CITY OF BLACK DIAMOND

October 21, 2011

STAFF RESPONSE TO PUBLIC RESPONSE STATEMENTS RECEIVED RE: DEVELOPMENT AGREEMENTS FOR THE VILLAGES MASTER PLANNED DEVELOPMENT FILE NOs.: PLN10-0020/11-0013 LAWSON HILLS MASTER PLANNED DEVELOPMENT FILE NOs.: PLN10-0021/11-0014

I. INTRODUCTION

This memorandum has been prepared per the City Council's adopted Rules of Procedures for the Closed Record Hearings, in which staff and the applicant are provided the opportunity to respond to response statements submitted by members of the public prior to the end of the business day, Wednesday October 19, 2011.

II. GENERAL COMMENTS

Most of the statements re-iterate arguments that have been previously made, rather than provide a direct response to comments made by staff in our statement that was provided on Friday, October 14, 2011. However, staff will provide brief response to some of the comments (below).

Staff wishes to remind the Council that, contrary to the terminology the Hearing Examiner chose to employ and that has been subsequently adopted by many members

EXHIBIT

66

of the public, there are no "conditions" that can be imposed on the Development Agreements. The Council has before it Development *Agreements*, which in order to be finalized, require the consent of both the Council and the applicant. Should the Council wish to have additional *terms* (as opposed to conditions) added to the Agreements, staff is prepared to address those with Yarrow Bay.

III. RESPONSE TO SPECIFIC COMMENTS

Nature of comments	Response
In-lieu payments for recreation facilities	Proposed public hearing process limits flexibility in project implementation and could deter ability to work collaboratively to create better recreational projects.
Lack of time for Hearing Examiner to address issues	Over 800 hrs. spent by H.Ex. and staff
Building permit surcharge	Would only be implemented if allowed under State law and approved by Council; only apply within MPDs
Facilities in rural areas	King Co. retains permit authority over any proposals in unincorporated areas; DA recognizes this
Wetland boundaries	Staff previously addressed these concerns. The COA only require the boundaries to be fixed in the DA.
Noise & work hours	Work hours allowed by the DAs are more restrictive than BDMC
School agreement	Tri-Party Agreement cannot be unilaterally amended by the City Council
Groundwater and well protection	No evidence of adverse impacts; letter from DOE submitted by Mr. Beers indicates no known history of a development adversely impacting private wells
Wetland restoration	City's SAO addresses this concern; MPDs required to comply with SAO
Open space and parks	2008 Parks Plan includes potential of active recreational facilities at Lake Sawyer Reg. Park
Green Valley Road (GVR) issues	The MPD COAs cannot be amended by the DA; The Villages site does not abut GVR; no evidence of potential negative impact to wells.
Adopt H.Ex. recommendation	Staff and YB offered amended language to address H.Ex. recommendation
Traffic impacts	Periodic traffic monitoring and potential new mitigation measures required per MPD COAs; cannot force new development to correct existing deficiencies
Bald eagle protection	DAs do not absolve YB from obligation to comply with State & Federal requirements

IV. CONCLUSION

As noted above, there are few new arguments raised in the response statements. Should Council wish to discuss these in greater detail, staff is prepared to do so as part of your deliberations.

YARROWBAY HOLDINGS

MEMORANDUM

To:	**The City Council for the City of Black Diamond**
From:	**Megan Nelson, Director of Legal Affairs, YarrowBay Holdings** MN
CC:	**Nancy Bainbridge Rogers, Counsel for YarrowBay Holdings**
Re:	**YarrowBay's Reply to Party of Record Responses**
Date:	**October 21, 2011**

Pursuant to the Procedural Rules set by the Black Diamond City Council in Amended Exhibit A of Resolution No. 11-766, YarrowBay has 10 pages, double-spaced, to reply to each written response from Parties of Record posted on the City's website on October 19, 2011. We have combined our reply into this one memorandum for the City Council's ease of reference.

I. Request For Approval.

BD Village Partners, LP and BD Lawson Partners, LP (collectively, "YarrowBay") again requests that the Black Diamond City Council authorize execution of the Development Agreements for both The Villages and Lawson Hills. Yarrow Bay recommends the Council move to authorize the City Attorney to draft an ordinance including findings of fact and conclusions of law, that approves the Development Agreements and authorizes the Mayor to execute the Development Agreements for The Villages and for Lawson Hills in the form of Exhibit 1 (The Villages) and Exhibit 2 (Lawson Hills), as revised by the terms contained in Exhibit 4 (the "Errata Sheet"), as further revised by the terms presented by YarrowBay to the City Council on September 29, 2011 adopting the changes called for by the Examiner's Recommended Implementing Conditions (Exhibit C-7), and as further revised by the terms

EXHIBIT

67

presented by YarrowBay herein adopting the changes called for by City Staff in Exhibit C-43. That action will also authorize execution of the MPD Funding Agreement, found at Exhibit "N" of each Development Agreement.[1]

II. Constraint Maps (YarrowBay's Reply to City Staff's Exhibit C-43).

On page 3 of Exhibit C-43, City Staff recommended a revision to the Development Agreements regarding wetlands such that only the Constraint Maps' wetland boundaries are accepted by the City of Black Diamond at this time. YarrowBay is willing to agree to this revision. In order to incorporate this City Staff recommendation into the Development Agreements, YarrowBay proposes the following additional revisions highlighted in yellow to the Implementing Language, included in Exhibit C-7 at pages 17-21, to address the Hearing Examiner's Recommended Implementing Condition "K".

IMPLEMENTING LANGUAGE

(Revisions to Sections 8.1, 8.2, 8.2.1, 8.2.2, 8.2.3 and 8.2.4 and new Section 8.2.5 of The Villages and Lawson Hills Development Agreements as shown in underlined and ~~strike through~~ text)

The Villages Development Agreement

8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY

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

[1] As in Exhibit C-44, YarrowBay refers to all exhibits submitted during the City Council's closed record portion of these Development Agreement hearings as C-#. Exhibits submitted during the Hearing Examiner's open record portion of the proceedings, however, are merely referred to by their number.

~~submitted with the Implementing Project application.~~ Buffers for the sensitive areas, as well as categories for the wetlands, mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

8.2 SENSITIVE AREAS DETERMINATIONS

Consistent with the Sensitive Areas Ordinance, at the time of construction, sensitive areas and their established buffers shall be clearly identified and marked in the field.

8.2.1 Wetland ~~Determinations and~~Boundary Delineations Final

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

8.2.2 Fish and Wildlife Habitat Conservation Areas Final

The presence ~~and typing~~ of Fish and Wildlife Conservation Areas within The Villages MPD are shown on the Constraints Map. These Fish and Wildlife Habitat Conservation Areas~~, types and buffers~~ as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger, than what was mapped, the mapped boundary shall prevail.

8.2.3 Mine Hazard Areas

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

8.2.4 Seismic Hazard Areas

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

8.2.5 Steep Slopes

Steep slope areas for The Villages MPD are shown on the Constraints Map. The steep slope areas for The Villages MPD are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

Lawson Hills Development Agreement

8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY

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

8.2 SENSITIVE AREAS DETERMINATIONS

Consistent with the Sensitive Areas Ordinance, at the time of construction, sensitive areas and their established buffers shall be clearly identified and marked in the field.

8.2.1 Wetland ~~Determinations and~~Boundary Delineations Final

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

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

8.2.2 Fish and Wildlife Habitat Conservation Areas Final

The presence ~~and typing~~ of Fish and Wildlife Conservation Areas within The Lawson Hills MPD are shown on the Constraints Map as surveyed on 7/27/09. These Fish and Wildlife Habitat Conservation Areas~~, types and buffers~~ are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

8.2.3 Mine Hazard Areas

[see language under Recommended Implementing Condition L ~~below~~ on pages 22-23 of Exhibit C-7]

8.2.4 Seismic Hazard Areas

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

8.2.5 Steep Slopes

Steep slope areas for the Lawson Hills MPD are shown on the Constraints Map. The steep slope areas for the Lawson Hills MPD are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 159 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

III. YarrowBay's Reply to Parties of Record Responses.

The Party of Record response statements (Exhibits C-45 through C-65) repeat earlier arguments made to both the Hearing Examiner and Black Diamond City Council. In reply, YarrowBay relies on its prior testimony and exhibits to the Examiner (Exhibits 7A-I, 8, 139, 208-212, 245, and 261), together with its prior arguments to the Council (Exhibits C-7 and C-44). The record and argument does not support, and YarrowBay does not voluntarily agree to,

any of the supplemental conditions or additional development agreement language or additional actions requested by the Parties of Record.

In addition, YarrowBay recommends the City Council review Attachment "A" to Exhibit 208 as YarrowBay's reply to Mr. Irrgang's Exhibit C-54.

YarrowBay also provides the following abbreviated reply to certain misrepresentations contained in Ms. Bryant's Exhibit C-59. First, on page 6, Ms. Bryant states: "Wetland F and all wetlands west: The wetlands identified on the maps presented are NOT separated by 100 feet. There are single digit or 10-15 feet separation in most cases . . ." Ms. Bryant is either incorrect or misunderstands the relevant separation. Yarrow Bay directs the City Council to Sheet 3 of 4 of the updated Constraint Maps submitted in Exhibit C-7, as well as to Sheet 7 of 7 attached to the Wetland Resources, Inc. *Sensitive Areas Study for The Villages* (July 21, 2009) which is part of Attachment 1 to Exhibit 139. On Sheet 7 of 7, Wetland S5/108 is also denoted as the Black Diamond Lake/Bog Core Wetland Complex. Both maps show that the distance between the eastern edge of Wetland F and the western edge of Wetland S5/108 is greater than 100 feet. Wetland F and all wetlands to the west of Wetland F are, in fact, separated from Black Diamond Lake or Black Diamond Lake Creek by at least 100 feet as stated by Mr. Scott Brainard of Wetland Resources Inc. on page 2 of his letter part of Attachment 1 to Exhibit 139.

On pages 9-10, Ms. Bryant includes only an excerpt of a letter dated September 24, 2009, from Appendix "O" of the EISs and claims YarrowBay is attempting to reduce wetland buffers contrary to best available science to 100 feet. In response, YarrowBay provides a complete copy of the September 24th letter and Parametrix's response dated November 16, 2009 for the City Council's review as Attachments 1 and 2 to this reply. In fact, and contrary to Ms. Bryant's

allegations, the September 24th letter and Parametrix's response (both contained in Exhibit O to the Final EISs) show that YarrowBay's request for a 300-foot-wide wildlife corridor concurrent with the wetland and wetland buffer areas, and based on best available science, provides the "necessary protection to water quality for sensitive downstream systems and King County Wildlife Network recommended corridor width west to the UGA boundary." The City's third party reviewer, in its November 16th response concurs that the 300-foot buffer width is appropriate.

ATTACHMENT 1

Wetland Resources, Inc.

Delineation / Mitigation / Restoration / Habitat Creation / Permit Assistance

9505 19th Avenue S.E.
Suite 106
Everett, Washington 98208
(425) 337-3174
Fax (425) 337-3045

September 24, 2009

Mr. Steve Pilcher, SEPA Official
City of Black Diamond
Community Development Department
P.O. Box 599
Black Diamond, WA

Re: The Villages MPD Draft EIS

Dear Mr. Pilcher,

Thank you for the timely issuance of The Villages MPD Draft EIS (DEIS). I have evaluated the Draft EIS with respect to wetlands and wildlife and have made comments directly through Yarrow Bay Communities. One additional comment is necessary for a full and accurate depiction of wetland and wildlife conditions within the bounds of The Villages MPD.

The wetland complex associated with Rock Creek, Jones Lake, Jones Lake Creek, Black Diamond Lake, Black Diamond Lake Creek, and Ravensdale Creek is designated as the Core Wetland Complex (DEIS page 4-62). The DEIS (page 4-65) also states that under City Codes (BMC 19.100.230) a 225-foot buffer is required from their delineated boundary. It further states that the applicant will be required to provide justification in accordance with City codes and Best Available Science to support any request for reducing buffers on these wetlands.

Since the implementation of the City of Black Diamond Sensitive Areas Ordinance, this 225-foot buffer has undergone a significant amount of scrutiny and scientific analysis. Its purpose, as identified in the City of Black Diamond Sensitive Areas Ordinance *Best Available Science Review and Recommendations for Code Update*, September 2008, is to protect the water quality of sensitive downstream systems (Black Diamond Lake Bog, Rock Creek, and Lake Sawyer) and to provide a wildlife corridor consistent with the King County Wildlife Habitat Network recommendations.

As discussed throughout the pre DEIS process by Andy Kindig of A.C. Kindig & Associates (memo dated November 13, 2008), virtually all of the water quality improvement function of the buffer is provided in its first 100 feet. In addition, we have shown through topographic analysis that the wetland areas west of, and including, Wetland F drain to the west and not toward the Black Diamond Lake/Rock Creek System. Therefore this 225-foot buffer is not necessary for water quality improvement.

As discussed in the July 24, 2009 memo to City of Black Diamond Natural Resources Planner, Aaron Nix, the wetlands west of Wetland F "consist of a mosaic of saturated areas, dry upland hummocks, and small areas that become shallowly ponded (1-6" deep) during winter months. These wetlands provide no impediment to travel by terrestrial mammals such as deer, elk, and black bear. The wetlands would contribute to providing a future wildlife corridor for terrestrial mammals. King County recommends wildlife corridors to be 300 feet wide, although it may be reduced to 150 feet where

necessary. Currently, the combined width of the wetlands and their required buffers range from approximately 150 to 500 feet, with average widths well over 300 feet. To provide an effective wildlife corridor, we recommend extending the wildlife corridor to the UGA boundary to the west. Additionally, buffers could be slightly increased in the few areas where the combined width of the wetland/buffers drops below 300 feet, to provide a minimum overall corridor width of 300 feet. On July 17, 2009, WRI spoke with King County lead ecologist, Jennifer Vanderhoof, regarding the King County Wildlife Network corridor requirements. She confirmed that the combined width of a wetland with its associated buffers would contribute towards fulfilling the 300-foot wide requirement of a wildlife corridor. She further explained that the 300 foot wildlife corridor width is not intended to require a wetland buffer to be increased to 300 feet".

Wetland Resources, Inc. believes, and Best Available Science supports a minimum 300-foot corridor width (ie: wetland plus buffer on both sides) for the wetlands west of, and including, Wetland F to the western UGA boundary. This 300 foot wide corridor will provide the necessary protection to water quality for sensitive downstream systems and King County Wildlife Network recommended corridor width west to the UGA boundary.

If you have any questions or comments regarding any of the information provided above, please contact me directly.

Wetland Resources, Inc.

Scott Brainard, PWS
Principal Wetland Ecologist

ATTACHMENT 2

Parametrix ENGINEERING • PLANNING • ENVIRONMENTAL SCIENCES

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TECHNICAL MEMORANDUM

Date:	November 16, 2009
To:	City of Black Diamond
From:	Susan Graham
Subject:	Black Diamond EIS Lawson Hills MPD Technical Peer Review EIS Element: Wetlands
cc:	Project File
Project Number:	217-3043-003
Project Name:	Lawson Hills and The Villages MPD EIS

EIS ELEMENT: Natural Environment - Wetlands

Original Documentation Prepared by: Wetland Resources Inc (WRI) on: 9/24/2009

PMX Peer Review Author: Susan Graham

PEER REVIEW COMMENT SUMMARY

This is to confirm receipt of additional technical materials regarding The Villages MPD EIS.
The September 24th letter to the City clarifies that in regards to the wetland and wildlife analysis for The Villages, it is the recommendation of WRI, based upon Best Available Science, to support a minimum 300-foot corridor width (ie: wetland plus buffer on both sides) for the wetlands west of, and including, Wetland F to the western UGA boundary. This 300 foot wide corridor should provide the necessary protection to water quality for sensitive downstream systems and King County Wildlife Network recommended corridor width west to the UGA boundary. The City has concurred that the 300-foot buffer width is acceptable.

Parametrix is adding this memorandum to the project files for clarification purposes and for use in response to comments.