

Steve Pilcher

From: Bob Edelman <BobEdelman@comcast.net>
Sent: Saturday, August 06, 2011 12:15 PM
To: Steve Pilcher
Subject: Procedural inquiry

Please forward this procedural inquiry to Mr. Olbrechts.

Mr. Examiner:

Exhibit 139 was submitted by Yarrow Bay as testimony but is an extensive rebuttal to verbal testimony and to statements made in written pre-hearing briefs.

Is Exhibit 139 to be considered testimony with responses due on August 12 or responses with replies due within two days following the posting of all responses?

Thank you for your consideration of my question.

Bob Edelman

EXHIBIT 182

Stacey Borland

From: Nancy Rogers <NRogers@Cairncross.com>
Sent: Monday, August 08, 2011 10:55 AM
To: Steve Pilcher
Cc: Stacey Borland; Andy Williamson; Brenda Martinez
Subject: Response to Procedural Inquiry

Mr. Pilcher:

Please forward this to Examiner Olbrechts.

We have received a copy of Mr. Edelman's procedural inquiry as to when a response is due to Ex. 139. Mr. Edelman asks whether he is required to respond to Ex. 139 within one week, by August 12, or if it is more appropriate to wait to "reply" to Ex. 139, two days following the date of posting of all responses due August 12. If Mr. Edelman wishes to respond to Ex. 139, he is required to do so by August 12.

The Pre-Hearing Order defined "party" as "all hearing participants." That means that Yarrow Bay, as well as Mr. Edelman, are parties. The following procedure was set by the Pre-Hearing Order, and the Examiner also confirmed this process at the close of the hearing session on July 16, in response to a similar question from the public.

(1) "Written comments" would be accepted "from all parties" two weeks following the oral testimony portion of the hearing. This due date was set as August 4. Yarrow Bay is a party and submitted the written comments found in Ex. 139. As explicitly requested by the Examiner, Ex. 139 includes answers to questions raised by the public and to issues discussed by the public during the hearing.

(2) "All parties" were provided one week to provide "written response" to any written comments received August 4, together with "written response" to oral testimony from only the last two days of the hearing. This date has been set as August 12. Any party who wishes to respond to Yarrow Bay's August 4 comments is required to meet the August 12 deadline.

(3) "All parties" were then provided two business days to provide "written reply" to the "written responses." The written replies are to the response documents filed on August 12, not the documents filed earlier.

CH&

Nancy Bainbridge Rogers

Attorney

Cairncross & Hempelmann

524 Second Ave., Ste. 500

Seattle, WA 98104-2323

nrogers@cairncross.com

Direct phone 206-254-4417

Office fax 206-587-2308

This email message may contain confidential and privileged information. Any unauthorized use is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this email is not intended or written to be used, and cannot be used by you, (a) to avoid any penalties imposed under the Internal Revenue Code or (b) to promote, market, or recommend to another party any transaction or matter addressed herein.

EXHIBIT 183

Stacey Borland

From: Bob Edelman <BobEdelman@comcast.net>
Sent: Tuesday, August 09, 2011 11:01 PM
To: Steve Pilcher
Cc: Brenda Martinez; Andy Williamson; Stacey Borland
Subject: FW: Procedural inquiry

Please confirm that the email below was forwarded to Mr. Olbrechts. I have not received a reply nor do I see one posted.

From: Bob Edelman [<mailto:BobEdelman@comcast.net>]
Sent: Saturday, August 06, 2011 12:15 PM
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Please forward this procedural inquiry to Mr. Olbrechts.

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Thank you for your consideration of my question.

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Steve Pilcher

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Tuesday, August 09, 2011 11:09 PM
To: Brenda Martinez
Cc: 'Nancy Rogers'; Steve Pilcher
Subject: Response Deadline on Villages/Lawson Hills Written Comments

Importance: High

Brenda,

Please post the following email ASAP:

It appears that the written testimony exceeds 1,700 pages. This number excludes the prehearing motions and the development agreements and their exhibits. Under the current briefing schedule the Applicant will have to respond to these documents in one week's time. The Applicant is tasked with responding to the majority of these 1700+ pages in that one week period. I will probably be seeking additional time beyond the required ten days to issue my decision. In order to do so, for liability reasons, I will need the authorization of the Applicant. I propose that the response period be extended for an additional week, the reply period be extended to a total of four business days and that I have fifteen business days from the deadline of the reply documents to issue my decision. For all hearing participants, please email any objections to this proposal to Steve Pilcher, cc'd above, by 10:00 am on Thursday, 8/11/11. I will need the express authorization of the Applicant to proceed with this proposal.

EXHIBIT 185

Stacey Borland

From: Judy Carrier <gotrocks886@msn.com>
Sent: Wednesday, August 10, 2011 12:02 AM
To: Stacey Borland; Steve Pilcher; Brenda Martinez; Andy Williamson
Subject: Document1
Attachments: Doc1.docx

REBUTTAL OF RESPONSE TO YARROW BAY TO GREEN VALLEY ROAD CONDITIONING FROM ORAL DEVELOPMENT TESTIMONY

PLEASE SEND AN INDICATION OF YOUR RECEIPT.

THANK YOU,

JUDITH CARRIER

EXHIBIT 186

FOR HEARING EXAMINER, PHIL OLBRESCHTS
JUDITH CARRIER, GREEN VALLEY ROAD RESIDENT

AUGUST 9, 2010

REBUTTAL TO YARROW BAY RESPONSE

THE VILLAGES/LAWSON HILLS

SECTION 13.8

SIR:

FOR EXPEDIENCE AND EASE OF REFERENCE AND READING, I EMBED MY REBUTTAL IN SECTION 13.8 COPIED IN BLACK BELOW.

SECTION 13.8 (The Villages and Lawson Hills)

Comments:

Matt Nolan (Oral testimony on July 21, 2011 and email dated July 21, 2011): In both his email to Steve Pilcher dated Thursday, July 21, 2011 3:59 PM and oral testimony, Mr. Matt Nolan requested the addition of a new condition to Section 13.8 (and Exhibit "P") of the Development Agreements that would prevent the Master Developer from recording any new lots within the MPDs if more than a 50% increase in GVR traffic volume is experienced post-commencement of MPD Development.

In addition to Matt Nolan's testimony, YarrowBay heard many comments during the public testimony portion of the Development Agreement Hearings regarding potential impacts to Green Valley Road resulting from the MPDs. These comments are addressed together in YarrowBay's response below.

YarrowBay Response:

The MPD Condition of Approval 33(a) for The Villages provides as follows:

The City shall commission a study, at the Applicant's expense, on how to limit MPD traffic from using Green Valley Road,

THIS STUDY IS BASED ON AN ASSUMPTION: SE GREEN VALLEY ROAD--- TRAFFIC CALMING STRATEGIES, P.1, ".....SR 169 at Lawson Street is assumed to be the 'mid-point' of the two MPDs, from which commuters to and from the west would originate or be destined to. This location was selected as the mid point (SIC) was because (SIC) it is roughly in the middle of the two MPDs and their access points.

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THERE ARE CONSIDERABLE OMISSIONS LOCAL PEOPLE NOTICE. STOP SIGNS AT EITHER END OF GVR AND AT 218TH AND 212TH ARE SOME OF THEM.

MITIGATIONS FROM EXHIBIT P, P. 1:

“Exhibit P
Green Valley Road Measures
Traffic Calming Measures

The following measures (“Traffic Calming Measures”) have been identified as the reasonable measures that the Green Valley Road Review Committee (“Committee”) will consider for implementation:

- A. Reduced Speed Limits
- B. Radar Speed Alert Signs
- C. Speed Humps/Cushions/Tables
- D. Stop Signs
- E. Surface Treatments

These measures are identified in Exhibit 9 of the “SE Green Valley Road – Traffic Calming Strategies” report dated November 29, 2010, prepared by Parametrix as directed by the City.”

WITHOUT THE “ANALYSES” AND “USES”, MITIGATIONS FOR THE SAFETY OF THE PEOPLE WHO FREQUENT THE ROAD ARE SKIMPY AND OF LITTLE VALUE.

A MAJOR TRAFFIC MITIGATION THAT WOULD CALM TRAFFIC IS A DESCRIBED, NEW TRAFFIC MODEL APPLIED SPECIFICALLY TO ALL OF THE ROADS MENTIONED IN THE "STUDY". IT COULD BE USED NOW (AS INTENDED FOR THE WHOLE REGION AROUND THE DEVELOPMENTS) AND VALIDATED AS A BASELINE FOR COMPARISON WITH EACH PHASE, PROACTIVELY!

THE STUDY GIVES CAPACITY FIGURES FOR 2035 (NONE FOR LAKE HOLM ROAD, HOWEVER). GREEN VALLEY ROAD'S CAPACITY CAN HANDLE THE PREDICTION. THE LOS FOR BOTH ENDS OF GVR WILL FAIL IN 2025 ACCORDING TO THE FEIS (EXHIBIT 3.6). PARAMETRIX DID BOTH OF THESE STUDIES. THEY DID NOT EXPLAIN HOW GVR WILL HANDLE SO VERY MANY OTHER SPECIFIC IMPACTS!

WITH ITS ASSUMPTIONS (NOT ALL ARE LISTED HERE), THIS ORDINANCE CONDITION HAS NOT BEEN MET ENTIRELY. A STUDY WAS DONE, BUT THERE IS NO ANALYSIS OF SAFETY ISSUES AND USES OF THE ROAD THAT WILL BE AFFECTED.

All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements, and with a proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review committee.

Similarly, MPD Condition of Approval 29 (Lawson Hills) provides as follows:

YarrowBay's Written Testimony Pursuant to Hearing Examiner's Pre-Hearing Order II
Page 56
August 4, 2011

The Applicant shall prepare a study, at its expense, for review and approval by the City, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic calming devices within the existing improved right-of-way. The study shall also include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements.

As required by these Conditions, the City commissioned a Green Valley Road study. A copy of this study has been admitted into the record. See Exhibit 30.

THIS IS TRUE. THE LETTER OF THE LAW WAS FOLLOWED. OR, WAS IT? WAS THE INTENT TO COMPLETE A STUDY, OF WHATEVER QUALITY, OR WAS IT TO WORK COOPERATIVELY WITH THE "COMMUNITY" OF GREEN VALLEY ROAD

TO FIND A WORKABLE SOLUTION TO THE PROBLEM OF INCREASED TRAFFIC IMPACTING ITS SAFETY, ENVIRONMENT, AND AESTHETIC/HISTORIC CHARACTERISTICS?

REMEMBER, GREEN VALLEY ROAD (GVR) WAS BARELY CONSIDERED IN THE FEIS.

The mitigation measures identified in the study were incorporated into the Development Agreements at Exhibit "P" along with a description of the process and timing required to seek permits for such provisions and the required proviso. Thus, the requirements set forth in these Conditions of Approval have been satisfied by the Development Agreements.

I DISAGREE. CALLING SE GREEN VALLEY ROAD---TRAFFIC CALMING STRATEGIES A STUDY BY LISTING ONLY SOME OF THE STRATEGIES, OMITTING ANALYSES OF THE NATURE OF GVR'S SAFETY CONCERNS AND VARIOUS USES , OMITTING INFORMATION THAT DOES NOT PROVE THE APPLICANT'S POINT, AND DRAWS CONCLUSIONS FROM ASSUMPTIONS IS NOT MUCH OF A STUDY.

CONDITION 33a SHOULD BE FULFILLED AS THE ORDINANCE INTENDED.

Most importantly, these Conditions of Approval do not require that YarrowBay prevent MPD traffic from traveling on Green Valley Road, but rather to examine whether there are ways to make it less likely that MPD traffic will travel on this road.

Conditions of Approval Nos. 33(b) (The Villages) and 31 (Lawson Hills) require the formation of the Green Valley Road Committee. This committee "shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community [and] shall meet to review the [Green Valley Road study] and attempt to reach agreement on whether any suggested traffic calming devices should be provided."

MY ORAL TESTIMONY COVERED THIS PART OF THE ORDINANCE CONDITIONING THAT HAS, ALSO, NOT BEEN MET. THE COMMITTEE WAS NEVER FORMED AND NEVER MET; ALTHOUGH, THE CALLED-FOR VOLUNTEERS SIGNED-UP AS MR. LUND REQUESTED.

See Conditions of Approval Nos. 33(b) (The Villages) and 31 (Lawson Hills). Thus, the membership and scope of the Green Valley Road Committee are established by the terms of the MPD Permit Approvals (Ord. Nos. 10-946 and 10-947). Public testimony regarding modifications to the committee's membership, dissolution of the committee, or changes to the committee's scope are outside the purview of these Development Agreement Hearings and cannot be considered by the Hearing Examiner. The new condition proposed by Matt Nolan for this Section 13.8 must be rejected by the Hearing Examiner. First, there is no authority for the Examiner to add a new condition to the MPDs at this stage of project review. Environmental analysis has been completed. The Villages and Lawson Hills FEISs were deemed adequate by the Examiner. The City issued Notices of Adoption of the FEISs for the Development Agreements. The FEISs did not identify the new condition offered by

Matt Nolan. Moreover, neither the Hearing Examiner's recommendation nor the City Council's MPD Permit Approvals (Ord. Nos. 10-946 and 10-947) identified this condition as necessary to meet the BDMC approval requirements for MPD Permits. The purpose of the Development Agreements is to incorporate YarrowBay's Written Testimony Pursuant to Hearing Examiner's Pre-Hearing Order II
Page 57

August 4, 2011

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Second, Green Valley Road has capacity to accommodate MPD traffic. See Exhibit 30 at pages 9-10. The Green Valley Road study (Exhibit 30) concludes that "with the build out of both MPDs all east-west routes [including Green Valley Road] would still have available capacity in 2035." Matt Nolan cited no capacity constraints on Green Valley Road that provide the basis for his new condition. Given the absence of capacity restraints and legal authority, Matt Nolan's proposed new condition for Section 13.8 must be rejected by the Hearing Examiner. There is no need or basis to revise this section of the Development Agreements.

IF THE ORDINANCE'S CONDTIONS 33 a AND b ARE ADEQUATELY AND TRULY FULFILLED, THE OUTCOME OF THE STUDY WILL SHOW ENTIRLEY DIFFERENT AND BENEFICIAL RESULTS.

Stacey Borland

From: Judy Carrier <gotrocks886@msn.com>
Sent: Wednesday, August 10, 2011 12:21 AM
To: Steve Pilcher; Brenda Martinez; Andy Williamson; Stacey Borland
Subject: 8.9.2011REBUTTAL TO YB RESPONSE TO ORAL DA TESTIMONY FOR HEARING EXAMINER
Attachments: 8.9.2011REBUTTAL TO YB RESPONSE TO ORAL DA TESTIMONY FOR HEARING EXAMINER.docx

Staff,

I sent my Rebuttal Statement for the Hearing Examiner before August 9 at midnight. My statement had the wrong year: 2010. I have corrected that mistake and am sending again. I hope you will, please, accept this second sending as the true Rebuttal Statement even though it is now August 10, 2011, beyond the due time.

Maybe we have all been at this so long the years are beginning to blend into each other!

As before, please send word that you have received this.

Thank you,

Judith Carrier

360.886.2204

EXHIBIT 187

FOR HEARING EXAMINER, PHIL OLBRESCHTS
JUDITH CARRIER, GREEN VALLEY ROAD RESIDENT

AUGUST 9, 2011

REBUTTAL TO YARROW BAY RESPONSE

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SECTION 13.8

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From: Nancy Rogers <NRogers@Cairncross.com>
Sent: Thursday, August 11, 2011 9:41 AM
To: Steve Pilcher
Cc: Brenda Martinez; Stacey Borland; Andy Williamson; 'olbrechtslaw@gmail.com'
Subject: FW: Response Deadline on Villages/Lawson Hills Written Comments

Importance: High

Mr. Pilcher:

YarrowBay has reviewed the Examiner's proposed extended schedule from the email dated 11:09 p.m. on 8/9/11. YarrowBay objects to the proposal to revise and lengthen the current schedule.

CH&

Nancy Bainbridge Rogers

Attorney

Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com
Direct phone 206-254-4417
Office fax 206-587-2308

This email message may contain confidential and privileged information. Any unauthorized use is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this email is not intended or written to be used, and cannot be used by you, (a) to avoid any penalties imposed under the Internal Revenue Code or (b) to promote, market, or recommend to another party any transaction or matter addressed herein.

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Stacey Borland

From: Nancy Rogers <NRogers@Cairncross.com>
Sent: Thursday, August 11, 2011 1:11 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Yarrow Bay's Objections to Exhibit 47 through Exhibit 180 (01745705).PDF
Attachments: Yarrow Bay's Objections to Exhibit 47 through Exhibit 180 (01745705).PDF

Mr. Pilcher,

Please see attached and forward to Examiner Olbrechts. Thank you.

CH&

Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com
Direct phone 206-254-4417
Office fax 206-587-2308

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EXHIBIT

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5 **BEFORE THE CITY OF BLACK DIAMOND**
6 **HEARING EXAMINER**

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8 IN RE: THE MATTER OF DEVELOPMENT
9 AGREEMENT HEARINGS
10 LAWSON HILLS PLN10-0021; PLN11-0014
11 THE VILLAGES PLN10-0020; PLN11-0013

YARROW BAY'S OBJECTIONS TO
EXHIBIT 47 THROUGH EXHIBIT 180

12 In response to the Examiner's Order on Exhibits and Response/Reply Documents dated
13 July 6, 2011, BD Lawson Partners, LP and BD Village Partners, LP (collectively "Yarrow Bay")
14 files these objections to the admissibility of Exhibits 47 through 180.

15 Yarrow Bay's objections to Exhibits 47 through 180 are found in the table below. For
16 purposes of these objections, the term "FEISs" means The Villages and Lawson Hills Final
17 Environmental Impact Statements dated December 2009; the term "Development Agreements"
18 means The Villages and Lawson Hills Development Agreements (PLN10-0020, PLN11-0013,
19 PLN10-0021, and PLN11-0014); the term "Conditions of Approval" means the conditions listed
20 in Exhibit C of the Black Diamond MPD Permit Approval Ordinances Nos. 10-946 and 10-947
21 dated September 20, 2010; the "MPD Permit Approvals" means the Black Diamond MPD Permit
22 Approval Ordinances Nos. 10-946 and 10-947 dated September 20, 2010; the term "Pre-Hearing
23 Order II" means the Hearing Examiner's Pre-Hearing Order II dated July 6, 2011; and the term
24 "School Agreement" means the Comprehensive School Mitigation Agreement between the
25 Enumclaw School District, the City of Black Diamond, BD Lawson Partners, LP and BD Village
26 Partners, LP dated January 24, 2011, recorded under King County recording no.
20110624001156.

[See Table Beginning on Next Page]

{01744981.DOCX;4 }

YARROW BAY'S OBJECTIONS TO EXHIBIT 47 THROUGH
EXHIBIT 180 - 1

CAIRNCROSS&HEMPELMANN
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

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Exhibit No.	Description	Objection
47	Email dated 07/15/2011 from Cindy Proctor re: Development Agreement Testimony	<p>This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p> <p>YarrowBay also objects to all portions of this Agreement that allege that the School Agreement does not provide adequate mitigation. There is no SEPA appeal pending before the Hearing Examiner and the Black Diamond City Council already determined that the School Agreement constituted adequate mitigation for the MPD Permit Approval Ordinances (Nos. 10-946 and 10-947). Such testimony is therefore irrelevant to the Hearing Examiner's recommendation and must be stricken.</p> <p>YarrowBay further objects to the portions of this exhibit authored by Vicki Harp that allege noise mitigation insufficiency. The noise mitigation was established in the Conditions of Approval. Its adequacy cannot be challenged in these Development Agreement Hearings. Such testimony must be stricken by the Hearing Examiner as irrelevant.</p>

Exhibit No.	Description	Objection
50	Comment letter dated 07/14/2011 from Eric C. Frimodt re: Comments and Submissions by the Covington Water District	This objection is to all portions of this exhibit that request the Hearing Examiner make a determination as to which entity (the Covington Water District vs. the City of Black Diamond) will be the water purveyor for 98 acres within The Villages MPD. The Hearing Examiner does not have the authority to decide which water purveyor will ultimately serve The Villages MPD and, therefore, such testimony is irrelevant to the Hearing Examiner's recommendation and must be stricken.
51	Email dated 07/21/2011 from Matthew Nolan re: Copy of conditions proposed	YarrowBay objects to the supplemental conditions proposed by Matthew Nolan. Mr. Nolan cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.
53	Email dated 07/26/2011 from Bryndza re: Written testimony regarding schools	This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.

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Exhibit No.	Description	Objection
54	Email dated 07/26/2011 from Cindy Proctor re: Supplemental school comments	<p>This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p> <p>YarrowBay also objects to all portions of this Agreement that allege that the School Agreement does not provide adequate mitigation. There is no SEPA appeal pending before the Hearing Examiner and the Black Diamond City Council already determined that the School Agreement constituted adequate mitigation for the MPD Permit Approval Ordinances (Nos. 10-946 and 10-947). Such testimony is therefore irrelevant to the Hearing Examiner's recommendation and must be stricken.</p>

Exhibit No.	Description	Objection
55	Email dated 07/26/2011 from Richard & Patricia Hughes re: Comments for the development agreements	This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.
56	Written Statement dated 07/29/2011 from Dan Streiffert, Chair, South King County Group, Sierra Club re: Written statement for Black Diamond Development Agreement Hearings	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
57	Written Statement dated 07/29/2011 from Alice Baird re: Written statement for Black Diamond MPD Development Agreements	YarrowBay objects to all portions of this exhibit regarding Green Valley Road impacts. Green Valley Road impacts and mitigation were addressed in the FEISs and the MPD Permit Approval Ordinances. The FEISs were deemed adequate and adopted for these Development Agreements. The Conditions of Approval cannot be challenged in the context of these Development Agreement proceedings. Such testimony must be stricken as irrelevant.

Exhibit No.	Description	Objection
58	Email dated 07/30/2011 from Jim and Marilyn Creighton re: Comments on proposed development	This objection is to all portions of this exhibit regarding environmental impacts. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
59	Written Testimony dated 07/11/2011 from Ulla Kemman re: Testimony on Development Agreements	This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation. The FEISs for the MPDs were deemed adequate. Traffic mitigation conditions were imposed in the MPD Conditions of Approval. The FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding these issues is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
63	Written Statement dated 08/02/2011 from Steve Heister, Chair, Greater Maple Valley Unincorporated Area Council re: Written statement from Chair of Greater Maple Valley Unincorporated Area Council	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties.</p>

Exhibit No.	Description	Objection
		The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.
66	Comment Letter dated 08/02/2011 from Senator Pam Roach re: Comments on proposed residential and commercial developments proposed in Black Diamond by Yarrow Bay	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
67	Written Testimony dated 08/02/2011 from Jack Sperry re: Written testimony regarding Lake Sawyer Flooding	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
69	Comment Letter dated 08/03/2011 from Robert Taeschner re: Concerns regarding the Bald Eagle	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
70	Public Comments dated 08/03/2011 from Cindy Proctor re: Comments on Villages Lawson DA w/attachments	This objection is to all portions of this exhibit regarding Community Facilities Districts (CFDs). CFDs are merely one form of financing referenced in the Development Agreements for infrastructure improvements. There is no CFD Petition being reviewed by the Hearing Examiner in conjunction with these Development Agreements. The Hearing Examiner has no authority to bind the City Council to any decisions regarding future CFD Petitions. As such, all testimony regarding CFDs must be stricken by the Hearing Examiner.
73	Written Comments dated 8/03/2011 Sheila Hoefig re: Written Comments regarding calculation of open space and identification parks in Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner. YarrowBay also objects to the supplemental conditions proposed by Ms. Hoefig. Ms.

Exhibit No.	Description	Objection
		Hoefig cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.
75	Written Testimony dated 08/03/2011 from Bob Edelman re: Written testimony regarding overall noncompliance of MPD Development Agreements	YarrowBay objects to the portions of this exhibit that allege noncompliance of the Development Agreements with certain BDMC provisions, the City's Comprehensive Plan, and the Growth Management Act (GMA). The City Council already found the MPDs consistent with the City's code, the Comprehensive Plan, and the GMA in the MPD Permit Approval Ordinances. The City Council's determination cannot be revisited in the context of these Development Agreement Hearings. Such testimony must be stricken as irrelevant to the Hearing Examiner's recommendation.
76	Written Testimony dated 08/03/2011 from Sue Vannatter re: Written testimony regarding Black Diamond MPD DA	This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.

Exhibit No.	Description	Objection
77	Written Comments dated 08/03/2011 from Robbin Taylor re: Written comments for the MPD DA Open Hearings	<p>This objection is to all portions of this exhibit regarding the insufficiency of Conditions of Approval. These conditions were adopted as part of the MPD Permit Approval Ordinances. The sufficiency of these Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings. Such testimony must be stricken.</p> <p>This objection is also to all portions of this exhibit regarding YarrowBay's Botts Drive office. There is no proposal in the Development Agreements regarding this specific office location. Moreover, there is no action regarding this office before the Hearing Examiner. Such testimony must be stricken as irrelevant.</p> <p>Finally, this objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p>

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Exhibit No.	Description	Objection
78	Written Testimony dated 08/03/2011 from Max Beers re: Written testimony for Hearing Examiner regarding Yarrow Bay Black Diamond developments; DOE letter	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit regarding the insufficiency of Conditions of Approval. These conditions were adopted as part of the MPD Permit Approval Ordinances. The sufficiency of these Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings. Such testimony must be stricken.</p> <p>Finally, YarrowBay also objects to the supplemental conditions proposed by Mr. Beers. The FEISs were deemed adequate. The Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.</p>
79	Comment Letter dated 08/03/2011 from Courtney Feeney re: Letter concerning the Development Agreements	YarrowBay objects to the portions of this exhibit that challenge the MPD Permit Approval Ordinances. The City Council adopted these ordinances in September 2010. The time to appeal has passed. The Hearing Examiner does not have the authority to revisit the MPD Permit Approval Ordinances. Such testimony must be stricken.

Exhibit No.	Description	Objection
80	Email dated 08/03/2011 from Sierra Club on behalf of Jim Maurer re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
81	Comment Letter dated 08/01/2011 from Alison Stern re: Letter commenting on proposed developments	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to the portions of this exhibit that challenge the MPD Permit Approval Ordinances. The City Council adopted these ordinances in September 2010. The time to appeal has passed. The Hearing Examiner does not have the authority to revisit the MPD Permit Approval Ordinances. Such testimony must be stricken.</p>

Exhibit No.	Description	Objection
82	Email dated 08/03/2011 from Sierra Club on behalf of Claudia Karl re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
83	Email dated 08/03/2011 from Sierra Club on behalf of Sue Linder re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
84	Email dated 08/03/2011 from Sierra Club on behalf of John Dunn re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
85	Email dated 08/03/2011 from Sierra Club on behalf of Amanda Thomas re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
86	Email dated 08/03/2011 from Sierra Club on behalf Elizabeth Borges re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
87	Written Testimony dated 08/03/2011 from Bruce Early re: Written testimony regarding the Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
		<p>This objection is also to all portions of this exhibit regarding the insufficiency of Conditions of Approval. These conditions were adopted as part of the MPD Permit Approval Ordinances. The sufficiency of these Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings. Such testimony must be stricken.</p> <p>This objection is also to all portions of this exhibit regarding the insufficiency of the Maple Valley Transportation Mitigation Agreement (Exhibit "Q"). Traffic mitigation, including allowance for mitigation agreements, were imposed in the MPD Conditions of Approval. The sufficiency of this Mitigation Agreement cannot be reviewed in the context of these Development Agreement Hearings. Such testimony must be stricken.</p> <p>Finally, this objection also applies to all portions of this exhibit that allege noncompliance with the BDMC. The MPDs' compliance with the City code was determined in the MPD Permit Approval Ordinances. These ordinances cannot be revisited in these Development Agreement Hearings. Such testimony must be stricken.</p>
88	Email dated 08/03/2011 from Sierra Club on behalf of Jennifer Svenson re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
89	Email dated 08/03/2011 from Sierra Club on behalf of Lynn Johanna-Larsen re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
90	Email dated 08/03/2011 from Sierra Club on behalf of Beth Reiter re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
91	Email dated 08/03/2011 from Sierra Club on behalf of James Hesketh re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
92	Email dated 08/03/2011 from Sierra Club on behalf of Cory and Denise Purkis re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
93	Email dated 08/03/2011 from Sierra Club on behalf of Daniel Christiaens re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
94	Written Statement dated 08/03/2011 from Susan Harvey re: Written statement reflecting oral testimony given on July 14	YarrowBay objects to the supplemental conditions proposed by Susan Harvey. Ms. Harvey cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.

Exhibit No.	Description	Objection
96	Email dated 08/03/2011 from Jamie/Ariana Stenson re: Comments regarding Black Diamond MPDs	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
97	CD of audio of the May 12, 2011 workstudy of the Black Diamond City Council regarding CFDs dated 08/03/2011 from Cindy Proctor re: CD in support of written testimony submitted on August 2, 2011 pertaining to Development Agreement Section 11	This objection is to all portions of this exhibit regarding Community Facilities Districts (CFDs). CFDs are merely one form of financing referenced in the Development Agreements for infrastructure improvements. There is no CFD Petition being reviewed by the Hearing Examiner in conjunction with these Development Agreements. The Hearing Examiner has no authority to bind the City Council to any decisions regarding future CFD Petitions. As such, all testimony regarding CFDs is irrelevant and must be stricken by the Hearing Examiner.
98	Written Testimony dated 08/04/2011 from Clarissa Metzler Cross re: Development Agreement Hearing July 13, 2011 with additional comments added to her oral testimony	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
		YarrowBay further objects to the portions of this exhibit that allege insufficiency of the Conditions of Approval regarding Green Valley Road. The Green Valley Road mitigation was established in the Conditions of Approval. Its adequacy cannot be challenged in these Development Agreement Hearings. Such testimony must be stricken by the Hearing Examiner as irrelevant.
99	Letter of Record dated 08/03/2011 from Sara Davis re: Letter of record	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay objects to the portions of this exhibit that challenge the MPD Permit Approval Ordinances. The City Council adopted these ordinances in September 2010. The time to appeal has passed. The Hearing Examiner does not have the authority to revisit the MPD Permit Approval Ordinances. Such testimony must be stricken.</p>

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Exhibit No.	Description	Objection
100	Email dated 08/04/2011 from Sierra Club on behalf of Jacqueline Powers re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
101	Email dated 08/04/2011 from Sierra Club on behalf of Jetta Hurst re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
102	Email dated 08/04/2011 from Sierra Club on behalf on Barry Brown re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
103	Email dated 08/04/2011 Sierra Club on behalf of Robin Buxton re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
104	Email dated 08/04/2011 from Sierra Club on behalf of Gloria Sting re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
105	Email dated 08/04/2011 from Sierra Club on behalf of David Blad re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

Exhibit No.	Description	Objection
106	Email dated 08/04/2011 from Sierra Club on behalf of Janis Whitcomb re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
107	Letter of Record for City Council dated 08/03/2011 from Sara Davis re: Letter of Record	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to the portions of this exhibit that challenge the MPD Permit Approval Ordinances. The City Council adopted these ordinances in September 2010. The time to appeal has passed. The Hearing Examiner does not have the authority to revisit the MPD Permit Approval Ordinances. Such testimony must be stricken.</p> <p>This objection is also to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all</p>

Exhibit No.	Description	Objection
		<p>parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p>
112	<p>Email dated 08/04/2011 from Sierra Club on behalf of Paige Heggie re: Comments on MPD Development Agreements</p>	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p>
113	<p>Written Statement dated 08/04/2011 from Gil Bortleson re: Written Statement regarding environmental topics for the Master Planned Developments</p>	<p>This objection is to all portions of this exhibit that challenge the MPD Permit Approvals and the Conditions of Approval. These were adopted by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreements. Such testimony must be stricken.</p> <p>YarrowBay objects to the supplemental conditions proposed by Gil Bortleson. Mr. Bortleson cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner</p>

Exhibit No.	Description	Objection
		recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.
114	Email dated 08/04/2011 from Sierra Club on behalf of Karen Hedwig Backman re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
115	Comment Letter dated 08/04/2011 from Tom Carpenter for GMVAC, FCUAC, UBCUAC Presidents re: UAC Comments on Black Diamond MPDs	<p>This objection is to all portions of this exhibit that challenge the MPD Permit Approvals and the Conditions of Approval. These were adopted by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreements. Such testimony must be stricken.</p> <p>This objection is also to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p>

Exhibit No.	Description	Objection
116	Written Testimony dated 08/04/2011 from Julie Early re: Written testimony for Hearing Examiner	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
117	Written Testimony dated 08/04/2011 from Lisa D. Schmidt re: Written testimony regarding The Villages Development Agreement	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to the supplemental conditions proposed by Lisa Schmidt. Ms. Schmidt cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.</p> <p>Finally, this objection is to all portions of this exhibit that allege noncompliance with</p>

Exhibit No.	Description	Objection
		the BDMC. The Black Diamond City Council found that the MPDs satisfied the BDMC criteria in the MPD Permit Approvals. These Development Agreement Hearings are not the appropriate venue to challenge the MPD Permit Approvals. Such testimony must be stricken.
118	Written Statement dated 08/04/2011 from Peter Rimbos re: Transportation Testimony	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals. These approvals were adopted by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreements. Such testimony must be stricken.</p> <p>This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation. The FEISs for the MPDs were deemed adequate. Traffic mitigation conditions were imposed in the MPD Conditions of Approval. The FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding these issues is irrelevant to the Development Agreement Hearings and must be stricken</p>

Exhibit No.	Description	Objection
		<p>by the Hearing Examiner.</p> <p>YarrowBay objects to the portions of this exhibit that allege noncompliance of the Development Agreements with certain BDMC provisions, the City's Comprehensive Plan, and the Growth Management Act (GMA). The City Council already found the MPDs consistent with the City's code, the Comprehensive Plan, and the GMA in the MPD Permit Approval Ordinances. The City Council's determination cannot be revisited in the context of these Development Agreement Hearings. Such testimony must be stricken as irrelevant to the Hearing Examiner's recommendation. YarrowBay objects to the portions of this exhibit that allege noncompliance with the King County Code. The King County Code does not apply to the Development Agreements. Such testimony must be stricken as irrelevant.</p> <p>YarrowBay objects to the supplemental conditions proposed by Peter Rimbo. Mr. Rimbo cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.</p>

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Exhibit No.	Description	Objection
119	Email dated 08/04/2011 Sierra Club on behalf of Michael Adams re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
120	Email dated 08/04/2011 from Bonnie Scott re: Comments on Yarrow Bay MPDs	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreements and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals. These approvals were adopted by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreement Hearings. Such testimony must be stricken.</p>

Exhibit No.	Description	Objection
121	Written Statement dated 08/04/2011 from Michael Irrgang re: Unfunded Obligations	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to the supplemental conditions proposed by Michael Irrgang. Mr. Irrgang cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.</p> <p>Finally, this objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p>

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YARROW BAY'S OBJECTIONS TO EXHIBIT 47 THROUGH EXHIBIT 180 - 29

CAIRNCROSS&HEMPELMANN
 ATTORNEYS AT LAW
 524 2nd Ave, Suite 500
 Seattle, WA 98104
 office 206 587 0700 fax 206 587 2308

Exhibit No.	Description	Objection
122	Written Statement dated 08/03/2011 from Vern and Betty Gibson re: Written statement towards Black Diamond Community Development	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreements and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals. These approvals were adopted by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreement Hearings. Such testimony must be stricken.</p>
123	Public Comment dated 08/04/2011 from Kristen Bryant re: Road testimony for Development Agreement Hearings	<p>This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation. The FEISs for the MPDs were deemed adequate. Traffic mitigation conditions were imposed in the MPD Conditions of Approval. The FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding these issues is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to the inclusion of certain photos within Exhibit 123. The photos are unauthenticated. In most cases, dates, locations, and photographer are not provided. Such photographs must be stricken.</p>

Exhibit No.	Description	Objection
124	Public Comment dated 08/04/2011 from Kristen Bryant re: Testimony regarding watershed; DevAg Testimony 2011-07-14.pdf	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to the inclusion of certain photos within Exhibit 124. The photos are unauthenticated. In most cases, dates, locations, and photographer are not provided. Such photographs must be stricken.</p> <p>Finally, YarrowBay objects to the supplemental conditions proposed by Kristen Bryant. Ms. Bryant cites no authority for the inclusion of such additional conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.</p>

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Exhibit No.	Description	Objection
125	Written Statement dated 08/04/2011 from Laurie Ann Reynolds re: Written statement for BD MPD Development Hearing	This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.
126	Public Comment dated 07/14/2011 from Tom Hanson re: Development Agreement comments	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that request supplemental conditions be included in the Development Agreements. There is no reason or basis to include new conditions at this time. The Hearing Examiner ruled in his Pre-Hearing Order II that supplemental conditions were outside his authority to require. Such testimony must be stricken.</p>

Exhibit No.	Description	Objection
128	Written Statement dated 08/04/2011 from Andy & Karen Benedetti re: Written Statement regarding proposed developments	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreements and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals. These approvals were adopted by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreement Hearings. Such testimony must be stricken.</p>
129	Email dated 08/04/2011 from Dennis & Diana Boxx re: Input for MPD and DA Hearings	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p>

Exhibit No.	Description	Objection
130	Written Testimony dated 08/04/2011 from Judith Carrier re: Written testimony with exhibits	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation. The FEISs for the MPDs were deemed adequate. Traffic mitigation conditions were imposed in the MPD Conditions of Approval. The FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding these issues is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that request supplemental conditions be included in the Development Agreements. There is no reason or basis to include new conditions at this time. The Hearing Examiner ruled in his Pre-Hearing Order II that supplemental conditions were outside his authority to require. Such testimony must be stricken.</p>

Exhibit No.	Description	Objection
131	Email dated 08/04/2011 from Gwyn Vukich for Garth Ray re: Written testimony regarding proposed developments	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreements and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that request modifications to Conditions of Approval. The conditions were adopted in the MPD Permit Approvals. They cannot be amended pursuant to these Development Agreement Hearings. Such testimony must be stricken.</p>
132	Public Comments dated 08/04/2011 from Kristen Bryant re: Other development comparison testimony for DA hearings	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit regarding development problems in other master planned communities. No evidence has been presented that The Villages and Lawson Hills MPDs will experience the same issues previously experienced by other communities. Such</p>

Exhibit No.	Description	Objection
		<p>testimony is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p> <p>YarrowBay also objects to the inclusion of certain photos within Exhibit 132. The photos are unauthenticated. In most cases, dates, locations, and photographer are not provided. Such photographs must be stricken.</p> <p>YarrowBay also objects to all portions of this exhibit that request supplemental conditions be included in the Development Agreements. There is no reason or basis to include new conditions at this time. The Hearing Examiner ruled in his Pre-Hearing Order II that supplemental conditions were outside his authority to require. Such testimony must be stricken.</p> <p>Finally, YarrowBay objects to all testimony within this exhibit regarding homes for sale in the Issaquah Highlands. Such testimony has no relevance to the Development Agreements and must be stricken.</p>
133	Written Statement dated 08/04/2011 from Donna Gauthier re: Schools	This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.

Exhibit No.	Description	Objection
134	Email dated 08/04/2011 from Sierra Club on behalf of Stacy Karacostas re: Comments on MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
135	Written Statement dated 08/04/2011 from Donna Gauthier re: Taxation without representation	<p>This objection is to all portions of this exhibit regarding the School Agreement. The School Agreement was executed by all parties thereto on or before January 2011. Therefore, it is final and cannot be amended without the mutual agreement of all parties. The Conditions of Approval explicitly find that the School Agreement constitutes adequate school mitigation for The Villages and Lawson Hills MPDs. Because the FEISs were deemed adequate, because there is no pending SEPA appeal before the Hearing Examiner, and because the Conditions of Approval cannot be revisited in the context of these Development Agreement Hearings, testimony regarding the School Agreement is irrelevant to the Hearing Examiner's recommendation and must be stricken.</p> <p>This objection is also to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and</p>

Exhibit No.	Description	Objection
		<p>SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay also objects to all portions of this exhibit regarding City Staff wages, the water tower, the Spring Water agreement, the appearance of fairness doctrine, and the city attorneys. This testimony is irrelevant to the Hearing Examiner's recommendation on the Development Agreements and must be stricken.</p>
136	Written Testimony dated 08/04/2011 from Sheila Swofford re: Development Agreement testimony letter	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
137	Written Statement dated 08/04/2011 from Michael Irrgang re: Transportation and gridlock	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals. These approvals were adopted</p>

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Exhibit No.	Description	Objection
		<p>by the Black Diamond City Council in September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreements. Such testimony must be stricken.</p> <p>This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation. The FEISs for the MPDs were deemed adequate. Traffic mitigation conditions were imposed in the MPD Conditions of Approval. The FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding these issues is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay objects to the supplemental conditions proposed by Michael Irrgang. Mr. Irrgang cites no authority for the inclusion of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.</p>

Exhibit No.	Description	Objection
140	Email dated 08/04/2011 from Sierra Club on behalf of Pamela Harris re: Comments of MPD Development Agreements	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
141	Email/Oral Testimony dated 08/04/2011 from Gwynllyn T. Vuckich re: Oral Testimony, Written Testimony	<p>This objection is to all portions of this exhibit that request modifications to the Conditions of Approval adopted in the City's MPD Permit Approvals. These conditions cannot be contested in the context of these Development Agreement Hearings. As such, this testimony must be stricken.</p> <p>This objection is also to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p>

Exhibit No.	Description	Objection
142	Comment Letter dated 08/04/2011 from Angela Jennings, Diamond Springs Water Association re: Possible impact on designated Wellhead Protection Area	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.
143	Written Statement dated 08/04/2011 from Ericka Morgan re: Written Statement on Development Agreements	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that assert non-compliance with the City's Comprehensive Plan and BDMC. The MPD Permit Approvals already found the MPDs in compliance with the Comprehensive Plan and BDMC. These conclusions cannot be challenged in the context of these Development Agreement Hearings. Such testimony must be stricken.</p> <p>Finally, this objection is to all portions of this exhibit that request supplemental conditions and changes to the Conditions of Approval. The Hearing Examiner noted in his Pre-Hearing Order II that he lacked the</p>

Exhibit No.	Description	Objection
144	Written Testimony dated 08/04/2011 from Llyn Doremus re: Written testimony regarding stormwater	<p>authority to effectuate either request. As a result, such testimony must be stricken.</p> <p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that assert insufficiencies in the City's Engineering Design and Construction Standards. These standards are not under appeal in front of the Hearing Examiner and their adequacy cannot be challenged in the context of these Development Agreements. Such testimony must be stricken.</p>
145	Supplement dated 08/05/2011 from Peter Rimbo re: Reformatted Stop-Light Assessment Table Supplement to Written Statement	<p>This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals. These approvals were adopted by the Black Diamond City Council in</p>

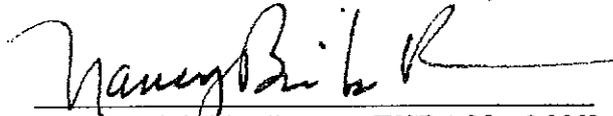
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Exhibit No.	Description	Objection
		<p>September 2010. Challenges are now untimely and irrelevant to the Hearing Examiner's recommendation on the Development Agreement Hearings. Such testimony must be stricken.</p> <p>This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation. The FEISs for the MPDs were deemed adequate. Traffic mitigation conditions were imposed in the MPD Conditions of Approval. The FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding these issues is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.</p> <p>YarrowBay objects to the portions of this exhibit that allege noncompliance of the Development Agreements with certain BDMC provisions, the City's Comprehensive Plan, and the Growth Management Act (GMA). The City Council already found the MPDs consistent with the City's code, the Comprehensive Plan, and the GMA in the MPD Permit Approval Ordinances. The City Council's determination cannot be revisited in the context of these Development Agreement Hearings. Such testimony must be stricken as irrelevant to the Hearing Examiner's recommendation. YarrowBay objects to the portions of this exhibit that allege noncompliance with the King County Code. The King County Code does not apply to the Development Agreements. Such testimony must be stricken as irrelevant.</p> <p>YarrowBay objects to the supplemental conditions proposed by Peter Rimbo. Mr. Rimbo cites no authority for the inclusion</p>

Exhibit No.	Description	Objection
		of such conditions within the Development Agreements and the Hearing Examiner recognized in his Pre-Hearing Order II dated July 6, 2011, that he does not have the authority to impose supplemental conditions on the Master Developer. Such supplemental conditions must be stricken.
150	Written Comments dated 08/04/2011 from Sarah Cooke re: Comments relating to critical areas and the potential impacts	This objection is to all portions of this exhibit regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review. The FEISs for the MPDs were deemed adequate. These FEISs were adopted by the City for the Development Agreements. There is no SEPA appeal pending before the Hearing Examiner. Therefore, testimony regarding environmental impacts, environmental analysis, environmental mitigation, and SEPA review is irrelevant to the Development Agreement Hearings and must be stricken by the Hearing Examiner.

DATED this 11th day of August, 2011.

CAIRNCROSS & HEMPELMANN, P.S.



Nancy Bainbridge Rogers, WSBA No. 26662
 Andrew S. Lane, WSBA No. 26514
 Randall P. Olsen, WSBA No. 38488
 Attorneys for Applicants BD Lawson Partners, LP
 and BD Village Partners, LP

Certificate of Service

I, Nancy Bainbridge Rogers, certify under penalty of perjury of the laws of the State of Washington that on August 11, 2011, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

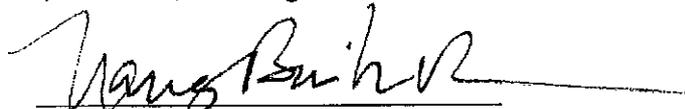
Steve Pilcher
Community Development Director, City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010
Email: spilcher@ci.blackdiamond.wa.us

Brenda Martinez
Clerk, City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010
Email: BMartinez@ci.blackdiamond.wa.us

Stacy Borland
City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010
Email: sborland@ci.blackdiamond.wa.us

Andy Williamson
City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010
Email: awilliamson@ci.blackdiamond.wa.us

DATED this 11th day of August, 2011, at Seattle, Washington.


Nancy Bainbridge Rogers, Attorney

Stacey Borland

From: Cindy Proctor <proct@msn.com>
Sent: Friday, August 12, 2011 8:15 AM
To: Steve Pilcher
Cc: Stacey Borland; Brenda Martinez; Andy Williamson
Subject: DA Response Comments Due 8/12/2011
Attachments: Harp_Proctor Response to Public Comment DA.pdf; Proctor Response to YB-schools.pdf

Steve,

Attached are written responses/reply to the comments as of 8/4/2011 exhibit 139 for both myself and my Mom. Please put into the DA record.

Thank you,

Cindy Proctor

“This country will not be a good place for any of us to live in unless we make it a good place for all of us to live in.”-Teddy Roosevelt

Before the Hearing Examiner of Black Diamond
Response to Development Agreement Comments as of August 4, 2011

Yarrow Bay states on page 46-47 in their written comments that they are going to adhere to work hours of operation more restrictive than the BDMC 8.12.040.C., and therefore won't work on Sundays without committee approval (the committee isn't even created until two weeks after start of construction and consist to two Master Developer staff and one City staff and two citizens) YB and City have already argued that noise mitigation is adequate therefore the expectation of relevance of the Noise committee is nil.

Condition 43. Work hours of operation shall be established and made part of the Development Agreement: does NOT state that the work hours of operation shall be governed by BDMC 8.12.040.C. BDMC 8.12.040.C is the general noise ordinance that applies for the day to day activities of a City this size. It is not all encompassing to include the massive, ongoing construction activities that will go on for years and years by these MPDs. That is why the **BDMC 8.12.30** allows for special noise requirements. Since Condition 43 did not provide the specificity of BDMC 8.12.040.C it can be inferred that Council intended for work hours of operations to be customized for this large development, and with consideration of the existing rural ambience and existing SF homes sited near the MPDs. This would exclude Saturday hours (accept for emergency reasons related to wet weather conditions) and Sunday work should be forbidden outright.

In regards to Yarrow Bay's response to what constitutes "Construction Activities" it is of no value **if the Designated City Official can waive or make minor amendments with his/her sole authority.** As detailed in the Harp oral and written comments, the Applicant has already submitted a PPA 1A (goes to relevance of the implementation of the Noise Conditions) where the City Designated Official has already determined that a noise study doesn't need to be completed prior to clearing and grading yet the FEIS and expert testimony noted this will be the greatest noise activity for the Harp Property, yet the PPA 1A SEPA Checklist states it will only be minimal. A noise study is an FEIS mitigation measure and should be completed prior to ANY disturbance on the Villages property, it should be noted that current forest lands serve to significantly mitigate noise; therefore the DA should require a) the noise study take place immediately to get an equivalent ambient noise level; b) the DA should require an additional noise study following partial build-out to determine ongoing mitigation measures that may not be apparent now.

In an effort not to restate what has already been presented please complete a comprehensive review of Harp submitted written testimony, specifically concerns related to the Master Developer having sole discretion on mitigation measures; mitigation measures shall be to the extent needed to FULLY mitigate the dangerous noise levels and shall be mutually agreeable.

Before the Hearing Examiner of Black Diamond
Response to YB Development Agreement Comments Exhibit 139

In order to accept Yarrow Bay's logic and defense of the various deficiencies of the Development Agreement one must decide whether one is going to embrace the idea that the Black Diamond City Council's intent was to knowingly, and capriciously violate numerous sections of the BDMC and Comprehensive Plan; that they knowingly and willfully intended to use the Development Agreement to supersede prior third party agreements; that they knowingly intended to waive or supersede other jurisdictions' codes, laws and/or design standards; that they knowingly and willfully intended to force the creation and approval of laws that constrain fundamental duties of a future City Council and take away the rights of the public they serve; that they knowingly and willfully intended to violate the rights of all interested parties by circumventing various public hearings on standalone agreements; that they knowingly and willfully approved illegal land-uses; that they knowingly and willfully violated the public participation process as determined by the Growth Management Hearing Board.

That is absurd. The City Council relied heavily on City Staff and the City Attorney, who are funded by the Developer under the funding agreement, to guide them in the MPD decision making process and the wording of the Conditions and eventually on the presentation of a thorough, complete, and legal Development Agreement. It is clear that City Council, rightly or wrongly, deferred many decisions, clarifications, and completion of implementing documents to the Development Agreement. **The City staff and Attorney had an obligation to protect the welfare of the City and public; they had an obligation and duty to ensure consistency with BDMC and Comprehensive Plan and prevent conflicts that may result in legal action against the City and her taxpayers.** Yarrow Bay cannot uniformly claim that there is absolutely nothing that can be done because the City Council Approved the MPD and corresponding conditions.

In regards to the Comprehensive School Agreement (CSA), Yarrow Bay would again like to tie the truth into a Gordian knot of confusion in regards to whether a public hearing took place and whether proper notice was provided. They must do this as they know full well that (pg49-52):

- No Public Hearing took place on the CSA; DA Exhibit #47 clearly demonstrates that the City was aware that a public hearing was required, but it was cancelled twice. After the second cancellation in November 2009 the City's Designated Official indicated that the CSA would now be considered in conjunction with the MPD Hearing, keeping the CSA under the very tight controls of a "Quasi-Judicial" process, even though, as Yarrow Bay points out, the CSA was a separate document from the MPD; In-fact the CSA should have had its own separate public hearing prior to approve or deny; *if approved it would be incorporated into the DA by reference per the MPD Conditions; therefore there is basis for discussion of the CSA.*

No one has testified that there weren't any public meetings for the "Rollout" of the CSA; this is an area that there is 100% agreement between those who testified, and the Applicant. In fact the Proctor written comments DA Exhibit #47 attach the public meeting minutes from these meetings. As a courtesy, the school district endeavored to communicate the final draft CSA to its constituents, however it was not the legal requirement of the school district to have a public hearing on the CSA, nor did the school district have the authority to hold a legal public hearing on the proposed CSA. It was the responsibility of the City of Black Diamond with notice being sent to 100% of the ESD taxpayers. One can anticipate that at least half of the taxpayers in the City of Black Diamond are relieved about the CSA, as they reside in the

Tahoma and Kent School Districts, and **will not** bear the tax burden of (7) new schools. This will fall primarily to the taxpayers in the City of Enumclaw and unincorporated King County, especially in years 1-7 and those **thousands** of taxpayers were never afforded the opportunity to participate in the public process in regards to the CSA due to lack of legal notice and a public hearing.

Contrary to Yarrow Bay's allegation about the "relevancy" of whether or not a public hearing took place, it is critical to understand that the CSA is a long-term contract and a standalone legislative document that required:

- A separate public hearing;
- Mandatory Public Notice Requirements for the affected parties; and
- Incorporation into the Lawson and Villages MPD Development Agreements

Therefore it is invalid for those reasons alone. However, I believe it is important to focus on what is really relevant to the Hearing Examiner's recommendation to the City Council regarding the Comprehensive School Agreement. What is relevant is whether the CSA clearly and adequately incorporates the MPDs Conditions 98 and 99 into the Development Agreement;

1. Are the schools adequately mitigated;
 - Written and Oral testimony from Brian Derdowski, Rich Ostrowski, and myself provide clear evidence that the schools are not adequately mitigated, and sufficient mitigation fees and mechanisms to limit permits in the event of overcrowding and bond failures are not in place;
2. Are they consistent with the MPD conclusion of law that they must be walkable within ½ mile;
 - No, Yarrow Bay's only argument is that the City Council approved the ordinance therefore they meet the walkable school requirements;
3. Are the number and sizes of the school sites designated to accommodate the total number of children that will reside in the MPD;
 - YB does have a CSA with (7) school sites designated; however (3) and possibly (4) of the schools are to be placed on land that will not be regulated by the implementing Development Agreement; and they are on land that cannot be served by water and sewer utilities from within the UGA per the BC Comprehensive Plan U-9; nor are they within the City limits per CF-11 of the BD Comprehensive Plan (oral testimony Proctor); nor are they allowed outright under current King County CWPP; furthermore only (1) site is guaranteed, the (6) other sites require voter bond approval within one year *before* transfer.

Yarrow Bay would like the Hearing Examiner believe that the only intent of the BDMC 18.98.080(A)(14) is to designate school sites, regardless if the sites are valid; regardless if they will remain available to the ESD throughout full build-out to serve the children of the MPD; regardless if there is possible permitting and feasibility issues with the designated site; regardless if mine hazards are an issue; regardless if they are walkable; regardless if they are within the City, MPD or UGA; and regardless of whether all the sites will be encumbered with the regulatory constraints for the Development Agreement. Besides transportation the lack of adequate school mitigation is one the biggest failures of these MPDs and DAs.

Since the CSA clearly does not adequately implement the MPD Conditions of Approval (98 &99); and the CSA did not go thru a legal, public hearing process, there is reason and basis for supplemental conditions, revisions and/or remand back to the City.

Cindy Proctor 718 Griffin Ave #241 Enumclaw, WA 98022

Stacey Borland

From: Cindy Proctor <proct@msn.com>
Sent: Friday, August 12, 2011 8:31 AM
To: Steve Pilcher
Cc: Brenda Martinez; Stacey Borland; Andy Williamson
Subject: DA Comments Due 8/12/2011
Attachments: Exhibit F Ordinance Challenge.pdf; Exhibit B Council Agenda 6-18-09.pdf; Exhibit C Affidavit public notice.pdf; Exhibit D Council Package June 18.pdf; Exhibit E 09-913.pdf; Exhibit A EEmergency Ordinances.pdf; Proctor Response to YB_General.pdf

Steve,

Attached is my additional response to comments of exhibit 139. Please note that there are attached supporting exhibits salient to my direct response to Exhibit 139's comments.

Thank you,

Cindy Proctor

“This country will not be a good place for any of us to live in unless we make it a good place for all of us to live in.”-Teddy Roosevelt

Before the Hearing Examiner of Black Diamond
Response to YB Development Agreement Comments Exhibit 139

Yarrow Bay's responses and defense of the Development Agreement's terms and conditions throughout their written comments rely heavily on their *repeated* position that the *public's* failure to appeal every code and ordinance within the BDMC immediately after adoption somehow makes every word and or sentence within that BDMC valid, and permanently waives the rights of the public to raise the question of validity at any point in the future; in essence once a code is codified it is valid forever.

First, it is important to understand the full context or background of the MPDs and BDMC revisions. For years and years the City of Black Diamond had a "Moratorium on the Development of MPDs" primarily due to the fact that they needed to create codes, and regulations to protect the City. The Public, including myself, continued to watch this process and continued to be assured by City Staff (Steve Pilcher, Gwendolyn Volpel), Council-members (Kristine Hanson), and Attorney (Loren Combs) to not worry as there was:

1. A "Moratorium" in place and no MPD developments could take place in the near future;
2. The "Moratorium" would continue for another (6) months;
3. That there would be "plenty" of opportunity to make comments and let council know your concerns;

We are not talking about a single standalone development regulatory agreement where a clearly defined appeal was missed. We are talking about volumes and volumes of BDMC, Design Guidelines and Comprehensive Plan changes that were talking place all the same time or in a relatively close time during a moratorium time period.

- The City explained to the public that the April 2009 MPD Ordinance could not be acted upon by a Master Developer as there was an existing moratorium in place;
- Many significant codes, such as the Design and Engineering Standards and the 2005 DOE Storm-water Guidelines were passed under Emergency Ordinances which *bypasses* the public hearing process;¹
- As early as June 2009, the Public was *intentionally* led to believe that there would be a (6) month "Continuation on the Moratorium" on MPDs²
 - This intent was so clear that formal publication in the paper of record took place;³
 - The Council Packet's had the "Continuation of the Moratorium" ordinance in their council packets;⁴
 - It was only at the June 2009 Council meeting that "Continuation of the Moratorium" was swapped out for the "Lifting of the Moratorium" the City Attorney at the time told the City Council that they could continue to have a

¹ Exhibit A Emergency Ordinances

² Exhibit B June 18, 2009 Agenda

³ Exhibit C Affidavit of Publication

⁴ Exhibit D June 18, 2009 Council Packets

public hearing or they could skip the public hearing since the “Lifting of the Moratorium” did not require a public hearing, the Council voted to not have a public hearing;⁵

- The relevance of this is that no one from the public was at this Council meeting since we believed the moratorium was going to be continued; the deception was so blatant that the State Auditor’s office has agreed to review this within their next Audit along with the funding agreement and other irregularities and the conflict with the funding agreement;⁶

To further exacerbate this issue, the BDMC does not have procedures in place to appeal a Council Ordinance, nor is there a process for such action in the Council Procedures. This was further complicated by the fact that the City Staff would not confirm or deny an ordinance appeal process (See Exhibit) when approached regarding the Comprehensive School Agreement.

The next notification for the public was when the MPD applications were submitted and public notice went out to the shock of the community. Upon this official public notice the public has endeavored to meet all the statutory provisions related to the specific regulatory land use or SEPA action, whereas Yarrow Bay argues that the challenge must have been made prior, at the actual codification level and of the code itself.

Therefore one must look at the ‘gravitational force’ of fairness. Where the time within which a challenge to an ordinance and or code is to be brought and it is not established by statute, the action must be brought within a *reasonable* time.

- The City and City Council does not appear to have established process for appealing an ordinance (and/or is unwilling to share this process if there is one);⁷
- The Moratorium on MPDs was in place holding all MPD actions; staff inferred there was opportunity later to discuss concerns;
- Several critical ordinances were passed as “Emergency Ordinances” by-passing the public process;

The first reasonable time for appeal inferred by the City was at the time of the FEIS and MPD public notices:

- The FEIS Appeals were timely;
- The MPD appeals were timely;

Regardless, of whether one agrees or disagrees with the validity BDMC 18.98.080 (B) and specifically as it relates to voluntary contributions to the City; it is still predicated on the fact that there are specific conditions for allowance of these voluntary contributions: **“So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's**

⁵ Exhibit E Final Ordinance

⁶ SAO contact Jim Griggs~ griggsj@sao.wa.gov

⁷ Exhibit F Email with City regarding Ordinance Appeal process

adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal. The jeopardy does not need to be the result of malfeasance it can simply be that the scale, scope and breakneck speed of this process itself is resulting in mistakes creating a flawed, illegal, and inadequate Development Agreement.

A clear example of this is the proposed "Surcharge" (pg 66) which requires the creation and approval of laws that constrain fundamental duties of a future City Council and the State Legislators. Prior to any enactment by City Council the State must first create this new law. Furthermore, the sole purpose of this surcharge is to pay the Master Developer back their quote "voluntary contributions"; how is this in the best welfare of the City and the taxpayers? Why would the City give money back to the Master Developer if they were not required to give money back?

The health and welfare of the City *is in jeopardy* with the plethora of BDMC, Comprehensive plan, public participation violations, and the conflicts created under the Funding Agreement. The City Staff and City Attorney have an obligation and duty to ensure compliance. There is sufficient basis to revise the funding agreement or remand it back for a separate public hearing.

EMERGENCY ORDINANCE ✓

ORDINANCE NO. 09-915

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF BLACK DIAMOND, KING COUNTY,
WASHINGTON, RELATING TO CONSTRUCTION
STANDARDS, REPEALING CHAPTER 12.04 OF THE
BLACK DIAMOND MUNICIPAL CODE AND AMENDING
CHAPTER 15.08 TO ADOPT AN OFFICIAL
"ENGINEERING DESIGN & CONSTRUCTION
STANDARDS MANUAL" FOR PUBLIC WORKS
PROJECTS IN THE CITY**

WHEREAS, chapter 12.04 of the Black Diamond Municipal Code adopted the 1995 "Development Guidelines and Public Works Standards" manual as the official set of minimum standards for construction work within the City; and

WHEREAS, because infrastructure standards directly and indirectly affect the health and safety of residents within the City, one of the important reasons why the City has had a moratorium on accepting new applications for master planned developments, subdivisions and planned unit developments was to review the existing construction standards and update them as needed; and

WHEREAS, these standards have now been comprehensively updated by PacWest Engineering, the public works staff and the Public Works committee; and

WHEREAS, because the moratorium mentioned above shall expire on June 28, 2009, it is imperative that the City's revised construction standards be officially in effect on that date in order to prevent public health, safety and welfare from being jeopardized by new applications that vest to the old construction standards, defeating the purpose of the moratorium and the goal of ensuring our local infrastructure promotes the health and safety of our City's residents; and ✓

WHEREAS, to more accurately reflect the contents of this manual and avoid confusion with the Design Guidelines adopted by the Community Development Department, the Public Works Director has renamed this manual as the "Engineering Design and Construction Standards" manual; and

WHEREAS, because this manual pertains to more than just streets and sidewalks, the Public Works Director wishes to move the chapter dealing with this manual to Title 15 ("Buildings and Construction") of the municipal code; and

WHEREAS, because these standards need to be updated from time to time, it is more

ORDINANCE NO. 09-914

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ADOPTING NEW STORMWATER MANAGEMENT REGULATIONS AND AMENDING CHAPTER 14.04 OF THE BLACK DIAMOND MUNICIPAL CODE AND DECLARING THIS ORDINANCE A PUBLIC EMERGENCY ORDINANCE AND THUS EFFECTIVE IMMEDIATELY

WHEREAS, in 1995, the Black Diamond City Council adopted the Washington State Department of Ecology's 1992 Stormwater Manual for the Puget Sound Basin as the stormwater standards for the City of Black Diamond; and

WHEREAS, The Department of Ecology's current stormwater manual is the 2005 Stormwater Manual for Western Washington ("2005 Ecology Manual"), which incorporates current best management practices and best available science; and

WHEREAS, Black Diamond is a National Pollution Discharge Elimination System (NPDES) Phase II community, and as such is required to adopt stormwater standards equivalent or more stringent than the 2005 Ecology Manual by August 19, 2009; and

WHEREAS, the Council held a public hearing on this ordinance on June 25, 2009; and

WHEREAS, the Council makes the following findings:

1. Urban development causes significant changes in patterns of stormwater flow from land into receiving waters. Increased surface runoff flows cause stream channel changes that destroy habitat for fish. Water quality can be harmed when runoff carries pollutants such as eroded soil, oil, metals or pesticides into streams, wetlands, lakes, and marine waters or into ground water. Managing stormwater runoff helps to reduce these significant pollution problems that make waterways unhealthy for people and fish.

2. The City has many large undeveloped and underdeveloped parcels that, if developed before the new stormwater management standards are in place, could result in stormwater management plans and facilities that do not meet current best management practices and are not based on best available science. Such inadequate plans and facilities could have a detrimental impact to water quality, fish habitat, and flood control for many years to come.

CITY OF BLACK DIAMOND

City Clerk

HOME / CLERK HOME / ORDINANCE HOME :: August 11, 2011

2008 ORDINANCES

Ordinances are "codes" adopted by City Council that will reflect the laws that are set forth in the Black Diamond Municipal Code.
-If you would like information prior to 2005, please contact the City Clerk's office

Ordinance No. 08-892	TABLED (See 2009 Ordinances)
Ordinance No. 08-891	Waiting for Adoption
Ordinance No. 08-890	Revising Water Connection Fees
Ordinance No. 08-889	Repealing Water Surcharge
Ordinance No. 08-888	Adopting 2009 Budget
Ordinance No. 08-887	Amending Budget for 2008
Ordinance No. 08-886	Interfund Loan - Police Records Management System
Ordinance No. 08-885	Extending Master Planned Developments - Moratorium
Ordinance No. 08-884	Comprehensive Park Plan
Ordinance No. 08-883	Stormwater Utility Tax
Ordinance No. 08-882	Allowing Commercial Sign in ROWs During Road Closures
Ordinance No. 08-881	Establishing Duties and Powers of the Position of City Administrator
Ordinance No. 08-880	Administrative Regulations
Ordinance No. 08-879	Water Service Rates 2009
Ordinance No. 08-878	Emergency Ordinance- Imposing Weight Limitation on Vehicles Traveling on City Streets ✓
Ordinance No. 08-877	2009 Sewer Rates
Ordinance No. 08-876A	Setting Property Tax Levy Dollars for 2009
Ordinance No. 08-876	Specifying One Percent Property Increase
Ordinance No. 08-875	Waiting for Adoption (See 2009 Ordinances)
Ordinance No. 08-874	Petty Cash Permitting Department
Ordinance No. 08-873	Capital Improvement Plan
Ordinance No. 08-872	Stormwater Utility and Establishment of Rates
Ordinance No. 08-871	Boating Regulations
Ordinance No. 08-870	Emergency Ordinance- Moratorium - Master Planned Developments ↙
Ordinance No. 08-869	Emergency Ordinance- Moratorium- Mobile Homes ↙
Ordinance No. 08-868	Emergency Ordinance - Prohibiting Solicitations on City Recognized Holidays - Amending BDMC ✓
Ordinance No. 08-867	TABLED
Ordinance No. 08-866	Tree Preservation - New Chapter BDMC
Ordinance No. 08-865	Amending Budget for Year 2008
Ordinance No. 08-864	Animal Welfare Agencies to Trap Animals - Amending BDMC
Ordinance No. 08-863	Short Term Interfund Loan from Sewer Reserve Fund to Drainage Fund
Ordinance No. 08-862	Fixing the Compensation for Judge Pro-Tem
Ordinance No. 08-861	Police Investigation Buy Account - New Chapter in BDMC
Ordinance No. 08-860	Petty Cash - Change Account - New Chapter in BDMC
Ordinance No. 08-859	Civil Service Regulations - Full Time Fully Commissioned Police Officer
Ordinance No. 08-858	Binding Site Plans - Adding New Chapters to BDMC
Ordinance No. 08-857	Hearing Examiner Position - Adding and Amending Chapters in BDMC
Ordinance No. 08-856	Moratorium - Master Planned Developments
Ordinance No. 08-855	Moratorium - Mobile Homes
Ordinance No. 08-854	Prohibiting Dogs in Cemetery - Dogs on Leash
Ordinance No. 08-853	New City Engineer Position- New Sections to BDMC
Ordinance No. 08-852	New 2008 Wage and Salary Schedule
Ordinance No. 08-851	Code Enforcement - New Chapters to BDMC
Ordinance No. 08-850	Payment of City Claims or Obligations - Deleting and Creating Chapters of BDMC

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Excessive use of emergency ordinances declaring public health and safety emergencies bypassing public hearings



CITY OF BLACK DIAMOND
June 18, 2009 Meeting Agenda
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 253-631-0351. Thank you for attending this evening.

PUBLIC HEARINGS:

- 1.) **AB09-069** – Ordinance Continuing Subdivision, Master Plan Development Moratorium
Mr. Combs
- 2.) **AB09-070** – Resolution Adopting Six Year Transportation Improvement Program
Mr. Boettcher
Council action may follow public hearings

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

- 3.) **AB09-071** – Ordinance Adopting 2009 Comprehensive Plan
Mr. Pilcher
- 4.) **AB09-072** – Ordinance Adopting Zoning Code
Mr. Pilcher
- 5.) **AB09-073** – Ordinance Adopting Zoning Map
Mr. Pilcher
- 6.) **AB09-074** – Ordinance Adopting Design Guidelines
Mr. Pilcher
- 7.) **AB09-075** – Ordinance Adopting Title 16 of Municipal Code
Mr. Pilcher
- 8.) **AB09-076** – Resolution Authorizing Change Order #3 to SLEAD Contract and
Accepting Project
Mr. Boettcher

DEPARTMENT REPORTS:

Public Works – Mr. Boettcher

Fire Department – Chief Smith

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 9.) **Claim Checks** – June 18, 2009, No. 33586 through No. 33590, No. 33642 through No. 33651, No. 33652 through No. 33705 in the amount of \$229,937.38
- 10.) **Payroll Checks** – May 30, 2009, No. 15912 through No. 16005 (voided checks 15981, 15983, 15985, 15988, 15989, 15995, 15996 through 15999) in the amount of \$305,021.69
- 11.) **Minutes** – Council Meeting of June 4, 2009 and Workstudy Notes of May 28, 2009

EXECUTIVE SESSION: Real Estate Acquisition

ADJOURNMENT:



CITY OF BLACK DIAMOND

24301 Roberts Drive, PO Box 599
Black Diamond, WA 98010

Phone: (360) 886-2560
Fax: (360) 886-2592

January 21, 2011

Cindy Proctor
718 Griffin Avenue, #241
Enumclaw, Washington 98022

Re: Public records request

Dear Ms. Proctor:

The City received today by fax your public records request dated January 12, 2011. The request sought "a copy of the Affidavit of Publication of the Public Hearing Notice for Ordinance #09-913".

Included with this letter please find a log sheet and copies of documents that are responsive to your request

If I can be of further assistance please let me know.

Sincerely,

Brenda L. Martinez

Brenda L. Martinez
Assistant City Administrator/City Clerk

Enclosure

CITY OF BLACK DIAMOND

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the Black Diamond City Council will be conducting two (2) public hearings.

1.) Continuation of a moratorium on submitting applications for subdivisions, master planned developments and planned unit developments within the City, and 2.) the proposed Six-Year Transportation Improvement Program. Both hearings will take place on Thursday, June 18, 2009 at 7:00 p.m. at the Black Diamond City Council Chambers, 25610 Lawson Street, Black Diamond, WA. The purpose of these hearings is to hear public testimony on the above listed subjects. Written comments may be submitted to the Clerk's office at 24301 Roberts Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on June 18, 2009, otherwise they must be submitted at the hearing. All documents related to these hearings are available for inspection or purchase at City Hall, 24301 Roberts Drive, or on the City's website at <http://www.ci.blackdiamond.wa.us>.

Dated this 29th day of May, 2009.
Brenda L. Martinez, CMC
City Clerk
(Published VOICE of the Valley,
Tuesday, June 2 and 9, 2009)

AFFIDAVIT

), Box 307, Maple Valley, Washington, deposes and
Proof Reader of the VOICE OF THE VALLEY, a

newspaper published weekly in the County of King with a circulation of
17,300.

She further states that the attached Notice of Public Hearing was in the
VOICE OF THE VALLEY in the issue(s) of June 2nd & 9th, 2009 for a total
of \$120.00.

Marilyn Ballard

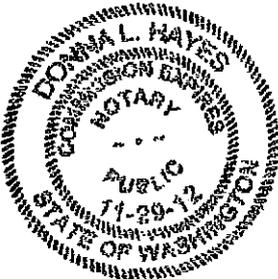
Marilyn Ballard
Proof Reader, Voice of the Valley

State of Washington

ss

County of King

Subscribed and sworn before me this 11th day of June, 2009.



Donna L. Hayes

Donna L. Hayes
Notary Public in and for the State of Washington

2

BLACK DIAMOND CITY COUNCIL MINUTES
June 18, 2009
 Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Botts called the regular meeting to order at 7:00 p.m. and lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Mayor Botts, Councilmembers Hanson, Bowie, Boston, Olness and Mulvihill.

ABSENT: None

Staff present were: Gwendolyn Voelpel, City Administrator; Andy Williamson, Economic Development Director; Steve Pilcher, Community Development Director; Jamey Kiblinger, Police Chief; Greg Smith, Fire Chief; Loren D. Combs, City Attorney and Brenda Streepy, City Clerk.

PUBLIC COMMENTS: None

PUBLIC HEARINGS:

Ordinance No. 09-913, Continuation of Master Planned Development and Subdivision Moratorium

City Attorney Combs reported he has prepared an alternative ordinance for tonight which does not require a public hearing. He explained that if Council adopts all items on tonight's agenda and next weeks agenda, it is the staff and administrations opinion the City is well protected and therefore recommends adopting the alternative ordinance that lifts the current moratorium.

A **motion** was made by Councilmember Bowie and **seconded** by Councilmember Boston to adopt to not hold a public hearing tonight on the moratorium continuation. Motion **passed** with all voting in favor (5-0).

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to adopt Ordinance No. 09-913, lifting the moratorium on accepting applications for Master Planned Developments, subdivisions and planned unit developments within the City and repealing Ordinance No. 08-885. Motion **passed** with all voting in favor (5-0).

Mayor Botts recessed the meeting for a short celebration at 7:04 p.m.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Ordinance 09-913, continuing a moratorium on accepting applications for master planned developments, subdivisions and planned unit developments within the City, as well as pre-application meetings Cost Impact: Fund Source: Timeline: July 1- Dec 31, 2009	Agenda Date: June 18, 2009		AB09-069
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator - Gwen Voelpel		
	Asst. City Attorney - Tom Guffol	X	
	City Clerk - Brenda L. Martinez		
	Finance - May Miller		
	Public Works - Seth Boettcher		
	Economic Devel. - Andy Williamson		
	Police - Jamey Kiblinger		
Court - Kaaren Woods			
Comm Development - Steve Pilcher			
Attachments: Emergency Ordinance 09-913			
SUMMARY STATEMENT: Adoption of this Ordinance would extend the current moratorium on acceptance of applications for Master Planned Developments, Planned Unit Developments, and subdivisions until December 31, 2009, unless the moratorium is earlier terminated by Council action. Pre-application meetings would continue to be prohibited unless the applicant agrees that such meetings shall not vest the applicant to existing code. Although it had been fully expected that this moratorium could be lifted by June 30, 2009, despite the diligent efforts of City staff to complete the needed revisions to the Comp Plan and development regulations the City has been unable to obtain all of the information it needs to complete the process. Moreover, unprecedented changes in the economy have required the City to review certain previous assumptions and amend proposed changes to the Comprehensive Plan and development regulations. Mayor and staff support letting the current moratorium expire.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-913, continuing a moratorium on accepting applications for master planned developments, subdivisions and planned unit developments within the City.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
June 18, 2009			

EMERGENCY ORDINANCE

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 09-913

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, CONTINUING A MORATORIUM ON ACCEPTING APPLICATIONS FOR MASTER PLANNED DEVELOPMENTS, SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS WITHIN THE CITY, AND CONTINUING A MORATORIUM ON PREAPPLICATION MEETINGS ON THOSE APPLICATIONS IF REQUIRED BY CITY CODE AND DECLARING THIS ORDINANCE A PUBLIC EMERGENCY ORDINANCE AND THUS EFFECTIVE IMMEDIATELY

WHEREAS, the City Council makes the following findings:

1. For over twelve years the City has been working toward the goal of bringing into reality a vision for the development of Black Diamond that will make Black Diamond a model for small city comprehensive urban land planning and development.
2. The City has this opportunity because a vast percentage of the total land area within the City is undeveloped and is in the control of only two entities.
3. One of those entities has provided the funding, through various agreements, to hire the consultants and expert staff to complete changes to the City's Comprehensive Plan and development regulations that are necessary to bring the City's vision into reality.
4. In order to complete the planning and review process necessary to complete revisions to the City's Comprehensive Plan and development regulations, and because of significant changes to the economic situation that have affected some previous assumptions, additional information and studies have been required, and this process has taken longer than anticipated and is not yet completed.
4. Allowing development to occur before the new development regulations are in place would result in the vision of the City that is contained in the revised Comprehensive Plan being severely compromised, if not thwarted.
5. It would be detrimental to the public health, safety and welfare to allow large portions of the City to vest to the old development standards until such time as the new development regulations are adopted by the City, as development applications might vest to the old standards unless the premature filing of applications is prevented.

EMERGENCY ORDINANCE

6. It is in the interest of the City to allow for construction, reconstruction or remodeling of single-family residences within the City as this type of development is less likely to negatively impact the vision set forth in the Comprehensive Plan and can provide for desired in-fill development in appropriate areas of the City.

9. Allowing pre-application meetings regarding Master Planned Developments shall continue to be allowed where the applicant expressly waives any claim to vesting under the existing Comprehensive Plan and development regulations, because these informal meetings allow the applicant to discuss overall concepts for the proposed development with City staff, to learn what changes to regulations are being considered by the City, and to assist in the general process of preparing an application.

10. When this moratorium was last extended, it was anticipated that the review and adoption of the Comprehensive Plan and accompanying development regulations would be fully completed by June 30, 2009. Unfortunately, compiling the necessary data to support decisions regarding elements of the Comprehensive Plan and development regulations has taken longer than projected. Because of this delay, additional time is also needed to allow for public input once the final proposed Comprehensive Plan and development regulations are complete.

11. It is anticipated, given the current work plan and schedule for information to be provided to the City and studies to be completed, that the needed implementation regulations will be completed and adopted by the City within six months.

12. Pursuant to RCW 35A.63.220, a public hearing was held on June 18, 2009 regarding the continuation of the existing moratorium that is in effect as a result of the adoption of Ordinance 08-885.

Based upon the above findings,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY,
WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The existing moratorium on accepting applications for any land use activity resulting in the creation of greater than four contiguous lots in the same ownership, including but not limited to, subdivisions, master planned developments or planned unit developments is hereby continued in full force and effect up to and including **December 31, 2009**, unless earlier terminated by action of the City Council, and shall also include a moratorium on conducting any pre-application meeting that is required by the Black Diamond Municipal Code for the above referenced applications, exception as provided in Section 2. Acceptance of short plat applications for the division of land into four (4) or fewer lots shall be allowed provided that new lots are to be served by public water and sewer facilities.

Section 2. Pre-application meetings regarding Master Planned Developments shall continue to be allowed under this moratorium only where the applicant expressly agrees that holding of pre-application meetings shall not result in vesting of the proposed development to any of the regulations

EMERGENCY ORDINANCE

currently in effect, and that applicant agrees and acknowledges that there is a risk that applicable regulations might change, and that applicant's development shall be subject to the regulations in effect at such time as a complete application is filed, and that such application shall not be allowed to be filed until the Comprehensive Plan and accompanying development regulations have been adopted by the City and this moratorium has been lifted.

Section 3. This Ordinance is hereby designated as a Public Emergency Ordinance as the Council finds it is necessary for the protection of public health, safety, public property or the public peace and shall be effective upon adoption.

Section 4. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to the law by a Court of competent jurisdiction, it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Introduced the 18th day of June, 2009.

Passed by an affirmative vote of no less than 4 Council Members on the 18th day of June, 2009.

Approved by the Mayor on the 18th day of June, 2009.

Howard Botts, Mayor

ATTEST:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

City Attorney
Published: _____
Posted: _____
Effective Date: _____

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Resolution No. 09-611, adopting the 2010 – 2015 Six Year Transportation Improvement Program	Agenda Date: June 18, 2009		AB09-070
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	Asst. City Attorney – Tom Guilfoil		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Court – Kaaren Woods			
Cost Impact: Planning for yearly budgets			
Fund Source: Various			
Timeline: As per individual project schedules			
Attachments: Resolution No. 09-611, Six Year Transportation Improvement Program			
SUMMARY STATEMENT: The City is required to update its Six Year Transportation Improvement Program (TIP) per RCW 35.77.010 and file the TIP with Washington State Department of Transportation. Updates include some new projects that will add transportation capacity and expected grant funding. This program takes advantage of the quarter of 1% of Real Estate Excise Tax for local street improvements and to provide grant matching.			
COMMITTEE REVIEW AND RECOMMENDATION: None.			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-611, adopting the Six Year Transportation Improvement Program for 2010 -2015.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
June 18, 2009			

EMERGENCY ORDINANCE

6. It is in the interest of the City to allow for construction, reconstruction or remodeling of single-family residences within the City as this type of development is less likely to negatively impact the vision set forth in the Comprehensive Plan and can provide for desired land-use development in appropriate areas of the City.

9. Allowing pre-application meetings regarding Master Planned Developments shall continue to be allowed where the applicant expressly waives any claim to treating under the existing Comprehensive Plan and development regulations, because these informal meetings allow the applicant to discuss overall concepts for the proposed development with City staff, to learn what changes to regulations are being considered by the City, and to assist in the general process of preparing an application.

10. When this moratorium was last extended, it was anticipated that the review and adoption of the Comprehensive Plan and accompanying development regulations would be fully completed by June 30, 2009. Unfortunately, compiling the necessary data to support decisions regarding elements of the Comprehensive Plan and development regulations has taken longer than projected. Because of this delay, additional time is also needed to allow for public input on the final proposed Comprehensive Plan and development regulations are complete.

11. It is anticipated, given the current work plan and schedule for information to be provided to the City and studies to be completed, that the needed implementation regulations will be completed and adopted by the City within six months.

12. Pursuant to RCW 35A.63.220, a public hearing was held on June 18, 2009 regarding the continuation of the existing moratorium that is in effect as a result of the adoption of Ordinance 09-885.

Based upon the above findings:

**THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. The existing moratorium on accepting applications for any land use activity resulting in the creation of greater than four contiguous lots in the same ownership, including but not limited to, subdivisions, master planned developments or planned unit developments is hereby continued in full force and effect to and including December 31, 2009 unless earlier terminated by action of the City Council and shall also include a moratorium on conducting any pre-application meeting that is required by the Black Diamond Municipal Code for the above referenced applications, except as provided in Section 2. Acceptance of short plot applications for the division of land into four (4) or fewer lots shall be allowed provided that new lots are to be served by public water and sewer facilities.

Section 2. Pre-application meetings regarding Master Planned Developments shall continue to be allowed under this moratorium only where the applicant expressly agrees that holding of pre-application meetings shall not result in waiving of the proposed development to any of the regulations

8:03:20 AM 6/18/09 5:46:56 AM
Options
This is what was sent to council and provided to the public.

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 09-913

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, LIFTING THE MORATORIUM ON ACCEPTING APPLICATIONS FOR MASTER PLANNED DEVELOPMENTS, SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS WITHIN THE CITY AND REPEALING ORDINANCE 08-885

WHEREAS, the City of Black Diamond, for many years, has been working toward the goal of bringing into reality a vision for the development of the City of Black Diamond that will make the City a model city, demonstrating excellent small city comprehensive urban land planning and development; and

WHEREAS, the City has this opportunity because a vast percentage of the total land area within the City is undeveloped and is in the control of only two entities; and

WHEREAS, because there is so much undeveloped and underdeveloped land this opportunity would be lost if development occurred before the new comprehensive plan and development regulations were in place, and thus the City has been under a development moratorium for years; and

WHEREAS, funding through various agreements, has been provided to hire the consultants and expert staff to complete the changes to the City's Comprehensive Plan and development regulations that are necessary to bring the City's vision into reality; and

WHEREAS, the City Council, City Staff and City Planning Commission have been diligently working to develop and process the updates to the City's Comprehensive Plan and development regulations so that the moratorium could be lifted; and

WHEREAS, it is anticipated that the most critical elements of the updates will be completed by June 25, 2009, now therefore;

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The moratorium imposed by Ordinance No. 08-885 shall be and hereby is lifted and Ordinance 08-885 is hereby repealed.

Section 2. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

Section 3. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to the law by a Court of competent jurisdiction, it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

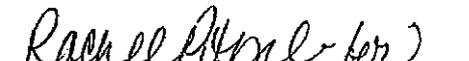
Introduced the 18th day of June, 2009.

Passed on the 18th day of June, 2009.

Approved by the Mayor on the 18th day of June, 2009.


Howard Botts, Mayor

ATTEST:


Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: 6/23/09
Posted: 6/19/09
Effective Date: June 28, 2009

RE: BDMC regarding Ordinance/Resolution Reconsideration

From: **Cindy Proctor** (proct@msn.com)
Sent: Tue 2/01/11 4:02 PM
To: bmartinez@ci.blackdiamond.wa.us

Hi Brenda,

Can you also follow on the request below. It seems to me that Mike Kenyon or Steve Pilcher should be able to answer this question.

Cindy Proctor

From: proct@msn.com
To: bmartinez@ci.blackdiamond.wa.us
Subject: RE: BDMC regarding Ordinance/Resolution Reconsideration
Date: Fri, 21 Jan 2011 15:30:03 -0800

Brenda,

Yes, this is where I thought it would be, but it doesn't have language about the rules for reconsideration of an ordinance or how to challenge an ordinance. Typically, an approving member of Council must bring the action back for reconsideration within so many days. We may not have any process for reconsideration, that is what I am trying to find out. Can you ask if there is a process for this within the BDMC or Council rules of procedures?

Thanks,
Cindy

Cindy Proctor

From: BMartinez@ci.blackdiamond.wa.us
To: proct@msn.com
Date: Fri, 21 Jan 2011 14:56:59 -0800
Subject: BDMC regarding Ordinance/Resolution Reconsideration

Hi Cindy,

I am assuming you are talking about an action Council has taken during a meeting. If so, please see the link below to our Council Rules of Procedures and see page 14 of 24 section 8.2.18. If my interpretation is not correct please let me know.

<http://www.ci.blackdiamond.wa.us/Depts/Clerk/Resolutions/2009/09-598.pdf>

Kind regards,

Brenda L. Martinez, CMC

Assistant City Administrator/City Clerk

City of Black Diamond

PO Box 599

24301 Roberts Drive

Black Diamond, WA 98010

Phone: 360-886-2560

Fax: 360-886-2592

Email: bmartinez@ci.blackdiamond.wa.us

Stacey Borland

From: Brenda Martinez
Sent: Friday, August 12, 2011 8:33 AM
To: Stacey Borland
Subject: FW: Response Deadline on Villages/Lawson Hills Written Comments

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Friday, August 12, 2011 7:32 AM
To: Brenda Martinez
Subject: RE: Response Deadline on Villages/Lawson Hills Written Comments

Please post along with the Yarrow Bay objection filed yesterday (as an exhibit):

Yarrow Bay has not agreed to an extension of the written comment period or deadline for the decision. The deadlines for written comments remain as stated in the 7/14/11 "Order on Exhibits and Response/Reply Documents", with response documents still due 8/12/11.

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Tuesday, August 09, 2011 11:09 PM
To: 'Brenda Martinez'
Cc: 'Nancy Rogers'; 'Steve Pilcher'
Subject: Response Deadline on Villages/Lawson Hills Written Comments
Importance: High

Brenda,

Please post the following email ASAP:

It appears that the written testimony exceeds 1,700 pages. This number excludes the prehearing motions and the development agreements and their exhibits. Under the current briefing schedule the Applicant will have to respond to these documents in one week's time. The Applicant is tasked with responding to the majority of these 1700+ pages in that one week period. I will probably be seeking additional time beyond the required ten days to issue my decision. In order to do so, for liability reasons, I will need the authorization of the Applicant. I propose that the response period be extended for an additional week, the reply period be extended to a total of four business days and that I have fifteen business days from the deadline of the reply documents to issue my decision. For all hearing participants, please email any objections to this proposal to Steve Pilcher, cc'd above, by 10:00 am on Thursday, 8/11/11. I will need the express authorization of the Applicant to proceed with this proposal.

Steve Pilcher

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Friday, August 12, 2011 10:39 AM
To: Steve Pilcher
Subject: RE: QUESTION FOR HEARING EXCAMINER

Midnight it is.

-----Original Message-----

From: Steve Pilcher [<mailto:SPilcher@ci.blackdiamond.wa.us>]
Sent: Friday, August 12, 2011 10:37 AM
To: olbrechtslaw@gmail.com
Subject: FW: QUESTION FOR HEARING EXCAMINER
Importance: High

See inquiry below; I would assume midnight is the deadline, since another time was not specified.

From: Peter Rimbo [<mailto:primbos@comcast.net>]
Sent: Friday, August 12, 2011 10:33 AM
To: Steve Pilcher
Subject: QUESTION FOR HEARING EXCAMINER
Importance: High

Steve,

Good morning. I don't believe the Hearing Examiner has ever given us the time when items are due to you today. Could you please ask him if our responses are due tonight at Midnight? That is what many of us are assuming. Thank you.

Peter Rimbo
452-432-1332
primbos@comcast.net<<mailto:primbos@comcast.net>>

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

Stacey Borland

From: Sheila Hoefig <shoefig@comcast.net>
Sent: Friday, August 12, 2011 10:46 AM
To: Steve Pilcher; Andy Williamson; Brenda Martinez; Stacey Borland
Subject: RE: Response to Yarrow Bay's written comment of my oral testimony regarding the DA
Attachments: Sheila Hoefig response to comments of 8 4 11 DA oral.doc

The attachment is my response to Yarrow Bay's written comment regarding my oral testimony of the DA. Please forward to the Hearing Examiner for his review.

I am also requesting acknowledgment that you have received this e-mail and that it has been sent to the Hearing Examiner. I understand that your read receipt acknowledgement may not be working.

Thank you

Sheila Hoefig

EXHIBIT 194

Before the Hearing Examiner of Black Diamond
Response to Development Agreement Comments as of August 4, 2011

Pg 9

Comments:

Sheila Hoefig (July 16, 2011): In Sheila Hoefig's testimony on July 16th, Ms. Hoefig expressed concerns that Section 4.4.6 of The Villages Development Agreement could be used to reduce the total amount of open space provided by the Master Developer in the MPDs.

Yarrow Bay Response:

While Section 4.4.6 of The Villages Development Agreement allows amendments to the open space areas shown on the MPD Site Plan (Exhibit "A"), such amendments cannot reduce the total amount of open space provided by the Master Developer. Collectively, Section 4.2 and Section 4.4 prohibit the Master Developer from reducing the total amount of open space provided as a requirement of either MPD. If, pursuant to Section 4.4.6 (The Villages) or Section 4.4.4 (Lawson Hills), the Master Developer reduces the amount of open space provided in one area of the MPD Site Plan (Exhibit "A"), it will have to increase the amount of open space it provides in another area of the MPD Site Plan. There is no need or basis to revise these sections of the Development Agreements.

Sheila Hoefig Response to YB:

The Yarrow Bay response only responds to one portion of my concerns. The primary issue is not whether the off-site replacement reduces the total open space requirement; the request is for the Development Agreement to clarify what happens to the proposed on-site open space in each phase when it is replaced off-site i.e. can it become developed space; and what type of limitations to reductions in onsite open space per each phase is in place. An on-going compliance matrix to track this would be prudent and should be part of the Development Agreement. Allowing the project to fully build out and only accounting for total open space in the last phase is dangerous and would allow the MPD to be fully built before compliance is an issue. Compliance should be with each phase.

PG 38: Comments:

Sheila Hoefig (July 16, 2011): In her oral testimony on July 16a', Ms. Hoefig expressed concern that the Master Developer would receive open space credit for Lake Sawyer Park.

Yarrow Bay Response:

Section 9.5.2 of the Development Agreements does not authorize the Master Developer to receive open space credit *for* Lake Sawyer Park. With the City's permission, the Master Developer may construct Recreational Facilities in Lake Sawyer Park that would count towards the Master Developer's Recreational Facilities requirements as set forth in Table 9-5 of both Development Agreements. There is no need or basis to revise this section of the Development Agreements. SECTION 9.6 (The Villages and Lawson Hills)

Sheila Hoefig Response to Yarrow Bay:

Yarrow Bay's comment is non-responsive. Section 9.5.2 of the Development Agreement does not explicitly exclude the Master Developer from receiving open space credit from the publically owned open space within the Lake Sawyer Regional Park. The request was to add clarifying language excluding private developers from obtaining open space credit in the future for any recreational facilities placed in the Lake Sawyer Park or any other publically owned open space.

Stacey Borland

From: Sheila Hoefig <shoefig@comcast.net>
Sent: Friday, August 12, 2011 10:53 AM
To: Steve Pilcher; Andy Williamson; Brenda Martinez; Stacey Borland
Subject: RE: Response to Yarrow Bay's written comment of my oral testimony regarding the DA
Attachments: Sheila Hoefig response to comments of 8 4 11 DA oral.doc

Steve
Forgot to attach the read receipt-just resending to you.
Sheila

From: Sheila Hoefig [<mailto:shoefig@comcast.net>]
Sent: Friday, August 12, 2011 10:46 AM
To: 'spilcher@ci.blackdiamond.wa.us'; 'AWilliamson@ci.blackdiamond.wa.us'; 'bmartinez@ci.blackdiamond.wa.us'; 'sborland@ci.blackdiamond.wa.us'
Subject: RE: Response to Yarrow Bay's written comment of my oral testimony regarding the DA

The attachment is my response to Yarrow Bay's written comment regarding my oral testimony of the DA. Please forward to the Hearing Examiner for his review.

I am also requesting acknowledgment that you have received this e-mail and that it has been sent to the Hearing Examiner. I understand that your read receipt acknowledgement may not be working.

Thank you

Sheila Hoefig

Before the Hearing Examiner of Black Diamond
Response to Development Agreement Comments as of August 4, 2011

Pg 9

Comments:

Sheila Hoefig (July 16, 2011): In Sheila Hoefig's testimony on July 16th, Ms.

Hoefig expressed concerns that Section 4.4.6 of The Villages Development Agreement could be used to reduce the total amount of open space provided by the Master Developer in the MPDs.

Yarrow Bay Response:

While Section 4.4.6 of The Villages Development Agreement allows amendments to the open space areas shown on the MPD Site Plan (Exhibit "A"), such amendments cannot reduce the total amount of open space provided by the Master Developer. Collectively, Section 4.2 and Section 4.4 prohibit the Master Developer from reducing the total amount of open space provided as a requirement of either MPD. If, pursuant to Section 4.4.6 (The Villages) or Section 4.4.4 (Lawson Hills), the Master Developer reduces the amount of open space provided in one area of the MPD Site Plan (Exhibit "A"), it will have to increase the amount of open space it provides in another area of the MPD Site Plan. There is no need or basis to revise these sections of the Development Agreements.

Sheila Hoefig Response to YB:

The Yarrow Bay response only responds to one portion of my concerns. The primary issue is not whether the off-site replacement reduces the total open space requirement; the request is for the Development Agreement to clarify what happens to the proposed on-site open space in each phase when it is replaced off-site i.e. can it become developed space; and what type of limitations to reductions in onsite open space per each phase is in place. An on-going compliance matrix to track this would be prudent and should be part of the Development Agreement. Allowing the project to fully build out and only accounting for total open space in the last phase is dangerous and would allow the MPD to be fully built before compliance is an issue. Compliance should be with each phase.

PG 38: Comments:

Sheila Hoefig (July 16, 2011): In her oral testimony on July 16a', Ms. Hoefig expressed concern that the Master Developer would receive open space credit for Lake Sawyer Park.

Yarrow Bay Response:

Section 9.5.2 of the Development Agreements does not authorize the Master Developer to receive open space credit *for* Lake Sawyer Park. With the City's permission, the Master Developer may construct Recreational Facilities in Lake Sawyer Park that would count towards the Master Developer's Recreational Facilities requirements as set forth in Table 9-5 of both Development Agreements. There is no need or basis to revise this section of the Development Agreements. SECTION 9.6 (The Villages and Lawson Hills)

Sheila Hoefig Response to Yarrow Bay:

Yarrow Bay's comment is non-responsive. Section 9.5.2 of the Development Agreement does not explicitly exclude the Master Developer from receiving open space credit from the publically owned open space within the Lake Sawyer Regional Park. The request was to add clarifying language excluding private developers from obtaining open space credit in the future for any recreational facilities placed in the Lake Sawyer Park or any other publically owned open space.

Stacey Borland

From: Tom <TDCarp@comcast.net>
Sent: Friday, August 12, 2011 11:12 AM
To: Dow Constantine; Reagan Dunn (KC); Steve Pilcher
Cc: Christie True; Harold Taniguchi; John Starbard; Kathy Lambert; Nancy Stafford; Paul Reitenbach; Pete Eberle; Steve Hiester
Attachments: UAC Response to Yarrow Bay comments.pdf

Attached is a letter from the Upper Bear Creek, Four Creeks, and Greater Maple Valley Area Councils responding to comments made by Yarrow Bay.

Steve, please make sure the Hearing Examiner gets a copy.

Tom Carpenter
For GMVAC, FCUAC, UBCUAC Presidents

12 August 2011

To: Dow Constantine, King County Executive
Reagan Dunn, King County Council Member, District 9
Phil Olbrechts, Hearing Examiner, Black Diamond
Olbrechts and Associates, 18833 74th St. NE Granite Falls, WA 98252-9011
Steve Pilcher, Director, Black Diamond Community Development

cc: Kathy Lambert, King County Council Member, District 3
Paul Reitenbach, Senior Policy Analyst, King County DDES
Christie True, Director, King County DNRP
John Starbard, Director, King County DDES
Harold Taniguchi, Director King County DOT

From: The Greater Maple Valley, Four Creeks, and Upper Bear Creek Unincorporated Area Councils (UAC)

This letter is in response to written comments (included) submitted by Yarrow Bay on August 4 specifically addressing Expert Testimony on July 21 by Paul Reitenbach, Senior Policy Analyst, King County DDES.

In its Written Comments, Yarrow Bay argues that adding conditions locating schools and stormwater facilities serving the MPDs in the Urban Growth Area (UGA) are “unnecessary and unacceptable”.

- Yarrow Bay argues the City of Black Diamond “cannot prohibit a land owner from applying for a Development Permit, and certainly cannot do so on land not within the City’s geographic jurisdictional”.

It’s not clear how adding conditions that require locating schools and stormwater facilities inside the UGA prohibit[s] a land owner from applying for a Development Permit.

- Yarrow Bay points out that the Comprehensive School Mitigation Agreement (CSMA) includes contingencies if schools intended to be located in rural King County are not permitted. Adding language in the Development Agreement to site schools inside the Urban Growth Boundary does not add new requirements to the CSMA. Instead, it merely ensures Yarrow Bay plan for the contingency.

- Yarrow Bay arguing lack of authoritative reference is myopic and reference to SEPA and approved permits is irrelevant.

The WA State Growth Management Act (GMA) gives King County the authority to recommend conditions in the Development Agreement requiring schools and stormwater retention facilities serving the MPDs be located inside the UGA.

GMA does not obviate any jurisdiction’s responsibility to protect rural areas. In the case of the MPDs, the City of Black Diamond, even though it does not contain rural areas, is expected to address impacts outside their jurisdiction.

Inter-jurisdictional cooperation is encouraged to assure all GMA goals are balanced locally and regionally. It’s beneficial to all parties, certainly including Yarrow Bay, to eliminate unfeasible options as quickly and effectively as possible. Reflecting those decisions in the Development Agreement is appropriate.

We disagree with Yarrow Bay’s conclusion that the proposed new conditions regarding the location of schools and stormwater facility inside the UGA cannot be recommended or passed on by the Hearing Examiner to the Black Diamond City Council.

The WA State Supreme Court states in *Thurston County v. Cooper Point Association* (included) that the Legislature’s intent to protect rural areas is clear. The Supreme Court’s interpretation of legislative intent points out that GMA provides:

- In general, cities are the units of local government most appropriate to provide urban governmental services. ***In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.***

The Court also supports the Growth Management Hearing Board's interpretation:

- The Legislature has recognized that intrusion or extension of urban services to rural areas inevitably creates pressure to urbanize.

Placing urban-serving facilities, such as the MPDs schools and stormwater facilities, in the rural area are not viewed as providing the protection expected by GMA. Those impacts are relevant and appropriate to be included in any agreements involving Black Diamond.

The fringe areas on both sides of the Urban Growth Boundary are a very fragile ecotone between urban and rural. It's the "front line" developers attempt to penetrate which, as the Court references, "inevitably creates pressure to urbanize".

The UACs share concerns over large developments or land use changes, particularly those near the UGB, because of the intensity and radius of impacts from these epicenters of community and infrastructural change.

We support Paul Reitenbach's recommendations.

Thank you.

Steve Heister, Chair Greater Maple Valley Unincorporated Area Council
Pete Eberle, President, Four Creeks Unincorporated Area Council
Nancy Stafford, Chair, Upper Bear Creek Unincorporated Area Council

attachments

UAC Mission

*Enhance opportunities for residents to meaningfully participate in
decisions that affect the future of their communities*

*Improve access to the information and services provided by King
County*

1. *Response to Paul Reitenbach.* In his testimony on July 21, 2011, Paul Reitenbach requested that the Hearing Examiner recommend that the Black Diamond City Council add supplemental conditions to the Development Agreements that: (1) require school sites serving the MPDs to be located within the urban growth area (UGA); and (2) require stormwater ponds serving the MPD Development to be located within the UGA. These proposed conditions are unnecessary and unacceptable for the following reasons.

First, before YarrowBay or the Enumclaw School District can build any schools or stormwater facilities within King County, such entity is required to submit the appropriate land use or building permit application to the County and such application has to be approved. Thus, King County has the ultimate authority to decide whether or not such infrastructure gets built in its jurisdiction with or without the proposed new conditions.

Second, the City of Black Diamond has no authority to prohibit YarrowBay, let alone the Enumclaw School District who is not even a party to the Development Agreement, from building infrastructure within King County. YarrowBay owns the parcels upon which such infrastructure is proposed and has the right, as a landowner, to convey that land to the school district, and the School District and Yarrow Bay can apply for land use and construction permits. It is self-evident that the City cannot prohibit a landowner from applying for development permits, and certainly cannot do so on land not within the City's geographic jurisdiction.

Third, the Comprehensive School Mitigation Agreement incorporated by reference in Section 13.3 of both Development Agreements explicitly calls out three school sites within King County, together with contingencies in the event that schools are not permitted at those sites. The Black Diamond City Council approved the School Agreement in January 2010. The Hearing Examiner and City Council cannot now include a new condition within the Development Agreements that is in direct conflict with the terms of the School Agreement.

Finally, Paul Reitenbach cites no authority for the inclusion of his proposed new conditions in the Development Agreements. SEPA review has been completed and deemed adequate by the Hearing Examiner. The Black Diamond City Council already established all of the MPD Permit conditions in Exhibit C of the MPD Permit Approval Ordinances (Nos. 10-946 and 10-947). Thus, Mr. Reitenbach's proposed new conditions cannot be recommended to the City Council by the Hearing Examiner.

FindLaw[®] FOR LEGAL PROFESSIONALS

Supreme Court of Washington, En Banc.

THURSTON COUNTY v. COOPER POINT ASSOCIATION

THURSTON COUNTY, a municipal corporation and subdivision of the State of Washington, Petitioner, v. The COOPER POINT ASSOCIATION, The League of Women Voters of Thurston County, Jolene Unsoeld, Michael Lynch, Tom Mumford, Lea Mitchell, Siviann Frankus, and Western Washington Growth Management Hearings Board, Respondents.

No. 71746-0.

-- November 21, 2002

Christine Gregoire, Atty. Gen., Marjorie Smitch, Sharon Eckholm, Asst. Attys. Gen., for Petitioner. Barnett Kalikow, Ed Holm, Thurston County Prosecutor, Jeffery Fancher, Deputy, Olympia, for Respondents. Tim Trohimovich, Seattle, amicus curiae on behalf of 1000 Friends of Washington & Washington Environmental Council. Kristopher Tefft, Olympia, amicus curiae on behalf of Building Industry Assoc. of Washington & Washington Assoc. of Realtors.

We have been asked to review a decision of the Court of Appeals in which that court affirmed a Western Washington Growth Management Hearings Board (Board) determination that a proposal by Thurston County (County) to extend a sewer line from an urban sewage system to the rural Cooper Point area of Thurston County violates a provision in this state's Growth Management Act (GMA), RCW 36.70A.110(4). The principal issues before us are whether County's proposal is subject to development restrictions imposed by the aforementioned statutory provision and, if so, whether County has shown that its proposal is necessary to protect basic public health, safety and the environment. We answer the first question "yes" and the second "no" and conclude that the Board did not err in determining that County's proposal violates RCW 36.70A.110(4). Accordingly, we affirm the Court of Appeals.

I.

In 1995, County adopted its first comprehensive plan for local development as it was required to do by a provision in the GMA.¹ In its plan, County designated the northern portion of the Cooper Point area as "rural." This area lies within a narrow peninsula that extends northward

roughly from the city limits of Olympia and the northern boundary of The Evergreen State College into an unincorporated area of Thurston County. The peninsula separates Budd Inlet on the east from Eld Inlet on the west. The area contains a number of residences, most of which lie along the shoreline of Budd and Eld Inlets. Except for two subdivisions which predate the GMA, Tamoshan with 89 residences and Beverly Beach with 22 residences, each of the 998 residences located in the rural Cooper Point area have individual septic systems for the collection and dispersal of their household sewage. Although 96 of the 998 septic systems have failed in the past, each failure was remedied by an on-site solution in an environmentally safe manner.

The more densely populated Tamoshan and Beverly Beach subdivisions each possess their own sewage system. These systems collect the sewage from all homes within the subdivision and treat it at a plant that is located within the subdivision. The effluent from each plant is then discharged into Puget Sound. The Beverly Beach treatment plant is homeowner-managed whereas County operates the Tamoshan plant in conjunction with a committee of homeowners that advises County on its management. Although both of these sewage treatment plants have outlasted their projected life, they currently operate in compliance with federal and state environmental standards.

As far back as 1992, County began working with the Cooper Point community to address future wastewater management concerns on Cooper Point. This process culminated in 1999 when County amended its comprehensive plan to include the Cooper Point Wastewater Facilities General Plan (Plan). The Plan enumerated five wastewater management alternatives for Tamoshan and Beverly Beach, to wit: (1) do nothing; (2) rebuild the Tamoshan plant further inland with the capacity to accommodate sewage from Tamoshan and Beverly Beach and adopt an enhanced septic system operation; (3) separate sewer service areas and develop an enhanced on-site septic operation and maintenance program; (4) construct a new limited capacity sewer line connecting the Tamoshan and Beverly Beach subdivisions to the sewer system of the Lacey, Olympia, Tumwater, and Thurston County Wastewater Management Partnership (LOTT); or (5) construct an extensive sewer system that would service the entire Cooper Point area.

Over the objection of numerous Cooper Point residents, County adopted the fourth option as its “preferred” alternative. Consequently, it planned to construct a four-inch sewer line to connect the sewage systems at Tamoshan and Beverly Beach with the LOTT sewage treatment system. It also planned to provide up to 100 future sewer hook-ups for existing outlying single-family homes in the event of individual septic system failures.

In February 2000, the Cooper Point Association, the League of Women Voters of Thurston County, and several individuals (Respondents) filed a petition with the Board claiming that the proposed sewer line violated the State Environmental Policy Act (chapter 43.21C RCW) (SEPA), and the GMA. Although the Board dismissed their SEPA claim, it concluded that County's proposal violated a portion of the GMA, RCW 36.70A.110(4), which prohibits governments from extending or expanding “urban governmental services” into “rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment.” The Board ordered County to abandon its planned extension of

sewer service from the LOTT system to Cooper Point. County appealed the Board's decision to Thurston County Superior Court, which transferred the matter to Division Two of the Court of Appeals.² The Court of Appeals affirmed the Board's decision.

We granted County's petition to review the decision of the Court of Appeals and thereafter extended amicus curiae status to 1000 Friends of Washington and the Washington Environmental Council, and the Building Industry Association of Washington and Washington Association of Realtors (BIAW).³

II.

When reviewing a decision of the Board, we apply the standards of chapter 34.05 RCW, the Administrative Procedure Act (APA), and base our review upon the record made before the Board. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.2d 38, 45, 959 P.2d 1091 (1998). Under the judicial review provision of the APA, the “burden of demonstrating the invalidity of [the Board's decision] is on the party asserting the invalidity.” RCW 34.05.570(1)(a). The validity of that decision shall be determined in accordance with the standards of review provided in RCW 34.05.570. RCW 34.05.570(3) sets forth nine bases for granting relief from the Board's decision. County, the party that is seeking to establish the invalidity of the Board's decision, contends only that the “[the Board] has erroneously interpreted or applied the law,” and that the “order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter.” RCW 34.05.570(3)(d), (e). In reviewing issues of law under RCW 34.05.570(3)(d), our review is de novo. *Redmond*, 136 Wash.2d at 46, 959 P.2d 1091. “[S]ubstantial evidence is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’ ” *Id.* (quoting *Callecod v. Wash. State Patrol*, 84 Wash.App. 663, 673, 929 P.2d 510, review denied, 132 Wash.2d 1004, 939 P.2d 215 (1997)). On mixed questions of law and fact, we determine the law independently, then apply it to the facts as found by the agency. *Hamel v. Employment Sec. Dep't*, 93 Wash.App. 140, 145, 966 P.2d 1282 (1998), review denied, 137 Wash.2d 1036, 980 P.2d 1283 (1999).

III.

RCW 36.70A.110(4) provides as follows:

In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(Emphasis added.) We must first determine if, as County contends, the Board erred in determining that RCW 36.70A.110(4)'s limitation on extension or expansion of urban governmental services into rural areas precludes County from developing the proposed sewer line into the Cooper Point area. In support of its contention, County asserts that (1) the

proposed sewer line is not an extension or an expansion of an urban governmental service and (2) the Cooper Point area of Thurston County is not “rural” under that same provision.

A. Is County's proposed sewer line an extension or expansion of an urban governmental service?

As noted above, County asserts that its proposed sewer line to the Cooper Point peninsula is not prohibited by RCW 36.70A.110(4). It maintains that what it plans to do does not constitute an extension or expansion of an urban governmental service. More specifically, County argues that the proposed sewer line merely replaces an existing governmental service with another governmental service. In support of that argument, it notes that the proposed sewer line would provide service to homes that are currently served by the sewage treatment facilities at Tamoshan and Beverly Beach. Although the Respondents agree with County that a “true replacement does not fall [under RCW 36.70A.110(4)'s development limitations],” they respond that the evidence that was presented to the Board does not support County's contention that the proposed sewer line constitutes a mere replacement of an existing urban governmental service. Answer to Pet. for Review at 11.

After reviewing the record, we find that we agree with the Respondents that the evidence does not support a conclusion that what County proposes to do is not an extension or expansion of the urban governmental service. We say this because LOTT is an existing urban governmental service 4 which does not currently serve the Cooper Point area. County's construction of a sewer line through approximately four miles of an area that is not part of its service area in order to connect the LOTT sewage treatment system with the privately developed sewage systems of Tamoshan and Beverly Beach is, in our view, an extension or expansion of an urban governmental service. In addition, County's Plan would allow up to 100 additional residential hook-ups for individual homes that currently have on-site septic systems for the collection and dispersal of their household sewage. We have to assume that this potential enlargement of the LOTT system by 100 customers could become a reality. If County did this it would clearly be a significant extension or expansion of an urban governmental service. For these reasons, we conclude that the proposed sewer line does not escape RCW 36.70A.110(4)'s development restrictions under the guise of mere replacement of urban governmental services.

B. Is the Cooper Point peninsula a “rural” area for the purpose of RCW 36.70A.110(4)?

County contends, additionally, that RCW 36.70A.110(4)'s development restrictions do not prohibit the development of the proposed sewer line because the “record clearly shows that the area intended to benefit from the four inch, limited capacity sewer line is not rural in nature.” Pet. for Review at 10. The thrust of County's argument on this point is that because Tamoshan and Beverly Beach are quasi-urbanized pre-GMA communities that are located in an area that has since been designated rural, the statute is inapplicable since it only has application to “governmental services . in rural areas.” RCW 36.70A.110(4). In support of its argument, County points out that although the Board applied RCW 36.70A.110(4)'s development restrictions, even it recognized that Tamoshan and Beverly Beach support “ ‘urban densit[ies].’ ” Administrative Record (AR) at 949.

As we have observed above, County, in accord with the GMA's rural designation provision, RCW 36.70A.070(5), specifically designated the Cooper Point peninsula, including Tamoshan and Beverly Beach, as "rural" when drafting its comprehensive plan. AR at 463. Although we believe that this is telling evidence that the area is "rural" for purposes of the GMA, the record also establishes that "[f]uture land use [on Cooper Point] is anticipated to remain rural and residential in character." AR at 481. Indeed, the record shows that the nearest urban growth area (UGA) 5 is located significantly to the south of the area at issue and that there are no proposals to extend the UGA northward to include Cooper Point. It is also apparent from the record that the Cooper Point area has considerable open area where the natural vegetation has remained relatively undisturbed. This lack of encroachment on nature is a characteristic, according to the GMA, that is associated with a "rural" area where, among other things, "open space, the natural landscape, and vegetation predominate over the built environment." RCW 36.70A.030(14)(a). Because the Cooper Point area has characteristics consistent with the GMA's definition of "rural" and has been designated "rural" within County's comprehensive plan, we conclude that it is "rural" within the meaning of the GMA.

The record is sufficient, in sum, to show that the proposed sewer line constitutes an extension or an expansion of an urban governmental service into a rural area.

IV.

Having concluded that RCW 36.70A.110(4)'s restrictions on development are applicable to County's proposed sewer line, we must next determine whether County has shown that the Board erred in determining that the proposed sewer line is not necessary to protect basic public health and safety and the environment. As noted above, the Court of Appeals agreed with the Board's conclusion that the proposed sewer line was not necessary to protect health and safety and the environment. It did so based upon its conclusion that "the existing sewage treatment plant and homes served by septic systems are not currently experiencing waste discharge problems that threaten public health or the environment." *Cooper Point Ass'n v. Thurston County*, 108 Wash.App. 429, 441, 31 P.3d 28 (2001) (emphasis added), review granted, 145 Wash.2d 1033, 43 P.3d 20 (2002). In reaching that conclusion, the Court of Appeals noted that the dictionary defines the term "necessary" to mean " 'INDISPENSABLE' " or " '[a]bsolutely required' " or " '[n]eeded to bring about a certain effect or result.' " Id. at 440, 31 P.3d 28 (quoting Webster's II New College Dictionary 731 (1999)). County contends that we should interpret the term "necessary" in a less restrictive fashion taking into account the fact that the treatment plants and residences might experience wastewater management problems in the future that would jeopardize public health and safety and the environment.

Generally, the first step a court takes when reviewing the meaning of a statute is to look to the plain meaning of its terms. *State v. Fjermestad*, 114 Wash.2d 828, 835, 791 P.2d 897 (1990). Under this approach, it is appropriate for a court to give, as did the Court of Appeals, a nontechnical statutory term its dictionary meaning. We have, however, recently indicated that the plain meaning of a statute may be "discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1, 11, 43 P.3d 4 (2002). Under

this approach, we construe the act as a whole giving effect to all of the language used. We stated that this “formulation of the plain meaning rule provides the better approach because it is more likely to carry out legislative intent.” *Id.* at 11-12, 43 P.3d 4. County and amicus curiae, BIAW, urge us to review the meaning of the term “necessary” under the latter formulation of the plain meaning rule whereas the Respondents contend that it is sufficient to look to the dictionary to ascertain the meaning of the term.

Regardless of which formulation of the plain meaning rule we choose to apply, in this case it seems clear that a less restrictive interpretation of “necessary” is not sustainable. We say this because a more restrictive definition of “necessary” is consistent with the legislature's intent in enacting the GMA to protect the rural character of an area. See RCW 36.70A.070(5)(c)(i), (iii); see also *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wash.2d 161, 979 P.2d 374 (1999). In that regard, we find it significant that the GMA seeks to reduce “the inappropriate conversion of undeveloped land into sprawling, low-density development.” RCW 36.70A.020(2). The provision at issue, which guards against the extension or expansion of urban governmental services into designated rural areas, is certainly consistent with that purpose. So also is the Board's conclusion that “[t]he Legislature has recognized that intrusion or extension of urban services to rural areas inevitably creates pressure to urbanize. That is the reason that the strict ‘necessary to protect’ test was adopted rather than a ‘betterment of health or environment’ standard.” AR at 952.

Despite the concerns expressed by the legislature in the GMA to protect rural areas, County asks us to consider two statutory provisions which it asserts support a less restrictive definition of “necessary.” It points out in this regard that “the legislature allows a county to designate areas of more intensive rural development and to provide the necessary /needed public facilities and services.” *Pet. for Review* at 16 (emphasis added) (citing RCW 36.70A.070(5)(d)(iv)). This contention is problematic because County has not designated Tamoshan or Beverly Beach an area for more intense rural development under RCW 36.70A.070(5)(d). Indeed, County's comprehensive plan simply designates Tamoshan and Beverly Beach “rural” along with the rest of the areas in Cooper Point that are the subject of this appeal. Moreover, like RCW 36.70A.110(4), RCW 36.70A.070(5)(d)(iv), the provision cited by County allowing for more intensive rural development, requires a showing of necessity. Because that provision does not define “necessary” it is not helpful in ascertaining the meaning of that term.

The second provision which County asks us to consider, RCW 36.70A.3201, accords deference to a planning agency's decisions over how it plans for growth. Thus, County asserts that we should give a less restrictive reading to the term “necessary” in order to remain in harmony with the general intent to accord deference to planning agencies. This assertion is defeated by the fact that deference is only given to policy choices that are consistent with the goals and requirements of the GMA. In *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wash.2d 543, 561, 14 P.3d 133 (2000), we addressed a similar argument to that raised here and said that “[a]fter properly designating agricultural lands in the [comprehensive plan], County may not then undermine the [GMA's] agricultural conservation mandate by adopting . amendments that allow . an unrelated use.” This case presents the same situation that we faced in *King County* because County is attempting to plan

in a manner that is inconsistent with Cooper Point's "rural" designation. Here, we must be mindful of the fact that the legislature specifically defined an "[u]rban governmental service[]" to include "sanitary sewer systems." RCW 36.70A.030(19). We must also remember the legislative policy to reduce "the inappropriate conversion of undeveloped land into sprawling, low-density development" while "protect[ing] the rural character" of an area. RCW 36.70A.020(2), .070(5)(c). Because County's proposal does just what the GMA prohibits—extends an urban governmental service into a rural area—the Board was not required to accord deference to County to define the term "necessary."

Thus, we are not persuaded by County that the GMA, when read as a whole, supports a less restrictive definition of the term "necessary." As indicated above, County has not designated any of the area at issue in this case an area appropriate for more intense rural development. Similarly, we will not defer to County's interpretation of "necessary" since its proposal is inconsistent with the GMA. To the contrary, the Board concluded that the strict definition of "necessary" is required to carry out the legislature's intent. See AR at 952. Although we review questions of law de novo, we give substantial weight to the Board's interpretation of the statute that it administers. See *Redmond*, 136 Wash.2d at 46, 959 P.2d 1091. Indeed, "[i]t is well settled that deference is appropriate where an administrative agency's construction of statutes is within the agency's field of expertise." *Redmond*, 136 Wash.2d at 61, 959 P.2d 1091 (Sanders, J., concurring) (quoting *Chrysler Motors Corp. v. Flowers*, 116 Wash.2d 208, 216, 803 P.2d 314 (1991); *Green River Cmty. Coll. v. Higher Educ. Pers. Bd.*, 107 Wash.2d 427, 438, 730 P.2d 653 (1986)). Because the Board's determination is consistent with the legislative policy of the GMA to protect rural areas, we hold that the Board correctly interpreted the term "necessary" in a more restrictive fashion. Furthermore, as the Court of Appeals indicated, its interpretation of the term is consistent with the dictionary definition of that term. For those reasons, we will not disturb the Board's determination.

V.

Finally, we must determine whether the Respondents, other than the Board, are entitled to attorney fees pursuant to RCW 4.84.370. That statute provides that

costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the supreme court of a decision by a county . to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision.

RCW 4.84.370(1) (emphasis added). In support of their request for fees, the Respondents contend that the proposed sewer line "amounted to a spot rezone and was equivalent to a permit." Suppl. Br. of Resp't at 12. They do not, however, provide any authority for this proposition. The plain fact is that no development permit was at issue in this case. Because RCW 4.84.370 applies only to development permits involving site-specific determinations, the Respondents are not entitled to attorney fees under that statute.

VI.

For reasons stated above, we are satisfied with the Board's determination that County's proposal to extend a sewer line from an urban treatment plant to rural Cooper Point is subject to and violates the development restrictions imposed by RCW 36.70A.110(4). That being the case, we affirm the Court of Appeals' decision affirming the Western Washington Growth Management Hearings Board.

In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

RCW 36.70A.110(4) (emphasis added).

Assuming the proposal involves urban governmental services to be extended or expanded in rural areas, the majority reads the term “necessary” to mean extending a sewer line, i.e., extension of a government service, would be permitted only if it were absolutely required, i.e., the only possible means of addressing a particular threat. Not surprisingly this reading dooms the proposed sewer. One can almost always imagine an alternative solution that would not involve expansion or extension of government services if considerations such as cost, other planning goals, and the interests of the community are deemed irrelevant by this court.

The majority claims its conclusion is required under the Growth Management Act (GMA) because the legislature's intent was to protect the rural character of an area and because its reading is required by the common dictionary definition. Majority at 1163-1164. But the majority's analysis is incomplete because it ignores the overall structure of the GMA, and it is wrong because it looks to 1 GMA planning goal while ignoring 12 others, failing to account for the GMA's clear mandate that cities and counties are to make planning decisions-not the boards (in this case the Western Washington Growth Management Hearings Board).

To properly apply RCW 36.70A.110(4) we must be guided by legislative intent as expressed in the language of the GMA. *Dep't of Licensing v. Cannon*, 147 Wash.2d 41, 57, 50 P.3d 627 (2002); *Rozner v. City of Bellevue*, 116 Wash.2d 342, 347, 804 P.2d 24 (1991). All of the GMA provisions must be considered in their relation to one another, and, if possible, they must be harmonized to ensure proper construction of each provision. *City of Seattle v. Fontanilla*, 128 Wash.2d 492, 498, 909 P.2d 1294 (1996).

Although “necessary” may sometimes mean “absolutely required” this is not the only meaning recognized by the law. As Black's explains: necessary

must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought. its force and meaning must be determined with relation to the particular object sought.

Black's Law Dictionary 1029 (6th ed.1990).

The majority's approach tells cities and counties that extension or expansion of government services into a rural area may never occur unless there is absolutely no other way to protect public health, safety, and the environment. This is not consistent with the GMA. The GMA is structured as a complex mélange of planning goals, 13 in all, which must be balanced and harmonized with one another. The balancing and harmonizing is left not to the growth management hearings boards but to cities and counties. RCW 36.70A.3201. By setting preservation of rural areas as an absolute requirement, the majority renders RCW 36.70A.110(4) inconsistent with the GMA's harmonizing approach.

The GMA recognizes 13 planning goals which are not ranked in priority, are not meant to be exclusive, and are permitted to be given varying degrees of emphasis by local planners. RCW 36.70A.020; WAC 365-195-070(1). A number of goals would be furthered by installing the four-inch sewer line to replace the existing obsolete treatment facilities before they fail and spill pollution into Puget Sound. Among the planning goals recognized under the GMA which might easily be served by installation of the new sewer line would be protecting private property values along the shore, conserving fish and wildlife habitat, and protecting the environment and water quality. See RCW 36.70A.020. Thus, a four-inch sewer line advances various planning goals in the context of addressing a serious threat to public health, safety, and the environment.

Reasonable people could certainly argue over which planning goals should be given priority in any given situation, but the legislature did not choose to prioritize the goals, and clearly there will be times when furthering one goal will conflict with furthering another goal. See Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 *Seattle U.L.Rev.* 5, 11 (1999). The legislature could have given responsibility for balancing these goals to the growth management hearings boards, but it clearly assigned responsibility for balancing priorities and harmonizing planning goals to the counties and cities:

In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201.

This statement of intent is further fortified by several other provisions of the GMA. Plans, regulations and amendments adopted under the GMA are presumed valid upon adoption. RCW 36.70A.320. Decisions must be upheld by the board unless it “determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.” RCW 36.70A.320(3). When weighing evidence, the board must “apply a more deferential standard of review to actions

of counties and cities than the preponderance of the evidence standard provided for under existing law.” RCW 36.70A.3201.

Thus, the GMA informs us that the legislature intended cities and counties to be the primary decision makers, to balance and harmonize the planning goals established under the GMA, and that the growth management hearings boards are to defer to these decisions unless they are clearly erroneous. “Clearly erroneous” means that after reviewing the record as a whole, the court is left with the definite and firm conviction that a mistake has been made. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 176, 4 P.3d 123 (2000). An absolutist meaning for “necessary” is not consistent with these mandates. A reading which more nearly effectuates the structure of the GMA is one which defines “necessary” to denote “convenient, useful, appropriate, suitable, proper, or conducive to the end sought” rather than “absolutely required.” Such a reading gives cities and counties a freer hand to perform their balancing and harmonizing roles under the GMA, allowing them to best judge how to protect the public health, safety, and the environment, while leaving unchanged the board's role to ensure compliance with the overall goals and requirements of the GMA. The majority's decision erroneously shifts power from cities and counties to the growth management hearings boards. It handcuffs local governments that attempt to discharge their planning responsibility to manage growth and address the pressing needs of their communities.

I dissent.

FOOTNOTES

1. Former RCW 36.70A.040(1) (1993) provided, in part, that “[e]ach county that has both a population of fifty thousand or more and has had its population increase by more than ten percent in the previous ten years . shall . adopt[] comprehensive land use plans and development regulations under this chapter.”
2. The Board has been designated as a party to the appeal as its decision is the subject of review. The Board has not, however, presented a brief or participated in the oral arguments presented to this court.
3. The Respondents have not assigned error to the Board's determination that the proposed sewer line complied with SEPA requirements. Consequently, that issue was not before the Court of Appeals nor is it before this court.
4. RCW 36.70A.030(19) specifically indicates that a “sanitary sewer system[]” is an urban governmental service.
5. RCW 36.70A.110(1) provides, in relevant part, that “[e]ach county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.”

ALEXANDER, C.J.

SMITH, JOHNSON, MADSEN, CHAMBERS and OWENS, JJ., concur. IRELAND and BRIDGE, JJ., concur.

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