streams must occur, design the outfall to minimize impacts to stream channel and avoid areas of significant vegetation.” [FEIS Mitigation]. The Development Agreement fails to address Condition 65. The Development Agreement needs to indicate explicitly, as a project goal, that no net loss of sensitive areas is to occur on-site. Mitigation sequencing provisions of BDMC 19.10.050 in the SAO requires that development avoid sensitive areas as the first goal and where all practical and feasible avoidance measures have been employed. The Development Agreement needs to describe at least general mitigation guidelines if stream and buffer alterations should occur in sensitive area buffers. For example, a stormwater pond is proposed to be located in the Rock Creek wetland buffer (Development Agreement, Conceptual Stormwater Plan, figure 7.4, June, 2011s).
- **Condition 118. “Implementing projects shall provide “on the ground” protection measures such as wetland buffers or root protection zones for significant trees.” [FEIS Mitigation Measure]** The Development Agreement fails to address Condition 118 or “on the ground” protection measures for significant trees. Randall Arendt stressed the importance of field visits (“on the ground”) to identify and conserve significant trees or stands of trees to incorporate in creative open space and city landscaping compared to conventional or “cookbook” development procedures.
- **Condition 120. “A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.”** The Development Agreement fails to address Condition 120. Tree inventories are consistent with rural- by-design principles and need to be done in the early planning design in order conserve significant trees for city landscaping as opposed to conventional practices of clear-cutting a site (Randall Arendt, Black Diamond City Council work session, April 14, 2011). Promoting rural-by-design principles into new development is required by BDMC:18.98.010(L): “Promote and achieve the city’s vision of incorporating and/or as adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for...; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in book ‘Rural by Design’ by Randall Arendt and in the City’s Design Standards.” Data from the tree inventory must used for creative open space and

landscape design opportunities. Contrary to a key principle in Rural-by-Design, clearing cutting the site is indicated according to the Hearing Examiner's discussion: "Given the proposed densities, it is anticipated that the development areas shown on Figure 3-1 Land Use Plan will be cleared of all vegetation and graded to facilitate development" (The Villages, Findings, Conclusions and Decision, 2010, p. 214).

8. **Aquifer recharge areas are greatly underestimated as are the potential impacts the project might have on these areas.** Parametrix in their Best Available Science review document for the City have stated that "Data already compiled and described above appear sufficient to support determination of aquifer susceptibility and vulnerability in the City of Black Diamond. Aquifer recharge areas may be identified largely by surficial soils and categorized for sensitivity based on "DRASTIC - A Standardized System for Evaluated Groundwater Pollution Potential Using Hydrogeologic Settings" (Aller et al. June 1987, US Environmental Protection Agency, Publication Number 600287035).

Wellhead protection areas (WHPAs) designated by water purveyors (as required by WAC 246-290-145) and mapped by Ecology (2006) should be added to the City's aquifer recharge area map, showing the 10-year ground-water travel-time area to each well or well field. Superposition of all designated WHPAs illustrates where aquifers are currently used for water supply. The mapping should be updated periodically to allow for additions and deletions of specific water wells. These data should be checked with State of Washington Department of Health and King County Health Department records." A review of the development agreement and EIS for the two projects barely grazes the topic of aquifer recharge. This is of concern for many reasons. A) maintenance of streams, wetlands and lakes in the area are certainly dependent on maintenance of aquifers and b) many citizens within the city limits are dependent on wells and would certainly be concerned if the aquifers that feed those wells was impacted. Further investigation is needed to determine if the State's Department of Natural resources aquifer recharge areas maps have been incorporated into the City's inventory and certainly more research on the location and dept of the aquifers is necessary before any platting is done for development as construction is not allowed in aquifer recharge areas by State law.

Please contact me if you have additional questions.



Sarah Cooke
Professional Wetland Scientist,
Fellow, Society of Wetland Scientists



COOKE SCIENTIFIC

4231 NE 110TH ST, SEATTLE, WA 98125
PHONE: (206) 695-2267 FAX: 206-368-5430
COOKESS@COMCAST.NET WWW.COOKESCIENTIFIC.COM

August 12, 2011

Steve Pilcher
City of Black Diamond, Community Development Director
PO Box 599
Black Diamond, WA 98010

RE: Response to Yarrow Bay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order II: Comments on the Lawson Hills and The Villages Development Agreements between the City of Black Diamond and BD Lawson Partners

Dear Mr. Pilcher:

I have reviewed the rebuttal comments submitted by the Yarrow Bay Consultants on both July and August 12, pursuant to my public testimony during the hearing and my written comments and have prepared the following rebuttal:

References Reviewed:

- City of Black Diamond. Staff report Lawson Hills MPD. File # PLN09-0016.
- City of Black Diamond. Staff report The Villages MPD. File # PLN09-0017.
- City of Black Diamond. June 2009. City of Black Diamond Comprehensive Plan.
- City of Black Diamond. December 2009. Lawson Hills MPD Final Environmental Impact Statement.
- City of Black Diamond. December 2009. The Villages MPD Final Environmental Impact Statement.
- City of Issaquah & Sougar Mountain East Village Partnership. 1999. Cougar Mountain East Village Development Agreement
- Otak, Inc. August 2010. Shoreline Analysis Report, Including Shoreline Inventory and Characterization for City of Black Diamond's Shoreline: Lake Sawyer. Prepared for the City of Black Diamond
- Parametrix. 2008. City of Black Diamond Sensitive Areas Ordinance Best Available Science Review, Summary, and Recommendations for Code Update
- Parametrix. November 16, 2009. Technical Memorandum, Peer Review, EIS Element, Wetlands. Lawson Hills and the Villages MPD, EIS. Additional information.

Parametrix, August 27, 2008. Technical Memorandum, Peer Review, EIS. Wetlands Element. Lawson Hills and the Villages MPD, EIS.

Parametrix, June 29, 2009. Lawson Hills and the Villages MPD EIS EIS Element Vegetation and Wetlands Technical Peer Review.

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Lawson Hills Master Plan Development, Development Agreement

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Villages Master Plan Development,

Wetland Resources. September 24, 2009. The Villages MPD Draft EIS Review.

Wetland Resources. July 17, 2008. The Villages Wetland Assessment- Draft EIS Report.

Wetland Resources. May 2, 2008. Lawson Hills Wetland Assessment- Draft EIS Report.

Wetland Resources. July 21, 2009. The Villages Sensitive Areas Study.

Wetland Resources. July 21, 2009. Lawson Hills Sensitive Areas Study.

Yarrow Bay August 4, 2011. Yarrow Bay's Written Testimony Pursuant to hearing Examiner's Pre-Hearing Order II.

Yarrow Bay. August 12, 2011. Yarrow Bay's Written Testimony Pursuant to hearing Examiner's Pre-Hearing Order II.

Section 8.2.1 Scott Brainard's/Yarrow Bay's responses, August 4 and August 12:

Yarrow Bay has asked Scott Brainard to provide rebuttal to both my oral and written public comments that a) the constraint maps are not specific enough (Section 8.2.1 "The wetland delineations and types outlined in the Constraints Map are deemed final and complete") (for providing a basis for wetland decisions in the Development Agreement) and b) Mr. Brainard and Yarrow Bay's contention that "The EIS for both The Villages and Lawson Hills have been deemed adequate in their entirety, including wetlands, buffers, and conceptual mitigation measures identified in.....".

I was not allowed to expand my oral testimony during the hearing so an expansion of my comments are provided below. I will outline multiple examples of why and where the development wetland maps are inaccurate and why the development agreement is not sufficient to protect critical areas under State Code RCW 90.48.

1. **One item of Mr. Brainard's and Yarrow Bay's comments is that "the EIS for both The Villages and Lawson Hills was deemed accurate in their entirety, including wetlands, buffers, and conceptual mitigation measures.....". My question here is Who has deemed the two EIS's "accurate in their entirety"? None of the agencies listed below with final approval review have examined the EIS (Pers. Comm. Muffy Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers, July 8, 2011); (pers. Comm. Patrick McGrainer SE King County Wetlands project reviewer, Wa. State Department of Ecology, July 8, 2011); Pers. Comm. Linda**

Storm, US Environmental Protection Agency, Seattle District, July 13, 2011).
Therefore, this statement clearly not accurate or true.

2. **In addition The EIS is written with all impacts related to what was required in the City's August 2007 Critical Areas Ordinance. This is a direct contradiction with SEPA law that requires a discussion of environmental impacts based on current scientific knowledge.** Instead, the DEIS discloses the legal impacts (violations) of each alternative under outdated law, not the true scientifically-based impacts of the proposed project. The SEPA official needs to know what the potential impacts are, not if the project is in compliance with an outdated ordinance. **Vesting does not impact the disclosure and analysis of scientifically-based environmental impacts in an EIS, even if affects the permitting process at a later date.** The delineation method used and the buffer section below describes two implication of this problem.
3. **The wetland boundaries have not been verified by the US Army Corps of Engineers, the ultimate authority for all wetland boundary verifications. "No final Jurisdictional Determination or final wetland boundary mapping can be made without this determination"** (Pers. Comm. Muffy Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers, July 8, 2011). Approval by the City makes no sense in light of the fact that all the wetland boundaries still have to be approved.
4. **It is highly likely that the wetland boundaries are not accurate, especially with respect to those determined as "isolated" from the larger Category I wetland, but which are in very close proximity to the Category I wetland.** Most of these "isolated" wetlands have been determined to be Category II, III, and IV wetlands, all of which conveniently have smaller required buffer widths. If any of these wetlands were found to be connected and the larger 225 foot buffer was applied then the area available for development would be reduced accordingly.
5. **The Corps of Engineers wetland boundary verification, statute of limitations is only 5 years.** The basis for this term is that wetlands are not static habitats. As groundwater discharge and recharge locations shift and surface water drainage patterns change wetland boundaries. The Corps and Department of Ecology would NEVER approve a boundary approval lasting longer then the 5 years. (Pers Comm. Muffy Walker, July 2011).
6. **Mr. Brainard states " BDMC 19.10 does not require that wetland boundaries be reviewed and/or approved by the US Amy Corps of Engineers (Corps) or the Washington State Department of Ecology (DOE)". Unfortunately, this statement is only accurate if the wetland in question is only under the jurisdiction of the local authority, where there will be less than 0.1 acre of impact proposed.** Since State jurisdiction supercedes local authority and federal jurisdiction supercedes both state and local jurisdiction in every instance if more than 01. acre of impact is proposed, his statement is not salient to these developments, which both are proposing well in excess of 01. acre of impact under all but the "No Action" scenario.
7. **Mr Brainard states that that wetland boundaries were delineated using the requirements in RCW 36.70.175 and 90.58.380 from 1997, which requires the use**

of the Washington State Wetland Delineation manual. This protocol was replaced and required to be used by both the DOE and the Army Corps of Engineers in 2008 with the publication on June 27, 2008 of the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coasts). This was prior to the production and approval of the FEIS. Additionally, Ecology went one step further and repealed WAC 173-22-080 (the state delineation manual) and replaced it with a revision of WAC 173-22-035 that states delineations should be done according to the currently approved federal manual and supplements. The changes were effective, March 14, 2011, prior to the approval of the Development Agreement. The regional supplement methodology for determining wetlands is quite different in the criteria for soils, vegetation, and hydrology. The use of the wrong method and different criteria increases the chance that some of the wetland boundaries are incorrect and that impacts to wetlands can occur because development is planned in some areas that meet the wetland criteria, but which are identified as wetlands in the Development Agreement Maps.

8. **Mr Brainard stated that ‘Wetland boundaries have been delineated by Wetland resources and approved by the city and their third party reviewer. The third party review was conducted by qualified individuals from Parametrix. These reviewers looked at individual wetland flags, data, and wetland rating forms and deemed them accurate’.** **I feel it important to call the accuracy of these statements in question.**

a) The City of Black Diamond Staff review reports make no mention of performing a site verification for the wetlands boundaries nor do they discuss any details about review in the wetland reports. They simply state that the wetland boundaries are approved as shown in the Wetland resources Reports Further, the city has no qualified wetlands person on staff who has the training or knowledge to evaluate a wetlands delineation. So staff is simply not qualified to determine if the wetland maps and ratings are correct.

b) The third party reviewer stated in their peer review documents listed above that their review consisted of “a review of the technical report and brief field inspections of The Villages wetlands on June 9 and 10, 2008” and “Two biologists visited most of the accessible wetlands on the property. (Parametrix November 2009 peer review). This certainly does not constitute a thorough review that would be necessary for mapping wetlands whose boundaries would be without dispute for the next 15 to 20 years.

9. **Wetland ratings for both MPD’s have been established without examination of offsite wetlands.** This is in direct violation to protocol which specifically states that the entire wetland must be evaluated before a rating is assigned. (Pers. Comm. Tom Hruby, Author *Wetland Rating for Western Washington* , 2004, April 2006). This is important because buffer widths are established based on the wetland rating.

One such example (but by no means the only example) is identified in the Parametrix report where “With regard to wetland buffers, wetlands K and F on the Main Property are designated as headwater wetlands in the City’ SAO. The MPD application submitted in support of Alternative 2 does not characterize these wetlands as

headwater wetlands, and instead utilized the Washington State Rating System for Western Washington to calculate required buffers for these wetlands. As designated headwater wetlands, under City codes these wetlands require 225 foot wide buffers. The application materials assign a 110 foot buffer to wetland F and a 60 foot buffer to wetland K.”

10. The actual wetland mapping is not consistent between maps produced by the City. An examination of the Best Available Science wetland mapping (Parametrix (attached) and the Constraint maps shows many areas where the wetlands and their buffers differ between the two. It is necessary to make a comparison of these two maps to see many examples of inconsistencies. There are areas where lobes of wetlands are cut off with no buffers assigned and no impact identified, there are areas where wetlands are in very close proximity but deemed isolated when it is most likely they are contiguous in the field, there are areas where a reduced buffer has been assigned but no reason identified other than it increases the associated lot size for development.

In summary,

An adverse environmental impact that is specifically attributable to the Development Agreement is the fact that the Development Agreement locks into place for a period of fifteen years or more the sensitive area delineations and buffers that are identified in the MPD permit approval. This can result in reductions to wetlands size, and functions in the following ways:

- The delineations have not been reviewed by other agencies with regulatory authority
- The delineations incorrectly characterize wetlands as isolated instead of as part of a network of associated and connected wetlands.
- The mapping of the sensitive areas are not internally consistent with other documents in the record including the Parametrix study and the FEIS.
- Associated buffers and therefore protections for the wetlands are inconsistent between the City’s own maps

The MPD permit approval did not fully 'lock-in' the delineations and buffer widths, but rather left it to the Development Agreement to do so. **Any changes in the sensitive areas extent or location over time will not be accommodated and therefore impacts to critical areas WILL OCCUR and are will be fully attributable to the Development Agreement.**

The city has a duty to be in compliance with all applicable regulations and rules on the State and Federal levels. For the city to knowingly violate one or more of these requirements puts them at risk for legal action. The City and Yarrow Bay will have to obtain NPDES, Section 404b, ESA and other approvals on the State and Federal levels. By approving development agreements that are not in compliance with State and Federal regulations, the city is, in effect, engaged in an unlawful contract with Yarrow Bay. The city cannot agree to findings that contradict its inherent

responsibility under State and Federal law as a member of a regional collective of agencies.

The implementation of the Clean Water Act rests on the good faith efforts of the local governments. Since the Clean Water Act, relies on science to set development constraints to protect Waters of the US and Best Available Science is by nature constantly updating and changing, the city's effort to freeze the critical areas locations and regulations for the 15 to 20 year duration of the development agreements severely limits the City's ability to propose appropriate development constraints with which to comply with the Clean Water Act.

Please contact me if you have additional questions.

A handwritten signature in black ink, appearing to read "Sarah Cooke". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Cooke".

Sarah Cooke
Professional Wetland Scientist,
Fellow, Society of Wetland Scientist

Issaquah Highlands

Buffer Conditions Past, Present, and Future

Current Conditions

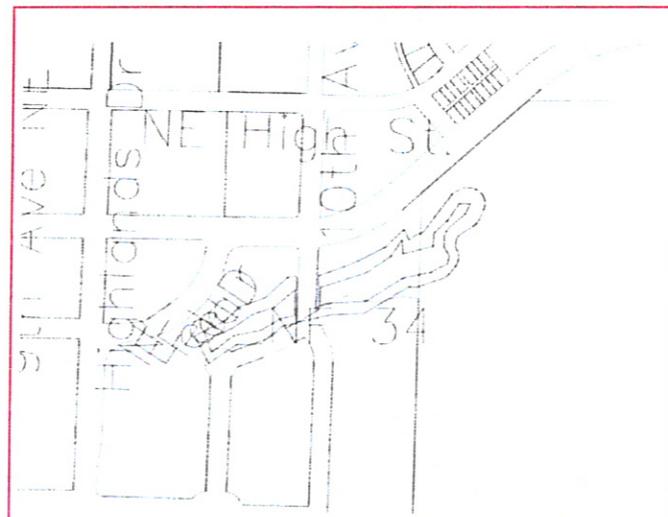
- As of January 2007 most of the wetland and riparian corridors throughout the Highlands are at severe risk from losing many to all of the trees in both the wetlands and buffers.
- Unfortunately no infill planting was identified in the original development agreement, and no one anticipated the huge percentage of trees that have fallen over time, or the weeds that have taken over in the areas left vacant.

Some examples of problem areas – NF34



NF34 before
the 10th Ave road
cut and before
the trees fell
down

Some examples of problem areas NF34



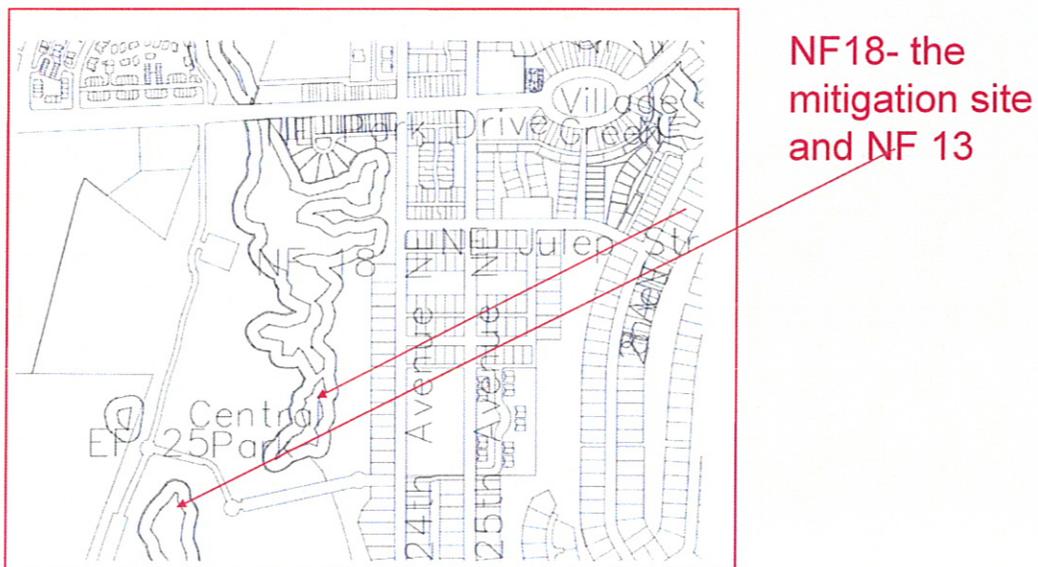
Some examples of problem areas

NF34



Some examples of problem areas

NF – 18



Some examples of problem areas



NF18- the mitigation site and NF 13

Before most of the trees fell

Some examples of problem areas 18



NF18- south edge 2005

Same edge now

No conifers are left



Some examples of problem areas – NF-13



NF13- northeast
edge today

No large trees
are left and
garbage, weeds
and woody
debris are
common

Some examples of problem areas – NF-17



NF17, Division
32- was bisected
by a major road
and the southern
lobe isolated

Some examples of problem areas – NF-17



NF17- northeast
edge today

No large trees
are left in either
the wetland or
buffer for much
of this Corridor
weeds are
common.

Some examples of problem areas – NF-10



NF10- many
years ago right
after the
clearing, before
the roads and
while there was
still significant
old trees in the
eastern lobe

Some examples of problem areas – NF-10



NF10- northeast
edge today

Eastern lobe

Some examples of problem areas – NF-10



NF10- east edge
today

Trees are
coming down at
an alarming rate
and weeds are
common.

The future, what can we do?

- The responsibility for replanting these critical areas has been taken on by Port Blakely and the MDRT to-date. Port Blakely has provided substantial monetary assistance targeted for replanting the trees and weed eradication.
- Two phases of replanting have already occurred; 3,200 in 13 areas in spring of 2007 and 6,000 trees in 14 areas in the spring of 2008.
- A final woody debris removal will occur this fall in the worst areas (e.g. NF34, NF17) and the next group of trees will be installed in winter of 2009.
- In the future more planting will be needed as more trees come down and remaining areas that need help are identified. Who will oversee and pay for this work?
- This problem is not confined to The Highlands. Can we get this program expanded to other areas of the City?

Erika Morgan
33624 Abrams Ave
360 886 0187
<smilemeadow@tx3.net>

Dear Black Diamond City Council

I hope you have read over my comments for the Hearing Examiner, they are for you too. Time and space constraints stop me from explaining all my many concerns with these DA. I notice that the comments would suggest that we do not all share all the same concerns but for me at least that could not be further from the facts. I share many concerns that are brought before you, unless I don't know enough about the subjects to have an opinion, there so I am willing to stipulate to those opinions of so many of my fellow citizens.

This process for you has sadly emphasized appearances and wishful thinking in place of the hard core reality. In case you wonder why us die diehards walked out for the presentation by the city staff and Yarrow Bay, we were channel surfing. We have all seen the cleaver ad before, and we are not buying it. You have been cut off from your constituents by the process, you have not been able to interact with your neighbors freely for years now. You have been in virtual seclusion with only input from Yarrow Bay and their hand picked Black Diamond city staff. You are actually prisoners to their process. They are very accomplished and cleaver sellers of their projects, it is after all the business of their business. They've practice at what they do, and you are amateurs, malleable putty in their hands, professionally groomed for the job they need you to do.

I, and many of your constituents out here in the real world were not under a "cone of silence", we have exercised our right to meet and discuss, read, analyze and collectively think about and dialog about what it is Black Diamond is thinking of signing us up for as a community. We have endeavored to understand each others points of view and the reasons behind those points. We have tried to grasp the meanings for Black Diamond, of the points held by YB and city staff. Your process has muzzled and constrained us, so Yarrow Bay can pretend we only have limited concerns individually, that are easily dispelled (the divide and conquer principle at work). In spite of my zeroing in on certain parts of the plan, I have many concerns with it; concerns you will, and have head about from others. Our stated process of Planning Commission Hearing and Recommendation, has been denied us to the detriment of Black Diamond. I have concerns about every page of the DA and rue a time to formally entertain the problems in the Planning Commission setting. Our Hearing Examiner speaks to this issue for himself. There is no time to actually study all of the plan with the intensity and forethought that future residents of Black Diamond have the right to expect from us, or that residents were promised in the Black Diamond Comp Plan.

EXHIBIT

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I actually respect council people who refuse to continue with the “being lawful in pretense only” stance. Wishful thinking, at the expense of reality is ruling the day, this is where the actual jeopardy lurks. It is in the realities of the natural world over which no government has any control, but which with proper oversight are entirely predictable and thus preventable; this is where there is real legal and financial jeopardy for Black Diamond. I have been to review the better than two cubic feet of archive about these properties. There is legal jeopardy on every page and scrap they have. They literally have every scrap, torn bits of paper, news paper clippings, bound reports and studies and legal records and judgments, I had them copy 850 pages for me to review. There will be a similar publicly available archival from these proceedings. Plum Creek and Palmer Coking Coal have both signed letters of perpetual covenant curbing their properties to an overall one unit per acre to be clustered to at least four units per acre where utilities are extended as a condition to having their properties annexed into Black Diamond and thus come under the Urban Growth Area. Black Diamond Associates formally recognized the constraint but did not sign a specific letter, about this.

I want to tell you about my personal wetland walk with Dr. Sarah Cooke of Cooke Scientific, a wetland scientist and professor, on the day she came prepared to offer expert testimony for the open record hearing, she was all studied up on this DA before you. We walked for about an hour around the north and east sides of Black Diamond Lake. As we progressed onto section 23 through a mostly sword fern salmon berry carpet under an approximately 35 year old re-prod forest, she kept emphasizing that we were traversing wetland. I asked her about the damp areas where YB had cut through the road blanket presumably to inhibit quaders, but actually making it more enticing for them. She explained that:

(1.) There are no wetland buffers in the plan as all the land we were crossing and around it is itself wetland.

(2.) The surface water and the ground water in our local hydrology system are the same water.

(3.) All the water and dampness is connected, and is continuously moving.

These main principles explain the things that I have observed, and problems I see with the red flag wetland demarkations YB surveyors placed on my land and in its neighborhood, since 1976 when I began visiting this property at least twice a day, some of them are listed below in no particular order.

a. The silting along a small 18 inch drain tile on Abrams over the dry season, a year after it ground disturbance; at the faster water speed of wet times this silt takes 600 feet to settle out, but through the dry season just this small cut in clay leaves a 2 square yard delta.

b. The quick sand (I call it quick clay on my land) that swallows our back hoe a 14 foot long dynahoe, diesel engine machine, so that it must be yarded out, if it stands and works rather than just traveling over the ground.

c. The inch or two of water that appears to be standing on my clay pan field during a downpour, but is just as quickly shed leaving no soft spots. Pilcher and Nix have both insisted that I must have wet places but I do not.

d. Black Diamond Lake's stable water level no matter what there is in rain fall or snow melt.

e. The causeway nature of Abrams Ave where it crosses the meandering Rock Creek. Right now the only responsible answer is a 500 foot bridge, but if runoff from Lawson Hills is funneled into Jones Lake the bridge will need to be 1000 feet long. Is there mitigation (ie. money from YB in the DA to pay Black Diamond the expense of this bridging right up front)? PS The beaver are not the ones importing silt into this system raising the water level, they may rearrange it some, but they are not the parties adding to the silt load of Rock Creek. This silting is being contained in this part of Rock Creek estuary, lucky for the regional hydraulics, but the result is raising of the water table. This indicates we are near the tipping point where irreparable harm happens to these core wetlands, and spills over onto neighboring properties. Before the sewage treatment plant was built much of the hill that was where the settling ponds are now, went on the causeway road, before my neighbor carved out the "gravel pit" on Abrams and added all that material to the causeway road, and before our fair city began its felicitous adding of all the various materials with small and light fines in it to Abrams, the water level was at least three feet lower then it is today. Beaver lived in and maintained that wetland before the human activity, only without so much human help with all this imported silt material degrading the riparian wetland. The one time flood I witnessed before the sewage treatment plant there was a very big flood in our area generally, people on the Cedar River were out of their homes for three weeks. Then Abrams one evening, had a large single puddle eight feet across, six inches deep, one time, with sort of dry land around it, by morning the water had receded so driving was no problem. This was the only time Abrams was impassible between Feb. 1976 and the construction of the sewage treatment plant. I think dredging out the damage that has been done to the wet land would be far to expensive and destructive but the Corp. of Engineers could have another view.

f. The "south connector road" can not just cross the other waterway out of Black Diamond Lake, the way the alinements are, that road will have to follow the basic water way. Even from the map I have given you, with its limitations as to actual wetland, it is plain to see the bridge will need to be a mile long to avoid creating another Abrams Ave.

i. My travels over these lands prove to me that the wetlands extent is far more aptly described by the county plats which call sections 22 & 23, whole section wetland then they are even by the parametrix map I have given you. This stands to reason since parametrix describes that much of the land is impenetrably densely overgrown and they could not inspect those areas to determine degree of wetland adequately.

j. Rebar marking wetland set-aside three feet from a 110 foot cliff with a

steep slope much more than the 40% slope in the SAO and in the federal regulations which demand a slide hazard setback.

k. The three to six hour lag time I notice for water on my field translating to a rise in Horseshoe Lake's water level, this happens without flooding of Black Diamond Lake Creek over Birkclids private road up to their place, proving that Black Diamond Lake Stream is the secondary outlet, and that what I will begin calling Horseshoe Lake Inlet Stream is the main outlet of Black Diamond Lake.

l. Current of water flowing from east to west, evident in test holes dug into the Abrams Causeway.

m. The fact that if we dig a hole into our clay there is an immediate oozing of water from the cut clay which appears itself to be dry, sort of like blood oozing from you rare steak at a first cut.

n. I grew up on a horse farm with mud, I did not want to deal with mud as a grownup, so all my buildings have good foundation drains on their high sides, and effective drain fields to replenish the "ground water" interruption on their leeward sides thus avoiding extra rearranging of natural water flow.

o. Whenever I trench into the clay, I make sure to add a drain tile to the ditch before covering, and I make sure that there is a similar drain field outlet for that water in any low spots. Incidentally these make very useful channels for microhydro electricity production.

p. My description of curtains of water cascading from level to level, like a series of shelves one might see in a fountain display as I observe the flows over the series of clay sheets left by past geological forces

r. The well on Abrams Ave which flows water from a flooded mine that was punctured at only 30 feet of depth, no one knows if this is an air shaft or if it is where the main mine is, but it has the same steady flow of sulfur containing brownish 65 degree water welling out of the pipe since 1946 when it was punctured without any interruptions or changes.

s. In 1983 when there was a serious drought on Kent East Hill and very concerted and highly policed water use restrictions, my well had 4 feet more water the Friday before Labor Day than there was the previous June 1, the point being that less draw in Kent and Covington results in a backup for me, the water is all connected.

t. The soft trench up the center of my road where the power cable was dug in and compacted by Puget Power August 16-24, 2010.

I know you have been recommended by the hearing examiner in his addendum page 1-3 to ask for a real state of the art, on the ground wetland determination with enough flexibility to actually protect the wetlands. I hope you understand my reservation to having the "experts" we have heard from who can not explain my observations on the ground as listed above. In setting these boundaries, instead I ask you take it upon yourselves, to follow Dr. Cooke's advice and assistance with respect to the wetlands all over Black Diamond.

Black Diamond Lake peat bog, with its position as a world class pristine functioning wonder of ecology not repeated anywhere in Washington or likely anywhere in the rest of the lower 48. It deserves every protection it needs to survive intact. The reality is that since the water is all connected and is all moving all the time this very sensitive wonder of nature is going to require the entertainment of a much wider buffer zone than exists in our SAO today. There may be ways around this basic failing in Black Diamond Code, because the actual wetland has been so underestimated by fundamental misunderstandings of our unique hydrology. I spoke with Aaron Nix about the wisdom of expanding the Land Conservancy, provisionally to include the balance of the four corner forties of 14,15,22, and 23; and he thought it would be a good idea and said he would look into funding for that move. I told him that as we private property owners were being found, to not be impacting the water quality with our current use. It would seem reasonable then to allow us to continue our current uses. After conferring with Dr. Cooke and digesting the Hearing Examiners recommendations I think there needs to be an interdepartmental evaluation of just where the wetlands and associated buffers are and just what sorts of uses they can sustain and still remain intact, and how best to achieve real actual protections, supported by on going best science. As regards to wildlife and human traffic, consideration needs to be made for wildlife passage around us private property owners for their sake and for the sake of our livestock and lands.

Reality is where the rubber will meet the road, these are the areas where there will be actual additional financial jeopardy for Black Diamond. Saving the integrity of the wetland so it can function properly will also go a long way towards saving Black Diamond financially from the liabilities associated with too much water spillage on downstream properties on the one hand and interference with water rights on the other.

We are all familiar with problems at Horseshoe Lake and flooding so I want to hold this up as a sort of neutral, hopefully less inflammatory example of what I mean. The first few houses were permitted by King County and built down around the lake itself, they were on individual septic tanks. When the lake flooded with a vengeance the flood waters were a foot over the Horseshoe Lake Road. There was sewage organisms in the lake water from their waste systems. King County Health Department red tagged and condemned these houses. The mortgages on the houses were paid out by the mortgage insurance, King County gave the owners their principle investment money back and set up a fund for tear down and reclamation of the wetland area around the lake.

Everyone was made whole, the County thought they had bought themselves out of financial responsibility for the mistake of granting these ill-advised building permits. The banks however were greedy even then. They found a septic designer locally who advocated that septic systems and drain fields could be elevated above grade. This technology was employed for the new rebuilt houses but the owners could not get insurance for lake flood or curiously septic failures. **Fast forward to now, whenever the waters rise at Horseshoe Lake, there is an urgent call to the county and they spend money pumping the lake.** This last time the retention pond across Auburn - Black Diamond Rd. was overwhelmed, the engineer tells me, he and his crew of 7 machines, required to channel into Covington Creek were called out of retirement, to complete the work, and then there was the restoration the county needed to do to repair the storage pond that had been damaged. Are you appreciating the dollars King County is spending in spite of their good intentions at stopping the financial hemorrhage yet. What I noticed is that when this water was released from the retention pond, there was essentially flooding of Covington Creek just north of the fish hatchery, I see more financial liability for responsible government.

The above mentioned engineer agrees with me, the **State Law will find Black Diamond financially responsible for any flooding that can be attributed to building permits they let in the developments here in town.** But that is not all, **Black Diamond, will be equally culpable for any loss of water enjoyed by water rights holders currently; furthermore these rights for these other property owners are in perpetuity.** Do you recognize the for ever sucking at the **Black Diamond check book; that scares any sane person.** This financial obligation that, you our city fathers, are lining us up for will cost Black Diamond a lot more for a lot longer than a one time suit about development rights. These financial obligations looming on Black Diamond's horizon demand very specific studies and engineering solutions that are tried and tested specifically for Black Diamond to keep Black Diamond from financial ruin. These have not been done to date. Please make sure that they are attended to. I hear that YB wants to take all this discussion off for now and save it for the implementing phase. I caution against this approach, preplanning even if it must be amended later, at least directs other choices toward a goal, and is a prerequisite for an integrated final product. Your other choice is a hodgepodge of ill connection that never will fit properly or fulfill Black Diamond's promise of a coordinated plan under its MPD provision. We will never realize the, live and work place, we promised ourselves in our comp plan, unless we as a community roll up our sleeves and get to work, on the actual plan. Let me add: I think the dedication and hours of thoughtful input your citizens and neighbors are dedicating to these hearings demonstrate their willingness to partner with the city if given the chance.

From where I sit: a land development company with experience in developing land in Western Washington failed themselves by not doing due diligence, about the land before they took this job on. Black Diamond insisted they get the deed to the property in their hand before they came to the city. Thus giving them ample opportunity to look at the records for these properties before counting their dollars. There are many pages of these records at the county archives, there is the whole testimony from the Black Diamond Associate bid for development. There is a 150 page document from the engineering firm that

explains why Black Diamond has no environment suitable to support a sewage treatment or infiltration retention ponds. There is the final annexation agreements, including a whole bunch of various covenants on the possible uses of these lands. There are the specific King County plat maps which describe "whole section wetland" for 22&23. There is a court case for which the developer sought to be excused from an EIS and lost at the State Supreme Court with the curt sentence "You must obey the written law!". Look: this is a "white water deal" if I ever saw one, and YB had every advantage to keep this from happening to them. They did not want to see reality or maybe they did not want you to see the reality; or they would have done their homework before they signed a purchase contract. You can not make them be prudent about their business, if their own practices or omissions turn out to be fundamental "mistakes", they and they alone must bear the responsibility. BDCC; there is no saving a business from the consequences of their failings and negligence in their stated field of expertise, no matter how much you like the principles personally, they walked into a mistake through their own negligence, with their eyes open, in a subject they professed to be knowledgeable about, it is not your job to save them from themselves.

It is your job to be the government of Black Diamond. This means that it is your job to make certain that power and money on the part of one party does not allow that party to take unfair advantage socially or economically of the majority or minority who may not have the power and money. If you are neglectful of your job, there will be no reason for us to be paying for a government who refuses to protect us.

I know, some of you will be able to recall, there was a time about four years ago now, when I was falling for YB nectar right along with you. I however; have enjoyed a freedom from the constraints of the "quasi judicial". I have been out here gratefully living in the land of reality, rather than the artificial bubble in which you have been forced to abide. From my vantage point I have been able to discover that the "cool-aid" they serve is laced with a cyanide. **I'd like to share with you what actually tipped me off because some of you may find my logical sequences somewhat instructive as you wrestle with "what is the reality" yourselves and try to break from the appearance and wishful thinking into the real world of actions and decisions have consequences.**

The first tip off was when I was told by their "experts" things as truths which I knew were patently untrue.

Like their geologist could not know what was under the surface without digging in to it. Three generations of my family are trained in geology and mining, it is the stuff of their professions to understand what is underground without digging, there is a marvelous earth scan available that inspects all sorts of subsurface layers with modern technology, do they really not know of this? There are also less technologically advanced cheaper techniques available, like maybe all the exploration drilling that has been done in these parts, and their reports.

The photo they presented at a Council meeting of a footprint in the mud left by my dog "Sultan" which they declared to be a cougar with claws extended, the triangular toes of a dog rather than the round toes of a cat were unmistakable.

For each of us with our different experiences, these discrepancies will be different subsets of “facts”. I will be cataloging some important ones in my written comments, please study them.

The second tip off for me are the many examples found in YB literature that are obviously not actually Black Diamond specific, but are rather generic and could be anywhere USA.

The photo of Tipsoo Lake on Mt. Rainier in their first ad.

The lack of responsibility for failing intersections, that their level of development will require in other jurisdictions down stream.

Their offer of assistance to our community center along with their refusal to fund a resealing of the roof.

Their patently untrue mapping of our wetland that seems to be an outgrowth of a lack of recognition of our local wetland plants, and their specific water requirements.

We have yet to be blessed with a photo by YB of this world class rare functioning peat bog; the queen of natural wetlands in the lower 48. Why? Could it be too much dedication to actually walk with a camera across their land to snap a photo and publish it? Or could it be that they know they will spoil it, and they don't want to be the suppliers of the incriminating evidence of what they wrecked?

The elevations and photos they show of dwellings and commercial projects done in other jurisdictions with other agendas.

Harping on their award, that is an armchair award granted by folks who have no idea of the here or now of this place and thus no basis to grant an award. This has the same reality attached to it as an armchair scientist who expands about theories and principles but never goes out observing or performing lab experiments, all balderdash.

Expensive books of many pages full of renditions from projects they have done elsewhere USA, that have nothing at all to do with Black Diamond.

All these things add up for me to a distinct lack of willingness to spend personal energy or actual real money creating a project just for us like our comp plan expects. So the friendly talk is lost on me. These examples prove to me that YB's agenda in practice is to spend as little as possible on understanding BD and to maximize their profits at our expense.

My notes about the Hearing Examiner's Recommendations:

page 1 Overview.....He recommends approval, **I ask for remanding** so we get his full considered evaluation and thus our public money's worth.

page 2 line 16-18..... **I ask that you use the legislative prerogative you have to insist on a DA that moves the promises of the comp plan ahead.** To this end I have included a copy of the 2009 comp plan mission statement, you three deliberates approved so you can easily test if your choices contribute to the stated goals.

page 3 line 24&25 page 4 line 1-7 and the intervening foot note You assigned him a job, he is a professional, you used public money to pay him, let him do his job and be satisfied that he has completed it to the best of his ability. **I ask for remanding.**

page 5 Procedural Summary paragraph 3..... The denial of actual expert testimony expresses what I perceive to be a distinct bias toward the needs of YB in place of actual fairness and most complete actual real facts gaining their place in the sun. YB produced whole books with their experts, those are in the record whether they are fact or fiction in actuality.

C. page 16 line 16-18..... He recommends **applying ADUs to the total dwelling units**, I concur since there will be a very heavy emphasis on attach dwelling units in the types of units available, anyone who needs this sort of arrangement can find it in the housing stock they build under their plan.

page 17 line 9-10..... He finds the **Council can require they stay with the MPD stated du** number; and you must, a signed agreement must have an amendment procedure to be changed.

A page 19 line 9-12.....He provides for some public oversight through a posting on the web site. **I ask for timely notification in the water bill requesting public input, and publication in the newspaper, may in town do not use the web and most of the stuff on your site will not open at my house, so to keep up I'd have to go to the Library daily to check if something new were happening.**

B page 22 line 12-15.....He recommends locations greater then collector streets be identified in DA be removed unless you require compliance, **I am very dissatisfied with the general level of planning, the whole street and trail map, the placement of the schools and public services, parks and open space, the swimming pools and fire halls, mass transit hubs; and the various industrial and business areas are the coordinating elements of any city plan. They must be mapped out so other property owners (don't worry, not me, Leih) can understand where and how their properties could fit in best. We will not have a coordinated city without this back bone, and it is patently unfair to allow YB to mastermind what happens all over BD to property in which they have no interest. Arendt called for the trail, services and road backbone it to be done first and it must be done now!**

A,B page 24 Dimensional Standards line 18-19..... He says you have discretion here; I just know this needs to be thought over very carefully. **The projects at Snoqualmie Ridge and Issaquah Highlands are very sterile, just the warehousing of families in a most depraved way, which will result in the worst possible outcomes for them and their children. They are not allowed any demonstration of pride in ownership, it is like a cemetery of the living. I could not have conceived of such depravity without witnessing these YB projects myself. There is a far higher standard of living and a much greater level of originality, hope and purpose, at our**

Cedar Brook trailer park then there is in those neighborhoods. When I think of the level of workmanship and attention to detail, that the combo of BD City staff and YB, demonstrated over those notice boards for “development coming”. Additions were admixed to them while they were in disrepair, but there was no maintenance, they left these eyesores as advertisements to what they could produce for at least 9 months in the, continuing to crumble state; all while our city staff is waxing sarcastic criticism on business sandwichboards....well anyway I think you can get the idea without my having to say more. Additionally i'll take this opportunity to let you know that your city staff is informing a certain “old town” property owner, who worked hard on the design standards for old town, “Oh! those are just some old stuff we are not following those guidelines anymore.

A,G page 25 Landscape standards..... He says you are free to choose; I would be very careful with what you do about this to avoid the problems discussed under page 24. Do these areas all need to follow the same standards or could there be the neighborhood of this and that? My concept would more involve dwellings around some unifying idea different from others so one could know where one was, the soccer field, the football field, the earthworks bicycle park....., also though place for particular individual home originality is very important in creating a healthy place to live.

J page 26 Wildlife forage Preferences.....He **says you can require approval of our Director of Natural Resources Director**; this would be a start but I think you also should instruct our director to seek out other professional expertise, Crisco Morris has received awards for his work in this area for the Seattle U campus, Mr. Richards our local wildlife keeper likely has some ideas. This subject is one of the many that could be much better with a proper investigation.

E,F, page 30 line12-13 private wells.....He says you need agreement from YB if you want them to protect the wells; I'll just remind you I treasure my water rights, **I will never accept BD water, and I will be made whole if there is any interruption of my water right, I am certain I am not alone!**

EF page 32 line 25&26 water conservation..... He says council should set actual real conservation targets; **I agree**, but I am still not satisfied. **Water used, means clean water made dirty. What happens to this waste water, there is no reason to spend a lot of money cleaning more then is necessary for the grade of “dirty” water it is. Right now you are still dumping black water into Rock Creek during “high water emergencies” because you are adding excess surface water to black water increasing the gallons of black water requiring the most expensive cleanup. I can not fathom how you can even consider any development while this illegal, unhealthy situation exists. More services needed by more rate payers will not help this situation. Let me assure you no dwelling unit will be sold or rented until the toilet flushes and the kitchen sink flows, Burien is still looking at condos who can not be occupied due to Judicial Hold for unpaid bills left by bankrupt developers leaving the city without income to pay off its mortgage on the improvements.**

I page 42 lines 11-18 Storm water quality..... He talks about timelines and enforcement mechanisms and recommends them; I would like to add, from my cursory experience with YB as their neighbor and observer, If I were obliged to sign a contract with them, I would need ironclad commitments with a very specific performance expectations including full and sole discretion about acceptance of work, penalties for untimeliness, independent oversight, and mostly quality. You see from the past behavior I have seen being the best predictor of what one can expect I have zero confidence in them. This is from observing their other projects in other jurisdictions, speaking with other neighbors, seeing their behavior in Black Diamond as well as the fundamental business mistakes resulting from just laziness and or un-particularness. **If you must sign with them put in every enforcement mechanism and every monitoring requirement at you can think up with your expert advisors help throughout all facets of your contact with them. Remember the State Boundary Review Board's admonition, "this company has caused the more problems in Washington State, then all the other developers operating in Washington combined." Buyer / Signer beware!**

A,I,G page 46 sensitive areas standards.....He actually addressed these issues in his addendum so don't be misled by the mild statements found here. I have already discussed the total inadequacy of the DA on these subjects. **At the time of the MPD we were told not to bring up specifics, now YB wants to pretend our very sensitive wetlands are protected as much as you want them protected. That may be so, but fortunately for the wetlands, they are not just a BD resource to be squandered willy-nilly, they are a Regional resource with State and Federal protections. YB is attempting to hoodwink you into ignoring the real actual facts, don't fall for it. It has been very useful for our citizens to go on the wetland tour, once they see in person an occupied YB project, our natural functioning peat bog, and last witness the differences between wild untouched Ginder Creek and Rock Creek which flows through BD, where both streams enter Lake Sawyer about 50 feet from each other, the prescriptions, and complex science of the scientists and engineers becomes very apparent and easy to understand. I am quite certain the tour could be duplicated for city dignitaries and that you also would find it very instructive.**

J,K, page 48 continuous wildlife corridor.....He admits that though the corridor seems to be ok, there may be problems with it. I reiterate here, even though my land and Birkclids land, has been identified as the corridor it most emphatically is not!

TO HE J NOTE: I ADD, A WILDLIFE EXPERT WHO UNDERSTANDS OUR HYDROLOGY AND TOPOGRAPHY AS WELL AS THE NEEDS OF THE WILDLIFE WILL BE NECESSARY TO SET USEFUL CORRIDORS. We have been steadfast in this declaration since YB came to town. from my open record hearing notes:

"the wildlife corridor undeveloped open area, is indeed a separate thing from the developed open space that is for human needs.

The very first comment on this MPD, asked that special care be given to the requirements of the wildlife. Mr. James Birkclid stated clearly that it was not acceptable that the animals be

pushed onto our private properties just because we had some acreage, and Craig Birkliid and Erika Morgan seconded those sediments as the other private property owners surrounded by this development.

I have since repeated, at many meetings that ungulates and their predators are effectively precluded from my property, that I am not a wildlife corridor in any way and that depiction and description are to be removed from YB materials of the project encroaching on my property. Their characterizations of my property as a wildlife corridor are false.

So what they have done is simply remove their opaque painted over swath from our property on their maps, but have done nothing to create the necessary continuous corridors around us, and have instead marked us in with densities right up to our fence lines.

With this DA, actual accommodation must be made for a wildlife corridor outside my property, at least 1000 ft wide to serve the wildlife so they do not defacto use my land as they go about their business. When I brought this up at the MPD hearing I was told that the plans were in their programmatic stage and would be handled at the Development Agreement stage. Now when our experts appeared at this hearing and tried to state our case for the record they were shut down; we were told these issues were settled in the EIS. Pray tell, when will my concerns and requirements as regards to my property, have their place in the sun? If you notice a certain frustration with this process be certain that it is real.”.....

“Open space is the three types, in-city, primary and secondary. [June 2009 BD Comp. Plan page 2-9] There are problems with the identification of the open space on the private properties of Erika Morgan, James Birkliid, Craig Birkliid and Denis Birkliid, we have not been properly accommodated. We insisted that the wildlife be accommodated on the applicants property that it is patently unfair to push the wildlife onto our private property. We have been living next to the wildlife for many years now. We well understand how their displacement from their accustomed space will impact us. There would be curtailing our use of our land and placement of financial burdens on us personally. Instead of accommodating our concerns their maps show our properties as “the wildlife corridor” constituting an uncompensated taking from us so YB can realize a higher profit at our expense.

There has been no agreement between me and YB on this subject, in fact quite the opposite. (note the summary of several legal moves illegally attempted against me by YB shared with the city of BD, time and again, and also during the MPD hearings) The west and South annexations are to be the county’s 4:1 concept which means 75% permanent open space for the South area, this is not found in the DA. [June 2009 BD Comp. Plan page 2-10]

I spoke with Aaron Nix, BD’s director of natural resources and parks about this problem after discussing it with our wetlands expert Dr. Cooke and my neighbors. My solution would be to add the corner forties of sections 14,15,23,&22 all around the same section iron, sans our privately held 30 acres to the land conservancy. Mr. Nix jumped at the thought and said he would look for funding to make this happen.

If the Land Conservancy does transpire it might be a thought to ask Craig and Denis Birkliid if they would like to swap their five acres in section 23 for some arrangements extending a

private buffer for other Birklid property lines in sections 15 and 22. This would allow public ownership for the west half of the corner 10 of section 23, the land around Abrams Ave as it extends to Black Diamond Lake's shore. This Land Conservancy extension would solve the wildlife corridor problem around my property.

It does not however address the problems that exist with the DA maps concerning the south side of Black Diamond Lake. I am attempting to create an overlay for the DA's depiction of the setback for the south side of the lake that shows the actual setback that YB is allowing the lake. The 80 degree slope that raises at least 110 feet has been depicted as setback and then obscured with an opaque colored wash over the photo obscuring the actual lake shore. They probably did measure the 225 feet wetland buffer from the highest class wetland by measuring straight up the hill and not allowing any additional buffer for the steep grade, if an actual site inspection by a city official had been made to verify the depiction the 225 ft would have been drawn in on the horizontal, and the cliff setback added to that number, as is normally done. The red capped rebar delineating the edge of this wetland are about three feet from the lake edge of the road that travels the cliff right above this lake. Rightly there needs to be a set back from the cliff even if there were no lake below, and besides that the water is cascading in a wide curtain over clay just below forrest floor topsoil, all along this edge. There needs to be additional accommodation here for water quality and for a wildlife corridor as separate entities well. Here the corner forties along with the rest of the land conservancy probably does not quite protect the lake, so there will need to be some degree of coordination to make a continuous "Land Conservancy".

Fifty percent open space is critical for allowance of certain housing densities and for enhancement of storm water control, wildlife protection, and community aesthetics. *According to BDMC 18.98.140 (F), "If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.120 (F)1."* At least 50% open space is recommended for the developable portion of a project area (Randall Arendt, Black Diamond City Council, work study session, April 14, 2011). According to Arendt, **in order to attain an unconventional community design with open space integration--green ways, neighborhood parks, play areas, neighborhood cut-through trails--requires a good deal of land on the developed portion of the project.** Arendt noted that by coordinating and integrating open space into developed parcels, provides economic and social benefits for businesses, homeowners, and developers."

K, page 50 line 10-11.....**Dr. Sarah Cooke did indeed state the problems with the constraint maps, but when she walked the property with me and took in the wetland and witnessed the rebar marking the wetland buffer as YB sees it she was inspired to submit her written testimony and documentation. [You should probably also know since this testimony was entered, YB has removed their incriminating rebar (I found the hole it left in the clay) with red cap marking wetland buffer that was nearest their test well on the east side of BD Lake, but they were too lazy to locate others, they did however cut the black berry from the test well head.]**

The only real remedy for these short falls in the DA before you is to take all the issues of wetlands, surface water management, wildlife corridor, and undisturbed open space out of the agreement and create a properly engineered plan with the assistance of the relevant State and Federal agencies, wildlife, fisheries, ecology, surface water, geology, corp. of engineers. All through BDMC there is concern that these decisions be based on the most current tested science, this must continue. But: there must be a basic underlining understanding of what exists, what the natural trends are, and what outcomes are to be achieved. This can not be left for implementing individual projects because the forces of nature involved are regional and have far reaching regional significance, so they must advance as a part of an ongoing coordinated plan or the result will be a piecemeal of unexpected discordant consequences that will plague Black Diamonds future forever.

J,K, page 55 line 3-4..... He observes that our SAO has been determined to be adequate protection for the wetlands. I however have never felt that way because of my intimate actual observation driven understanding of the connectedness and flowing nature of our water. At the MPD hearings I brought in the chicken waterer to demonstrate our dynamic hydrology that has not yet been considered. I also plead for a special extra additional grade for the Black Diamond Lake Peat Bog because of its uniqueness, importance and sensitivity. We have a situation where this body of water has runoff curtaining down over a clay bank just under a rather thin topsoil. The water is surface water running off a forrest, it spills onto the Peat Bog, there the rush slows down some but there is no actual load of suspended particles except coniferous forrest duff (woody bits and conifer needle) which floats until saturated and then drops out, most of this new water slides over the surface and continues on its spill routes into the South West Horseshoe Lake bound surface / subsurface stream and some exits at Black Diamond Lake Creek. Both of these exits are brushy on the surface and this filters out the peat. This Peat Bog would be easily silted up if any clay is disturbed ruining its character. There are studies and calculations about water speed and clay particle size that determine how far the water must go before clay loads are dropped out, these must be applied when designating a reasonable buffer width. Water that runs off of human habitation is full of all sorts of unnatural toxins that we find so attractive to use, Birkclids and I have been very mindful to never use any of these products anywhere on our properties ever, and we also only use our own water from our own wells so we do not bring in any other additives into the system. We have left wide natural space between us and the Lake, I would not let the power line come within 300 feet of the clay bank and forrest last summer to the chagrin of Puget Sound Energy because there would have been a silting issue in the clay. I will expect all this protection that we have for Black Diamond Lake to be enhanced by any development that is allowed.

I,J,K page 55 line 16 please refer to HE addendum pages 1-3, it is also useful to review Dr. Sarah Cooke's written testimony so I will insert a copy of it here for your benefit.



COOKE SCIENTIFIC

4231 NE 110TH ST, SEATTLE, WA 98125

PHONE: (206) 695-2267 FAX: 206-368-5430

COOKESS@COMCAST.NET WWW.COOKESSCIENTIFIC.COM

August 12, 2011

Steve Pilcher
City of Black Diamond, Community Development Director
PO Box 599
Black Diamond, WA 98010

RE: Response to Yarrow Bay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order II: Comments on the Lawson Hills and The Villages Development Agreements between the City of Black Diamond and BD Lawson Partners

Dear Mr. Pilcher:

I have reviewed the rebuttal comments submitted by the Yarrow Bay Consultants on both July and August 12, pursuant to my public testimony during the hearing and my written comments and have prepared the following rebuttal:

References Reviewed:

- City of Black Diamond. Staff report Lawson Hills MPD. File # PLN09-0016.
- City of Black Diamond. Staff report The Villages MPD. File # PLN09-0017.
- City of Black Diamond. June 2009. City of Black Diamond Comprehensive Plan.
- City of Black Diamond. December 2009. Lawson Hills MPD Final Environmental Impact Statement.
- City of Black Diamond. December 2009. The Villages MPD Final Environmental Impact Statement.
- City of Issaquah & Sugar Mountain East Village Partnership. 1999. Cougar Mountain East Village Development Agreement
- Otak, Inc. August 2010. Shoreline Analysis Report, Including Shoreline Inventory and Characterization for City of Black Diamond's Shoreline: Lake Sawyer. Prepared for the City of Black Diamond
- Parametrix. 2008. City of Black Diamond Sensitive Areas Ordinance Best Available Science Review, Summary, and Recommendations for Code Update
- Parametrix. November 16, 2009. Technical Memorandum, Peer Review, EIS Element, Wetlands. Lawson Hills and the Villages MPD, EIS. Additional information.

Parametrix, August 27, 2008. Technical Memorandum, Peer Review, EIS. Wetlands Element. Lawson Hills and the Villages MPD, EIS.

Parametrix, June 29, 2009. Lawson Hills and the Villages MPD EIS EIS Element Vegetation and Wetlands Technical Peer Review.

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Lawson Hills Master Plan Development, Development Agreement

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Villages Master Plan Development,

Wetland Resources. September 24, 2009. The Villages MPD Draft EIS Review.

Wetland Resources. July 17, 2008. The Villages Wetland Assessment- Draft EIS Report.

Wetland Resources. May 2, 2008. Lawson Hills Wetland Assessment- Draft EIS Report.

Wetland Resources. July 21, 2009. The Villages Sensitive Areas Study.

Wetland Resources. July 21, 2009. Lawson Hills Sensitive Areas Study.

Yarrow Bay August 4, 2011. Yarrow Bay's Written Testimony Pursuant to hearing Examiner's Pre-Hearing Order II.

Yarrow Bay. August 12, 2011. Yarrow Bay's Written Testimony Pursuant to hearing Examiner's Pre-Hearing Order II.

Section 8.2.1 Scott Brainard's/Yarrow Bay's responses, August 4 and August 12:

Yarrow Bay has asked Scott Brainard to provide rebuttal to both my oral and written public comments that a) the constraint maps are not specific enough (Section 8.2.1 "The wetland delineations and types outlined in the Constraints Map are deemed final and complete)"(for providing a basis for wetland decisions in the Development Agreement) and b) Mr. Brainard and Yarrow Bay's contention that " The EIS for both The Villages and Lawson Hills have been deemed adequate in their entirety, including wetlands, buffers, and conceptual mitigation measures identified in.....".

I was not allowed to expand my oral testimony during the hearing so an expansion of my comments are provided below. I will outline multiple examples of why and where the development wetland maps are inaccurate and why the development agreement is not sufficient to protect critical areas under State Code RCW 90.48.

1. **One item of Mr. Brainard's and Yarrow Bay's comments is that " the EIS for both The Villages and Lawson Hills was deemed accurate in their entirety, including wetlands, buffers, and conceptual mitigation measures.....".** My question here is **Who has deemed the two EIS's "accurate in their entirety"?** **None of the agencies listed below with final approval review have examined the EIS** (Pers. Comm. Muffy Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers, July 8, 2011); (pers. Comm. Patrick McGrainer SE King County Wetlands project reviewer, Wa. State Department of Ecology, July 8, 2011); Pers. Comm. Linda

Storm, US Environmental Protection Agency, Seattle District, July 13, 2011).
Therefore, this statement clearly not accurate or true.

2. **In addition The EIS is written with all impacts related to what was required in the City's August 2007 Critical Areas Ordinance. This is a direct contradiction with SEPA law that requires a discussion of environmental impacts based on current scientific knowledge.** Instead, the DEIS discloses the legal impacts (violations) of each alternative under outdated law, not the true scientifically-based impacts of the proposed project. The SEPA official needs to know what the potential impacts are, not if the project is in compliance with an outdated ordinance. **Vesting does not impact the disclosure and analysis of scientifically-based environmental impacts in an EIS, even if affects the permitting process at a later date.** The delineation method used and the buffer section below describes two implication of this problem.
3. **The wetland boundaries have not been verified by the US Army Corps of Engineers, the ultimate authority for all wetland boundary verifications. "No final Jurisdictional Determination or final wetland boundary mapping can be made without this determination"** (Pers. Comm. Muffy Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers, July 8, 2011). Approval by the City makes no sense in light of the fact that all the wetland boundaries still have to be approved.
4. **It is highly likely that the wetland boundaries are not accurate, especially with respect to those determined as "isolated" from the larger Category I wetland, but which are in very close proximity to the Category I wetland.** Most of these "isolated" wetlands have been determined to be Category II, III, and IV wetlands, all of which conveniently have smaller required buffer widths. If any of these wetlands were found to be connected and the larger 225 foot buffer was applied then the area available for development would be reduced accordingly.
5. **The Corps of Engineers wetland boundary verification, statute of limitations is only 5 years.** The basis for this term is that wetlands are not static habitats. As groundwater discharge and recharge locations shift and surface water drainage patterns change wetland boundaries. The Corps and Department of Ecology would NEVER approve a boundary approval lasting longer then the 5 years. (Pers Comm. Muffy Walker, July 2011).
6. **Mr. Brainard states " BDMC 19.10 does not require that wetland boundaries be reviewed and/or approved by the US Amy Corps of Engineers (Corps) or the Washington State Department of Ecology (DOE)". Unfortunately, this statement is only accurate if the wetland in question is only under the jurisdiction of the local authority, where there will be less than 0.1 acre of impact proposed.** Since State jurisdiction supercedes local authority and federal jurisdiction supercedes both state and local jurisdiction in every instance if more than 01. acre of impact is proposed, his statement is not salient to these developments, which both are proposing well in excess of 01. acre of impact under all but the "No Action" scenario.
7. **Mr Brainard states that that wetland boundaries were delineated using the requirements in RCW 36.70.175 and 90.58.380 from 1997, which requires the use**

of the Washington State Wetland Delineation manual. This protocol was replaced and required to be used by both the DOE and the Army Corps of Engineers in 2008 with the publication on June 27, 2008 of the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coasts). This was prior to the production and approval of the FEIS. Additionally, Ecology went one step further and repealed WAC 173-22-080 (the state delineation manual) and replaced it with a revision of WAC 173-22-035 that states delineations should be done according to the currently approved federal manual and supplements. The changes were effective, March 14, 2011, prior to the approval of the Development Agreement. The regional supplement methodology for determining wetlands is quite different in the criteria for soils, vegetation, and hydrology. The use of the wrong method and different criteria increases the chance that some of the wetland boundaries are incorrect and that impacts to wetlands can occur because development is planned in some areas that meet the wetland criteria, but which are identified as wetlands in the Development Agreement Maps.

8. **Mr Brainard stated that ‘Wetland boundaries have been delineated by Wetland resources and approved by the city and their third party reviewer. The third party review was conducted by qualified individuals from Parametrix. These reviewers looked at individual wetland flags, data, and wetland rating forms and deemed them accurate’.** I feel it important to call the accuracy of these statements in question.

- a) The City of Black Diamond Staff review reports make no mention of performing a site verification for the wetlands boundaries nor do they discuss any details about review in the wetland reports. They simply state that the wetland boundaries are approved as shown in the Wetland resources Reports Further, the city has no qualified wetlands person on staff who has the training or knowledge to evaluate a wetlands delineation. So staff is simply not qualified to determine if the wetland maps and ratings are correct.
- b) The third party reviewer stated in their peer review documents listed above that their review consisted of “a review of the technical report and brief field inspections of The Villages wetlands on June 9 and 10, 2008” and “Two biologists visited most of the accessible wetlands on the property. (Parametrix November 2009 peer review). This certainly does not constitute a thorough review that would be necessary for mapping wetlands whose boundaries would be without dispute for the next 15 to 20 years.

9. **Wetland ratings for both MPD’s have been established without examination of offsite wetlands.** This is in direct violation to protocol which specifically states that the entire wetland must be evaluated before a rating is assigned. (Pers. Comm. Tom Hruby, Author *Wetland Rating for Western Washington* , 2004, April 2006). This is important because buffer widths are established based on the wetland rating.

One such example (but by no means the only example) is identified in the Parametrix report where “With regard to wetland buffers, wetlands K and F on the Main Property are designated as headwater wetlands in the City’ SAO. The MPD application submitted in support of Alternative 2 does not characterize these wetlands as

headwater wetlands, and instead utilized the Washington State Rating System for Western Washington to calculate required buffers for these wetlands. As designated headwater wetlands, under City codes these wetlands require 225 foot wide buffers. The application materials assign a 110 foot buffer to wetland F and a 60 foot buffer to wetland K.”

10. The actual wetland mapping is not consistent between maps produced by the City. An examination of the Best Available Science wetland mapping (Parametrix (attached) and the Constraint maps shows many areas where the wetlands and their buffers differ between the two. It is necessary to make a comparison of these two maps to see many examples of inconsistencies. There are areas where lobes of wetlands are cut off with no buffers assigned and no impact identified, there are areas where wetlands are in very close proximity but deemed isolated when it is most likely they are contiguous in the field, there are areas where a reduced buffer has been assigned but no reason identified other than it increases the associated lot size for development.

In summary,

An adverse environmental impact that is specifically attributable to the Development Agreement is the fact that the Development Agreement locks into place for a period of fifteen years or more the sensitive area delineations and buffers that are identified in the MPD permit approval. This can result in reductions to wetlands size, and functions in the following ways:

- The delineations have not been reviewed by other agencies with regulatory authority
- The delineations incorrectly characterize wetlands as isolated instead of as part of a network of associated and connected wetlands.
- The mapping of the sensitive areas are not internally consistent with other documents in the record including the Parametrix study and the FEIS.
- Associated buffers and therefore protections for the wetlands are inconsistent between the City's own maps

The MPD permit approval did not fully 'lock-in' the delineations and buffer widths, but rather left it to the Development Agreement to do so. **Any changes in the sensitive areas extent or location over time will not be accommodated and therefore impacts to critical areas WILL OCCUR and are will be fully attributable to the Development Agreement.**

The city has a duty to be in compliance with all applicable regulations and rules on the State and Federal levels. For the city to knowingly violate one or more of these requirements puts them at risk for legal action. The City and Yarrow Bay will have to obtain NPDES, Section 404b, ESA and other approvals on the State and Federal levels. By approving development agreements that are not in compliance with State and Federal regulations, the city is, in effect, engaged in an unlawful contract with Yarrow Bay. The city cannot agree to findings that contradict its inherent

responsibility under State and Federal law as a member of a regional collective of agencies.

The implementation of the Clean Water Act rests on the good faith efforts of the local governments. Since the Clean Water Act, relies on science to set development constraints to protect Waters of the US and Best Available Science is by nature constantly updating and changing, the city's effort to freeze the critical areas locations and regulations for the 15 to 20 year duration of the development agreements severely limits the City's ability to propose appropriate development constraints with which to comply with the Clean Water Act.

Please contact me if you have additional questions.

A handwritten signature in black ink, appearing to read "Sarah Cooke WSE". The signature is fluid and cursive, with the letters "WSE" at the end being more distinct and larger than the rest of the name.

Sarah Cooke
Professional Wetland Scientist,
Fellow, Society of Wetland Scientist

I,J page 56 line 9-10He notes about "temporary" silt fences and sediment ponds. **I add the caveat here that my experience on this land the word temporary needs to be excluded and maybe replaced with permanent** because the silting goes on more than a year after the clay disruption from last year but actually any disturbed, not parent soils continue to shed fines for many years as the clay does not repack down the same way as it did under the moraine building activity of the glacier.

I,X page 58 line 22&23 He says there is city engineer discretion to withhold approval for work during significant erosion risk. **This is a good thing but Black Diamond would be better protected if there were some discussion about on site inspections and independent engineering evaluations before the digging. I am thinking of some very thorny ongoing unintended water problems that have cropped up and the significant chance of encountering flooded mines anywhere in our region.**

L, page 61 line 19-20.....He says mine hazards for LH are probably adequately considered. **I ask that you ask YB to extend the same mine considerations to the Villages** because there was a mine 14 named for its section, and there is an artesian well driven into a flooded mine on Abrams Ave, that was encountered at only 30 feet so it is likely that other mining remains could be found and when they are they will need to be dealt with responsibly. The methane gas that burns at Flaming Geyser is a product of Black Diamond mining activity, our side of town has all these issues too.

L page 63 line 16-19.....Mine Hazard Release Forms With these release forms in place I worry that any new discovery of any sort of mine hazard, gas fumes or the like will leave Black Diamond the City completely exposed to financial liability because "the City could have known about and warned and thus failed to protect."

J,K,M, page 65 Hazard tree removal.....He says up to you; I need you to consider this occurrence, there was a 150 year old tree on Birkclids 5Ac next to me, the top has been dead since before I purchased my piece. This tree had large friend trees all around it, if the rotten top blew out there was no hazard since the friend trees assured this top would fall inside the very tinny forrest. I was very upset they cut it down, they cut down three trees over the years always missing this correct tree, the mistake trees were fallen over my land damaging my property, the tree left alone was a phenomenon of nature and now it is gone. On the other hand, 30 years ago these same neighbors cut into the bark and cambium of another tree on our shared property line "because the fence ran 6" into that tree, and they wanted to show the actual line with their wire". This stupid mistake caused top death and ultimately years later a splitting which sent a tree torpedo / spear into my house. They are very lucky that the tree only broke apart a flimsy basement door because if there had been real expensive damage I'd have sued the pants off them since their negligent act of cutting into the tree caused the problem.

A, M, N, O page 66 Open space requirements.....My note: The same agreements alluded to here include **voluntary covenants stipulating no more than 1 dwelling unit per gross acre. Signed letters by Plum Creek and Palmer Coking Coal to this affect are in the record.** Black Diamond Ass. acknowledges this covenant in its annexation agreement to place its lots in section 22 and 15 into Black Diamond, but BDA did not write such a letter about 1 unit per ac, they did supply other covenants though.

M page 69 line 6-8.....He says if Council Person's husband Hanson gets a 50 foot buffer everyone along their road gets this buffer. I say what is good for Council Persons Hanson is good for every neighbor of these projects, and so every project buffer needs to be at least this 50 feet.

A, B, M, page 75 line 4-13 Ownership and Protection of open space, wild space, land trust and the like.....I also am disquieted for the same reasons as the HE. I think the real problem is the absence of a real plan that coordinates these lands and their uses. This is the back bone that will provide continuity. I can understand YBs unwillingness to commit so they keep as many options open as possible incase they find a willing buyer who wants to have his own ideas accepted; but **if there is to be a contract it seems you need to know in fact what is in it.** Certainly if you agree to have our Mayor sign a contract in our name it is important you understand what it is you are agreeing with or if there is any reality involved.

A, B, J, K, M, N, O, S page 76 linebrings up access to sensitive areas for me; how is this addressed in the SAO?

T page 81 line 17-18.....I agree the city does indeed need to hold approval of traffic monitoring reports and be able to make adjustments when there is failure outside of town to build roads as needed by the region.

U page 85 line 22-24..... Makes a very valid point, operative word could needs to become shall.

T, U page 86 line 11-15.....It looks like a double bind which you can not correct over this transportation issue. Let me suggest that the smart thing is to accept many lessons learned by forging ahead with this process, but it might be time to vacate your MPD approval and start over with the correct legislative process, however maybe you could get smarter if you wait for the LUPA appeal to fail.

I, J, K, T, page 86 South Connector Road.....**Few of the people who come before you have ever walked it, but I am one of them. Council Person Hanson expressed doubts at one point about cutting a road through this area and her doubts are founded in fact. The stream ran all this year for certain. I refer you to the parametrix map, even though it does not show all the actual wet area it is fairly plain the road follows rather than crosses the stream to Horseshoe Lake. There are large gravel areas which would seem to be dry at least but it was just this sort of shifting gravel just across the Green River that shut down the Krummer Bridge. I'd want some sophisticated engineering before I set my stars on a South Connector.**

L,H page 90 line 9&10, line 20&21.....**Please make certain that skimmed off parcels are replanted in legumes and trees on the next growing season unless there is construction underway, even for the land that is logged under the forrest act.**

P page 91 line10-17..... He thinks we could resurrect the Black Diamond School District. I doubt the State Board of Education will fall for that, they think they could save a lot of money by getting rid of all local school boards and just handle the administration at the State Level. I suspect they are correct about the money savings.

P page 92 line 20-23..... I say there are some valuable lessons for BD over this school issue, maybe next time our city could be more proactive about requiring an alternate representative if for any reason we should loose our school board representation. If we can go for a resurrected school board be sure to ask for enough money from YB to get the needed capital, State only contributes to maintenance remember.

PS,V page 94 line 23.....I also noticed that the “movement of the school buildings and parking lots” into the City Limit and into the UGA was actually a function of moving the line on the map rather than moving the facilities, please firm all these things into a reality before signing or you simply do not know what you are going to get.

A,B,J,K,M,N,O,S,T,V page 96 line 6&7.....Trails and roads, public facilities and off limits areas, these things need to be addressed as **the backbone of the new and improved Black Diamond. Other property owners and the city itself, business that want to come to our town, every one needs these things spelled out. Look guys it’s the same mantra I had 15 years ago, WE NEED A PLAN, NOTHING COORDINATED CAN HAPPEN UNLESS WE HAVE A PLAN. To this end I suggest there is but one rational thing to do. Vacate your MPD ordinance and install a new moratorium on development, and then get us citizens together to make the plan.**

W page 101 line 24.....He doesn’t think this is a problem but I think he is wrong. I asked that city personnel be asked to wear Black Diamond name badges including their positions because they and the YB people were mostly folks who appeared in Black Diamond at the same time, they were seen socializing around town and at meetings, and seemed to have long standing personal relationships with each other and certainly not with Black Diamond residents over the years since. We could not tell city and YB apart. We were told at the time of selecting the current Law firm during a city council meeting for instance, that YB had worked with them before and had recommended this firm as “people who knew them and how YB did business, and with whom YB could work”. Now we have the situation where none of our elected representatives are allowed any contact with any one who is not a YB or city employee, heck how could we think anything else. Council could indeed fire any city employee, but they have been barred from any other friends in town, so we are certain impartiality as regards YB was gone long ago. Any applicant control over city personnel is way to much and just the access on and off the job is a real problem.

page 103 Noise.....Our noise restrictions were designed for projects of limited duration. We do have some strict rules about the rare blasting done at the John Henry which include specific warnings and scheduling. What seems reasonable to me is a six hour work day with a two hour lunch break and only 4 days a week and a public notice scheduling for when the work will be happening so sensitive folks can plan to be out of town. These projects purport to be going on for a generations worth of time 20 years, its going to wreck the hearing of a whole generation. There needs to be extreme restrictions or we will all go mad. **For me at my quiet lake the noise issue is a very big deal as regards to the ongoing development. I hear no traffic or voices now except occasionally if the kids are on the trails or coming to fish and I always find them an imposition. Birkkids complained last year about my generator which ran about 2 hours an evening from the April to October while my power was out.** I have not been real vocal about this because I don't want to contemplate the destruction of my peace, and because it is my understanding that section 23 is in a reserve area to be developed later, and because the water issues will impact the region at large so fundamentally that their consideration must come first.

B,I,J,K,M,S,T,V page 105 Green Valley Road impacts again.....There are certain unnatural and fundamental problems with these plans, this development is a contrived armchair overlay which does not match the topography and watershed of the region. Look at the separate watersheds on the map, water has its way of finding efficient routes. The artificial overlapping of two watersheds traffic is causing particular inefficiencies. Yes, human ingenuity can conquer the natural order but it is always very expensive in effort and money and usually results in an inferior product. I don't really know how these ideas help you but this is just one of the examples of our fundamental lack of planing.

A,B,J,K,M,N,O,S,V page 109 line 6-8.....please consider vegetative retention and buffers on just separating current Black Diamond from the discordant intrusion of the MPD, but also consider that the Villages are so named because the original intent was for there to be small isolated patches of concentrated development with large natural areas and nature trails leading to the next "village". Listen: I have seen this YB plan and it is not anywhere near what we envisioned when we developed the comp plan. Black Diamond is worth so much more then what is being offered here.

B,I,L page 110 line 20-22.....The Sand vibration issue, He sees no vibration problem, I see that the sand plays a part in the hydrology and as such must be entertained by the water studies that are missing for the whole development.

I page 111 line 1-3.....The dust impacts need to be addressed but in light of also protecting from silting, so if there is application of water spray to hold down dust there must be accompanying silt fencing to keep the silt out of the waterways.

NOW FOR MY ILLUSTRATION:

I have been thinking of purchasing a new refrigerator. I went to Sears, where I let a saleslady talk me into a certain model that is on sale, one quarter off. I was smart enough to have her print out the specifics, so I could take the write up home and think about it. Part of my thinking included goggling the model, there I found 68 product reviews by previous buyers. Everyone praised the looks of the appliance and most commented that their friends were jealous of a handsome unit in their home. More then half of them however cited multiple service calls and actual breakdowns, a refrigerator that got too warm and spoiled food, compressor failure, door not closing, noisy operation, five minute cycling.

One electrician reported that a voltage regulator solved many of his compressor problems, another said the refrigerator is so roomy and the door so big that one should keep bottles of water in the empty space to "hold the cold" for more efficient operation.

I need to think about and discuss this idea thoroughly before I purchase, or I am possibly setting myself up for "buyers remorse" in a big way. I will be taking a month to mull over my decision so I can be certain I am not rationalizing away real problems before I contract.

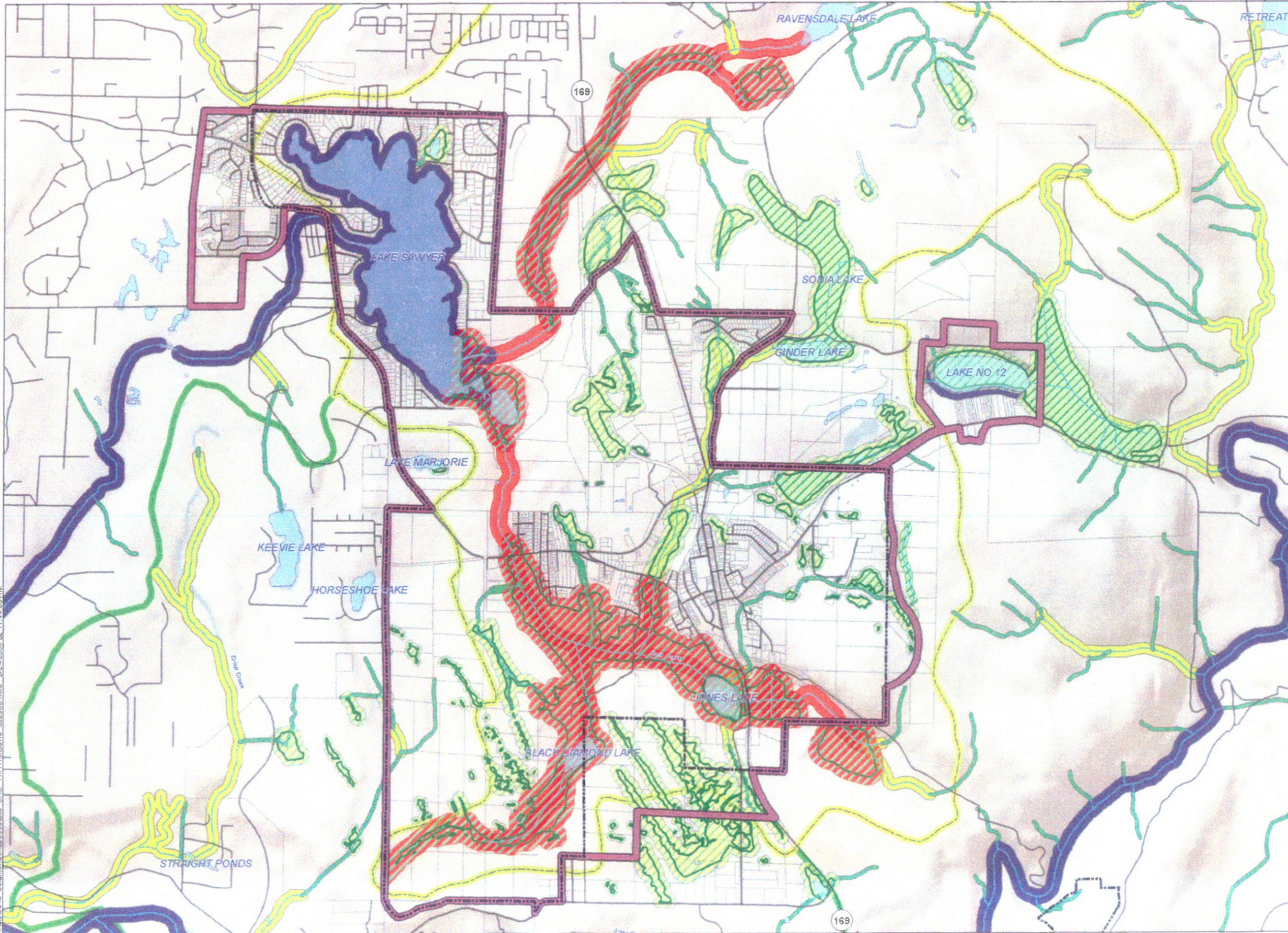
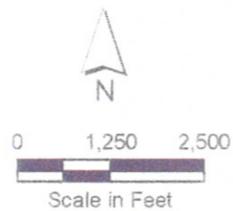
This DA process, in the way you have committed to it, bars you from my sort of a studied considered fact checking for yourselves, on a project with a lot more consequences, and a forever time line for the residents of Black Diamond; then my \$850.00 refrigerator does for me, so I think you owe your city more then three days for fact checking and deliberation before you make a decision. **Please consider remanding this DA back to the Hearing Examiner so he can properly finish his work and so you can get honest value from his fee for your constituents.**

Remember, reality of the situation will in the end rule the rest of Black Diamonds days, the wishful thinking will be long forgotten.

We were promised a first class development. A development which we could stand up on the world stage with, with pride. We have been offered mediocrity and depravity, YB stated at the beginning that they liked a challenge, that it made them deliver a better product. Let's be the town that holds them to their word.

We were promised a community built on Black Diamond's firm foundation as an integrated economically sound and rational, self sufficient community. With a walking scale but efficiency of transportation and communication, with a proud historical heritage, with an exceptional natural setting, with a small town community filled atmosphere. Forested and untouched areas remain, trails, bikeways, green belts as well as roads to connect open space, housing, shopping, employment and recreation areas with each other and with the several regional nearby parks, and with the "old town"; all this in a coordinated integrated way that encourages a walking and active lifestyle. The economic base is set on a diverse platform of heavy and light industry, business park and office space, cottage and tourist industry, and there is enough retail to at least provide the necessities right here in town. The town is properly thought out and coordinated in the placement of roads, schools and services and trails for most effective transportation and communication; and for the ease of movement of goods and services for most efficiency. Residential development will be a mix of types and densities which are clustered to preserve the maximum open space, and access to the trail system that is the coordinating back bone of the development. Citizens participate in effective and open government, and are part of the decision making process reflecting the community values of cooperating with downstream neighbors to protect their quality of life, also to provide adequate public services and environmental protections for a safe high quality life for all citizens from children to seniors.

[from 2009 Comprehensive Plan Update page 1-2]



- Legend
- Black Diamond City Limits
 - UGA Boundary
 - SR 169
 - Road
 - Water Body
 - WADNR Streams
 - CAO Wetland boundaries
 - Wetland Buffer Alternative C
 - Category and Buffer Distance
 - Headwaters - 225 ft
 - CORE - 225 ft
 - I - 180 ft
 - II - 150 ft
 - III - 80 ft
 - IV - 50 ft
 - Stream Buffer Alternative C
 - Category and Buffer Distance
 - CORE - 225 ft
 - S - 200 ft
 - F - 150 ft
 - Np, Ns - 50 - 100 ft
 - Study Area
 - Lake Sawyer Watershed
 - Green River Watershed

Data Source: King County GIS, WA DNR

Figure 1-1
Core Area
Most Intensive Processes
Black Diamond UGA

Sensitive Area Ordinance Update
 City of Black Diamond, WA

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City of Black Diamond
25510 Lawson St.
Black Diamond, Washington

July 13, 2011

Mr. Phil Olbrechts, Hearing Examiner

C/o Mr. Steve Pilcher

Re: Development Agreement Hearing

We wish to enter our objection to the inclusion of the exhibit entitled:
“The Villages and Lawson Hills
*Guide to MPD Design and Build-Out as Envisioned
by the Development Agreements.*”

This document was entered into the record as evidence at the hearing by the Applicant’s counsel. The Applicant’s counsel was not under oath when the document was submitted on July 11, but after we entered our objection on July 12, the Applicant’s attorney was sworn in and affirmed that her comments on the previous day were also under oath. However, it is not clear that the document that was submitted is also covered in its entirety by that affirmation.

The Applicant’s Guide purports to describe the development “as envisioned” by the Development Agreement. “As envisioned” is an interesting and troubling choice of words. Does this Guide detail the Applicant’s *understanding* as to the terms of the Development Agreement? Is this document a *codicil* to the Development Agreement Contract? Is this document part of the Applicant’s application?

The public and Council need to know whether this Guide and its representations are contractual in nature. At some future point, may the parties to the Agreement refer to the Guide and enforce its content?

If the Guide is not a contractual representation, and if it does not describe the Applicant’s understanding as to its rights and obligations under the contract, then its purpose may simply be to “spin” the Applicant’s intentions. The danger to the public interest here is that the Council may well rely on the Guide for its decision making rather than the actual

EXHIBIT

24

Development Agreement. At the very least, the Guide should be accompanied with a clear statement from the Applicant whether the Guide is a contractual commitment or merely a puff piece that may contain inaccuracies and misrepresentations.

Additional basis for our objection is that portions of the document are, in fact, misleading or inaccurate as follows:

The stated housing unit count differs significantly from that which is included in the Development Agreement.

The estimate of jobs has no foundation in the MPD approval or the Development Agreement.

The various photographs of housing examples are not related to the design criteria in the MPD approval or the Development Agreement, and in some cases may actually conflict with that criteria.

The site plans, “bird’s eye views”, and graphics are speculative in nature, are not addressed in the MPD approval or Development Agreement, and in some cases may actually conflict with that criteria. Park and open space areas are exaggerated well beyond the requirements of the MPD approval or Development Agreement. Hedge words such as “the drawing is less precise” and “represents possible development areas”, “representative”, “conceptual”, are found throughout the document.

The reference to the Applicant’s web site on its Transportation Map should be deleted since the website will be changed over time and may include information that is not part of the record. Also, the list of projects does not track directly with the MPD approval and Development Agreement.

The estimate of wetland alteration, and speculative avoidance ‘promises’ are not consistent with the terms of the MPD approval and Development Agreement.

The statement regarding the Lake Sawyer weir is not accurate or consistent with the terms of the MPD approval and Development Agreement.

The open space acres and percentages are not consistent with the terms of the MPD approval and Development Agreement.

Thank you for considering our objection.

Sincerely,

Brian Derdowski
70 E. Sunset Way #254
Issaquah, Washington 98027

On behalf of "Save Black Diamond", "The Sensible Growth Alliance"
and several individuals who reside in and around the City of Black
Diamond

Unintended Consequences

1. The development starts out with projects that make it harder to succeed in the long run. For example, several hundred apartments are built with no retail or single-family homes to balance them out.
2. The construction traffic hurts our local businesses too much.
3. The noise and construction activities hurt our local residents too much.
4. The road projects don't work well and traffic backs up in strange places or completely fouls up arterials.
5. The run-off and erosion gets out of control and causes pollution and flooding.
6. Clearing and grading doesn't follow the plan and damages the environment.
7. Shallow ground water is intercepted with no regulations to protect springs, wetlands, streams, and lakes.
8. The City is forced into accepting variances that reduce environmental and neighborhood protections.
9. The Council finds that it is powerless to affect the direction of the development.
10. The project happens faster than the City can manage.
11. The costs and revenues become wildly out of balance.

Common Sense Precautions

1. The environmentally sensitive areas should be surveyed when the building permits and subdivisions are submitted. These surveys should govern.
2. Environmental monitoring and contingency plans need to be separately funded and specific enough to handle the worst emergencies.
3. Sensitive area enforcement and penalties should be separately funded and specified. The City needs the power to shut down the project if necessary.
4. The noise levels should always comply with Health Department standards, and should stop if they don't.
5. Gridlock is never an option. The City needs a tool to stop development if traffic mitigations don't work.
6. The City needs to be able to prohibit undesirable development.
7. The City needs to be able to require proportional development.
8. The City needs to be able to use SEPA effectively to condition implementing projects.
9. The City needs to have sufficient discretionary authority over variances and amendments.
10. The Council needs to have its legislative authority preserved.

Doing it Legally

- Ask your attorney in executive session for “what would be the strongest language that could be applied to accomplish your common sense precautions”.
- As an alternative, ask your attorney to draft a motion of remand to the Hearing Examiner to prepare findings and recommendations to accomplish your common sense precautions.
- Consider retaining and requesting suggestions from other attorneys. They could advise you in executive session just like your City attorney is doing.
- If Yarrow Bay can walk away from this Development Agreement, so can you. Is Yarrow Bay really going to challenge your common sense precautions at this point?
- Your role as Council is legislative. The Council needs to act as a check and balance against the executive/administrative authority.

MPD Approval Requires Permit Approval
and Development Agreement

The BDMC (18.98.050 (A)) states:

“An approved MPD permit and Development Agreement shall be required for every MPD.”

The City’s approval of the MPD permit conveyed no entitlement to the Applicant unless and until a Development Agreement is approved.

The Development Agreement is a Voluntary Legislative Contract

The Development Agreement is a “voluntary” contract as defined by State law.

The City has no obligation and cannot be compelled to adopt a Development Agreement.

The Growth Management Hearings Board has ruled that the MPD permit approval was a legislative action.

Unlike an administrative act such as a building permit, the Applicant has no fundamental right to the conclusion of a *contract*, as Development Agreements are defined in the Statute.

The City cannot be restricted in its consideration of a *voluntary contract* Development Agreement in the same way that an administrative review of a building permit can be. The exercise of the City’s contracting authority is legislative and discretionary.

The Council has the authority to amend the Development Agreement based on its own legislative judgment.

Quasi-Judicial Process Doesn't Alter Fundamental Legislative Character of a Development Agreement

The City may review and process the Development Agreement using a method that is similar to that used for quasi-judicial proceedings.

The City may limit the Hearing Examiner's work scope and Hearing to the conduct of a quasi-judicial hearing on a narrow aspect of the Development Agreement, such as whether or not it complies with the MPD permit approval.

However, the Council's consideration of the Development Agreement is fundamentally legislative, and cannot be bound by the record or quasi-judicial processes.

During Council review, the Development Agreement is subject to the public participation requirements governing land use planning and other notice, hearing and due process requirements of law.

The Development Agreement is a “Stand-Alone” Document

The Development Agreement is a “stand-alone” document. The authority to adopt a Development Agreement is established and defined in State law. The City cannot change the fundamental State-defined legal characteristics of Development Agreements

The Development Agreement must be consistent with the Black Diamond Municipal Code (BDMC).

Whether the Development Agreement is consistent with the BDMC is a determination that is independent of the MPD approval.

MPD approval conditions are not subject to review during the Development Agreement review process. However, any Development Agreement provision can be challenged as to its consistency with the BDMC.

The Development Agreement Can Have Its Own Conditions Based On Code or FEIS

If a provision of the Black Diamond Municipal Code (BDMC) is violated by the draft Development Agreement, then the Agreement must be amended to comply with the code.

If the MPD approval is silent on an issue that is addressed in the BDMC, the Development Agreement may include conditions that conform with the code.

The Development Agreement may include conditions that are based on an adverse environmental impact that has been identified in a prior adopted SEPA document.

The Development Agreement Should Include Conditions To Mitigate It's Own Environmental Impacts

The Development Agreement's environmental impacts are not necessarily the same as those that were examined during the MPD permit review.

The prior adopted environmental documents were developed many months ago, and since then the MPD's impacts have changed.

The Development Agreement has a different force and effect than the MPD permit approval. For example, key provisions regarding design criteria, funding, vesting, phasing, and other issues are different or go beyond the MPD permit approval. Some of these new provisions potentially pose adverse environmental impacts that were not evaluated in the prior adopted environmental documents.

The Development Agreement's new provisions regarding additional accessory dwellings and attached single family housing units were not evaluated in the prior adopted environmental documents.

The Development Agreement's maps and exhibits have provisions that were not evaluated in the prior adopted environmental documents.

The Development Agreement is Subject to SEPA

The Development Agreement is subject to its own separate SEPA review.

The SEPA Responsible Official has determined that prior environmental documents are sufficient.

The SEPA Responsible Official's determination is subject to appeal.

These proceedings are the best and possibly only opportunity for parties to establish a record as to whether or not the prior environmental documents are sufficient to address issues posed by the Development Agreement.

Offering information that documents that the prior environmental documents have not addressed all SEPA related issues posed by the Development Agreement is relevant and useful to inform the Council.

Offering information that documents the probability of a significant adverse environmental impact if the Development Agreement is adopted is relevant and useful to inform the Council.

The Development Agreement's Terms and Conditions are
Fundamentally Affected By The Vesting of
Three Implementing Subdivisions

The City's approval of the MPD included a condition that a Development Agreement had to be approved "prior to any approval of subsequent implementing permits or approvals." (Condition Number 2).

The City received and deemed complete applications for three implementing subdivisions for the Lawson Hills MPD, (Phase 2, Preliminary Plat B), and The Villages MPD, (Phase 1A Preliminary Plat and Phase 2, Preliminary Plat A).

The determination of a complete application is an "approval". It is an important "approval" because it determines vesting.

The City's approval of applications for the purpose of vesting violates the BDMC and the MPD approval. However, that issue is not under review during the Development Agreement Hearing.

What is under review, however, are the terms and conditions of the Development Agreement Contract. Those terms and conditions cannot apply to the implementing subdivisions if they are vested as of the date of their application.

If the terms and conditions of the Development Agreement do not apply to the three subdivisions, then its environmental mitigations and standards for large areas of the MPD don't apply. This constitutes a fundamental inconsistency with the BDMC, the MPD approval, and SEPA.

The Following Sections of the Development Agreement*
Should Be Amended

2.3.1

This provision states that the MPD Site Plan is “too small a scale to depict surveyed boundaries on the ground”. The Development Agreement should include a larger scale map. Moreover, the constraints map is also not sufficiently detailed to depict environmentally sensitive areas adequately, especially considering that the mapped boundaries are deemed final and complete regardless of detailed surveys and construction level review in the future.

3.0

This provision states the Development Agreement will supercede all previous agreements. This provision violates State laws that require Development Agreements to be consistent with development regulations, municipal codes, and ordinances. Even if the parties to these prior agreements agree, any modification to these agreements require amendments to the City ordinances which adopted them.

4.1

This provision amends the Land Use Plan Map. While the MPD approval stated that “all *other* specifics shall be resolved through the Development Agreement process” (emphasis added), it did not permit an amendment to the Land Use Plan Map outside of the MPD amendment process.

This provision also alters sensitive buffer widths without any discussion about how this was accomplished. Oral testimony from the Applicant suggests that the Constraints map is currently under review and modification by staff.

The details outlined by this provision rise to the level of project level, but they have not been evaluated as such. The prior adopted environmental documents were programmatic by definition, and as such, have not evaluated these detailed impacts.

4.2

This provision allows single-family *attached* units up to four-plexes. This is not consistent with the MPD approval or the City's development regulations.

4.4.8

This provision allows amendments to the Design Concept and the Land Use Plan to be made without any amendment process whatsoever. This violates the MPD permit approval, the BDMC, and the Growth Management Act; creates a potential SEPA gap, and is poor policy.

4.4.9

This provision allows amendments to the roadway alignments without any amendment process whatsoever. This violates the MPD permit approval, the BDMC, creates a SEPA gap and is poor policy.

4.7

This provision allows any development parcel to be converted to school use with only a minor amendment, administrative review. This conflicts with provisions to modify the Land Use Plan Map, creates a potential SEPA gap, is inconsistent with the BDMC, and is poor policy.

4.5

This provision eliminates compatibility mitigations between the MPD and adjoining properties in cases where the property is undeveloped at the time of Implementing Project application. This provision should provide for a way to address circumstances where the adjoining property has a pending application, or when the City is aware of the intent to develop.

4.6

This provision allows for the concurrent development of all Expansion Parcels, subject to review processes outlined in Sections

10 and 12. The Expansion Parcels should be required to go through a planning and rezone process.

4.7.1

This provision allows for construction and field offices without defining their size or other characteristics. This provision violates BDMC.

4.7.2

This provision allows for commercial development within any neighborhood by minor amendment, administrative review. Though gas stations are limited to four thousand square feet, other commercial development appear to have no limit in terms of size or usage.

4.7.3

This provision allows accessory dwelling units. This provision was not included in the MPD permit approval, and the additional dwelling units were not evaluated in the prior adopted environmental documents.

4.8

This provision establishes “target” unit counts by Phase. There is no definition of what a “target” is. It appears that any phase could exceed the unit counts without regulatory limit.

4.10

This provision states that for the life of the MPD, any and all environmental impacts will assume to have been fully mitigated. While including the disclaimer that implementing projects will require SEPA review, this disclaimer does not correct the defect in the proposition that a programmatic FEIS can identify and fully mitigate all impacts including those that may be identified at the project level.

5.2

This provision establishes residential standards that create too small setbacks, allow encroachments, allow 55 foot (including authorized extensions) tall structures, zero lot line single family development, and other design standards that are inconsistent with the letter, intent and vision of the BDMC and the MPD permit approval.

5.4

This provision establishes sign standards that are weak, vague, and inconsistent with the intent and vision of the BDMC and the MPD permit approval.

5.5.1

This provision exempts schools and utility structure from landscape requirements. It would exempt transformers and utility vaults. This is inconsistent with the intent and vision of the BDMC and the MPD permit approval.

5.5.2

This provision fails to establish the standards for Mast producing species as required by the MPD permit approval requirements.

5.5.5

This provision is very weak. Street trees on 30-foot centers, and the loophole allowing groves would negate the intent and vision of the BDMC and the MPD permit approval.

The provision for “low growing plant palette” (grass) is laughable.

5.5.7

This provision would allow the Applicant to delay landscape plantings for three years by bonding. The establishment of landscaping takes time, and the visual impact of new development especially needs the benefit of landscaping. The Applicant should be required to actually plant the landscaping concurrent with development.

6.4.2

This provision allows for the design and location of off-site connection roads to be determined by a “collaborative process”. This provision is vague, and in conflict with the BDMC, the MPD permit approval, and SEPA.

6.4.3

The threshold dwelling number for the Pipeline Road completion is too high and arbitrary. There is no evidence that any technical consideration went into this number.

7.1.5

This provision requires the City to inspect all improvements within one day, and provide a comprehensive written report within seven days. These time limits are arbitrary, and undifferentiated between simple and complex projects.

7.1.6

This provision requires the City to release bonds within 14 days of acceptance. There is no provision for holdbacks to cover performance monitoring over time. Designs do fail, and the City should set aside a reasonable contingency to ensure that there are funds to correct deficiencies that may emerge after acceptance.

7.1.9

This provision provides that if the Council fails to exempt the Applicant from Capital Facility Charges, then the Applicant will receive a credit for its system improvements. There should be a provision for a “hybrid” where a modified or contingent Capital Facility Charge can be imposed in addition to the Applicant financed system improvements.

7.2.1

This provision accepts the Applicant's contention that it owns the rights to 1.08 million gallons of water per day. There is no documentation as to whether these rights are valid or are able to be perfected. The source of some of this water is based on the increased water level at the Hanson Dam; a level that is currently in doubt. Moreover, this provision eliminates the need for water certificates for implementing projects, in violation of State law and the BDMC. The Development Agreement should have a provision that requires firm water certificates at the time of implementing project applications.

7.3.1

This provision guarantees sewer availability for the entire build-out and eliminates the requirement for a certificate of sewer availability for implementing projects. This provision is irresponsible and in violation of State law, Public Health codes, and the BDMC.

7.4.3

This provision sets forth stormwater management "goals". What effect are these goals?

These goals should be rewritten as performance standards that have equal effect as specific design standards. Where there is a conflict between these goals and specific design standards, the more restrictive should apply.

7.4.4

This provision establishes vesting to stormwater standards by phase rather than implementing project. Phases are too general and undefined to properly establish impacts and enable vesting. Vesting of stormwater standards should apply to implementing projects. An alternative would be to specifically require the use of the latest standards as applied by SEPA review.

8.2

This provision ‘freezes’ sensitive area review for the life of the project to that which has already been accomplished. There are many problems with this approach. Sensitive areas, especially wetlands, change over time. The level of existing review was not as detailed as a project level review. The constraint maps are too large a scale to accurately depict facts on the ground. The provision violates State law and the BDMC. Federal and State regulatory agencies that have jurisdiction do not recognize this approach. There are profound SEPA problems since new data could not be considered, and vesting under SEPA is not allowed. Moreover, the prior adopted environmental documents specifically relied on project level review to determine detailed impacts...project level review that would be prohibited by this provision.

Additionally, sensitive areas should not merely be field marked. They should be protected with temporary barriers and silt fences.

Additionally, geologic and landslide areas should not be “altered or eliminated”. This provision was never even contemplated by the prior adopted environmental documents.

Additionally, the hazardous tree provisions could allow extensive alterations of sensitive areas. Leaving only “the majority” of the sensitive areas alone is a gross violation of the BDMC and other legal requirements.

9.2

This provision delays the construction of parks until Certificates of Occupancy are issued for 60% of each Phase (40% for Phase 3). Note that this provision delays the *construction*, not the *completion*. Note also, that this provision applies to *Phases*, not *Implementing Projects*. This provision violates the BCMC and is extremely poor policy.

9.3

This provision allows trails, crossings and encroachments into sensitive areas as a blanket provision. This is a violation of the BDMC and other laws.

9.4

This provision allows for stormwater facilities to be considered open space even if it is inundated 9 months out of the year. This violates the intent of the BDMC.

9.5

This provision undermines the Recreational Facility standards of the BDMC and the MPD permit approval. The applicant may locate facilities off site, negating the intent of providing recreational facilities within the MPD, internalizing impacts and minimizing off-site vehicle trips. The applicant may pay a fee lieu of providing the facilities. The procedure for establishing the fee pre-empts legislative authority. The LOS for recreational facilities is based on population generation rates that are unsubstantiated and standards that are not suitable for the MPD.

9.6

This provision allows the Trails Plan to be built on an implementing project basis. This defeats the intent of providing interconnectivity and a regional trail system. Many years will likely pass before the trails actually lead anywhere. The Trails Plan should be built on a Phase-by-Phase basis.

The “should” standards for sensitive area, dead end, and incomplete segment avoidance should be “shall”.

9.7.3

This provision makes trail “amenities” like restrooms and drinking fountains subject to veto by the Applicant. These amenities should be specified and required.

9.9.1

This provision makes the dedication of conservation easements optional for sensitive areas. These dedications should be mandatory.

10.3

The dispute resolution process described in this provision leaves out any public involvement. The public is a beneficiary of the Development Agreement, and should have the right to initiate and participate in appeals of interpretational determinations. The Council is also cut out of these determinations. There should be a provision for appeal to Council.

10.4

The criteria that this provision applies for determining “Major” or “Minor” amendments to the Development Agreement is vague.

The administrative and appeal process illegally cuts out the Council on what is essentially an amendment to a legislatively approved contract.

There is no provision for legislation that could modify the procedure by which various classes of land use actions are processed. For example, these provisions vest considerable authority with the Mayor, but what if the City’s form of government changes?

10.5

This provision would allow the addition of Expansion Parcels to be by Minor Amendment. This violates the BDMC, the MPD permit approval, and State law.

Addition of Expansion Parcels should require a Comprehensive Plan Amendment and Rezone.

11.1

This provision allows all infrastructure and timing of development to be changed without amendment to the MPD permit approval or the Development Agreement! This is an astonishing violation of the MPD permit approval, the BDMC, and State law.

11.3B

The Applicant will be constructing public facilities to benefit its development, and future non-MPD development will have to pay the Applicant for the use of those facilities. This provision determines the method by which those payments would be calculated. The example given in this provision does not seem to address instances in which more than 10,500 units are benefited. Moreover, there is no provision for cost containment. Should surrounding non-MPD development be required to pay a share of facilities that may have had large cost over-runs or profit to the Applicant?

Table 11.3.1

This table shows On-Site Regional Facilities, but doesn't appear to be tied to any applicability text language.

11.4

This provision allows development to be *occupied* as soon as needed Regional Facilities are *permitted*. Obviously this creates the problem of a gap during the construction of the Regional Facilities. This needs to be corrected.

12.3

This provision creates a Design Review Committee. It is totally under the control of the Applicant. This is an extraordinary provision in this regard. To the extent that the Design Review Committee has review authority, it is an illegal delegation. The Design Review Committee should be created and staffed by the City.

12.5

This provision establishes the procedures for reviewing Implementing Projects. It appears to bias the City's review by stipulating that the City "shall take a collaborative approach to addressing any issues." This provision may violate due process and equal protection laws, as well as standards of administrative conduct.

12.8.2

This provision attempts to vest to the existing code certain applications that are not subject to vesting, or which have vesting periods different from the Development Agreement.

12.8.15

This provision links together the MPD permit and Development Agreement Amendment review process. The problem with this is that the MPD permit amendment might be a quasi-judicial administrative review, while the Development Agreement Amendment would be a legislative decision.

12.9.1

This provision allows the Applicant to "defer any required improvement" if bonded. This is a highly unusual provision that violates the BDMC, the MPD permit approval, and State law.

12.10.2

This provision requires the City to not issue a permit if the City of Maple Valley files a breach of contract lawsuit against the MPD developer. However, this provision is only triggered if the City files for injunctive relief. This provision should be changed to include halting the acceptance and review of permits whether or not injunctive relief is sought.

13.3

This provision allows amendments to the Comprehensive School Mitigation Agreement to be processed as a minor amendment. This violates the MPD permit approval. Moreover, the availability of schools and their location are important matters that should require public participation and adoption by the Council. Additionally, the School Mitigation Agreement was adopted legislatively, and can only be amended legislatively.

13.4

This provision fails to fully address the BDMC and the MPD permit approval that require that public safety LOS be maintained and concurrent with project build-out.

13.6

This provision addresses fiscal impacts. The following problems apply:

“Comparable City” should not be based primarily on population. An established city that is growing slowly is not comparable to a city that is quadrupling its population in 15 years. There are many factors other than population that determine municipal finances.

Privatization of facilities is highly speculative and poses legal issues.

No appropriate allowance for inflation.

Questionable methodology regarding intergovernmental transfers.

No third party review by experts in municipal finance of the annual analysis.

No third party review by experts in municipal finance of the Development Agreement provision.

13.7

This provision details noise mitigation standards. The following problems apply:

There is inadequate provision for the application of King County and Washington State Health Department noise standards and requirements.

The provision of a 100-foot buffer may not adequately mitigate noise problems.

No provision detailing the method of measurement, time averaging and other methodology

No firm performance standards, monitoring, or enforcement plan

13.9

This provision requires the City to adopt a general government facilities mitigation fee within three years or else the Master Developer's obligation is void. Since the fee is paid at the time of building permit issuance, it is likely that this fee will never be collected and the identified impact not mitigated.

15.1

This provision states that the MPD permit application was vested on June 28, 2009, while the implementing projects are vested as of the date of MPD permit approval.

This provision should be amended to reflect the following:

This matter is under litigation.

The MPD requires both an MPD permit approval and a Development Agreement. Thus, the vesting date for the MPD should be when the Development Agreement is approved.

Implementing projects such as subdivisions vest when they are applied for.

Certain other applications are not subject to vesting.

Projects do not vest under SEPA.

Certain Federal and State regulations do not recognize vesting.

15.3

This provision addresses the issue of Assignment. The following problems apply:

The City is required to release the Applicant of liability whether or not the release is stated in the assignment document.

The provision does not address the status of outstanding performance bonds.

The provision has no protections for the City from third parties.

The provisions should include conditions under which the City could deny an assignment.

15.7

The Exhibit list only includes a Summary of Prior Agreements. It should include the actual agreements.

This provision allows for the amendment of Exhibits H, J, K, M, N, Q, R, by minor amendment. This violates the MPD permit approval, the BDMC, and State law.

15.11

This provision excludes third party beneficiaries. The residents of Black Diamond should be included as third party beneficiaries. One reason for this admittedly novel suggestion is that if the City were to dis-incorporate, and the powers and authority of the City transferred to the County, the residents would need to be able to assert their rights under the contract.

15.12

This provision should specifically exclude any instruments and documents that require legislative action.

Submitted by Brian Derdowski
70 E. Sunset Way #254
Issaquah, Washington 98027

brian@derdowski.com

On behalf of “Save Black Diamond”, “The Sensible Growth Alliance” and several individuals who reside in and around the City of Black Diamond

*Condition numbers are taken from The Villages, companion conditions for Lawson Hills also apply

DEVELOPMENT AGREEMENT CONTRACT ORAL SUGGESTIONS

FOR THE BLACK DIAMOND CITY COUNCIL

OCTOBER, 2011

Judith Carrier

24305 SE Green Valley Road

Auburn, WA

Black Diamond needs Master Plan Developments and it needs them with stronger Development Agreements (DAs). Yarrow Bay (YB), the City staff, and some members of the public have worked for months to compile the Final Draft. It will surely take you time to digest what you have heard and what has been written, asking your questions of the best authorities you can find. It is my understanding---from others more practiced in land-use than I---that during this DA process is the best opportunity, and wisely so, to get as much detailed information as possible into the binding contract. I hope you will allow yourselves as much time as you need to do that.

STUDY DILIGENTLY AND ACT NOW---AVOIDANCE OF REGRET

For the sake of Black Diamond and the surrounding area, again, I urge your continued diligent study of the complexities and deep consideration of the many development issues. Because these agreements have a 20 to 25 year life, they need a well-thought-out, detailed contract now to avoid fewer and unexpected impacts. As you know, it is usually easier, less costly, and, in this case, legally safer to make necessary changes, additions, or deletions sooner rather than later. Resist the temptation to leave decisions for another process beyond the DAs.

Wetland Concerns

I have concerns about wetlands issues in the DAs in the details required by government agencies. Dr. Sarah Cooke discusses some of the wetlands problems in her testimony. At the same time, her work is an example of the technicalities of which most of us have little knowledge, yet the Council must understand thoroughly to make informed DA choices. Her testimony also gives information of why it is prudent to act now rather than wait.

My hand-outs for you include Dr. Cooke's written comments to the Hearing Examiner through her letter to Mr. Pilcher of August 12, 2011: "Response to Yarrow Bay's Written Response Pursuant to Hearing Examiner's (HE) Pre-Hearing Order II". By now, you have read Dr. Cooke's references from the Open- Record Hearings showing why she was asked and definitely qualified to testify as a wetlands expert. She has the education, background, and on-the-ground experience in this area to recommend why and what is needed to protect these sensitive areas in and around Black Diamond.

As an implementing condition, the Hearing Examiner requires the Council to determine if constraint maps are detailed enough to use. (Recommendations, Section VIII, K) Inconsistencies between wetland constraint maps are mentioned by Dr. Cooke. She is in doubt that the boundary delineations and the accompanying protective buffers are correct. (Comment 4) Both she and the Hearing Examiner state that when the boundary and buffer information is entered into the Development Agreements, if that information is found to be inaccurate as the Developments proceed, it cannot be changed to reflect the discovery. Negative impacts can occur to the wetlands involved. That will put

the City out of compliance with State and Federal rules and regulations which the size and quantity of the many wetlands in these projects require. That will leave the City at risk for legal action. (Cooke's Summary, 2nd and 3rd paragraphs)

Implementing Condition: Have the wetland boundaries verified by the US Army Corps of Engineers. They are the ultimate authority. (See Cook's "Response", Comment 3 and accompanying references.)

CONSULTING EXPERTS---ONE EXAMPLE OF THE NECESSITY

It is past history that causes me to ask you again to please review your decisions with experts beyond those on your City Staff and legal team. I have brought the subject of this kind of consultation up to you before and by way of explanation will refer again to wetlands expert Dr. Sarah Cooke and her Final Response mentioned above.

In reading her last testimony, you will find that ,if Dr. Cooke is correct, even the City's SEPA official who I mention as a City expert to whom the HE, the Planning Commission, and the Council and many others have turned to as an authority struggles, justifiably so, with the technicalities as a lot of us often do. In regard to wetlands, Dr. Cooke comments (Comment 2) about a grave wetlands error by him: "The SEPA official needs to know what the potential impacts are, not if the project is in compliance with an outdated ordinance." With projects as large as these and covering so many varied issues, I think even experts can be expected to make some mistakes. Even so, consulting more than one or two would be wiser if a new source of help is experienced in his or her field.

According to Dr. Cooke, Yarrow Bay relied on Scott Brainard, their wetlands expert, to rebut Dr. Cooke's oral testimony. In her response, she refuted his rebuttal with authoritative, current references in five comments (#1, 2, 6, 7, and 8) out of ten.

Brainard referred to the wetland boundary delineation work of Parametrix reviewers (Comment 8). You (and many of us) recognize Parametrix as a knowledgeable authority in many areas of these developments' issues. However, from their description of how their personnel did their wetland reviews, Dr. Cooke questions their accuracy and rightly so! She knows her stuff! (Comment 8) She also states, "The city has no qualified wetlands person on staff." (My underlining.) I would imagine you are aware of that already because the Staff knows it and would have told you.

Use your City and legal experts, but go beyond these, for sure, to the most qualified consultants you can find on any and all of the Developments' topics and complexities. I don't want you to think because I have used examples from wetlands testimony that this is the only area where you should seek outside advice. You have immersed yourselves in this land- use data enough to know that to make the soundest decisions you need to confer with the Knowledgeable and Experienced.

Again, before approval, sit with an exceptional, informed, legal land-use expert--a proof-reader, if you will, to review your final draft of the DAs. Make certain it says what you meant it to say word for smallest, legal word!! There was some question about a misunderstanding between what the Council had wanted written in the Final Draft of the MPD Ordinances Approvals and what actually

appeared in them. I was there during all the Deliberations. On the last day, you received the Finals for Lawson Hills and The Villages for the first time without a chance to go over them thoroughly and, yet, approved them outright. This did surprise me! It was as if you were rushing to bring it to the approval stage that very day.

"HASTE MAKES WASTE"

While you apply "A stitch in time saves nine!" to this contract, please use your authority to prevent a "rush job". Study, research, discuss, and deliberate alone and with each other. Give yourselves the time you need. Find and consult with experts as often as necessary. The far-more-experienced Hearing Examiner (HE) Olbrechts, regretfully, had to do his Recommendations in haste. You could feel his frustration in not being able to give the Council his best as he repeatedly stated his need for more time in his Recommendations.

"Haste makes waste!" Let's hope waste does not become apparent as this project goes forward!

It sounds like commitments for travel and business are crowding your schedule, cramping your time to do your best for the people who elected you. I hope you'll work out a longer timeline. Give yourselves and your city time.

CONCLUSION:

I have asked for only two conditions in this presentation. One is the Hearing Examiner's: Do not approve the wetland data (conflicting constraint maps,

boundary delineations, buffer widths, etc.) until you know for sure that information is correct.

The other is my own: Have the boundary delineations verified by the Army Corps of Engineers.

Please read Dr. Cooke's Response that I am giving you. For further understanding consult experts (more than one...and, in this case, there are no wetlands experts in the City). Do the same for all the other technical details for all the other Developments topics. Discuss together and get all the details you can into the Development Agreements....in many cases to protect your City. What you do for Black Diamond is very likely to affect Green Valley Road. You will need time. Take it. Don't rush. "Haste makes waste." Who said that? Probably your mother!! And, you know, mothers are always right!

Thank you.

October 27, 2009

Leonard Smith
CITY OF BLACK DIAMOND
Department of Community Development
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010

Re: The Villages MPD Application

Dear Leonard:

We received your letter dated October 20, 2009 regarding the City's Transportation Plan and the Villages potential connection to Green Valley Road. As you are aware, the Villages MPD application did indicate a secondary access to Green Valley Roadway in the general location depicted as an alternative alignment on the City's Transportation Plan.

Over the past week, we have taken a more critical look at extending this secondary access to State Route 169 rather than to Green Valley Roadway. With the City's assistance on potential deviations to horizontal roadway alignments, reduced amenities in limited areas and coordination with King County for a short segment of the alignment, we believe the roadway can be extended to State Route 169 with only a marginal difference in wetland impacts. The alignment would extend more northerly than originally thought but it is the path of least resistance to make it through this highly constrained area.

As requested in your letter, we will revise the Villages MPD application to reflect the alignment shown on Attachment A. I believe if we work collaboratively together on this issue, a roadway alignment can be achieved that meets the City's Transportation Plan, addresses most of the concerns raised by individuals living along the Green Valley Roadway (especially by aligning the connection to SR 169 as far north as possible), and provides secondary access to the Villages MPD primarily for vehicle trips going to/from the Enumclaw area.

We anticipate submittal of revised MPD documents to Steve Pilcher within the next two weeks. If you have any questions or require additional information, please do not hesitate to give me a call at (425) 898-2100.

June 15, 2011

Steve Pilcher
Community Development Director
City of Black Diamond
PO Box 599
Black Diamond, WA 98010

RE: Condition of Approval No. 34(b) and Development of a Plass Road Plan

Dear Mr. Pilcher:

Condition of Approval No. 34(b) of the approved Villages Master Planned Development Permit (Black Diamond Ordinance No. 10-946) requires YarrowBay to work in good faith with the City of Black Diamond ("City"), King County and Plass Road residents to develop a plan to prohibit or discourage the use of Plass Road as a connection to Green Valley Road. The condition further indicates YarrowBay's agreement to vacate portions of Plass Road with concurrence from King County and the residents.

While YarrowBay does not currently intend to build the South Connector across Plass Road for seven-to-ten years and, therefore, the issues raised in Condition of Approval No. 34(b) will likely not need to be addressed for several years, it would be helpful for all parties if the City would ask its transportation consultant to provide an analysis of the potential to vacate portions of Plass Road in compliance with the Villages MPD Condition of Approval 34(b). We understand that the transportation analysis requested in this letter will be funded by BD Village Partners pursuant to the current funding agreement. After the Plass Road analysis is completed, the City may also want to consider updating its Transportation Comprehensive Plan to reflect any outcomes of associated with vacating portions of Plass Road.

If you have any questions regarding this request or require additional information, please do not hesitate to give me a call.

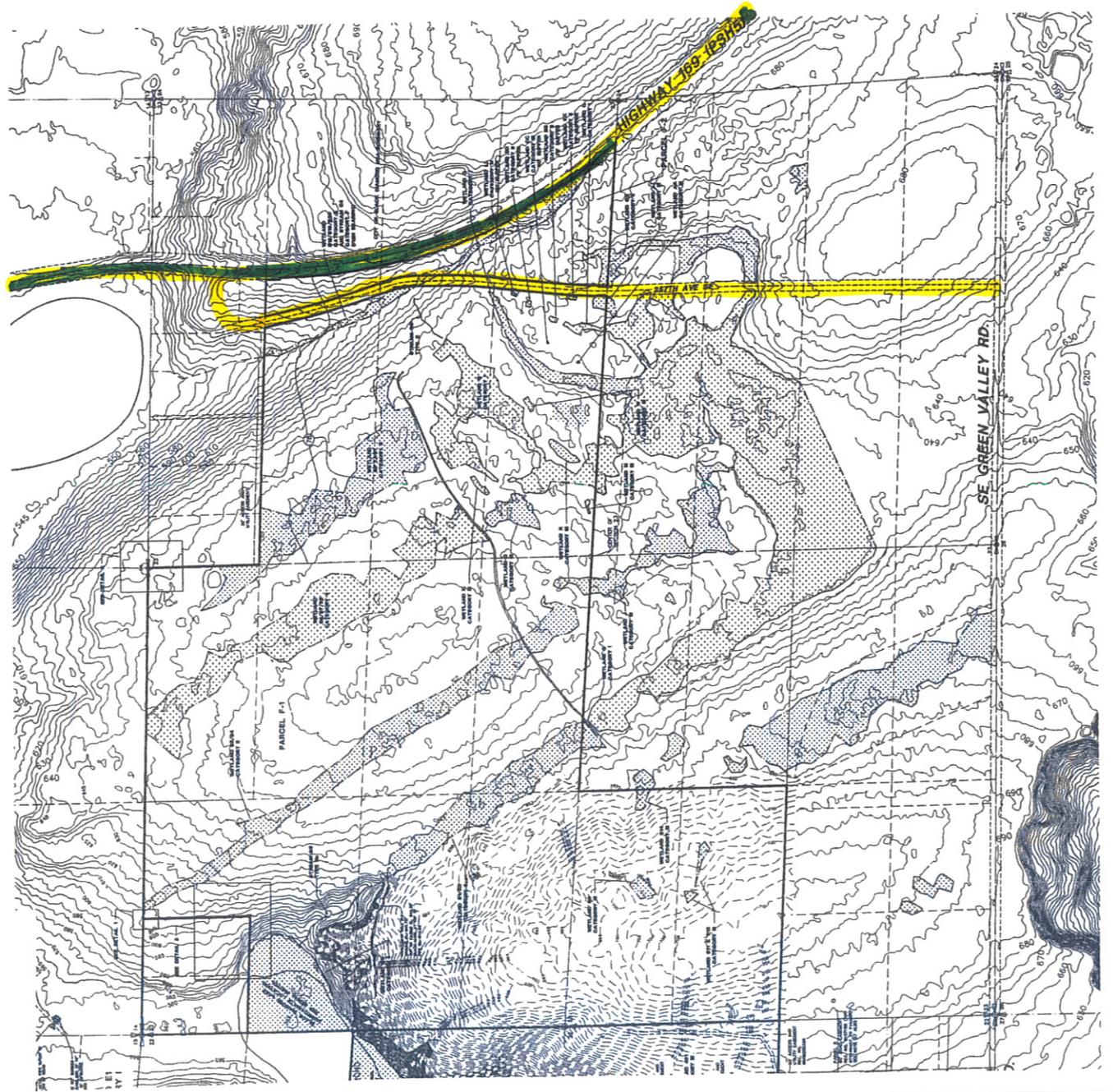
Sincerely,

BD Village Partners



Colin Lund
Chief Entitlement Officer

SECTION 23, TOWNSHIP 21 N, RANGE 6 E, W.M.



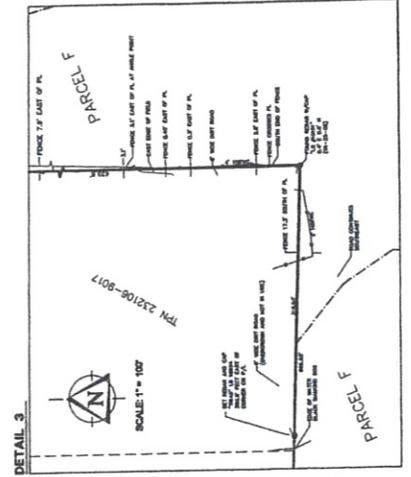
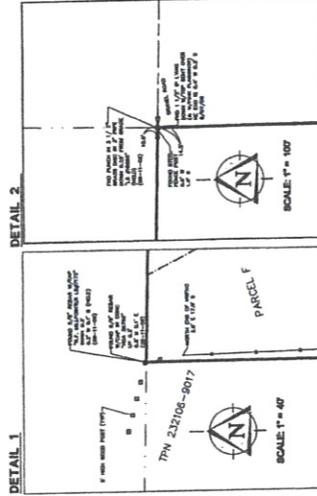
SCALE: 1" = 400'

LEGEND

- ON-SITE WETLAND AREA (INCLUDES FISH AND HABITAT CONSERVATION AREAS)
- SLOPES ≥ 40% AND 10 FEET HIGH OR HIGHER

NOTES

- 1.) CONTOURS EAST OF THE WEST EDGE OF WETLAND S1/S2 AND STREAM S5 ARE BASED ON LIDAR TOPOGRAPHY.





COOKE SCIENTIFIC

4231 NE 110TH ST, SEATTLE, WA 98125
PHONE: (206) 695-2267 FAX: 206-368-5430
COOKESS@COMCAST.NET WWW.COOKESCIENTIFIC.COM

August 12, 2011

Steve Pilcher
City of Black Diamond, Community Development Director
PO Box 599
Black Diamond, WA 98010

RE: Response to Yarrow Bay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order II: Comments on the Lawson Hills and The Villages Development Agreements between the City of Black Diamond and BD Lawson Partners

Dear Mr. Pilcher:

I have reviewed the rebuttal comments submitted by the Yarrow Bay Consultants on both **July** and August 12, pursuant to my public testimony during the hearing and my written comments and have prepared the following rebuttal:

References Reviewed:

- City of Black Diamond. Staff report Lawson Hills MPD. File # PLN09-0016.
- City of Black Diamond. Staff report The Villages MPD. File # PLN09-0017.
- City of Black Diamond. June 2009. City of Balck Diamond Comprehensive Plan.
- City of Black Diamond. December 2009. Lawson Hills MPD Final Environmental Impact Statement.
- City of Black Diamond. December 2009. The Villages MPD Final Environmental Impact Statement.
- City of Issaquah & Sougar Mountain East Village Partnership. 1999. Cougar Mountain East Village Development Agreement
- Otak, Inc. August 2010. Shoreline Analysis Report, Including Shoreline Inventory and Characterization for City of Black Diamond's Shoreline: Lake Sawyer. Prepared for the City of Black Damond
- Parametrix. 2008. City of Black Diamond Sensitive Areas Ordinance Best Available Science Review, Summary, and Recommendations for Code Update
- Parametrix. November 16, 2009. Technical Memorandum, Peer Review, EIS Element, Wetlands. Lawson Hills and the Villages MPD, EIS. Additional information.

Parametrix, August 27, 2008. Technical Memorandum, Peer Review, EIS. Wetlands Element. Lawson Hills and the Villages MPD, EIS.

Parametrix, June 29, 2009. Lawson Hills and the Villages MPD EIS EIS Element Vegetation and Wetlands Technical Peer Review.

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Lawson Hills Master Plan Development, Development Agreement

City of Black Diamond, Wa and BD Village Partners L.P. September 2010. The Villages Master Plan Development,

Wetland Resources. September 24, 2009. The Villages MPD Draft EIS Review.

Wetland Resources. July 17, 2008. The Villages Wetland Assessment- Draft EIS Report.

Wetland Resources. May 2, 2008. Lawson Hills Wetland Assessment- Draft EIS Report.

Wetland Resources. July 21, 2009. The Villages Sensitive Areas Study.

Wetland Resources. July 21, 2009. Lawson Hills Sensitive Areas Study.

Yarrow Bay August 4, 2011. Yarrow Bay's Written Testimony Pursuant to hearing Examiner's Pre-Hearing Order II.

Yarrow Bay. August 12, 2011. Yarrow Bay's Written Testimony Pursuant to hearing Examiner's Pre-Hearing Order II.

Section 8.2.1 Scott Brainard's/Yarrow Bay's responses, August 4 and August 12:

Yarrow Bay has asked Scott Brainard to provide rebuttal to both my oral and written public comments that a) the constraint maps are not specific enough (Section 8.2.1 "The wetland delineations and types outlined in the Constraints Map are deemed final and complete") (for providing a basis for wetland decisions in the Development Agreement) and b) Mr. Brainard and Yarrow Bay's contention that "The EIS for both The Villages and Lawson Hills have been deemed adequate in their entirety, including wetlands, buffers, and conceptual mitigation measures identified in.....".

I was not allowed to expand my oral testimony during the hearing so an expansion of my comments are provided below. I will outline multiple examples of why and where the development wetland maps are inaccurate and why the development agreement is not sufficient to protect critical areas under State Code RCW 90.48.

1. **One item of Mr. Brainard's and Yarrow Bay's comments is that "the EIS for both The Villages and Lawson Hills was deemed accurate in their entirety, including wetlands, buffers, and conceptual mitigation measures.....". My question here is Who has deemed the two EIS's "accurate in their entirety"? None of the agencies listed below with final approval review have examined the EIS** (Pers. Comm. Muffy Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers, July 8, 2011); (pers. Comm. Patrick McGrainer SE King County Wetlands project reviewer, Wa. State Department of Ecology, July 8, 2011); Pers. Comm. Linda

Storm, US Environmental Protection Agency, Seattle District, July 13, 2011). Therefore, this statement clearly not accurate or true.

2. **In addition The EIS is written with all impacts related to what was required in the City's August 2007 Critical Areas Ordinance. This is a direct contradiction with SEPA law that requires a discussion of environmental impacts based on current scientific knowledge.** Instead, the DEIS discloses the legal impacts (violations) of each alternative under outdated law, not the true scientifically-based impacts of the proposed project. The SEPA official needs to know what the potential impacts are, not if the project is in compliance with an outdated ordinance. **Vesting does not impact the disclosure and analysis of scientifically-based environmental impacts in an EIS, even if affects the permitting process at a later date.** The delineation method used and the buffer section below describes two implication of this problem.
3. **The wetland boundaries have not been verified by the US Army Corps of Engineers, the ultimate authority for all wetland boundary verifications. "No final Jurisdictional Determination or final wetland boundary mapping can be made without this determination"** (Pers. Comm. Muffy Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers, July 8, 2011). Approval by the City makes no sense in light of the fact that all the wetland boundaries still have to be approved.
4. **It is highly likely that the wetland boundaries are not accurate, especially with respect to those determined as "isolated" from the larger Category I wetland, but which are in very close proximity to the Category I wetland.** Most of these "isolated" wetlands have been determined to be Category II, III, and IV wetlands, all of which conveniently have smaller required buffer widths. If any of these wetlands were found to be connected and the larger 225 foot buffer was applied then the area available for development would be reduced accordingly.
5. **The Corps of Engineers wetland boundary verification, statute of limitations is only 5 years.** The basis for this term is that wetlands are not static habitats. As groundwater discharge and recharge locations shift and surface water drainage patterns change wetland boundaries. The Corps and Department of Ecology would NEVER approve a boundary approval lasting longer then the 5 years. (Pers Comm. Muffy Walker, July 2011).
6. **Mr. Brainard states " BDMC 19.10 does not require that wetland boundaries be reviewed and/or approved by the US Amy Corps of Engineers (Corps) or the Washington State Department of Ecology (DOE)". Unfortunately, this statement is only accurate if the wetland in question is only under the jurisdiction of the local authority, where there will be less than 0.1 acre of impact proposed.** Since State jurisdiction supercedes local authority and federal jurisdiction supercedes both state and local jurisdiction in every instance if more than 01. acre of impact is proposed, his statement is not salient to these developments, which both are proposing well in excess of 01. acre of impact under all but the "No Action" scenario.
7. **Mr Brainard states that that wetland boundaries were delineated using the requirements in RCW 36.70.175 and 90.58.380 from 1997, which requires the use**

of the Washington State Wetland Delineation manual. This protocol was replaced and required to be used by both the DOE and the Army Corps of Engineers in 2008 with the publication on June 27, 2008 of the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coasts). This was prior to the production and approval of the FEIS. Additionally, Ecology went one step further and repealed WAC 173-22-080 (the state delineation manual) and replaced it with a revision of WAC 173-22-035 that states delineations should be done according to the currently approved federal manual and supplements. The changes were effective, March 14, 2011, prior to the approval of the Development Agreement. The regional supplement methodology for determining wetlands is quite different in the criteria for soils, vegetation, and hydrology. The use of the wrong method and different criteria increases the chance that some of the wetland boundaries are incorrect and that impacts to wetlands can occur because development is planned in some areas that meet the wetland criteria, but which are identified as wetlands in the Development Agreement Maps.

8. **Mr Brainard stated that ‘Wetland boundaries have been delineated by Wetland resources and approved by the city and their third party reviewer. The third party review was conducted by qualified individuals from Parametrix. These reviewers looked at individual wetland flags, data, and wetland rating forms and deemed them accurate’.** I feel it important to call the accuracy of these statements in question.

a) The City of Black Diamond Staff review reports make no mention of performing a site verification for the wetlands boundaries nor do they discuss any details about review in the wetland reports. They simply state that the wetland boundaries are approved as shown in the Wetland resources Reports Further, the city has no qualified wetlands person on staff who has the training or knowledge to evaluate a wetlands delineation. So staff is simply not qualified to determine if the wetland maps and ratings are correct.

b) The third party reviewer stated in their peer review documents listed above that their review consisted of “a review of the technical report and brief field inspections of The Villages wetlands on June 9 and 10, 2008” and “Two biologists visited most of the accessible wetlands on the property. (Parametrix November 2009 peer review). This certainly does not constitute a thorough review that would be necessary for mapping wetlands whose boundaries would be without dispute for the next 15 to 20 years.

9. **Wetland ratings for both MPD’s have been established without examination of offsite wetlands.** This is in direct violation to protocol which specifically states that the entire wetland must be evaluated before a rating is assigned. (Pers. Comm. Tom Hruby, Author *Wetland Rating for Western Washington* , 2004, April 2006). This is important because buffer widths are established based on the wetland rating.

One such example (but by no means the only example) is identified in the Parametrix report where “With regard to wetland buffers, wetlands K and F on the Main Property are designated as headwater wetlands in the City’ SAO. The MPD application submitted in support of Alternative 2 does not characterize these wetlands as

headwater wetlands, and instead utilized the Washington State Rating System for Western Washington to calculate required buffers for these wetlands. As designated headwater wetlands, under City codes these wetlands require 225 foot wide buffers. The application materials assign a 110 foot buffer to wetland F and a 60 foot buffer to wetland K.”

10. The actual wetland mapping is not consistent between maps produced by the City. An examination of the Best Available Science wetland mapping (Parametrix (attached) and the Constraint maps shows many areas where the wetlands and their buffers differ between the two. It is necessary to make a comparison of these two maps to see many examples of inconsistencies. There are areas where lobes of wetlands are cut off with no buffers assigned and no impact identified, there are areas where wetlands are in very close proximity but deemed isolated when it is most likely they are contiguous in the field, there are areas where a reduced buffer has been assigned but no reason identified other than it increases the associated lot size for development.

In summary,

An adverse environmental impact that is specifically attributable to the Development Agreement is the fact that the Development Agreement locks into place for a period of fifteen years or more the sensitive area delineations and buffers that are identified in the MPD permit approval. This can result in reductions to wetlands size, and functions in the following ways:

- The delineations have not been reviewed by other agencies with regulatory authority
- The delineations incorrectly characterize wetlands as isolated instead of as part of a network of associated and connected wetlands.
- The mapping of the sensitive areas are not internally consistent with other documents in the record including the Parametrix study and the FEIS.
- Associated buffers and therefore protections for the wetlands are inconsistent between the City’s own maps

The MPD permit approval did not fully 'lock-in' the delineations and buffer widths, but rather left it to the Development Agreement to do so. **Any changes in the sensitive areas extent or location over time will not be accommodated and therefore impacts to critical areas WILL OCCUR and are will be fully attributable to the Development Agreement.**

The city has a duty to be in compliance with all applicable regulations and rules on the State and Federal levels. For the city to knowingly violate one or more of these requirements puts them at risk for legal action. The City and Yarrow Bay will have to obtain NPDES, Section 404b, ESA and other approvals on the State and Federal levels. By approving development agreements that are not in compliance with State and Federal regulations, the city is, in effect, engaged in an unlawful contract with Yarrow Bay. The city cannot agree to findings that contradict its inherent

responsibility under State and Federal law as a member of a regional collective of agencies.

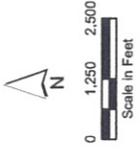
The implementation of the Clean Water Act rests on the good faith efforts of the local governments. Since the Clean Water Act, relies on science to set development constraints to protect Waters of the US and Best Available Science is by nature constantly updating and changing, the city's effort to freeze the critical areas locations and regulations for the 15 to 20 year duration of the development agreements severely limits the City's ability to propose appropriate development constraints with which to comply with the Clean Water Act.

Please contact me if you have additional questions.

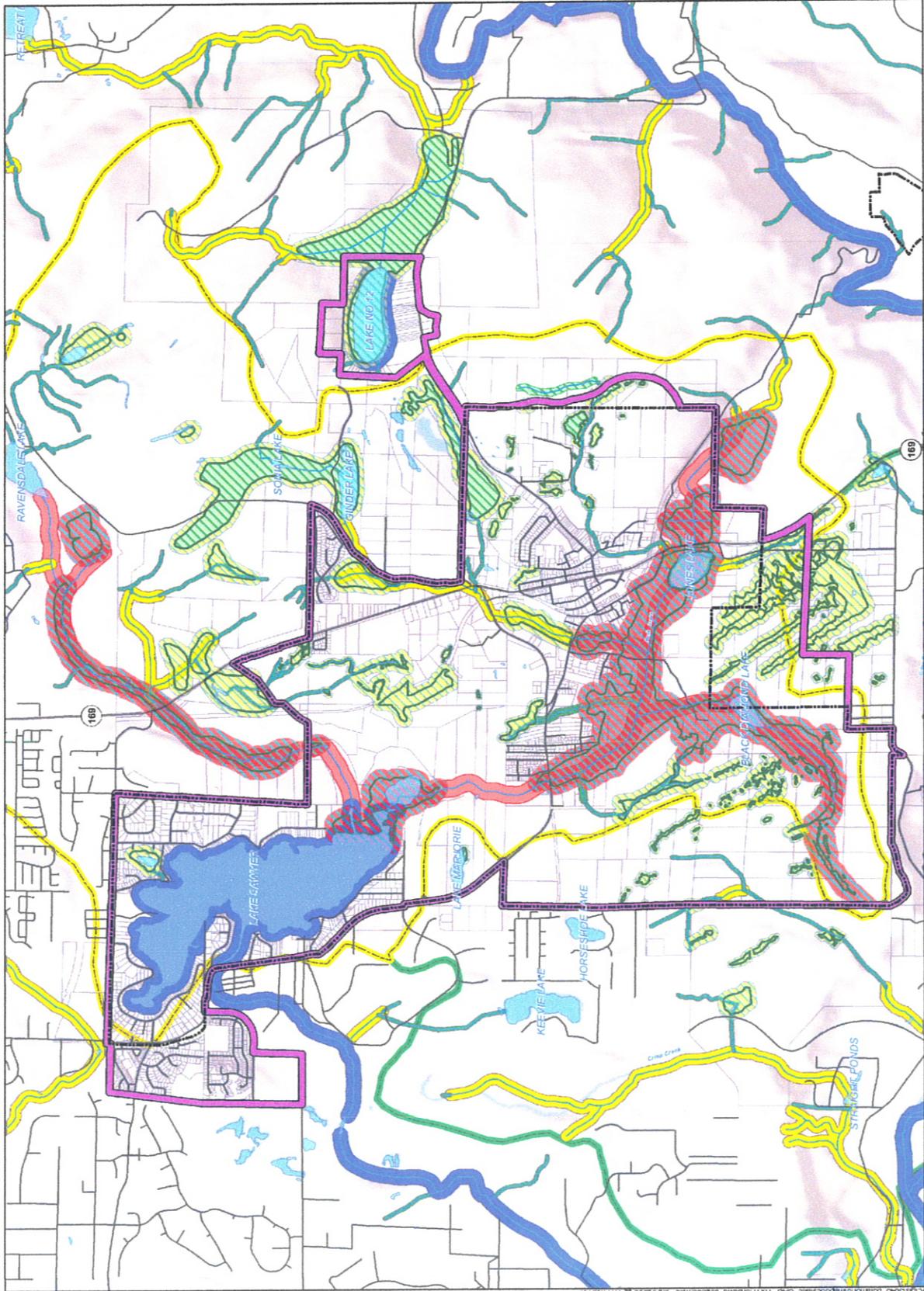
A handwritten signature in black ink, appearing to read "Sarah Cooke". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Sarah Cooke
Professional Wetland Scientist,
Fellow, Society of Wetland Scientist

Parametrix



- Legend**
- Black Diamond City Limits
 - UGA Boundary
 - SR 169
 - Road
 - Water Body
 - WADNR Streams
 - CAO Wetland boundaries
 - Wetland Buffer Alternative C
 - Category and Buffer Distance
 - Headwaters - 225 ft
 - CORE - 225 ft
 - I - 180 ft
 - II - 150 ft
 - III - 80 ft
 - IV - 50 ft
 - Stream Buffer Alternative C
 - Category and Buffer Distance
 - CORE - 225 ft
 - S - 200 ft
 - F - 150 ft
 - Np, Ns - 50 - 100 ft
 - Study Area
 - Lake Sawyer Watershed
 - Green River Watershed



Data Source: King County GIS, WA DNR

Figure 1-1
Core Area
Most Intensive Processes
Black Diamond UGA

Sensitive Area Ordinance Update
 City of Black Diamond, WA

Brenda Martinez

From: blscott60_3@q.com
Sent: Saturday, October 08, 2011 7:55 AM
To: Brenda Martinez
Cc: Peter Rimbo
Subject: statement from hearings

Follow Up Flag: Follow up
Flag Status: Flagged

My name is Bonnie Scott, and I reside at 30014 312th Way SE, Ravensdale, Wa, 98051. I am in the rural area-unincorporated King County.

Nevertheless, this large of a development will definitely impact me.

One of my biggest concerns is the loss of habitat for wildlife. A lot of others have brought it up before, but it bears repeating. We continue to take

away their habitat--a bit here, a bit there, and finally, they have nowhere to go, except someone's yard, which may not always be a good thing.

I'm to understand no "endangered" species were found on the said properties, but loss of habitat is the top reason wildlife species become

endangered. As an avid birder, who has helped on the annual Audubon's Christmas Bird Count, I'd like to mention one bird specie in particular--

the Pileated Woodpecker--our largest woodpecker to be found in our woods. It may not be endangered yet, but they are not that common

anymore, so it is always a treat to see one. Furthermore, this is happening to a lot of bird species. Habitat loss is occurring here and on their

wintering grounds, and thanks to the annual Christmas Bird Counts, we now know many bird species are declining. We need to share this earth with

all species. So bulldozing, rather a small area or a large one, has the same impact--the end result is less land for all wildlife. It does not make me

happy. In fact, it makes me angry that we are so selfish.

Where I live I see coyotes, elk, deer, raccoons, bears, migrating birds and others. And a part of me feels guilty as I took away a bit of habitat myself.

However, I've left my 5 acres in a natural state with native plants, and part of my property lies within a class 2 protected wetland, which I enjoy and

am happy to help preserve. In the spring the chorus of frogs is wonderful. So what I've done with my property is totally different than what Yarrow

EXHIBIT

Bay will do with theirs. Their way will kill many animals and displace the rest. Shame! This is just too too big!

And so I hope the city council and Yarrow Bay will do the right thing and live up to it's plans to achieve a high degree of compatibility with wildlife.

But I'm not convinced the MPDs, as they stand now, will do this.

I also wonder if this large of a development, if approved, will set a precedent for future projects. Could it happen in Ravensdale or any other

small town such as Cumberland? True, they are zoned for minimum 5 acres now, but guess what? Zoning gets changed. So that is another

concern that I have.

Another topic of personal, and in this case, selfish, interest--bicycling. I am an avid road bicyclist. And Black Diamond has been a favorite

destination for 30 years. Even before moving here 19 years ago from Renton, Black Diamond was a destination. Cascade Bike Club out of

Seattle uses Black Diamond as a destination. We all love this area for bike rides. I have been riding for 30 years, and many of the routes I used

to do are no longer feasible or fun. Why? Because of too much growth and too much traffic. Now it appears it will happen in Black Diamond,

and it makes me sad. So this is another concern, and although it is minor in the big scheme of things, it is important to me and many other

bike riders.

And so, I conclude this speech with a plea to the Black Diamond city council to please, please listen to what your citizens and the rest of the

public have said throughout these hearings.

Thank you, Bonnie Scott



King County

Road Services Division
Traffic Engineering Section
Department of Transportation
KSC-TR-0222
201 South Jackson Street
Seattle, WA 98104-3856
www.kingcounty.gov/roads

October 7, 2011

Steve Plicher
Community Development Director
City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010

Dear Mr. Plicher: ^{Steve}

On Thursday, July 21, 2011, I testified at the Development Agreement hearings. At that meeting we requested the City of Black Diamond to consider an additional outcome based condition related to traffic impacts on SE Green Valley Road. Specifically, King County requested the following:

- *The Applicant shall monitor traffic volumes at two locations along SE Green Valley Road every three (3) months, i.e. quarterly, through the life of the proposed Master Planned Development (MPDs).*
- *The Applicant shall provide a current baseline count at locations to be determined by King County, against which future traffic increases may be measured and compared.*
- *If the traffic volumes along SE Green Valley Road exceed a 50% increase from the current (2011-2012) traffic volumes, no additional lots may be recorded until identifying additional mitigation that can be shown to decrease traffic volumes along SE Green Valley Road to below the threshold values.*
- *If the mitigation requires construction of road improvements, no additional lots may be recorded until the design for these improvements is approved by the local jurisdiction, the improvements are bonded, and a construction schedule is established. Once construction is substantially complete on the identified improvement, recording of lots may begin.*

I am writing today in response to testimony of Mr. John Perlic, P.E., who has commented against this proposal. Predicting future traffic patterns and demands are problematic due to many factors including the economy, community evolution and differing trip patterns during development. King County again recommends additional measures to protect unincorporated King County residents from undisclosed impacts of the Black Diamond MPD developments.

EXHIBIT

27

King County has required of its own developments conditions similar to what it is asking of the City of Black Diamond. We hope the City of Black Diamond can learn from the County's experience with MPD projects slightly smaller (both in terms of residential dwelling units and significantly smaller in terms of commercial development) than the proposal in Black Diamond. King County's Hearing Examiner required an annual traffic monitoring report be provided by the applicant. The report identified the pace of the MPD construction, the status of developer required transportation improvements, the traffic volumes on a critical roadway segments, and the 'realized' (as contrasted to predicted) trip generation of the project. Development limitations were tied to threshold traffic volumes.

In our experience, the expected interaction between residential and commercial development known as "the trip internalization rate" has never fully been realized in the County's MPDs Trilogy and Redmond Ridge. This is – to an extent – also true with other recent MPDs within Pierce County and others in the Puget Sound region, such as Snoqualmie Ridge, DuPont Landing, and Issaquah Highlands. In Redmond Ridge, the expected job-producing commercial development did not occur. Building sites proposed for employers became utility switchyards and low-employment computer data centers. The first generation (i.e. current) of residents work outside the community. The unique circumstance at this MPD is that many of the residents work for a small group of Redmond employers who have strong Transportation Demand Management (TDM) programs including private transit which has mitigated the traffic impacts. This local experience makes us believe that monitoring based future traffic impact analysis is as important as the prediction/forecast based traffic impact analysis.

The Black Diamond MPD developer has already proposed a low-density (rural) subdivision abutting the MPDs, in the unincorporated area. The MPD developer when faced with non-compliance with the County Road Standards recommended serving the rural area plat via the MPDs – effectively extending the MPD project limits out across the Urban Growth Boundary of the City. King County does not support the developer proposal for a connector road across urban growth line but it does illustrate the point that impacts not envisioned during the early studies can have consequences on predicted travel patterns and rural area.

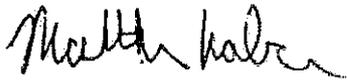
Our proposed traffic monitoring plan ensures an outcome based mitigation scheme and ties the mitigation to the impacts only if and when the impacts actually occur. As we pointed out above, if the traffic increases never happen at these locations, then the mitigation never happens. Mr. Perlic's testimony takes issues with the proposed monitoring frequency of every three months and trigger of a 50% increase over the predicted traffic impact. Would the city be more willing to consider annually monitoring and a 100% increase?

Steve Plicher
October 7, 2011
Page 3

A regular re-evaluation of the traffic volumes on SE Green Valley Road, and the identification of mitigation if a threshold traffic percentage increase is reached would appear to be a reasonable request. I believe this would better protect the rural character of SE Green Valley Road from traffic volumes great then disclosed in the SEPA process.

We look forward to continuing to work with the city as they permit these important developments.

Sincerely,



Matthew Nolan, P.E.
County Traffic Engineer

cc: Paulette Norman, P.E., Division Director, Road Service Division, Department of
Transportation
Lauren Smith, Land Use and Unincorporated Area Relations Manager, King County
Executive Office
Paul Reitenbach, Senior Policy Analyst, Department of Development and
Environmental Services

October 5, 2011

Black Diamond Community Development Department
P.O. Box 599
Black Diamond, WA 98010

References: a) Lawson Hills City of Black Diamond Master Planned Development, dated December 31, 2009
b) The Villages City of Black Diamond Master Planned Development, dated December 31, 2009
c) Lawson Hills MPD Development Agreement dated June 4, 2011
d) The Villages MPD Development Agreement dated June 4, 2011

Subject: Lawson Hills and Villages MPD Development Agreement (DA) Closed Record Hearing comments

1. Hearing Examiner Recommendation Overview

Page 1 line 24 through Page 2 line 3 of the Hearing Examiner's Recommendation is provided as the basis of my statements concerning the Funding Agreement.

This is a unique hearing examiner recommendation because most of the issues brought up by the public and addressed in the DAs are subject to the discretionary contractual and policy authority of the Council. The Council has wide discretion as to what it can include in the development agreements and the public has corresponding wide latitude in suggesting what they'd like to see in the development agreements. There are few legal standards to govern this discretion and the Examiner has little business in making recommendations on policy choices to the Council. As a result, a primary focus of this recommendation is to organize and evaluate the information provided by the public so that the Council has an accessible means of making informed choices on the huge record of information provided by its constituency.

2. Funding Agreement Conflict of Interest.

As I have stated in the MPD hearings, at City Council and during the Hearing Examiner hearings, I believe the funding agreements are a clear conflict of interest for both parties as currently written. The City Staff that is identified as part of the Master Development Review Team (MDRT) of the Funding Agreement are the very people that were involved in creating the Funding Agreement included in Exhibit N to the DA. These individuals should have been excluded from creating the funding agreement in the DA for they will receive personal financial gains. This is clearly does not follow good public policy as

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described in the Ethics in Public Service RCW 42.52.030. Recited for your convenience as follows:

No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

What I find egregious is that in Section 3 MDRT item b. "MDRT Costs" on page 6 of the Funding Agreement states the following concerning vehicles.

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.

The reason I find this egregious is that it appears that the very people that are the MDRT are the three people that will now have three cars bought by Yarrow Bay for their use. Why do we need more cars for our city staff, especially since there are already other city cars that can be used. QUIT SPENDING for the gain of a few city employees.

3. Hearing Examiner's recommendation that FA to be executed prior to DA.

I agree with the Hearing Examiner that the Funding Agreement by its very nature should be considered a separate agreement and separate from the DA. Including the Funding Agreement as an attachment to the DA provides the Council no leeway to adjust fees as necessary and implies that if the Council does not provide approval of the DA, then funding will not be provided and the city may be sued for past monies received.

I believe that the Hearing Examiner thought the Funding Agreement issues brought up by the public and addressed in the DAs are subject to the discretionary contractual and policy authority of the Council. Since there is no legal standards to govern this discretion, the Examiner felt he could not make recommendations on policy choices to the Council. Therefore my oral testimony concerning fees and city staff salaries would not be addressed.

4. Building Permit Fees.

As I stated in my testimony before the Hearing Examiner, I expected that the City would have included a study of the associated building permits and other fees that would need to be performed by the City, similar to what is found on the City of Chelan's website. However, no schedule of fees was included in the Funding Agreement or the DA. So I

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provided a copy of the 10 page Exhibit "D", from the City of Chelan Planning & Building Department that outlines the Building Department Permit Fees marked as Exhibit 42. I am attaching an update to the Permit Fees for Chelan for they have been updated as of September 1, 2011, as a reference.

It appears the City has not thought it was important to perform due diligence to update our City Code to establish a more realistic building permit fee based structure (similar to Chelan, other municipalities and counties in the state). Instead we rely upon a cost reimburse structure, which is very wasteful in its very nature.

This is especially egregious, since our City Staff is overpaid as compared to other municipalities of a similar size that have established a building permit fee structures such as Chelan. I believe that all developers whether they are a single home builder or a developer are subject to fair and equitable treatment in regards to the size and complexity of the development and therefore a building permit fee schedule should be developed.

In some cases perhaps both a fee schedule and cost reimbursement would be required. It appears today in our city that a single or small developer were to try to develop land within BD, Yarrow Bay will be given preferential treatment since the City Staff is being paid by Yarrow Bay and perhaps they will be charged more than the average for Yarrow Bay.

I am providing the following Section 2.62.018 of the DAs for your consideration so that you will not have to find the wording in the 155 pages of the Lawson Hills DA and the 166 pages of the Villages DA. Even as written you will notice that there is an expectation that a fee schedule may be eventually adopted and the DA has language which allows us to do this due diligence.

2.62.18 Costs Incurred by City. The proponent of all land development proposals shall pay to the city all costs incurred by the city that are associated with processing the proposal, including engineering, inspection, legal, secretarial and administrative costs, including staff time for preliminary consultations. The proponent shall deposit with the city the amount required as a deposit in the notice of requirements. If it appears that the actual cost to review will exceed the amount of the initial deposit, then the city administrator shall immediately notify the proponent, in writing, of the estimated amount of additional fees that will be required, in order to complete review and an explanation as to the reason why the cost to review exceeds the estimate contained in the notice of requirements. The proponent shall then deposit the additional amount with the city. The city may discontinue reviewing the application until such time as the additional required deposits are made. The city council may authorize the mayor to enter into contracts for alternative payment arrangements for city processing costs for phased land development proposals or those for which processing is anticipated to exceed one hundred twenty days. This section is intended to supplement the fee schedules of any and all other city ordinances and resolutions to add thereto the obligation of the proponent to pay, in addition

to scheduled fees, actual city costs incurred in processing the land development proposal; provided, however, the developer shall only be required to pay the fees set forth in any applicable fee schedule if the actual city costs incurred in processing the land development proposal does not exceed the fee set forth in the applicable fee schedule.

I recommend that the City Staff should do their due diligence and provide Council with an analysis of how long it would take to establish a more comprehensive building permit fee structure for the City instead of a cost reimbursement structure. Lack of such transparency and common standards of due diligence practices leads one to suspect collusion and a conflict of interest. Therefore I recommend that a comparative analysis of fee basis structure to cost reimbursement be done by the finance director or outside firm and provided to Council.

5. City MDRT Salary.

The current city staff is overpaid in comparison to other Washington municipalities of similar size:

- According to the 2010 census, Black Diamond population was 4,151, Chelan was 3,890, Buckley was 4,354 and Sultan was 4,651.
- Community Development Director, Economic Development Director and City Planner avg for Chelan is \$90K, national avg \$106.5K, our city \$130K - \$135K or 1.5 times (150%) over Chelan.
- Assistance City Administrator (City Manager \$88K for Chelan, avg national \$119K, city \$147.5K). I would argue that our current Asst. City Administrator is really a City Planning Aide based on the job descriptions and duties performed.
- City Planning Aide (\$73K Chelan, National \$65K our city \$147.5k). Therefore we are paying this person over 2 times the salary of a person in Chelan and over 2 ¼ times the national average for the same job function (227%).

These types of overpaying Public employees got national coverage when Bell, California was highlighted last year. You Major Oleness and City Council have a fiduciary duty to have the city Finance manager or an outside firm provide a common standard of due diligence for establishing city salaries.

In case you do not know what a fiduciary duty is: "A **fiduciary** duty (from Latin *fiduciarius*, meaning "(holding) in trust"; from *fides*, meaning "faith", and *fiducia*, meaning "trust") is a legal or ethical relationship of confidence or trust regarding the management of money or property between two or more parties." (Wikipedia definition)

We voted for you to provide this type of oversight and from what I can tell you are not performing your fiduciary duties to the City thus the taxpayers of this city.

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I recommend a comprehensive competitive review of the City staff salary and benefit costs should be done in comparison to other municipalities to establish a more realistic baseline. If this is not done soon Yarrow Bay could contend that they are being overcharged for current and past funding agreements and would seek recourse from the city to rectify the overpayment, which could include interest. The reason I state this is that Section 2 of the current Funding Agreement reads as follows:

“Developer’s funding obligation in this Section 2 is subject to the condition that all such salary and benefit costs be competitive with similar positions in the municipal community, as evidenced by reference to the Association of Washington Cities annual salary survey and similar documentation.”

6. Recommendations:

I ask that Council have the Finance Manager (or outside agencies or firms) perform a competitive review of the City Staff salaries and benefits in comparison to other Washington municipalities city positions of similar population sizes to establish a fair and reasonable salary baseline for our City Staff. The benefit review should also include any city vehicles that may be provided for the City Staff as part of the Funding Agreement. (City Staff Competitive Salary & Benefit Report)

While Council is having the City Staff Competitive Salary & Benefit Report prepared, I recommend the City Staff should do their due diligence and provide Council with an analysis of how long it would take to establish a more comprehensive building permit fee structure for the City (Building Permit Fees Report). Specific building permit fees would help in developing the city planning costs associated and be a good basis for estimating cost revenues for each phase of development.

The Building Permit Fees Report may take 6 months or more and would require changes to City Code. Thus language in the Funding Agreement and DA should be adjusted to allow for the completion of the Building Permit Fees Report recommendations and the normal process of incorporation into our City Code through the Planning Commission process. If City Staff do not have the expertise to do this then the City should hire a consulting firm to provide this analysis.

As I stated before, I agree with the Hearing Examiners recommendations about the Funding Agreement. Most specifically that this be executed separately, prior to the acceptance of any implementing project applications or prior to the execution of the DA and that no applications already received be processed further until this Funding Agreement is executed.

I ask that you strongly consider performing the City Staff Competitive Salary & Benefit Report and Building Permit Fees Report. Also as I’ve stated before, the Hearing Examiner has stated that

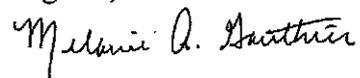
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“most of the issues brought up by the public and addressed in the DAs are subject to the discretionary contractual and policy authority of the Council.”

These two reports are within the Council’s discretion and authority and should be conducted to not only protect the City from future lawsuits but more importantly to perform the due diligence that should have been done by City Staff on the Council’s .

It should be noted that none of this information, which I provided in my oral comments was included in the Hearing Examiners recommendations, since this type of analysis and requests of City Staff are within the discretion and policy authority of the Council. Please do the right thing and have your staff or outside consultants perform these reports.

Regards,



Melanie Gauthier
25565 Baker St.
Black Diamond, WA 98010
Email: mgauthier40@comcast.net
Phone: 360-886-9227

EXHIBIT "D"

Building Department Permit Fees

Fees shall be assessed in accordance with this fee schedule. All fees are exclusive of any state building code fees, which shall be additional, as applicable.

Permit Fees. The fee for each permit shall be set forth in the fee schedule. The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment.

Plan Review Fees. When submittal documents are required by Section 106 of the International Building Code and International Residential Code, a plan review fee shall be paid at the time of the submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit fee.

The plan review fees specified are separate from the permit fees specified and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2 of the International Building Code, an additional plan review fee shall be charged at the rate shown in the Building Permit Fee Table.

Reinstatement of expired building permit – Expired permits which are more than 6 months and less than 36 months since being expired (Note 7).

1. No inspections have been completed:
 - a. Resubmittal – Note 6
 - b. Permit – 100% of original permit fee
 - c. Plan Review – Note 1 & 2
 - d. Valuation – Note 3 & 4
2. Footing and foundation inspection has been completed and approved:
 - a. Resubmittal – Note 5
 - b. Permit – 50% of original permit fee
 - c. Plan Review – Note 1 & 2
 - d. Valuation – Note 3 & 4
3. All rough in inspections have been completed and approved:
 - a. Resubmittal – Note 5
 - b. Permit – 25% of original permit fee
 - c. Plan Review – Note 1 & 2
 - d. Valuation – Note 3 & 4
4. All inspections have been completed except for final approval:
 - a. Resubmittal – Note 5
 - b. Permit - \$47 per hr. with 1 hour minimum
(not to exceed 25% of original permit fee)
 - c. Plan Review – Note 1
 - d. Valuation – Note 3

Notes:

1. No plan review fee is charged if the same approved plans are being used
2. A new plan review fee of 65% of the permit fee is charged when the original approval plans are not being reused.
3. Use the original valuation if the original approved plans are being reused.

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4. The valuation shall be based on the proposed construction if the original approved plans are not being reused.
5. Reuse the original approved plans and all paperwork as long as no changes are being made.
6. All paperwork is required to be resubmitted.
7. Permits which have been expired greater than 36 months must be resubmitted and are subject to current building permit fees.

BUILDING PERMIT FEES

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.50 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.75 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each additional \$1,000.00, or fraction thereof
Other Inspections and Fees:	
Inspections outside of normal business hours.....	\$47.00 per hour(1) (minimum charge – two hours)
Re-inspection fees assessed under provisions of Section 305.8.....	\$47.00 per hour(1)
Inspections outside of normal business hours.....	\$47.00 per hour(1) (minimum charge- one-half hour)
Additional plan review required by changes, additions, revisions to plans >.....	\$47.00 per hour(1) (minimum charge- one-half hour)
Outside consultant use for plan check and/or inspections.....	Actual Cost(2)

(1) Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

(2) Actual costs include administrative and overhead costs.

PLAN CHECK FEES FOR IDENTICAL PLANS

A. An owner, builder or developer seeking to build more than one structure of an identical design may obtain a discount on the plan check fee required by this chapter and the International Building Code for subsequent identical design submissions within a period of twelve months of the original submission. The discounted fee shall be thirty percent (30%) of the full fee applicable at the time of payment, or the actual cost to the city for plan check review if conducted by an outside official, whichever is greater. The plans must be identical to those submitted by the same applicant within the previous twelve months for which a full fee was paid.

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B. At the time of submission of the original plans, the applicant may submit up to four minor construction alternatives for a common design, and pay the applicable additional fee based on the value of the alternative as determined by the building official. The approved alternative plans shall be considered part of the original plans for purposes of determining what constitutes an identical plan.

C. The decision of the building official as to what constitutes a minor construction alternative and identical plan, for purposes of the discount provided by this section, shall be final and binding.

**The above plan check fees for identical plans shall not apply in the event of an applicable code change.

DEMOLITION PERMITS

0 – 500 square feet	\$ 20.50
501 – 2,000 square feet	\$ 47.00
2,001 – 10,000 square feet	\$ 75.00
10,000 and above	\$150.00

GRADING PLAN REVIEW FEES

50 Cubic yards (38.2m3) or less.....	No Fee
51 to 100 cubic yards (40 m3 to 76.5 m3).....	\$23.50
101 to 1,000 cubic yards (77.2 m3 to 764.6.....	\$37.00
1,001 to 10,000 cubic yards (765.3 m3 to 7645.5 m3).....	\$49.25
10,001 to 100,000 cubic yards (7646.3 m to 7645.5 m3) - \$49.25 for the first 10,000 cubic yards (7645.5 m3), plus \$24.50 for each additional 10,000 yards (7645.5 m3) or fraction thereof.	
100,000 to 200,000 cubic yards (76 456 m3 to 152 911 m3) - \$269.75 for the first 100,000 cubic yards (76 455 m3), plus \$13.25 for each additional 10,000 cubic yards (7645.5 m3) or fraction thereof.	
200,001 cubic yards (152 912 m3) or more - \$402.25 for the first 200,000 cubic yards (152 911 m3), plus \$7.25 for each additional 10,000 cubic yards (7645.5 m3) or fraction thereof.	
Other Fees: Additional plan review required by changes, additions or revisions to approved plans	\$50.50 per hour* (minimum charge - one-half hour)

*Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

GRADING PERMIT FEES

50 Cubic yards (38.2 m3) or less.....	\$23.50
51 to 100 cubic yards (40 m3 to 76.5 m3).....	\$37.00
101 to 1,000 cubic yards (77.2 m3 to 764.6 m3).....	\$37.00 for the first 100 cubic yards (76.5 m3) plus \$17.50 for each additional 100 cubic yards (76.5 m3) or fraction thereof.
1001 to 10,000 cubic yards (765.3 m3 to 7645.5 m3).....	\$194.50 for the first 1,000 cubic yards (764.6 m3), plus \$14.50 for each additional 1,000 cubic yards (764.6 m3) or fraction thereof.

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10,001 to 100,000 cubic yards (7646.3 m3 to 76 455 m3)...	\$325.00 for the first 10,000 cubic yards (7645.5 m3), plus \$66.00 for each additional 10,000 cubic yards (7645.5 m3) or fraction thereof.
100,001 cubic yards (76 456 m3) or more.....	\$919.00 for the first 100,000 cubic yards (76 455 m3), plus \$36.50 for each additional 10,000 cubic yards (7645.5 m3) or fraction thereof.
Other Inspection and Fees:	
Inspections outside of normal business hours.....	\$50.50 per hour (minimum charge - two hours)
Re-inspection fees assessed under provisions of Section 108.8.....	\$50.50 per hour
Inspections for which no fee is specifically indicated.....	\$50.50 per hour (minimum charge – one-half hour)

1. The fee for a grading permit authorizing additional work to that under a valid permit shall be the difference between the fee paid for the original permit and the fee shown for the entire project.
2. Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

MECHANICAL PERMIT FEES

Permit Issuance and Heaters

For the issuance of each mechanical permit.....\$23.50
 For issuing each supplemental permit for which the original permit has not expired, been canceled or finalized\$7.25

Unit Fee Schedule (Note: The following do not include permit- issuing fee.)

1. Furnaces

For the installation or relocation of each forced- air or gravity- type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h (29.3 kW)\$14.80
 For the installation or relocation of each forced- air or gravity- type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h (29.3 kW) \$18.20
 For the installation or relocation of each floor furnace, including vent.....\$14.80
 For the installation or relocation of each suspended heater, recessed wall heater or floor mounted unit heater.....\$14.80

2. Appliance Vents

For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit.....\$7.25

3. Repairs or Additions

For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaporative cooling system, including installation of controls regulated by the mechanical Code.....\$13.70

4. Boilers, Compressors and Absorption Systems

Effective September 1, 2011

For the installation or relocation of each boiler or compressor to and including 3 horsepower (10.6 kW), or each absorption system to and including 100,000 Btu/h (29.3kW)\$14.70

For the installation or relocation of each boiler or compressor over three horsepower (10.6 kW) to and including 15 horsepower(52.7kW), or each absorption system over 100,000 Btu/h(29.3kW) to and including 5,000,000Btu/h (146.6kW).....\$27.15

For the installation or relocation of each boiler or compressor over 15 horsepower (52.7 kW) to and including 30 horsepower (150.5 kW) to and including 30horsepower (105.5kW), or each absorption system over 500,000 Btu/h (146.6kW) to and including 1,000,000 Btu/h (293.1kW).....\$37.25

For the installation or relocation of each boiler or compressor over 30 horsepower (105.5kW) to and including 50 horsepower (176kW), or each absorption system over 1,000,000 Btu/h (293.1kW) to and including 1,750,000 Btu/h (512.9kW)\$55.45

For the installation or relocation of each boiler or compressor over 50 horsepower (176kW) or each absorption system over 1,750,000 Btu/h (519.89kW).....\$92.65

5. Air Handlers

For each air-handling unit to and including 10,000 cu ft per minute (cfm) (4719 L/s), including ducts attached thereto.....\$10.65

Note: this fee does not apply to an air-handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere in the Mechanical Code.

For each air- handling unit over 10,000 cfm (4719L/s).....\$18.10

6. Evaporative Cooler

For each evaporative cooler other than portable type.....\$10.65

7. Ventilation and Exhaust

For each ventilation fan connected to a single duct.....\$7.25

For each ventilation system which is not a portion of any heating or air- conditioning system authorized by a permit.....\$10.65

For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood.....\$10.65

8. Incinerators

For the installation or relocation of each domestic-type incinerator.....\$18.20

For the installation or relocation of each commercial or industrial-type incinerator.....\$14.50

Effective September 1, 2011

9. Miscellaneous

For each appliance or piece of equipment regulated by the Mechanical Code but not classed in other appliance categories, or for which no other fee is listed in the table.....\$10.65

Other Inspections and Fees:

- 1. Inspections outside of normal business hours, per hour (minimum charge- two hours)\$45.50*
- 2. Re-inspection fees assessed under provisions of Section 116.6, per inspection.....\$49.50*
- 3. Inspections for which no fee is specially indicated, per hour (minimum charge - one- half hour)..\$49.50*
- 4. Additional plan review required by changes, additions or revisions to plans or to plans for which an initial review has been completed (minimum charge - one-half hour.....\$49.50*

* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

PLUMBING PERMIT FEES

Permit Issuance

- 1. For issuing each permit\$20
- 2. For issuing each supplemental permit.....\$10

Unit Fee Schedule (in addition to items 1 and 2 above)

- 1. For each plumbing fixture on one trap or a set of fixtures on one trap (including water, drainage piping and backflow protection therefore.....\$ 7
- 2. For each building sewer and each trailer park sewer.....\$15
- 3. Rainwater system - per drain (inside building).....\$ 7
- 4. For each cesspool (where permitted).....\$25
- 5. For each private sewage disposal system.....\$40
- 6. For each water heater and/ or vent.....\$ 7
- 7. For each gas-piping system of one to five outlets..... \$ 5
- 8. For each additional gas-piping system outlet, per outlet.....\$ 1
- 9. For each industrial waste pretreatment interceptor including its trap and vent, except kitchen-type grease interceptors functioning as fixture traps.....\$ 7
- 10. For each installation, alteration or repair of water piping and/or water treating equipment each...\$ 7
- 11. For each repair or alteration of drainage or vent piping, each fixture.....\$ 7
- 12. For each lawn sprinkler system on any one meter including backflow protection devices therefore.....\$ 7
- 13. For atmospheric- type vacuum breakers not included in item 12:
 - 1 to 5\$ 5
 - over 5, each\$ 1
- 14. For each backflow protective device other than atmospheric type vacuum breakers:
 - 2 inch (51 mm) diameter and smaller.....\$ 7
 - Over 2 inch (51 mm) diameter.....\$15
- 15. For each gray water system.....\$40

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- 16. For initial installation and testing for a reclaimed water system.....\$30
- 17. For each annual cross-connection testing of a reclaimed water system (excluding initial test)....\$30
- 18. For each medical gas piping system serving one to five inlet(s)/outlet(s) for a specific gas.....\$50
- 19. For each additional medical gas inlet(s)/outlet(s).....\$ 5

Other Inspections and Fees

- 1. Inspections outside of normal business hours.....\$30*
- 2. Re-inspection fee.....\$30*
- 3. Inspections for which no fee is specially indicated\$30*
- 4. Additional plan review required by changes, additions or revisions to approved plans
(minimum charge - one-half hour).....\$30*

*Per hour for each hour worked or the total hourly cost to the jurisdiction, whichever is greater. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of all the employees involved.

MANUFACTURED HOME INSTALLATION PERMIT FEES

- 1. Single Wide: \$300
- 2. Double Wide: \$400
- 3. Triple Wide: \$500

PERMIT AND PLAN HOLDERS

- 1. Small \$ 10
- 2. Medium \$ 50
- 3. Large \$100

ALARM/DETECTION FEES

New Fire Alarm or Detection System

- FACP..... \$150
- Transmitter..... \$150
- FACP and Transmitter..... \$200

Devices

- 1 to 100..... \$330
 - 101 to 200..... \$410
 - 201 and up..... \$410 for the first 200 plus \$50 per 100 or fraction thereof
- Replace Fire Alarm Monitoring System and/or Components
- FACP..... \$110
 - Transmitter..... \$110
 - FACP and Transmitter..... \$120

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Tenant Improvement of Fire Alarm or Detection System Devices

1 to 5.....	\$110
6 to 10.....	\$150
11 to 20.....	\$200
21 to 40.....	\$260
41 to 100.....	\$330
101 to 200.....	\$410
201 and up.....	\$410 for the first 200 plus \$50 per 100 or fraction thereof

FIRE SUPPRESSION FEES

New Fire Sprinkler System NFPA 13 or 13R

Sprinkler Heads

1 to 100.....	\$330
101 to 200.....	\$410
201 to 300.....	\$500
301 and up.....	\$500 for the first 300 and \$50 per 100 devices or fraction thereof

Risers or Supplies

Per riser.....	\$ 25
Per supply.....	\$ 25 (post/wall indicator valve, double detector check valve connection)

One "supply" shall consist of a Post or Wall Indicator Valve, a Double Detector Check Valve Assembly, and a Fire Department Connection (one each).

One "riser" shall consist of an interior zone supply with all accompanying trim with flow switch or pressure switch or pressure switch. It may be either a stand-alone vertical riser, one vertical riser of a manifold system, or where zones are controlled at floors, one floor control valve and all accompanying trim and flow switch.

NFPA 13 D

Sprinkler Heads

1 to 40.....	\$180
41 and up.....	\$240

Risers or Supplies

Per riser.....	\$ 25
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Tenant Improvement or Modification of Fire Sprinkler Systems

NFPA 13, 13R, OR 13D

Sprinkler Heads

1 to 5.....	\$110
6 to 10.....	\$150
11 to 20.....	\$200
21 to 40.....	\$260

Effective September 1, 2011

41 to 100.....	\$330
101 to 200.....	\$410
201 to 300.....	\$500
301 and up.....	\$500 for the first 300 plus \$50 per 100 devices or fraction thereof

Fire Suppression System other than Sprinklers (e.g. Hood & Duct, FM 200 etc.)

New System Per

1 TO 20.....	\$160
21 to 40.....	\$200
41 and up.....	\$200 for the first 40 plus \$40 per each 40 additional devices or portion thereof

Tenant Improvement or System Modification for other than Sprinklers

1 to 5.....	\$100
6 to 10.....	\$120
11 to 20.....	\$160
21 and up.....	\$160 for the first 20 and \$40 per each 20 additional devices or fraction thereof

Other Inspections and Fees:

1. Inspections outside normal business hours (minimum charge – two hours).....\$118.50
2. Reinspection fees, per inspection when such portion of work for which inspection is called is not complete or when corrections called for are not made.....\$ 79
3. Inspection for which no fee is specifically indicated, per hour (minimum charged one-half hour).....\$ 79
4. Additional plan review required by changes, additions, or revisions to plans or to plans for which an initial review has been completed (minimum charge one-half hour).....\$ 79
5. Permit extension.....\$47

Fees shall be doubled for work begun without a valid permit.

REFUND POLICY

- A. 75% refund of fees will be provided if the Planning Director or his/her designee determines that, although the application has been accepted, no processing by the City has occurred.
- B. A 50% refund of fees will be provided if the Planning Director or his/her designee determines that the request is made after processing by the City has occurred.
- C. No refund of fees will be provided after an administrative decision or interpretation is rendered or after the mailing of notice unless the application is withdrawn at a City Department's request.
- D. Full refund of fees, minus the pre-conference fee, may be authorized if the City has inappropriately told an applicant that a permit/action is required and later is determined by the City that

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the permit/application was not necessary/required.

Honorable Mayor and City Council Members:

My name is Carol Lynn Harp. I live at 24430 Morgan Street, Black Diamond WA 98010.

Cutting corners, unfinished or hastily done work, is a poor idea in matters of lasting consequence. If you hired someone to build a house for you, would you rush over the details and let them build whatever way happened to occur to them, with no care for the price or maintenance costs or the effects on your property?

We are not just building a house. We are building major additions to our city. Cutting corners just doesn't cut it. We shouldn't have to feel pressured. You shouldn't have to feel pressured. Ideally, we should all be working together to bring about the optimal developments for our urban growth.

Of the testimony I've heard, no one has suggested we somehow avoid the mandated urban growth, although a few may have tried to stereotype others in this fashion. I have heard a lot of about specific concerns of these particular developments. The expression of these concerns is not opposition to development. It is the best process we have been given to work together for the optimal developments for our community.

Traffic is already heavy on SR 169. Development is supposed to pay for development. Presently there is a trend to underfund government, as I am sure you are experiencing. Don't look to the state to add capacity. Mitigations proposed are inadequate, and there is no plan for handling the vastly increased traffic in a proactive fashion. To make this worse, public transit, never that effective out in this area, is being cut, not increased.

Schools are a cost of development. Development should pay for development. School sites have been proposed to be located outside the development area. This is not

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“development paying for development.” In a well-thought-out master plan, one would expect that schools, which are used for so many community functions, would be at the hearts of the developments, not relegated to the fringes, or even worse, even outside the urban growth area.

Lake Sawyer phosphorus content is already dangerously high. While YarrowBay has agreed not to increase phosphorus content, the processes and responses are not clear and specific. Lake Sawyer flooding is already a problem and likely to become more so. This needs to be addressed as well.

The Hearing Examiner stated that the funding agreement should be executed prior to and separately from the Development Agreements. These Development Agreements should not be completed before the funding agreement is complete.

All of our concerns are based on the assumption that the homes will be built, sold, and occupied in the volume set forth. Yet here we are in a real estate market flooded with homes that have become unaffordable to their owners. And it is said that even when the real estate market recovers, it will never again be the tremendous boom it once was.

In these changing times, how will these homes sell? They will be located so far away from jobs and many services, such as hospitals, recreation, entertainment and other amenities, with a commuting nightmare, overcrowded schools, potential mine cave-ins and other hazards, a compromised environment, crammed together on minimal lots, lacking visual and aesthetic value. And we are in an economy that is currently high in unemployment and likely to recover quite slowly.

It is in the developer's best interests, as well as ours, to address the problems successfully. There have been many other concerns expressed by the public as well.

It is certainly getting difficult to be a public official. The situations regarding your missing members could be a consideration to you as well. I know it is going to be difficult to do what you can to ensure good, responsible development. But I hope you do. For the present and future citizens of Black Diamond, cutting corners just doesn't cut it.

I am here to discuss just 2 things. In-Lieu Payments for Recreational Facilities and the Funding Agreement.

In-Lieu Payments for recreational facilities will hopefully not become an issue. We all want the parks and facilities we were promised to become a reality. If however, at some point down the road if the issue does come up and the possibility of not getting our parks is an option on the table, it will be extremely important that the citizens of this city have a voice in that decision through our elected CC. The current DA proposal leaves this decision entirely with city staff. If the citizens of this city just get **told** that the recreational facilities we were expecting will not be built we will rightly be furious.

I strongly recommend you read the HE discussions on this topic starting on page 71 of his recommendation. He clearly states that the City Council DOES have the power to enact changes in this section and that the handling of this represents a VALUE CHOICE by the Voting Council Members. Think about what that means for a moment..... This CHOICE will reflect YOUR VALUES....and of course you were elected to REPRESENT THE PEOPLE IN THIS CITY..... For all of you, but especially for the two of you who are seeking RE-ELECTION TO THESE POSITIONS - WE WILL BE WATCHING TO SEE WHOSE VALUES YOU CHOOSE TO REPRESENT.

I believe in order to avoid creating angry and disappointed current citizens, as well as future taxpayers and homeowners, it is important the opportunity to ELIMINATE the parks and recreation facilities that have been DEPICTED IN EVERY HAND OUT AND ADVERTISEMENT promoting these MPD's the following changes to DA section 9.5.3 MUST BE MADE.

First, give the option to accept In-lieu payments to the CC (seated at the time of development) not the Master Developer.

Second, Change the wording to say something along the lines of *City Council may vote to accept a lump sum payment instead of Parks or Recreation Facilities only after a public hearing on the merits of accepting such funds AND the consequences of eliminating the proposed recreational facility.*

I have included both the current proposed text and my proposed text in my written statement.

The current proposed language.

9.5.3 The *Master Developer* shall have the option to request that the *Designated Official accep* a lump sum payment in lieu of constructing any of the individual Recreational Facilities in Table 9-5. The request shall be made prior to triggering the need for the next Recreation Facility. Pursuant to Condition of Approval No. 95 of the MPD Permit Approval, the Designated Official retains sole discretion to determine when and if a lump sum payment will be accepted in lieu of the Master Developer constructing a

Recreational Facility. The *Designated Official's* determination shall be based on the following three criteria: (i) availability of land; (ii) adequacy of funds to construct City-approved recreational facilities; and (iii) City's ability to maintain recreational facilities. *Pursuant to Condition of Approval No. 93 of the MPD Permit Approval, the amount of the payment that may be provided in lieu of construction shall be set through the following process:*

The new proposed language.

9.5.3 The *City Council* shall have the option to request that the *Master Developer pay* a lump sum payment in lieu of constructing any of the individual Recreational Facilities in Table 9-5. The request shall be made prior to triggering the need for the next Recreation Facility. The *City Council may vote to accept a lump sum payment instead of Parks or Recreation Facilities only after a public hearing on the merits of accepting such funds AND the consequences of eliminating the proposed recreational facility.* Determination shall be based on the following four criteria: (i) availability of land; (ii) adequacy of funds to construct City-approved recreational facilities; and (iii) City's ability to maintain recreational facilities AND the input of the public who will be the user base for the amenity and tax base who will be ultimately paying for the maintenance of same. *Pursuant to Condition of Approval No. 93 of the MPD Permit Approval, the amount of the payment that may be provided in lieu of construction shall be set through the following process:*

Now, the funding agreement. The HE's recommendations regarding the Funding Agreement start on page 96 of his recommendation and condition W of his Implementing Conditions. Again, this should be REQUIRED READING.....Mr. Olbrecht's is an EXPERIENCED ATTORNEY IN LAND USE LAW and he has clear concerns about the Funding Agreement inclusion in the Development Agreement. Indeed, his recommendation to APPROVE these Agreements are CONTINGENT on the Funding Agreement being removed from this process AND BEING EXECUTED PRIOR TO ANY COUNCIL VOTE! In other words.....*The HE does not recommend passing*

the Development Agreements unless the Funding Agreement is removed and approved separately.

Why are we having these hearings? The HE asked for more time. You wouldn't give it to him. Why? He wouldn't ask if he didn't need it.

You have all received a letter from Land Use Attorney David Bricklin that addresses Ms. Hanson's email from MSRC and makes it clear that her interpretation is NOT accurate. Mr. Bricklin's email is NOT ex parte information but expert advice you should heed.

Mr. Bricklin tells you.....the City Council ABSOLUTELY has the power to remand this back to the Hearing Examiner.

You should seriously consider taking this action. During the time the Examiner is providing the additional conclusions of law AND addressing the numerous sections that were skipped or missed due to lack of time - the City can work with the Applicant to finalize and execute a Funding Agreement (which both parties agree is req'd) as its own stand alone document.

This provides protection for BOTH the City and Yarrow Bay.

This removes the issue of City Funding from approval and allows for an appearance of impartiality. It addresses in advance the issue of financial influence and monetary need being associated with possible future approval of these Development Agreements.

The FA by its nature is full of conflicts of interest. Any time you have a private company giving an estimated 34% of the 2011 City budget and what will probably be several million dollars over the life of the agreement to the City, there could be the suggestion of possible inappropriate influence.

The Funding Agreement needs to be looked at from several angles and by several different parties. The HE has looked at it briefly (with his limited time) and found a few issues. He's a smart guy but he is not a financial expert. It needs more scrutiny.

Independent financial experts, not recommended by YB, need to review it.

Now, if you take the FA with its built in conflicts of interest and put it inside a DA, which gives YB the rule book for the next 20 years or better, and you have what appears to be a classic quid pro quo. Is that really what you want to put your name on?

Do you know who funds the other 66% of the budget? We do, the citizens. And we expect fair and responsive government.

What is the benefit of executing a 20 year agreement without the appropriate time, input and consideration? It only increases the likelihood of making mistakes and as the Hearing Examiner points out numerous times through out even his hurried review.....ALL of this language give the options, choices, power and benefit to the applicant and leaves the City and her citizen's with nothing but the risk and repercussions.

This is NOT good business.....this is not acceptable. Especially when the terms last for 20 years and the ramifications last forever more.

You have ample legal and moral reasons to send this back to the HE so he can finish the job he started. DO IT!

Respectfully Submitted,

Bill Wheeler

This document comprises three different written testimonies:

1. The transcript of Mike Irrgang's oral testimony to the Development Agreement hearing ,
4 October 2011, 7:25 pm.
2. A commentary on some dangerous legal issues related to critical unfunded financial obligations incurred by documents already passed, which must be mitigated by concurrency
3. A discussion of the transportation issues which have not been dealt with in either the MPDs or the Development Agreements as currently written.

Transcript of Mike Irrgang's Oral Testimony to Development Agreement Hearing

4 October 2011, 7:25 pm.

Extemporaneous Comments: Animals

The comments just now about animals by Angela and Jacqueline Taeschner really tugged at my heartstrings.

When I left home to come to this meeting, my wife (who is ill) called to me as I left the house to tell me that she had just seen out the window that there was a doe and her two fawns in our back yard. And I also know that now, at 7:30, half an hour after dark, I am sure that there are a number of raccoons on our back patio.

What will happen to these poor and wonderful animals after YarrowBay clear-cuts 750 acres?

They will all be dead!

How **HORRIBLE!**

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Every time I drive to Issaquah, as I pass Mirrormont, I think to myself, why couldn't YarrowBay have planned a decent development like Mirrormont on their land in Black Diamond?

How sad!

Planned Comments: An Inappropriate DA & MPD Process

As I was organizing my thoughts for my testimony this evening, I thought, what do I want to focus on?

- The burden placed on the taxpayers of Enumclaw school district and the potential \$300 million unfunded liability, creating a potentially illegal schooling situation?
- The many unresolved issues creating traffic gridlock in the entire region from the MPDs?

And then I remembered, it was clear that, while the hearing examiner had done an excellent job in the short time he was given, he had not read some of my written testimony, as it was left out of his numerous references. And why is that?

Because the real issue in these development hearings is that the city has followed a wrong process in these development agreement hearings, as you did in the MPD hearings before them.

You have received very bad legal advice from your attorneys, and both you and they have been badly intimidated by YarrowBay. As a result, you potentially have opened yourself up badly to years of future legal action, uncertainty and delay. You have also ill-served the citizens of this community and its environs (people such as myself, living 100 yards from YarrowBay) and the

entire last two years of actions on your part have also had the appearance of being unfair and inappropriate.

I would like to point out a quotation with which I am very sure the attorneys are quite familiar, as it was first stated by the U.S Supreme Court Justice William O. Douglas in 1954 in "Offutt v. United States". It has been repeated many times since. Justice Douglas said, "Justice must satisfy the appearance of justice." In other words, as this ruling is usually used, something may be perfectly legal, but if it does not appear to be just, then it is wrong and must not be done!

Let me lay out some of the issues here, where you have opened yourself up to legal challenge, to indication of bias, to not appearing to be just, to not fulfilling your duties as elected representatives of the people:

- You were told this in no uncertain terms by the GMHB decision on Feb. 15, 2011, and I quote, "The bedrock of GMA planning is public participation. The GMA's public participation provisions require cities and counties to adopt specific procedures ... Thus, a jurisdiction's failure to follow the public participation procedures it has adopted ... constitutes non-compliance with [the GMA]. The Board recognizes the process Black Diamond undertook in the adoption of these two MPD Ordinances, but it simply was not the correct process. The Board finds and concludes the City of Black Diamond failed to comply with its adopted public participation procedures as set forth in BDMC 16.30.020. ... the City of Black Diamond will need to enact new legislation"
- Regarding your legal representation, the board further stated, "... to comment on the decorum of the attorneys in this matter. Generally, the Board expects and receives briefings from attorneys that are factual, straight forward, professional and respectful of differing viewpoints expressed in a case. The current case before the Board is an

exception. The sarcasm, disrespect, and foolish quotes to make points, add little to the briefing.” I reminded you of this at the next city council meeting, and suggested that, to preserve your own credibility, it would behoove you to seek new legal counsel. By not doing so, after such a clear statement from the GMHB, you dug yourselves deeper in the quagmire of injustice and uncertain legality.

- Pursuant to the first point I mentioned in the GMHB ruling, I will never forget when Ms. Rogers stood in front of you here in this room in the summer of 2010, and wagged her finger at you as she said, “every citizen of Black Diamond could be against these MPDs, and yet you are still obligated to vote to approve them, since they are legal.” It is exactly such an outcome that the GMHB wished to prevent, and which should have caused you to go back and start the process over again, as the GMHB instructed. Following Ms. Roger’s logic to the extreme, why are you even voting if you may only vote one way? Or to take it to a more ridiculous extreme, if it is legal to build a freeway through the middle of someone’s house, and someone applies for a permit to do so, you have no alternative but to say, “Yes”? Come on, give me a break!
- You and YarrowBay chose to ignore the GMHB, again in your case following bad legal advice.
- You further compounded your errors by treating the DAs as a quasi-judicial process.
- You ignored the Hearing Examiner, when he said he needed more time. According to the rules the decision to grant more time resides with the applicant. However, the city could have pressed upon the applicant that it was in their best interest to grant more time. He was unable to totally review everything. I would further question, have all of YOU read every single document in evidence, thoroughly, and listened to all testimony and/or read all transcripts? Have you absorbed all the technical content? I would

question that, and in particular even if you have, it does not APPEAR to be so, given the rush to conclude everything.

- The Hearing Examiner, in effect echoed the GMHB when he said on page 1 of his DA recommendations, “The Council has wide discretion as to what it can include in the development agreements and the public has corresponding wide latitude in suggesting what they’d like to see in the development agreements.

One of the worst things that you have done, apparently once again due to bad legal advice, is what has resulted in the absence of Mr. Goodwin and Mr. Saas from these hearings. You allowed them to be threatened into recusing themselves by YarrowBay. This is a gross injustice. The reasons given by YarrowBay were that both councilmen spoke with our Citizens’ Technical Team last spring and, thus, according to YarrowBay, violated the quasi-judicial Development Agreement Hearing rules.

This is nonsense! All discussions and emails between the councilmen and our team dealt with the MPD Ordinances passed in September 2010 (existing City of Black Diamond law). There is NOTHING illegal about that and it has NOTHING to do with the ongoing quasi-judicial Development Agreement Hearing.

The record must be straight. Two such dedicated public servants like Black Diamond City Councilmen Goodwin and Saas should not be challenged for something that was completely legal and, I might add, part of the normal process to obtain input from the Public which they serve.

We should all remember that we are very fortunate to live in a Democracy, which provides us the opportunity of free speech, and we live in a Republic, which allows for representation. Both the councilmen and our team were exercising their rights as American citizens!

The attorneys clearly know of the doctrine of sovereign immunity, of which I must remind you. The sovereign or state cannot commit a legal wrong and is immune from civil suit or criminal prosecution. To translate this into English, in the U.S., as long as you are not violating a higher authority, i.e. Federal law or Washington law, if you did something as part of your duties as a Councilman, you can't be subject to a civil suit about it. Goodwin and Saas were performing their duties. Moreover, they were following the GMHB ruling, while the rest of you chose not to.

The mayor and the-city attorney should have given Goodwin and Saas a letter stating that if they were sued either as Councilmen or individuals on any matter involving YarrowBay, the city would pay all their legal costs. Furthermore, the mayor should have had a similar letter, authorized by the city council, to provide the same protection.

But, getting back to the "appearance of justice", this entire process in the last several months has been SO ACCELERATED since candidates filed for city council elections. It appears that all of you are in a race to do everything you can to deny the citizens any opportunity to have a voice until YarrowBay is vested in their 6000 units and their plan for \$2.5 billion dollars in sales with a very high profit margin, due to the \$300 million dollar taxpayer subsidy they will receive for school construction and the hundreds of millions of dollars in subsidies they will indirectly receive for dealing with the traffic mess they will produce in the region. And the millions of dollars in ratepayer subsidy they will receive for sewage treatment for the last 4250 units. All these numbers were addressed in prior testimony: 6,050 units @\$400+ K, \$350 million total school construction costs, and the inability of the King County sewer system to handle beyond

the first 1800 units. Why do I call the school costs a subsidy? Because where I moved from, Texas, requires large-scale developers to pay for all the infrastructure costs directly associated with their developments (schools, roads, water, sewage), usually by setting up a Municipal Utility District (MUD) that only encompasses their MPD. Any costs not initially paid by the developer (such as monies raised through bonds) will be paid by MUD taxes only on the residents of the MPD.

In closing, you have ignored legal rulings. You have ignored the citizenry. You have ignored the hearing examiner, both in the MPD hearings as well as the DA hearings. Do the right thing now. At a minimum, remand the DAs back to the hearing examiner to finish his job. Then provide the public and the City Council enough time to truly study everything in a non-rushed manner.

But more justice and more appearance of justice would be to vote to repeal the MPDs and start the process over again, as the GMHB ordered you to do.

A Commentary On Some Dangerous Legal Issues Related To Critical Unfunded Financial Obligations Incurred By Documents Already Passed, Which Must Be Mitigated By Concurrency

The development agreements as currently written allow for the inevitable creation of significant unfunded obligations/liabilities. One of the principal of these creates an inevitable illegal situation. The development agreements MUST be changed to correct these conditions.

In most parts of the U.S., and particularly in Texas, where I last lived, developers are expected to pay for themselves. It is a fundamental assumption in these United States that property

rights are of paramount importance – that if I have a piece of land, I should be able to use this land to the greatest degree possible as I see fit. Therefore, a developer such as YarrowBay should be able to build their MPDs.

But along with these rights there is an assumption and understanding on the part of everyone that no landowner or developer should be able to force their neighbor to pay for items that only benefit themselves; e.g. if I want to build a deck behind my house, I should be allowed to do so. But under no circumstances does my neighbor pay for me to build my deck.

Yet YarrowBay with the MPDs as currently written, is forcing their neighbors to pay for costs that they should pay themselves. This is what YarrowBay has done to us, in the case of transportation (generating HUGE amounts of traffic, with the taxpayers expected to pay for infrastructure improvements, in the case of sewage treatment, with King County ratepayers expected to pay for expansion of the sewage system after the first 1800 YarrowBay units, but worst in the case of the schools.

In Texas, the way this is handled is that either a developer may not develop until all infrastructure is in place, or else the developer must pay for all infrastructure. If the developer does not want to pay directly, the developer may set up what is called a Municipal Utility District (MUD), which only incorporates that development (i.e. MPD) and which requires the future residents to pay additional taxes to pay for such infrastructure. This almost always includes all water, sewage, schools and roads associated with and necessitated by the development. I lived in a MUD for 20 years, and basically paid double-high property taxes (vs. the surrounding communities) because of it.

Schools are covered in the MPD Approval ordinances in Condition 98, which states: *The Applicant shall enter into a separate school mitigation agreement....school mitigation may be addressed in the Development Agreement...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)... All school sites shall be located either within the MPDs or within one mile of the MPDs.*

The Tri-Party School Agreement has been approved as a mitigation agreement. Personally, I believe that the school board should be impeached for having been so financially irresponsible to sign such a one-sided agreement, which obligates the Enumclaw School Districts taxpayers to pay for 90% of the construction costs and 100% of the operating costs, in exchange for a paltry 10% of construction and land worth a minuscule several million dollars.

I say “minuscule” because the seven new schools which are required by state law for the number of expected residents are estimated to cost \$350 million to construct, with operating costs in the millions of dollars annually. Enumclaw should have required YarrowBay to set up a Texas-style MUD to force the 6,050 homes in the MPDs to pay for the schools from taxes limited to the MPD residents.

But they did not. I was very surprised to read that the Hearing Examiner stated that YarrowBay’s mitigation agreement is the largest in Washington state history. Clearly, then it is legal, even if it is immoral and unconscionable. But in the case of the Black Diamond MPDs, legal or not it creates a situation which will inevitably result in a serious problem for both Black Diamond as well as the Enumclaw school district.

Enumclaw residents will effectively get no benefit from these new schools, but they are expected to be financially responsible for them.

Knowing this, is it likely that the very small tax base of the Enumclaw School District will approve either bonds or taxes to fund schools for new Black Diamond residents?

Any reasonable person will know that the answer is a resounding **“No!”** Bond issues have already failed on the ballot where Enumclaw residents were going to receive a benefit in their own community – why would they fund a different community?

In other words, the most likely scenario is that a point will be reached where a school will be required by state law, yet it has not been built and there is no Enumclaw money to build it. RCW 28A.150.100 requires a basic ratio of school staff to student population; if the facilities do not exist to accommodate this staff, then additional facilities must be built. The population of the MPDs as the units are sold will determine the number of schools required and the amount of the facilities in these schools to accommodate the staff.

Since the Tri-Party Agreement is done, signed, and cannot be renegotiated, the only legal remedy for such a situation would be to modify the development agreements to prohibit the construction of any home until the schools required by the total number of homes currently in the MPDs are completely constructed and in service. In other words, for example, if, say, 812 homes required “n” schools to be built, and they are, but 813 homes would require the next school to be built, then home #813 cannot be built until the next school is both built and operational. The developer would have the choice of either holding off on home construction until the taxpayers fund the school construction or else the developer could pay for the schools themselves (as they morally should, anyway!).

**A Discussion Of The Transportation Issues Which Have Not Been Dealt With In Either the
MPDs or the Development Agreements As Currently Written**

The YarrowBay MPDs will create a gridlock at rush hours that will necessitate building out 169 as a freeway from Black Diamond to Renton (I-405). According to the mayor of Maple Valley, a study was done in 2004 which estimated the costs of such a project to be at least \$300 million, if not more. Why should the taxpayers of Washington have to pay for this, which is only necessary to allow YarrowBay to build their development.

YarrowBay expects to sell their 6,050 homes for in excess of \$2 billion dollars. In fact, when they were talking about this development in community meetings in 2008, they quoted an “average home price” of over \$400,000, which would mean more than \$2.5 billion in total sales. Why can't they pay for all the costs of infrastructure associated with their project?

The development agreements as currently written and the MPDs as passed set up an inevitable situation whereby YarrowBay's 6,050 homes will produce an impossible gridlock which could result in two-hour or longer commutes each way to Seattle, Bellevue and Tacoma, where most of the MPDs' residents will probably work. In fact, this situation may very well be produced after only the first 1,000 or so homes are built, as will be discussed below.

The Development Agreements list Mitigation Agreements with outside jurisdictions that do not include mitigations that are technically defensible, let alone adequate, as they are based on the Hearing Examiner-ruled flawed model and analyses. Consequently, those negotiations have no common database with which to work and, thus, are meaningless as a starting point, let alone an ending point.

Mr. Peter Rimbos compared the Black Diamond YarrowBay MPDs to two other MPDs:

Issaquah Highlands MPD:

There are ~3,000 residences and ~900,000 sq ft of commercial/retail space. They are situated near an 8-lane divided Interstate superhighway, I-90, served by 3-lane (one-way) dedicated ingress/egress ramps. They are located ~10 miles from one of the world's greatest high-tech employment centers.

Snoqualmie Ridge MPD:

There are ~2,000 residences and ~800,000 sq ft of commercial/retail space. They are situated near an 8-lane divided interstate superhighway, I-90, served by dedicated ingress/egress ramps. They are located ~15 miles from one of the world's greatest high-tech employment centers.

Black Diamond Villages and Lawson Hills MPDs:

There are ~6,000 residences (more than those first two combined!) and ~1,100,000 sq ft of commercial/retail space. They are situated near an already congested 2-lane undivided road, SR-169, served by many non-signalized intersections including driveways. They will be located more than 30 miles from any major employment centers.

There are no effective mitigation plans for these effects – the “mitigation” proposed by YarrowBay to Black Diamond and the surrounding communities is a joke – it only provides “window dressing” by treating traffic as a problem of intersections, etc. and also as a problem of only the immediately adjacent communities. Traffic will be a regional issue, affecting all of southeast King County.

Traffic will be an issue because Black Diamond and the YarrowBay MPDs are only served by roads which are only two lanes, or roads which are already problematic, and because it is either prohibited to widen these roads, or there is no available funding for widening in the coming decades.

Why was this issue not addressed in the MPD agreements? Simply, because the traffic modeling done for YarrowBay by Parametrix relied on faulty assumptions, and was grossly inadequate, as will be discussed further below.

The Development Agreements are grossly deficient in addressing Transportation issues directly and indirectly attributable to the proposed MPDs. The Traffic Model is insufficient in scope and character. The proposed Traffic Monitoring program is totally re-active and, thus, will not provide timely mitigation as required by Black Diamond City Code 18.98.020(G). The proposed Mitigations are not supported by critical analyses and no methodology is proposed to address mitigation concepts that are insufficient or fail outright to mitigate the coming gridlock.

The mitigations outside Black Diamond and agreed to with the City of Maple Valley as part of the MPD Approval Ordinances 10-946 & 10-947 appear to address today's existing congestion problems and not the massive traffic volumes yet to come with the MPDs.

The Development Agreements do not describe a Baseline Traffic Model that provides predictions with which the Hearing Examiner and the Public have any confidence. Consequently, the City of Black Diamond, adjacent cities, King County, WSDOT, and the Developer have no idea what future scenarios will look like, nor what mitigations could even work or cost. The Traffic Demand Model contracted by the City with Parametrix will not produce a Baseline Model that is substantially better than that rejected outright by the Hearing examiner,

if it doesn't address myriad deficiencies previously identified such as the boundaries of the model, key assumptions, and timing of verification and validation.

- The Hearing Examiner in the MPD hearings said in his final report that transportation was not sufficiently studied and modeled. Things we have learned since then:
 - The city did not follow his recommendations
 - Parametrix did not model the impact to surrounding region
 - Parametrix used highly questionable demographics to figure the recapture rate. The demographics was based on the 2000 census. Not projecting logical demographic changes resulting from the MPDs was extremely self-serving and inaccurate on the part of YarrowBay. How? Consider: Black Diamond today is a community largely comprising retired people, the unemployed, people working from their homes. Many residents are here because their families have lived here for generations. Accordingly, it is in their nature to stay close to Black Diamond. Residents who do not fit this demographic are people who came to Black Diamond looking for an idyllic life in the countryside. But any logical approach to the demographics of the residents of 6,050 new homes would be that they would primarily be bought by working families in the Seattle-Bellevue-Redmond area who are looking for a less expensive place to live than closer to their work. Let's face it – the MPDs transform Black Diamond into purely a bedroom community.
 - The reality of the MPDs is that perhaps 10,000 to 15,000 more cars would commute. 10,000 given current demographics of bedroom communities, assuming 1.5 working adults per household. But for the future, it is more reasonable to use a number of 15,000 – 2.5 working adults per household. This is assuming trends well-documented by sociologists of more adults sharing living quarters in America, as our

future economic prospects decline. This is a trend which has accelerated during the Great Recession – adult children living with their parents.

The solution to these problems is to convert 169 into a freeway all the way to I-405. According to the mayor of Maple Valley, this was studied in 2004, and costed at over \$300 million. While the state will not fund such a project for decades, such a project could certainly be funded by YarrowBay as a condition of the development agreements.

The Developer proposes to rely primarily on other people's money to fund needed infrastructure. Both the State and the County have precious little funds to allocate out here on the Rural/Suburban Fringe and the Alaska Viaduct Tunnel and the 520 Bridge projects will drain already-stretched funding coffers for a very long time. PSRC's Transportation 2040 makes this abundantly clear. The Development Agreements fail to provide a credible financial plan to pay for all the traffic mitigations that will be required by such a massive undertaking as the proposed MPDs in an area possessing little or no major transportation infrastructure.

The immense size--6,050 homes and 1.1 million sq ft of commercial--proposed cannot be adequately mitigated from a practical standpoint given all the financial and land constraints that exist. Consequently, our infrastructure will suffer gridlock for generations.

The Development Agreements don't tell me when levels of traffic will be even looked at. The MPD Approval Ordinances and Conditions require this to be described in the Development Agreements, so that any needed changes in our roads can be done. The Development Agreements do not even describe how future traffic will be modeled. The Conditions of the MPD Approval Ordinances require this as well.

The Development Agreements don't explain how important assumptions will be made, such as how much traffic stays in the City and how much leaves. The Conditions of the MPD Approval Ordinances require this.

How will we know if any estimates of future traffic levels makes any sense, if it's not compared to anything and validated? The Development Agreements do not address this and fail to meet several of the Conditions of the MPD Approval Ordinances.

I commute through Maple Valley to go to work. There are Mitigation Agreements mentioned with other cities that will affect me, but how do we know if those agreements will fix the future traffic tie-ups? This is required in the Conditions of the MPD Approval Ordinances. In fact, Exhibit F-- Traffic Monitoring Plan, states that projects in these "mitigation agreements" are exempt from later monitoring and analysis of traffic impacts. Why are they exempt? Those agreements don't protect the citizens. They need to be fixed in the Development Agreements.

I feel the Development Agreements require a lot more detail to even begin to address my concerns about traffic. As they stand now they are grossly lacking and fail to even meet most of the Traffic Conditions of the MPD Approval Ordinances.

But I emphasize, understanding the flaws in the traffic analysis done for the MPDs is not rocket science. A traffic simulation is nothing but the visualization of a series of simple calculations all being done at the same time. The individual calculations are mostly simple and mostly common sense, IF AND ONLY IF nobody plays games with the assumptions that go into the calculations. The assumptions are critical, and need to be all-inclusive, since they drive the results. There were invalid assumptions last year, and not enough was included, as you can see in the first point below. Let's go through it, step-by-step:

1. The most basic simple flaw in what we saw last year is that all the models that were used assumed that each of the communities surrounding Black Diamond is a traffic sink. What is a "sink"? In engineering terms, this means that the assumption was made that each community could accept and pass through an infinite number of cars, without effect. This is to say, for instance, that cars leaving Maple Valley on Highway 169 at the Testy Chef would just keep on going and never back up. But all of us know that even today cars back up at the various traffic lights between the Testy Chef and 405, especially before the road becomes four lane, almost all the way to the golf course. You put more traffic on that road and you very well can produce gridlock. This is called "Queueing." WSDOT testified that "Queueing analysis must be done, even in a programmatic FEIS."
2. So the next question is, what produces gridlock? Well, on a two lane road anytime you have an intersection with a light, or a place where a lot of people will make a left turn, traffic will start to back up as soon as the flow of traffic exceeds the number of cars that can pass through the light or make the turn in any given time period. This is easiest to calculate with a traffic light. After a presentation to the Black Diamond City Council this past March, which included the color graphic at the end of this document (in a different form), and a subsequent letter by YarrowBay to attempt to refute my contentions, I realized that what I needed to do was to pick a gridlocked intersection and count cars. I made some estimations of traffic flow that were slightly inaccurate, but empirical evidence is always better in any case. I decided to use the intersection to which they referred in their letter. They contended that the intersection of 169 and SE 240th street was a good case and can sustain a very high flow rate. As this intersection is on my daily commute, I noted that this intersection is gridlocked today, before YarrowBay constructs their 6,050 homes. It is generally gridlocked every Tuesday, Wednesday and Thursday southbound, from about 4 pm to 6 pm. It is actually a better case than the worst chokepoints on 169, as it has left turn lanes and a speed limit of 45 mph. The worst chokepoint is northwest of the Testy Chef,

after 169 crosses under highway 18. So now to my gridlock test. The traffic light at 240th St. changes every two to two and a half minutes (inconsistently). Counting cars during gridlock (defined as traffic backed up to the prior light at Witte Road), the average flow rate is 17 cars per minute, observed on multiple days, or one car every 3.5 seconds. Again, this is gridlocked rush hour traffic today!

3. The next question is, how many cars will the MPDs produce at rush hour? Once again, let's apply common sense. The absolute and unlikely best case would be 5,000 cars. This would assume that many households were for retired people and that those that were not only had one breadwinner in the house. This is unlikely on both counts. Once YarrowBay is built, who on earth would want to retire in Black Diamond, after it loses its "rural by design" character and becomes wall-to-wall houses and apartments with gridlocked traffic? It is ridiculous to think that the MPDs will be anything more than a bedroom community, since there will never be more than a few hundred jobs in Black Diamond. This is why Internal Capture Rate assumptions and verification are so critical in any traffic analysis. Now let us look at the worst case scenario of 15,000 cars. This would assume that every household had two breadwinner commuters, and that some would also have an adult child living with them and also commuting, a scenario you read about more and more in today's troubled economic times. The graphic accompanying this email takes that scenario, but if you disagree somewhat, when you look at the graphic, just scale back the traffic flows proportionately on each of the roads I have shown.
4. The next question, what flow rate will the MPDs produce at rush hour? Again, this is a reasonably simple calculation. Let's say that rush hour lasts from 6 am to 9 am? Regardless of what start time or end time you use, I think it is being charitable to say it will last 3 hours. The less time it lasts, the more problems it produces. So if it lasts 3 hours, then using the 15,000 figure, this is 5,000 cars per hour. There are 60 x 60 seconds in an

hour, or 3,600 seconds. Therefore the MPDs produce one car every 0.72 seconds in this scenario.

5. Now, we get to one of the key issues – which way will the traffic go? This involves assumptions, which I have an opinion on that I will share, but that you would want to do a study TODAY to validate – not after we have 850 homes. Also, however, there is a conclusion that can be drawn about the effects of traffic flow on gridlock, which is eminently logical:

a) My assumptions are that nearly half of the traffic is headed toward the region's major employers: Boeing, Microsoft, Starbucks, Amazon; i.e. northward up 169. I believe that one third of the traffic will head westward, and perhaps 10-15% will head southward. Some of the westbound traffic will eventually end up in Seattle or Tacoma. Why do I believe this? Because this is what I see when I take different roads every day (for variety) to get to Boeing. If you disagree with the assumptions, you can do the calculations with your own.

b) BUT, one must conclude that as soon as gridlock develops on one road, people seek another to find the "path of least resistance." This was testified by many people last summer, and was the basis for the concern about Green Valley Road.

6. So what now is the gridlock calculation? Well, if half of the traffic goes north, then YarrowBay will send a car north every 1.4 seconds, with the 15,000 car assumption. With the BEST CASE and unrealistic 5,000 car assumption, a car would go north about once every 4 seconds. So you can see, since the flow rate of the two lane road is about a car every 3.5 seconds, then ANY scenario will produce gridlock northbound, which will then re-direct westbound, and then produce gridlock in all directions. The same situation would occur southbound in the afternoon. Please refer to the picture at the end of this document to further illustrate a very likely traffic scenario.

7. How fast will gridlock build? In the worst case, every minute you would be adding 42 cars to the northbound lineup. In the best case you would be adding 14 cars to the lineup every minute.
8. Now what does "adding to the lineup" really mean. Well, look in your garage. A typical garage allows 20-22 feet for cars. A Ford F150 pickup is 17 feet long. A Ford Crown Victoria is 18 feet long. A Honda Civic is 15 feet long. In a traffic lineup, cars are not going to be touching. If you assume that there are at least 3-6 feet between each car, then let's say that in gridlock cars would occupy 21 feet of roadway. This means that $21 \times 1000 = 21,000$ feet, or that a gridlock of 1,000 cars is 4 miles long! 15,000 cars? Even 5,000 cars?
FORGET IT!

So what does this all mean? The numbers above show that in effect to take the currently gridlocked (at certain hours) 169 and add YarrowBay MPD cars to it would require adding two more lanes all the way to Renton, and it would likely STILL be gridlocked! In other words, there needs to be a freeway!

So what are the possible solutions? My view – and if there are alternatives, I would like to hear about it – is that there is only one solution: Based on the GMHB findings, rescind the MPD ordinances, and restart the process with interactive Public participation to look at all alternatives and determine what is best for the greater Black Diamond area and its residents.

But at a minimum, then I would say set some new traffic conditions as follows:

1. develop a new traffic model, using more realistic demographics, a more realistic internal capture rate, and most importantly with full regional impact

2. benchmark the current traffic environment, both to validate the new model as well as to identify current gridlock situations. Identify current areas that are at maximum capacity without additional lanes. Define maximum capacity as being gridlocked in either direction more than an hour per day. Anything beyond that is unreasonable and should be mitigated by additional lanes.
3. require that the model be re-run once per year, with model validation by further empirical tests each time. Since the Black Diamond MPDs will not be the only construction in SE King County, it is imperative for such revalidation to occur
4. impose conditions in the development agreements to **require all construction to cease at any point that gridlock has not been mitigated**, until such mitigation occurs
5. YarrowBay, of course, should be free at any time to pay for construction of a freeway from Black Diamond to I-405 from their billions of dollars in expected sales revenue.

As I would expect that YarrowBay in their rebuttal of this statement will include their letter of May 4, I will comment on each of their points:

- Maximum Flow Rate: They are correct in that I made an error in my calculations. In my above analysis I have corrected this error by empirical observation **using the intersection they refer to**, which moreover is **much worse than they claim**.
- MPD traffic: As I stated above, their projections are based on the absolutely ridiculous assumption that Black Diamond will not be a bedroom community, but will continue to be a community of isolated people whose families have lived here for 100 years. This is patently ridiculous! They are adding at least 20,000 new residents, for goodness sake! This will not be a retirement community – it will be a large town of people who have to work, and there are **no** jobs locally, and never will be, certainly not on that scale.

- Presumed gridlock: See my above analysis, and my empirical car-counting data. It is an insult to all of our intelligence that YarrowBay pretends that improving a few intersections solves the problem of 15,000 additional cars a day commuting to the big employment areas.
- Conclusion: They have done no real analysis (i.e. non-self-serving) and no real mitigation. Their conclusions are ridiculous.

In fact, Black Diamond City Code (BDCC) 18.98.020(G) requires: "Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops...."

Further, the Black Diamond City Code (BDCC) 18.98.080(A)(4) requires: "A phasing plan and timeline for the construction of improvements...."

Last year the Hearing Examiner rejected the analysis that was used to develop transportation mitigations and, thus, rejected those mitigations. Yet the Development Agreements still contain those rejected transportation mitigations! That alone is a basis for rejecting these Development Agreements.

I understand major developments such as the MPDs are required to meet Transportation Concurrency so that our road system can handle the new levels of traffic as required in the City's Comprehensive Plan and the State's RCW 36.70A.070. The Development Agreements don't even discuss how Transportation Concurrency will be assessed.

There are no provisions to handle those mitigations that are insufficient. How will "an unsatisfactory level of mitigation" be fixed as required by the Ordinances' Condition 17 f? I for one do not look forward to endless gridlock whether I'm going to work or to the grocery store!

These Development Agreements need a lot more detail on how the massive amounts of increased traffic in southeast King County will be mitigated. They also clearly fail to address many of the Transportation Conditions in the City Council's Ordinances.

As Yarrow Bay indicates in **Exhibit 209, p. 47 & 48**, they are stating that they will mitigate all infrastructure impacts as they impact the community. They are saying this now **in their own words**, but the Development Agreements do not contain sufficient wording to require them to do so. If they are saying now that they will do such mitigation, then the Development Agreements need to be specifically modified to **explicitly require such mitigation on all infrastructure – especially** transportation! How can anyone object to such a reasonable requirement, if YarrowBay has freely stated they will do it? The language needs to **require** them to do what they have said they will do.

The graphic below has been modified from what the City Council has previously seen. In my previous testimony and in my comments above, I refer to potential traffic of 15,000 additional commutes per day. However, most other people testifying have referred to 10,000 additional commutes per day. I therefore modified the graphic to show what would be a potential extremely logical distribution of 10,000 trips per day.

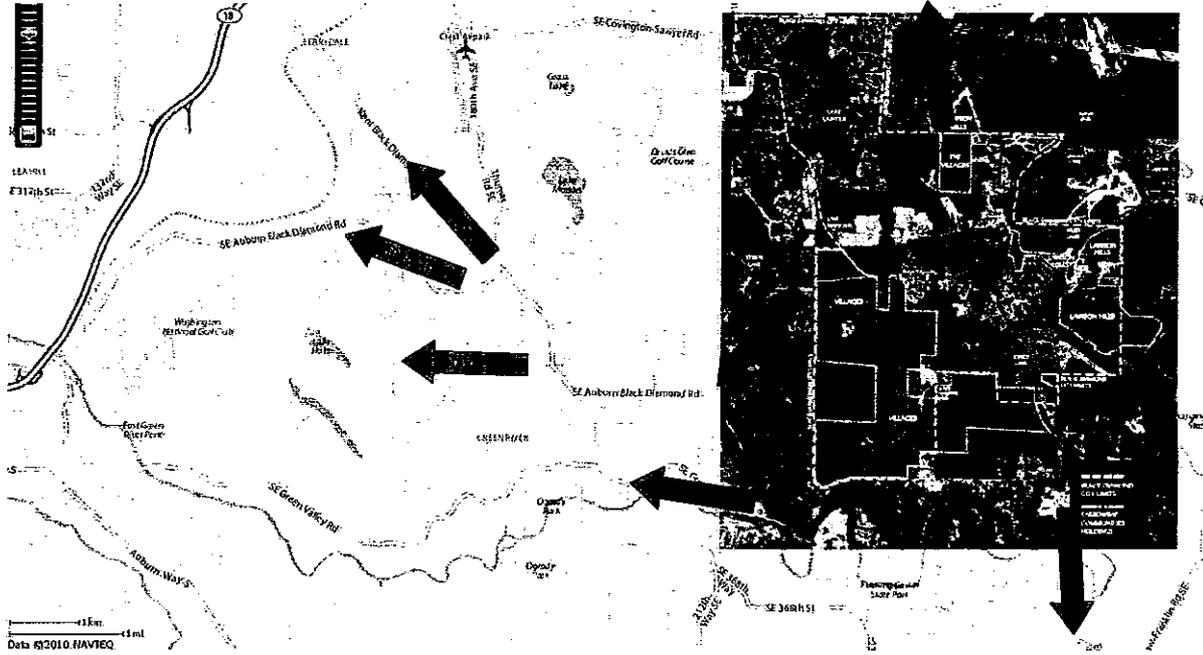
It still generates **GRIDLOCK!!!**

YarrowBay Development

4 Miles from Lake Holm, Thomas Road, 4 Corners!

How will 10,000 new commuters be distributed every morning?

1,000 cars can make a 4 mile long bumper-to-bumper gridlock!



Angela Jennings
21223 SE 351st St.
Auburn, WA 98092

October 8, 2011

Black Diamond City Council
24301 Roberts Drive
Black Diamond, WA 98010

Dear Council Members:

I am writing you today to express my support of the citizens of Black Diamond who are in opposition of the Master Planned Developments as proposed by YarrowBay. I have attended several of the meetings held at Sawyer Woods and Black Diamond Elementary Schools over the past several weeks and have seen first hand the dedication and perseverance of this wonderful, thoughtful and intelligent group of individuals. These people are not afraid of change as suggested by some, but recognize the potential huge, negative impact the developments will have on their way of life and the environment. I have lived in Green Valley for 18 years, and I completely support the other residents living along Green Valley who are telling you the potential impact of the traffic alone along this beautiful stretch of roadway, would be horrendous - not to mention the negative effects on our wildlife and water supplies.

I received a brochure in the mail from YarrowBay a few days ago, and on the cover it reads: "New Schools Planned for Black Diamond". It sounded to me as if the developer is providing free land for the Enumclaw School District to build schools on, so I tried to contact YarrowBay to hear the specifics, but no one returned my call. The way I see it, YarrowBay is hiding behind the premise of new schools. After all, who would deny our children the opportunity for a better learning environment? I look at YarrowBay as nothing more than cowards hiding behind our children. The only interest they have at heart is their own. Whose best interest do you have at heart? Is it the citizens of Black Diamond and the surrounding communities? Is it the children? I suppose the decisions you make over the next few weeks will tell. We can place our children in a nice building and preach morals and values at them all day long. We can also show them pictures of beautiful places and tell them how important it is to protect the environment. But, at the end of the day, what difference will it make if we do not practice these ideas ourselves? How about allowing our children to experience nature and the beautiful outdoors in its natural state? Do we really need another video store as some have suggested?

I understand that cities need to develop and grow, but the Master Planned Developments are simply too big for Black Diamond and the surrounding communities. The people who are asking you, the City Council, to take a good long look at their suggestions, as well as

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the suggestions of the Hearing Examiner are not the uninformed ones. These people are knowledgeable and experienced, and should not be ignored. They deserve your respect and consideration and I respectfully implore that you thoughtfully and thoroughly examine all of their proposals. Please reconsider the consequences of implementing the Master Planned Developments before it is too late.

Thank you for your time.

Sincerely,
Angela Jennings

Sierra Club Written Statement
Black Diamond--YarrowBay Development Agreements
Closed-Record Hearings--October 2011

My name is Dan Streiffert. I am the Chair of the South King County Group of the Sierra Club. I wish to speak today of our Environmental concerns with the proposed Development Agreements.

The Development Agreements describe a massive urbanization of a small town and its surrounding areas with a quintupling on the outer edges of King County's Rural/Suburban boundaries. The Development Agreements describe adverse impacts, without providing sufficiently detailed plans for adequate mitigation. These impacts extend beyond the City of Black Diamond into the rural areas and the neighboring towns of Covington, Ravensdale, Maple Valley, and Enumclaw.

There is inadequate mitigation for adding over 10,000 additional commuters on windy, narrow 2-lane roads creating even worse commutes than we have now with additional air pollution and Greenhouse Gas Emissions. The Hearing Examiner was concerned that concurrency has not been properly applied or applied at all. Heed his warnings and accept his recommendations on concurrency.

Additional adverse impacts on our shared environment include clearcutting over 750 acres of prime habitat forest and displacing countless fish and wildlife, as well as disrupting the recreational opportunities for many, many outdoor enthusiasts. How can wildlife purportedly be "protected" when half their habitat is destroyed through clear-cutting? The Development Agreements do not provide any answers to that question.

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Although Open Space will be preserved, it is clear from the maps in the applications that the open space protected would be identical even if Black Diamond did not require open space in its MPD's. This is because the required wetlands, buffers, parks, wildlife corridors, and school fields account for the open space. The Sierra Club is disappointed that the spirit and intent of Black Diamond's open space goals is not being realized.

There is the a disregard and exploitation of the adjacent Unincorporated Rural Areas by placing required urban infrastructure such as needed Schools and Stormwater Detention Facilities outside Black Diamond's Urban Growth Area on cheaper land to save money without regard to the adverse impacts on rural residents. When King County is asked to approve permits for such misplaced facilities, the Sierra Club and other environmental organizations will fight very hard for those urban facilities to be placed where they belong--within the Urban Growth Area where they will better serve students and residents.

The Development Agreements must meet the provisions of the Black Diamond Municipal Code which state that ***“significant adverse environmental impacts are appropriately mitigated.”*** The FEISs were found adequate based on the information that had been generated at a *“programmatic”* level. The Development Agreements were expected to provide more *“project”* level details on a wide variety of environmental issues many with the potential to cause serious impacts. Unfortunately, we find insufficient detail in the DAs to stave off adverse impacts, many which might be irreversible. These include: habitat, wildlife, and corridor protection; retention of open

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space; stormwater runoff and retention; air quality; water quality; wetlands preservation; forest preservation; and transportation. Many of these environmental impacts cannot be adequately mitigated, because of the size of the MPDs and their placement in a highly-constrained environment of many wetlands, small streams, and lakes--all in a rapid buildout.

The development Agreements lack of detail in the following areas:

Habitat, Wildlife, and Corridor Protection

The Development Agreement fails to provide plans for a high degree of connectivity and compatibility for wildlife on- and off-site. The wildlife corridor winds through the Black Diamond Lake wetlands with no coordinated use of non-wetland habitat. Many corridors are narrow. Some go through water bodies and attendant wetlands. The open space/habitat plan does not provide sufficient connectivity for wildlife. The development Agreements require a strong and feasible **Wildlife and Habitat Preservation Plan to preserve and *enhance* existing habitat corridors for deer, elk, and other large animals. We agree with the Hearing Examiner's recommendation that wildlife corridors comply with the City's Sensitive Areas Ordinance and that the corridor boundaries be revised as necessary.**

Retention of Open Space

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Open Space is an important component of the City's Comprehensive Plan and Municipal Code. The Development Agreements do not meet the 50% open space for the total project area indicated in the Black Diamond Comprehensive Plan, Municipal Code, and the MPD Framework and Design Standards & Guidelines. **The Development Agreements must be rewritten to verifiably rectify this. In addition, we agree with the Hearing Examiner's concerns about using the amendment process to change Open Space boundaries once established. Such concerns are warranted, to preserve the integrity of boundaries.**

Stormwater Runoff and Retention

Although some sustainable building practices are proposed, there still will be a large amount of new impervious surfaces replacing existing permeable soils. Low-impact development technologies have advanced beyond what is proposed--why aren't they being used? In addition, the massive grading mentioned earlier will significantly change natural land contours and drainage. These will have major impacts on the natural environment, many of which are not adequately mitigated by the plans outlined in the Development Agreements. **We have not seen an overall grading plan. Plus, the Development Agreements must address both the quality and the quantity of stormwater runoff.**

Air Quality

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Due to the massive number of new trips in and out of the Black Diamond area on already congested roads, there would be even greater smog-producing vehicle emissions, thus making it even more difficult in mitigating any newly contemplated Federal EPA smog limits that will put King County in violation of air quality regulations. **The Council should require the Development Agreements provide an Air Quality Preservation Plan.**

Water Quality

The Green River and its tributaries have runs of Chinook salmon and steelhead, both of which have been listed under the Federal Endangered Species Act. The effects on water quality, stormwater runoff, and instream flows from these MPDs could wipe out extensive efforts by many local groups, environmental organizations, outdoorsmen, and government agencies to save our salmon. There also may be heavy impacts to nearby lakes such as Lake Sawyer, Horseshoe Lake, Jones Lake, and Black Diamond Lake. Some of those lakes are part of the habitat for salmon runs and many provide habitat for a variety of other fish. These lakes also provide important recreational opportunities in southeast King County. **The Development Agreements do not provide sufficient detail on how or what will trigger additional actions to correct stormwater deficiencies. The Development Agreements must include monitoring of all key water bodies in the Green River Watershed with enforceable provisions conducted sufficiently frequently and rigorously to ensure water quality for people and wildlife. Restoring water**

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quality after it is damaged is very costly and unfortunately takes, in many cases, generations.

We support the Hearing Examiner's recommendation for an accurate Water Conservation Plan and urge the Council to require the development Agreements to be modified accordingly.

Wetlands Preservation

There are numerous wetlands within the boundaries of the two proposed developments. Many of these areas would be negatively impacted by changes in water infiltration and stormwater runoff.

We agree with and support the testimony of Dr. Sarah Cooke, wetlands ecologist. Additional studies need to be done before wetlands boundaries are fixed. These change over time and should not be fixed for twenty years. Additional third party verification needs to be done.

Agency verification also needs to be done by the Department of Ecology. Wetland Boundaries and ratings have to be verified by the State (Washington State Department of Ecology) and Federal (US Army Corps of Engineers, US Environmental Protection Agency) agencies.

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The Development Agreements fail to address Condition 105 to control stream bank erosion and bank/slope failures along stream corridors. The Council should require an Erosion Control Plan.

The Development Agreements must meet the provisions of the City's Sensitive Areas Ordinance during buildout to protect fragile wetland and stream watershed complexes.

The lands in question are highly susceptible to ground water contamination, but **the Development Agreements inadequately provide detailed measures targeted to protect ground-water quality.**

We urge the Council to require the Development Agreements include a **an independent 3rd part review** that addresses adequate buffers and encroachment into those buffers, as well as uses the best available science to maintain natural hydrology on these sites.

Forest Preservation

Much of the land to be developed is forested. Many trees would be cut down at a time when we are going forward with restoring forests for a variety of reasons, including helping to fight the negative aspects of human-accelerated climate change. At a time when we are trying to expand recreational opportunities in nearby forests,

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we see that some of the forested areas that would be destroyed are in areas that contain many trails used by hikers and mountain bikers. Also, **the Development Agreements need to better address Condition 113 and should be modified to limit the removal of hazard trees, and increase buffers where numbers of hazardous trees exist.** No trees should be deemed "hazardous" unless public safety is an issue.

Finally, per **Condition 87 any clearing and grading for logging for timber revenue should only be during the active phase of Development. That is not specified in the Development Agreements.**

The Council should require the Development Agreements include a Forest Preservation Plan that addresses maintaining clusters of significant trees, assesses hazardous trees, conducts a tree inventory, and provides adequate buffers, *as well as how the elements of such a Plan are implemented and monitored.*

Transportation

The greatly increased traffic flow and massive amounts of additional traffic will impinge upon already existing clogged major roads and minor arterials. How could any of this meet the letter and intent of Transportation Concurrency requirements of the WA State Growth Management Act, the King Comprehensive Plan, and the Black Diamond Comprehensive Plan? **The Hearing Examiner has recognized the**

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lack of Concurrency testing and made recommendations accordingly. The Council is urged to accept those recommendations.

The proposed Traffic Monitoring program in the Development Agreements is totally *re-active* and, thus, will not provide timely mitigation as is required by Black Diamond City Code 18.98.020(G). Transportation mitigations for the entire project both inside and outside Black Diamond must be based on the new Traffic Demand Model required in Condition 11.

The Development Agreements are insufficient or fail outright to mitigate the coming gridlock and attendant vastly increased smog, air pollution, and water pollution. **The Council must require the Development Agreements give more than “lip-service” to the commute trip and develop a strong Mass Transit component to truly address reducing the number of vehicle trips as called for in the Conditions.**

Conclusions

In conclusion, the Sierra Club's comprehensive review shows **the Development Agreements fail to provide complete plans and implementation techniques in the areas of habitat, wildlife, and corridor protection; retention of open space;**

Sierra Club Written Statement
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stormwater runoff and retention; air quality; water quality; wetlands preservation; forest preservation; and transportation.

Consequently, we still do not have sufficient detail to ensure adequate plans will be put in place and enforced over time that truly mitigate placing MPDs comprising of 6,000+ units and up to 20,000 residents on the Rural/Suburban edge of King County where little to no infrastructure currently exists, nor can be put in place in any economically viable or environmentally sustainable way.

The Council is urged to give great scrutiny to the details that should be part and parcel of these Development Agreements. You have the future of all of us in your hands. We expect you to act accordingly and ensure a sustainable development that serves all.

Dan Streiffert

Chair: South King County Group, Sierra Club

**Before the Black Diamond City Council Hearings on Yarrow Bay Master Planned
Development Agreements**

Testimony Regarding Issues Not Addressed by the Hearing Examiner

October 8, 2011

The Hearing Examiner's request for additional time to review open record testimony and prepare his recommendations was refused by Yarrow Bay and the City. As a result there were numerous issues that were raised during the open record hearings that were not addressed in the Hearing Examiner's report. The following is a summary of eight such issues that I raised in testimony.

- 1. Failure to meet the requirement of Condition 156 (Villages) and 160 (Lawson) for exact terms and conditions was not addressed by the Hearing Examiner.**

Edelman Testimony: Exhibit 62, pp 2-5, Exhibit 75. pp 6-7

Yarrow Bay Response: Exhibit 209, pp 23-24

City Response: Exhibit 217

Edelman Reply: Exhibit 256, pp 5-9

The Villages MPD Condition 156 and Lawson Hills MPD Condition 160 require:

“The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement ...”

The Development Agreement does not and cannot meet this requirement because the methodology is not adequately defined and key defining decisions are left to future agreement between Yarrow Bay and the City. Deferring selection of terms and process to

some future agreement will not suffice – the exact terms and process must be specified and described as required by the condition. Allowing methods, parameters, and assumptions to be dependent upon a future negotiation between City Staff and the developer does not define an “exact” process – it defers the definition. For example, selection of “efficiency factors” and “level of service adjustments” must not be deferred to a future negotiation nor should a decision as to whether to adjust revenues and expenses for inflation. Further, whenever an agreement by “the Designated Official and Master Developer” is required there must be provisions for when agreement is not reached.

Exhibit 62 discussed the specific lack of detailed definition. The fiscal analysis methodology has an overwhelming number of areas where the terms and/or process are not exactly defined and therefore cannot be outlined. Most significant processes and parameters were left to future determination by the analyst or by negotiation between Yarrow Bay and the City Staff. In their reply, Yarrow Bay did not directly address the requirement for “exact” definition.

The City entered a declaration by a financial consultant, Mr. Randall Young, in the form of a reply to my comments. Mr. Young bases his reply almost entirely on his contention that almost none of the processes should be defined in detail because circumstances change and the state-of-the-art improves. His declaration heavily criticizes any exception that I took to lack of definition in the process. His entire declaration is a testimony to how much of the analysis is left to judgment and how little he would wish to define in advance. This is the problem – the MPD calls for exact terms and processes and he would prefer to leave a very significant amount for future definition. He relies on assumptions that the City will use the

services of experts to both negotiate future decisions with the developers and to review results. There are no such requirements expressed in the Development Agreement specification of the fiscal analysis process. In defending deferral of definitions he states the following:

“... [T]he City has engaged an independent expert to review the proposed decisions, and to advise the City's Designated Official to insure that the ultimate decision is the best interest of the City. In addition, the City's expert will provide peer review of the results of the fiscal analysis to ensure that it is consistent with the City's best interests, and was prepared using practices, sources and methods that are acceptable to the City.”

The fiscal impact analysis section does not specify a requirement that the City engage independent experts to review the proposed decisions that are deferred to the designated official. Nor is there an agreement that the analysis results will be reviewed and blessed by an independent expert. In any case, the Development Agreement must set the exact terms and process to be used by whomever will perform the analysis.

In his conclusions, Mr. Young states: “Mr. Edelman admits that the methodology’s ‘exact terms and process’ can be summarized by the Development Agreement, and he quotes the MPD condition that says this information should be outlined”. This is hardly an admission. The words “outlined” and “summarized” are synonymous in this context. That we agree on. Apparently Mr. Young’s quarrel is with the word “exact”. The requirement is to summarize the exact terms and process of the fiscal impact analysis in the Development Agreement. The exact terms and process cannot be summarized unless they exist.

Mr. Young never identifies his interpretation of the requirement for “exact” terms and conditions. Whatever his interpretation, the fiscal analysis description seemed to be a hybrid where the terms are reasonably well defined but processes are generally undefined (or ill-defined). Much is left for the judgment of analysts and future consultants who may or may not materialize and who may or may not be well qualified.

The exact terms and process for performing the fiscal analysis are required to be specified and can be specified. Processes (methodology) should be selected and described in detail. Methods for evaluating key parameters should be specified and not deferred to future judgment and negotiation. Methodologies that require expert judgment should be avoided. If such methodologies must be used then the Development Agreements should require the participation of independent qualified experts to verify and validate the approach.

2. The illegal surcharge agreement in the Funding Analysis was not addressed by the Hearing Examiner.

Edelman Testimony: Exhibit 62, pp 14-17, Exhibit 75, p 9

Yarrow Bay Testimony: Exhibit 139, pp 65-66

Edelman Response: Exhibit 199, pp 5-7

The Surcharge Agreement in the new Funding Agreement violates both the municipal code and state law. The BDMC 18.98.040(C) provides:

“The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. ...”

There is no provision in the code for reimbursing costs. Further, the RCW prohibits imposing a charge on construction for other than certain exceptions, none of which apply to recovery of permit processing costs. RCW 82.02.020 provides in part:

“Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land.”

In its response, Yarrow Bay attempts to defend the surcharge on the basis that it is somehow an MPD requirement because it replaces the existing Staff and Facilities Funding Agreement (SFFA) requirement which has a reimbursement provision. The content of the existing SFFA is irrelevant to the new Funding Agreement. The Villages MPD Condition 156 and Lawson Hills MPD Condition 160 require in part:

“The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific ‘MPD Funding Agreement,’ which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.”

The MPD conditions call for a replacement to the existing Funding Agreement, not an amendment or an extension. If it were intended that certain terms and conditions of the

existing funding agreement be carried over to the new funding agreement then the conditions would have so stated and would have listed the specific terms and conditions to be carried forward. They did not. There is no requirement in the MPD ordinances that requires the City to reimburse Yarrow Bay for its expenses. In fact, to do so runs counter to municipal code. The code requires that the applicant pay the costs of processing an MPD permit application.

RCW 82.02.020 prohibits the surcharge contemplated by the Development Agreements. It provides, in part:

“Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land.”

Yarrow Bay does not address the State law issue directly but rather asserts by footnote that the potential violation is taken care of by language that says the agreement will be entered into only if it is legal. (That should go without saying since to do so otherwise would invalidate the agreement). There is no sense whatsoever in including language for a potential agreement while knowing that it is illegal.

Yarrow Bay also implies that adding the charge only to permits makes it acceptable with the statement that “the building permit surcharge proposed in the new MPD Funding Agreement has no effect on property owners outside the MPDs, only applies to building

permits (instead of all land use and construction permits generally)". However, the charge does not meet the permitting exception of 82.02.020:

"Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6)."

It cannot be claimed that a permit fee to reimburse Yarrow Bay covers any of the costs in the exception.

3. The issue of vesting on two different dates was not addressed by the Hearing Examiner.

Edelman Testimony: Exhibit 64, Exhibit 75, p 5

Yarrow Bay Response: Exhibit 209, pp 25-27

Edelman Reply: Exhibit 256, pp 9-10

Exhibit 64 testimony detailed the problem of Yarrow Bay attempting to vest the MPDs on two different dates. Yarrow Bay contends that the MPDs vest to laws in effect when the moratorium was lifted and when the Development Agreements get approved.

Yarrow Bay ignores the fact that each MPD application was and remains a single proposal. Each MPD proposal was first the subject of the MPD ordinance and now is the subject of a proposed Development Agreement. Under the case law I cited, Yarrow Bay does not have

the option of having an MPD proposal vested to one set of laws for the initial decision (the MPD ordinances) and then vest to another set of laws for a latter decision (the Development Agreement). The case law makes clear that a developer cannot pick and choose in this manner. It's "all in" or "all out." Yarrow Bay's efforts to have the initial decision for its proposals judged by laws in effect in 2009 and the second set of approvals judged by laws in effect in 2010 directly conflicts with the holding of these cases.

The Yarrow Bay MPDs were vested and remain vested to the laws in effect at the time their applications were deemed complete, shortly after the moratorium was lifted in 2009.

4. Failure to meet the requirement of Condition 10 to specify the mechanism for credits or cost recovery was not addressed by the Hearing Examiner.

Edelman Testimony: Exhibit 75, p 2

Condition 10 requires in part:

"The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur."

This requirement is not met. The mechanisms for specifying which projects are eligible must be spelled out.

Footnotes to tables 11.5-1 and 11.5-2 reference paragraphs 11.3(B) and 11.4(B) for cost recovery mechanisms. When boiled down to their essence, these paragraphs say that the Master Developer will be reimbursed for its proportionate share of the costs (less whatever

the City is able to cover through other sources such as grants) based upon who benefits. This is hardly a specification – the particular projects that are eligible must be specified and the precise method for determining proportionate share must be detailed.

Yarrow Bay and the City did not respond to this issue and the Hearing Examiner did not address it in his recommendations.

5. Failure to meet the requirement of Condition 18 to establish pro-rata shares of transportation mitigation projects was not addressed by the Hearing Examiner.

Edelman Testimony: Exhibit 75, pp 2-3

Condition 18 states:

“The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another. (Traffic impacts were studied based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.) “

The Villages Development Agreement Section 11.5(B) addresses this requirement but does not satisfy it.

“The transportation impacts of the Villages MPD were assessed based on the cumulative impacts of The Villages MPD and the Lawson Hills MPD in the EIS. During any time period in which The Villages MPD proceeds before the Lawson Hills MPD or vice versa, the transportation mitigation obligations shown in Tables 11-5-1 and 11-5-2 and triggered

by the Traffic Monitoring Plan shall be borne by the MPD that is proceeding alone.

During any time period in which both MPDs are proceeding, the transportation mitigation obligations outlined in Tables 11-5-1 and 11-5-2 will be shared by The Villages and the Lawson Hills MPDs on a proportionate share basis.”

Responsibilities are set by this statement. However, the requirement to establish pro-rata shares as required by the condition is not satisfied. Stating that the obligations will be shared on a proportionate share basis does not establish what the pro-rata share will be nor does it even specify how one would determine pro-rata share.

Yarrow Bay and the City did not respond to this issue and the Hearing Examiner did not address it in his recommendations.

6. Failure to meet the requirement of Condition 34 to identify which traffic projects will be built by the developer and which by the City was not addressed by the Hearing Examiner.

Edelman Testimony: Exhibit 75, p 3

Condition 34.a states:

“The Development Agreement shall address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.”

The Development Agreement does not specify which entity, the developer or the City, will build each project. Further, there is no discrete identification of which projects will qualify for cost recovery. Only very general criteria for determining cost recovery are discussed.

Yarrow Bay and the City did not respond to this issue and the Hearing Examiner did not address it in his recommendations.

- 7. Failure to meet Condition 92 (Lawson) for guaranteed public access to private parks and trails was not addressed by the Hearing Examiner. The Examiner did address a differently worded requirement for The Villages but not the more stringent requirement of Lawson Hills.**

Edelman Testimony: Exhibit 75, p 3

Yarrow Bay Response: Exhibit 209, pp 19-20

Edelman Reply: Exhibit 256, pp 3-5

The Villages MPD ordinance and the Lawson Hills MPD ordinance are different regarding public access to private parks and trails.

The Lawson Hill MPD condition 92 requires:

“The Development Agreement shall include provisions to define which parks and trails facilities will be public and which shall be private. The Agreement shall also include language to guarantee public access to privately-owned parks and trails facilities.”

[Emphasis added]

The Villages MPD condition 94 requires:

“The Development Agreement shall include language authorizing public access to parks and trails facilities.”

Yarrow Bay suggests that these two conditions be read together and then concludes that all that is required is that there be “some authorizing language in the Development Agreements”.

The two ordinances cannot be interpreted together. The MPDs are separate and the MPD authorizing ordinances are separate. The above emphasized sentence in the Lawson Hills ordinance is quite clear in its meaning and intent: there must be language that guarantees access to privately-owned parks and trails facilities. The public cannot be denied access.

Yarrow Bay cites BDMC 9.86.230 as confirming the “City's existing authority to put reasonable limitations on public access, including but not limited to, hours of operation or the ability to host private events”. The language relied on provides in part:

“Such 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.”

The City has no authority to apply this code to private parks. If applied to private parks it would allow closure of parks to “the general public” which would include the park owners, and would regulate park owners’ access to their own parks. An obvious exception would be closing for public safety under code that permits closing any property for that reason.

The Hearing Examiner addressed the Condition 94 (Villages) only and did not address the Lawson Hills condition which requires guaranteed access.

- 8. Failure to meet the requirement of BDMC 18.96.150(B) to establish the sizes of trails was not addressed by the Hearing Examiner. The Examiner did make a recommendation to correct the failure to identify the sizes of parks.**

Edelman Testimony: Exhibit 75, p 8

Yarrow Bay Response: Exhibit 209, pp 44-46

Edelman Reply: Exhibit 256, pp 14-15

I commented that the Developments Agreements fail to identify the sizes of the recreational facilities and trails as required by BDMC 18.98.150(B). Yarrow Bay responded that the sizes of recreational facilities are defined in Exhibit "E" which contains the City's Parks, Recreation, and Open Space Plan. Exhibit "E" is incorporated by reference in Section 15.7 which provides: "The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this agreement."

The Hearing Examiner recommended that the Development Agreements "be clarified to provide that the City's Parks, Recreation and Open Space Plan shall govern park design standards to the extent that stricter standards are not imposed by the DA". This addresses the issue of park sizes but not of trail sizes. The plan does not specify the sizes of trails except for one three mile trail.

Yarrow Bay also responded that sizes of trails are described in Section 9.7. This section describes trail standards but does not describe the more important measure of trail sizes – their length.

Respectfully submitted,

Robert Edelman

29871 232nd Ave SE

Black Diamond, WA 98010

WRITTEN STATEMENT
CLOSED RECORD HEARINGS
BEFORE THE BLACK DIAMOND CITY COUNCIL THE BLACK DIAMOND MASTER PLANNED
DEVELOPMENTS –THE VILLAGES AND LAWSON HILLS

Respectfully submitted by Gil Bortleson, 23831 SE Green Valley Road, Auburn, WA 98092

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Note:

1. Condition of Approval Numbers Correspond to Villages
2. Emphasis added are usually where Hearing Examiner says City Council has latitude

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ORAL STATEMENT BEFORE BLACK DIAMOND CITY COUNCIL, OCTOBER 5, 2011

Overview

Citizens generally understand that the Applicant has a right to the reasonable use of their land. However, the scale of this project force fits a “new city” of 20,000 people upon a small town in a rural setting in a short amount of time. Even though the Hearing Examiner noted the Council has a powerful opportunity to ensure that all impacts be fully mitigated, it is most likely the many environmental impacts can not be adequately mitigated because of the size, density and pace of the development --and placement in highly-constrained environment of wetlands, streams, and lakes. Placement of schools or other urban infrastructure outside the City’s Urban Growth Area adds to the feelings of unreasonableness. The large-scale “potential” expansion areas add to uncertainties. A City at odds with its own vision statement of moderate growth, maintaining a small-town atmosphere, and retaining natural features leads to skepticism. In essence, the size and density of the development are the root cause of legitimate and shared concerns, especially as it relates to lack of a freeway to move 20,000 new people and their cars.

Black Diamond City Council Council and Hearing Examiner

According to the Hearing Examiner, “*The Council has wide discretion as to what it can include in the Development Agreements and the public corresponding wide latitude in suggesting what they would like to see in the Development Agreements.*” The Hearing Examiner noted that the Development Agreement serve as a powerful opportunity for the Council to look at the impacts of the master planned development as a whole to ensure that they will develop as intended. The Council needs to make its own value choices for aspects of the Development Agreements as the Hearing Examiner has made it clear he has little business in making recommendation on policy choices to the Council.

A stated purpose of the MPD permit according to BDMC 18.98.010 (M) is to “*Implement the city’s vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code.*” The Council needs to weigh the intentions and public benefits provided in the

Comprehensive Plan and municipal codes Vs the adequacy of the Development Agreement to deliver those intentions and public benefits. With the public input and Hearing Examiner recommendations serving as a catalyst, the Development Agreement will need the additional welcome scrutiny by Council. Hearing Examiner did not have sufficient time to complete his planned analysis which further justifies detailed deliberations by the City Council. The Hearing Examiner was and is the most impartial person in the process, yet he was denied time for his full and complete analysis.

Although experts, consultants, and attorneys provide technicality to producing the Development Agreements, only the City Council can provide the value choices to meet public benefit objectives. Because of the need to meet all eight MPD public benefits listed in BDMC 18.98.020 and the fact that Development Agreement will affect generations to come, an independent outside review for City Council is justified. This idea was explored verbally by Councilman Saas during the work session in April of this year when he asked Randall Arendt author of Rural-by-Design about an independent review of the MPD's.

Open Space

The Development Agreement is to provide public benefits not typically available through conventional development: BDMC 18.98.020 (A)-- "*A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but not limited to: A. preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas) of the site.*" Yet with the density of development already approved, the site will likely be clear-cut and graded out, and immediately the public benefit of unconventional development preserving native vegetation and topography (stated in the code) is lost.

The amount of open space is at the heart of a Vision for Creative and Better Communities. The adequacy of open space has been an issue throughout the process. It is worth noting, most of the open space provided in the Development Agreement is primary open space, such as wetlands that would be federally protected under any development scenario. What sets apart unconventional development is integrating a considerable percentage of usable open space on the buildable property. Randall Arendt in

his book *"Envisioning Better Communities"* provides example developments, depending on underlying housing densities, where 30 % or higher amount of land outside sensitive areas could remain permanently undeveloped. Usable open space is promoted in BDMC 18.98.010 (C) which states, *"Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents."* [Emphasis added] Arendt points that additional open space in a community design adds value to properties to the benefit of developers. The most interesting quote in The Black Diamond Comprehensive Plan (Chapter 5-7) states, *"While every square foot of land has value to home owners, not every square foot has to be built upon to achieve that value."*

An example of poor or better usable open space is in storm water pond design. Storm water ponds by Black Diamond code definition qualifies as open space. In conventional development, storm water ponds often look like "bomb craters" according to Randall Arendt author of *"Envisioning Better Communities"*. Storm water ponds in unconventional design, according to Arendt, can have shallow sloping edges with planted vegetation, no fencing, and perimeter walkways, albeit requiring more usable open space than conventional storm water ponds, but more appealing. The Council has an opportunity to view the project as a whole (in the words of the Hearing Examiner) to determine the adequacy of integrating usable open space into the new development.

Wetlands

Council was been given a packet of illustrations to follow along with the discussion. At the recommendations of the Hearing Examiner, the Applicant has provided clarity to the boundaries for the core wetlands by showing a new illustration for the Fish Wildlife Habitat Conservation Areas (FWHCA). The new illustration shows core wetlands and the associated 225 foot buffers per 2008 Best Available Science report to the City. The non-core wetland buffers have been removed from the Constraint Maps leaving those decisions for the implementing project stage. However, most importantly, the wetland boundaries (not buffers) do remain fixed as shown on the Constraint Maps. Thus, the Hearing Examiner cautions that the Council must be satisfied with the wetland delineations at this stage in the process because the proposed wetland boundaries will no longer be subject to change once approved by the City Council. It is

recommended that the Council deliberate on increasing the core wetland buffer width for Black Diamond Lake because of its world class status of a pristine peat bog. Because of the steep slopes around much of Black Diamond Lake a close examination of a wider core wetland buffer is warranted. Again, the Hearing Examiner cautions that all potential factors should have been considered in the setting of the proposed "permanent" wetland boundaries.

One purpose of the Sensitive Area Ordinance (SAO) is "*To limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values*" (SAO, p.5). The extensive wetlands in the City of Black Diamond function to maintain good water quality for Lake Sawyer. The water quality benefit to Lake Sawyer was one of the summary findings of the 2008 Best Available Science report to the City. The summary indicated of a variety of factors identified, the large wetlands of Rock Creek, Jones Lake/Jones Creek, and Black Diamond Lake/Black Diamond Creek within Urban Growth Area have the most positive influence on the water quality of Lake Sawyer. It is recommended that a Wetland Preservation Plan be incorporated in the Development Agreement. One objective of Wetland Preservation Plan would be to provide long-term strategies for restoration of wetlands and buffers after construction, especially the core wetlands of Black Diamond Lake which would be surrounded by development. If they have not, the Council and mayor should consider taking a field trip to Black Diamond Lake before deliberating on the Development Agreements. For a guaranteed new perspective, the Council and Mayor should also consider an overflight of the entire project area.

Fish and Wildlife Habitat

At the recommendations of the Hearing Examiner, the Applicant has provided clarity for the required mapping and designating Fish Wildlife Habitat Conservation Areas with the new illustration. The updated Constraint Maps show a 300-foot wildlife corridor overlain with the Black Diamond Lake core wetland from the western edge of the properties to the southern end of Black Diamond Lake. The new illustration shows

the King County Wildlife Habitat Network running through Black Diamond Lake. A wildlife corridor running through Black Diamond Lake is a question. Additional non-wetland open space would seem necessary for a viable wildlife connection around Black Diamond Lake. The corridor issue is interrelated to the previous discussion of a proposed expansion the core wetland buffer around Black Diamond Lake because of its uniqueness. It is recommended a Wildlife and Habitat Preservation Plan be incorporated in the Development Agreement to provide long-term guidelines for wildlife and habitat restoration.

Visual and Aesthetic Values

A Visual, Aesthetic and Buffer Plan is recommended. Support is given in the MPD permit purpose (D): allow alternative, innovative forms of development and encourage imaginative site and building and development layout with the intent of retaining significant features of the natural environment. After the Hearing Examiner read the rationale for an Aesthetic Plan provided in Exhibit 113 he thought the MPD's satisfied these aesthetic standards given the density of the development. However, the Hearing Examiner went on to say, *"Despite all this, as an aesthetic standard, the Council could reasonably require additional setback/vegetative retention standards through its authority to add land use restriction to the DA under V COA 128."*

Closing Remarks

The City's Comprehensive Plan gives a direction for the City to retain small-town atmosphere, incorporate unconventional Rural-by-Design principles, control the scale of the development, and grow at a moderate pace. The accelerated urbanization in southeast King County has implications that extend far beyond the boundaries of Black Diamond. Will the Upper Green River Agricultural Production District remain viable? Will the spillover into rural areas be overwhelming? Will gridlock on two lanes roads be ever present? Will the many wetlands on the landscape remain functional to positively contribute to the water quality of Lake Sawyer? Black Diamond is at a pivotal point in its history. Will Black Diamond take on its

own stated identity envisioned out to 100 years or blend in a few short years into look a likes of Kent and Covington and Maple Valley? Only the City Council has the legislative power to shape our destiny.

WRITTEN STATEMENT BEFORE BLACK DIAMOND CITY COUNCIL, OCTOBER 8, 2011

Open Space

Assertion, Applicant Response, and Reply to Conditions of Approval

Condition 151. *The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.*

Assertion: Complete documentation of active open space is required according to MPD standard 18.98.150 (B): *“The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance.”* The Development Agreement needs to provide complete documentation of the amount of open space (in acres) for on- and off-site by categories of active and passive open space. **Applicant Response:** Also refers to Condition 97 indicating Applicant needs only to respond to characteristics of active and passive open space. Moreover, the Development Agreements do not propose allowing off-site open space to be counted toward the total open space required for each MPD. While off-site recreational facilities count towards Master Developer's recreational facilities requirements set forth in Table 9-5, off-site open space does not count towards either The Villages MPD's or Lawson Hill's MPD's total open space requirements. There is no reason or basis to revise the Development Agreements as a result of this condition of approval. **Reply:** *Despite the clarifying comments and apparent limitation requested of Condition 151. A compliance matrix (data base) showing open space accounting to track the sizes, location, type of recreational facilities and whether the facilities are on- or off-site is warranted to assist City officials in assessing level of service requirements and to provide oversight by the public. The compliance matrix for open space accounting would serve its purpose from the first to the final implementing plat.* **Comment:** *A project level compliance matrix at the implementing stage is recommended.*

Condition 153. *Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.*

Assertion: The Development Agreement fails to provide specific details for the protection of open space to be dedicated to the City as required by this condition. The Development Agreement needs to specify restrictions and non-allowed activities in passive open space and define the circumstances non-temporary use of passive open space would be allowed. A stated goal of no net loss of open space in sensitive

areas/passive open space should be provided in the Development Agreement. Mitigation measures need to be provided in the Development Agreement to maintain a no net loss of sensitive areas / passive open space. If non-temporary use of open space occurs, mitigation measures need to provide for replacement passive open space within the project area. Specific mitigation measures for loss of passive open space needs to be provided in the Development Agreement. **Applicant Response:** The Applicants response is contained Section-by-section on 9.9.1 and 9.9.2 where the discussion of timelines and details of ownership of sensitive areas and their buffers is the thrust of the response. **Reply:** *The response does not appear to include the intent of the entire Condition 153. The Condition seems to ask also for specific details on protection of open space which in the assertion is stated as not adequate. Given a no net loss goal of wetlands in the Sensitive Area Ordinance, it is important for the Development Agreement to lay out specific protection measures for wetlands..* **Assertion:** The Development Agreement falls short of the 50% open space required for the total MPD project area. The Development Agreement provides for less than 50 percent of the required open space for the total project. The Development Agreement shows total open space is comprised of the land-use categories: (a) open space, trails and parks, (b) buffers, and (c) wetlands which is 42.2% of the total Villages project area (Exhibit L, Figure 3.1). These same open space categories make up 38.8% of the total Lawson Hills project area. **Applicant Response:** The Applicant's response is found in Section 2.2 where the Applicant maintains "...,based on Land Use Maps approved with each MPD contained within Exhibit "L" of each Development Agreement, each MPD is in fact providing more open space than is minimally required." **Reply:** *A case has been presented in the assertion, which is based on simple "on-the-ground" acreage data presented in Exhibit L, Figure 3.1, that open space percentages do not meet the 50 percent requirement for the total project area. The Applicant argues open space requirements have been met through a process of past agreements.*

Hearing Examiner Response to Open Space

Assertion. In Ex. 75, R. Edelman noted LH MPD COA 151 requires that prior to DA approval the legend on the approved land use plan must be clarified to differentiate between wetlands, their associated buffers, other critical areas and open space, trails and parks and to incorporate the additional required open space area. **Examiner Response:** The legend does not differentiate between various land uses as required by LH MPD COA 151. This should be done before DA approval as required by Condition 151. In the alternative, the City may be able to amend out the requirement as a minor amendment prior to DA approval.

Hearing Examiner Revisions to Open Space

Open Space Boundary Amendments A. V DA 4.4.6 should be amended to require that minor amendments for changes to open space boundaries may only be used if all the prerequisites for qualifying

as a minor amendment in BDMC 18.198.100(D) are met. **Examiner Response continued:**Minor amendments are subject to the approval of the Mayor and the decision to classify the amendment as minor are appealable to the Examiner. To provide for some public oversight over the minor amendment process, the DA could require that all decisions to classify an amendment as minor be posted on the City's website so that the public has an opportunity to appeal them. Since provisions on the amendment process are a necessary part of DA implementation, the Council can withhold approval of the DAs if it cannot reasonably agree with YB on this issue. **Comment:** *It is requested that Council require that all decisions to classify an amendment as minor be posted on the City's website.* **Open Space Assessment.** M. V DA 9.1 should be revised to enable the City to require that MPD-wide open space requirements be satisfied at earlier stages of development within MPD phases as discussed in Section VII.

Sensitive Areas

Assertion, Applicant Response, and Reply to Conditions of Approval Sensitive Areas

Condition 104. *Major earth moving and grading may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05.*

Assertion: The Development Agreement needs to disallow major earth moving and grading in the winter. The City of Black Diamond is in a constrained environment of numerous lakes, streams, and wetlands. In this constrained environment, it is prudent, and perhaps economical, to restrict major earth moving and grading from October through March. **Applicant response:** Section 2.2.05 authorizes applicants to seek permission from the City Engineer for clearing and grading activities from Oct 1st to March 31st . Thus the BDMC does not prohibit winter grading activities. **Reply:** *It is recommended the Development Agreement contain language for no major winter earth-moving activities to occur in areas highly constrained by sensitive or geologically hazardous areas.*

Condition 110. *Prior to approval of the first implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%.*

Assertion: The Development Agreement is not clear on whether an overall Grading Plan will be submitted for the first implementing plat. The Development Agreement needs to layout elements for an overall Grading Plan that will preserve existing topography and vegetation to meet BDMC 18.98.020 (A). The City's development standards for erosion hazard areas include measures such as: "grading shall minimize

alterations to the natural contour of the slope”, and “retaining walls shall be preferred over cut and fill for roads, parking lots and structures” (SAO, p. 80). **Applicant Response:** This condition only requires that the applicant submit an overall grading plan prior to approval of the first plat or site development permit within a phase. As such, there is no action required in the Development Agreements. A grading plan will be submitted prior to approval of the first implementing Project at which point compliance with the condition’s criteria can be reviewed by City Staff. **Reply:** *Review by City Staff and opportunity for the public to view the overall grading plan prior to approval of the first implementing project is a step in detail that would be informative and constructive. Such language in the Development Agreement is recommended..*

Condition 113: *Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.*

Assertion: The Development Agreement needs to specifically retain geologically hazardous areas as designated open space. Instead the Development Agreement makes allowances to alter or eliminate geological hazards by grading. **Applicant Response:** In fact, the City’s SAO authorizes (i.) the alteration and/or elimination of geologic hazard and landslide areas per the standards set forth in BDMC 19.10.410. See Section 8.3 of Development Agreements. **Reply.** *Despite the legal language to allow alteration of geologically hazard areas, the Development Agreement should state as a goal such areas shall remain in open space per condition 113 and allow language in the Development Agreement that clearly recognizes these areas to be altered only where avoidance is impossible on a strict case-by-case basis. This strictness is needed to satisfy BDMC 18.98.020 (A): “.....A. preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas) of the site.” Setting aside primary conservation areas such as geologic hazard areas is normal for conventional development. This project purports to embrace unconventional development which needs to preserve landforms and topography. Comment: Public benefit objectives include retaining significant natural features and retaining geological hazardous helps meet those objectives.*

Wetlands

Assertion, Applicant Response, and Reply to Conditions of Approval

Condition 71. *Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.*

Assertion. The Development Agreement needs to specify protections for wetlands by employing strict sediment -control measures during the construction phase and a detailed emergency response plan to

guard against large storms overwhelming temporary erosion-control structures. **Applicant Response.**However, Section 7.4.3 of The Villages Development Agreement indicates the Master Developer will comply with Condition 71 as a stormwater management provision. No further action is required by this condition in the Development Agreements. **Reply.** Section 7.4.3 of the Development Agreement indicates the Applicant will comply with Condition 71 as a stormwater management provision. The provisions need to be backed up in the Development Agreement with planned mitigation measures preventing stormwater volumes and flow rates that would cause sediment deposition to wetlands and natural drainage systems during the construction phase. The Development Agreement needs to lay out mitigation measures to protect wetlands and their buffers from sediment discharge during the multi-year (decades-long) construction phase (reply applies to Condition 117). One such mitigating measure was pointed out by Mr. Derdowski in his testimony—“...sensitive areas should not only be field marked they should be protected with temporary barriers and silt fences.” **Comment:** *It is requested the Council consider a strict erosion plan be outlined in the Development Agreement. Mr. Derkowski pointed out to the Council, from his many years of observation, severe erosion problems are often one of the most common unintended consequences of development.*

Hearing Examiner Response to Wetlands

..... Since the wetland buffers set in the DAs will be applied during implementing project review, the Council must be satisfied that the precision of those boundaries will satisfy the requirements of the SAO at implementing project review. This places the Council in the somewhat unusual position of having to address specific project wetland impacts during the more generalized level of DA review. All statements by concerned citizens that the proposed boundaries do not comply with the SAO must be carefully considered.

As to the concerns of Erika Morgan, wetlands buffers are measured from the wetland boundary as surveyed in the field and must extend to include the buffers for any adjacent critical areas such as landslide hazard/erosion areas (BDMC 19.10.230. (E), which could include the cliff mentioned by Ms Morgan if it qualifies as a landslide/erosion hazard area. Further, buffers may not extend across any human features such as "improved" roads, unless restoration of buffer function is reasonably anticipated. Id. It doesn't appear that the logging road cited by Ms. Morgan would qualify as "improved", but clarification is necessary on this issue. All of these factors potentially should have been considered in the setting of the proposed "permanent" wetland boundaries proposed in the constraint maps if all of the assertions made by Ms. Morgan are correct.

As to Dr. Cooke 's testimony on the 250 foot buffer she believes is required for Black Diamond Lake wetlands, the basis of her opinion and what buffer is depicted in the constraints map is unclear. In Black Diamond, wetland buffers range from 40 feet to 225 feet (BDMC 19.10.230) with the

possibility for an increased buffer width in the instance where a large buffer is needed to protect other sensitive areas or where the buffer or adjacent upland has a slope greater than fifteen percent (BDMC 19.10.230(G))

For the reasons stated above it is recommended that staff provide information to the Council, from evidence in the record, that addresses the alleged discrepancies cited by Dr. Cooke and Ms. Morgan. The presentation of the full scale constraint maps be sufficient to address many of these issues. The Council should not agree to any permanent wetland boundaries if they cannot be reconciled with project level discrepancies such as those allegedly identified by Dr. Cooke and Ms. Morgan. **Comment:** *The wetland buffers have been deleted from the Constraint Maps leaving the buffer widths to be determined at the implementing project stage. The buffer widths as shown on the prior Constraint Maps were informative and instructive if recognized as preliminary. The best available data for wetland boundaries and wetland categories need to be provided on the Constraint Maps. Ms. Bryant in her testimony pointed out the Applicant is not fixing the problem by removing the buffer widths from the Constraint Maps and declaring the wetland boundaries and categories are to remain fixed in the Development Agreement. Ms. Bryant makes the following request: "The DA Constraint Maps should be amended that the wetland boundaries are preliminary."[Emphasis added] The City Council is urged to carefully consider the wetland-related comments made by the Hearing Examiner and the research-documented testimony of Ms. Bryant before deliberations.* **Comment continued on wetlands:** *A large area around Black Diamond Lake has been considered as a study area potential for an additional Fish Wildlife Habitat Conservation Area (FWHCA) (Black Diamond Comprehensive Plan, figure 4-2).. The Comprehensive Plan (figure 2-3) also shows additional open space around Black Diamond as a conceptual open space plan. Thus, the Comprehensive Plan also provides rationale for an expanded buffer width or a larger FWHCA around the mostly steep-sided Black Diamond Lake. The closeness of the 225-foot core wetland buffer and steep-side slopes of Black Diamond Lake warrant consideration of extended buffer protections to the lake. The objective of expanded buffer widths would be to protect the unique qualities of Black Diamond Lake, provide a viable wildlife corridor, and protect the water quality of Lake Sawyer.*

Hearing Examiner Response

LH Northern Triangle Wetland. In Exhibit 3-13, attachment 2, King County Department of Natural Resources and Parks noted a wetland buffer affects the western edge of the Northern Triangle (see "Sensitive Areas Map – North Triangle" on the final page of the WRI wetland study). This buffer is also repeated in the Lawson Hills EIS in Exhibit 2.2, but does not appear in Figure 10-3.

Examiner Response continued: The Lawson Hills MPD DA S 2.3.2 notes the existence of a wetland off-site to the west of the North Triangle that was not fully delineated as of the date of the agreement. The WRI Wetlands report notes that this is a Category I wetland that will require a 150 foot buffer. The Constraints Map needs to be updated to reflect the location of the wetland and the buffer before an Implementing Project can be approved. **Applicant Response:** Added to 8.2.1 Wetland Determinations and Delineations Final "An off-site wetland adjoining the North Triangle has not been fully delineated.

Hearing Examiner Revisions to Wetland/ Sensitive Area

Detail of Constraints Map. K. It is recommended that staff make the constraint maps that set the sensitive area boundaries in V DA 8.2 available for City Council review and explain to the Council, based on information contained in the record, the level of detail provided in the map so that Council may determine if they are detailed enough to be used for implementing projects.

Vegetation

Assertion, Response, and Reply to Conditions of Approval

Condition 120. A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.

Assertion: The Development Agreement is silent on Condition 120. Tree inventories need to be done "on the ground" in early planning stages at a project level in order to identify and conserve significant trees or stands of trees. **Applicant Response:** This condition, however, does not require action in the Development Agreements:...repeat of condition above... As such, a tree inventory will be performed by the Master Developer prior to the development of implementing projects. There is no requirement for a tree inventory to be in the Development Agreement. There is no reason or basis to amend the Development Agreements based on this condition of approval. **Reply:** *Tree inventories are consistent with rural- by-design principles and need to be done in the early "on-ground" planning design in order to integrate significant trees or stands of trees into creative open space and to satisfy BDMC 18.98.020 (A).* **Comment:** *If early planning doesn't include identifying usable open space from tree inventories in early planning, opportunities may be lost to retain significant stands of trees in their natural existing condition once lot lines are drawn and housing densities established.*

Related Response to Muckleshoot Tribe on Tree Retention

Applicant Response: In Ex. 3-13q, YB responded that the MPDs provide clustering of units to retain large contiguous forested and open space areas. As a result of this significant benefit, there is less opportunity to retain existing trees and vegetation in development areas due the clustered style of development. All future MPD implementing projects will be subject to the City's Tree Preservation Ordinance as codified in BDMC Chapter 19.30 and significant tree inventories will conducted on a project by project basis. The Black

Diamond Municipal Code at Section 18.72.020(E) establishes the sixty percent (60%) requirement for native and non-native naturalized plant species that are drought tolerant. **Examiner Response:** The Examiner concurs in the YB response. Further, there is little room to provide for more vegetative retention within the confines of the MPD approvals. As previously discussed, the MPD approvals require a minimum of four units per acre and also limit development to a relatively small portion of the overall project area via approval of the Land Use Plan. These minimum densities and the Land Use Plan cannot be modified by the DA even if YB were willing to do so. Consequently, the Council has few options to retain more trees and/or vegetation. If this is a priority for the Council, it could confer with staff as to what options are available within the confines of the MPD approvals to add further restrictions to the tree protection ordinance and other vegetation retention measures. Emphasis added.

Parks, Recreational Facilities, and Trails

Assertion, Response, and Reply to Conditions of Approval

Condition 89. *The details of the park and recreation facilities to serve the new demand from the MPD shall be set in the required Development Agreement, including whether such facilities may be constructed on- or off-site. [FEIS Mitigation Measure].*

Assertion: The Development Agreement is inadequate in defining whether park and recreation facilities may be constructed on- or off site (Development Agreement, Section 9, table 9.5, June, 2011). A lump-sum payment option for construction of all off-site recreational facilities is shown table 9.5. Overweighing off-site construction of recreational facilities puts the City at risk of not meeting level of service (LOS) requirements for distance of recreational facilities to residential neighborhoods. On-site recreational facilities are required according to BDMC 18.98.150(A).

Applicants Response:repeat assertion...This, however, is not required by the terms of the condition. Repeats Condition 89.... .. may be constructed on-or off –site. (emphasis added). The Development Agreements provide at section 9.5.2 that recreational facilities identified table 9.5 may be constructed off-site if agreed to by the City. Thus, section 9.5.2 meets the requirements of this condition and there is no reason or basis to revise the Development Agreements. **Reply:** *Despite the clarifying comments, an apparent bias remains toward building recreational facilities off-site with the Applicant request to build any of listed facilities in table 9.5 off-site with approval of the Designated Official. A tabular data base showing accounting of on- and off-site construction of recreational facility is warranted to assist City officials in assessing level of service requirements and provide oversight by the public. Mr. Derdowski in his written testimony referring to Section 9.5 states, “The Applicant may locate facilities off site, negating the intent of providing recreational facilities within the MPD, internalizing impacts and minimizing off- site vehicle trips. The Applicant may pay a fee in lieu of providing the facilities. The procedure for establishing the fee pre-empts legislative authority.”* **Applicant Response continued:**.....The section provides that all MPD

dwelling units shall have access to and be located within ¼ mile of a park that is at least 1500 square feet in size. Compliance with this condition will effectively limit off-site park construction. **Hearing Examiner**

Response: The DA provisions provide enough standards to legally delegate decisions about in-lieu payments to City staff. If the Council chooses, it is free to require that the DA provide that the Council make a final decision and also that a public hearing will be held prior to making the decision. [Emphasis added]

Condition 97. *The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.*

Assertion: Complete documentation of recreational facilities and trails is required according to MPD standard 18.98.150 (B): “*The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance.*” The Development Agreement needs to provide complete documentation of recreational facilities and trails by size (in acres), location and type in categories of active and passive open space and whether the facilities are located on- or off-site.

Applicant Response: ...Contrary to this assertion, however, Condition of Approval no. 97 (The Villages) only requires the Development Agreements include “ a tabular list of passive open space and active open space and permitted activities thereon ...” This tabular list is provided within Section 9.10 of both Development Agreements. Thus, there is no reason or basis to amend this section of the Development Agreements. **Reply:** *Specification of size (acreage) and location is the heart of providing complete documentation of recreational facilities. Ms Hoefig’s request for a new condition also relates to complete documentation—The Development Agreement shall have; ii An initial open space and parks compliance matrix (excel spreadsheet or similar data sheet) that reflects all the MPD’s required open space, parks, trails and recreational facilities....”.*

Examiner Response continued: *DA 9.2 provides only approximate locations of parks. However, the DAs and COAs contain a detailed level implementation of the City’s level of service standards, including minimum distances from residents to park facilities and precisely what type and number of facilities, such as parks and basketball courts, are required for each MPD. See, e.g. LH DA Table 9.5. This level of detail is sufficient to ensure that the MPDs will provide parks that satisfy the City’s level of service standards. Sizes of Recreation Facilities and Trails. Exhibit 75 (Edelman) asserted that the Development Agreements fails to meet the requirements of BDMC 18.98.150(B), which stated that “The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance.”*

Applicant Response: In Ex. 209, YB responded that the 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.

Where the MPD recreation facilities listed in Table 9-5 “go above and beyond” the City’s Code to provide amenities, additional definitions are found in Section 14.0 of the Development Agreements (Definitions). Sizes of trails are described in Section 9.7.

Examiner Response: *The DA should be clarified to provide that the City’s Parks, Recreation and Open Space Plan shall govern park design standards to the extent that stricter standards are not imposed by the DA. With this clarification the detail of design requirements appears to be sufficient for this level of review, but the Council is free to require the addition of additional reasonable design standards if it chooses.*
[Emphasis added]

Condition 95. *As proposed in the Master Planned Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connection shall meet the same standard to the extent authorized by law.*

Assertion. The Development Agreement does show an on-site trail system, but lacks conceptual plans for providing trail connections to current and future local and regional trails (Development Agreement, Park and Trail Plan, Figure. 9.2). **Applicant Response.** This condition does not require the trail connections requested in exhibit 143 [exhibit 113 added]. Instead, condition of approval no. 95 (The Villages) provides: As proposed in the Master Plan Application, on-site trails (ie on site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law. Section 9.6 of the Development Agreement provides that “the construction of trails located outside of the project that are necessary to achieve connectivity may be required by the City prior to issuance of certificate of occupancy, final plat approval for an Implementing project to extent authorized by law.” This is consistent with the language of the condition. The connections requested in Exhibit 143 [Exhibit 113] may be requested at the Implementing project stage. There is no need or basis to amend Section 9.6 of the Development Agreements. **Applicant Response: continued** Thus, the connections requested by the commentators above will be addressed at the Implementing Project stage **Reply:** *The Black Diamond Comprehensive Plan and Municipal Code lends strong support for local and regional trail connections. Connecting trail plans shown in the Comprehensive Plan are shown as attached figures to Exhibit 113. These connecting trail plans should be honored as part of the process. Mr. Derdowski in his written testimony indicates the Applicant provision allows trails to be built on an implementing project basis. Mr. Derdowski states, “This defeats the intend of providing interconnectivity and a regional trail system. Many years will likely pass before the trails will actually lead anywhere. The Trails Plan should be built on a Phase-by-Phase basis.”*

Examiner Response: *V COA 95 sets the limits on what may be required on the issue of trail connections. However, trail connectivity is certainly a critical part of trail function. The City Council may wish to pursue some additional voluntary terms that assure that trails have full connectivity, such as requiring that prior to*

approval of the final implementation project for a phase that YB complete construction of any trail portions necessary to achieve full connectivity within that particular phase. As an additional condition, or in the alternative, the Council could pursue a condition that requires YB to complete any trail gaps that exist for more than x years between the ends of a constructed trail system in any one phase. [Emphasis added]

Comment: A trail connecting the North Triangle should be considered by Council.

Hearing Examiner Revisions to Parks and Recreation

Revision N. Park Dedication Plan. V DA 9.9.1 should be revised to provide for a more global park dedication plan that prevents park dedications to be conducted on a piecemeal basis at project implementation. **Revision O. Parks Standards.** V DA Chapter 9 should be clarified to provide that the City's Parks and Open Space Plan will govern park design standards when stricter standards are not imposed by the DA.

Fish and Wildlife Habitat

Wildlife and Habitat Preservation Plan

It is recommended a Wildlife and Habitat Preservation Plan be incorporated in the Development Agreement to provide guidelines for wildlife and habitat protection. The Black Diamond Municipal Codes lend strong support to minimize the impact to wildlife--BDMC 18.98.155 (B):*"All development, including road layout and construction, shall be designed, located and constructed to minimize impact to wildlife habitat and migration corridors...."*; BDMC 18.98.010(C) and BDMC 18.98.140(C) also support minimizing the adverse impacts on wildlife resources.

Assertion, Applicant Response, and Reply to Wildlife and Habitat Plan

Wildlife and Habitat Protection Plan. Bortleson (Exhibit 113) asserts that the wildlife corridors are insufficient, and that a Wildlife and Habitat Preservation Plan should be included in the DA. Guidelines for the size, placement, and connections with on- and off-site habitats should be done in consultation with King County and other agencies with region-wide wildlife networks. Bortleson cites BDMC 18.98.155(B), 18.98.010(C) and 18.98.140(C) as authority for this request. Sierra Club (Ex 56) also endorsed a Wildlife and Habitat Preservation Plan, and stated that the DA fails to provide a high degree of connectivity with the wildlife corridor winding through Black Diamond Lake with no coordinated use of non-wetland habitat. Erika Morgan (Ex 143) also supported the need for a Plan to coordinate the MPDs with the City's Comprehensive Plan. Pat Pepper (verbal testimony) also endorsed a wildlife habitat protection plan. **Applicant Response:** In Ex. 209, YB responded that the City Council found that MPDs satisfied the wildlife criteria at COL 6, COL 54, and COL 61 of the MPD Permit Approval Ordinances (Nos. 10-946 and 10-947). **Reply:** The BDMC requires: *"The open space shall be located and designed to minimize the adverse impacts on wildlife*

resources and achieve a high degree of compatibility with wildlife habitat areas where identified." It is requested this supplemental condition be forwarded to the City Council for consideration. Rationale and BDMC justification for the supplemental condition is provided in Exhibit 113.

Assertion, Applicant Response, and Reply to Conditions of Approval

Applicant Response: YB responded that Constraints Map does show 300- foot wildlife corridor extension from western edge of core-stream-wetland Black Diamond Lake complex to the western edge of the MPD site. YB contends that this extension is all that is required by V COA 125 (Ex. 209).

Hearing Examiner Response

.....The lack of delineated FWCA on the constraints map contributes to the inability to determine the adequacy of the wildlife corridors; in addition to the two extensions being provided by YB, the SAO-designated FWCA should be shown on the constraints map. The HE suggests that City staff prepare a map showing the FWCA's defined in the SAO along with the King County Wildlife Habitat Network. This map would be similar to combining Figure 4-2 in the Black Diamond Comprehensive Plan with Exhibit 4-10 in the V FEIS. **Comment:** The Applicant has provided a new illustration showing a 300- foot wildlife corridor from the western boundary of the properties to the southern end of Black Diamond Lake. It remains unclear on viability of the corridor running through Black Diamond Lake; it is not clear whether all FWHCA's for small streams are to be shown on the new illustration provided by the Applicant. Unnamed stream S5 (type Na) flowing into Black Diamond is shown as a FWHCA while unnamed streams S6 (Type 5),, S4 (Category F, fish bearing), S2 (Ns), and S1 (Ns).are not indicated as FWHCA's. It would seem if the non-fish bearing stream S5 is shown on the new illustration that other unnamed streams should be shown as FWHCA's .

Hearing Examiner Revisions to Fish and Wildlife Habitat

Fish and Wildlife Buffer. **J** It is recommended that staff provide the Council an explanation, based upon the record, of whether the wildlife corridors comply with the City's Sensitive Areas Ordinance and that the corridor boundaries be revised as necessary if they do not before any agreement is made to the boundaries as identified in V DA 8.2.2. **Comment:** The new illustration provides clarity to the wildlife corridors and FWHCA's. It would appear the wildlife corridor running through Black Diamond Lake would require resolution by the Council. See interrelated discussion under wetlands.

Visual and Aesthetic Values

Visual, Aesthetic and Buffer Plan

An amendment is requested requiring a Visual, Aesthetic and Buffer Plan in the Development Agreement that addresses visual and aesthetic values and adapts design standards that incorporates continuous greenbelt areas, retains natural landforms and vegetation as usable open space, provides buffers,

setbacks, and conservation easements to transition incompatible land uses of the MPD's and perimeter and adjoining properties. **Applicant Response:** The Applicant responded to this assertion in Ex. 209, stating that imposing additional requirements was inappropriate as the adequacy of the MPD approvals and the EIS is a closed matter. Furthermore, in regards to the BDMC sections cited by Mr. Bortleson, YB states that the MPDs have been found consistent with BDMC 18.98.140.B in MPD COL 53 and the requirements of BDMC 18.72.030.E are addressed by DA 5.5. **Reply:** *In the next 100 years, as envisioned in the City's Comprehensive Plan, the City will be characterized by "...the preservation of the quality of its natural setting, its scenery and views, and the preservation of its historic treasures." The City's Comprehensive Plan calls for a new direction by maintaining small-town character by controlling the scale and character of new development, yet provisions in the Development Agreement to retain natural beauty and the small-town character are lacking. It is requested this supplemental condition be forwarded to the City Council for consideration. Rationale and BDMC justification for the supplemental condition is provided in Exhibit 113.*

Hearing Examiner Response to Aesthetic Plan

The visual and aesthetic impacts of the MPDs were addressed by the EISs, which found that no mitigation was required as no significant impacts would occur (V EIS pp. 3-65 through 3-67; LH EIS pp. 3-61 through 3-64). Mr. Bortleson has provided no new information beyond that considered by the EISs and the City during the consideration of the MPDs. Of additional consideration is the fact that the MPDs and DAs incorporate many of the features called for by Mr. Bortleson, including buffers and setbacks. The City's tree preservation ordinance requires the retention of trees. BDMC requirements for buffers between non-compatible land uses (BDMC 18.72.030) would apply to the MPDs. Despite all this, as an aesthetic standard, the Council could reasonably require additional setback/vegetative retention standards through its authority to add land use restriction to the DA under V COA 128. [Emphasis added]

Closing Remarks

The City Council is urged to carefully review the Hearing Examiner's recommendation for the Development Agreement and all oral and written statements. The Council needs to weigh the intentions and public benefits provided in the Comprehensive Plan and municipal codes Vs the adequacy of the Development Agreement to deliver those intentions and public benefits. With the public input and Hearing Examiner's recommendations serving as a catalyst, the Development Agreement will need the additional and welcome scrutiny by the Council. The Hearing Examiner has provided, in many instances, a path the City Council can so choose to take on an issue. The public has provided collectively hundreds of hours of effort to assist the Council in understanding issues of concern. The City Council is urged to take an equal amount of reasonable time to understand all critical issues voiced in the closed record hearing.

July 14, 2011

Dear Black Diamond City Council,

My name is Valerie Brazier and my husband is R. Shane Brazier. Our address is 30243 234th Ave SE BD, 98010. We have lived on Lake Sawyer since 1980 when we built a house next door to my parents. My parents built the house next door in 1961 and prior to that we had a cabin on the property where we spent our summers while my dad commuted to Seattle for work for years until he retired in 1980. We are very disappointed in the approval of the MPD's and the number of residents per acre. I am a nurse and I commute to Renton every day, by Valley Medical Center and it is taking longer and longer to get to work, especially when school is in session 9 months of the year. It is imperative that SR169 be improved by Yarrow Bay before the developments are even started as the construction will provide a multitude of vehicles on the road plus all of the wear and tear from big construction rigs running fill out of the development and materials in to the development. These improvements need to be paid for by the developer and not the citizens. We built our home in this area because we loved living in a rural area, away from traffic and all of the retail stores of a city. We don't feel we, the taxpayers should have to pay for the roads, schools and all of the extra taxes a development of this multitude would impose on us.

Another concern is the water quality to Lake Sawyer and the surrounding streams that will be affected by this development. There has been a decline of the water quality in the lake in the past few years anyway and I can't imagine that this will get any better with run off from black top, fertilizer from lawns, oil and antifreeze from vehicles. Who will monitor the developments to make sure everyone follows the rules and keeps our water safe? Our son and his family live at the top of Lawson Hill and they already have a water saturation problem in their yard where they have had to dig a ditch to keep run off from flooding their house. If a development is built less than a mile away from them where the trees are removed, the black top will cause water to run off the hill and what will happen to his home then? Will the city bail him out and put in culverts to fix the water problems? I am sure Yarrow Bay won't after the fact! Yarrow Bay makes inferences but not all promises are in writing and a sure thing.

Our daughter and her family live in Enumclaw and I would like to know what is going to happen to their taxes with all of the new schools going in, especially if school bonds don't pass. They are a struggling young family in a time of down economy and they can't afford to be taxed out of their house. The same for our son and his family in Black Diamond who can't even work a full 40 hour week because the economy is poor at this time. We need some written documentation that YB will pay for these schools. I agree with the speakers at the meetings. The schools will not be built before the children come, therefore there will be overcrowding of the schools until they can be built and this will jeopardize our granddaughter's education.

My husband is a retired Fish and Wildlife officer. He feels there is not enough open space and untouched habitat for the wildlife with these new master plan developments.

EXHIBIT

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At the first hearings, YB was asked what would happen to the wildlife when the developments came in and they said they would just move out of the area. This isn't true! As it is, there is a huge demand on these officers to control wildlife. You can see on the news there are a multitude of bear and cougar complaints not only in the cities but even in the rural areas where there are no housing tracts. This will make a huge impact on the State of Washington financially because these animals (deer, elk, bear, cougar, beaver, otter) will have to be trapped and relocated or euthanized as we are running out of open space habitat to move them to. We are growing too fast and taking away precious habitat from all of these beautiful animals. It killed my husband every time he had to euthanize one of these animals whether it be because they were hit by cars or problem animals that were re-offenders. Growing up on Lake Sawyer, it was a rare occasion I would see a deer or any wildlife as far as that goes. Now driving out of 234th where I live, it is a rare occasion that I don't see deer eating in my neighbor's yards and you can see by the Arborvitae trees in their yards that they are well trimmed in a weird fashion by them for the mile stretch I drive out each morning. I can get documentation of bear, deer and elk complaints if you are interested.

What will the impact be on the streams connected to the fish hatcheries down by the Green Valley Road?

We feel that it is a huge conflict of interest that the wages of the Black Diamond City Council and the city lawyer are funded by Yarrow Bay.

In closing, there are far too many residents planned per acre to sustain the land where these developments are going to be built. The development phases should be taken at a slower pace and SR 169 needs to become a four-lane highway before the developing starts. Schools need to be built before the houses are built and the people move in. These things are imperative to the future of our city. These developments are far too big and they must be scaled down, both the retail and the residences. The city needs to listen to its people, I was in on the petition where in about 2 days we collected over 650 signatures to stop the permitting during this phase we are in right now. We had 1 person for the development, 2 that wouldn't sign because of their work (but they would have if they could) and most of the rest did not want the developments to come at all. That should have told the city something!

Thank you Black Diamond City Council for taking the time to listen to the people and please take your time to digest what has been said and what needs to be done. Our future is in your hands, please do what is right for our town and the citizens you are making decisions for.

Sincerely,

Valerie and R. Shane Brazier

The Villages Master Planned Development
Draft Development Agreement

~~~~~  
Exhibit N Villages (Lawson) MPD Funding Agreement 2011

Please note that I added illustrative examples of my narrative. They clearly reflect a Funding Agreement that result in “zero” net benefit to the City. The way it is structured the best fiscal position the City can achieve is “zero” net benefit; the worst they can do is significant fiscal shortfall with not recovery mechanism. Anytime there is a benefit to the City the funding agreement is adjusted to reduce YB’s obligations bringing any revenue back to “zero”.

Additionally, the Funding Agreement takes future employment control of the MDRT staff away from a future Mayor.

In reviewing the Funding Agreement please note:

TV Development Agreement Reads on PG 128 5. Fiscal analysis results:

If the results of the fiscal analysis show a revenue deficit after application of a credit equal to the Developer’s Total Funding Obligation pursuant to the terms of the Funding Agreement, then the Master Developer shall prepare a supplemental analysis proposing how any projected City fiscal short

Ex. N Funding Agreement PG 6 of 25:

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 {Emphasis added};

CP: In essence the Developer is double dipping; the Funding Agreement is the mechanism for directly paying staff related cost including FFE, in lieu of the City collecting permit fees (which

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they could do and pay staff directly) the Developer has in essence already received credit for the Funding Agreement by not being required to pay the permit fees; why would the City allow them to also apply the funding agreement expenditures as a credit against any fiscal deficit?

(See Example Below)

| (Numbers are for illustration only) | Ex. 1 w/Permit Fees | Ex. 2 w/SFFA   |
|-------------------------------------|---------------------|----------------|
| Revenue (Sales/Prop. Taxes, etc.)   | 1,000               | 1,000          |
| Permit Fees (6,050 DU* 1.00)        | 6,050               |                |
| YB SFFA                             |                     | 2,065          |
| MDRT Staff                          | (2,050)             | (2,050)        |
| MDRT FFE                            | (15)                | (15)           |
| General Fund Exp.                   | (3,000)             | (3,000)        |
| <b>City Surplus / (Shortfall)</b>   | <b>1,385</b>        | <b>(2,000)</b> |

|                  |          |
|------------------|----------|
| YB SFFA Credit   | 2,065    |
| City (Shortfall) | (2,000)* |

\*The DA states that Yarrow Bay is only required to keep the City Fiscally Neutral in regards to the MPD related costs, and if there is a Fiscal shortfall YB gets to first credit the Funding Agreement, in this example YB would pay zero and the City would be left with a Fiscal Shortfall of (2,000) because YB SFFA credit is greater than the shortfall.

Ex N. Funding Agreement Page 9/10 of 25

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

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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.

CP: Agreement states that any non-MPD revenue generated by the City (handled) by *any* of the staff positions funded under this agreement shall be deemed a credit against any MPD Applicants obligation.

**MDRT Staff works on Non-MPD Projects:**

| (Numbers are for illustration only)   | Ex. 1 MPD Only | Ex. 2 MPD and Other Development (i.e. Kahne) Projects |
|---------------------------------------|----------------|-------------------------------------------------------|
| MDRT Staff                            | (2,050)        | (2,050)                                               |
| YB SFFA                               | 2,050          | 2,050                                                 |
| Non-MPD Revenue                       |                | 50                                                    |
| Projected City Surplus / (Shortfall)  | 0.00           | 50                                                    |
| Credit MDRT Non-MPD generated Revenue |                | (50)                                                  |
| <b>Net Profit to City</b>             |                | <b>0.00</b>                                           |

**MDRT Staff is too busy working on the MPDs:**

| (Numbers are for illustration only)                                       | Ex. 3 MDRT Staff Too Busy for Other Work |
|---------------------------------------------------------------------------|------------------------------------------|
| City is unable to process other Development Permits hires (1 FTE) Planner | (100,000)                                |
| City Generates Revenue from these Developments of:                        | 75,000                                   |
| City Shortfall                                                            | (25,000)                                 |
| YB Obligation*                                                            | 0.00*                                    |
| City Shortfall                                                            | (25,000)                                 |

**\*YB has no obligation in this scenario as it is not a MPD related cost!**

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9. **Building Permit Surcharge.** As anticipated in the Staff and Facilities Funding Agreement, but only to the extent permitted by law or other agreement between Developer and its purchasers 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.

This makes no sense. The City Attorney and the State Auditor have already determined that the City of Black Diamond has **NO** liability to repay the SFFA. The developer is proposing to have an option sometime in the future that requires the City to collect an illegal surcharge (caveat with if it is legal) and re-pay Yarrow Bay.

**Surcharge:**

| <b>(Numbers are for illustration only)</b> | <b>Ex. 1 If City collected Permit Fee Vs. Surcharge</b> |
|--------------------------------------------|---------------------------------------------------------|
| (a) Previous SFFA Owed                     | 6,700,000                                               |
| (b) MPD DU                                 | 6,050                                                   |
| Surcharge (a/b)                            | 1,107 per MPD DU                                        |
|                                            |                                                         |
| City collects surcharge                    | 1,107 per MPD DU                                        |
| City passes it thru to YB                  | (1,107)                                                 |
| <b>City Surplus / (Shortfall)</b>          | <b>0.00</b>                                             |

YB paid to get its MPD process facilitated; they have already received a benefit. Most Cities would charge Permit Fees and Additional Services Fees to process the MPD to pay for these same costs. RCW 82.02.020 forbids the imposition of any fee, either direct or indirect, on construction activities. But it expressly allows an exception to this general rule to cover cities' costs to process building permit applications, inspect and review plans, or prepare State Environmental Policy Act (SEPA) statements:

**If the City would have charged a permit fee:**

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|                     |             |
|---------------------|-------------|
| (a) City Permit Fee | 1,950*      |
| (b) MPD DU          | 6,050       |
| Revenue (a*b)       | 11,797,500  |
| SFFA Cost Repayment | (6,700,000) |
| Net Revenue to City | 5,097,500   |

**\*We know that YB needed to pre-fund the staffing and review cost so a per DU permit fee most likely could not be charged at that time; but a permit fee certainly can be paid at this point in time. In no event is there any reason for the City to pass funds back to Yarrow Bay, any ability to collect fees should benefit the City.**

**(2) 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.

**CP: Any fiscal benefit to the City is immediately reduces YB Obligation to bring the project to "Fiscal Neutral"**

a. **MDRT Composition.** The MDRT shall initially be comprised of the following current positions, or their functional equivalent: (i) City's Economic Development Director; (ii) the City's Community Development Director; (iii) the City's MPD planner; (iv) a new City administrative support position; (v) necessary consultants as determined in the City's sole, reasonable discretion after consultation with the Developer; and (vi) additional City staff as identified by the Developer through the Annual Review

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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.

CP: This clearly takes sole employment decision and authority away for the City and future administrations.

- a) The MDRT team can only be modified by mutual agreement
- b) The City may offer multiyear employment contracts to some or all the members of the MDRT (**This is clear conflict of interest; current staff recommendations of the agreement insure those same staff have long-term employment security!**)

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.

CP: Again this language gives staffing tenure control to the Developer based on the Developers discretion of the Market conditions. It also conflicts with the 3a in which the City can offer a multi-year contract to a MDRT staff person (who is obligated to pay that staff cost if the City in-fact executed a long-term

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contract with a MDRT staff person and now the Developer is exercising a wind-down or reduction of MDRT staff clause?)

**3. Master Development Review Team.** The primary function of the MDRT is to process, review, and implement development permits and development agreements of the Villages MPD and the Lawson Hills MPD. The MDRT shall become effective upon approval of The Villages or Lawson Hills Development Agreement, provided that if an additional staff member or consultant has not yet been hired, the City agrees to review and process implementing development permits using City staff funded pursuant to the City Staffing Funding Shortfalls section outlined above.

The Developer is funding a portion of government for their exclusive benefit. This certainly is not in the public interest.

**10. Security.** Security shall be provided by the Developer to the City to assure that, in the event of Developer's default, the City Staffing Shortfalls and MDRT Costs provided under this Agreement are timely paid to the City.

**a. Security Schedule.** The Developer shall provide security as follows:

i. Commencing on the Effective Date and until December 31, 2011, collectively BD Village and BD Lawson shall provide security of three million dollars (\$3,000,000.00). To meet this obligation, BD Village and BD Lawson shall

**Collectively {emphasis added}** provide to the City a letter of credit in a form reasonably acceptable to the City evidencing cash or other liquid assets in the minimum amount of two million dollars (\$2,000,000.00). BD Village shall also provide a first position deed of trust to the City on King County

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Parcel Nos. 0221069024, 0221069030, and 1121069006 of at least one million dollars (\$1,000,000.00) no later than the Effective Date (the “**Deed of Trust**”) in the form attached hereto as Exhibit D. ii. For the calendar year 2012, following the Annual Review in year 2011 and until December 31, 2013, BD Village and BD Lawson collectively shall provide a letter of credit to the City totaling 125% of its projected annual City Staffing Shortfalls and MDRT Costs less consultant costs. The City shall automatically release the Deed of Trust when this letter of credit is renewed on December 31, 2011.

CP: It appears that full \$3M is only until the end of this year and then the \$1M land is released.

Additionally, the \$2M doesn't have to be a Letter of Credit; it appears it can be other liquid assets.

Language s/b 100% triple AAA rated Irrevocable Letter of Credit from an approved institution by the City naming the City as the sole beneficiary; it should also state that it **cannot** be cross-collateralized for any other obligations.

This entire staff funding agreement creates conflict and frankly is complicated. **The agreement should be that Yarrow Bay guarantees a specific revenue stream; every year there is a calculation and if they miss their revenue stream calc the City draws down the L/C.**

Hearing Examiner:

- *It is recommended that the DA be revised to require that the proposed funding agreement attached as DA Ex. N, or a substantially similar agreement, be executed prior to the acceptance of any implementing project applications and that no applications already received be processed further<sup>8</sup> until the Ex. N agreement is executed.*
- *If the flexibility identified in the preceding paragraph was not the Council's intent, the Agreement can be clarified by revising the last sentence of Paragraph 4(a) as follows: “The City shall not approve any Phase III implementing development permits until a written*

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*agreement between the City and Developer is executed that reasonably assures that any build out fiscal deficits caused by the MPDs are completely mitigated.” The City Attorney may conclude that such a condition is not constitutionally supportable. In that case the agreement should make it abundantly clear that a reduction in density or other change in land use shall be one of the options considered in solving any on-going fiscal problems if other options are not reasonably available and that the City shall have no obligation to authorize the MPD to move forward if the Applicant is unwilling to agree to any changes in land use that still allow a reasonable use of its property*

- *To further reduce the conflict, it is suggested that the FA contain a provision prohibiting the Applicant from threatening to withhold funding on the basis of City personnel/decision making issues and that if any such threat is made that the Applicant be required to fund the affected City staff member’s position for as long as MPD work necessitates the position as reasonably determined by City staff.*

DEVELOPMENT AGREEMENT WRITTEN CONTRACT SUGGESTIONS

FOR THE BLACK DIAMOND CITY COUNCIL

OCTOBER, 2011

Judith Carrier

Many conditions that I would like to see in the Development Agreements are Supplemental. The Hearing Examiner did not have the time to include much of the public's supplementing conditions in his recommendations, but in his "Recommendation Overview" (RO) has explained his frustration with his inability to do so as being their value in giving the Council additional information. (RO, p.2) The Examiner points out the authority the Council has even though Yarrow Bay can refuse to accept conditions of this kind. However, some supplemental *"...conditions may.... be a priority for the Council. The Council may want to try to negotiate a deal with YB to agree to the supplementary condition, or require the condition either under the State Environmental Policy Act or by taking the position that it can withhold approval of the development agreements for any reason it chooses". (RO, p.3)*

Earlier in his August 16, 2011, "Order on Yarrow Bay Objections to Exhibits" the HE explained his overruling YB's objection to public testimony that included supplementary conditions. He pointed out the City and the Applicant were *"free to discuss and negotiate terms that both implement and supplement the MPD conditions of approval while the public can only comment on terms that implement them."*(p. 1) He clarified to YB that we, the public, are describing what we see as "deficiencies" that we "hope to be addressed in supplemental conditions in the DAs". (p.2) Our arguments are relevant and should not be ignored. To lean a bit on Shakespeare, I think Yarrow Bay "protesteth too much"!

## Green Valley Road Conditions for the Development Agreements

### Supplementing Condition for 33b. Green Valley Road Review Committee

(Color-matching denotes referencing of text.)

A Green Valley Road Review Committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members or representatives of King County desire to participate, they may do so, **but only two community members and King County shall have a vote on the committee regarding any matter.** The Committee shall meet as needed. ~~and specifically~~ It shall meet to review the study required by Condition 33(a) and attempt to reach agreement on whether any suggested traffic calming devices should be provided. **If the community members of the Green Valley Road Review Committee decide against the traffic calming measures, then the Applicant need not construct them must develop and offer other alternatives.** The Committee shall also meet to review the plan to prohibit or discourage the use of Plass Road. The Applicant shall be responsible, at its expense, for drafting a report to the City Council regarding the Committee's findings on the traffic calming devices and on Plass Road. **The Applicant and City will work together in good faith with Plass Road residents, GVR residents, and a KC Transportation Dept. representative to find a mutually agreeable way to prevent South Connector traffic from using GVR.**

**The original voting balance puts the Green Valley Road (GVR) committee members at a disadvantage. The King County (KC) member restores the balance to 50-50 which is more democratic.**

**With the KC member and the experience of Yarrow Bay (YB) and the City, we may all find a mutually acceptable solution. However, the only solution may be to lower the number of residences originally proposed by the Applicant. We support development for Black Diamond (BD). However, the size of this project**

will change the rurality of our “neighborhood”, Green Valley Road, and affect the quality of life and safety of its residents.

GVR has an interest and possibly positive ideas to contribute in the decisions Plass residents make regarding their neighborhood and quality of life as well as that of GVR. A KC Transportation representative will have options and the understanding of what is allowable as far as regulations. A decision might be reached more quickly with the added input.

**Implementing Condition: South Connector Road Alignment and Connection to SR 169**

The Applicant will develop a plan to for the South Connector Road alignment and connection to SR 169 that minimizes impacts to existing wetlands that will be subject to SEPA review. Consult the Army Corps of Engineers to fully determine the wetlands present and possibly recommend an alignment that will not impact the environment or cause mitigations that can be accomplished to preserve it. Should wetlands be damaged but replaceable, arrangements will be made using best Science to replace them using native vegetation like what originally existed and ensure they flourish at the Applicant’s expense. Should such review result in destruction of wetlands that cannot be adequately mitigated on site, the Applicant will agree to realign a portion of the South Connector Road so as to avoid crossing any wetlands and cause no impacts on wetlands or construct a bridge to span the wetlands.

The SEPA review should also include information on the wildlife in the area of the crossing. Should the crossing be shown to disturb a natural travel trail or habitat that can be preserved by a change in design, material, or location, the Applicant will consider those changes. It is possible GVR, Plass, and Black Diamond residents might work with the Applicant and City to make choices for both native flora and fauna.

## Supplementing Conditions: Green Valley Road Buffering

### Visibility of Man-made Structures

To maintain the rural, scenic character of Green Valley Road, provide protection for wildlife, and lessen the impact of water run-off leave a 400'-500' existing native growth cover including evergreen and deciduous trees as a buffer on the non-sloping southern boundary on the east end of GVR where it abuts the Villages on its north shoulder. This buffer will prevent visibility of man-made structures.

Similar buffering for residences on the southern boundary will prevent visibility of man-made structures and maintain privacy.

Leave buffers of native growth on the north side of GVR approximately 1 – 1.5 miles east of SR 169 where it slopes steeply upward and where the road-bed is above the valley floor. This area is where erosion control may be necessary and the buffering of soil-holding Salal, Sword Fern, and Oregon Grape as well as native evergreen and deciduous trees will help. This latter cover will be used to prevent visibility of any Development man-made structures at Flaming Geyser Park.

Buffer with the same native growth to the north of existing residences above GVR at the top of this slope to prevent visibility of man-made structures and maintain privacy.

### Light and Noise on Green Valley Road

The Applicant will buffer for light and noise at night on Green Valley Road and residences on the southern and western borders of The Villages as conditioned for man-made noise and light in the City proper.

The Applicant will buffer for daytime, man-made noise as done in the City for Green Valley Road and residences on the southern and western borders of The Villages.

**Condition: Green Valley Road Surface Protection /Mitigation**

The Applicant will work with King County Transportation and Green Valley Road residents to monitor at 6-month intervals traffic increases and the quality of the road surface before and after construction begins. When the traffic increases and the road surface begins to deteriorate in tandem, the Applicant will repair damage at their cost before it becomes a safety hazard, an impediment to the flow of traffic, and heightened wear on vehicle tires. The Applicant will arrange that construction trucks for the Developments do not use GVR to the detriment of the road bed.

**Condition: Green Valley Road Water Resource Protection**

Whereas private sources of potable water (wells and springs) for residences are difficult to find on the eastern end of Green Valley Road bordering the southern and western boundaries of The Villages and

Whereas, without potable water, the quality of life of the residents and residential property values deteriorate and

Whereas, most Green Valley Road residents have their water tested annually to reveal changes and

Whereas, currently, there is no known Science to prove that environmental changes due to the size of a development like The Villages affect neighboring properties,

The Applicant will do everything in its power to preserve the current environment, including wetlands, forest cover, and pervious surfaces and

Will put plans in place for the conservation of water in every way possible in the construction and development of The Villages property and

Will educate and encourage the residents of The Villages in all ways possible to use water conservation methods inside and outside their homes and

Will, if New Science becomes available to prove that development practices, changes in the environment, and/or use of water sources on The Villages property

have caused the deterioration in quality or quantity of water resources of existing Green Valley Road residential properties, provide water of good quality and quantity currently enjoyed to the, then, residents of said existing properties at the Applicant's expense by arranging now for that possible occurrence in the future.

Thank you.

**Black Diamond MPD DA CRHs October 2011--Written Statement (WS)--Transportation by Peter Rimbos**

|                                                                       |          |
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| <b>2.0 SUMMARY</b>                                                    | <b>1</b> |
| <b>3.0 HE DA RECOMMENDATIONS</b>                                      | <b>1</b> |
| 11.5 TRANSPORTATION REGIONAL FACILITIES                               | 1        |
| 1. Transportation Demand Model                                        | 1        |
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| 11.7 Phasing of Development                                           | 1        |
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| <b>4.0 HE UNADDRESSED DA ITEMS</b>                                    | <b>1</b> |
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| <b>5.0. PROPOSED “SUPPLEMENTARY” CONDITIONS</b>                       | <b>1</b> |
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| “Supplementary” Condition 14 a. -- Transportation Concurrency Testing | 1        |
| “Supplementary” Condition 14 b. -- Transportation Monitoring Plan     | 1        |
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| <b>6.0 CONCLUSIONS</b>                                                | <b>1</b> |
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EXHIBIT  
39

**1.0 INTRODUCTION**

There are many, many major issues related to these proposed MPDs. However, the one issue that rises above all others in terms of impacts, costs, and risks is Transportation. It is the most costly to mitigate--if real mitigation is possible given the size and location of these MPDs. It is the most schedule-driven and long-term mitigation. It is the most risky to resolve. It affects the most people. It affects our economy. It will forever define the future of Black Diamond and southeast King County.

In this WS I do not provide Hearing Examiner (HE), YarrowBay (YB), Staff, and Consultant full text; nor a *List of Figures*, *Glossary*; or my updated “*Stop-Light Assessment Table*”--to meet page limits. I build upon my Transportation Open-Record Hearing (ORH) Exhibits (#118, #145, #224, #226, & #262). I specifically address: (1) 9/14/11 HE *DA Recommendations* (see Sect. 3.0); (2) 9/28/11 YB *Exhibit 7, “Request for Approval”* (see [\*\*\*xxxxx\*\*\*] throughout this WS); (3) Items the HE did not have sufficient time to address (see Sect. 4.0); (4) Response to Parametrix’ John Perlic’s ORH Reply, which I did not have the opportunity to provide earlier (see Sect. 3.0); and (5) Proposed “Supplementary” Conditions submitted to the HE in my ORH Exhibits--which the HE did not have time to pass onto the Council (see Sect. 5.0). For a far more thorough assessment of all

the Transportation issues, please see my 177-pg Exhibit #262, specifically: **Sections: VII. CHRONOLOGY AND REMAINING CONCERNS; VIII. CONCLUSIONS; IX. RECOMMENDATIONS; and X. FOR THE CITY COUNCIL.**

## 2.0 SUMMARY

Figures 2.1 through 2.3 provide a Summary of the major points addressed in this WS.

**Figure 2-1: Summary--Transportation Demand Model** (HE statements in *italics*; Ref.: HE DA Recom.; pp. 79-81)

- *"Should the City choose to include any calibration or validation of the model used prior to 850 dwelling units in the DA it will need the voluntary approval of YB."*  
 I propose "Supplementary" Condition 14 a. -- Transportation Concurrency Testing (see Sect. 5.0) to run the new model now before DAs are approved, as recommended by HE in his 2010 MPD Applications Conditions.  
 I propose "Supplementary" Condition 14 b. -- Transportation Monitoring Plan (see Sect. 5.0) to fix timing conflicts between **V COA 25** and **V COAs 11 & 17** *"to bring mitigation projects into service before LOS degrades below City's standard."*
- *"Any changes to the MPD COA would require a separate Major Amendment to the MPD...V COA 20 requires the DA to include a transportation monitoring plan. Consequently, .. Council can require YB agree to reasonably necessary monitoring requirements."*  
 I propose "Supplementary" Condition 12 a. -- Traffic Analyses (see Sect. 5.0) to use the new Model (once validated) to conduct Sensitivity Analyses to understand effects of changes in projected Peak-Hour Factor (PHF), intersection spacing, signal timing, and Queue length assumptions. It also calls for a Cost-Benefit-Risk Analysis be performed for three scenarios: 6-yr Transportation Improvement Plans (TIPs) funded on time; 20-yr TIPs are not fully funded; and 20-yr TIPs funded on time.

**Figure 2-2: Summary--Traffic Monitoring Plan & GMA Concurrency** (HE statements in *italics*; Ref.: HE DA Recom.; pp. 82-86)

- *"The DA traffic modeling [monitoring] plan lacks assurances traffic mitigation will comply with GMA mandated concurrency..."*
- *"Nothing in the monitoring plan requires concurrency review for implementing projects. Nothing requires that the City deny any implementing project applications that fail to meet concurrency."*
- *"The Applicant and the City did not directly address the legal requirements for concurrency."*
- *"The City is approving a concurrency program that hasn't been developed yet....It has no idea at MPD/DA review whether the timing of the traffic improvements will actually comply with concurrency."*
- *"It could take several years beyond the GMA six year maximum before improvements are actually completed to remedy LOS deficiencies caused by large development projects. It is unlikely that the City could be found to have satisfied its due diligence in assessing concurrency when it only approves a conceptual framework with a huge margin of error where most details are left to the control and discretion of the Applicant."*
- *"The City's concurrency decision making is limited to MPD/DA approval because the MPD conditions and monitoring plan do not subject the traffic modeling reports for each phase to City approval."*
- *"The timing required in the monitoring plan only requires modifications to be considered midway through each MPD phase....the Applicant and City ... have not referenced project level concurrency as a remedy to the traffic concerns raised by the public....the plan should be required to be updated to accommodate any changes necessitated by implementing project concurrency."*
- *"It is recommended the DA contain a requirement that no implementing project shall be approved unless it complies with the City's concurrency requirements."*
- *"Adherence to GMA concurrency could require a reconsideration of the approved densities for the project if funding doesn't become available to complete necessary improvements beyond those made available by the developer...."*
- *"The only methodology available to the City to correct project-created impacts to the LOS of state-owned facilities is to limit the density of the MPDs."*  
 A viable and executable Transportation Concurrency Plan is not provided in the DAs. Such a Plan must be incorporated, as required by the **BD Municipal Code (BDMC)** and **BD Comprehensive Plan (BDCP)**. The DAs do not specify how it will be done, when it will be done, or if it will be done. The HE recognized the gross deficiencies in the DAs and provided his Response accordingly. The Council is urged to address these deficiencies in its review and revision of the DAs.  
 I propose "Supplementary" Condition 29 a. -- Transportation Planning (see Sect. 5.0) whereby a complete set of Transportation Plans shall be developed that include, at a minimum, project descriptions, project impacts, mitigations proposed, estimated costs, cost shares, identified funding mechanisms, and risks of potential revenue sources for both route and intersection improvements to fully mitigate all transportation-related impacts on all geographic areas.

**Figure 2-1: Summary--Transportation Demand Model** (HE statements in *italics*; Ref.: HE DA Recom.; pp. 79-81)

- *"It is recommended that the monitoring plan be amended to make it clear that GMA traffic concurrency review shall be conducted at project implementation and that concurrency review shall supersede any conflicting timing identified in the monitoring plan."*  
The DAs must require no implementing project be approved unless Concurrency requirements are met and that concurrency review supersede any conflicting timing in the traffic monitoring plan. The State's GMA requires the City ensure each Implementing Project satisfies concurrency. So, at each stage mitigation projects must be funded and included in the 6-yr TIP so that LOS requirements are met. Traffic Monitoring Plan must be revised to incorporate such concurrency requirements.  
Should traffic mitigation funding shortfalls occur needed traffic mitigation will not be possible! In fact, the Maple Valley Traffic Mitigation Agreement (TMA) is completely predicated on the availability of Grant funding, which will be in short supply, if at all, for some time. YB's contribution is based on percentages, not dollar levels. Should Grant funding fall short, planned mitigations (which already are insufficient to mitigate expected MPD traffic volumes) will be scaled back! Finally, the DAs don't specify what steps will be taken to implement additional mitigation should traffic analyses and monitoring show planned mitigation is inadequate--a potential Fatal Flaw for the City and the Region!  
[\*\*\*YB's Exhibit 7, proposed changes to DA Exhibit "F" -- Traffic Monitoring Plan do not include HE's recommendation: "concurrency review shall supersede any conflicting timing identified in monitoring plan." This should be added to Exhibit "F."\*\*\*]

**Figure 2-3: Summary--Final Concerns for the City Council to Assess and Address**

- With no validated Traffic Demand Model prediction of future traffic patterns/volumes and needed mitigations is suspect, at best.
- The Maple Valley Traffic Mitigation Agreement does not include mitigations the HE, in his MPD Application Recommendations, believed were technically defensible and, thus, those mitigations are suspect, at best, and inadequate, at worst.
- YB effectively is vested on all transportation-related standards and requirements through full build-out. Such standards and requirements protect YB, not the City or the citizens and will unduly handcuff future Councils with the burden of proof.
- Major changes needed to the region's Transportation Infrastructure due to MPD size--generating over 10,000 daily commuter trips--are not likely to be feasibly mitigated due to geographic & funding constraints, condemning the region to decades of gridlock.
- YB proposes Funding Sources that rely primarily on other people's money to build needed infrastructure or monies that currently do not exist and are not likely to exist, as attested to by State-elected officials, WSDOT, KCDOT, and the PSRC (e.g., Transportation 2040). This is possibly where risks are the greatest !

### 3.0 HE DA RECOMMENDATIONS

#### 11.5 TRANSPORTATION REGIONAL FACILITIES

##### 1. Transportation Demand Model

###### *a. Revisions to Current Model through 850 Dwelling Units*

Here I would have expected the HE to forward to the Council one of my proposed "Supplementary" Conditions: 14 a. Because V COA 14 deals with Traffic Demand Model assumptions and revisions, I recommended "Supplementary" Condition 14 a (see Section 5.0 for the proposed "Supplementary" Condition language and supporting rationale).

Also, in YB's WS it included: **ATT. #6 -- TRANSPOR GROUP RESPONSE BRIEF ON THE VILLAGES AND LAWSON HILLS MPDs** (Ref.: 8/3/11, Mr. Jones of Transpo Group). Mr. Jones posed and answered 6 questions: #1 - #3: Transportation Demand Model Timing and Scope; #4: Model Assumptions; #5: Traffic Monitoring Plan; and #6: Transportation Concurrency. These were part of Exhibit #224--my Response to YB's WS. I discuss them here to provide the Council a more in-depth look at these critical issues and the potential remedies the HE has described. I address all 6 of Mr. Jones' Q/A's; however, below in this section I address the first three. Unfortunately, the HE in his *DA Recommendations* did not have time to comment on these three important questions. As mentioned earlier, due to page limits I only provide my responses.

**Mr. Jones' Q/A #1:** Of course, model assumptions always get more fine-tuned with time and experiential data. But, that misses the point. The entire premise of these MPDs and the traffic analysis on which they are based comes from a flawed

model using flawed assumptions (both per the HE's 2010 FEIS Appeals Hearings Decisions and the MPD Applications Hearings Recommendations and all the subject-matter Expert Testimony--except Parametrix's). During the FEIS Appeals Hearings the HE ruled no current valid Traffic Demand Model existed to analyze traffic distribution locally or regionally, nor from which mitigations could be analyzed and optimized for selection. Now a new more "regional" Traffic Demand Model is under development. It will be completed soon, but put on the shelf until 850 building permits are issued, at which time it will be "validated." Such a plan provides no value. Why wait, especially since the current model, assumptions, and analyses were deemed flawed? The following prudent and technically sound steps should be followed: 1. Finish the new model now; 2. Validate the new model now; 3. Run the new model now; 4. Compare results from the new model with those of the original model (i.e., used in the traffic analyses to support the FEISs, MPD Applications, and MPD Ordinances); and 5. Determine if any of the "proposed" mitigations would change, especially outside the City limits, where the new "regional" aspects of the model will be most useful. Given the current flawed model and assumptions, no one knows if "*Adequate transportation mitigation for the first 850 dwelling units has, in fact, already been identified.*" No credible analysis/data exists to support this!

**Mr. Jones's Q/A #2:** All this "mitigation" proposed is based on the flawed model using flawed assumptions. No one knows if these "mitigations" are adequate to solve the impending traffic volumes that will be unleashed by even the first Phase of the MPDs. This is exactly why in his 2010 MPD Application recommendations the HE called for a "new" model and the assumptions be revisited, especially the wildly flawed Internal Capture Rate assumptions. Also, the Maple Valley "mitigations" proposed ("*a financial contribution to 'Project E.'*") are only ~0.3 and 0.7 mi segments of the long SR-169 corridor. Any "Band-Aid improvement" in those small segments will simply evaporate as traffic proceeds through all the "choke" points along the SR-169 corridor, a series of ratcheting between 1 and 2 lanes. I live in Maple Valley, drive these through these perpetual "choke" points and consecutive "queued" intersections every day. Since Queueing Analyses have never been done, on what basis can anyone state such mitigations will work to maintain adequate traffic flows and throughput at key intersections?

**Mr. Jones' Q/A #3:** In a 4/18/11, meeting with Parametrix' Traffic expert Perlic (City Staff and citizens Irrgang and myself were in attendance) We asked Mr. Perlic many questions about the Traffic Demand Model. The "SE BD-Ravensdale Rd-Landsburg Rd SE-Issaquah-Hobart Rd SE corridor" is included in the new model, but was never been "analyzed," nor do they intend to analyze it. As a major alternative for commuters to and from Black Diamond and Issaquah, Bellevue, or Seattle, this is unacceptable. Further, King County repeatedly has warned (in DEIS and FEIS comments), yet still unaddressed in the DAs: "*Since 'safety'-related improvements are permitted, and 'capacity' improvements are expressly prohibited in the Rural Area, a detailed evaluation of existing conditions of the roadways impacted by TV & LH projects should be made, and mitigation identified to address the "appropriate provisions" requirement in the RCWs.*"

#### ***b. Modeling Assumptions***

There are several issues to address here: **A. Mr. Jones' Transpo Letter** (question/answer #4 contained in Exh. #139); **B. Parametrix' Perlic's Reply** (Exh. #216); **C. Proposed "Supplementary" Condition 12 a. -- Traffic Analyses** (see Section 5.0); and **D. HE's Recommended Revision to DAs' Traffic Monitoring Plan.**

**A. Mr. Jones' Transpo Letter** (again I provide only my responses due to the page limit):

**Mr. Jones' Q/A #4:** Yes, the COAs address Internal Capture Rates (ICRs) and Peak-Hour Factors (PHFs). Unfortunately,

the DAs provide no methodology for choosing the final ICRs. Other questions left unanswered include: (1) At what intervals will ICRs be recomputed/reassessed and fed into the model? and (2) How will the expected differences between Institute of Transportation Engineers (ITE) ICR categories (e.g., "residential") and actual ICR data from other MPDs in "Western Washington" be weighed and subsequently resolved?

**ICRs:** Reference to the *ITE Trip Generation Handbook* may not be appropriate, as there are several ITE scenarios from which to choose, none of which may be applicable in this case. YB chose ICRs for "*residential development*" (based on the *ITE Trip Generation Handbook* Codes 210--Residential and 220--Apartment for average US urban areas, which Black Diamond is not). This is a composite of urban and suburban communities throughout the country and yields ICRs which are much too high. Clearly, Black Diamond and related parts of southeast King County are not typical of many urban and suburban settings, but rather sit on the rural/suburban fringe where ICRs are expected to be much lower and, thus, AM and PM commuting traffic in and out of Black Diamond much worse than predicted.

**PHFs:** Unfortunately only peak-hour "monitoring" is mentioned in the DAs (ref.: *Exhibit F, Traffic Monitoring Plan, Sect. D*). However, *VOA 17 b.* calls for PHFs to be evaluated. PHFs must be addressed, as evaluating Level of service (LOS) for the "entire PM peak hour" (as called for in DA Exh. F) is insufficient. The HE also specified that in his *FEIS Appeals Decision* and *MPD Application Recommendations*. Finally, the evaluation of PHFs was stated as a necessity by WSDOT's Ramin Pazooki in his Expert Testimony during the 2010 FEIS Appeals Hearings. Specifically, Mr. Pazooki discussed how Volume/Capacity (v/c) Ratios reveal problems with certain "legs" (e.g., lanes) of an intersection. He stated that maintaining v/c ratios of less than or equal to 1.0 is a necessity and that once a certain intersection reaches capacity (v/c > 1.0) the Level-of-Service (LOS) value is no longer effective, especially for major corridors.

**Queueing Analyses:** As discussed earlier, Queueing Analyses never have been done. While the HE stated in his FEIS Appeals decision that such analyses need not be done at the "programmatic" level of an FEIS, he also stated they be done at the "project" level. Unfortunately, at this stage with the DAs--where such details are to be discussed, we still have no evaluation of Queueing (or even a discussion of what and how such analyses will be done). To make matters worse, there are two signed and sealed Traffic Mitigation Agreements with the Cities of Maple Valley and Covington that call out specific projects, none of which have ever been evaluated for Queue lengths. Unfortunately, this appears to be another "shell game"--didn't have to do it before, not planning for it now, and won't do it later!

#### **B. Parametrix' Perlic's Reply (Exh. #216).**

Because I never had the opportunity to respond to Mr. Perlic's Reply to my Open-Record Hearing (ORH) WS (Exh. #118), I provide a comprehensive response to each of his points below. However, due to the page limit I could not include Mr' Perlic's Replies. To distinguish it from the rest of the text I indent it for ease of reading. Note Mr. Perlic's Reply contains 24 numbered paragraphs: 1. and 2. are a Declaration; 3. - 11. are addressed to KCDOT's Expert Witness Matthew Nolan (Note: I leave *Re-Reply* to these to Mr. Nolan; however, I provide a *Re-Reply* to 11.); and 12. - 24. are addressed to my ORH WS (Exh. #118).

11. Mr. Perlic mischaracterizes the basic argument made by so many members of the Public who live in the Rural Area, as I do. What we care about is vastly increased volumes of traffic passing over roads that are not designed or maintained to handle such traffic. While *qualitative* arguments are important, the argument here is *quantitative*.

12. Both Exhibit #262 (my REPLY to YB's Exhibit #208 Response to my Exhibit #118 WS) and Exhibit #224 (my Response to YB's WS) provide extensive descriptions of modeling aspects/methodology. They clearly indicate there is no *"misunderstanding of how travel demand modeling works in general,"* nor the *"specifics of the modeling and mitigation work called for by Conditions 11 -17 of the MPD Permits."*

13. We clearly have diametric views on what a DA is to contain or not contain. First, the DAs should provide the details of what is to be done and plans that answer the basic 7 "W's": Who? What? Where? Why? When? How? Which? Conversely, Mr. Perlic (and YB, for that matter) believes the DAs merely need to state: *"the Conditions will be met."* Second, I believe City efforts (e.g., the Traffic Demand Model, should be detailed in the DAs as well. Conversely, Mr. Perlic (and YB, for that matter) believes that the DAs should not discuss City efforts. Finally, Mr. Perlic hides behind the excuse that *"although transportation engineering does involve technical calculations and analysis, it also necessarily involves some level of professional judgment that cannot be reduced to a formula or checklist."* I never asked for *"a formula or checklist."* Rather, I asked for the basic planning done in any project, even those much, much *smaller* than this. The technical efforts that will be pursued should be explained, assumptions to be considered and why, analyses to be conducted, how results will be evaluated and against what benchmarks, how adjustments will be pursued, etc. These are the tenets of basic engineering practice.

14. Both my Response (Exhibit #224) and REPLY (Exhibit #262), which provide extensive descriptions of modeling aspects and methodology, clearly indicate that I do understand *"what is involved in the process of model validation and calibration."* I have personally built, validated, run, and evaluated many detailed models, far more complex than Traffic grid models. I understand the distinction and roles of both the Traffic Demand Model and Traffic Analyses to be conducted. Mr. Perlic is correct--I believe the 850 threshold is wrong. That is why I proposed "Supplementary" Conditions. I agree with the HE who recommended a threshold of "0" homes in his MPD Application Recommendations.

15. Both my Response (Exhibit #224) and REPLY (Exhibit #262) clearly detail why the 850 threshold is not the prudent way to go. That is why I agree with the HE who recommended a threshold of "0" homes and I proposed "Supplementary" Conditions to be considered. The Traffic Demand Model used to support the FEIS and MPD Applications was found inadequate in its regional coverage; used inadequate assumptions; and coupled with traffic analyses, helped to identify inadequate mitigations. The HE recognized all this and formulated his Recommendations accordingly. During the FEIS Appeals Hearings the HE ruled there was no current valid Traffic Demand Model with which to analyze the distribution of traffic locally or regionally, nor one from which mitigations could be analyzed and optimized for selection. That ruling was correct then and nothing has changed now. Thus, the mitigations derived from Traffic Analyses based on results from the flawed Traffic Demand Model are themselves suspect. So, in effect, we do not have a good understanding as to what mitigations would work prior to the 850 threshold being reached. The new Traffic Model is ~80% complete (ref.: Mr. Perlic; 4/18/11 meeting). Finish it. Validate it using existing traffic. Run it to look at future scenarios. Redo the Traffic Analyses. Develop an updated set of mitigations.

16. I don't *"misunderstand(s) the validation process."* I understand that validation of the new Traffic Demand Model does not change pre-MPD traffic counts--how could it. Mr. Perlic misunderstands my point about *"additional mitigation."* I simply

was asking what methodology would be used to develop “*additional mitigation*” in conjunction to the mitigations already identified and agreed to once the new Traffic Demand Model is validated and results are used in subsequent Traffic Analyses (the DAs don’t explain any of this). In fact, YB takes the position it doesn’t need to! This is arrogant and the Council should not be misled. Rather, the Council should require such information be detailed in the DAs.

17. Once again, Mr. Perlic states that an explanation of what is to be done and how it is to be done is not required to be in the DAs. In effect, Mr. Perlic (and YB) are saying that all that needs to be stated in the DAs is: “*We will meet the Conditions.*” The Council should not and cannot accept this!

18. Mr. Perlic is correct that **V COA 14** require the model to include “*a reasonable internal trip capture rate assumption, one that is based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in Western Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available.*” And yes, of course, as with all engineering decisions, “*the exercise of reasonable professional engineering judgment*” will be part of that process. However, the DAs must describe the basic technical process to be used to: identify potential ICRs, weigh their applicability, and run Sensitivity Analyses to ascertain how much the selection of the ICRs affect overall Traffic Patterns and local intersection and route LOSs.

19. I am not even talking about the *MPD Ordinance COAs*. Rather, I am stating the DAs do not contain a plan to be put in place once the “new” regional Traffic Demand Model is validated to use the model coupled with detailed intersection analyses to determine the level and type of mitigation needed. To provide meaningful documentation and commitment on the part of all parties the DAs must not simply parrot back the COAs. If that fiction were true, as YB seems to repeatedly assert, then why hold any Hearings whatsoever? The City Council should not and cannot accept this when it comes to the DAs.

20. Yes, **V COA 17. b.** requires PM peak-hour LOS analyses. However, that doesn’t mean that traffic from and to the seven planned Schools should be ignored. The proposed off-site Schools must be included in any Traffic Analyses. Mr. Perlic has stated this had not been done as they were “*...not aware of those (school) sites.*” (ref.: 4/18/11 Perlic Meeting with Steve Pilcher, Andy Williamson, Mike Irrgang, and myself). This is a deficiency that could have a profound effect on the AM commute. However, this appears to be more of a deficiency in the COAs, than in the Traffic Analyses themselves.

21. Once again, this is the same repeated argument we hear from YB: “*If the V COA 12 says to conduct ‘a sensitivity analysis...,’ then the DAs do not need to include any detail on what is to be done and how it is to be done.*” Nonsense! The DAs are not meant to simply parrot back the COAs. If they were, why go through the expense and time in preparing them in the first place? Why subject them to Public Hearings? At a minimum, the DAs should provide basic plans on how the tasks identified in the *MPD Ordinance COAs* are to be conducted.

22. Just because **V COA 17b.** doesn’t expressly state “*evaluate volume-to-capacity*” or “*conduct queuing analyses and travel time analyses,*” doesn’t mean they should not be part and parcel of prudent Traffic Analyses. I recommend the City Council ask its Traffic Consultant, Parametrix, the pros and cons on whether such analyses should be included, then make an informed decision. As testified by WSDOT (2010, FEIS Appeals Hearings, Ramin Pazooki), Volume/Capacity

(v/c) Ratios reveal problems with certain “legs” (e.g., lanes) of an intersection with v/c ratios of less than or equal to 1.0 a necessity. Once a certain intersection reaches capacity (v/c > 1.0) the LOS value is no longer effective, especially for major corridors. SYNCHRO analyses could be conducted for specific intersection legs to inform the overall Traffic Model. SYNCHRO is an LOS analysis software tool, which provides additional insight as to how well an intersection is functioning and how much *extra* capacity is available to handle future growth, traffic fluctuation, and incidents. The City will need to have the correct information to make decisions. Traffic Queueing Analyses were not addressed in the FEIS and MPD Application analyses and still is not addressed here! Many intersections in the project-affected areas are relatively close to each other and, thus, Queueing will be a critical factor in maintaining adequate traffic flows. Travel Time Analyses are important to a decision-maker for very large projects with long transportation corridors--exactly the type of dilemma these MPDs present here.

23. Once again, we are to rely on the words in the COAs, with no plan to implement them in the DAs. What are the DAs for? Do they represent an actual legal “*agreement*”? If so, they better detail to what is being agreed, since the COAs provide enough honest “interpretation loopholes” to keep lawyers happy for a very long time. Is that what the City and its residents want? Is that how time and money should be spent? In the real world this is not how major projects are managed!

24. Mr. Perlic and I agree. Yes, I do want the *MPD Ordinance COAs* updated. Yes, I do want more information put into the DAs. There is nothing wrong (and I agree with) “*the exercise of reasonable engineering judgment.*” However, you still need a detailed plan that answers the “7 W’s.” Mr. Perlic states the “*City Council selected the Conditions it wished to apply*” and that’s that. No, the DAs are to explain in detail how those COAs are to be met. (also, see Section 5.0).

**C. Proposed “Supplementary” Condition 12 a -- Traffic Analyses** (discussed in Section 5.0).

**D. The HE’s Recommended Revision of the DAs’ Traffic Monitoring Plan:**

The HE astutely has called for caution here and for prudent evaluation and approval by the City of all Traffic Monitoring Reports. For the Traffic Monitoring Plan to be credible it must present a process in which “modeling” of future traffic loads and distribution patterns is coupled with “monitoring” of existing traffic loads and distribution patterns. That process must include a way to synthesize such data to determine what mitigations will work, how well they will work, and when they are needed. Unfortunately, the DAs fall far short on defining that process.

Let’s define elements of such a plan. “*Modeling*” is a tool to help predict future traffic loads and distribution patterns over certain time periods. “*Monitoring*” is a tool to gage current traffic loads and distribution patterns in real time. Consequently, “*monitoring*” cannot supplant good predictive modeling techniques, but can be used to aid in validating a “model” to determine how close and repetitively it predicts current conditions. As more “*monitoring*” is done over time, the “*model*” will become more accurate in its predictions--that is good; however, it must be understood that “*monitoring*” in itself is reactive at best and one will never “catch up” until after full build-out of the MPDs is reached. “*Monitoring*” will always be “chasing” the next needed mitigation improvement, such that the transportation infrastructure--intersections and road spans--always will be on the precipice of failure or outright in failure. What is presented in the DAs is not a credible Traffic Monitoring Plan. See Figure 3-1 for specific elements that should be part of the Traffic Monitoring Plan and, thus, resulting Traffic Monitoring Reports:

**Figure 3-1: Traffic Monitoring Reports**

Details are needed on how “forecasts of future traffic volumes” be made and used to adjust the model and/or the speed and breadth of needed mitigations and further build-out of the MPDs. There is insufficient detail in the DAs to determine whether this satisfies the stipulations of V COAs 11 and 17, which call for such methodology to be used.

The frequency of Traffic Counts and Level-of-Service (LOS) computations must be provided to determine whether and when these counts will be of practical use.

Evaluation of potential future traffic volumes from other Black Diamond development must be required. What validity will be associated with the “forecasts” of “future traffic volumes”? The **Traffic Demand Model** must include all traffic regardless of how it is generated, otherwise true traffic distribution patterns and throughput timing will not be fully understood. Everyone uses the same transportation infrastructure. These MPDs will dominate the traffic generation throughout the region. How can one discern what non-MPD-generated traffic is in order to parcel it out of the traffic volume and intersection timing numbers? Once again, here the DAs do not satisfy the stipulations of V COAs 11 and 17.

For intersection improvements, Reports should compare results from a validated model and subsequent analyses with LOS threshold for each existing facility to determine whether and at what time any improvement to an existing facility is required. But those model runs must be done frequently, as conditions will change markedly throughout buildout of the MPDs.

The Reports should evaluate the extent to which MPD traffic would cause or contribute to any LOS failure on an existing facility in and outside Black Diamond. The City Council must keep in mind that problems caused outside the city limits not only will affect nonresidents, but also will adversely affect Black Diamond residents, commuters, and shoppers. As such the DAs do not satisfy the stipulations of V COA 15.

The Reports must include after-the-fact Monitoring. Unfortunately, in all its WSs, Responses, and Replies YB never once responded to the concerns expressed by the Public and Traffic Experts that no technical or experiential justification exists to assume the “improvement” will work as modeled and designed and that no changes will be necessary. That is why traffic improvements must be monitored continuously for a period of time after they are built and put into service to ascertain whether the improvement works as designed. This is simply part and parcel of prudent engineering and fiscal responsibility as transportation infrastructure must evolve over time to meet changing user needs.

[\*\*\*Unfortunately, throughout the recently proposed changes to the DA's Exhibit “F” *Traffic Monitoring Plan* (ref.: YB's Exhibit 7) language has been added to effectively vest to the 2009 Comprehensive Plan: “...to comply with the City's transportation concurrency requirements as defined in the City of Black Diamond's Comprehensive Plan (2009).” The City Council should not approve this language, but rather should change it as follows: “...to comply with the City's transportation concurrency requirements as defined in the City of Black Diamond's Comprehensive Plan in effect at the time of implementing project approval.” Concurrency requirements should not be subject to any vesting. The City must not lose this powerful tool to ensure the MPDs are served by adequate traffic infrastructure.\*\*\*]

One of the biggest reasons for the DAs to be changed to provide the City signature “buy-off” authority over all Traffic Monitoring Reports is the statement in DA Exhibit F--*Traffic Monitoring Plan*, para. B.--*Reporting Requirements*: “The City, in its reasonable discretion, may use the report to determine whether to request that the Master Developer [“alter”?, an important verb is missing here.] 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.” With signature/approval authority the City will not have to “request” the Master Developer “alter” its timing for construction. Such authority will ensure the City and its residents have control over their own transportation infrastructure and how to mitigate any risk. Currently, this language in the DAs is both irresponsible and does not meet the intent of numerous MPD Ordinance COAs.

Several changes to DA Exhibit F--*Traffic Monitoring Plan*, para. C.--*Transportation Projects to be Monitored and Modeled* also are necessary. Clearly, this does does not satisfy **V COA 10** (maintain Level of Service), **V COA 15** (mitigation outside Black Diamond), and **V COA 18** (funding and pro-rata shares). All “projects” must be “included in the model” and “monitoring”

of traffic flows. These must include those subject to a “mitigation agreement” reached “with an outside jurisdiction” The traffic impacts of the proposed MPDs will reach far, far beyond the borders of the City of Black Diamond directly and indirectly affecting a large portion of southeast King County. That is but one of the reasons the HE and the City Council called for a new “regional” traffic model.” Notwithstanding any “Mitigation Agreements” with the Cities of Maple Valley and Covington, the DAs give no consideration to WSDOT; KCDOT; the cities of Auburn, Enumclaw, Issaquah, and Kent; and residents of Unincorporated King County. This is a recipe for disaster in the future. There must be mechanisms in place through the *Traffic Monitoring Plan* to adjust to ever-changing circumstances. Projects that could be designed and built as late as 2031 could be based on 2009 Traffic analyses using 2000 Census data! We could be 30 years off between mitigation identification and mitigation implementation? The City Council must not approve such language in the DAs and must call for a stronger *Traffic Monitoring Plan* that addresses the issues discussed herein.

Also, as part of DA Exhibit F, para. C., the *Traffic Monitoring Plan* must evaluate a specific improvement after that improvement has been constructed. The language in the DAs is both irresponsible and technically indefensible and represents a “head-in-the-sand” approach. There is no technical or experiential justification to assume the “improvement” will work as modeled/designed and no changes will be necessary. The improvement must be monitored continuously for a period of time to ascertain whether the improvement works as designed and that the original 2009 Traffic analysis still adequately addresses real conditions in place at the time of completion of the improvement. The improvement also could alter traffic flow patterns such that other areas within the model grid could be affected. Transportation infrastructure is not static, it evolves over time to meet the needs of its users. If not, both quality of life and economic vitality will be needlessly detrimentally affected for all.

Unfortunately, DA Exhibit F--*Traffic Monitoring Plan*, para. D.--*Triggers and Timing for Construction of Transportation Projects* describes a reactive, not pro-active, process and, thus, unnecessarily risky. This does not meet either **BDMC Section 18.98.020 or 18.98.80** to provide infrastructure when needed (as described earlier). This is particularly the case with **18.98.80: “Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ....”** In fact, it appears the improvements will not even be identified until after LOS has been compromised! This uses the wrong “trigger” to mis-“time” project construction to alleviate congestion.

Continuing with para. D., Peak-Hour Factors (PHFs) must be addressed, as evaluating LOS for the “entire PM peak hour” is insufficient (as specified by the HE in his *FEIS Appeals Decision* and *MPD Application Recommendations*; the evaluation of PHFs also was stated by WSDOT in their Expert testimony during the FEIS Appeals Hearings). The vague phrases in the DAs: “additional impact” and “delay” must be defined? Who defines them? How large will the time lag be between “delay” or “impact,” intersection improvement design, securing funds, and construction? This approach is reactive after-the-fact thinking that will result in a continual guaranteed lag in meeting ever-changing traffic needs and, in the end, essentially never catching up. Traffic improvements must be identified before LOS has been compromised. The approach espoused in the DAs does not meet V COA 20: “The Monitoring Plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service.” Successful engineering projects do not plan for “failure” and then react, they seek to thoroughly analyze and design their projects ahead of time with adequate margins so as to avoid failure.

Also in para. D. the following language must be changed: *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 DA, 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. The timing described is inadequate and unacceptable.* How can permits be reviewed and issued and "construction of transportation improvements" "commence before the impacted street or intersection falls below the applicable level of service" when the entire Monitoring Plan is predicated on "failure" as a trigger mechanism? This is, at best, "double-speak." Plus, why should construction timing pressure be a lever on the City to rush through permit review and approval. That puts the onus on the City for "delaying" the construction of a transportation mitigation improvement that the Master Developer should have had in place earlier, save for a "re-active" "monitoring" plan. Yes, the City Council must ensure timing of permits and their issuance is reasonable for the Developer, but in doing so must include language in the DAs that ensures the "real" customers, the citizens and businesses that use the Transportation infrastructure, are protected from undue endless congestion.

There are other timing issues discussed in para. D. There is no plan in the DAs that explains how this "lag time" between commencement of engineering and design versus commencement of construction will be overcome or what will happen when planned mitigations inside the City limits are not put in place when needed. The language regarding projects outside the City limits--the bulk of the traffic mitigation--is even worse and would unnecessarily delay timely construction of those improvements. Many of the proposed projects are major undertakings and the YB won't even commit to a process whereby the commencement of construction of needed improvements is identified. This does not meet the MPD Ordinance COAs. Projects of this size, cost, risk, and impact require detailed schedules with major milestones and decision points identified, risks associated with each enumerated, and risk mitigation plans spelled out. The DAs need to provide plans that include basic schedules for major transportation improvement projects, along with cost contingencies and risks identified. Without such information there are no cost and schedule control mechanisms identified that could be put in place to manage mitigation improvements and overall project flow and priority--all the basics of Project Planning. None of this appears to be even contemplated in the DAs! The Council must ensure the DAs include the critical elements of Project Planning & Management.

Finally, and possibly the most detrimental language in para. D. is: *"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."* This is vague and non-committal. The improvements necessary to ensure that even the initial phases of these MPDs are viable from a transportation point of view will require much right-of-way acquisition, especially along the narrow SR-169 corridor winding through the heart of Black Diamond. YB must not be allowed to "punt" this political football to the City and its taxpayers. This is a plan to use Eminent Domain in its worse form to benefit a private developer to help it "mitigate" problems that its development is causing. Contrary to what YB implies, **V COA 10** does not discuss this at all. Such right-of-way only needs to be acquired because of the massive disruption to the transportation infrastructure caused by YB-proposed MPDs. Yet, YB would have us believe the onus for such right-of-way acquisition falls only on the City. This language must be

changed to protect the City, its residents, and business from such an ill-conceived plan that has no basis in the MPD Ordinance COAs.

Unfortunately, because the HE was constrained in his capacity to *only* evaluate the DAs versus the *MPD Ordinance* COAs, his Recommendations on Exhibit F--*Traffic Monitoring Plan* were limited (e.g., City approval of Traffic Monitoring Reports). However, the City Council is not so constrained. The City doesn't have to sign the DAs as written, but rather should direct the City Staff to work with YB to fix the *Traffic Monitoring Plan* as described above and as recommended by the HE.

## **2. Concurrency.**

### ***a. Timing of Review.***

On pages 84-85 the HE lays out his solid arguments on DA deficiencies related to Transportation Concurrency: "*...the City is approving a concurrency program that hasn't been developed yet....It has no idea at MPD/DA review whether the timing of the traffic improvements will actually comply with concurrency....it could take several years beyond the GMA six year maximum before improvements are actually completed to remedy LOS deficiencies caused by large development projects. It is unlikely that the City could be found to have satisfied its due diligence in assessing concurrency when it only approves a conceptual framework with a huge margin of error where most details are left to the control and discretion of the Applicant....As proposed, the City's concurrency decision making is limited to MPD/DA approval....it is recommended that the DA contain a requirement that no implementing project shall be approved unless it complies with the City's concurrency requirements, i.e. that improvements or strategies are in place at the time of implementing project development to maintain required LOS or that a financial commitment is in place to complete the strategies or improvements within six years.*"

I wholeheartedly agree with the HE's well-researched and clearly written arguments and recommendations. The Public is vindicated for the literally 1,000's of hours it has devoted to the many complexly intertwining, long-term, and far-reaching Transportation issues presented by the proposed MPDs. The Council must accept the HE's recommendation the DAs contain a requirement that no implementing project shall be approved unless it complies with the City's Concurrency requirements and concurrency review shall supersede any conflicting timing identified in the traffic monitoring plan. The State's GMA requires the City ensure each Implementing Project satisfies concurrency. So, at each stage transportation mitigation projects must be funded and included in the 6-yr TIP so that LOS requirements are met.

The following provides some specifics to support the Council *enacting* the HE's Recommendations in this area. First, I respond to the last of Mr. Jones' (Transpo Letter) Q's #5 and #6 (Note: My responses to Q's #1 - #4 were provided earlier).

**Mr. Jones' Q/A #5:** Let's take each of these three points separately."

*"(1) modeling the potential traffic impacts of an entire phase of development before submitting land use applications for that phase."* This point relates to DAs' *Exhibit F -- Traffic Monitoring Plan Part A. Required Timing for Modeling and Monitoring.* Unfortunately, details are lacking in the DAs. What "*model*" is going to be used "*before submitting land use applications for each Phase*" and in the "*middle of each Phase*" and how will that "*model*" be validated? This is especially of a concern prior to 850 building permits being issued as called for in **V COA 17a**. It should without saying that the confidence level associated with results generated using an un-validated model is unknown. There is no clarity on what will happen prior to the 850 threshold. "*Modeling*" is a tool that helps to predict future traffic loads and distribution patterns over certain time

periods. The “*model*” cannot be static, rather it must be ever evolving so its predictive capabilities are improving through periodic “*monitoring*” and subsequent validation cycles. In fact, “*re-validation*” of such a model often is required, especially if the original conditions under which it was validated change substantially, such as much higher traffic loads, major changes in traffic distribution, new intersections, road widening, employment center growth or movement, etc.

“*Monitoring*” is a tool to gage current traffic loads and distribution patterns in real time. Consequently, “*monitoring*” cannot supplant good predictive modeling techniques, but can be used to aid in validating a “*model*” to determine how close and repetitively it predicts current conditions. However, “*monitoring*” in itself is reactive at best and one will never “catch up” until after full build-out of the MPDs is reached. “*Monitoring*” will always be “chasing” the next needed mitigation improvement--transportation infrastructure--intersections and intervening road spans--always will be on the precipice of failure or failing.

“(2) *determining when particular transportation improvements will be necessary before submitting land use applications for that phase.*” This point relates to DAs’ *Exhibit F -- Traffic Monitoring Plan Part B. Report Requirements*. The DAs lack detail in this area. Details are needed on how “*forecasts of future traffic volumes*” will be made and used to adjust the model and/or the speed and breadth of needed mitigations and further build-out of the MPDs. There is insufficient detail in the DAs to determine whether this satisfies the stipulations of **V COAs 11 and 17**, which call for use of such methodology. Also, frequency of any traffic counts and level-of-service (LOS) computations are not discussed in the DAs to determine whether and when these counts will be of practical use. As to determining “when” traffic improvements are necessary, discussion of the “*Report*” mentions that “*results*” will be used to determine timing. Does this refer to “*results*” from the “*modeling*” or the “*monitoring*”? If the latter, then this is reactive and not pro-active. Consequently, it constitutes a risky approach that must be rectified. Results from a validated model could be used here, but those model runs must be done frequently, as conditions could and, probably, will change markedly throughout MPD buildout.

“(3) *beginning construction of a particular improvement before the street or intersection is predicted to no longer meet the applicable level of service standard.*” This point relates to DAs’ *Exhibit F -- Traffic Monitoring Plan Part D. Triggers and Timing for Construction of Transportation Projects*. From Part D.: “*For intersection improvements, the threshold trigger is when the intersection level of service (LOS) ... would ... no longer meet the adopted LOS....*” and “*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.*” Again, it is not clear if we are talking about results from “*modeling*” or “*monitoring*.” If the latter, this is all reactive, not pro-active. Consequently, it is unnecessarily risky. This does not meet either **BDMC 18.98.020 or 18.98.80** “*...to provide infrastructure when needed.*” This is particularly the case with **18.98.80**: “*Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ....*”

It appears the improvements will not even be identified until after LOS has been compromised! This reactively uses the wrong “*trigger*” to mis-“*time*” construction of projects to alleviate congestion. What is the time lag between “*delay*” or “*impact*,” intersection improvement design, securing funds, and construction? How can this be “*pro-active*”? This approach does not meet **V COA 20**: “*The Monitoring Plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable LOS.*”

Further driving home the point that the Monitoring Plan is re-active is the following statement from Part D: “*The Master*

Developer shall only be required to perform an improvement if the applicable threshold is triggered." These "thresholds" really mean "failure" of an intersection or intervening road segments. Successful engineering projects do not plan for "failure" and then react, they thoroughly analyze and design their projects ahead of time with adequate margins so as to avoid failure.

The timing described in the DAs is inadequate and unacceptable. How can permits be reviewed and issued and "construction of transportation improvements" "commence before the impacted street or intersection falls below the applicable level of service" when the entire Monitoring Plan is predicated on "failure" as a trigger mechanism?

Finally, there are two statements in Part D that once again prove the Monitoring Plan is reactive on timing: "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." There is no plan in the DAs that explains how this "lag time" will be overcome or what will happen when planned mitigations are not put in place when needed. "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." Since the vast majority of proposed mitigations are "outside the City of Black Diamond," this in effect unnecessarily delays timely construction of those improvements. Many of the proposed projects are major undertakings to fundamentally change portions of SR-169, but the Monitoring Plan states that the YB won't even commit to a process whereby the commencement of construction of needed improvements is identified.

In summary, the DAs' *Exhibit F -- Traffic Monitoring Plan* does not support Mr. Jones statement: "The Plan is designed to ensure that the construction of a necessary transportation improvement project begins before a street or intersection is impacted by MPD traffic and therefore, by definition, the Plan is proactive." The Monitoring Plan as written is re-active.

**Mr. Jones' Q/A #6:** Mr. Jones is lumping together the COAs and the DAs to make the contention that Concurrency requirements are met. The discussion herein does not address the COAs themselves, but rather whether or not the DAs meet the COAs. In this respect, in meeting Transportation Concurrency requirements, as in many respects, the DAs do not. As discussed in the response to the previous commentary regarding the Monitoring Plan, the timing required to meet Concurrency is not adequate. This is especially the case, as identified earlier, in how *Exhibit F's Part D* addresses mitigation "within the State right-of-way" and "outside the City of Black Diamond City."

There is no Transportation Concurrency Plan. For any mitigation plan to succeed, at a minimum, Transportation Concurrency must be met. The MPD Ordinances' *Exhibit B--Conclusions of Law, para. 30* mentions ensuring "concurrency at full build-out." Transportation Concurrency testing also is called out in the **Black Diamond Comprehensive Plan (BDCP) 7.2.2, 7.9.2, and 7.11.1**. Also, **BDMC 18.98.080** states, in part, as conditions of approval of any future MPD permits under *Paragraph A.4.a* that there be a: "...phasing plan and timeline for the construction of improvements ... so that: Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ...." So, looking ahead, the required transportation improvements must be in place, at least, at final plat approval.

Further, there is no Transportation Concurrency Plan to be put in place should concurrency not be met. Such a plan, when added, should detail needed adjustments--such as funding, timing, moratoriums, etc.--to be made should a particular improvement fail the Transportation Concurrency Test. A viable, executable Transportation Concurrency Plan is not provided

in the DAs. The DAs are incomplete until a cohesive Transportation Concurrency Plan is incorporated--as required by the BDMC and BDCP. See *Figure 3-2* for the minimum elements that should comprise a viable Transportation Concurrency Plan:

| <b>Figure 3-2: Transportation Concurrency Plan</b>                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Complete a regional traffic demand model.                                                                                                                                                                                                                                                                      |
| 2. Validate the model to show it provides reproducible results in a variety of situations.                                                                                                                                                                                                                        |
| 3. Evaluate model sensitivity to key assumptions and input parameters.                                                                                                                                                                                                                                            |
| 4. Run the validated model to conduct traffic analyses to determine the level and timing of needed mitigations.                                                                                                                                                                                                   |
| 5. Conduct transportation concurrency testing to address when and how required adjustments in funding, timing, moratoriums, etc. should be made if a particular mitigation improvement fails the Transportation Concurrency test.                                                                                 |
| 6. Transportation Concurrency testing must be periodically conducted for each Implementing Project and at the beginning, midpoint, and end of each Phase to ensure concurrency at full build-out.                                                                                                                 |
| 7. The intersections needing mitigation as identified in the Traffic Analyses must be monitored. Such monitoring should identify those areas needing improvements to be constructed with development to bring mitigation projects into service before the Level of Service is degraded below the City's standard. |

When it comes to Transportation Concurrency testing there is no mention in the DAs of how it will be done, when it will be done, or if it will be done. The HE recognized the gross deficiencies in the DAs in addressing Transportation Concurrency testing and provided his Response accordingly. The Council is urged to take this into account and address these deficiencies in its DA review and consider changes to the *MPD Ordinance COAs*. Three of my five proposed "Supplementary" Conditions (see Section 5.0) are devoted to this major area of concern to the HE and to the Public: 14 a. -- Transportation Concurrency; 14 b. -- Traffic Monitoring Plan; 29 a. -- Transportation Planning.

***b. Mitigation Project Funding for State Facilities.***

The HE clearly states in his Response the grave mistake made in the *MPD Ordinance COAs*. The City cannot assure its residents and businesses MPD-generated traffic impacts will be adequately mitigated. This because, should funding shortfalls occur (at either the State, County, or Local level), the only resolution is unavailable to the City as it cannot address this through scaling back of the MPDs. Consequently, should those shortfalls occur (as all budget predictions show), the needed traffic mitigation will not be possible! As stated in my ORH WS (Exh. #118): *"The DAs don't specify what steps will be taken to implement additional mitigation should analyses show planned mitigation is inadequate--a potential Fatal Flaw."*

The Council must seek a Major Amendment to the *MPD Ordinance COAs* to fix this problem! That Amendment must require Transportation Concurrency Testing of state facilities, specifically, SR-169. In June 2011 I submitted to the Black Diamond Department of Community Development a proposed BDCP amendment calling for Transportation Concurrency testing on SR-169 (much like King County has in their Comprehensive Plan). Adoption of that proposed amendment to the BDCP and subsequent major Amendment to the *MPD Ordinance COAs* would ensure that the City can grow responsibly, while not unduly burdening its residents and businesses with perpetual traffic gridlock. This is a win-win result: the City will gain responsible growth without harming its citizens and businesses; YB will be able to develop its MPDs in a fashion that people and businesses will want to move in and purchase homes and space.

The HE (nor the DAs) discuss a Traffic Mitigation Funding Plan (part and parcel of an overall Financial Plan). This is required by **V COAs 10 and 18** and implied in **V COA 17**. Although both the *MPD Ordinance COAs* and the DAs list some projects and some cost-share splits, there is a scarcity of credible information on funding sources, the risks of those sources materializing, and the timing associated with securing needed funds. The HE discusses Transportation Concurrency repeatedly and in detail in his Recommendations--which is very good (as discussed elsewhere in this WS), but the HE doesn't go the next step and recommend a credible Financial Plan to cover the costs of added traffic mitigation--this puzzles me. Most likely, the HE didn't have the time to adequately address this. However, it is critical. If the monies are not there for the required mitigations and/or added mitigations, what happens? The DAs don't tell you. Consequently, the Council needs to *enforce V COAs 10, 17, and 18* and ensure it does not sign DAs which lack credible Financial Plans to address traffic mitigations.

### **11.7 Phasing of Development**

#### **3. Project Phasing [including HE ADDENDUM (pp. 4-5)]**

What the HE has stated is important and must be addressed by the Council in the final DAs. In summary, the HE stated:

1. DA plans for infrastructure improvements *"are not linked to implementing project level concurrency."*
2. Concurrency results must *"supersede" any "timing requirements for infrastructure improvements" in Traffic Monitoring plans.*
3. V COA 3, by adopting same Phasing Plan, establishes *"timing of traffic infrastructure" through "the traffic monitoring plans."*
4. The DAs could be interpreted as violating the *"timing requirements of GMA traffic concurrency" in BDCP Sect. 7.9.2 Concurrency* (see Exh. 118, p. 23) and BDMC 18.98.080(A)(4) (see Exh. 118, p. 20).
5. *"GMA concurrency" must be "conducted at project implementation" and "supersede...conflicting timing" of other plans.*

This is why I graded Transportation Concurrency **RED** in my ORH WS (Exh. 118, *Stop-Light Assessment Table--note: YB took this Table, renamed it "Traffic-Signal Table," and unjustifiably graded everything GREEN while providing little explanation*). There is no **Transportation Plan** including a process whereby mitigations may change as issues develop; no **Transportation Concurrency Plan**, and no enforcement mechanisms identified. The Council must fix these glaring problems.

### **4.0 HE UNADDRESSED DA ITEMS**

#### **[DA] 4.0 LAND USE AND PROJECT ELEMENTS**

**[DA] 4.10 DEVELOPER IMPROVEMENTS.** This effectively states that regardless of any future traffic modeling and analysis, all necessary mitigations have already been accounted for. It also states that no additional cost can be levied on the Master Developer. This is a fiscally irresponsible "clause," ties the hands of future Councils. and likely ensures critical decisions on mitigations needed or unfinished will be settled in Court. It is doubtful this was the intent of the Council when approving the *MPD Ordinance COAs*. In addition, the *"Periodic Reviews"* do not include the vast majority of the proposed traffic mitigation--that contained in the Maple Valley Transportation Mitigation Agreement (TMA).

For projects of this massive size in an area with poor infrastructure to begin with, there will be major Change Orders over a 15- to 20-year build-out. This is especially true when it comes to traffic mitigation projects, which historically are fraught with long lead times, technical risks, schedule slips, surprise costs, and ever-changing traffic demand circumstances.

## **[DA] 11.0 PROJECT PHASING**

**[DA] 11.2 PHASING OF IMPROVEMENTS.** Transportation “*infrastructure and timing*” are cornerstones determining MPD viability. As such, any changes to the definition of either must be put forth as Amendments to either the MPD Permit Approval or the DAs. Such language, as espoused in section 11.2 above, is not contained in the *MPD Ordinance COAs*. Although **V COA 3** does implement the Phasing Plan (Exhibit K), it does not state that “*...infrastructure and timing of Development different from the MPD Phasing Plan (Exhibit “K”) may be proposed by the Master Developer, without an amendment to the MPD Permit Approval or this Agreement...*” as alleged by YB.

### **[DA] 11.3 PHASING AND CONSTRUCTION OF ON-SITE REGIONAL FACILITIES.**

**[DA] B. Construction and Funding.** The Master Developer primarily is relying on other people's money to build identified traffic mitigations. In addition, the phrase “*or cause to be constructed.*” is troubling--what does it mean? It seems to imply unknown-sourced outside funding. If so, that does not constitute an element of a credible **Financial Plan**. The phrase “*proportionate share*” often is mentioned, but such cost splits are not provided, except in Tables 11.3.1 - 11.3.4, which show the Master Developer as being “*responsible*” for the infrastructure, thus implying a 100% share. [Note: the first three Tables list Transportation infrastructure, while the fourth, while not listing specific Transportation infrastructure, it is implied, because there will have to ingress and egress to the Wastewater and Stormwater facilities listed.] Yet, the *overall* transportation infrastructure needs could exceed \$100,000,000 (it is hard to tell with no cost estimates of any kind are provided!).

Where will the Master Developer get such sums of money? One could assume the Master Developer is planning on borrowing against their land value at municipal bond rates through the mechanism of Community Facility Districts (CFDs). Then passing the CFD charge onto homebuyers, commercial/business owners; etc. through a special assessment. Those special assessments most likely will be used to pay back the bondholders. But this is all speculation on my part because nowhere in the DAs is a **Financial Plan** detailed. What happens if CFDs are not available to the Master Developer? What is the Back-up Plan? These are all potential Fatal Flaws! Plus, where are the risks identified? Finally, and possibly most important, on whom are those risks imposed and for how long? Risks are not identified and there is **no Risk Mitigation Plan**.

Although **V COA 10** (and, similarly, **V COA 34 a.**) stipulates: “*The DA shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur,*” the Master Developer simply states that it “*may recover costs...using methods approved and allowed...*” This does not constitute identifying “*cost recovery mechanisms.*”

Somehow YB (in its response to my WS) boiled down my extensive discussion on: (1) lack of financial estimates, (2) over-reliance on CFDs, (3) no risks identified, and (4) no contingency planning to: the type of “*Financial Plan*” I seek is “*not required,*” nor “*practical.*” Such **Financial Plans** are developed everyday for small and large projects. They protect all parties involved. Of course, estimates can change, but with none to begin with, there is no program to manage, no costs to contain, and no risk management of tasks and funding sources. I stand by my contention: There is no credible Financial Plan!

The Bottom Line: There is no detailed Transportation Financial Plan. No one knows how much total costs will be. No one knows who risks will fall upon and when. Without this type of information, how can a long-term commitment be made on the part of the City, its current citizens, its future citizens, and the region in the form of 15-20-year “contracts”--the DAs?

### **[DA] 11.4 PHASING AND CONSTRUCTION OF OFF-SITE REGIONAL INFRASTRUCTURE IMPROVEMENTS.**

**[DA] A. Phasing.** This does not ensure “that necessary off-site Regional Facilities are provided to serve Implementing Projects as they occur.” Allowing “occupancy” to exceed “thresholds” simply based on issuance of permits for necessary infrastructure doesn’t make sense and harms the City and its new residents. Comments on this subsection only are provided because, while no specific Transportation infrastructure is listed, it is implied, as there will have to ingress and egress to any off-site regional Wastewater and Stormwater facilities listed as “Regional Facilities.” Actually, no Stormwater facilities are listed, but the off-site major Stormwater Detention Facility is shown in *Exhibit K--MPD Phasing Plan (Phase 3: fig. 9-5, Project III-13)*, so there appears to be yet another conflict within the DAs.

**[DA] B. Construction and Funding.** [This section has similar deficiencies to those of 11.3.B.]

**[DA] EXHIBITS Q and R – TRANSPORTATION MITIGATION AGREEMENTS**

Maple Valley signed its Transportation Mitigation Agreement (TMA) primarily because it had little choice and because it hopes to add such monies to its own to leverage potential Grants. This is stated in its Comprehensive Plan--Transportation Element for 2011 (p. T-56--my underlining: “*The City has entered into an agreement with the City of Black Diamond and the applicant for two master planned communities in Black Diamond related to mitigation of traffic impacts in Maple Valley....The City can combine the Black Diamond mitigation funding with City funding in its pursuit of grants and/or partnerships with other agencies to implement key improvements along SR 169 and SR 516.*” Covington chose to accept cash payments in lieu of potential mitigations. Apparently, Covington determined that no mitigation would help alleviate the coming traffic nightmare.

How can such “agreements” with “applicable agencies” be reached before the DAs are subject to any Public process and vetted through the HE and the City Council without first developing a new **Traffic Demand Model**, then validating it with existing data, and finally using it to analyze future scenarios to identify potential mitigations to be implemented?

The DAs state the **TMA**s “supersede” the **V COA 11-34, except 15** (which mentions the Agreements). Therefore, after the new **Traffic Demand Model** is first validated and used to look at various road and intersection volumes (after 850 permits issued), there will be no adjustments to the Agreements. This completely ignores the HE’s MPD Application rationale for a new **Traffic Demand Model**--to address regional deficiencies in the original model because it tied to the Puget Sound Regional Council’s higher level model. Consequently, a new **Traffic Demand Model** is being developed, it will be validated after 850 building permits have been issued, and then it will not be used to assess traffic volumes and needs outside of Black Diamond! This isn’t simply a “deficiency,” it’s another recipe for failure and a Fatal Flaw !

The vast majority of the road mitigation (e.g., widening/adding lanes between intersections) occurs after many of the intersection improvements. This raises the concern that should the Master Developer cease development after Phase “X” is complete and only “Y,YYY” units have been built, certain “Trigger Points” in the **Maple Valley TMA** will not be reached. Thus, some key mitigations will never be undertaken. This would result in a hodgepodge of mitigation along SR-169 between SR-18 and Black Diamond whereby intervening road segments will remain “choke” points even after some intersections have been improved, rendering those improvements moot. Having lived in the Maple Valley area for over 30 years and driven most of its intersections everyday, I know firsthand what adverse impacts the region will suffer.

One of the largest deficiencies in the **Maple Valley TMA** is no mitigation to eliminate additional “choke points” along SR-169 north of SR-18. The commute doesn’t suddenly stop there, rather it continues on to Renton, I-405 to Bellevue, and I-5 to

Seattle. From this point north SR-169 will continue to be a 2-lane *undivided* road for ~ 5 mi until 196th Ave SE and becomes a 4-lane *undivided* road to Renton. Not only is this ~5-mi 2-lane portion a “choke point,” but so is the narrow Cedar River Bridge less than a mile north of the SR-18 intersection. That bridge will need to be replaced, but with what monies?

Because of these flaws, the already inadequate mitigations proposed in the **Maple Valley TMA** are rendered moot as traffic will balloon at “choke points” from either direction during the AM and PM commutes.

### 5.0. PROPOSED “SUPPLEMENTARY” CONDITIONS

The HE wrote in his *DA Recommendations*; “The relevancy of supplementary conditions has been a major point of disagreement between the Examiner and the City and YB....Even though YB may indicate it’s not agreeable to a supplemental condition during the hearings before the Examiner, the conditions may still be a priority for the Council. The Council may want to try to negotiate a deal with YB to agree to the supplementary condition, or require the condition either under the State Environmental Policy Act or by taking the position that it can withhold approval of the development agreements for any reason it chooses. The Examiner chose not to close the door on any testimony related to supplemental conditions, so that all options for the Council remained intact during their stage of review.” As part of my ORH WS (Exh. #118), I submitted a number of proposed “Supplementary” Conditions. The following subsections provide both the proposed language, and supporting rationale on why these “Supplementary” Conditions are “necessary and appropriate.” First, I provide some background.

The HE’s most critical 2010 ORH recommended **Transportation Conditions** were: **16**: “*The resulting project impacts and mitigations must be integrated into the DA or processed as a major amendment to the MPD prior to City approval of any implementing projects.*” **AND 17**, [in part]: “*The Monitoring Plan shall require that improvements be constructed with development...to bring mitigation projects into service before LOS is degraded below the City’s standard.*” Unfortunately, these were removed from further consideration by the Council at the behest of YB (ref.: 6/21/10, e-mail from YB to City Attorneys--I submitted this as an Exhibit on 7/13/11; the e-mail was expanded into a 6/22/10 memo to the Council and entered into the MPD Application CRHs as Exh. C-8.). [On 9/28/11 YB essentially did the same thing by submitting Exh. 7, a 224-pg “Request for Approval.”] The 2010 letter recommended HE **Conditions 11-17** be replaced entirely and HE **Conditions 18, 21, 24, and 34** be revised. These represented nearly half of the HE’s Transportation Conditions and possibly the most important ones.

Indeed, these YB-suggested Transportation Conditions formed the basis for those finally approved by the Council in the *MPD Ordinance COAs*. The major thrust of YB’s recommendations were to move the development and use of the new Traffic Demand Model from prior to (and, thus, informing) the DA to a distant (~8 to 10 years?) “Mid-Point Review” (e.g., ~3,000 homes). Although, the Council changed this in their final approved *MPD Ordinance COAs* to the issuance of 850 building permits, it is still inadequate. The HE had correctly recommended doing this essentially at zero (0) homes.

**Figure 5-1: Process Concern**

The HE conducted thorough FEIS Appeals Hearings including many Expert witnesses (State, County, Maple Valley, and Consultants). Those Hearings were the basis for the HE’s recommended MPD Application ORH Transportation Conditions.

YB submitted their 6/21/10 letter to the City Staff and introduced their recommended Transportation Conditions as an Exhibit in the MPD Application CRH (exactly analogous to what has happened in *these DA CRH* with YB’s 9/28/11 Proposal--Exh. 7).

**Figure 5-1: Process Concern**

At the end of the MPD Application CRHs the Council *miraculously* adopted the YB-suggested Transportation Conditions almost verbatim, ignoring virtually all the Transportation Expert Witness testimonies and the HE's careful study and prudent judgement.

Figure 5-1 describes a process concern--it might be legal, but it provides a strong feeling the process is stacked against the Public good, the science, and the experts.

The HE's response to the Expert Testimony and that of the Public during the 2010 MPD Application ORHs was: "*For both traffic and noise, the Examiner recommends that added mitigation be added to the project either through the DA or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation.*" Unfortunately, the current set of Transportation Conditions contained in the *MPD Ordinance COAs* were modified by the Council from those discussed in the HE's *FEIS Appeals Decision* and those enumerated in detail in the HE's *MPD Application Hearing Recommendations*. As discussed earlier, some were eliminated outright! The e-mail letter referenced above and submitted as an Exhibit in the ORHs, possibly and, I would contend, most probably, resulted in such wholesale changes to the Transportation Conditions. Unfortunately, many benefit the Applicant, while increasing the risk, uncertainty, and future costs to the City and the Region and its citizens.

So now you and the Public have before us a set of voluminous, yet relatively empty, DAs that describe no new Traffic Demand Model (though one is in development for some far future use), no new Traffic Analyses, and no new Traffic Mitigations. The City, Maple Valley, King County, Parametrix, YB, or the Public have no clear understanding of what it will take to mitigate the massive traffic volumes that will be added by these outsized MPDs to the existing southeast King County road network and infrastructure! Each is discussed in *Figure 5-2*.

**Figure 5-2: What Should Be Done ?**

1. A new **Traffic Demand Model** is under development. That is good. But when will it be ready? When will it be validated? When will it be used? [As a long-time Boeing Principal Engineer and Project Manager, these are the critical questions I've asked my people repeatedly. I ask no less of the City and YB!]
2. The model must be verified and validated now. Assumptions must be reassessed, such as the wildly unsubstantiated Internal Capture Rates used in the past analysis (and now cemented in stone in the **Maple Valley Traffic Mitigation Agreement**), as well as others the HE recommended be revisited. Then, **Traffic Analyses** must be conducted to assess future traffic scenarios.
3. A complete set of comprehensive **Traffic Mitigations** then must be developed with **Mitigation Plans** that include design concepts, cost estimates, funding requirements, cost-share splits, tentative schedules, and cost/benefit/risk analyses.

All this must be done prior to the approval of any DAs, so that these 15- to 20-year "contracts" can be informed by the results. Then the Public, adjacent jurisdictions, the County, and the State must be given the opportunity to thoroughly critique these plans in open Public Hearings. This is the most glaring flaw in the entire process! And the most glaring weakness in the proposed DAs before the City Council and the Public. The City Council must not ignore these flaws and impose unnecessary adverse impacts on its own citizens and on citizens like me who live in Southeast King County! Again, this must be rectified. Consequently, I propose five "Supplementary" Conditions. The first four are intended to reduce risk and cost to the City and the Region and its citizens, as well as ensure "*Growth Pays for Growth*" by holding the Applicant accountable. The fifth "Supplementary" Condition is proposed to address impacts on King County road and Public involvement.

Unfortunately, YB in their *Response* (Exh. #208) to my ORH WS (Exh. #118) continued to voice the same rationale on model timing. Let's be clear what happened here: (1) A Traffic Demand Model was developed and used to support Traffic

Analyses that identified potential Transportation problems the proposed MPDs could cause; (2) That information informed the preparation of the DEISs, FEISs, and MPD Applications; (3) The HE held *simultaneous* rigorous Hearings on the latter two documents and found that model and some of its assumptions to be flawed; (4) The HE recommended extensive Conditions to remedy these issues, the biggest of which dealt with timing of the “new” model’s development, validation, and use; and (5) The Council at the behest of YB decided to eliminate or modify many of the HE’s Transportation Conditions. Yet, YB in their *Response* stated: *“The rationale for doing so is so that the City can run a model that includes not only all of the new model parameters included in the Conditions of Approval, but also model inputs consisting of real data from the MPD developments.”* This is hard to believe. The model can always be run as real data is developed and synthesized—that is normal engineering practice. The “new” model could be completed now (I believe it’s nearly complete), validated using existing data, and run periodically as new traffic data is generated. YB in their *Response* does not provide a technically credible rationale to radically alter the timing of the model. Rather, it was a way to not have to *re-evaluate* already-identified, most likely, flawed mitigations and possibly discover far more mitigation is needed or, worse for YB, the MPDs need to be scaled down in size and breadth to provide the only sure-fire traffic mitigation that could hope to work: generate far less traffic in the first place!

Unfortunately, YB in their *Response* takes KCDOT’s Matthew Nolan’s prior testimony out of context. I have reviewed all of Mr. Nolan’s testimony and spoken to him, as well. The original (2010) Yarrow Bay-proposed and clearly less-than-inadequate *stand-alone* “Midpoint Review” (i.e., 3,000 homes) was rejected outright by everyone (in fact, the HE in his MPD Application Hearings Recommendations and the Public in multiple Oral Testimonies and WSs proposed a new evaluation of Traffic distribution, volume, and throughput at zero “0” homes). Waiting for 3,000 (or even a lesser number) of homes to be built before even looking at traffic models and analyses of traffic patterns, traffic volumes, travel times, queuing, peak-hour factors, etc. was considered a foolhardy gamble. Mr. Nolan’s testimony refuted that a “Midpoint Review” was adequate. In fact, Mr. Nolan’ testimony focussed on just four of the numerous HE’s recommended Conditions: 11, 12, 15, and 34, all of which had been proposed to be changed by YB. Here is a part of that 7/6/10 testimony YB failed to cite: *“We are willing to work collaboratively with the applicant and the City on the modeling. The HE has made a number of conditions and suggestions to you as a council to adopt. I would just point out the first thing he suggested is that you do that modeling right away. There have been a number of questions about if you should do a quarter-point review or a third-point review. King County is supportive of the idea if you would look at 1000-2000 units to see what actual numbers are generated by the development.”*

Looking at the first part of Mr. Nolan's statement: *“The first thing he suggested is you do that modeling right away.”* Mr. Nolan was agreeing with the HE’s recommendation for new modeling for the DA process. Looking at the second part of Mr. Nolan’s statement: *“There have been a number of questions about if you should do a quarter-point review or a third-point review. King County is supportive of the idea if you would look at 1000-2000 units to see what actual numbers are generated by the development.”* Here Mr. Nolan was suggesting that periodic reviews be conducted to check actual conditions such as actual trip internalization information. This, of course, is technically prudent and makes tremendous sense. In addition, the County recommended tying residential development thresholds to commercial/retail/employment opportunity thresholds,

minimizing (future) MPD residents' potential of developing employment and shopping trip patterns well-outside the MPD boundaries. The County felt such an approach would more closely mimic modeling results of the initial traffic impact analyses.

Unfortunately, YB selectively cited one quote out of context from Mr. Nolan's testimony. YB also chose not to cite salient portions of Mr. Nolan's testimonies related to concerns over use of the ITE Manuals, Internal Capture Rates, data and lessons learned from other MPDs in Western WA, etc. Mr. Nolan also testified that Alternate #3 should have been looked at in more detail, especially in terms of the traffic analyses. In fact, YB fails to mention that Mr. Nolan testified that the County "greatly discourages" any "capacity improvements" on Rural Area roads including Green Valley Road. Mr. Nolan was agreeing with the HE's recommendation for new modeling. So, "(s)hifting the timing of the model" was not supported by King County; in fact, KCDOT supported the HE's recommendation to do the "modeling right away."

**"Supplementary" Condition 12 a. -- Traffic Analyses**

| <b>Figure 5-3: "Supplementary" Condition 12 a. -- Traffic Analyses</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>BACKGROUND</b>                                                      | Because <b>V COA 12</b> deals with <b>Traffic Analyses</b> , I recommend a <b>new Condition 12 a.</b> to deal with <b>Sensitivity Analyses</b> . Although <b>V COA 17 b.</b> does call for <b>Sensitivity Analyses</b> on Peak-Hour Factors (PHFs), it does so only <u>after</u> the <b>Traffic Demand Model</b> has been validated following the issuance of 850 building permits. That is inadequate, since, as stated earlier, 850 building permits represents a ~50% increase in the City of Black Diamond's population and is estimated to not occur for ~5 years until 2016!                                                                                               |
| <b>Supplementary Condition 12 a.--Traffic Analyses</b>                 | <i>The new Traffic Demand Model shall be used to conduct Sensitivity Analyses to understand the effects of changes in projected Peak-Hour Factor (PHF), intersection spacing, signal timing, and Queue length assumptions. The varying consequences to travel times, overall project impacts, and mitigation measures shall be presented to the City and all affected jurisdictions for full evaluation of performance. In addition, a rigorous Cost-Benefit-Risk Analysis shall be performed, at a minimum, for three scenarios: 6-year Transportation Improvement Plans (TIPs) are funded on time; 20-year TIPs are not fully funded; and 20-year TIPs are funded on time.</i> |

YB's Response implied I did not understand the purpose and use of the Traffic Demand Model. Contrary to that *arbitrary* opinion, I fully understand that a "global" Traffic Demand Model is used in conjunction with "local" traffic analysis tools in the overall Traffic Analyses to address a variety of traffic parameters. That is why I labeled this proposed "Supplementary" Condition 12 a., because **V COA 12** deals with Traffic Analyses. The intent is to ensure these important traffic parameters are fully addressed and that Sensitivity Analyses are performed to provide a much better understanding of potential traffic flow patterns and the expected efficiency of any proposed mitigations.

YB's Response stated "*the Rimbo's-defined Cost-Benefit-Risk Analysis, is inappropriate and...not meaningful*", I already have provided ample evidence in my ORH WS as to why Cost-Benefit-Risk (CBR) Analyses are so important to *Projects* of this size. Simply put, CBR Analyses consists of an assessment of costs, benefits, and risks associated with potential traffic mitigations to inform major decision points and identify problems before they become insurmountable. Analyses must also provide assessments of acceptable levels of Cost, Schedule, and Technical Risk associated with various levels of Traffic Mitigations. This affects not only Black Diamond, but adjoining jurisdictions of Maple Valley, Covington, Enumclaw, Auburn, and Unincorporated King County. In fact, such analyses should be continually revisited throughout the life of the projects.

And, to make it very clear and to penetrate the continual fog produced by YB in describing what I am talking about here, I am not talking about CBR Analyses associated with SEPA environmental considerations, rather I am talking about CBR Analyses as they relate to *Project Management and Planning* decisions. Unfortunately, the DAs are completely devoid of any

plans to conduct the necessary CBR Analyses to inform major decision points and identify problems before they start to become insurmountable--technically or fiscally. That is unacceptable! Projects one tenth this size need such detailed analyses. Folly is not strong enough a word to describe such an omission. A "contract" of this size, length, cost, and risk must be subject to such analyses to head off technical, schedule, and/or fiscal disaster. This is common *Project Management and Planning* practice and should go without saying.

**"Supplementary" Condition 14 a. -- Transportation Concurrency Testing**

| <b>Figure 5-4: "Supplementary" Condition 12 a. -- Transportation Concurrency Testing</b>                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BACKGROUND                                                                                                                                                                       | <p>Because <b>V COA 14</b> deals with <b>Traffic Demand Model</b> assumptions and revisions, I recommend two <b>new Conditions 14 a</b> and <b>14 b</b>. Unfortunately, with respect to the new <b>Traffic Demand Model</b>, HE's recommended <b>Conditions 16 &amp; 17</b> were eliminated. <u>This must be rectified</u>. By eliminating these two conditions there will be <u>no</u> evaluation of impacts and mitigations and <u>no</u> transportation monitoring plan <u>prior</u> to entering into a DA. This is very <u>risky</u> and <u>does not protect the City</u>, its businesses, and its citizens. For any mitigation plan to succeed, at a minimum, <b>Transportation Concurrency</b> must be met. Essentially, the City committed to density <u>before</u> concurrency!</p> <p>The MPD Ordinances' <i>Exhibit B--Conclusions of Law, para. 30</i> mentions ensuring "<i>concurrency at full build-out.</i>" Unfortunately the <i>MPD Ordinance COAs</i> <u>fail</u> to stipulate Transportation Concurrency testing, nor require adjustments--such as funding, timing, moratoriums, etc.--to be made should a particular improvement fail the Concurrency test. <u>A viable and executable Transportation Concurrency Plan must be required</u>. Lastly, <b>Transportation Monitoring</b> must be <u>pro-active</u>, not <u>re-active</u>, as testified to by WSDOT and many other Expert witnesses during the FEIS Appeals Hearings held in 2010.</p> |
| <p><b>Suppl. Condition 14 a-- Transportation Concurrency Testing</b></p> <p>(HE's MPD Applic. Recom'd TV Cond. 16, but with additions: <u>underlined</u> sentences are new).</p> | <p><u>Once a new Traffic Demand Model is developed, validated, and run, the resulting project impacts and mitigations must be integrated into the DA or processed as a major amendment to the MPD prior to City approval of any implementing projects. Transportation Concurrency testing shall be periodically conducted for each implementing project and at the beginning, midpoint, and end of each Phase to ensure concurrency at full build-out. Subsequent model revisions also shall be validated to ensure results are real and reproducible. Sensitivity analyses shall be conducted to gage the adequacy of key assumptions such as the internal trip capture rates. These sensitivity analyses must assess the risks associated with assuming different sets of assumptions. All results, assessments, conclusions, and recommendations shall be fully documented.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

**"Supplementary" Condition 14 b. -- Transportation Monitoring Plan**

| <b>Figure 5-5: "Supplementary" Condition 14 b. -- Transportation Monitoring Plan</b>                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BACKGROUND                                                                                                          | <p>Please see supporting rationale above under <b>Condition 14 a</b> discussion. This also should fix the "timing" conflicts between <b>V COA 25</b> and that of <b>V COA 11 and 17</b> "<i>to bring mitigation projects into service before the Level of Service is degraded below the City's standard.</i>"</p>                                                                                                                                                                                                    |
| <p><b>Suppl. Condition 14 b-- Transportation Monitoring Plan</b></p> <p>(HE's MPD Applic. Recom'd TV Cond. 17).</p> | <p><i>The intersections needing mitigation as identified in the analysis required above shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the DA for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard.</i></p> |

Both are "Supplementary" Conditions 14 a and 14 b common-sense change. Incredibly, YB's *Response* to my WS for "Supplementary" Conditions 14 a and 14 b stated: "*the requirements of the MPD Conditions of Approval and the Traffic Monitoring Plan are better than concurrency testing. In addition, there is no basis to repeat the fundamental requirement already imposed by Condition of Approval No. 20 that traffic mitigation should be installed before Level of Service problems occur.*" Fortunately, the HE gave no credence to such statements.

Proposed "Supplementary" Condition 14 a. attempts to rectify several issues: (1) Restore the HE's Condition 16 dealing with Traffic Demand Model timing; (2) Ensure Transportation Concurrency testing is conducted at three points of time during each Phase to better ensure concurrency at full build-out; (3) Require *re-validation* of the Traffic Demand Model, as necessary

(this is standard practice in the Engineering world); and (4) Require Sensitivity Analyses as part of the overall Traffic Analyses to gage the adequacy of key assumptions (this also is standard practice in the Engineering world). All of these are necessary to best ensure mitigation needs are identified, adequate mitigation is designed, and necessary mitigation is put in place when needed to ensure concurrency at full build-out. Otherwise Black Diamond runs the risk of compromising its Transportation infrastructure (and that of the State, County, and adjacent Cities).

**“Supplementary” Condition 29 a. -- Transportation Planning**

| <b>Figure 5-6: “Supplementary” Condition 29 a. -- Transportation Planning</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>BACKGROUND</b>                                                             | <p>Because <b>V COA 29</b> deals with Implementation Plans, I propose <b>Supplementary Condition 29 a.</b> The <b>BDMCs</b> require <b>Transportation Planning</b> be done and when it should be done, as shown below.</p> <ol style="list-style-type: none"> <li>1. <b>BDMC 18.98.010</b> states for an MPD--under <i>Paragraph I</i>: “Provide needed services and facilities in an orderly, fiscally responsible manner.” This includes <b>all</b> transportation-related improvements.</li> <li>2. <b>BDMC 18.98.020</b> states, in part, Public Benefits to be derived--under <i>Paragraph G</i>: “Timely provision of all necessary ... infrastructure ... equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops.” <b>All</b> transportation-related infrastructure must be provided in a “timely” matter to avoid even worse gridlock than today. Plus, it is the law!</li> <li>3. <b>BDMC 18.98.080</b> states, in part, as COAs of any future MPD permits--under <i>Paragraph A.4.a</i> that there be a: “...phasing plan and timeline for the construction of improvements ... so that: Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ....” So, the required improvements must be in place at final plat approval. However, the City’s current <i>Six-Year TIP</i> contains projects that clearly will not mitigate the impacts of the MPDs <b>and</b> do not have real funding sources identified, securing ROWs, etc. This effectively lets the Master Developer largely off the hook for funding such mitigations. Once again, where is “growth paying for growth”?</li> </ol> <p>In addition, mitigations proposed for Maple Valley and Covington must be addressed in an overall <b>Transportation Plan</b>. Those proposed mitigations (out to at least 2026!) must <b>not</b> be “frozen in time” based on 2009 flawed analyses. <b>Transportation Plans</b> must define needs, routes, concepts, schedule, estimates, funding sources, risks, cost-benefit-risk analyses, and potential impacts.</p> |
| <b>Supplementary Condition 29 a-- Transportation Planning</b>                 | <p><i>A complete set of Transportation Plans shall be developed that include, at a minimum, project descriptions, project impacts, mitigations proposed, estimated costs, cost shares, identified funding mechanisms, and risks of potential revenue sources for both route and intersection improvements to fully mitigate all transportation-related impacts on all geographic areas (including the Cities of Maple Valley and Covington and the surrounding unincorporated areas of King County) studied before each Phase begins. Cost-Benefit-Risk Analyses shall be conducted for each mitigation proposed that provide specific details for decision-makers and assess potential impacts associated with slips in schedule, not securing adequate funding, and traffic pattern changes. Such Plans shall be submitted to the City for review and approval 180 days before a Phase is scheduled to begin.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

Predictably, YB’s *Response* to my “Supplementary” Condition 29 a. stated it as unnecessary: “the MPD Conditions of Approval already assure that transportation mitigation is identified, updated, and constructed in a timely fashion.” As I have explained in detail in my ORH WS, the DAs must discuss Transportation Planning. Proposed “Supplementary” Condition 29 a. requires a complete set of Transportation Plans, which must, at a minimum, define needs; routes; concepts; schedule; cost estimates; potential funding sources and likelihood of access to them; technical, cost, and schedule risks; cost-benefit-risk analyses; and potential impacts related to each risk factor. Finally, let’s be clear: the *MPD Ordinance COAs* lay out the rules and contours of what is required. There is no argument there. However, the DAs are to detail the 7 “W’s” of Who? What? Where? Why? When? Which? and How? This has not been done and, thus, the DAs are deficient!

**“Supplementary” Condition 33 c. -- Citizen Review Committees**

| <b>Figure 5-7: “Supplementary” Condition 33 c. -- Citizen Review Committees</b> |                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>BACKGROUND</b>                                                               | <p>Because <b>V COA 33</b> deals with Green Valley Road--a King County road--and residents outside the city limits, a <b>new Condition 33 c.</b> is proposed that deals with <b>all</b> King County roads that will be affected by the massive traffic to be generated by the MPDs on these 2-lane windy country roads.</p> |

**Figure 5-7: "Supplementary" Condition 33 c. -- Citizen Review Committees**

|                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Supplementary Condition 33 c-- Citizens' Review Committees</b></p> | <p>Separate Citizen Review Committees will be established for Issaquah-Hobart-Ravensdale-BD Rd., Auburn-BD Rd., Kent-BD Rd., Lake Holm Rd., Thomas Rd., Covington-Sawyer Rd., and Green Valley Rd. Some may be combined should the citizens agree. Each Committee will be comprised of five members. KCDOT shall be invited to participate as a member in each committee. The other members will include three citizens along the road in question and one representative of the Master Developer. Black Diamond can send a non-voting representative to participate in Committee meetings. The Committees will be responsible for setting their goals and agendas. The express intent is to provide the Public a voice on potential impacts that could affect their quality of life.</p> |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

YB's Response to my WS for "Supplementary" Condition 33 c. stated that it: "is more than willing to meet with members of the public to discuss their concerns, and has met with a number of individuals. However, the Examiner cannot recommend nor can the City impose a mitigation condition that obligates King County to act, especially one that appears intended to provide a citizen veto to YB's development plans." I applaud the Council for establishing a Citizens' Review Committee for Green Valley Rd and YB for supporting same. However, "Supplementary" Condition 33 c is necessary because there are several flaws in *MPD Ordinance Condition 33 b.*: (1) Many other King County roads will be directly affected by the proposed MPDs, especially the well-traveled Issaquah-Hobart-Ravensdale-Black Diamond Rd. corridor; (2) Inexplicably, King County is not offered a position on a Committee dealing with a road under its *exclusive* jurisdiction; (3) Inexplicably, Black Diamond is provided a position on a Committee dealing with a road not under its jurisdiction; and (4) The citizens who live, work, worship, and recreate along the road are offered a permanent *minority* say on the Committee. "Supplementary" Condition 33 c. seeks to rectify each of these flaws in *V COA 33 b.* Also, it would be surprising if King County chose not to participate given its already keen interest (i.e., extensive DEIS and FEISs Written Comments and participation by technical experts in every Hearing). Finally, I never stated Citizens on these proposed Committees would have the power to "veto to YB's development plans."

## 6.0 CONCLUSIONS

The **DAs** are deficient in Transportation Plans & Mitigation, Financial Plans, Traffic Demand Model & Analyses, Concurrency, Vehicle Trip Reduction, and Transportation Monitoring and require specific revisions. **MPD Ordinance COAs** potentially handcuff the Council in addressing some of these, but the HE provides good advice for the Council to consider.

1. **Traffic Demand Model** under development needs to be validated and used to inform detailed Traffic Analyses to identify potential mitigations prior to DA approval. Mitigation list is suspect, as HE found the old model and key assumptions flawed.
2. Traffic modeling/analyses **assumptions** need reassessment, especially ICRs, which *inordinately* drive overall mitigation.
3. **No Transportation Plan** detailing Tasks and Schedule, integrating the other plans mentioned herein, and including design, construction, maintenance, and operation of the vast transportation infrastructure the MPDs will require.
4. **No Traffic Demand Model Validation Plan** to validate/re-validate the model to identify and evaluate additional mitigation.
5. **No Traffic Analysis Plan**, along with no details on assumptions to be used and their sensitivities.
6. **No Financial Plan** to assure transportation obligations can be met, nor a process to evaluate jurisdictional pro-rata shares.
7. **Transportation Monitoring Plan** is primarily "re-active" and provides the City no leverage to assess mitigation needs.
8. Transportation infrastructure improvements are not linked to implementing project level **Transportation Concurrency**.
9. **Traffic Monitoring Plan** does not require transportation concurrency testing for implementing projects.

10. DAs violate timing requirements of **GMA Transportation Concurrency** in **BDCP 7.9.2** and **BDMC 18.98.080(A)(4)**.

11. **Traffic Monitoring Reports** do not require City approval to ensure an impartial and accurate traffic assessment.

### 7.0 RECOMMENDATIONS

The HE provided an excellent “blueprint” for how the Council could proceed. There are several DA changes the Council should make and several Amendments the Council should append to the MPD Ordinances to ensure MPDs benefit the City.

1. **ACCEPT:** The HE’s recommendation the DA Traffic Monitoring Plan be revised to require City approval of Traffic Monitoring Reports to protect the City and ensure impartial Reports to include: (1) How forecasts of future traffic volumes will be made and used to adjust the model (*V COA 11 & 17*); (2) Frequency of Traffic Counts and LOS computations; (3) Comparison of results from a validated model and subsequent analyses with the LOS threshold for each existing facility; (4) Evaluation of the extent to which MPD traffic would cause or contribute to any LOS failure on existing facilities (*V COA 15*); and (5) After-the-fact Monitoring results of traffic improvements and proposed plans to remedy any deficiencies found.

2. **ACCEPT:** The HE’s recommendation: (1) No implementing project to be approved unless it complies with City Concurrency requirements and (2) Monitoring plan state GMA concurrency review to be conducted at project implementation and supersede any conflicting timing in the monitoring plan. The State’s GMA requires the City ensure each Implementing Project satisfies concurrency. So, at each stage transportation mitigation projects must be funded and included in the 6-yr TIP so that LOS requirements are met. The Traffic Monitoring Plan must be revised to incorporate such concurrency requirements. Transportation concurrency comprises possibly the most critical and far-reaching of the HE’s recommendations.

3. **ADOPT:** The five proposed “Supplementary” Conditions (see Section 5.0) as MPD Ordinance Amendments:  
Traffic Analyses--Conduct traffic analyses using the *new validated model* to evaluate key parameter sensitivities and Cost-Benefit-Risk Analyses related to potential funding shortfalls to evaluate potential future mitigation deficiencies.  
Transportation Concurrency Testing--Prior to DA approval conduct analyses using the new validated model to determine needed mitigations and test concurrency at Phase beginning, midpoint, and end to ensure concurrency at full build-out  
Transportation Monitoring Plan--Monitor transportation infrastructure to identify those improvements to be constructed with development to bring mitigation projects into service *before* the Level of Service is degraded below applicable standards.  
Transportation Planning--Develop Transportation Plans that include: mitigations proposed, project impacts, estimated costs, cost shares, funding mechanisms and potential revenue sources for both route and intersection improvements to *fully mitigate* all transportation-related impacts on all geographic areas (including Maple Valley, Covington & KC) before each Phase begins.  
Citizen Review Committees--Establish Committees (incl. KC, at its *discretion*) for Issaquah-Hobart-Ravensdale-BD Rd., Auburn-BD Rd., Kent-BD Rd., Lake Holm Rd., Thomas Rd., Covington-Sawyer Rd., and Green Valley Rd.

**Figure 7-1: Final Concerns for the City Council to Assess and Address**

- Since there is no validated **Baseline Traffic Demand Model**, complete the new model and validate it now, then use it coupled with detailed Traffic Analyses to provide predictions, reduce risk, and lend some certainty to understanding impacts on the City’s and Region’s Transportation infrastructure. Otherwise, the City lacks reliable forecasts of what future traffic patterns and volume scenarios could look like and what transportation infrastructure mitigations might even work.

**Figure 7-1: Final Concerns for the City Council to Assess and Address**

- **Mitigation Agreements** with outside jurisdictions do not include Transportation mitigations the HE believed were technically defensible. Nor did all the *independent* Technical Experts and the vast majority of the Public. Consequently, those negotiations have no common database with which to work, thus, the mitigations listed are suspect, at best; completely inadequate, at worst.
- YB effectively is vested on all transportation-related stds. & requirements through full build-out. Such standards and requirements protect the Master Developer, **not** the City, its residents, or the Region's citizens. They will unduly handcuff future City Councils by putting the burden of proof on the City to substantiate the MPDs are causing future traffic problems--a recipe for future lawsuits.
- Major changes needed to the region's **Transportation Infrastructure** due to MPD total size--6,050 homes and 1.1 million sq ft commercial footprint and generating over 10,000 daily commuter trips--are not likely to be feasibly or economically mitigated due to the geographic and funding constraints. The region's Transportation infrastructure could suffer gridlock for several decades.
- YB proposes **Funding Sources** that rely primarily on other people's money to build needed infrastructure or monies that currently do not exist and are not likely to exist. Both the WA State and King County Departments of Transportation have precious little funds to allocate in southeast King County. The Alaskan Way Viaduct Replacement and 520 Bridge Replacement projects will drain State funding coffers for a very, very long time. King County is trying to stretch its ever-dwindling transportation budget to simply maintain road safety, not increase capacity, in the unincorporated areas. State-elected officials, WSDOT, KCDOT, and the PSRC (e.g., Transportation 2040) have made these points abundantly clear. This is possibly where risks are the greatest !

- **Hearing Examiner did not have enough time/he didn't address all issues/Council should remand the DA back.**
  - The Hearing Examiner and his staff team spent quite a bit of time, 800 hours in fact, on the DA.
  
- **Noise/Construction hours**
  - For noise mitigation see DA Section 13.7.ii.2.b—this is directly from Villages MPD condition of approval #44. MPD conditions of approval cannot be changed through the DA. YB and property owners meet and if they cannot reach agreement then there is a list of mitigation measures per the condition.
  - For the noise committee see Lawson MPD condition of approval #45—the community can have input on the regular report that is prepared.
  - Also nothing is required to be in the DA regarding the noise committee, which was established as part of Villages MPD condition of approval #45.
  - For construction hours, see HE recommendation p. 104 where he notes that the proposed construction hours in the DA are more restrictive than anywhere else in the City.
    - See Section 12.8.13 in The Villages DA:
      - BDMC 8.12.040.C (Exhibit “E”) establishes the following noise standards: “Sounds originating from construction sites, including but not limited to sounds from construction equipment, power tools and hammering between seven a.m. and eight p.m. on weekdays, between eight a.m. and six p.m. on Saturdays, and between nine a.m. and six p.m. on Sundays shall also be exempt.”
      - Pursuant to Condition of Approval No. 43, Master Developer nonetheless agrees that it shall comply with the following, more restrictive noise standard: any sound made by the construction, excavation, repair, demolition, destruction, or alteration of any building or property or upon any building site anytime shall be prohibited on Sundays and City holidays and outside the hours of 7:00 am through 7:00 pm, Monday through Friday and 9:00 am through 5:00 pm on Saturday, subject to emergency construction and repair needs as set forth in BDMC 8.12.040.C (Exhibit “E”).
      - On a case by case basis, work may be permitted on Sundays if authorized by the Noise Review Committee; however, no work shall occur outside the hours of 9:00 am through 5:00 pm on Sundays.
  
- **Fee-in-lieu/Open Space/Lake Sawyer Regional Park**
  - See DA Section 9.5.3 regarding fee-in-lieu; staff cannot spend money without Council approval

EXHIBIT

- Sterbank’s language
  - See DA Section 9.1 for open space requirements, all required open space will be provided on-site.
- **Funding agreement**
    - The funding agreement doesn’t set the pay scales of the MDRT, City Council has the authority to set salaries.
    - Despite what you may have heard, the City does have an adopted fee schedule.
- **Updated DA—heard testimony on lack of updated Development Agreements, missing updates from the many exhibits that have been submitted.**
    - Recommended additional DA language has been provided by city staff, the applicant, parties of record and the Hearing Examiner. Any changes to the June 2011 version of the DA will ultimately be up to the City Council as you are the final decision makers.
- **Stormwater/Phosphorous**
    - See p. 45 of the Hearing Examiner’s recommendation, where he notes that “no new information was presented to merit supplemental conditions for additional stormwater/water quality mitigation. The COAs for both MPDs include a substantial number of requirements for the protection of water quality, both on the surface and below the ground, as well as general protective measures and adaptive management options in the case that environmental advantages are identified in the future. The 2005 stormwater manual and other applicable regulations will provide for extensive mitigation at project level implementation. AS such, there is no completing reason to seek supplemental DA terms to address these impacts for these projects.
- **Lake Sawyer flooding**
    - See p. 43 of the Hearing Examiner’s recommendation where he states that, Finding of Fact 8 of the MPDs clearly and unequivocally determined that the MPDs would not create any flooding impacts to Lake Sawyer...Repeated rebuttals by two experts (Exhibit 215 from the City’s expert Dan Ervin) supported the original analysis...
- **Wildlife/eagles**
    - See the Hearing Examiner’s recommendation on p. 50 for wildlife and p. 47 regarding that addresses bald eagle protection. There has been no new information provided suggesting bald eagle protection needs to be addressed in the DAs.

- **CFDs**
  - The only place in DA where these are mentioned is in relation to the satellite fire station in Villages DA Section 13.4.D.iii.a.
  
- **Wetlands restoration**
  - See DA Section 8.1, which states that all development in the MPDs shall be subject to the standards, requirements and processes of the Sensitive Areas Ordinance.
  - Per the SAO, impacts on wetland functions are to be mitigated in accordance with BDMC Section 19.10.240 (mitigation requirements) and 19.10.250 (wetland mitigation plan).
  
- **Schools/Stormwater facilities located outside the City**
  - See p. 38 of the Hearing Examiner recommendation on this issue; he notes that if King County were to prohibit the development of schools in the rural area, the applicant has the option to build them within the City.
  
- **Real estate signage**
  - The City and Yarrow Bay have agreed to comply with the Hearing Examiner's recommended implementing condition Ds.

RESPONSE TO HEARING EXAMINER RECOMMENDATIONS AND  
YARROWBAY REVISIONS TO THE VILLAGES AND LAWSON HILLS  
DEVELOPMENT AGREEMENTS

Contents

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General Issues

The revisions made to the DAs by YB in order to satisfy the Hearing Examiner's Implementing Conditions provide a great beginning in necessary changes to the DAs. While they are being presented as a "deal," it is definitely encouraging to see these necessary adjustments. However, additional measures are necessary to protect the City over time, as approved and recommended in Supplemental Conditions not addressed in Exhibit 7.

The most prudent City response to such a long-term, binding agreement is to remand the DAs back to the Hearing Examiner for completion of the tasks he was not given time to perform. A development so monumental should demand the consideration of all relevant information and the negotiation of all relevant issues. The 3500 pages of information provided is a lot to sift through for anyone, including the Hearing Examiner (hereafter HE). The public tried to fill those 3500 pages with relevant, authentic concerns and information for the protection of the entirety of Black Diamond and surrounding communities. While what the HE was able to accomplish in the time given is very impressive, he did not respond to each section of the DAs, as he would have, and as a commitment so huge demands. His omissions were not because of the unimportance or irrelevance of the unaddressed Sections, but simply because the request for adequate time to respond was denied, forcing upon him a need for extremely focused prioritization. Having all the impartial information he could offer would, at the very least, provide the Council with confirmation that the Council is, one way or the other, doing the right thing – that thing which is in the best interests of Black Diamond.

At least two attorneys have stated that the Council has the legal option of remanding the DAs. Furthermore, the HE has stated that “even purely legislative decisions can be reversed by a court if they are highly irrational. In this case the record is replete with rational reasons to deny the MPDs, such as inadequate school funding, uncertain funding of state road facilities and transportation/environmental issues related to separation from major employment centers.”

During this time of public and Council isolation from one another, it would be easy for the public to take on a “them” quality, rather than being the very City the Council represents. It would be easy for residents to begin to be seen as acting in the best interests of the individual, rather than

of the City, to be unaware of the rights of property owners, to be contrary to the benefits of responsible growth, or to be acting out of simple resistance to change. However, careful examination of the voluminous materials presented by the public citizens and experts shows that common sense and fairness is of ultimate concern. The public wants what is best for the City – its people, its environment, its financial viability, and its future.

As stated by the HE, “...most of the issues brought up by the public *and addressed in the DAs* (emphasis added) are subject to the discretionary contractual and policy authority of the Council. The Council has wide discretion as to what it can include in the development agreements and the public has corresponding wide latitude in suggesting what they’d like to see in the development agreements.” This means that the Implementing Conditions address a minority of issues in question. It is interesting that so much emphasis has been placed on determinations of legality, when most issues for these DAs rely on choices made by the Council. Pursuant to HE comments concerning State law, a court is not necessarily going to force the Council to protect the City. That is left up to the Council. It should be recognized that a difference exists between what is legally acceptable and what is allowable and in the best interests of Black Diamond. It is up to the Council to choose what is best for the City. Remember the HE’s words, “Council discretion in negotiating a development agreement is wide because its contents are not limited to any permitting criteria. The development agreement can address any conceivable master plan development impact. development agreements serve as a powerful opportunity for the Council to look at the impacts of the master plan developments as a whole to ensure that they will develop as intended and that all impacts are adequately mitigated.” The HE also stated in his

recommendation to the Council that the input and suggestions of citizens “will result in the substantial improvement of those agreements.” Please consider Supplemental Conditions.

The concern regarding SEPA:

According to the HE, “The available case law on the issue suggests that these multiple reviews are to be tolerated in deference to the regulatory gap filling role assumed by SEPA. SEPA overlays and supplements all other state laws and mandates governmental bodies to consider the total environmental and ecological factors to the fullest in deciding major matters.” This suggests that the Council may be able to impose stricter standards than those outlined as legal. Remember that there are examples of the court denying special use permitting even after SEPA was approved, because “the MDNS did not constitute approval of the project and that the YB had to comply with all applicable permitting requirements.” All these public and expert concerns that center around environmental impact, which are arguably deemed out of the scope of this particular Hearing, are not out of the scope of consideration of this Development within a different venue. But if the DAs are approved now, the opportunity to consider these will disappear and we will be locked in to an incredible commitment. The HE referenced the denial of the Victoria Tower application on the grounds that new information was available at the DA level that was not available at the time the general allowance for such a building type was made. This implies that the new information available in the YB DAs that was not anticipated by the FEIS, such as increased trip generation due to changes in commercial property to schools, locations of connecting roadways, adjustments to housing types and population densities, changes in fiscal analyses, applied interpretation of BDMC and the way it aligns with WAC and the GMA, changing calculations to impervious ground cover, etc. are important to explore. New

information is sometimes a product of the “refinement” of old information. Rather than having to wait for lengthy SEPA determinations at every implementing project, it would be better to remand now for more specific evaluation in order to know before each implementing project that SEPA will go smoothly, quickly, and will be stress-free. So much is currently hinging on SEPA compliance at the Implementing Project stage. This is one reason it is so important to refuse to agree to 3.1, as discussed below.

Remember that “the development agreement can also include negotiated terms that are not necessary to implement MPD conditions of approval or any legal requirements. The YB and City argue that the scope of the hearing is primarily limited to implementing the conditions of approval of the master plans. The Black Diamond and state regulations do not support this position. The scope of what can be included in the development agreements should not be confused with what can be required as opposed to requested from the YB.”

The Implementing Conditions are conclusions of law. The HE has determined that those Conditions are required in order for the DAs to fulfill the requirement that they satisfy the MPD COAs. YB is treating conformance to the Implementing Conditions as though it is a negotiating point, when their agreement to the Implementing Conditions should be the minimum expected in order for the DAs to be legally acceptable, and energy should be focused, instead, on the negotiation of Supplemental Conditions. In Ex. 7, YB strongly encourages the City to pass the DAs and warns that it may push for its interpretation of dwelling units if the Council does not approve the DA with the revisions as presented in Ex. 7. The Council should require the legally accurate interpretation of dwelling units while still being able to negotiate supplemental

protection for the City. The “hardships” of satisfying the Implementing Conditions would be required regardless of the Council’s consideration of Supplemental Conditions. Rather than simply satisfying the DA requirements as loosely as possible to be legal, the opportunity exists to negotiate protection for the City.

While it may appear upon first consideration that YB is providing for facilities, services, and conditions far beyond the call of duty, the City is actually providing much more to YB. These DAs do not ensure that those beautiful pictures YB again presented represent the actual product to which we are agreeing. I encourage the Council to take this final opportunity to create what supplemental conditions it still can in order to provide that the DAs do allow a beautiful city to the extent still within the Council’s control.

While we do not have all the legal information and recommendations that we could, we do know that the following Conditions deserve to be addressed before acceptance of the DAs:

## Recommendations by V DA Section

2.3.1 – “General character” should be defined.

3.1 – In order to maintain the enforceability of prior agreements, such as the FEIS, it is *imperative* that the Council refuse 3.1, as it is a loophole for YB to invoke the less stringent of standards in the event that future implementation of the MPD brings about an unforeseen point

of conflict with prior agreements. As the HE explained, it could render meaningless the important elements of FEIS conformity that have been left for the Implementing Project stage!

4.2 – The HE has stated, “The Council can, within its land use policy making discretion, require that the DAs adhere to the attached/detached numbers proposed in the MPD applications.” It is in the City’s best interest to stipulate that attached/detached numbers proposed in the MPD applications do not exceed those proposed in the DAs. This is an opportunity to require greater specificity not appropriate for the Implementing Project level in order to reduce impacts in a legal manner. This change would be a very positive protection for Black Diamond, and it is easily done.

4.2 – The Council can require a more precise allocation of dwelling units per phase if it so chooses, such as requiring a DA amendment if the targeted amount is exceeded by more than 5%. I suggest the Council do so, as a “target” provides virtually no specificity for the City, whatsoever. It certainly is not much to ask that those targets not be exceeded by more than 5% without a DA amendment.

4.2 – Protection of trees to the fullest extent possible helps preserve a rural character that will be in jeopardy. According the HE, “Council has few options to retain more trees and/or vegetation. If this is a priority for the Council, it could confer with staff as to what options are available within the confines of the MPD approvals to add further restrictions to the tree protection ordinance and other vegetation retention measures.” Please enhance Black Diamond’s appeal to prospective residents by adding restrictions to protect trees and other vegetation where possible.

4.4 – “To provide for some public oversight over the minor amendment process, the DA could require that all decisions to classify an amendment as minor be posted on the City’s website so that

the public has an opportunity to appeal them. Since provisions on the amendment process are a necessary part of DA implementation, the Council can withhold approval of the DAs if it cannot reasonably agree with YB on this issue.” Posting to the website all minor amendment proposals will provide for greater likelihood that valuable information will be brought before concerned parties.

4.4 – As the DAs are currently written, assurance cannot be obtained via SEPA that an amendment proposed as minor will have no adverse environmental impacts. If it is not subject to SEPA, as a major amendment, then the City needs to recognize that it is relying heavily on the City SAO at the time of each amendment proposal. This holds City liability more vulnerable, rather than having the documented SEPA findings of proof.

4.7.2 – “If the Council chooses to retain the neighborhood commercial uses proposed by the DAs, it may wish to subject those uses to a conditional use approval process in addition to minor amendment approval.” The Council should create and adopt a conditional use approval process. Without it, sufficient justification for denying each amendment would be required by the City. A process for conditional use approval would allow the City much more leeway in denying an amendment in the event such need arises.

Remember that the DA is the last opportunity the Council has to specify zoning-type standards for MPD development. I would recommend that a certain amount of the commercial property be reserved for venues such as intimate concert settings, poetry readings, churches, etc. Otherwise, there may not be room for these amenities to be placed. The Council may wish to consider here how it could provide for the types of residents it would like to attract to Black Diamond.

4.8 – The discrepancy of a total of 1050 units in Phase 1, instead of the 880 agreed to in the MPD, is still unresolved. While it does not provide a discrepancy in the total count for all of the phases, it is, nonetheless, a discrepancy between the MPD and the DA. Furthermore, if the Council adopts the suggested requirement that all phases do not exceed the “targets” as listed in the MPDs, then this count needs to be revised to the original 880 units approved in the MPD for Phase I.

5.5.8 – “As an implementation of land use standards through V COA 128, the Council is free to require additional reasonable landscaping standards if it so chooses.” Also, “the Council can require the Director of Natural Resources and Parks to approve the landscape plans if consistent with City code.” It would be wise to consider overall aesthetic standards at this time, because the Implementing Project stage may be too late to do so. Although a professional landscape architect will design grounds, the Director of Natural Resources and Parks would be much more likely than a “designated official” to provide for and ensure that aesthetic quality standards are met. For instance, the amount of grass in pictures provided by YB won’t be part of the project with the reduction of lawn use agreed to in the MPD. Consideration should be given to how those small yards will be landscaped. Whether the landscaper be required to use bark, gravel, large stones, create totally flat or slightly mounded areas is not a matter for someone such as the SEPA authority, alone, for instance, to evaluate. Since the Council also should define for YB what it requires in order to satisfy the requirement of “other, native preferred vegetation”, an expert should be appointed. (Will any vegetation bloom, have berries? Will yards be contained within ugly cement retaining walls?) Please appoint Director of Natural Resources and Parks, who can address things like variety and natural layout patterns where codes might not specifically cover them. No one wants to see 500 photinia in a row, planted in flat gray pea gravel gardens.

7.1.5 – The Council has the authority to ask that timeframes be imposed upon the Developer. This will be necessary in some instances, especially in determining time allowed for corrections to be made, particularly if the situations in need of correction are resulting in deleterious effects.

7.2.1 – Requiring water certificates for each Implementing Project will provide the City with assurance that is well worth the paperwork! YB is responsible for infrastructure – Not actual availability of product or connection. More importantly, there is additional reasoning behind the HE’s conditions F and H -- of striking the Sections of the DAs discussing water and sewer certificates. The wording could be construed to imply that water resources and sewer connections will be available at the time of any implementing project, which is in no way guaranteed, and should not be implied, as it could become legally required of the City to approve an implementing project with no water availability or sewer connectivity simply because the DAs state that those amenities exist, whether or not they actually do at the time of implementing project application. Water and sewer certificates are needed at the time of each implementing project. The extra time and effort required to process such a certificate will provide crucial information as to feasibility of the project. Requiring certificates allows the City to have control if availability of resources or off-site facilities change or are unavailable at the time of implementing projects.

7.2.5 – I concur with the HE’s recommendation that the wording of this requirement be modified to make it clear that homes selected for the sample should be occupied homes. “...a representative block of occupied homes...” The sampling would otherwise be inaccurate in assessing water usage.

7.2.6 – Water balance calculations need to be performed using only occupied residences – after occupation of 500<sup>th</sup> unit, rather than after 500 units are built.

7.4 – Nowhere do the DAs commit to responding to a stormwater disaster, nor present plans to do so, even though MPD Condition of Approval 71 requires a response plan for stormwater runoff disasters during construction. The only “plan” provided is a statement of intent to use sediment control barriers. A response plan is needed.

7. 2. 4 – An important HE statement here says of his recommendations, “This assumes that the MPDs do not qualify as land use regulations themselves. If they do, as currently ruled by the GMA Hearings Board, the location of the stormwater facility as a GMA issue may very well be a valid consideration before the Hearings Board.” Since the zoning was changed to “MPD zoning,” rather than normal city zoning subject to other land use regulations, it seems to serve as a land use regulation, in and of itself.

Concerning stormwater, the HE states, “It is agreed that the proposed monitoring plans lack timelines and enforcement mechanisms. These themes should and can be required to be in the DA. V COA 73 and LH COA 76 require the DAs to include stormwater monitoring plans. COA81/85 requires that the Master Developer modify existing practices and facilities and/or provide for other mitigation measures to respond to any situation where monitoring indicates that phosphorous outflow exceeds the maximum value. In implementing these requirements, the DAs provide no timeline for compliance or any enforcement mechanism for the City. It is recommended that the DAs impose deadlines for remedial phosphorous mitigation and also provide enforcement mechanisms for the City to compel compliance.” Monitoring may be met

for Lake Sawyer, but there's no revision for stormwater monitoring, and there should be, as recommended by the HE.

7.4.3 – Because of the concerns the Muckleshoot Tribe has concerning Treaty-protected fish, I would strongly urge the Council to require plans for future appropriate mitigation in the event that development results in increased fish morbidity or mortality. The HE has granted the Council permission to ask that YB add additional mitigation measures to the DA.

Condition 9 of MPD Approval states that homeowners Association(s) conditions, covenants and restrictions (CCRs) and/or the proposed Architectural Review Committee shall be required to allow the use of green technologies (such as solar panels) in all buildings and prohibit washing of cars on roadways or in driveways... These items are important measures to help protect water quality, and they should be detailed in the DA.

8.2 Concerning wetlands, the HE says, "If the Council has any concerns on the accuracy of the delineation, it could certainly require in the DA that the wetland boundaries be subject to further verification by Parametrix or another third party reviewer." The Council should use a third party of its choosing to confirm. The presentation of an updated and more readable Constraints Map should not be confused with its validity. Because of the considerable disagreement between expert witnesses and the disagreement between the Applicant's witness and Parametrix, resolution through a third-party study is in order. Unresolved disputes are revolving here around the last chance to confirm accuracy of the wetlands map.

9.1 – It is true, as YB asserts, that the HE specifically noted the need to address the missing 9.3 acres of open space. However, YB focuses attention here while completely disregarding Condition M as it applies to the Villages, that “V DA 9.1 should be revised to enable the City to require that MPDwide open space requirements be satisfied at earlier stages of development within MPD phases as discussed in Section VII.” The area of the HE’s concern not addressed is that relating to the possible ambiguity of open space areas if not specifically assigned along the way. Therefore, the implementing language presented by YB in Ex. 7 does not satisfy Implementing Condition M.

9.2 – Concerning the timing of park construction, the HE suggested that the “Council may wish to negotiate an outside time limit, such as the earlier of 60%/30% or two years.” This would help to assure the City will receive its parks in a timely fashion under a greater variety of circumstances.

Concerning open space, V MPD COA 69 does “provide discretion to include a nonexclusive number of factors in designating open space areas. This leaves room for the Council to treat inundated areas differently than those that are not. In general the Council probably doesn’t want to require added amenities for areas that are more frequently inundated. There are other options. For example, the DA could provide that if a retention/detention facility is inundated for more than six months out of the year it may only qualify as active open space if it is adjoined by highly developed active space that is dry year round, such as a tennis or basketball court.” I request that this suggestion made by the HE be adopted.

9.5.3 – It would benefit the Council to choose to require that the DA provide that the Council make the final decision and also that a public hearing will be held prior to making the decision, as the HE has stated the Council is free to do. Public input may provide staff with valuable information not otherwise available.

9.6 – As allowable Supplemental Conditions, the City Council should pursue some additional voluntary terms that assure that trails have full connectivity, such as requiring that prior to approval of the final implementation project for a phase that YB complete construction of any trail portions necessary to achieve full connectivity within that particular phase. As an additional condition, or in the alternative, the Council could pursue a condition that requires YB to complete any trail gaps that exist for more than x years between the ends of a constructed trail system in any one phase.

9.9.1 – YB did agree to dedicate open space in larger portions during Implementing Projects, but this misses a degree of the HE’s suggestion, which reads that open space dedication be “either for the entire MPD before any project implementation or that a plan be approved by the City at some designated point for each MPD phase.” Earlier and broader is better.

11.1 is not anticipated and contradicts MPD COA 3. I concur with the HE recommendation that the monitoring plan be amended to make it clear that GMA traffic concurrency review shall be conducted at project implementation and that concurrency review shall supersede any conflicting timing identified in the monitoring plan.

11.5 – Even with the power granted the City to review the traffic monitoring, the facts exist – as explained by the HE – That “there are a couple major problems with the presumed Applicant/City

position that do not support consistency with GMA mandated concurrency. First, the City is approving a concurrency program that hasn't been developed yet. The second problem is the significant amount of development and the significant amount of time to develop in each phase creates the potential for a wide divergence from the six year concurrency requirement. It is unlikely that the City could be found to have satisfied its due diligence in assessing concurrency when it only approves a conceptual framework with a huge margin of error where most details are left to the control and discretion of the Applicant." Traffic is a reason the current DAs should not be approved.

13.2 – The HE pointed out that current DA language would allow logging at the proposal stage, not at the approval of an implementing project, and that a significant time can pass between the application and the approval of an implementing project. I concur with his recommendation that the word “approved” be used as it relates to this issue.

Also, RCW 76.09.070 states that reforestation must occur within three years, or five in certain extenuating circumstances. Since the Council may require a stricter time frame in the DAs if it so chooses, I recommend it do so.

13.3 – It is recommended that Council take under advisement RCW 58.17.110, as cited by Rich Ostrowski, which states that a proposed subdivision must be found by the City to show appropriate provisions for, among other things, “schools and schoolgrounds and all other relevant facts (emphasis added), including sidewalks and other planning features that assure safe walking conditions for students...”

The HE recognizes that, unfortunately, a “relatively” good agreement may not be sufficient to assure adequate schools. He asserts that the record makes it abundantly clear that relying upon bond measures funded by persons residing in Enumclaw borders on wishful thinking; that schools will probably be well over capacity during the first few years of MPD build out and that King County may not approve permits necessary to construct schools outside the City’s urban growth area.

Regarding this fact, I concur with these valuable ideas for consideration, also provided by Rich Ostrowski:

1. The city shall request the school district provide written status on adequacy of school facilities during MPD development at frequent periodic intervals as specified by the city council.
2. The city shall request a written confirmation of agreement from the school district prior to making any decisions or statements concerning the adequacy of school facilities.
3. The city shall conditionally approve MPD permits to only allow development to continue when adequate school facilities will be available. If at any time the school district decides provisions for schools have or will become inadequate then all development must stop immediately and be delayed no matter what stage it is until the issue is resolved to the school district’s satisfaction. Of course, the Council can request that the applicant agree to a condition restricting the distance of schools to within a half-mile of MPDs or impose such a requirement through the legally risky imposition of SEPA conditions.

Concerning Urban Growth areas, the HE states that “As to consistency with King County concurrency standards, more information is necessary on the availability of services and

infrastructure to assess the issue.” The Council should investigate this information before approving the DAs.

Since the HE states, with regards to Walkable Distance, “There is indeed a conflict in the City’s MPD decisions on required walking distance to schools. VMPD COA 98 and LHMPD COA 99 both require schools to be located “within the MPDs or within one mile of the MPDs” the Council should request that the applicant agree to a condition restricting the distance of schools to within a half-mile of MPDs.

13.7 – Since storm ponds should only be considered open space if they are developed as an amenity for safe recreational use, the Council should implement the HE’s related Supplemental Condition to plan for activities on stormwater pond locations in the DA in order for that acreage to be included among their Open Space total: “The ‘six months or longer’ in DA 13.7 addressed by Ms. Harp above is somewhat ambiguous. In order to avoid abuses, the Council may wish to clarify that the 6 months is over any two year term or something similar.” The HE also states that it would “be worthwhile for the City Council to see if YB is willing to add compliance to city/state noise standards to the hotline and to the review of the noise committee. It would also be worthwhile clarifying the DA to provide that the noise study required by V COA 44 will be completed prior to the commencement of construction.”

13.8 – The “modest expansion” to the authority of the Green Valley Road Committee (which the HE suggested may be easy to do) would provide better representation and consideration of recommendations on traffic calming strategies, including strategies not identified in the report. It is

understood that this is most feasible if the costs of any alternative measures will not be more than that of the measures identified in the report.

## Concluding Remarks

While the initial “deal” offered for agreement to YBs revised version of the DAs implementing the HE Implementing Conditions may seem like a good one at first glance, YB consistently quotes the minimum requirements, rather than the most appropriate action or mitigation for each situation. An Agreement as this is an overwhelmingly huge commitment that needs to be entered into with the utmost care and assuredness. Black Diamond should be free to carry out its goals and ideals that are advertised with pride on the City website. I encourage the Council to consider not only the minimum legal requirements, but what is best for the future of Black Diamond and South King County. Once again, the citizens are trusting the City to do the right thing.

Respectfully,

Lisa Schmidt

## Written Testimony for City Council Closed Record Hearings

Jack C. Sperry  
29051 229<sup>th</sup> Ave. SE  
Black Diamond, WA 98010

### Obsolete Development Agreements for Review

I'd like to begin by noting that neither the Council, the Staff, nor the Public has an up-to-date copy of the proposed Development Agreements to review at this time. The last sets of Development Agreements that have been posted were put on the City's website in early June of this year. Since then hundreds of exhibits have been posted regarding the content of these Development Agreements. On July 21<sup>st</sup> Exhibit #4 added numerous changes to the Development agreements and was submitted as errata, but the posted DAs have not been republished or redlined. On September 28th YB offered numerous changes to the DAs to show their version of how the DAs should be changed to be in compliance with the 24 Implementing Conditions required by the Hearing Examiner to allow him to recommend approval. Once again no final, or "redline" versions of the Development Agreements that we are commenting on, and you are to review, are available. I really don't understand how you can review, deliberate about, and pass judgment on a set of Development Agreements that are made up of obsolete document versions with voluminous changes contained in separate exhibits. I just wish you were planning to take more time to thoroughly review this material because we will all live with your decisions for the rest of our lives.

### Funding Agreement

On Monday, October 3<sup>rd</sup>, you heard Mr. Wheeler tell you that including the Funding Agreement as part of the Development Agreements creates a grave concern on the part of the public that the

funding of so many of our future City employees by the Master Developer gives the appearance of a serious conflict of interest on the part of those employees. I just want to read to you what the Hearing Examiner said about this in his Implementing Condition W. He said: "It is recommended that the DA be revised to require that the proposed funding agreement attached as DA Ex. N, or a substantially similar agreement, be executed prior to the acceptance of any implementing project applications or prior to the execution of the DA and that no applications already received be processed further until the Ex. N agreement is executed." I hope the Council will immediately move to extract the Funding Agreement from the Development Agreements, review them, modify them as appropriate, and obtain Council approval of them prior to the acceptance of any implementing project applications.

### **Water Systems**

The Hearing Examiner has recognized on page 31 of his recommendations that the blanket statement in paragraph 7.2.1 of the DAs which states "**Any Implementing Project application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement.**" is not appropriate and should be removed. Specifically the Hearing Examiner has stated: *"It is recommended that the Council remove the provisions in DA 7.2.1 that nullify any project level requirements for certificates of water availability. As previously noted, no findings have been made in the MPD/EIS hearings that water will be available at the time of project implementation. The EIS only concludes that water will ultimately be available for project build out, but makes no assurance that water and supporting facilities will be available as implementing project applications are filed. Also, RCW 36.70B.170(1) requires DA provisions to be consistent with local development standards. If any Black Diamond regulations require a certificate of water availability at project implementation, this requirement cannot be waived by the DA"*.

I strongly support the Hearing Examiner's recommendation that the blanket statement in paragraph 7.2.1 that the DAs provide water availability in lieu of Certificates of Water Availability be removed. The Hearing Examiner in his Implementing condition F states: "Villages DA paragraph 7.2.1 should be eliminated. It provides that the DAs shall serve in place of certificates of water availability for the MPDs." Yarrow Bay has struck that blanket statement in their proposed DA language. I urge the Council to accept the Hearing Examiner's recommendation and Yarrow Bay's proposal, since the blanket statement is a violation of state code because it's not consistent with Black Diamond Municipal Code.

Now in the Staff Report it states that since the Master Developer will be responsible for providing the infrastructure, there is little value added by requiring the issuance of water and sewer certificates for individual implementing projects. I quote from the Staff Report: "In staff's opinion, requiring the issuance of certificates will add unnecessary paperwork and workload during the process of reviewing Implementing Projects."

Let me remind you that the Hearing Examiner pointed out that there are no findings in the MPD or EIS that water will be available at the time of project implementation, so the City is going to have to make that commitment. Water Certificates are going to be required just as they are for every other developer who's dividing land into seven or more parcels. BDMC title **17.12.010** line **H** requires Certificates of Water and Sewer Availability for any Preliminary Plat Application. Therefore Preliminary Plat Permits PLN11-0001, PLN11-0008, and PLN11-0010 are not complete as submitted and must be updated and provided with Certificates of Water Availability for their applications to be properly deemed complete.

### **Sewer Systems:**

In my written testimony for the Open Record Hearings I found fault with and recommended deletion of paragraph 7.3.1 in each Development Agreement. Paragraph 7.3.1 of the Villages Development Agreements states (and I quote): *"This Agreement provides sewer availability to service 4,800 Dwelling Units on The Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement. Any Implementing Project application process that calls for a certificate of sewer availability shall be satisfied by reference to this Agreement."* A similar statement is made in the Lawson Hills DA.

In his recommendations on page 36 and 37, the Hearing Examiner said the following (and I quote) *"DA 7.3.1, stating that the DA provides for sewer availability, should be stricken. The necessity and meaning of the section is unclear and could be construed as a preemptive finding that sewer will be available for all implementing projects at any time. While the EISs conclude that adequate sewer will be available at some point in time for MPD development (Villages EIS, p. 3-49; Lawson Hills EIS, p. 5-6), nothing in the EISs or elsewhere in the record suggests that adequate sewer will be available at any time that an implementing project application is filed. The uncertain timing of sewer availability arises from the City's dependence upon Metro to provide sewer service. An agreement between the City and the Municipality of Metropolitan Seattle (referred to as "Metro") regarding sewer service (Ex. 215, Ex. D) allows the City to connect local sewer collection infrastructure to the Metro system and to transmit locally generated wastewater to Metro for treatment. Metro, in exchange, is required to construct whatever sewer facilities are necessary to treat the sewage. However, the agreement does not require King County to build the sewer facilities within any specified time period, providing merely that the City's facilities shall*

*connect to those of King County at such time as King County's facilities become available. See Ex. 215, Ex. D, Section 4. Consequently, there is no guarantee that adequate sewer will be available whenever the Applicant decides to apply for an implementing project.*

The Hearing Examiner in his Implementing Condition H says; "Villages Development Agreement paragraph 7.3.1, stating that the DA provides for sewer availability should be stricken." Yarrow Bay has proposed to totally strike this paragraph as recommended by the Hearing Examiner. The Council should accept Yarrow Bay's proposal that paragraph 7.3.1 be stricken, but also require that Sewer Availability Certificates be required for each preliminary plat application per BDMC title **17.12.010** line **H**. This means that Sewer Availability Certificates are required for those Preliminary Plat Applications PLN11-0001, PLN11-0008, and PLN11-0010 previously submitted to the City as otherwise they would be incomplete without the blanket statement in paragraph 7.3.1 of the DAs. Because the City must depend upon the County for increased sewer offload capacity there is some uncertainty in its availability. Sewer certificates will be required to establish this availability for each Preliminary Plat Application.

**Lake Sawyer Flooding Potential:**

During the MPD and Development Agreement hearings I tried to express my concerns through testimony regarding the large volumes of new stormwater runoff from the MPDs that would be flowing to Lake Sawyer. Since Lake Sawyer is subject to periodic flooding of low lying lots that occurs on average a couple of times each decade I wanted to highlight this concern and quantify the potential rise in water level from new MPD stormwater runoff. While the volume of stormwater runoff is large, the Lake's water level rise will generally be relatively small if the water exiting the lake's outlet through the weir and culverts to

Covington Creek remains unimpeded. The Applicant went to great trouble in engaging two separate consultants and the City engaged RH2 Engineering to try to refute the data in my testimony because I had argued as a conclusion of my analysis that the Applicant should be required to send no additional water to Lake Sawyer than currently comes from the MPD properties in their undeveloped state. This, of course, would have meant larger stormwater ponds to hold the water onsite rather than sending MPD runoff to Lake Sawyer and its surrounding property owners.

In my analysis I used the water runoff volumes provided to the City in January, 2011 by Triad Associates in support of their calculations on the Total Phosphorous Load that would be coming to Lake Sawyer as required by COA 81/82. The runoff volume of water I used in my analyses was calculated by Yarrow Bay consultant Triad Associates and assumed no ground infiltration while the water was in their retention ponds. While there obviously would be some infiltration it might not be very much in the winter months of December and January with which I was concerned due to relatively rapid flow through the ponds. During December and January the data in the Triad report showed that the quantity of water flowing to Lake Sawyer was equivalent to nearly seven vertical inches in equivalent Lake water level. I also pointed out that water level measurements for Lake Sawyer taken by King County during the years 1996 through 2003 show that on average the lake rises about 2 ½ inches each month and typically reaches its peak in January. Since flooding at Lake Sawyer has historically occurred in January or early February this additional stormwater coming to the lake in December and January could be of real concern. Now I never said that the lake would rise an additional seven inches due to the MPD runoff, but that is what some consultants tried to say I said in order to try to discredit my analysis.

In Yarrow Bay's response to my testimony, documented in Exhibit 139, Mr. Alan Fure of Triad Associates went to great lengths to perform detailed flow calculations of water flowing over the weir and through the culverts to Covington Creek. For these analyses Mr. Fure made the assumption, highlighted only in a footnote, that some of the new water runoff from the MPD basins tributary to Lake Sawyer that was shown in his January, 2011 Phosphorous report would now be infiltrated using LID techniques. It turns out that the water assumed to be infiltrated was actually 40% of the total. So he reduced the amount flowing to Lake Sawyer from 615 ac-ft. to 372 ac-ft. per year. As an aside, I don't think anyone has seen any details to support that big of a reduction in MPD runoff to Lake Sawyer since the January report on total phosphorous load was presented to the City. In any case, the analyses that Mr. Fure performed in Exhibit 139 were done to be able to calculate the water leaving the lake so he work backward to determine what the impact would be on lake level rise from MPD stormwater runoff under various worst-case starting lake levels as seen historically during previous floods.

Mr. Fure's analyses show that at high-water levels of around 10 inches above the weir, which are seen most years in the January-February time frame, the water leaving the lake is constrained only by the weir at the lake's outlet and can flow unimpeded through the outlet culverts. At these lake levels the water is exiting the lake at fairly high volumes and the additional MPD stormwater runoff is able to exit the lake with only minimal additive increase to the already high lake level (about 3/8ths of an inch or less). However, at higher water levels, somewhere around 1 ¼ to 1 ½ ft. above the weir, the flow out of the lake starts to become constrained by how much water can pass through the three culverts under 224<sup>th</sup> Ave. SE and into Covington Creek.

In 1996 we experienced a flood on Lake Sawyer where the water level was more than 2 ft. (actually 26 inches) above the weir. When Mr. Fure analyzed that condition, his calculations showed that the Stormwater runoff from the MPDs would have added approximately 1 inch of additional rise to the already flooded properties around the lake. While that's less than one might expect, every inch counts on low lying properties with flat front yards. And if all that water that was assumed to be infiltrated doesn't really happen during the January-February time frame, the water level could increase even more.

I want it to be clear that I generally don't disagree with these calculations and furthermore agree that under Mr. Fure's assumptions the rise in lake level would be relatively small from the MPD stormwater runoff rise in most years. But there are many assumptions in these analyses about runoff from various types of pervious and impervious surfaces and how much water will be infiltrated, so I really don't know how much variability may be involved in the calculations. Even assuming the calculations are generally accurate, why should Lake Sawyer residents be faced with any additional water level rise caused by these MPDs during those years when unusual amounts of winter rainfall cause flooding damage to homes and septic systems around the Lake?

I believe that it is not unreasonable to ask Yarrow Bay to retain the excess runoff their developments will create, particularly during those critical winter months. Wouldn't you expect your neighbor to retain his stormwater runoff on his own property and not send it to your property during winter months? Why should Lake Sawyer residents and other residents outside the City along Covington Creek be asked to put their property at any greater risk, even if small, just to accommodate a gargantuan new development. That

development should infiltrate its own stormwater runoff to the same degree that the property did before the land was scraped bare and over 6,000 new dwelling units and hundreds of acres of impervious surface were added. According to Mr. Fure's data in Exhibit 139, on average Yarrow Bay will be sending over 372 acre-ft. of new stormwater runoff to Lake Sawyer each year even with his assumptions regarding infiltration of 40% of the stormwater tributary to Lake Sawyer. That's equivalent to 15 vertical inches of water covering the entire Lake's surface. And on average that's 121 million gallons of new water containing unknown quantities of various pollutants that will be coming to the Lake each year.

In my testimony before the Hearing Examiner I recommended that a new provision be added to the Development Agreements that stated the following: "***Maintain hydrology for Lake Sawyer and associated wetlands by providing their tributaries with no greater volume of stormwater in the post-developed state than would occur under pre-developed conditions.***" This is kind of like a "no net increase in stormwater runoff" provision. And it's similar to the plan Yarrow Bay has for controlling any potential flooding conditions at Horseshoe Lake due to MPD runoff.

The Hearing Examiner concluded based on his review of Yarrow Bay's response to my testimony from their expert witnesses that he wasn't going to recommend this provision. He didn't think a little extra rise in lake level caused by the MPDs was any big deal. He doesn't live on the Lake. However, there are waterfront homeowners along low lying lake properties that feel much differently, and they don't want any more runoff coming to Lake

Sawyer when they already experience serious flood damage a couple of times each decade and are very concerned about future water quality of the Lake.

I strongly recommend that the Council consider the City's liability associated with large new volumes of stormwater which will flow to Lake Sawyer and downstream in coming years and how they may increase flooding damage on Lake Sawyer and along Covington Creek as well as degrade the Lake's water quality.

If you approve these Development Agreements with no provision for limiting large new volumes of winter stormwater runoff after being warned, you will be putting the City at risk as well as the Lake Sawyer property owners.

Thank you