BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER

IN RE: THE MATTER OF DEVELOPMENT AGREEMENT HEARINGS LAWSON HILLS PLN10-0021; PLN11-0014 THE VILLAGES PLN10-0020; PLN11-0013	**DECLARATION OF ALAN D. FURE**

I, Alan D. Fure, PE, am a citizen of the United States and a resident of the State of Washington, am over the age of 18 years, have firsthand knowledge of the matters to which I attest below, am fully competent to testify as a witness, and have sworn and do certify and declare, under penalty of perjury, that the following declaration is true and correct.

1. I am a licensed civil engineer, and a true and correct copy of my curriculum vitae is attached to this Declaration.

2. Written testimony submitted to the Black Diamond Hearing Examiner during the Development Agreement Hearings expresses concerns regarding YarrowBay's proposed location of the regional stormwater facility in unincorporated King County.

3. I was asked to respond to such testimony. Attached is a true and correct copy of the memorandum I prepared in response.

4. Based on topographic, geographic, geologic, hydrologic and economic considerations, it is my professional opinion that the proposed regional stormwater facility location is the best site for such a facility on property owned by YarrowBay.

[*signature on following page*]

Cairncross & Hempelmann, P.S.
Law Offices
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
Phone: 206-587-0700 • Fax: 206-587-2308

EXHIBIT 212

Dated this 11th day of August, 2011 at Kirkland, Washington.

ALAN D. FURE, PE

Cairncross & Hempelmann, P.S.
Law Offices
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
Phone: 206-587-0700 • Fax: 206-587-2308

Alan D. Fure, PE

ALAN D. FURE, PE, SENIOR VICE PRESIDENT, has 34 years of civil engineering design, project management and entitlement process experience throughout the Puget Sound region. With a portfolio of over 200 projects, Mr. Fure's areas of expertise include master planning, feasibility analysis, team formation and management, consultant team leadership, storm drainage analysis, grading design, erosion control design, utility design, street design, construction management and collaborative design. Currently serving as Principal in Charge for several master planned communities, Mr. Fure is a trusted advisor for his clients and is highly regarded by co-consultants and local agencies.

EDUCATION

B.S. Civil Engineering, University of Washington, 1977

CERTIFICATIONS AND AFFILIATIONS

Registered Civil Engineer: WA, OR, CO
Member: American Society of Civil Engineers

EMPLOYMENT HISTORY

- University of Washington: Harris Hydraulics Laboratory, Laboratory Assistant, Summer 1976
- Triad Associates: Project Engineer to Principal in Charge and Senior Vice President, December 1976 to present

RECENT PROJECT EXPERIENCE

Lawson Hills and Villages Master Planned Developments

Yarrow Bay Holdings is currently processing the development approvals within the City of Black Diamond for two MPDs that constitute close to 2,000 acres of property and propose a total unit count of roughly 6,000 residential units and 1,200,000 square feet of commercial development. Mr. Fure has been responsible for leading the civil engineering team as it works through the feasibility and environmental analysis phase of the project. His team recently completed an MPD application, currently under review in the City. Some of the design items of note include:

- Storm drainage facility analysis and design, including many low impact development features
- Water system design, including reservoir, pump station and transmission main planning, design and design coordination
- Sanitary sewer design, including pump station and trunkline planning, design and design coordination
- Roadway improvement design, including roundabouts, traffic signals and roadway extensions

Harbor Hill Mixed Use Community

Harbor Hill is a Master Planned Community in Gig Harbor, Washington. The project includes retail and commercial office development and a residential component consisting of approximately 800 units of varying housing types. As Senior Project Manager, Mr. Fure has orchestrated the envisioning process preceding the development of the master residential plan. Subsequently, he led the design team as it prepared a Planned Residential Development Application on the property. Included in this work is the coordinated drainage system design and the master utility planning. Offsite improvements include one mile of frontage roadway improvements: a roundabout, additional road connections and offsite sewer and water extensions.

Arborwood

Located in Kitsap County, Washington, Arborwood is a mixed-use project consisting of 751 residential units and 20,000 square feet of commercial space. As Principal in Charge, Mr. Fure led a team towards the goal of Preliminary Plat approval, realized in 2009. The master plan, including storm drainage and preliminary utilities, was developed with consideration for native open space areas.

TRIAD ASSOCIATES

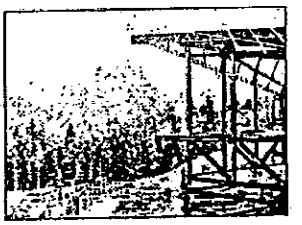
Talus Master Planned Community

Talus is a large master planned community perched on the easterly slopes of Cougar Mountain located in Issaquah, Washington. The site is steeply sloped and tightly constrained with numerous wetlands and stream corridors. The community contains 1,700 residential units, 500,000 square feet of office space and 25,000 square feet of retail commercial. Mr. Fure served as Senior Project Manager for Triad and assisted his client, Intracorp, with the management of the extensive consultant team. His 14-year involvement spans the planning, environmental, development agreement, design and construction processes. The following infrastructure elements were envisioned, planned and executed under his direction:

- Multiple detention facilities
- Water quality facilities to meet the Lake Sammamish lake management plan
- Over a mile of state highway improvements
- Over two miles of sanitary sewer trunkline
- Multiple water system facilities including a large water pump station and two water reservoirs
- Wetland mitigation and enhancement facilities
- Offsite stream restoration
- Over a mile of onsite roadway

In addition, Mr. Fure managed and directed the planning and engineering efforts for ten of the parcel development projects that followed the infrastructure design and implementation noted above. His work on this project began in 1996 and continues to this day.

Snoqualmie Casino



Snoqualmie Casino is an entertainment project located within the Snoqualmie Indian Nation near Snoqualmie, Washington. The project consisted of a large multi-purpose facility with a 2000-car parking garage constructed with associated additional parking and support facilities on a steeply sloped 40-acre site bisected by a natural stream corridor. Mr. Fure served as Senior Project Manager and assisted the owner by providing leadership to the entire design team. Of significance was the design and construction of a large detention and water quality facility. Other infrastructure elements undertaken on the project under Mr. Fure's leadership include:

- Street frontage improvements on North Bend Way, including a new intersection roundabout
- A water well and pump house
- Water treatment and potable water storage
- Fire flow reservoir and fire flow pump
- Numerous onsite retaining walls

OTHER REPRESENTATIVE PROJECTS

- Lakeland Master Plan, Auburn, WA
- Archstone Northcreek, Snohomish County, WA
- Oswego Pointe Mixed Use Development, Lake Oswego, OR
- Port Ludlow Planned Community, Jefferson County, WA
- Avalon High Grove, Snohomish County, WA
- Brandemoor Apartment Community, Snohomish County, WA
- Emerald Heights Retirement Community, Redmond, WA
- Mack Elementary School, King County, WA
- Element Residential Community, Redmond, WA
- Belcarra Apartments, Bellevue, WA
- Boeing Space Center Redevelopment, Kent, WA
- Inglewood Hills Apartment Community, King County, WA

TRIAD ASSOCIATES

MEMORANDUM

Date:	August 9, 2011
To:	Colin Lund, Chief Entitlement Officer, YarrowBay Holdings
From:	Alan D. Fure, P.E.
Re:	Regional Pond Location
Triad Job No.:	10-001

This memorandum has been prepared to identify the multiple benefits provided by locating a regional stormwater maintenance facility within King County near the Black Diamond City limits as shown on the attached map. Triad Associates has led the team of engineers and scientists, which has evaluated the potential locations for a regional stormwater pond to serve The Villages MPD and other surrounding areas. This investigation considered topographic, geographic, geologic, hydrologic and economic considerations and determined that the King County site shown on the attached map is the best location for a regional stormwater facility from an environmental, economic and strategic standpoint. The most appropriate location for a drainage facility does not necessarily respect jurisdictional boundaries.

From a regional standpoint the proposed stormwater facility location is at significant low point that receives natural drainage from approximately 760 acres within King County and the City of Black Diamond. A stated goal of both the City of Black Diamond and King County is to promote low impact or "natural" drainage systems. By utilizing the proposed location, the regional stormwater facility can be designed to mimic natural conditions because it will lie in the natural course of stormwater in the undeveloped state.

The proposed regional stormwater pond will incorporate natural contouring and habitat design to allow the project to have a rural character similar to other nearby natural drainage features. Such design will allow the stormwater facility to blend into the surrounding rural landscape and provide a natural buffer between The Villages MPD and unincorporated King County.

The proposed facility location also provides other substantial regional stormwater benefits including:

- **A Solution for Horseshoe Lake.** Proximity to Horseshoe Lake allows for a convenient overflow and outlet for the lake. The proposed regional stormwater facility will provide a means to resolve Horseshoe Lake's historical flooding problems that King County and its residents have suffered for years. A stormwater facility within the City would not provide protection for Horseshoe Lake – the lack of available space and physical constraints make it impossible within The Villages MPD property.

- **Maintain and protect groundwater levels.** The geology of the proposed stormwater facility site includes areas of highly permeable and deep draining soils, which allows for an infiltrating outfall for the proposed pond. By infiltrating the cleaned and treated stormwater to the deep regional aquifer, groundwater levels can be maintained and protected and cool clean water provided to the Green River system in a natural manor. Portions of The Villages MPD property

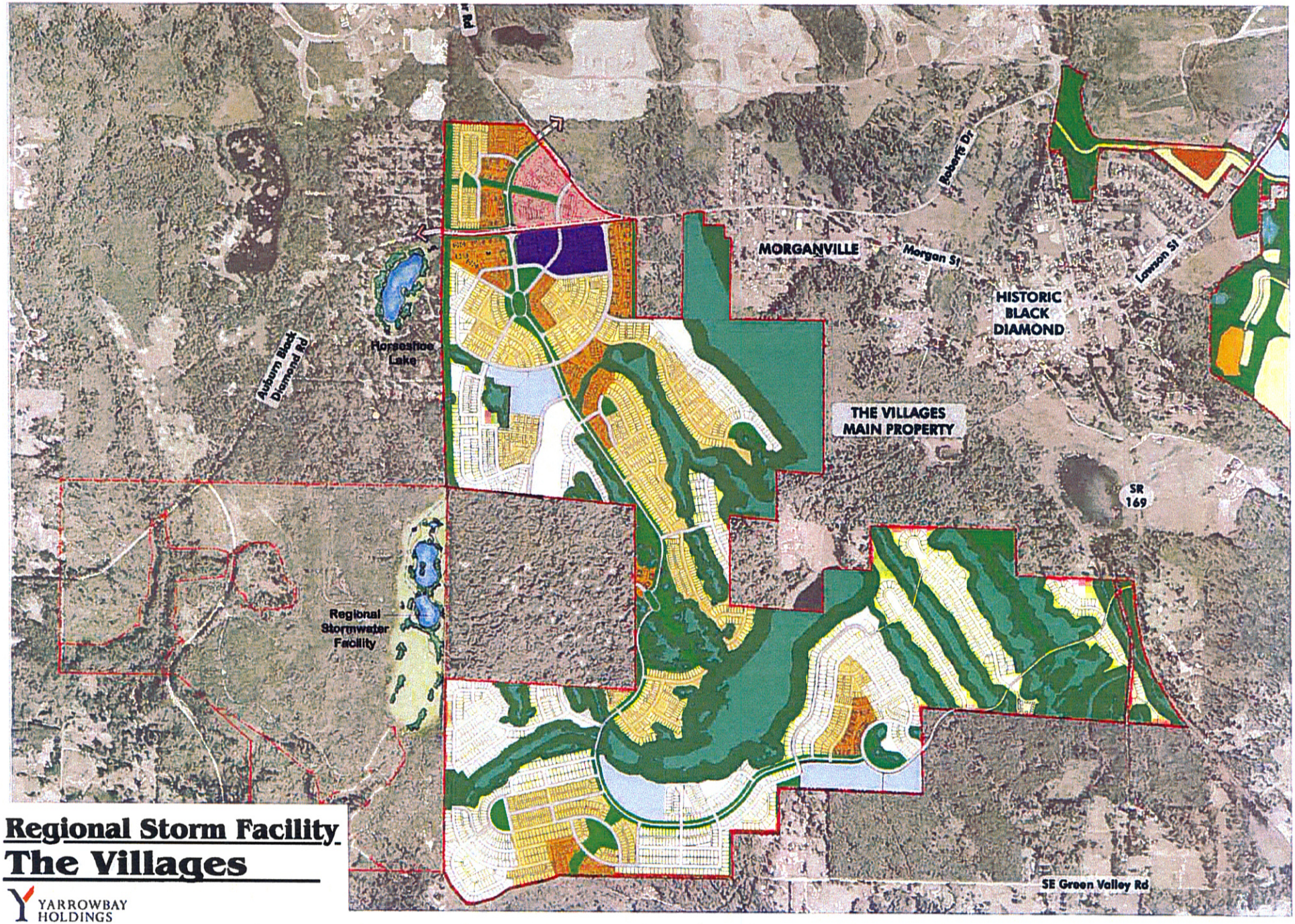
contain glacial till soils, which are not conducive to LID (low impact development) techniques, whereas routing the water to this location provides the ability to infiltrate the water, a viable LID strategy.

- **Provide significant wildlife habitat.** By consolidating stormwater management into a single large facility, rather than multiple small facilities throughout the landscape, such a facility can be designed to create significant wildlife habitat and recreational opportunities.

- **Reduces taxpayer burdens.** A consolidated regional stormwater facility reduces overall taxpayer burdens by allowing jurisdictions to manage or regulate a single facility to provide all stormwater treatment as opposed to multiple small facilities, thus producing economies of scale.

- **Easy and efficient future stormwater management upgrades.** A single regional facility will allow for easier implementation of future stormwater management practices. If future developments in stormwater management necessitate retrofitting of existing facilities, a single consolidated stormwater facility design is easier and less expensive to update than multiple small facilities.

In summary, based on topographic, geographic, geologic, hydrologic and economic considerations, it is my professional opinion that the proposed regional stormwater facility location shown on the attached map is the best site for such a facility on property owned by YarrowBay.



Regional Storm Facility
The Villages

YARROWBAY HOLDINGS

Response to Development Agreement Written Testimony

Due Aug12
By Kristen Bryant

On Page 32 of "YarrowBay's Written Testimony Pursuant to Hearing Examiner's Pre-Hearing Order II", it states:

> "In the Issaquah Highlands Development Agreement, a memorandum of agreement of which is record at King County No. 9606251228, the City of Issaquah and developer agree that all critical areas on the project site are shown on the critical areas map, that no further critical area studies are required for implementing projects, and that, in the event of any conflict, the critical areas map shall control."

Further, at the end of page 32 continuing to 33 it states:

> "…Future applications will be made for subdivisions and binding site plans to divide the MPDs' Development Parcels into buildable lots. Those applications are required by both State law and City code to include surveys. Those surveys will reflect the surveyed wetland boundaries shown on the Constraints Maps in Exhibit "G" …. Thus, the MPDs' wetland areas will be protected."

The applicant references the Issaquah Highlands and how that development's constraints map was fixed at the beginning. The applicant states Black Diamond will do the same. Then, concludes "t**he wetland areas will be protected**."

The problem is, the Issaquah Highlands wetlands protection was a **failure**. The attached document prepared "IssaquahHighlandsFollowup Presentation.ppt" by Dr. Sarah Cooke was prepared for the city of Issaquah in 2009 in response to significant wetlands degradation. It is submitted as part of this response to make it very clear that the city of Black Diamond must include remedies for wetland protection failure or it will fail in its legal duty to protect wetlands. The protection of wetlands is required by federal and state law. It is relevant because it shows that the applicant's statement that the wetland areas will be protected is not necessarily true.

See attached. Thank you,

Kristen Bryant

EXHIBIT 214

Issaquah Highlands

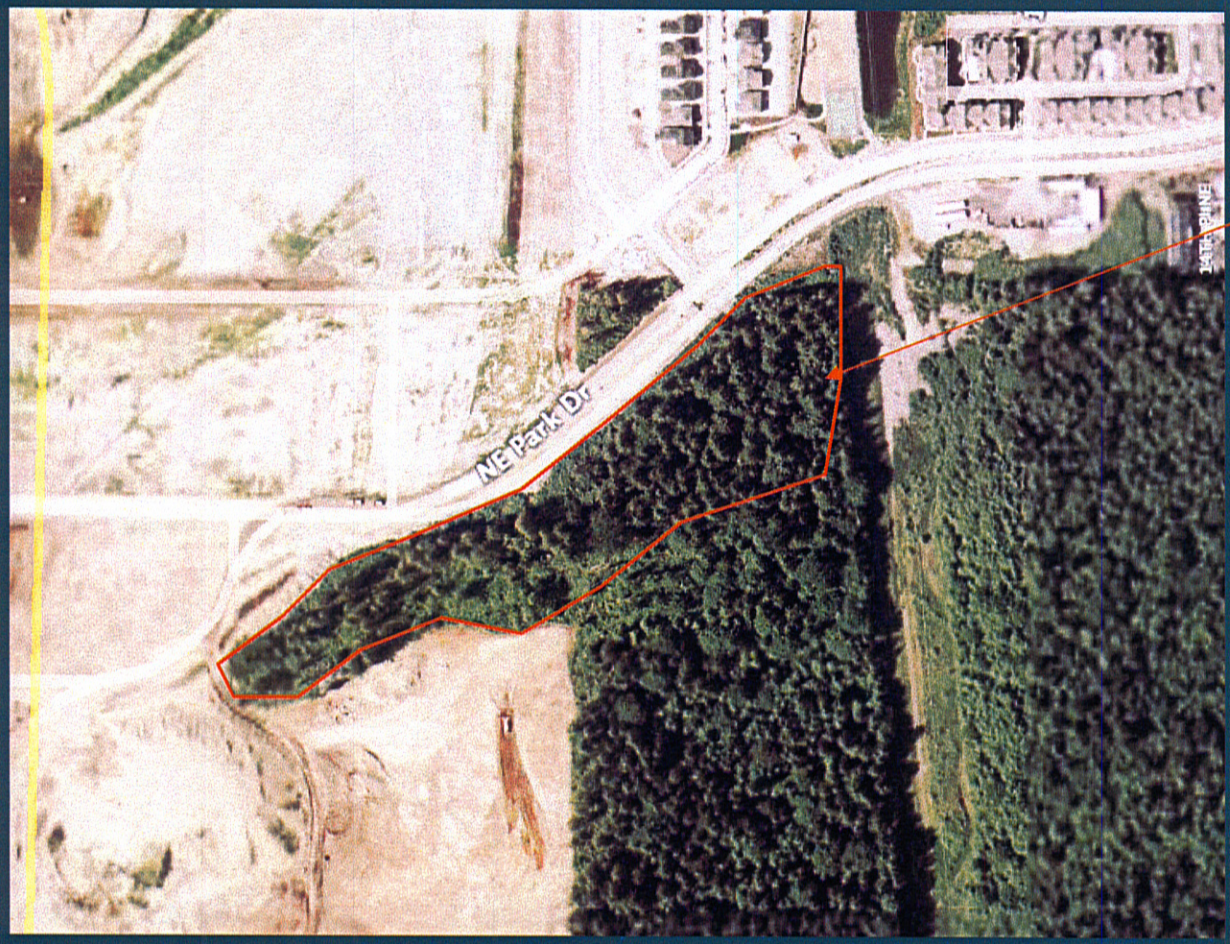
Buffer Conditions

Past, Present, and Future

Current Conditions

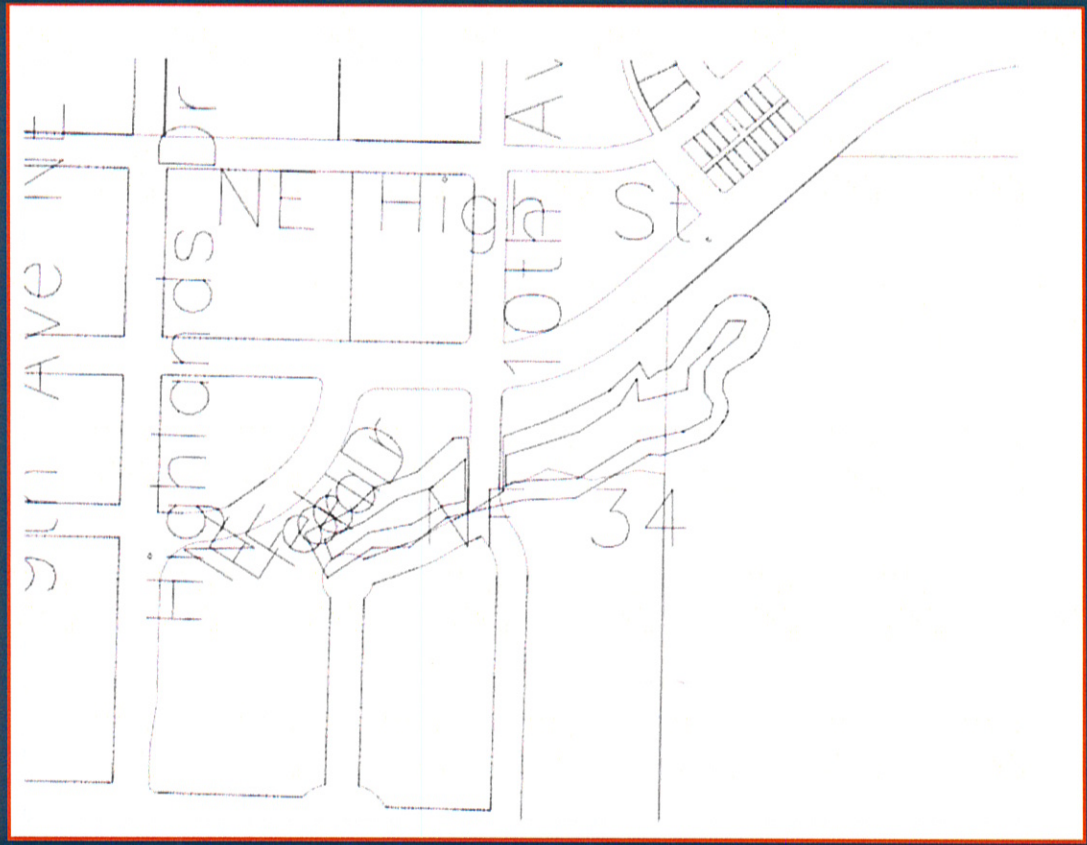
- As of January 2007 most of the wetland and riparian corridors throughout the Highlands are at severe risk from loosing many to all of the trees in both the wetlands and buffers.
- Unfortunately no infill planting was identified in the original development agreement, and no one anticipated the huge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

Some examples of problem areas – NF34



NF34 before the10th Ave road cut and before the trees fell down

Some examples of problem areas NF34



Some examples of problem areas NF34

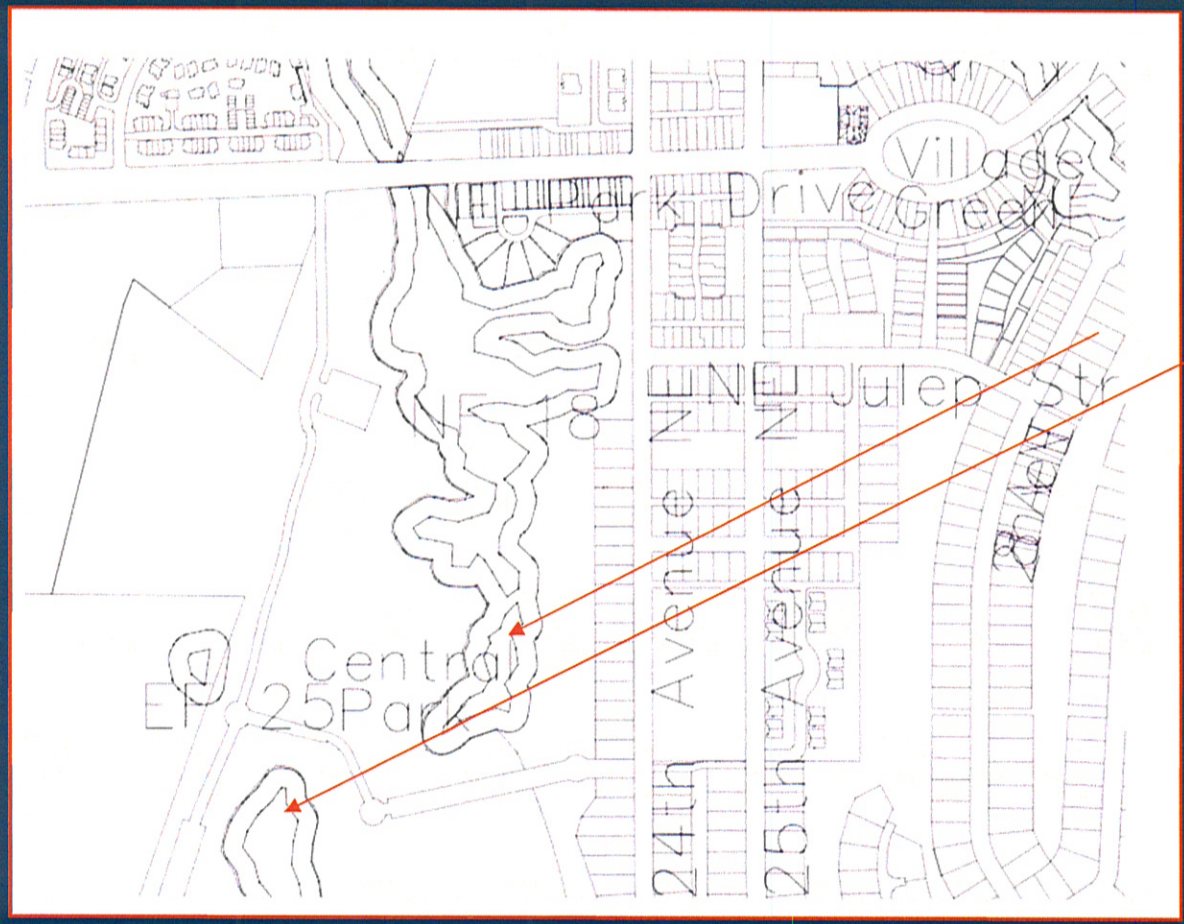
10th Ave road cut east edge

West edge

Northwestern section

no trees remain

Some examples of problem areas NF – 18



NF18- the mitigation site and NF 13

Some examples of problem areas

NF18- the mitigation site and NF 13

Before most of the trees fell

Some examples of problem areas 18

NF18- south edge 2005

Same edge now

No conifers are left

Some examples of problem areas – NF-13

NF13- northeast edge today

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

Some examples of problem areas – NF-17

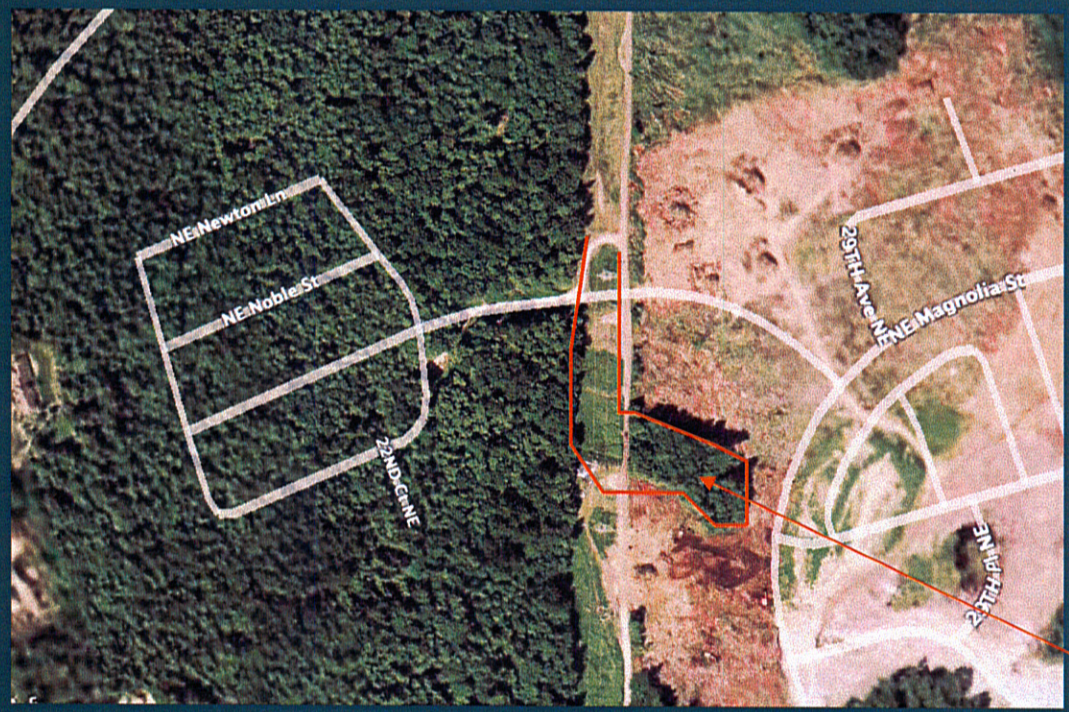
NF17, Division 32- was bisected by a major road and the southern lobe isolated

Some examples of problem areas – NF-17

NF17- northeast edge today

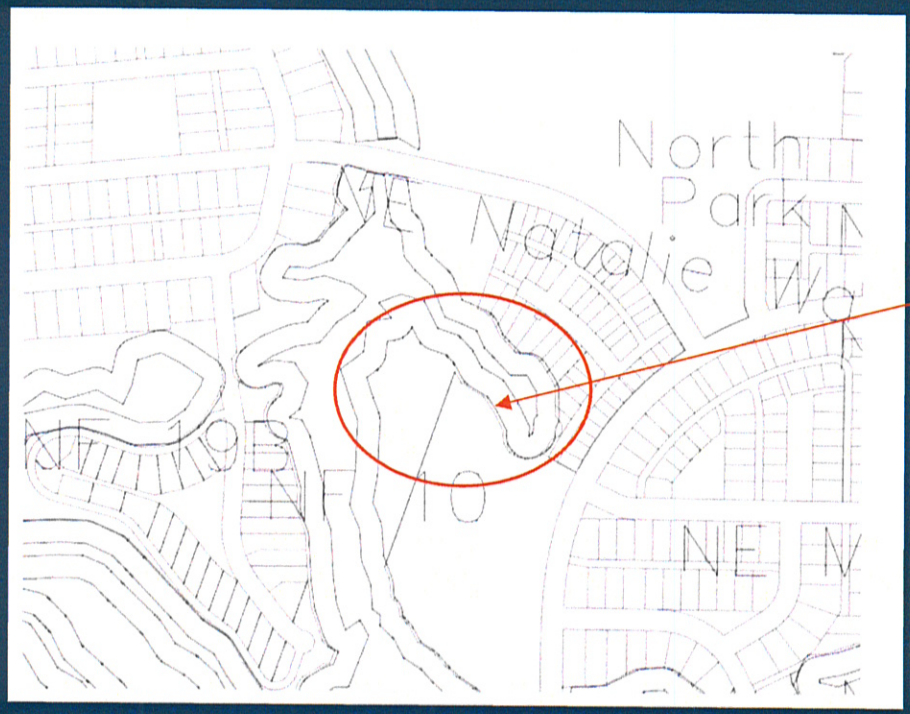
No large trees are left in either the wetland or buffer for much of this Corridor weeds are common.

Some examples of problem areas – NF-10



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

Some examples of problem areas – NF-10



NF10- northeast edge today

Eastern lobe

Some examples of problem areas – NF-10

NF10- east edge today

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

The future, what can we do?

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

BEFORE THE HEARING EXAMINER OF THE CITY OF BLACK DIAMOND

IN RE DEVELOPMENT AGREEMENTS RELATED TO MPD PERMIT ORDINANCES 10-946 (VILLAGES) AND 10-947 (LAWSON HILLS)	NOS. PLN10-0020/11-0013; PLN10-0021/11-0014 DECLARATION OF DANIEL R. ERVIN IN SUPPORT OF CITY'S RESPONSE TO WRITTEN COMMENTS AND ORAL TESTIMONY

DANIEL R. ERVIN declares and states as follows:

1. I am an engineering consultant to the City of Black Diamond in this matter. I am over the age of eighteen years, competent to testify herein, and make this declaration on personal knowledge of the facts stated.

EXHIBIT 215

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

2. Attached hereto as Exhibit A is a true and correct copy of my resume and expert credentials. I am a Vice President of RH2 Engineering, Inc., an engineering, planning, and scientific consulting firm incorporated in the State of Washington. I hold a Bachelor's of Science degree in Mechanical Engineering from the University of Washington in 1981. I am a licensed Professional Engineer in the State of Washington with 30 years of experience in municipal civil engineering with emphasis on infrastructure planning (comprehensive water, sewer and storm plans) facility design (pump stations, reservoirs, roadways, control systems) and administrative support (expert witness, meeting facilitator, public educator, contract negotiator, standards development).

3. Since the mid-1990's, I have served as the Project Engineer for the Issaquah Highlands and the Talus Master Planned Developments in Issaquah, Washington. Together, these two MPDs represent 5,100 residential dwelling units and 4,800,000 square feet of commercial development over 1,700 acres. I have also authored and administered or processed two significant development agreements in the City of Issaquah: one to allow unique development rules to facilitate an affordable YWCA housing project under a City/County/State joint venture, and the second to remove and preserve 100 acres of previously permitted but not constructed Urban Village development and relocate the permitted residential units into a smaller site elsewhere in the City. Collectively, the two Development Agreements included a SEPA processes, LID development regulations design guidelines, unique traffic and trip reduction strategies, open space preservation and/or City facility entitlements. Both projects subject to the Development Agreements are under construction.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
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4. At the request of the City's attorneys, I directed a review of the written comments of Jack Sperry (Exhibit 67) and Al Fure of Triad Engineering (Attachment 9 to Exhibit 135) concerning the potential effect of The Villages and Lawson Hills Master Planned Developments (MPDs) on the water level of Lake Sawyer. For the reasons discussed in more detail below, Triad's conclusions (arrived at using a reservoir routing model) about lake level rise in 2010-2011 and the minor lake level rise that might be associated with construction of the MPDs is generally correct, while Mr. Sperry's assertion that lake levels will rise 6.8 inches due to the MPDs and remain elevated is incorrect.

5. At the outset, some discussion is warranted concerning the three structures that control the discharge of water from Lake Sawyer: (1) the overflow weir; (2) twin culverts running under 224th Avenue SE (Lake Sawyer Road); and (3) Covington Creek itself. The overflow weir was installed as the result of a petition by lakefront property owners under RCW 90.24, that resulted in an order by the King County Superior Court in 1952 that set the overflow weir level at an elevation of 518.94 feet above mean sea level. This process and order is described in the July, 2000 Lake Sawyer Management Plan, as follows:

> Residents of the lake petitioned the King County Superior Court to provide for "the regulation of the outflow and fixing the water level of said lake." As a result of this action, the court determined that the Vern Cole Realty Company would be required to construct a dam and fish ladder based upon plans approved by the appropriate fisheries, wildlife and hydrologic agencies. Although the maximum water level was established at 518.94 feet above mean sea level, the focus of the court action was to reestablish a functional weir to control outflow and maintain lake levels during low water periods. During the dry period, however, the lake is controlled by losses to groundwater and drops well below the level of the dam and fish ladder.

KENYON DISEND
Kenyon Disend, PLLC
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Issaquah, WA 98027-3820
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6. The overflow weir is also described in a recent inspection letter issued on July 28, 2011 by the Washington Department of Ecology. The letter notes that the purpose of the "Sawyer Lake Outlet Structure" (aka the weir) is "for elevation control of Lake Sawyer," and that this "provides a recreational benefit, primarily for lake side residents and facilities." According to the letter, the overflow weir is owned and must be maintained by the two adjacent property owners, Colleen Boyle and Ken Dooley. A copy of the July 28, 2011 letter is attached to this Declaration as Exhibit B.

7. Taken together, the Lake Sawyer Management Plan and the July 28, 2011 DOE letter indicate that the overflow weir or dam was installed at the behest of the lakefront property owners, primarily to ensure a water level high enough during dry periods – the summer – for convenient recreation. If the weir were not present, water levels in the lake would be lower to start with when fall rains typically begin (because more of the lake would empty in the absence of the weir), and outflow rates from the lake would be increased during winter months. Therefore, to the extent that the weir serves as a limiting factor during winter flows and/or contributes to winter flooding (see discussion below), this is a necessary corollary to the summer recreation benefits the weir provides by limiting outflow and ensuring higher summer lake levels.

KENYON DISEND
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Issaquah, WA 98027-3820
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8. Turning to the Triad and Sperry comments, I conclude that the Triad analysis and conclusions are generally correct. First, the weir-controlled outlet rating curve presented by Triad is a reasonable way to calculate the maximum impact on lake levels due to increased runoff when the lake is at the level where properties will begin to flood (10 inches above the weir crest). Using this rating curve, RH2 Engineering, Inc. (RH2) recreated the weir-controlled outlet calculations for the 2010-2011 time period. Our calculations closely matched the Fure/Triad calculations. The only differences were minor, and were likely attributable to rounding errors. RH2 also compared changing the discharge coefficient from 3.09, which was used by Triad, to 2.964, which is closer to the coefficient identified in Brater and King (1976). Altering the discharge coefficient had little impact on the calculated lake level change, because although a lower discharge coefficient will reduce the discharge calculated for the weir at a particular lake level, and therefore lead to slightly higher lake levels, the difference was nearly imperceptible, on the order of hundredths of an inch. In addition, the fish ladder portion of the control structure will also likely discharge water from the lake, which makes the discharge calculations from the weir conservative and more likely to show a rise in lake water level. Discharge through the fish ladder portion of the structure would have the effect of increasing the discharge from the lake, which would lead to even less lake level rise than Triad calculated.

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Issaquah, WA 98027-3820
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9. RH2 also reviewed Triad's calculations concerning the twin culverts running under 224th Avenue SE. We concluded that, based on the survey information, some of the culverts appear to be either partially flattened due to the weight of the overlying soil and roadway, or partially filled with sediment. In either case, the discharge through the culverts would likely be slightly less than calculated, which could lead to a slight increase in lake level during times of culvert-controlled discharge, again, only on the order of hundredths of an inch. Even so, the measured/estimated water velocity multiplied by the cross-sectional area holding water will provide a rough estimate of discharge though a culvert, and the calculations by Triad for tributary area and culvert discharge were correct.

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10. Finally, RH2 also recreated Triad's reservoir routing analysis to determine the likely effect on lake levels from the proposed MPD development. This method, which models what will happen as a result of the surface water draining from the MPD sites when the lake is on the edge of flood stage, as well as during the recorded high discharge, is a good way to analyze worst-case scenarios. Again, our analysis generated essentially the same results as Triad's spreadsheets, and differed by no more than a hundredth of an inch from those shown in Mr. Fure's report. Even if Triad had expressed the additional rise in lake level as a per-day rise (a more accurate way to express it), the projected additional lake level rise from MPD development would be on the order of .06 of an inch per day, which is virtually imperceptible. Even if one were to assume that surface water that is infiltrated via LID methods eventually made its way to the Lake, this contribution would be spread out over time and would not correlate to precipitation or surface water peak flows. Thus, even assuming a constant source year round of 0.34 cubic feet per second (a reasonable rate), this addition of the infiltrated water to the model will likely only cause a very minor rise in water level (one to two hundredths of an inch) that will be also balanced by increased discharge to Covington Creek.

11. In light of the conclusions discussed in Paragraphs 8-10 above, I conclude that the Al Fure / Triad analysis of the likely effect of MPD development on the level of Lake Sawyer, even during winter, peak storm flow months, is generally correct.

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12. By contrast, the calculations and assertions contained in the written comments of Jack Sperry are generally **incorrect**, and lack scientific or engineering validity. First, Mr. Sperry based his calculations on the assumption that there would be an additional 615 acre-feet of water due to the MPD developments. While this total would be correct if one assumed that the total amount of surface generated by the MPDs will wind up in the Lake either via direct flow or tributary streams, Triad indicates that a large portion of this surface water will be infiltrated as opposed to being sent directly to Lake Sawyer or a tributary. As a threshold matter, this overstates (by approximately 65%) the volume of water potentially available to contribute to lake levels (615 acre-feet vs. 372 acre-feet).

13. Second, Mr. Sperry assumes that the additional runoff from the MPDs will flow into Lake Sawyer and remain in the lake as if it is a bathtub plugged by a stopper. For example, Mr. Sperry's Table 1 calculates the Equivalent Increase in Lake Sawyer Water Level in December as 3.5 inches and in January as 3.3 inches, for a total increase of 6.8 inches over these two months attributable (Mr. Sperry says) to the MPDs. These depths are based on the proportional distribution of the 615 acre-feet based on the timing of precipitation. This is not the case, however, because as long as the Lake's water level is above the crest of the weir, water will be leaving the lake – and reducing the Lake's level -- through surface water discharge to Covington Creek. The higher the lake level is, the higher the corresponding discharge rate to Covington Creek will be, which will prevent Lake levels from rising in the manner or to the extent that Mr. Sperry predicts.

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14. This is illustrated by some relatively simple principles, which Mr. Sperry's calculations fail to account for. A reservoir – which is what Lake Sawyer is given its artificially installed weir -- is a dynamic system with a simple general mathematical relationship. Inflow/Outflow equals Change in Storage or Water Level. The inflow and outflow are variable, but both are related to the water level in the reservoir through a water level/discharge relationship. If the lake level remains constant over time, the inflow to the reservoir and outflow from the reservoir are in balance and equal. If there is more inflow than outflow, then the reservoir will add storage and the water level will rise. If the outflow is greater than the inflow, then the reservoir will lose storage and the water level will drop. However, when the lake level rises above the top of the weir, increases in lake inflow generate roughly corresponding increases in lake outflow. Increases in outflow must be calculated, and offset against any increased inflow, in order to accurately predict the effect of increased inflow in resulting lake levels. Mr. Sperry's calculations completely fail to take increased outflow into account and, as a result, are not valid.

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Tel: (425) 392-7090
Fax: (425) 392-7071

15. Mr. Sperry does try to justify not taking outflow into account. He asserts that downstream flow limitations within Covington Creek essentially stop flow. The notion of some downstream limitations in Covington Creek tracks Triad's analysis, to a certain extent. Triad concludes that the twin culverts running under Lake Sawyer Road pose some limitations on downstream flow. And, as described above, RH2's analysis acknowledges that based on the survey information, the culverts appear to be either partially flattened due to the weight of the overlying soil and roadway, or partially filled with sediment. Consequently, in either case, the discharge through the culverts would likely be slightly less than calculated, which could lead to a slight increase in lake level during times of culvert-controlled discharge, but this would be only on the order of hundredths of an inch. Given this, it is incorrect (and invalid) for Mr. Sperry to conclude that downstream limitations shut off lake outflow entirely even during peak rainfall events, let alone halt it for the entire two-month period as assumed by Mr. Sperry's calculations.

16. Given all of the above, I conclude that there is no basis for Mr. Sperry's contentions that construction of the MPDs will cause a rise in the level of Lake Sawyer in such a way as to contribute to flooding. Notwithstanding this, options exist to lower lake levels, should lakeshore residents and/or the City wish to pursue them.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

17. First, lakeshore residents may petition the King County Superior Court to reopen the 1952 order and adjust the lake level. Under RCW 90.24.040, "the court shall have continuing jurisdiction after a petition is once granted and shall, upon subsequent petition filed and heard in accordance with the preceding sections, make such further findings and conclusions and enter such further orders as are necessary to accomplish fully the objectives sought in the initial petition. . . ." As part of such a petition, lakeshore residents could ask that the lake level be lowered to provide more potential storage during winter months. They could also request that a modern, more adjustable weir be installed, that could allow for preservation of certain lake levels during the winter, while lowering weir height to obtain greater lake outflow during winter months. While Mr. Sperry criticizes the prospect of operating the lake as a large detention facility, that is essentially the way the Lake functions today: its level is deliberately and artificially controlled by a weir, installed by lakefront residents to obtain certain benefits (primarily recreational). Obtaining a revised lake level order from the Superior Court along with installation of an adjustable weir will simply allow lakeshore residents to better do what they are already doing.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

18. Second, the City's current Capital Improvement Program (CIP) adopted as part of its comprehensive plan includes replacement of the twin culverts under 224th Avenue SE (Lake Sawyer Road) with a new, bottomless box culvert. A true and correct copy of the relevant pages of the City's 2011-2016 CIP is attached as Exhibit C to this Declaration. The CIP calls for construction of this project in 2013. To the extent that the existing culverts are a limiting factor in existing downstream flows in Covington Creek, replacement will eliminate this and allow for continued and increased lake outflow during winter storms.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

19. The solution proposed by Mr. Sperry, inclusion of revised condition language limiting inflow to the lake, is not warranted for the reasons described above. It is also unwarranted because it does not apply to circumstances involving a lake with an existing outflow, like Lake Sawyer. Mr. Sperry indicates that his suggested condition is modeled on what he states was included as a condition of development in the vicinity of Horseshoe Lake. The reason that such a condition might have been included for that development is that Horseshoe Lake has no outflow, and therefore is a "closed depression" as that term is defined in the King County Surface Water Design Manual. (The Horseshoe Lake development is not in the City of Black Diamond, which uses the Washington Department of Ecology's Stormwater Design Manual; Horseshoe Lake is in unincorporated King County and so any development there would have been subject to the King County Manual). The King County Manual contains limiting provisions for properties adjacent to closed depressions. Where such properties are subject to flooding under existing (i.e., pre-development) conditions, development occurs subject to a condition limiting inflow to the closed depression. The reason for this requirement is the lack of any outflow from the closed depression. Lake Sawyer, however, has an existing outflow which, for the reasons described above, will increase outflow as lake levels increase. There is no valid stormwater engineering basis for including a condition applicable to closed depressions to a water body like Lake Sawyer, which has an existing, properly functioning outflow.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

20. At the City's request, I also reviewed Mr. Sperry's written comments concerning the sanitary sewer service (Exhibit 68). Mr. Sperry's concerns center on his contention that the Development Agreements cannot be approved until King County agrees upon the location for a Peak Flow Wastewater Storage Facility. Mr. Sperry writes at page 5 of Exhibit 68: The City should not make the commitment for the full 6,050 Dwelling Units until it has firm agreement with King County on how to handle that capacity. The Development Agreements should not be approved until a viable sewer system design has been laid out, sited, and agreed to between the City and King County." For the reasons discussed below, Mr. Sperry's comments are again without merit.

21. By way of background, the Peak Flow Wastewater Storage Facility is not a part of the City's sewer system, but rather is a regional facility that will be part of King County's Metropolitan Sewage System. The Peak Flow Facility is required to be constructed by King County, under Section 3 of the Agreement for Sewage Disposal between the City and King County. A copy of that Agreement is attached hereto as Exhibit D. Section 3 of the Agreement provides that King County "*shall construct, acquire or otherwise secure the right to use all facilities required for the disposal of sewage delivered* to Metro pursuant to this Agreement and shall perform all services required for the maintenance, operation, repair, replacement or improvement of the Metropolitan Sewage System, *including any additions or betterments thereto.*" Under this contract, King County must build the facility if and when it is required for disposal of the sewage delivered to it. The fact that the City and County have not, as of this date, agreed to a particular location or design is unimportant, because the County must build the facility by the time it is "required for the disposal of sewage delivered to" the County.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

22. Turning to the City's proposed sanitary sewer system, Mr. Sperry correctly notes that the Development Agreements contain conceptual sewer plans, which the Agreement indicates show the "approximate facility locations"; "final locations are subject to City review and approval." This flexibility means that, as between the City and Master Developer, the City will have control over the ultimate location of any MPD sewer facilities, and thereby ensure that their can be compatible with whatever location is ultimately selected for the Peak Flow Wastewater Storage Facility constructed by King County. Consequently, the fact that that location is currently unknown does not create a flaw in the sewer plans contained in the Development Agreement. The City retains sufficient control and authority within the Development Agreement to ensure that the sewer plan will work from an engineering and design standpoint with whatever location is selected for the Peak Flow Wastewater Storage Facility.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

23. The Development Agreement contains additional protection for the City. Section 11.4.B of The Villages Development Agreement, for example, states that "Except as provided in the WSFFA and the Municipality of Metropolitan Seattle City of Black Diamond Agreement for Sewage Disposal dated September 12, 1990, the Master Developer shall design and Construct (or cause to be Constructed) the off-site Regional Facilities identified in Tables 11-4-1 . . . below." Under this Development Agreement provision, if a court were to somehow determine that the Agreement for Sewage Disposal did not obligate King County to build the Peak Flow Wastewater Storage Facility, the Master Developer would be legally required to design and construct it (or cause it to be constructed). Table 11-4-1 reinforces this conclusion; it identifies the Wastewater storage facility" and notes that "Construction Responsibility" is allocated to "Master Developer or King County Wastewater Treatment Division." The Lawson Hills Development Agreement contains a parallel provision and table, at Section 11.4.B and Table 11-4-1, pages 87-88.

24. Mr. Sperry also notes that the Peak Flow Wastewater Storage Facility is not included in the County's 2011-2016 CIP. This is a non-issue. The August 18, 2010 letter from King County's Mark Buscher that is Attachment 1 to Exhibit 68 states that the County removed the facility from its CIP due to uncertainty as to the timing of issuance of the MPD Permits. The letter concludes by indicating that "we can work with you to re-incorporate the project into the capital budget in 2012."

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 12 day of August, 2011, at ISSAQUAH, Washington.

Daniel R. Ervin

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Ex A

Daniel R. Ervin – RH2 Engineering, Inc.

22722 29th Drive SE, Suite 210
Bothell, WA 98021 (dervin@rh2.com)

Vice President, RH2 Engineering. BSME, University of Washington (1981). PE License No. 22513. 30 years experience in municipal civil engineering with emphasis on infrastructure planning (comprehensive water, sewer and storm plans) facility design (pump stations, reservoirs, roadways, control systems) and administrative support (expert witness, meeting facilitator, public educator, contract negotiator, standards development).

DIRECT MPD EXPERIENCE

Issaquah Highlands, Issaquah WA **1996 - Present**

Project Engineer for the Issaquah Highlands (IH) MPD (4,000 Units, 4,000,000 sf commercial, 1,300 acres). Worked directly with the Mayor's office and City Council. Designed and provided staff support for a public development commission process. Administered all aspects of Public Works compliance including permitting, SEPA, and coordination with other departments and jurisdictions. Received numerous awards for innovations in government and process including the Kennedy School of Business Award. Designed public projects including a Fire station and 47 acre regional park. Wrote codes and standards including non-potable water reuse (without a water right), low impact development, zero-energy design guidelines and other innovative technology implementations. Provided expert witness support to Council on challenges and appeals. Permits included 3,000 residential lots, a regional hospital, 1,000-stall parking garage and 100-acre Microsoft campus.

Talus, Issaquah WA **1998 - Present**

Project Engineer for the Talus MPD (1,100 Units, 800,000 sf commercial, approx 400 acres). Worked directly with the Mayor's office and City Council. Primary staff engineer for the Major Development Review Team, a permitting organization within Public Works. Performed similar duties to the Issaquah Highlands project above, except wrote the Development Agreement for the project based on experience administering the Issaquah Highlands D.A. The Talus D.A. was later used to supersede the Issaquah Highlands D.A. Project under construction.

Town Center, Sammamish WA **2008 - Present**

Special consultant to the Planning Department and Planning Commission with an emphasis on peer review of work prepared under a separate process. The project is a Town Center Plan that will culminate in a Development Agreement. Work includes integrating sustainability with economic vitality, developing incentives for public/private partnerships, developing municipal codes for allowing developers to access public financing for "partner" eligible facilities, and developing special resource districts so O&M cost savings can be used to finance capital projects. Project currently being processed by the City Council.

Block 9 Expansion Parcel, Issaquah WA **2006 - Present**

Wrote and administered a Development Agreement (DA) Amendment for Block 9 within Issaquah Highlands to allow unique development rules. The unique rules facilitated an affordable YWCA housing project under a City/County/State joint venture. The DA included a SEPA addendum, LID development regulations and sustainable technology standards. Project under construction.

Park Pointe DA Transfer, Issaquah WA **2008 - Present**

Wrote and processed a Development Agreement to remove (and preserve) 100 acres of previously permitted (but not constructed) Urban Village and move the entitled units into a smaller site elsewhere in the City. Similar to the County's TDR program but tailored to accommodate multi-jurisdictional entitlements. The DA included SEPA, development standards, design guidelines, LID stormwater standards, unique traffic and trip reduction strategies, open space preservation and City facility entitlements. Project under construction.

Ex B

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

COMMUNITY DEVELOPMENT
JUL 29 2011
RECEIVED

July 28, 2011

Ms. Colleen K. Boyle
29722, 224th Avenue SSE
Black Diamond, WA 98010

Mr. Ken C. Dooley
22407 SE 297th Street
Black Diamond, WA 98010

Project: Lake Sawyer Outlet Structure
File Number: KI09-1177

Subject: June 28, 2011 At-Public-Request Inspection

Dear Ms. Boyle and Mr. Dooley:

The purpose of the letter is to present to you, as owners, the results of an inspection of the Lake Sawyer Outlet Structure. The inspection was not a regularly scheduled inspection, but completed after a request was received regarding flooding concerns from Alan Nix, Director of Parks and Natural Resources at the City of Black Diamond. I have copied him on this letter along with Alan Gangl, President of the Sawyer Lake Community Club, who made a request to receive a copy. This report provides background information and a description of the project, results of the June 28, 2011 inspection, and any remedial actions required based on the inspection findings. An Operation and Maintenance Plan and an Owner's Annual Inspection Form are also included.

In the Conclusion section of this letter, you will see that our overall assessment of the structure following our June 28th inspection is that Lake Sawyer Outlet Structure is adequately maintained and functioning properly and that the downstream hazard remains classified as Low, Hazard Class 3.

The inspectors were John R. Blacklaw, P.E. and David Cummings, P.E. of Ecology's Dam Safety Office. Ms. Dusta Dooley was present for the inspection. Mr. Dooley and Ms. Boyle were not present, although they had been apprised of the time for the inspection by certified letter.

In accordance with RCW 43.21A.064 (2), the Department of Ecology, Dam Safety Office (DSO) has the responsibility and authority to inspect the construction of all dams and other works related to the use of water, and to require necessary changes in construction or maintenance to

reasonably assure safety to life and property. This report has been prepared in accordance with this statute.

PROJECT INFORMATION

Sawyer Lake Outlet Structure is located on Covington Creek in the city of Black Diamond, Washington, within Section 4, T21N, R6E in King County (Figure 1). The dam is located at: Latitude 47.335703N., Longitude -122. 045458 E.

The purpose of the Sawyer Lake Outlet Structure is to provide a hardened spillway to limit erosion and head cutting in Covington Creek, for elevation control for Sawyer Lake, and to support fish passage. This results in a recreational benefit, primarily for lake side residents and facilities. The project is owned by the two residential owners of land parcels on each side of Covington Creek at the dam.

The owners are:

Left Side of Dam:	**Right Side of Dam:**
Ms. Colleen K. Boyle	Mr. Ken C. Dooley
29722, 224th Avenue SSE	22407 SE 297th Street
Black Diamond, WA 98010	Black Diamond, WA 98010
	(360) 886-0125
	kdchows@hughes.net

The project was constructed in 1952. The dam is a 4-foot high concrete structure, with a central fish passage section. The dam crest is 60 feet wide on the right side, 30 feet wide on the left, for a total width of about 94 feet. Both sides of the dam have raised concrete sections extending into the raised earthen abutments. The upstream slope is vertical. The downstream slope is an ogee shape. There is a concrete apron at the dam toe that extends about 10 feet downstream. The apron is about 6 feet below the dam crest elevation. Downstream of the apron is large rock.

About 100 feet downstream of the dam is 224th Street, a two lane street crossing Covington Creek. There are 3 approximately 5 foot diameter corrugated metal pipe (CMP) culverts. The culvert inverts are set at approximately the elevation of the dam apron (about 6 feet below the dam crest). The street is about 3 to 4 feet higher than the dam crest. 224th Street and the three culverts underneath would attenuate (limit) the peak flow rate from the dam during very large precipitation events or a potential dam breach failure.

The dam can impound about 1116 acre-feet when filled to the spillway crest height of 4 feet.

FIELD INSPECTION

On June 28th, there was a depth of flow over the dam crest of about 2 to 3 inches. Using the attached Flow versus Head chart, this amounts to about 40 cubic feet per second (cfs). Silt has built up on the upstream side of the dam and is evident about 1 to 2 feet below the water surface. There was no visible damage to the apron, although it was submerged by about 2 to 3 feet below the downstream water surface and was not easily observable. The rock beyond the apron

appeared to be stable. There is a large stump on the right toe near the abutment. It appeared to be stable. No scour holes were observed.

The owner stated that she had looked at the dam toe area during low flow periods and had noticed any problems.

The concrete structure was evaluated by David Cummings, P.E., Structural Specialist with the Dam Safety Office. His observations are noted: The structure appears to be stable and has not changed much since it was last inspected 18 years ago. Moss has obscured the surface in places. Even so, it appears that the concrete dam members had no cracks of significant width, or out-of-plane offsets or misalignments. There was no apparent deviation of flow at the dam crest, as would be noticeable if there were cracks of significant size. All concrete members appeared to have smooth, well-formed surfaces, with what appeared to be the original cast-in-place alignments.

Please note that the above statements about the concrete members were made without any consideration of member sizes, concrete strength, or viewing from a close enough distance to make condition statements beyond an "approximate" accuracy.

HAZARD SETTING

In light of the inundation path findings noted below, the Lake Sawyer Outlet Structure hazard remains classified as Low, Hazard Class 3.

The dam hazard classification is based on an evaluation of potential impacts downstream from a hypothetical dam breach to an inundation pathway area downstream of the dam. Evaluated impacts include the potential for loss of life, and economic and environmental impacts.

There are three hazard categories – High, Significant, and Low. The High Hazard category has three additional separations – High 1A, High 1B, and High 1C. There is a matrix of risk parameters used to make these distinctions. Please see Table 2 of the Dam Safety Guidelines, Part IV: *Dam Design and Construction at: http://www.ecy.wa.gov/programs/wr/dams/dss.html.*

The downstream hazard area is principally wooded streambed. The general area is semi-rural mostly developed into large lot residential homes of several acres each. There are two main roadway crossings between the dam and where Covington Creek enters the Green River about 15 miles downstream. See the attached Inundation Map.

The inspection included reviewing the flow pathway of a potential dam breach flood from the dam until Covington Creek enters the Green River. The first road crossing was at 224th Street less than 100 feet downstream of the dam. There were 3 large approximately 5 feet diameter corrugated metal pipe (CMP) culverts that pass the Covington Creek flow at that point. The culverts were flowing about ¼ full at the time of the inspection. The roadway is approximately 3 to 4 feet above the dam elevation and would constrict the potential dam breach flow rate, if the dam were to fail.

It is estimated that peak stormwater flow during large design-basis storm events and/or a potential dam breach failure would be attenuated by the 224th Street roadway and culverts and that there would be no significant impacts downstream caused by the dam's presence. Therefore, a failure of the dam would not likely result in a loss of life.

The second roadway crossing is several miles downstream of the dam on the Kent Black Diamond Road near 328th Street. This crossing is a two lane bridge with apparent limited stormwater flow capacity. It is estimated that the bridge capacity is no greater than the culvert capacity on 224th Street. There are two homes on the right side of Covington Creek just downstream of the bridge crossing that were flooded (according to City of Black Diamond staff) in the past two years. It is likely that the flooding was the result of a combination of high water flows from local surface water and from Covington Creek. This location has a much larger watershed that the dam due to tributary streams below the dam. The limited capacity of the bridge could also cause backwater conditions that might affect local flooding in the area.

There is a fish hatchery (Soos Creek Hatchery) just upstream of the confluence of Covington Creek and the Green River. In discussions with Mike Wilson, Fish Hatchery Specialist, at the hatchery, there is routine flooding at this facility. He said that most of the flooding is from impacts of backwater from the Green River due to flood water control at the Howard Hanson Dam. He does not believe that Covington Creek alone has caused his facility to flood.

Prior to the inspection, the hazard classification was considered Low, Hazard Class 3.

Information obtained on the Inundation Path Downstream from the dam is listed below:

Equivalent Number of Downstream Residences:	None
Number of Road Crossings:	Two
Number of Bridge Crossings:	One
Infrastructure Description:	Semi-rural developed in large lots
Reservoir Contaminants Description:	Lake water
Environmental Resources Description:	Salmon and trout habitat
Other Impacts:	None

CONCLUSIONS

Our overall assessment of the structure following our June 28th inspection is that Lake Sawyer Outlet Structure is adequately maintained and functioning properly and that the downstream hazard remains classified as Low, Hazard Class 3. The necessary Operation and Maintenance Plan and Owner's Annual Inspection Form need to be instituted by the owners. There are no other required remedial actions for the owners.

Thank you for your assistance during the inspection. If you have questions, please contact me at the Dam Safety Office. I can be reached at (360) 407-6883, or at John.Blacklaw@ecy.wa.gov.

Sincerely,

John R. Blacklaw, P.E.
Dam Safety Engineer
Dam Safety Office
Water Resources Program

Cc: Aaron Nix, Director, Parks and Natural Resources, City of Black Diamond
Alan Gangl, President, Sawyer Lake Community Club
Jacque Klug, Ecology, NWRO

Mailing Addresses:

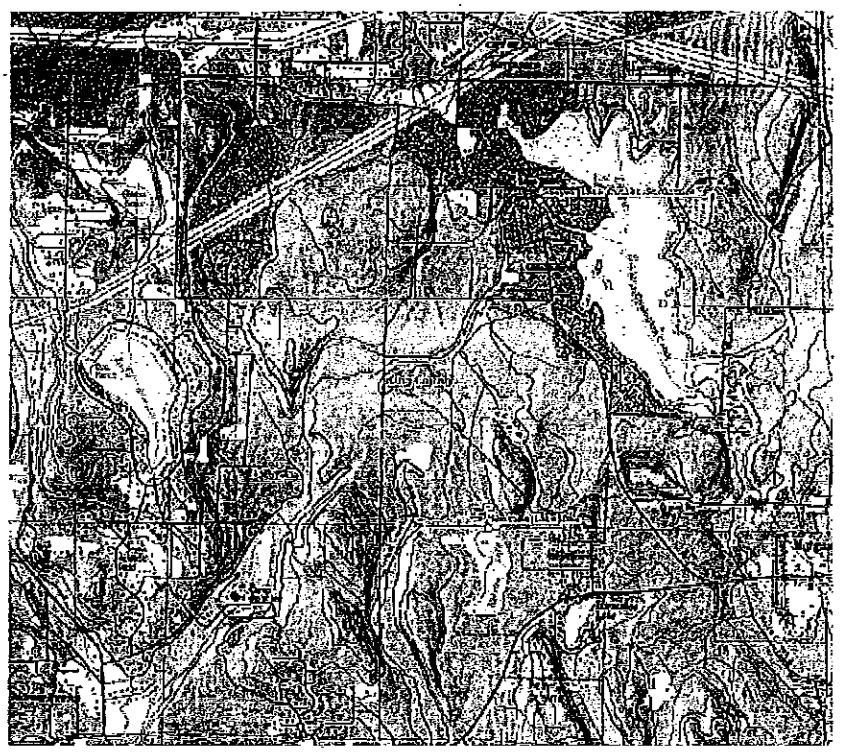
Aaron Nix, Director
Parks and Natural Resources
City of Black Diamond
24301 Roberts Drive (PO Box 599)
Black Diamond, WA 98010

Alan Gangl, President
Sawyer Lake Community Club
PO Box 191
Black Diamond, WA 98010

The dam safety inspection of the Lake Sawyer Outlet Structure and technical material presented in this letter were prepared under the supervision and direction of the undersigned professional engineer, in accordance with RCW 43.21A.064 (2).

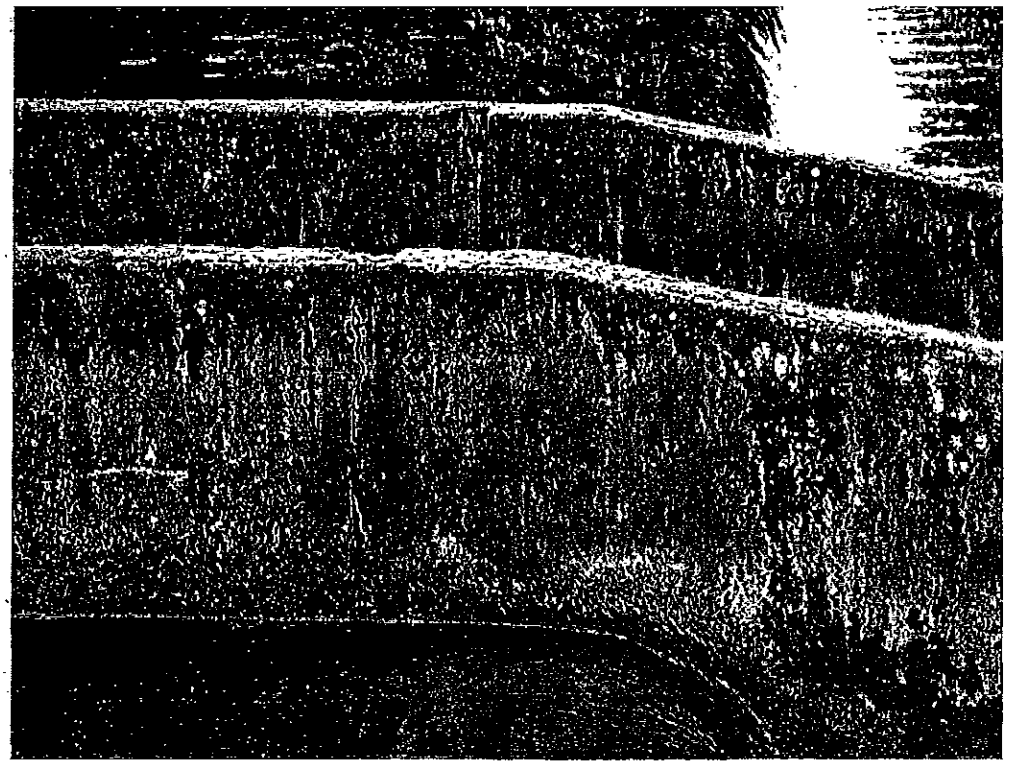
John R. Blacklaw, P.E.
Dam Safety Engineer
Dam Safety Office

JOHN ROLAND BLACKLAW
STATE OF WASHINGTON
30030
REGISTERED
PROFESSIONAL ENGINEER



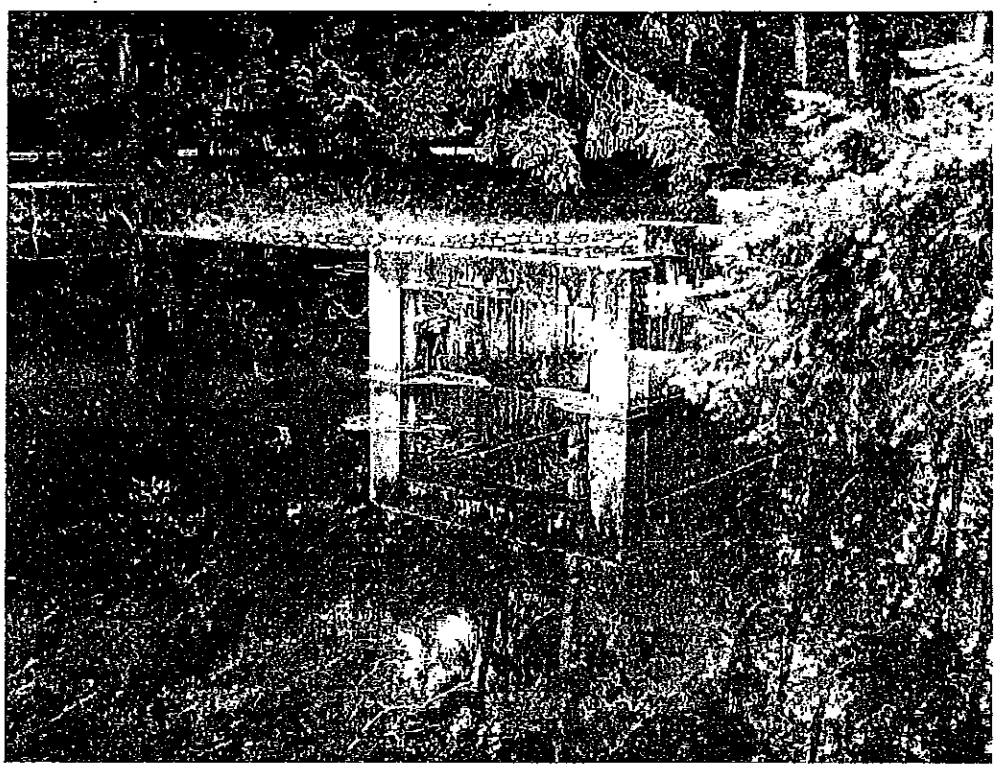
Lake Sawyer Outlet Structure Location Map

Lake Sawyer Outlet Structure Inundation Map

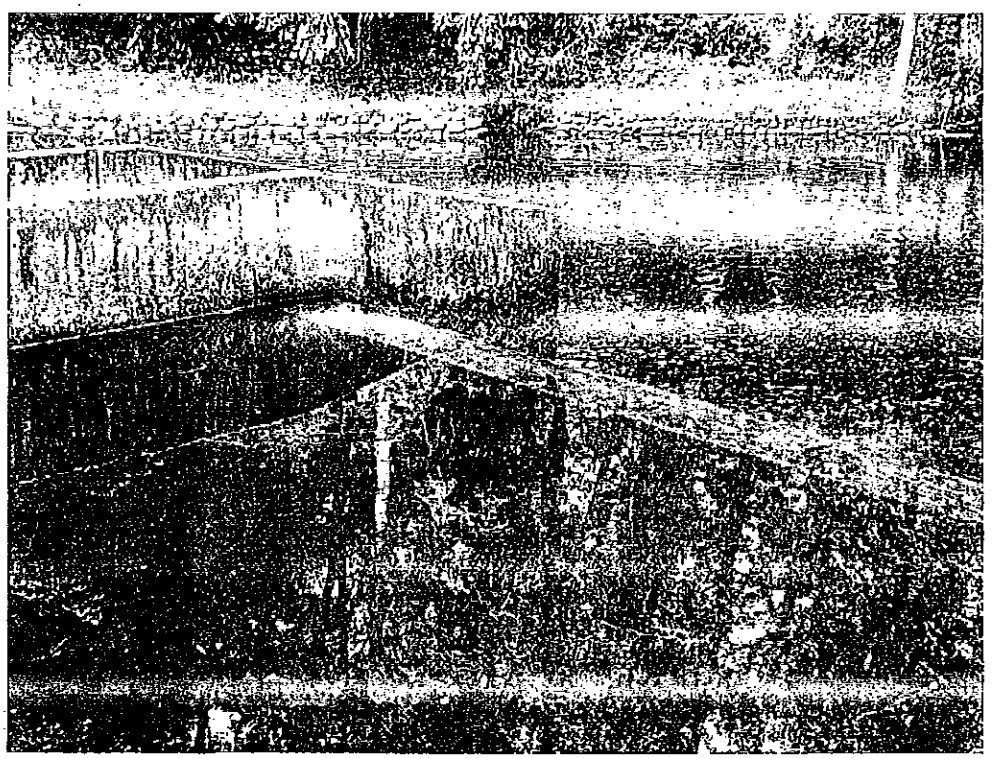


Fish Passage Training Wall Looking from Right Abutment

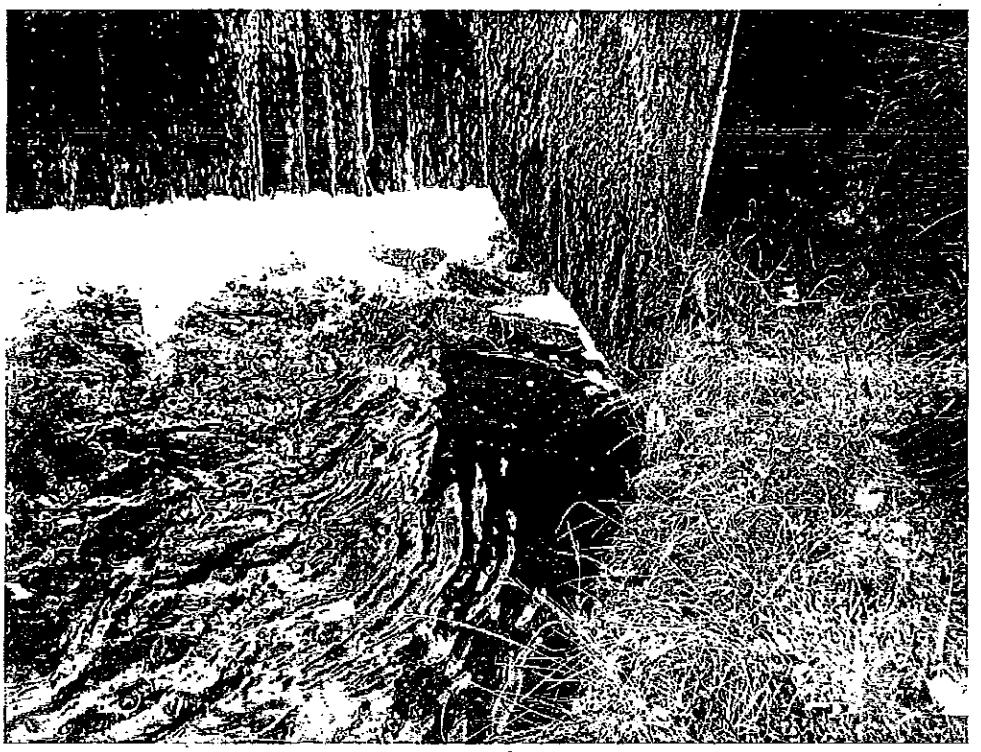
Fish Passage and Crest from Right Abutment



Fish Passage Entrance



Right Side Dam Crest Looking Downstream

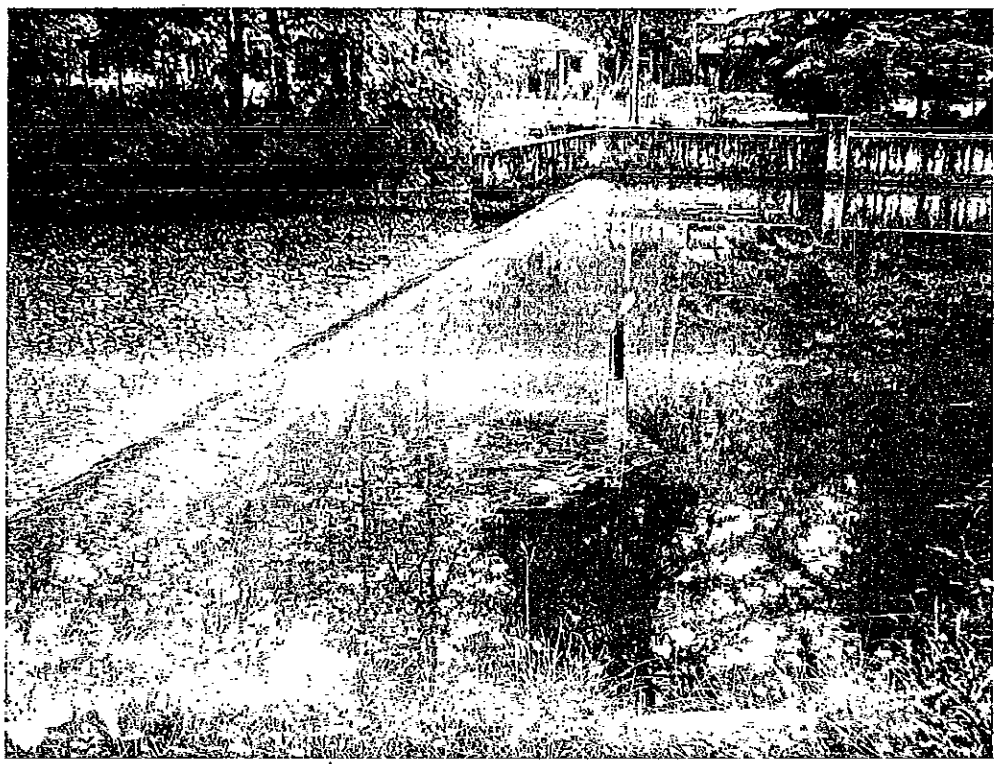


Stump Remnant at Left Downstream Toe

224th Street Culvert Looking from Right Abutment

Looking Upstream at Dam from 224th Street near Culverts

Looking Upstream at Dam from 224th Street Roadway Margin



Water Level Indicator Looking from Left Abutment

OPERATION AND MAINTENANCE PLAN

1. PROJECT DATA:

Dam Name: Lake Sawyer Outlet Structure
Reservoir Name: Lake Sawyer

Owner's Names:

Left Side of Dam:	**Right Side of Dam:**
Ms. Colleen K. Boyle	Mr. Ken C. Dooley
29722 224th Avenue SSE	22407 SE 297th Street
Black Diamond, WA	Black Diamond, WA 98010
98010	(360) 886-0125
	kdchows@hughes.net

Creek/River: Covington Creek
Location: Section 4, T21N, R6E, Latitude 47.335703N., Longitude -122. 045458 E.
Dam Type: Concrete ogee with downstream apron
Dam Height: 4 ft. Crest Length: 94 ft. Crest Width: 3 ft.

2. INDIVIDUALS WHO ARE RESPONSIBLE FOR:

Operations: Owners (See above)
Maintenance: Owners (See above)
Inspections: Owners (See above)
Monitoring of Instrumentation (Water Level Gage): Owners (See above)

3. LIST OF ITEMS REQUIRING PERIODIC MAINTENANCE, AND PROCEDURES FOR PERFORMING MAINTENANCE.

Debris: Since there is no log boom or other device to limit debris from impinging on the structure, quarterly maintenance should identify any need for debris removal. The owners should then make arrangements for debris removal. The entry to the fish passage may be particularly susceptible to debris build up and should be observed specifically each quarter so debris is eliminated in order to keep fish passage functional.

Concrete: Concrete surfaces should be observed for significant cracking that appears unstable (may move and separate) or that has out-of-plane offsets (misalignments, separations) or leakage (flowing water). Be sure to observe the contact of the fish ladder with the ogee spillway sections on each side.

Apron: The downstream toe of the dam (apron and rock) is a potential dam failure area that needs to be evaluated during periods of low flow and low downstream water level so the area can be adequately inspected. Be careful for personal safety when inspecting this area. Be sure to look for large or significant concrete defects (see above) and for void areas at the end of the apron when flow may have eroded or displaced the large rock. At

the left abutment, there is a large stump that was cut off at the water line at some time in the past. This area should be observed for potential changes or deterioration of the apron and abutment in the area.

4. LIST OF INSTRUMENTATION, FREQUENCY OF MONITORING, AND METHOD OF RECORD KEEPING:

Water level measurements should be made quarterly (around January 1, April 1, July 1 and October 1) by the owners and recorded in a log book. The only instrumentation at the dam is the water level gage (indicator). This gage measures the upstream water level and is most easily observed from the left abutment area. Measurements can be correlated to stream flow rate for Covington Creek using the water level, dam width dimensions and standard weir flow rate calculation methods. These measurements may be useful by city or county officials, or others, to monitor stream flow for fish or flood protection purposes. Use the chart below to convert water level measurements to approximate stream flow rates.

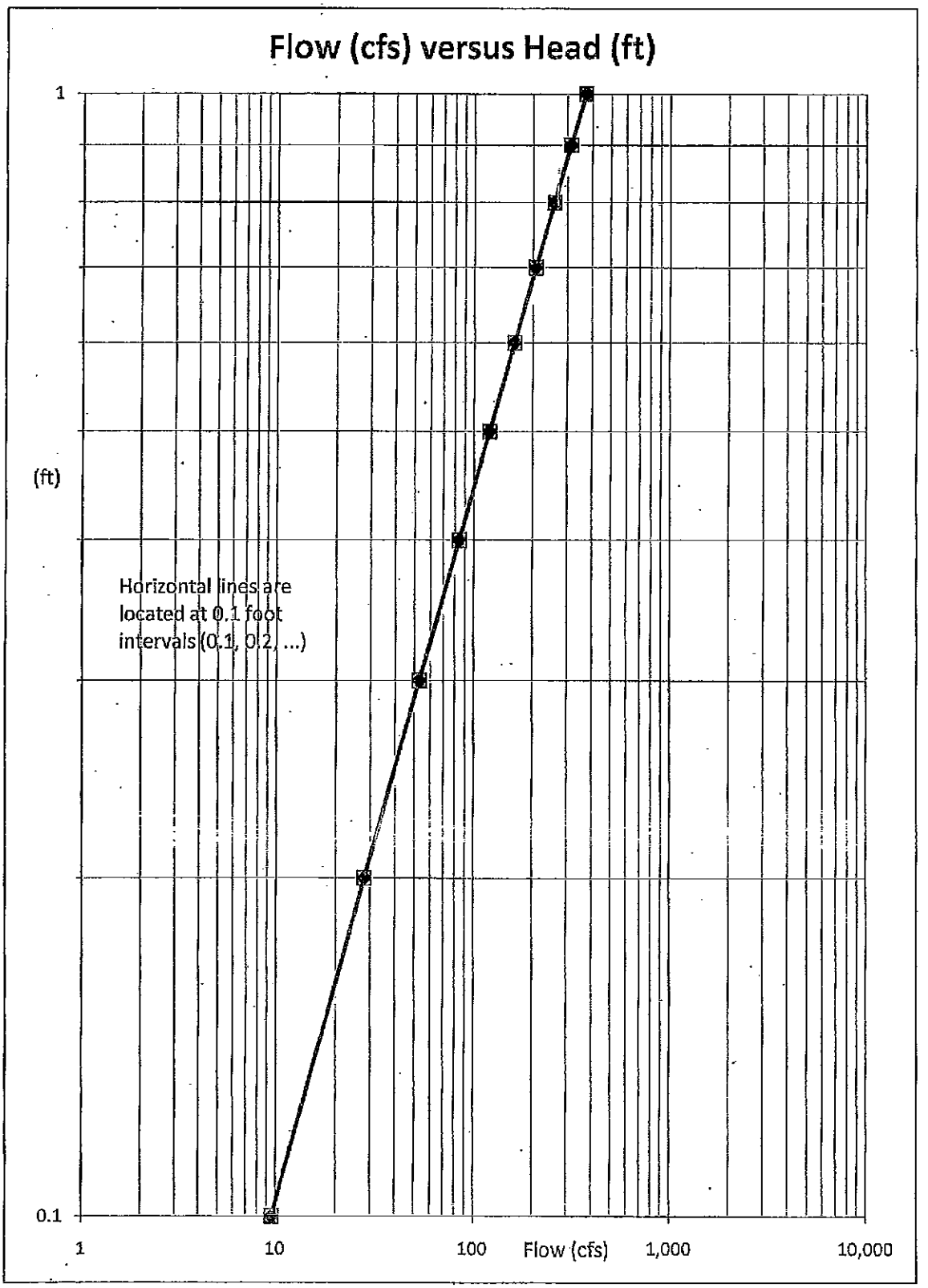
5. FREQUENCY OF ROUTINE INSPECTIONS:

Routine inspections should be done quarterly when the water level gage measurements are taken (around January 1, April 1, July 1 and October 1). Routine inspections should be made by the owners by walking around and observing the condition of the dam to see if anything is out of place or has changed since the last inspection. Photographs are helpful in evaluating changes with time. Notes should be taken and entered in the log book along with the photos and water level measurements.

6. ANNUAL INSPECTIONS BY OWNER:

The dam should be inspected annually (around October 1) using the attached Annual Inspection Form. Of particular interest would be the condition of the concrete members and of the downstream apron and rock at the dam toe.

Ideally, the annual inspection should be scheduled after a prolonged low flow period when the dam toe, apron and rock can be readily observed. Also, an additional inspection may be warranted if there is concern following an unusually large storm event. A major earthquake causing lengthy strong shaking in the area should also trigger an annual inspection.


Flow (cfs) versus Head (ft)
1
(ft)
0.1
Horizontal lines are located at 0.1 foot intervals (0.1, 0.2, ...)
1
10
100
Flow (cfs)
1,000
10,000

OWNER'S ANNUAL INSPECTION FORM

Project Data:		
Dam Name: Lake Sawyer Outlet Structure		
Owner's Names:	**Left Side of Dam:** Ms. Colleen K. Boyle 29722 224th Avenue SSE Black Diamond, WA 98010	**Right Side of Dam:** Mr. Ken C. Dooley 22407 SE 297th Street Black Diamond, WA 98010
Inspected by: _____	Inspection date: _____	Weather: _____
Reservoir Data:		
Reservoir Level at time of Inspection: _____ (Use the water level gage or estimate the water level flowing over the dam crest.) Reservoir Outflow at time of Inspection: _____ (Use the Flow versus Head chart to determine stream flow rate at the dam.)		

Condition of Dam: (Describe below deficiencies found and their approximate locations.)

Debris: _____

Concrete: _____

Apron: _____

Measurements: _____

Maintenance Deficiencies: (Note any maintenance issues found and provide a description of the recommended action required to make needed corrections.)
Additional Inspector Comments:
Notes on Attached Photos: (Attach and number photos taken during the inspection.)

Instructions: Send a copy of the completed Owner's Annual Inspection Form to the Dam Safety Office at the following address within 30 days of the inspection. Keep the original in the facility Logbook.

Dam Safety Office
Washington State Dept. of Ecology
PO Box 47600
Olympia, WA 98504-7600

Note: If a significant or serious problem is observed during the inspection, please call the Dam Safety Office at (360) 407-6208 during normal working hours or the 24-hour pager number at (360) 971-6347 for guidance and assistance.

Ex C

Stormwater Projects

Stormwater Department

Capital Improvement Program 2011 - 2016

Expenditure Summary by Project

	Project Name	Total $ Requested	2011	2012	2013	2014	2015	2016
D1 W.Q.	Public Works Yard Improvements	115,000	10,000			85,000		20,000
D2 W.Q.	Ginder Creek Stormwater Treatment Pond	250,000			50,000	200,000		
D3 M.R.	Lake Sawyer Road Culvert and Guardrail	320,000		70,000		250,000		
TOTAL EXPENDITURES		685,000	10,000	70,000	50,000	535,000		20,000

Funding Sources

		Total $ Project	2011	2012	2013	2014	2015	2016
Ecology Grants								
D1	Public Works Yard Improvements	65,000	10,000			55,000		
D3	Lake Sawyer Road Culvert and Guardrail	250,000				250,000		
	Total Ecology Grants	**315,000**	**10,000**			**305,000**		
Water Connection Fees								
D1	Public Works Yard Improvements	12,500				10,000		2,500
	Total Water Connection Fees	**12,500**				**10,000**		**2,500**
Wastewater Connection Fees								
D1	Public Works Yard Improvements	12,500				10,000		2,500
	Total Wastewater Connection Fees	**12,500**				**10,000**		**2,500**
Stormwater Connection Fees/Reserves								
D1	Public Works Yard Improvements	12,500				10,000		2,500
D2	Ginder Creek Stormwater Treatment Pond	50,000			50,000			
D3	Lake Sawyer Road Culvert and Guardrail	40,000		40,000				
	Total Stormwater Connection Fees/Reserves	**102,500**		**40,000**	**50,000**	**10,000**		**2,500**
Street Fund Funded								
D1	Public Works Yard Improvements	2,500						2,500
	Total Street Fund Funded	**2,500**						**2,500**
Real Estate Excise Tax II								
D1	Public Works Yard Improvements	10,000						10,000
D3	Lake Sawyer Road Culvert and Guardrail	30,000		30,000				
	Total Real Estate Excise Tax II	**40,000**		**30,000**				**10,000**
Developer Funded or Grant								
D2	Ginder Creek Stormwater Treatment Pond	200,000				200,000		
	Total Developer or Grant Funded	**200,000**				**200,000**		
	Total Stormwater Projects	**685,000**	**10,000**	**70,000**	**50,000**	**535,000**		**20,000**

Capital Improvement Program 2011 - 2016

Project for the Stormwater Department # D3

PROJECT TITLE Lake Sawyer Road Culvert and Guardrail

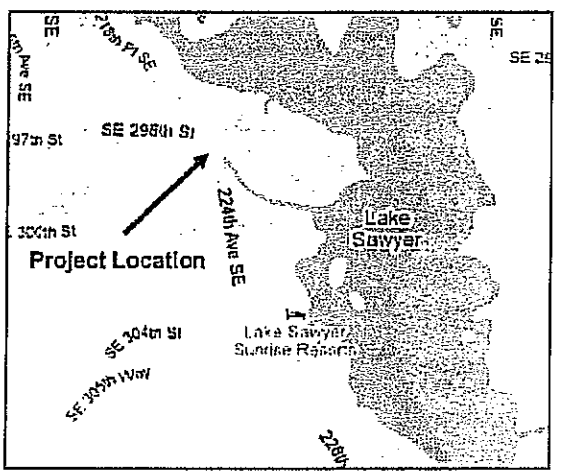
DESCRIPTION Maintenance of Roads: Replace twin culverts with a bottomless box culvert and install guard rails to protect vehicles from running into the creek.

BACKGROUND The twin culverts may impede the upstream migration of salmon. The existing corregated metal culverts are showing signs of corrosion. The guard rails will protect the environment from errant stray vehicles.

COMMENTS Grant funding is anticipated and included in the financing for this project. Design and permitting is scheduled for 2012 to assist with attracting grant and private mitagation funds.

CAPITAL PROJECT COSTS	**Total $ Requested**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Design Engineering	70,000		70,000				
Construction Costs	250,000				250,000		
TOTAL COSTS	$320,000		$70,000		$250,000		

REQUESTED FUNDING	**Total $ Project**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Grants (Dept of Ecology)	250,000				250,000		
Stormwater Connection/Reserves	40,000		40,000				
Real Estate Excise Tax II	30,000		30,000				
TOTAL SOURCES	$320,000		$70,000		$250,000		



Ex D

MUNICIPALITY OF METROPOLITAN SEATTLE

CITY OF BLACK DIAMOND

AGREEMENT FOR SEWAGE DISPOSAL

THIS AGREEMENT, made as of this 12th day of September 1990, between the City of Black Diamond, a municipal corporation of the State of Washington, hereinafter referred to as the "City", and the MUNICIPALITY OF METROPOLITAN SEATTLE, a municipal corporation of the State of Washington, hereinafter referred to as "Metro":

WITNESSETH:

WHEREAS, the public health, welfare and safety of the residents of the City and the residents of the Metropolitan Area require the elimination of existing sources of water pollution and the preservation of the fresh and salt water resources of the area; and

WHEREAS, Metro is engaged in developing and operating a Metropolitan Sewage Disposal System and the City is engaged in operating a sewage collection, treatment and disposal system for the City; and

WHEREAS, the City and appropriate regulatory agencies have determined that the City's sewage treatment and disposal system does not adequately protect local water resources and the City now desires to deliver sewage collected by the City to Metro for treatment and disposal; and

WHEREAS, to provide for the disposal by Metro of sewage collected by the City, it is necessary that a contract be now entered into establishing the rights and duties of the parties;

NOW, THEREFORE, in consideration of the mutual convenants contained herein, it is hereby agreed as follows:

Section 1. Definition of Terms. The following words and phrases used in this contract shall have the meanings hereinafter set forth in this section:

a) The words "Comprehensive Plan" shall mean the Comprehensive Sewage Disposal Plan adopted in Resolution No. 23 of the Municipality of Metropolitan Seattle and all amendments thereof heretofore or hereafter adopted.

b) The words "Metropolitan Sewerage System" shall mean all of the facilities to be constructed, acquired or used by Metro as a part of the Comprehensive Plan. The Metropolitan Sewerage System shall generally include sewage disposal facilities with capacity to receive sewage from natural drainage areas of approximately one thousand acres or more. The Metropolitan Sewerage System shall thus include trunk or interceptor sewer facilities extending to a point within each tributary and natural drainage area where not more than one thousand acres remain to be served beyond the upper terminus of such trunk or interceptor sewer.

c) The words "Local Sewerage Facilities" shall mean all facilities owned or operated by a Participant for the local collection of sewage to be delivered to the Metropolitan Sewerage System and all side sewers and connection fittings connected directly to such System which serve customers of such Participant.

d) The words "Metropolitan Area" shall mean the area contained within the boundaries of the Municipality of Metropolitan Seattle as now or hereafter constituted.

e) The word "Participant" shall mean each city, town, county, sewer district, water district, municipal corporation, person, firm or private corporation which shall dispose of any portion of its sanitary sewage into the Metropolitan Sewerage System and shall have entered into a contract with Metro providing for such disposal.

f) The words "Residential Customer" shall mean a single family residence billed by a Participant for sewerage charges.

Section 2. Delivery and Acceptance of Sewage. The City shall deliver to the Metropolitan Sewerage System all the

sewage and industrial wastes collected by the City, and Metro shall accept the sewage and industrial wastes delivered for treatment subject to such reasonable rules and regulations as may be adopted from time to time by the Metropolitan Council. Metro shall not directly accept sewage or wastes from any person, firm or corporation which is located within the boundaries of or is delivering its sewage into the Local Sewerage Facilities of the City without the written consent of the City. The City shall not deliver sewage to any other agency for disposal without the written consent of Metro.

Section 3. Construction of Metro Facilities. Metro shall construct, acquire or otherwise secure the right to use all facilities required for the disposal of sewage delivered to Metro pursuant to this Agreement and shall perform all services required for the maintenance, operation, repair, replacement or improvement of the Metropolitan Sewerage System, including any additions and betterments thereto. Metro shall in its sole discretion determine the nature, location and time of construction of facilities of the Metropolitan Sewerage System.

Section 4. Connection of Local Sewerage Facilities to Permanent Facilities of the Metropolitan Sewerage System. Local Sewerage Facilities of the City shall be connected to the Metropolitan Sewerage System at such time as any of the permanent facilities of such Metropolitan Sewerage System shall be available to receive sewage collected by such local facilities. The connection of the Local Sewerage Facilities to the Metropolitan Sewerage System shall be accomplished at the expense of the City and in accordance with the rules and regulations of Metro at such point or points of connection as shall be determined by Metro. In lieu of directly connecting Local Sewerage Facilities of the City to the Metropolitan Sewerage System, the City may deliver sewage to the Metropolitan Sewerage System by means of the Local Sewerage Facilities of another participant. In that event, the City

shall secure and pay for the right to use all Local Sewerage Facilities of another Participant which may be required to deliver the City's sewage to the Metropolitan Sewerage System.

Section 5. Payment for Sewage Disposal. Commencing with the first month in which sewage collected by the City is delivered to Metro, the City shall pay to Metro, on or before the last day of each month during the term of this Agreement, a sewage disposal charge determined as provided in this Section 5.

1. For the quarterly periods ending March 31, June 30, September 30 and December 31 of each year every Participant shall submit a written report to Metro setting forth a) the number of Residential Customers billed by such Participant for local sewerage charges as of the last day of the quarter, b) the total number of all customers billed for local sewerage charges by such Participant as of such day, and c) the total water consumption during such quarter for all customers billed for local sewerage charges by such Participant other than Residential Customers. The quarterly water consumption report shall be taken from water meter records and may be adjusted to exclude water which does not enter the sanitary facilities of a customer. Where actual sewage flow from an individual customer is metered, the metered sewage flows shall be reported in lieu of adjusted water consumption. The total quarterly water consumption report in cubic feet shall be divided by 2,700 to determine the number of Residential Customer equivalents represented by each Participant's customers other than single family residences. Metro shall maintain a permanent record of the quarterly customer reports from each Participant.

The City's first quarterly report shall cover the first quarterly period following the effective date of this agreement and shall be submitted within thirty days following the end of the quarter. Succeeding reports shall be made for

each quarterly period thereafter and shall be submitted within thirty (30) days following the end of the quarter.

2. a) To form a basis for determining the monthly sewage disposal charge to be paid by each Participant during any particular quarterly period, Metro shall ascertain the number of Residential Customers and Residential Customer equivalents of each Participant. This determination shall be made by taking the sum of the actual number of Residential Customers reported as of the last day of the next to the last preceding quarter and the average number of Residential Customer equivalents per quarter reported for the four quarters ending with said next to the last preceding quarter, adjusted for each Participant to eliminate any Residential Customers or Residential Customer equivalents whose sewage is delivered to a governmental agency other than Metro or other than a Participant for disposal outside of the Metropolitan Area.

b) For the initial period until the City shall have submitted six consecutive quarterly reports, the reported number of Residential Customers and Residential Customer equivalents of the City shall be determined as provided in this subparagraph b). On or before the tenth day of each month beginning with the month prior to the month in which sewage from the City is first delivered to Metro, the City shall submit a written statement of the number of Residential Customers and Residential Customer equivalents estimated to be billed by the City during the next succeeding month. For the purpose of determining the basic reported number of Residential Customers or Residential Customer equivalents of the City for such next succeeding month, Metro may at its discretion adopt either such estimate or the actual number of Residential Customers and Residential Customer equivalents reported by the City as of the last day of the next to the last preceding reported quarter. After the City shall have furnished six consecutive quarterly reports the reported

number of Residential Customers and Residential Customer equivalents of the City shall be determined as provided in the immediately preceding subparagraph a).

c) If the City shall fail to submit the required monthly and/or quarterly reports when due, Metro may make its own estimate of the number of Residential Customers and Residential Customer equivalents of the City and such estimate shall constitute the reported number for the purpose of determining sewage disposal charges.

3. The monthly sewage disposal charge payable to Metro shall be determined as follows:

a) Prior to July 1st of each year Metro shall determine its total monetary requirements for the disposal of sewage during the next succeeding calendar year. Such requirements shall include the cost of administration, operation, maintenance, repair and replacement of the Metropolitan Sewerage System, establishment and maintenance of necessary working capital and reserves, the requirements of any resolution providing for the issuance of revenue bonds of Metro to finance the acquisition, construction or use of sewerage facilities, plus not to exceed 1% of the foregoing requirements for general administrative overhead costs.

b) To determine the monthly rate per Residential Customer or Residential Customer equivalent to be used during said next succeeding calendar year, the total monetary requirements for disposal of sewage as determined in subparagraph 3.a) of this section shall be divided by twelve and the resulting quotient shall be divided by the total number of Residential Customers and Residential Customer equivalents of all Participants for the October-December quarter preceding said July 1st.

c) The monthly sewage disposal charge paid by each Participant to Metro shall be obtained by multiplying the monthly rate by the number of Residential Customers and Residential Customer equivalents of the Participant. An

additional charge may be made for sewage or wastes of unusual quality or composition requiring special treatment, or Metro may require pretreatment of such sewage or wastes. An additional charge may be made for quantities of storm or ground waters entering those Local Sewerage Facilities, in excess of the minimum standard established by the general rules and regulations of Metro.

4. A statement of the amount of the monthly sewage disposal charge shall be submitted by Metro to each Participant on or before the first day of each month and payment of such charge shall be due on the last day of such month. If any charge or portion thereof due to Metro shall remain unpaid for fifteen days following its due date, the Participant shall be charged with and pay to Metro interest on the amount unpaid from its due date until paid at the rate of 6% per annum, and Metro may, upon failure to pay such amount, enforce payment by any remedy available at law or equity.

5. The City irrevocably obligates and binds itself to pay its sewage disposal charge out of the gross revenues of the sewer system of the City. The City further binds itself to establish, maintain and collect charges for sewer service which will at all times be sufficient to pay all costs of maintenance and operation of the sewer system of the City, including the sewage disposal charge payable to Metro hereunder and sufficient to pay the principal of and interest on any revenue bonds of the City which shall constitute a charge upon such gross revenues. It is recognized by Metro and the City that the sewage disposal charge paid by the City to Metro shall constitute an expense of maintenance and operation of the sewer system of the City. The City shall provide in the issuance of future sewer revenue bonds of the City that expenses of maintenance and operation of the sewer system of the City shall be paid before payment of principal and interest of such bonds. The City shall have the right to fix its own schedule of rates and charges for sewer service

provided that same shall produce revenue sufficient to meet the convenants contained in this Agreement.

Section 6. Responsibility of the City. The City shall be responsible for the delivery to the Metropolitan Sewerage System of sewage collected by the City, for the construction, maintenance and operation of Local Sewerage Facilities, and for the payment of all costs incident to the collection of such sewage and its delivery to the Metropolitan Sewerage System.

Section 7. Records. Permanent books and records shall be kept by Metro and the City of the respective rates established, the volumes of sewage delivered and discharged into the Metropolitan Sewerage System wherever such volumes are measured and the number of Residential Customers and Residential Customer equivalents reported. In addition Metro shall keep complete books of account showing all costs incurred in connection with the Metropolitan Sewerage System and the City shall keep complete records showing the amount billed to each of its customers for sewer service and the basis used for such billing including sewage flow and water consumption for each customer where applicable. The records required by this paragraph shall be available for examination by either party at any reasonable time.

Section 8. Development of Metropolitan Sewerage System. It is contemplated that the Metropolitan Sewerage System will be developed in stages and the nature of facilities to be constructed, acquired or used and the time of such construction, acquisition or use shall be determined by Metro, it being contemplated that Metro shall ultimately provide sewage disposal service for the entire Metropolitan Area and such adjacent areas as may feasibly be served into the Metropolitan Sewerage System.

Section 9. Operation of City Facilities by Metro. It is anticipated that the City will deliver sewage to Metro through the facilities of Soos Creek Water and Sewer District

and for such purposes will construct a pumping station, force main and gravity sewer, generally as described in Exhibit A attached hereto, from a pumping station site in the City to a point of connection with local sewage facilities of Soos Creek Water and Sewer District.

Plans and specifications for the foregoing construction shall be subject to review and approval by Metro. The City shall inspect, control, and administer the work in progress. Metro shall have the right to review and inspect the work in progress. Prior to final acceptance of the contractor's work by the City, Metro and the City shall participate jointly in final inspection of the construction described in this section and Metro may make recommendations to the City regarding deficiencies or incomplete work under the terms of the construction contract. In the event of deficiencies or incomplete work, it shall be the responsibility of the City to pursue any remedies available under the terms of the construction contract or at law or under the contractor's guaranty or bond, and the City agrees to actively pursue said remedies at the request of Metro at no cost to Metro.

King C. operate, maintain repair

City own

Upon completion of construction and acceptance of the contractor's work by the City it shall be the sole responsibility of Metro to operate, maintain, and repair said pumping station, force main and gravity sewer at Metro's cost. Metro and the City may enter into a separate agreement that provides for operation and maintenance of the pumping station by the City on behalf of Metro. The City will continue to own the foregoing facilities and Metro's responsibility to operate, maintain, and repair said facilities shall terminate when the facilities are no longer necessary to deliver sewage to Metro.

Section 10. Insurance and Liability for Damages. The City shall secure and maintain with responsible insurers all such insurance as is customarily maintained with respect

to sewage systems of like character against loss of or damage to the sewerage facilities of the City and against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost. Any liability incurred by Metro as a result of the operation of the Metropolitan Sewerage System shall be the sole liability of Metro and any liability incurred by the City as a result of the operation of the Local Sewerage Facilities of the City shall be the sole liability of the City.

Section 11. Assignment. The City shall not have the right to assign this Agreement or any of its rights and obligations hereunder either by operation of law or by voluntary agreement without the written consent of Metro and neither party may terminate its obligations hereunder by dissolution or otherwise without first securing the written consent of the other party and this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. In the event that the City should be dissolved or should no longer be authorized to operate sewer facilities, the Local Sewerage Facilities owned and operated by the City shall be assigned and transferred to Metro subject to any outstanding debts of the City which had been incurred for the specific purpose of constructing or acquiring such facilities, and subject to the acceptance by Metro of the obligations to continue to provide sewer service to the residents served by such local facilities upon payment by such residents of sewage disposal charges determined as herein provided and the reasonable costs of local sewer service.

In the event the Local Sewerage Facilities of the City are assigned and transferred to Metro in the manner described in this section, Metro will comply with all applicable requirements of grant agreements between the City and the U. S. Environmental Protection Agency entered into for construction of said Local Sewerage Facilities.

Section 12. Future Amendments. The City agrees to amend this agreement to incorporate any changes in the terms for sewage disposal and/or payment therefore as may be proposed by Metro and agreed to by those remaining participants that shall represent, in total, not less than 90% of the residential customers and residential customer equivalents then served by the metropolitan sewerage system.

Section 13. Effective Date and Term of Contract. This Agreement shall be in full force and effect and binding upon the parties hereto upon execution of this agreement and shall continue in full force and effect until July 1, 2036.

Section 14. Notice. Whenever in this Agreement notice is required to be given, the same shall be given by Registered Mail addressed to the respective parties at the following addresses:

Municipality of Metropolitan Seattle
821 Second Avenue
Seattle, Washington 98104

City of Black Diamond
P.O. Box 599
Black Diamond, Washington 98010

unless a different address shall be hereafter designated in writing by either of the parties. The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for a payments of sewage disposal costs may be made by regular mail.

Section 15. Execution of Documents. This Agreement shall be executed in three counterparts, any of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Agreement.

Section 16. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or

construed as a waiver of any other term or condition, nor shall a waiver of any pledge be deemed to constitute a waiver of any subsequent pledge whether of the same or a different provision of this Agreement.

Section 17. Severability. If any portion or provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected and will continue in full force and effect.

Section 18. Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either party.

Section 19. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BLACK DIAMOND

Mayor

ATTEST:

City Clerk

MUNICIPALITY OF METROPOLITAN SEATTLE

Richard K. Sandaas
Executive Director

ATTEST:

Bonnie Mattson
Clerk of the Council

BEFORE THE HEARING EXAMINER OF THE CITY OF BLACK DIAMOND

IN RE DEVELOPMENT AGREEMENTS RELATED TO MPD PERMIT ORDINANCES 10-946 (VILLAGES) AND 10-947 (LAWSON HILLS)	NOS. PLN10-0020/11-0013; PLN10-0021/11-0014 DECLARATION OF JOHN PERLIC

JOHN PERLIC declares and states as follows:

1. I am a consulting transportation engineer to the City of Black Diamond in this matter. I am over the age of eighteen years, competent to testify herein, and make this declaration on personal knowledge of the facts stated.

2. Attached hereto as Exhibit A is a true and correct copy of my resume and expert credentials.

3. I listened to the testimony of Matthew Nolan, the King County Traffic Engineer. As part of his testimony, Mr. Nolan proposed that a new condition be added to both development agreements, and that Section 6.4.1.A be revised. For the reasons discussed below, the application of prudent transportation engineering principles call for rejection of Mr. Nolan's proposed condition and revision.

EXHIBIT 216

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

4. In his proposed new condition, Mr. Nolan first suggests that the applicant be required to "monitor traffic volumes at two locations along SE Green Valley Road every three (3) months, *i.e.* quarterly, through the life of the proposed MPDs." There is no transportation engineering basis for this suggestion, and Mr. Nolan did not identify any in his testimony. It is not necessary to monitor traffic volumes so frequently, and it is certainly unwarranted when the monitoring frequency is unconnected to the level of new construction. If monitoring is intended to measure the number of new trips generated by the MPDs and that use Green Valley Road, reasonable and prudent transportation engineering calls for the monitoring frequency to correlate in some way to the level or amount of new MPD construction. Similar traffic monitoring conditions for other projects typically occur after completion of substantial development phases—more frequent monitoring would be excessive King County itself, in its previous submission to the City Council concerning the Master Planned Development Permits, suggested that traffic volumes be measured, and compared against a revised trip distribution model run, after the first 1500 dwelling units are constructed.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
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Issaquah, WA 98027-3820
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5. Mr. Nolan's proposed new condition would also prohibit the recording of any new lots if traffic volume monitoring indicated that traffic on Green Valley Road had increased by more than 50%, until additional mitigation is identified that will decrease traffic volumes along SE Green Valley Road below the baseline traffic volumes. Mr. Nolan's proposed condition goes on to suggest that, "If the mitigation requires construction of road improvements, no additional lots may be recorded until the design for these improvements is approved by the local jurisdiction, the improvements are bonded, and a construction schedule is established," and "construction is substantially complete." Similar to his first suggestion, Mr. Nolan did not support his suggestion for a 50% increase limitation by any reference to any generally accepted transportation engineering principle, because there is none. This limitation is also not supported by the transportation impact analysis completed for the MPD's Environmental Impact Statements.

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6. The reason Mr. Nolan's 50% threshold suggestion is unwarranted is that existing traffic volumes on Green Valley Road are relatively low, in fact, substantially lower than the road's capacity indicated by its functional classification as a collector arterial. (The Examiner may recall that several individuals (including me) testified to this effect during the hearings on the MPD Permits.). An increase stated as a percentage of a low number is nevertheless still a low number. Thus, a 50% increase in Green Valley Road existing, low, traffic volumes would not represent a significant increase. In fact, as I testified, even a 300-400% increase in Green Valley Road traffic volumes would not bring traffic volumes anywhere near that road's collector arterial capacity. For example, in the Transportation Technical Report we examined existing traffic volumes along Green Valley Road, both east and west of 218th Ave. SE. The daily traffic volume along SE Green Valley Road east of 218th Ave. SE was identified as 720and 1,960 west of 218th Ave. SE. A 50% increase would be 1,080 east of 218th, and 2,940 west of 218th. Meanwhile, a 300-400% increase would result in daily volumes of approximately 2,160-2,880 east of 218th; and 5,940 to 7,880 west of 218th. Even assuming a 300-400% increase, however, the total volumes attributable to the MPD projects would be well below the road's capacity of 18,600 – 22,800 trips per day indicated by its functional classification as a collector arterial. This difference in volumes, and the substantial remaining capacity above and beyond any MPD project traffic, is highlighted in Exhibit 7 to the November, 2010 SE Green Valley Road Traffic Calming Strategies analysis prepared by Parametrix pursuant to Condition No. 33a of the MPD Permit Conditions. A copy of the Traffic Calming Strategies analysis is attached as Exhibit B to this Declaration. This report identifies several possible improvements on Green Valley Road

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in response to the MPD Permit Conditions. Given SE Green Valley Road's significant remaining traffic volume capacity, when stated as a daily traffic volume, use of a 50% increase in trips as the benchmark for additional monitoring is arbitrary and unwarranted.

7. In addition, the projected 300-400% increase in traffic volumes along Green Valley Road was itself a conservative estimate, as I testified during the MPD Permit hearings. As discussed on pages 10-11 of the Traffic Calming Strategies analysis, Parametrix conducted travel time studies, which is a method suggested by (among others) Ross Tilghman, who testified during the MPD Permit hearings on behalf of a number of project opponents. The travel time studies indicated that travel times along SE Green Valley Road are 3 minutes longer than available alternate routes using Auburn - Black Diamond Road or Auburn – Black Diamond / Lake Holm Road, and nearly 4 minutes longer than two identified "combination routes" utilizing part of Green Valley Road combined with portions of the other two alternative routes. The analysis concludes (pages 11-12) that drivers are highly unlikely to divert to Green Valley Road even after full MPD build out, given the faster travel times and that both alternative routes have better operating characteristics and will retain unused capacity. Given this conclusion, Mr. Nolan's highly restrictive 50% traffic volume increase limitation is doubly unwarranted.

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8. In conclusion, the condition from Mr. Nolan suggesting an arbitrary 50% increase of traffic on Green Valley Road as a threshold for requiring additional project mitigation and prohibiting further recording of lots for the MPD's is unnecessary, unwarranted, and inconsistent with the transportation impact analysis completed for the MPD's EIS. The SE Green Valley Road—Traffic Calming Strategies report was prepared to meet condition 33a of the MPD permit conditions. This report identifies several possible improvements on Green Valley Road. The capacity of Green Valley Road greatly exceeds the traffic volume projections assuming full buildout of the MPD's, even assuming a highly conservative traffic growth percentage. Therefore, the suggested condition should be rejected.

9. Mr. Nolan also suggests revision to the language in Section 6.4.1.A to prohibit approval of any implementing projects east of Villages parcel V48 until the South Connector Roadway is completed along a new alignment located entirely within the urban growth boundary, or an alternative secondary access is provided. This suggestion is also unsupported by any transportation engineering principles. Based on a review of the site plan attached to the proposed development agreement, the South Connector is proposed to traverse only a tiny portion of unincorporated King County. There are no driveways, access, or road connections within the unincorporated area. All southbound trips along the South Connector would terminate at its intersection with SR 169; all northbound trips would enter the Villages MPD. The exact same circumstances would exist if the applicant revised the South Connector alignment as Mr. Nolan suggested: all southbound trips along the South Connector would terminate at its intersection with SR 169; all northbound trips would enter the Villages MPD. Therefore,

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Fax: (425) 392-7071

there would be no transportation impact to the unincorporated area even if the South Connector alignment remains as currently proposed.

10. Mr. Nolan acknowledged as much during his testimony on cross-examination. He acknowledged that the UGA boundary could be revised to include the small area over which the South Connector is currently proposed to pass. He also admitted that even if the UGA boundary were not revised, there would be impacts "only in a technical, wonky sense," meaning that he was assuming that there was an impact solely because cars related to a project in the urban area might travel through the unincorporated area. The mere fact that vehicles traverse an unincorporated, even rural, area does not equate to a transportation impact, however. Traffic impacts primarily occur when adopted transportation levels of service or other adopted standards are exceeded, not when a road merely passes through (but does not provide direct access to) a particular area. Because the proposed alignment of the South Connector does not result in any connections directly to the rural area in question, it has no traffic impact, and Mr. Nolan's suggested revision to Section 6.4.1.A of the Development Agreements is unnecessary.

11. Mr. Nolan's testimony hints at a theme argued by certain MPD project opponents: vehicles driven over rural roads by drivers who live in the MPD projects represent a qualitatively different, and/or more significant, traffic impact than vehicles driven by drivers who live in the rural area. While this is an interesting argument, whether a driver's residence in an urban or rural area has no bearing on whether that driver's trips create traffic impacts. That latter question is determined by the roadway classification and characteristics of the route in question, existing traffic volumes and growth in background traffic, and the like. Mr. Nolan's suggested revision is not

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

warranted by commonly-accepted transportation engineering principles and, accordingly, should not be accepted.

12. I have also reviewed the written comments submitted by Peter Rimbos (Exhibit 113). Mr. Rimbos makes many arguments about transportation, but most are primarily legal arguments about the Development Agreements rather than being related to the substantive transportation engineering issues at hand. The discussion at pages 40-53 of Exhibit 113 merits response, however, because it displays a fundamental misunderstanding of how travel demand modeling works in general. It also contains numerous errors and assumptions concerning the specifics of the modeling and mitigation work called for by Conditions 11 -17 of the MPD Permits. These are discussed below.

13. First, Mr. Rimbos makes the point repeatedly (e.g., pages 40-46) that some details as to how the new transportation demand model will be constructed, validated, and run are not specified in the Development Agreements. This may be correct, as a general point, but the MPD Permit Transportation Conditions (Nos. 10 – 34) do not require that this information be included in the Development Agreements. Instead, those conditions specify particular criteria, including detailed instructions as to model boundaries and roadways and intersections to be included (Condition 11), information from other jurisdictions to be included (Condition 12), mode split analysis (Condition 13), internal trip capture assumptions (Condition 14), mitigation measures (Condition 15 and 16), and periodic modeling and additional mitigation measure identification (Condition 17). The conditions do not require that further specification be included in the Development Agreement; instead, it will be up to the City's transportation engineer to exercise engineering judgment in completing the steps required by the MPD Permit

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Conditions. This is appropriate, because although transportation engineering does involve technical calculations and analysis, it also necessarily involves some level of professional judgment that cannot be reduced to a formula or checklist. It is also important to note that Condition 11 requires that the City (and not the applicant) create the model and take the various steps outlined in Conditions 11-17. Therefore, there is no risk (as Mr. Rimbos' comments assume) that a developer will assume an inappropriately high internal capture rate, or peak hour factor; the work will be performed and decisions made by the City and/or the City's own engineering consultant.

14. The bulk of Mr. Rimbos' complaints have to do with the new transportation demand model required to be created by Condition No. 11. For example, he complains (pages 40-41) that the model will not be validated until 850 units, and that it will then be validated only against existing traffic. Mr. Rimbos misunderstands what is involved in the process of model validation and calibration. Validation is a process used to test the relative accuracy of a transportation demand model. After the model is developed, a set of inputs relating to known, existing conditions are run through the model, to determine to what level of accuracy the model will "predict" the known conditions. Successful validation thus provides a greater measure of certainty that the model will accurately predict future trip distribution and assignment, which can then yield an accurate measure of transportation levels of service at the intersections to which the model distributes vehicle trips. Condition No. 11 appropriately calls for the new model to be "validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation." In turn, Condition No. 17 calls for the City, after building permits for 850 units have been issued, to "validate and calibrate the

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

new transportation demand model created pursuant to Condition 11 above for the then-existing traffic from The Villages and Lawson Hills together." Because the purpose of the new model is to predict future trip distributions and trip assignments from growth occurring after 850 units, it is prudent transportation engineering practice to validate and calibrate the model at this future point, to determine its relative accuracy in "predicting" the traffic then existing (following permitting of 850 units).

15. There are a number of reasons that validating the new transportation demand model at 850 units makes sense. First, it should be noted that Condition 11 also calls for Black Diamond to work cooperatively with the cities of Maple Valley and Covington, the applicant, King County, and the Washington Department of Transportation. Pursuant to that goal, I led a meeting with those entities, and all concurred that it was appropriate to validate and calibrate the new model following issuance of permits for 850 units, just as called for by Condition 17. Second, the Hearing Examiner may recall that some differences of engineering opinion expressed during the MPD hearings last year concerned the appropriate level of growth in "background traffic" that the model should assume. Validating the model after permitting 850 units will also allow the City to check whether assumptions about the growth in background traffic were accurate, based on actual background traffic growth occurring between the time of MPD Permit approvals and the date of model validation after permits for 850 units have been issued.

16. Mr. Rimbos complains that validating the model in this fashion may make assessment of mitigation impossible ("Finally, since this will constitute a new traffic "baseline," how will this be used to address additional mitigation?"). Again, he

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

misunderstands the validation process. Validation does not change baseline, pre-MPD traffic volume counts. Validation also does not change assumptions about the number of trips generated by particular kinds of new development (e.g., single-family or multi-family dwelling units, or commercial development). Validation is merely a way to check whether the model accurately predicts the distribution of vehicle trips. If the model is correctly validated and calibrated, we can then use the model outputs to conduct a level of service analysis, from which mitigation can then be determined if levels of service are predicted to fail at particular intersections.

17. Mr. Rimbos then questions (page 43) why the new model will include projects from other jurisdictions' 20-year Transportation Improvement Program even when such projects are unfunded. As the Hearing Examiner will recall, I testified last year that it is not common to include projects beyond the 6-year TIP, because such projects are often unfunded and their inclusion may be speculative. Mr. Rimbos and other projects, and the City of Maple Valley, disagreed, and called for such projects to be included. The City Council agreed with unfunded projects on a 20-year TIP should be included, however, and Condition No. 12 requires that the model take into account such unfunded projects that "are determined to have a reasonable likelihood of obtaining funding based on consultation with each jurisdiction." This latter caveat will reduce the likelihood that projects will be included in the model but not be built. It will require that the engineer preparing the model consult with the other jurisdictions, and determine based on that input which projects have a reasonable likelihood of obtaining funding. Similar to other aspects of model development and implementation prescribed by the MPD Permit Conditions, this will necessarily involve the exercise of the City's

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

engineering judgment, but there is no requirement that it be incorporated into the Development Agreements. This is as the City Council required.

18. Mr. Rimbos also is dissatisfied with the model's inclusion of an "internal capture rate" or ICR, required by Condition No. 14. Mr. Rimbos questions how the methodology for choosing the ultimate ICR will be weighed and resolved. The answer is in the exercise of reasonable professional engineering judgment, as required by Condition 14. As the Examiner will recall, testimony during last year's MPD Permit hearings suggested various methods for selecting an internal trip capture rate. I testified that I relied upon the ITE Handbook, the most recent edition of which includes an ICR methodology for developments like the Black Diamond MPDs. Mr. Tilghman concurred that this is the most authoritative source. Mr. Nolan of King County indicated a preference for the ICR rates in other master planned developments with similar land use mixes in Western Washington. The City Council resolved this issue by requiring the model to include "a reasonable internal trip capture rate assumption," one that is "based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in Western Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available." This condition necessarily requires the City's engineer to analyze a variety of trip capture rates and utilize one that is "reasonable," a determination that can be made only through the exercise of engineering judgment. It was the City Council's decision to allow the City's engineer to resolve this issue in this manner. If other parties of record are dissatisfied with the results of the

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

City's periodic review using the model, they may appeal to the City's Hearing Examiner as provided under Condition 17(f) – (j).

19. Mr. Rimbos' second set of complaints are directed at the manner and timing of running the new transportation demand model. For example, he complains (page 42) that the Development Agreements do not specify when the model will be run again after the initial model run following issuance of 850 building permits. The City Council, however, decided in Condition No. 17(a) that the model would be validated, calibrated, and run "again at such phase or interval determined by the City Council following completion of the review called for by this condition." The Council declined to set a specific interval in the MPD Permit Conditions, but reserved that decision to itself in the future "following completion of the review" called for by Condition 17(a)].

20. Mr. Rimbos also claims (page 42) that the location of any off-site schools must be included in future traffic modeling runs. As I testified during the MPD Permit hearings, however, the precise location of school sites is not required as part of the traffic analysis, because the appropriate methodology (indeed, the one required by Condition 17(b) focuses on the p.m. peak hour, not a.m.

21. Mr. Rimbos aims his third set of complaints at the traffic analysis to be performed following the creation and operation of the new demand model. For example, he argues (page 43) that Peak Hour Factor should be addressed in the traffic analyses, including the performance of some sensitivity analyses. This is already required by Condition No. 17(b). That Condition states that, after the transportation demand model is run, yielding a trip distribution and trip assignment, the City shall conduct an intersection operations analysis of the levels of service for intersections identified in Condition No.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

11. Condition 17(b) goes on to state: "The intersection operations analysis for existing conditions must take into account the then-existing peak hour factor; the analysis for the next identified phase or interval of development must be based on a reasonable assumption (justified by reasonable traffic engineering practice) as to the future peak hour factor, and contain a sensitivity analysis to identify the effect of such peak hour factor assumption."

22. Mr. Rimbos takes issue with the absence of volume-to-capacity (V/C) standards, queuing analyses, or travel time analyses. None of these are required by the MPD Permit Conditions to be performed as part of the traffic analysis. Instead, as noted above, Condition 17(b) requires an "intersection operations analysis," examining whether the then-existing, adopted PM peak hour intersection levels of service are met," and whether those same standards are projected to be met by the time of the next periodic traffic analysis called for by the City Council. When Mr. Rimbos states at page 44 that "There is no description of Level of Service (LOS) Analyses for roads and intersections," he is missing that the City Council reviewed the claims of Maple Valley, WSDOT, Mr. Rimbos himself and others, and elected not to require the additional V/C, queuing, or roadway LOS analysis that Mr. Rimbos now complains are missing. As I testified last year in the MPD Permit hearings, these are not required here by the exercise of prudent transportation engineering practice, and by adopting Condition No. 17(b), the City Council agreed.

23. Mr. Rimbos' final general area of misunderstanding surrounds the imposition of additional transportation mitigation from the MPD's. His general complaint (e.g., pages 46-47, 51-52) is a repeat of previous ones: i.e., that the Development Agreement

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

itself does not spell out additional details concerning how mitigation will be determined and imposed. But, as with other components of the transportation impact analysis, this is already dictated by the MPD Permit Conditions. For example, Mr. Rimbos complains at pages 51-52 about what he perceives as a lack of clarity in Condition No. 17(f), asking who will determine whether mitigation is "unsatisfactory," and by what standards the determination will be made. Condition 17(f) makes clear that it is the City who makes this determination: "proposed conditions and mitigations applicable to future permits and associated mitigation . . .shall be revised if the City finds that the conditions or mitigation measures. . .have resulted in an unsatisfactory level of mitigation. . . ." Condition No. 17(f) goes on to state that the City makes this determination based on whether "the degree of mitigation is inadequate or the quantity of impact demonstrated to be attributable to MPD development exceeds levels predicted." Similarly, Condition 17(b) requires the City's findings and conclusions to recommend such additional measures necessary to adequately mitigate the impacts reasonably attributable to the MPD projects' failure to meet the adopted LOS." These conditions clearly spell out the basic transportation engineering standards to be used: additional mitigation is to be recommended as needed to rectify failures of adopted LOS, which failures may occur because "the degree of mitigation is inadequate" (e.g., too few lanes), or because "the quantity of impact. . .exceeds levels predicted." The City's transportation engineer can readily apply these conditions with the exercise of reasonable engineering judgment. There is nothing more required in the Development Agreement to ensure adequate transportation mitigation from the MPD's.

24. Taken together, Mr. Rimbos' comments appear aimed at re-arguing the MPD

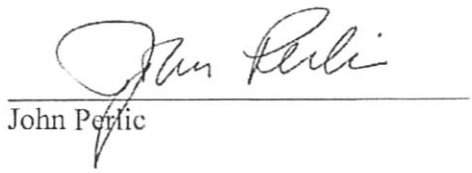
KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Permit Conditions approved by the City Council, and/or searching for ways to require the addition of more verbiage to the Development Agreements. This is not warranted by reference to any transportation engineering principles. The City Council selected the conditions it wished to apply to the MPD Permits. Those conditions do not require additional language to be included in the Development Agreement. In addition, additional language is not necessary, because the conditions call – appropriately – for the exercise of reasonable engineering judgment in their implementation. For these reasons, the Hearing Examiner should reject Mr. Rimbos requests, and consider the Development Agreements adequate with respect to their implementation of the MPD Permit Conditions 10 – 34.

I declare that the foregoing is true and correct subject to the penalty of perjury under the laws of the State of Washington.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

DATED this 12th day of August, 2011, at Corvalis, Oregon.



John Perlic

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Ex A

John Perlic, PE

Transportation Planning and Traffic Analysis

John is a traffic engineer with experience managing traffic analysis and design efforts for a variety of transportation construction projects. He has managed several similar projects including the traffic and multi-modal transportation integration analysis for the North Link SEIS, traffic engineering design to support Central Link light rail final design, and preparation of construction traffic control plans for the Denny Way/Lake Union Combined Sewer Overflow project in South Lake Union. The Rainier Vista Pedestrian Bridge concept was initially identified as part of the multi-agency working group that John facilitated. He has extensive experience with traffic forecasting, level of service, and other traffic operations analysis techniques used to evaluate improvement alternatives. John has also been the project manager or transportation engineering manager for some of the most significant and complex transportation infrastructure projects in the Puget Sound region including, Central Link Light Rail, Seattle Monorail Green Line, SR 520/Trans-Lake Washington Corridor Study, and Cross-Base Highway. All of these projects have involved traffic analysis and design to support transportation improvement projects.

Selected Project Experience

Traffic Impact Studies

John has managed the preparation of over 200 traffic impact studies for Environment Impact Statements and other environmental review documents. Projects have included shopping malls (Redmond Town Center, Auburn Super Mall); mixed-use master plan developments (Lawson Hills, The Villages, Westpark, Port Blakely Bainbridge Island, Sea-Van Mt. Vernon, Villages at North Bend); major institutions (Providence Hospital, Overlake Hospital, North Seattle Community College); and numerous other office, residential, light industrial, and retail projects.

Christian Faith Center – Federal Way, WA

John was the transportation lead on this EIS for the Christian Faith Center project in Federal Way. The project included a 5,000 seat sanctuary building, K-12 school, and an administrative office building. The site is adjacent to an established residential neighborhood, and concerns about the large number of trips generated from the site emerged during the EIS process. The traffic analysis was conducted for three time periods: weekday AM peak hour, weekday PM peak hour, and Sunday peak hour. The study area for the project included analysis at over 20 intersections and mitigation included a contribution to the City's Transportation Impact Fee program, access improvements, and neighborhood traffic control improvements to minimize impacts in the adjacent residential neighborhoods. John led several community workshops to discuss project impacts and identify and select improvements to mitigate the impacts.

Lawson Hills and The Villages EIS – Black Diamond, WA

John was the transportation director responsible for providing direction and quality control review of the transportation analysis for the Lawson Hills and The Villages EIS. Both projects would add over 6,000 residential dwelling units, 515,000 square feet of retail, 650,000 square feet of office, and two new schools to the City of Black Diamond. The analysis for both projects involved trip generation and distribution

Years of Experience: 28

Education
MS, Civil Engineering, 1989
BS, Civil Engineering, 1983

Registrations
Registered Professional Engineer, WA

Professional Affiliations
Institute of Transportation Engineers, Fellow

using the Puget Sound Regional Council travel demand forecasting model, and level of service analysis at over 20 intersections. Project scoping for the EIS included several coordination meetings with staff from WSDOT, King County, Maple Valley, Covington, Auburn, and Enumclaw to identify specific intersections in these adjacent communities. Improvements to mitigate project impacts included several roadway and intersection improvements in Black Diamond and surrounding communities.

Ueland Tree Farm Mineral Resource Development and EIS– Bremerton, WA

John was the transportation director responsible for providing direction and quality control review of the transportation analysis for a new mineral quarry in Kitsap County west of Bremerton. The EIS analysis included and evaluation of site access improvements and pedestrian safety from quarry trucks generated from the site. John provided expert testimony at the EIS appeal hearing for the project.

Westpark Master Plan – Bremerton, WA

John was the transportation lead on this EIS for a new mixed use development in Bremerton including 875 residential units, 140,000 square feet of retail, and 40,000 square feet of office development. The project included analysis at over 10 intersections impacted by project-generated traffic and included improvements to mitigate project impacts on Kitsap Way.

Providence Medical Center (PMC) Master Plan and EIS– City of Seattle, Washington

John was the project manager for thhis project involving atwo-year process working with a Citizen's Advisory Committee and City staff on resolving traffic and parking impact issues for the expansion of PMC. Two traffic circles at nearby intersections were evaluated and designed to help mitigate project impacts.

North Seattle Community College (NSCC) Master Plan and EIS– City of Seattle, Washington

John was the project manager for this project involving a two-year process working with a Citizen's Advisory Committee and City staff on resolving traffic and parking impact issues for the expansion of NSCC. Four traffic circles were evaluated and designed to help mitigate traffic impacts from the project.

Multimodal Facility and Downtown Waterfront Redevelopment – City of Port Angeles, Washington

John was the transportation task manager in charge of traffic and non-motorized issues in the investigation of downtown revitalization opportunities that would concentrate civic, cultural, tourist and retail activities into the downtown core. The project, which includes siting a multimodal transportation facility, has the potential to transform Port Angeles into a "world class" international gateway and activity center, which is afforded by the City's quality of life, scenic beauty, and proximity to major regional and international destinations that include Victoria, British Columbia, on Vancouver Island.

Bremerton Waterfront Redevelopment – Bremerton, Washington

John was the transportation task manager in charge of traffic and non-motorized issues for the $75 million waterfront redevelopment project known as Sinclair Landing. The City is looking to produce a development that can compete with Kitsap Mall and the strip centers that have sprung up in the past five years, and invigorate a downtown that has been struggling for a number of years. This major

undertaking will include housing, a multilevel parking structure, restaurants, offices, retail shops, and a destination hotel, as well as parks, gathering places and a multiscreen cinema. The economic challenge is to implement this vision of what the waterfront could become, through a number of public/private and intergovernmental relationships.

Seattle Monorail Project Green Line EIS – Seattle, WA

John managed the consultant team in the preparation of Draft and Final Environmental Impact Statements (DEIS and FEIS) to comply with the State and National Environmental Policy Act (SEPA and NEPA). The Green Line is a 14-mile elevated Monorail transit system extending from NW 85th Street in the Crown Hill area of Ballard through Seattle Center and Downtown Seattle, to its southern terminus at the California Avenue SW/Fauntleroy Avenue SW intersection in West Seattle. The elevated transit system is expected to have up to 72,000 daily passengers. Meeting a compressed 13-month schedule to complete the Draft and Final EIS required a focused and integrated review process involving City of Seattle, and Seattle Monorail Project staff. – OR – John was project manager of this MIS and EIS for a new six-mile highway connecting I-5 with SR 7 in Pierce County. The study involved preparing an eight-point added access report, EIS, preliminary design studies, detailed traffic analysis, and operational analysis/forecasting, including level of service analysis and freeway operations analysis at a modified single-point diamond interchange on I-5. The new highway corridor is critical to support continued economic development in mid-Pierce County including a Boeing facility where airplane wings are assembled. The new highway would also facilitate improved transit and bicycle access to this area. Preliminary approval of the Added Access Report has been granted by WSDOT and FHWA.

City Center Access Study Phase 2 – Federal Way, WA

John is the project manager completing an environmental assessment, interchange justification report, and preliminary design plans for the Federal Way City Center Access Study Phase 2. The project involves a modification to the existing highly congested South 320th Street interchange to include new ramps at either South 312th Street or South 324th Street. The new interchange is critical for the City to achieve its ambitious plan for higher density residential, office, and retail in their central core area. Major environmental issues include Section 4(f) impacts to Steel Lake Park, possible environmental justice impacts to several residential areas, and impacts to a Sphagnum Bog, a protected aquatic ecosystem.

Central Link Light Rail Transit – Western Washington, WA

Parametrix was the prime consultant of a 28-firm team that prepared the NEPA and SEPA EIS for Sound Transit's proposed light rail systems, known as Link, and John managed all of the transportation and transit impact analysis work on the project. This work included evaluation of revisions to the current bus transit service network to provide feeder service to the high capacity light rail system. John managed a team of five subconsultants that included intensive schedule and milestone monitoring, integrated agency coordination with the PSTC design team and other environmental discipline leads and a progressive DBE mentoring and participation program with several minority and woman-owned businesses in key roles. All of the environmental documents were completed on or ahead of schedule, and within approved budgets. Since completing the Central Link EIS, Parametrix has continued to assist Sound Transit with several subsequent environmental documents including the Tukwila Freeway Route Supplemental EIS, North Link Supplemental EIS, and Initial Segment EA. – North Link Supplemental EIS – John served as the overall discipline manager for the North Link SEIS traffic and transportation analysis. This involved detailed traffic operations analysis at each station area, as well as a review of

pedestrian impacts and improvement needs at each station. John also led the Montlake Multimodal Evaluation at the University of Washington station as part of the North Link SEIS. This involved facilitation of a multi-agency work group represented by Sound Transit, King County Metro, City of Seattle, University of Washington, and WSDOT staff. This effort led to a multi-agency consensus on a series of improvements to improve pedestrian and bicycle circulation in the station vicinity, and provide convenient connections to bus stops adjacent to the station. The Rainier Vista Pedestrian Bridge concept was initially identified as part of this effort.

Port Angeles Multimodal Center/CBD Revitalization – Port Angeles, WA

John was the task manager in charge of traffic and nonmotorized issues related to downtown revitalization opportunities that would concentrate civic, cultural, tourist, and retail activities into the downtown core. The project, which included siting a multimodal transportation facility, has the potential to transform Port Angeles into a "world class" international gateway and activity center, which is afforded by the City's quality of life, scenic beauty, and proximity to major regional and international destinations that include Victoria, British Columbia, on Vancouver Island.

Central Link Light Rail Project Environmental Services – Western WA, WA

Parametrix was the prime consultant in the preparation of the NEPA and SEPA EIS for Sound Transit's proposed light rail systems, known as Link. John managed all of the transportation impact analysis work on the project. The project passes through the highest-density commercial and residential centers in the Northwest, crosses salmon-bearing waters, tunnels through difficult geologic areas, and passes over and under I-5, I-90, SR 520, SR 99, and SR 518. John managed a team of five subconsultants which included intensive schedule and milestone monitoring, integrated agency coordination with the PSTC design team and other environmental discipline leads, and a progressive DBE mentoring and participation program with several minority and woman-owned businesses in key roles. All of the environmental documents were completed on or ahead of schedule and within approved budgets.

SR 303 Bremerton to Silverdale Corridor Study – Bremerton, WA

As project manager, John led this community-based planning effort to identify a long-term improvement plan for the SR 303 corridor between Bremerton and Silverdale in Central Kitsap County. The study involved working with a Technical Committee representing WSDOT, Kitsap County, Kitsap Transit, City of Bremerton, and other local and regional agencies, and a Stakeholder Committee representing business, neighborhood and environmental groups in the area. These committees helped to evaluate 15 different alternatives for their transportation system benefits, and impacts to the built and natural environment. From this alternatives evaluation, a strong consensus for a preferred alternative emerged to widen the corridor from 5 to 7 lanes, and designating the lanes for peak period use by high occupancy vehicles, including a new Bus Rapid Transit (BRT) system. The BRT system recommendations involved a comprehensive restructuring of transit routes and service between Bremerton and Silverdale. The preferred alternative also includes an emphasis on transportation demand management (TDM) and transportation systems management (TSM) strategies such as transit signal priority, enhanced transit service and park-and-ride lots.

Trans-Lake Washington EIS Scoping – King Co., WA

John served as the transportation engineering and traffic analysis manager for this

legislatively mandated study of the long- range mobility and environmental issues involved in travel across and around Lake Washington. The goal of the project was to produce a set of "reasonable and feasible" solutions for further consideration by the region and the legislature. WSDOT convened a study committee representing more than 30 jurisdictions and community interest groups, with a multi-stage work plan that allowed quick response to the committee's recommendations and concerns. The project required expertise in multi-modal transportation planning, highway and bridge engineering, traffic engineering, travel demand forecasting, transit planning, and ferry systems planning. It also required expertise in state and federal environmental compliance issues, including natural resources, and built and social resources. As part of this effort, technical analysis and evaluation of major freeway interchange improvements at the SR-520/I-5 and SR-520/I-405 interchanges was conducted. This interchange evaluation will be used in subsequent Added Access Reports for each of these interchanges.

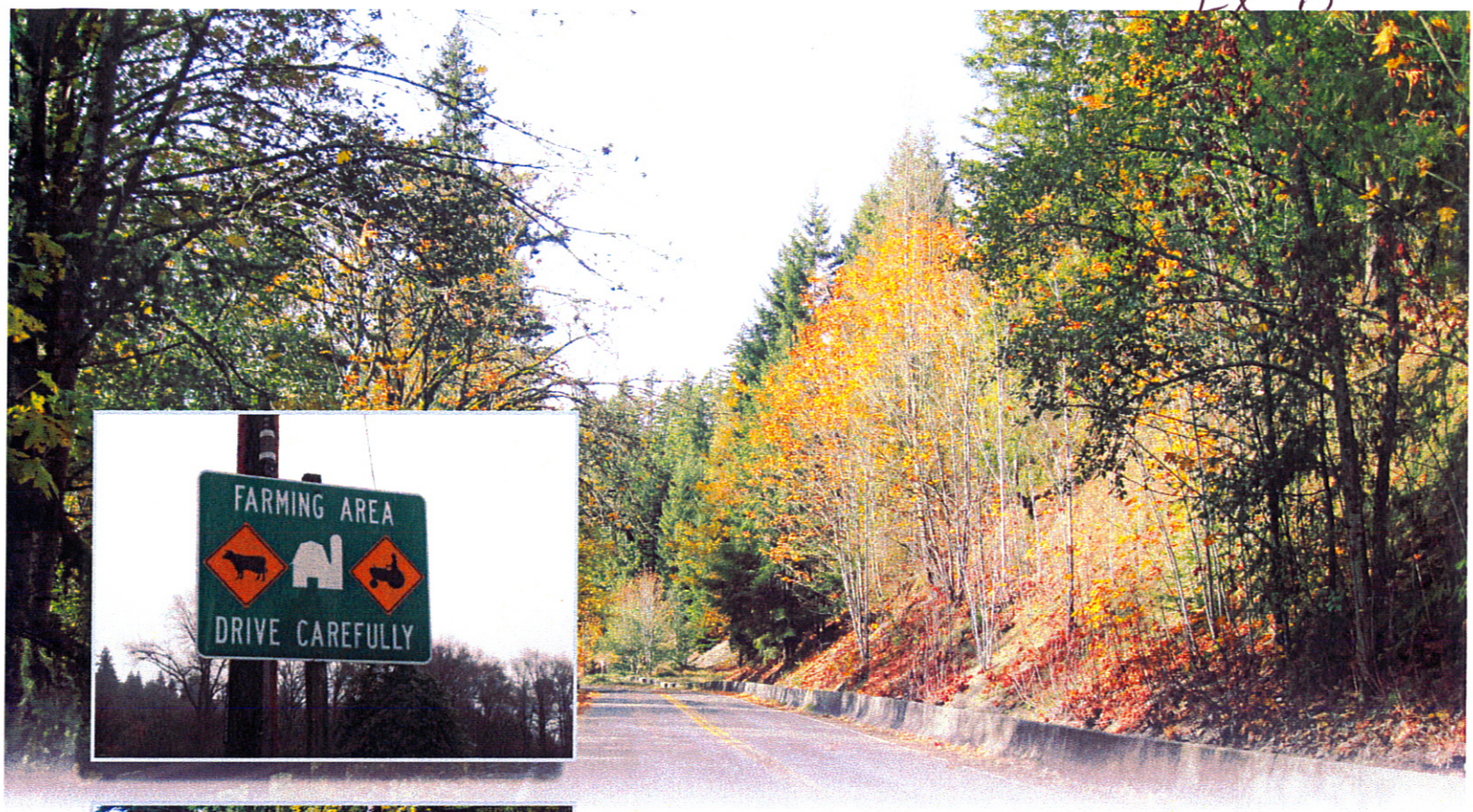
Bremerton Comprehensive Transportation Plan – Bremerton, WA

John prepared the Comprehensive Transportation Plan for the City to comply with the State's GMA requirements. The plan included an analysis of a potential third bridge crossing the Port Washington Narrows and new or widened arterial streets on both sides of the new bridge. The plan also addressed transit, ferry, bicycle, and pedestrian facility improvements throughout the City. Transportation demand management and systems management strategies were also a major element of the plan.

Lakewood Comprehensive Plan – Lakewood, WA

John was the project manager responsible for the preparation of the transportation element of the City's comprehensive plan to comply with the state Growth Management Act (GMA) requirements. The plan addressed all travel modes and facility types in the City of Lakewood, including streets and highways, HOV facilities and transportation demand management. The plan also considered the location and function of the future commuter rail terminal, the development of a new centrally-located downtown Lakewood area, and the potential direct connection to the SR-512 interchange from 100th Street SW.

Ex B



SE Green Valley Road – Traffic Calming Strategies

Prepared for
City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010

Prepared by
Parametrix
411 108th Avenue NE, Suite 1800
Bellevue, WA 98004-5571
T. 425.458.6200 F. 425.458.6363

November 29, 2010 | 554-3040-011

Parametrix

ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

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Acronyms

City	City of Black Diamond
HCM	Highway Capacity Manual
LOS	level of service
MPDs	Master Planned Developments
vpd	vehicles per day
vph	vehicles per hour

1. Introduction

The City of Black Diamond (City) City Council approved the two Master Planned Developments (MPDs) known as The Villages and Lawson Hills under Ordinances 10-946 and 10-947, which included a list of conditions that must be met. The purpose of this study is to address Condition 33a, which states:

"The City shall commission a study, at the Applicant's expense, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic calming devices within the existing improved right-of-way. The study shall also include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements, and with a proviso that none or the measures need to be implemented if not agreed to by the Green Valley Road Review Committee."

To comply with this condition, this study:

- Identifies and evaluates the three primary and likely east-west routes between SR 18 and the vicinity of the two MPDs, and
- Describes and evaluates the likely effectiveness of various traffic calming measures to limit MPD traffic from using Green Valley Road.

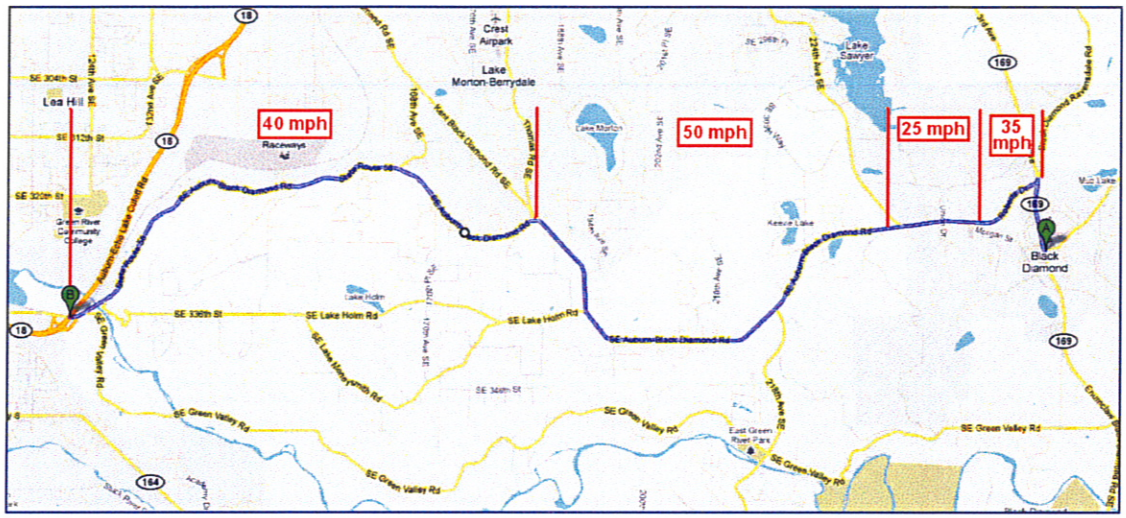
2. Primary East-West Routes

There are three primary east-west corridor routes that could be used to accommodate travel between SR 18 and the vicinity of the two MPDs. For the purposes of this study, 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 was because it is roughly in the middle of the two MPDs and their access points.

Auburn-Black Diamond Route

From the vicinity of the two MPDs (i.e., SR 169/Lawson Street), commuters could travel along SR 169, Roberts Drive, then continue along Auburn-Black Diamond Road to SR 18. This travel route is shown on Exhibit 1.

Exhibit 1. Auburn-Black Diamond Route



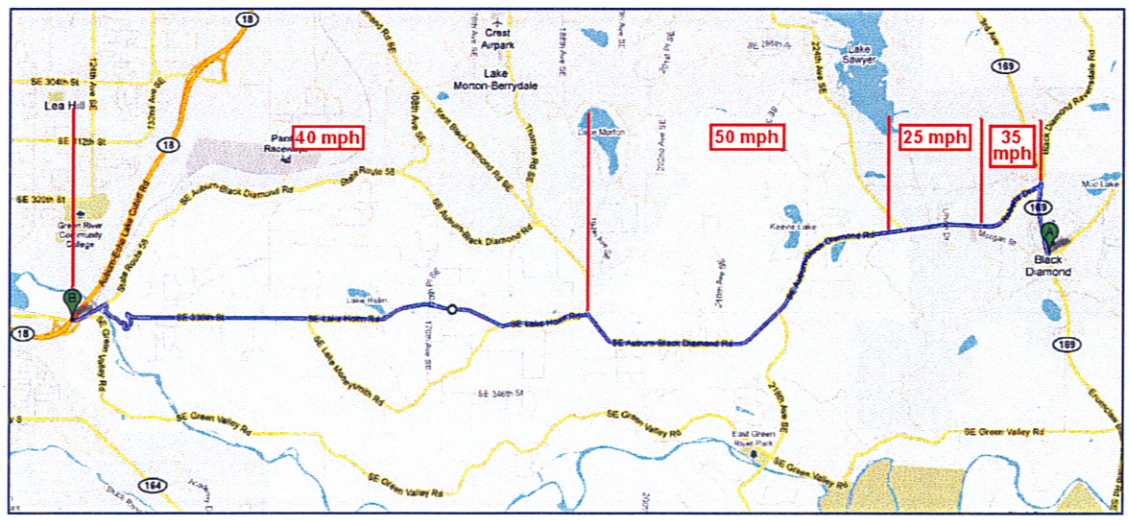
Source: Modified from Google Maps (Google 2010).

This route is also listed on the King County Bicycling Guidemap as a "Shared Roadway." From 148th Avenue SE to SR 18, Auburn-Black Diamond Road is listed as a "Caution Area."

Auburn-Black Diamond/Lake Holm Route

Starting at SR 169/Lawson Street, this route is similar to the Auburn-Black Diamond Route in that commuters could travel along SR 169, Roberts Drive, and Auburn-Black Diamond Road. However, the Auburn-Black Diamond/Lake Holm Route would then continue along SE Lake Holm Road, and back to SE Auburn-Black Diamond Road to reach SR 18. This travel route is shown on Exhibit 2.

Exhibit 2. Auburn-Black Diamond/Lake Holm Route



Source: Modified from Google Maps (Google 2010).

The Auburn-Black Diamond/Lake Holm Route is also identified on the King County Bicycling Guidemap as a "Shared Roadway." Two short segments along SE Lake Holm Road have steep

grades; one segment is about a 1/2 mile in length and located just west of 148th Avenue SE, and the other segment is also about a 1/2 mile in length and is just east of the traffic signal at Auburn-Black Diamond Road.

Green Valley Route

The third route option for travel between the vicinity of the MPDs and SR 18 extends along SR 169, SE Green Valley Road, and a short distance along SE Auburn-Black Diamond Road. This travel route is shown on Exhibit 3.

Exhibit 3. Green Valley Route

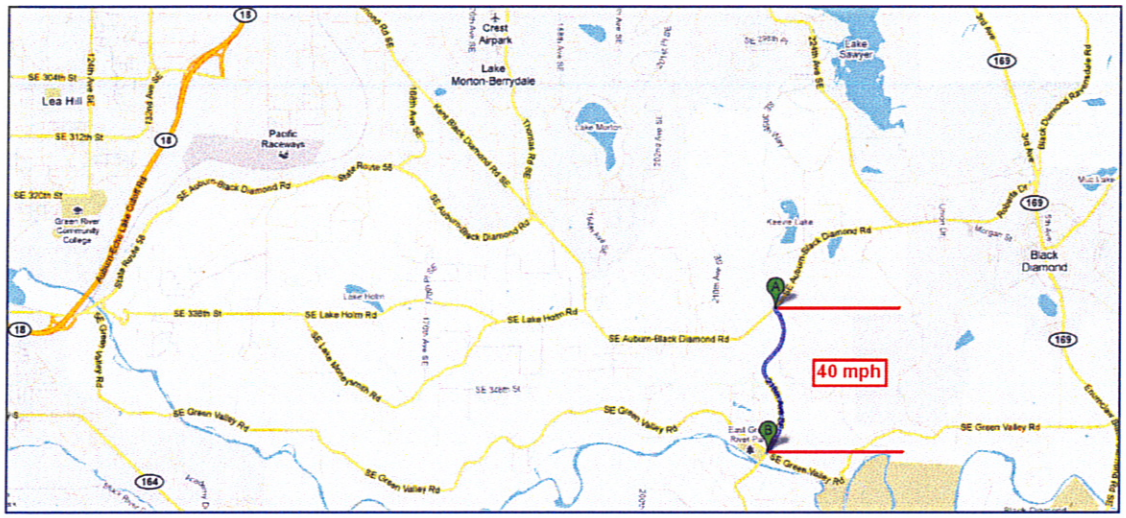
Source: Modified from Google Maps (Google 2010).

Similar to the other east-west routes, the Green Valley Route is also listed on the King County Bicycling Guidemap as a "Shared Roadway." A short segment, nearly a 1/2 mile long, is shown as having steep grades near the Flaming Geyser State Park.

218th Avenue SE Connection

This roadway is not an east-west corridor that could be used for travel between the MPDs and SR 18; however, 218th Avenue SE is a north-south roadway and could be used to travel between Auburn-Black Diamond Road and Green Valley Road. Exhibit 4 highlights 218th Avenue SE.

Exhibit 4. 218th Avenue SE Connection



Source: Modified from Google Maps (Google 2010).

This roadway is also listed on the on the King County Bicycling Guidemap as a "Shared Roadway." The length of this roadway, approximately 1.4 miles, has steep grades.

The use of 218th Avenue SE in conjunction with the other routes and its affects on travel time between the vicinity of the MPDs and SR 18 is described in Exhibit 7 below.

3. East-West Route Desirability

For the purposes of this study, the desirability of each east-west route is evaluated with respect to three factors:

- **Functional Classification** – is a categorization system that groups roadways based on their intended uses.
- **Roadway Characteristics** – are the various features of a roadway as well as its environmental context.
- **Operating Characteristics** – describes how little, or how much, congestion is experienced.

These three factors are independent, yet exhibit a great deal of overlap – collectively they dictate roadway-context-driver interaction and form the basis for route desirability and selection.

Functional Classifications

Section 2.02 of the King County 2007 Road Design and Construction Standards divides roadways into rural and urban roadways (King County 2007). Within the rural roadways category, King County provides seven functional classifications, three relevant classifications are quoted below.

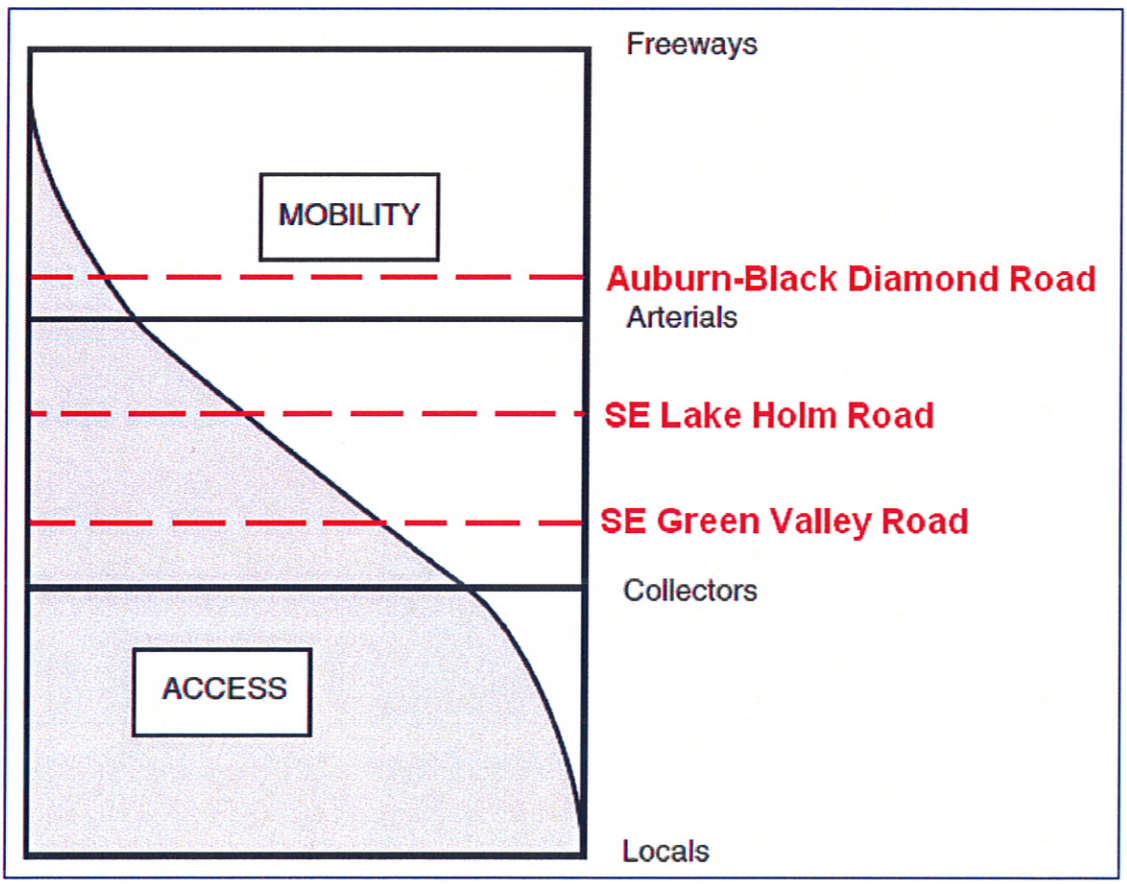
- **Rural Principal Arterial** – Rural principal arterials provide primary connections between rural areas and also distribute traffic between rural and urban areas. They provide the highest degree of mobility; therefore, direct access to abutting properties is very restricted. They generally serve major centers of activity, highest traffic volume corridors and intra-area travel between business districts, communities, and rural town centers.

- **Rural Minor Arterials** – Rural minor arterials interconnect with and augment the principal arterial system. They provide intra-community continuity connecting community centers and facilities. A rural minor arterial is typically a continuous road with a direct alignment. Access is partially restricted.
- **Rural Collector Arterial** – Rural collector arterials typically are intra-community roadways connecting cities or towns, residential neighborhoods and community centers and facilities. They provide connections between rural local roads and other roadways that are higher in the hierarchy of classification. Access is partially restricted.

The City's definitions for these classifications are very similar to King County's, and are found in their Comprehensive Plan (Black Diamond 2009).

According to both King County and the City, for the classifications described above, principal arterials are intended to primarily emphasize mobility, collector arterials are primarily intended to provide the most property access, and minor arterials are intended to balance mobility and access. The relationship between mobility and direct property access is graphically shown in Exhibit 5.

Exhibit 5. Relationship Between Functional Classification, Mobility, and Access



Note: Dotted lines showing the balance between mobility and access for the primary east-west routes are only conceptual.

Source: Modified from Exhibit 1-5 of A Policy On Geometric Design of Highways and Streets (AASHTO 2004).

Auburn-Black Diamond Route

This route begins with a short distance along SR 169, which is a State facility and is classified as an urban-principal arterial (U1) and is also classified as a Highway of Statewide Significance. Roberts Drive and Auburn-Black Diamond Road (east of Lake Sawyer Road SE) are within the City of Black Diamond and are classified as minor arterials. The remaining section of Auburn-Black Diamond Road is within King County jurisdiction and is classified as a principal arterial.

Auburn-Black Diamond Route/Lake Holm Route

This route is similar to the Auburn-Black Diamond Route, except the portion of the route along SE Lake Holm Road is under King County jurisdiction and is classified as a minor arterial.

Green Valley Route

All of SE Green Valley Road is within King County jurisdiction and is classified as a collector arterial.

218th Avenue SE Connection

This roadway is under King County jurisdiction and is classified as a minor arterial.

Summary of Functional Classifications

Based on the King County and City of Black Diamond functional classification systems, the Auburn-Black Diamond Route would serve as the best east-west route because the majority of this route is classified as a principal arterial, which emphasizes mobility over property access.

The Auburn-Black Diamond/Lake Holm Route would serve as the second best east-west route because approximately half of this route is classified as a principal arterial and the remaining portions are classified as minor arterials.

The Green Valley Route, according to its functional classification, would serve as the least desirable east-west route because the entire route is classified as a collector arterial, which is intended to emphasize property access over mobility to a greater degree compared the principal and minor arterial classifications associated with the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes.

Roadway Characteristics

In addition to functional classification, other roadway characteristics are important to route selection because they provide context on how users interact with the roadway and environmental features along the roadway. Exhibit 6 provides a summary of roadway characteristics along representative portions of the three primary east-west routes and the 218th Avenue SE connection.

As shown in Exhibit 6, all three routes share some similar roadway characteristics, such as the number of lanes, lane widths, availability of turn pockets, and, to a lesser degree, paved shoulder widths. However, several differences exist that differentiate these routes, including:

- Both Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes have two stop-controlled approaches (a third stop for Lake Holm) and one signal, whereas the Green Valley Route does not have any controlled approaches.
- Travel speeds along the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes tend to be higher compared to the Green Valley Route.

- The Green Valley Route has the most frequent horizontal curves with speed reduction signs and the Auburn-Black Diamond/Lake Holm Route has a similar, but lower, frequency of curves. In addition to the frequency of curves, both of these routes have locations with sharp curves that require substantial speed reductions. It is also important to note that the 14 signs with substantial speed reductions (25 – 30 mph below posted speeds) along the Auburn-Black Diamond/Lake Holm Route occur over a 1/2-mile section of SE Lake Holm Road, whereas most of the speed-reducing curves along the Green Valley Route are distributed throughout the corridor.

In addition to these differences in roadway characteristics, land uses abutting Auburn-Black Diamond Road and SE Lake Holm Road are primarily residential, whereas the majority of the Green Valley Route is located in a more agricultural setting. Frequent "Cattle" and "Farming Area Drive Carefully" signage along SE Green Valley Road indicates use of the roadway by slow-moving farming equipment and heavy machinery, which could deter commuter traffic.

Several areas along SE Green Valley Road also have very little horizontal clearance. Jersey barriers, river-rock privacy walls, dense vegetation and mature trees, and steep embankments on both sides of the road tend to narrow the corridor from 243rd Avenue SE to the Flaming Geyser State Park.

Exhibit 6. Typical Roadway Characteristics

Route	No. of Lanes	Lane Width	Paved Shoulders	Turn Pockets	Controlled Intersections	Posted Speed	Curves with Speed Reduction Signs
Auburn-Black Diamond Route	-1 lane in each direction	-10 ft	-0 - 4 ft along Roberts -4 - 6 ft along Auburn-Black Diamond -Discontinuous	-At 161st -At Lynch	-Stop at SR 169/Roberts -Stop at Auburn/Kent-Black Diamond/Thomas -Signal at Auburn-Black Diamond/Lake Holm	-25 - 35 mph between SR 169 and Lake Sawyer -50 mph between Lake Sawyer and Kent-Black Diamond -40 mph between Kent-Black Diamond and SR 18 -Weighted average 44.9 mph	- 7 @ -5 mph - 3 @ -10 mph - 1 @ -15 mph - 4 @ -20 mph - 0 @ -25 mph - 0 @ -30 mph **- Total 15**
Auburn-Black Diamond/Lake Holm Route	-1 lane in each direction	-10 ft	-0 - 4 ft along Roberts -4 - 6 ft along Auburn-Black Diamond -0 - 2 ft along Lake Holm -Discontinuous	-None	-Stop at SR 169/Roberts -Stop at Lake Holm/Lake Moneysmith -Stop at Lake Holm/Auburn-Black Diamond -Signal at Auburn-Black Diamond/Lake Holm	-25 - 35 mph between SR 169 and Lake Sawyer -50 mph between Lake Sawyer and Lake Holm -40 mph between Lake Holm and SR 18 -Weighted average 44.4 mph	- 8 @ -5 mph - 6 @ -10 mph - 0 @ -15 mph - 3 @ -20 mph - 10 @ -25 mph - 4 @ -30 mph **- Total 31**
Green Valley Route	-1 lane in each direction	-10 ft	-0 - 3 ft -Discontinuous	-None	-None	-40 mph between SR 169 and 218th -35 mph between 218th and 144th -40 mph between 144th and SR 18 -Weighted average 39.0 mph	- 16 @ -5 mph - 10 @ -10 mph - 6 @ -15 mph - 0 @ -20 mph - 3 @ -25 mph - 0 @ -30 mph **- Total 35**
218th Avenue Connection	-1 lane SB -1 to 2 lanes NB	-10 ft	-4 ft -Continuous	-None	-None	-40 mph	-None

In December 2009, the King County Road Services Division completed the Historic and Scenic Corridors Project, which identified the entire length of SE Green Valley Road as one of nine Heritage Corridors in King County (King County 2009). Heritage Corridors are roadways that provide a unique historical and cultural experience and have been deemed worthy of special attention to preserve its characteristics. The Historic and Scenic Corridors Project identifies several guiding principles with respect to road design and maintenance, vegetation management, and view shed preservation that should be taken into consideration.

Summary of Roadway Characteristics

The controlled intersections along the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes are not as desirable compared to the uncontrolled intersections along the Green Valley Route. However, the slower posted speeds, frequency of curves with speed reductions, distribution of speed reductions along the corridor, and potential interference from agricultural equipment disfavor the Green Valley Route. Based on the collective roadway characteristics described above, the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes are equal to or more desirable than the Green Valley Route.

Route Operating Characteristics

While functional classification and roadway characteristics play a role in route selection, route choice mostly depends on how well the roadway operates – roadway operations are largely determined by roadway capacity (supply) and traffic volumes (demand), and measured best by travel times.

Route Capacity

Roadway capacity is dependent on a variety of different parameters, such as the roadway characteristics described above, intersection spacing, driver behavior, traffic composition (i.e., the proportions of cars, medium trucks, and heavy trucks), and several other factors. As a result, roadway capacity is different for each roadway, different within each section of a single roadway, and can only be truly identified from field observation. Nonetheless, the capacity of a roadway can be generally identified and adequately captured within a range.

The Highway Capacity Manual (HCM) provides guidance on approximate traffic volumes that can be served for different roadways. According to the HCM, Class I roadways can be expected to serve approximately 930 vehicles per hour (vph) with little congestion (level of service [LOS] C) and up to 1,140 vph at capacity (LOS E) (TRB 2000). This range of service volumes could be low compared to all three of the east-west routes because the Class I roadways are assumed to have 0.8 traffic signals per mile and other roadway characteristics that lower the roadway capacity. However, this range could also be high because the HCM assumes a higher posted speed limit (50 mph) and a 50/50 directional distribution. If the differences between the HCM Class I roadways and east-west routes have a small net capacity difference, the HCM range is appropriate, and 10 percent of the daily traffic occurs during the peak hour (i.e., 0.10 k-factor), the daily roadway capacity is estimated to range from 18,600 vehicles per day (vpd) to 22,800 vpd (930 vph x 2 directions of travel ÷ 10 percent = 18,600 vpd; 1,140 vph x 2 directions of travel ÷ 10 percent = 22,800 vpd). A transportation plan for Georgetown, Texas also provided ranges of daily roadway capacity for different roadway types; for minor arterials the volume range was 12,500 vpd to 24,000 vpd, which is generally consistent with the HCM guidance (Wilbur Smith Associates 2003).

The capacity for the Auburn-Black Diamond Route is likely the highest due to the higher posted speed limits and least amount of horizontal curves, while the capacity for the Green Valley Route is likely the lowest for the same reasons. However, for the purposes of this analysis, the capacity for all three east-west routes is assumed to be within the same range described above.

Route Traffic Volumes

Traffic volumes for each of the primary east-west routes were based on the cumulative (i.e., both MPDs) PM peak hour forecasts provided in the Transportation Technical Report to the FEIS for each of the MPDs (Parametrix 2009). The cumulative PM peak hour traffic forecasts provided in the Transportation Technical Reports were converted to daily traffic volumes using the same method used for the HCM capacity (0.10 k-factor). The daily traffic forecasts are compared to the approximate roadway capacity estimated from the HCM in Exhibit 7.

Exhibit 7. Route Capacity and Forecasted Traffic Volumes

Route	Daily Capacity[1]	No Build 2035 Traffic Volumes[2]	Build 2035 Traffic Volumes[2]	Available Capacity
Auburn-Black Diamond east of 218th	18,600 - 22,800	5,510	14,420	4,180 – 8,380
Auburn-Black Diamond west of 218th	18,600 - 22,800	7,620	14,810	3,790 – 7,990
Green Valley east of 218th	18,600 - 22,800	940	2,810	15,790 – 19,990
Green Valley west of 218th	18,600 - 22,800	2,570	4,730	13,870 – 18,070

[1] *Source: (TRB 200)*
[2] *Source: (Parametrix 2009)*

Exhibit 7 shows that with the build out of both MPDs all east-west routes would still have available capacity in 2035.

Travel Times

Travel times were identified as the best means of characterizing east-west route operations and desirability because they account for the running time (i.e., free-flow travel time), internal congestion caused by vehicles turning into and out of side streets, and control delay (i.e., congestion at stop signs and signals).

Travel times along the primary east-west routes and the 218th Avenue SE connection were evaluated using two methods. The first method, the "theoretical travel time," utilized Google Maps (October 21, 2010 after 8:00 PM) to calculate the travel time based on the distance and speed limits provided by Google Maps. This theoretical travel time represents free flow conditions. The second method utilized floating car travel time surveys, or "observed travel times," that were collected by driving the routes during a time that was representative of PM peak hour conditions (Tuesday, October 26, 2010; 4:30-6:30 PM). Travel speeds were maintained at the posted speed limits, or up to 5 mph above the posted speed limit to replicate typical and reasonable driver behavior. This observed travel time accounts for congestion caused by vehicles turning into and out of side streets as well as control delay at stop signs and the signal.

In addition to the primary east-west routes, the 218th Avenue SE connection allows drivers to use a combination of routes. For example, a driver could start along the Auburn-Black Diamond and Lake Holm Routes by traveling north along SR 169 and west along Roberts Drive. Instead of continuing along Auburn-Black Diamond Road or SE Lake Holm, the driver could travel south along 218th Avenue SE, then use SE Green Valley Road to get to SR 18 ("Combination 1"). Similarly, a driver

could travel south along SR 169, west on SE Green Valley Road, and north along 218th Avenue SE, to access either Auburn-Black Diamond Road ("Combination 2") or SE Lake Holm ("Combination 3") to SR 18. Exhibit 8 summarizes the theoretical and observed travel times for the different primary east-west routes, as well as the different combinations of routes when using the 218th Avenue SE connection.

Exhibit 8. Existing Route Travel Times

Route	Distance (miles)	Theoretical Travel Time (min)			Observed Travel Time (min)		
		EB/NB	WB/SB	Average	EB/NB	WB/SB	Average
Auburn-Black Diamond Route	18,600 - 22,800	10.4	18.00	20.00	19.00	16.82	16.65
Auburn-Black Diamond/Lake Holm Route	18,600 - 22,800	9.4	19.00	19.00	19.00	16.65	16.87
Green Valley Route	18,600 - 22,800	12.5	23.00	22.00	22.50	20.60	20.43
218th Ave SE		1.4	2.00	2.00	2.00	1.95	1.90
Combination 1 *		11.7	23.00	23.00	23.00	20.11	19.90
Combination 2 *		13.9	24.00	25.00	24.50	21.21	20.98
Combination 3 *	18,600 - 22,800	12.9	25.00	25.00	25.00	20.83	20.87

Note: Distances and theoretical travel times are based on Google Maps after 8:00 PM (October 21, 2010) to avoid the effects of Google's congestion component (Google 2010).

** Estimated from travel times associated with the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes and 218th Avenue SE.*

As shown in Exhibit 7, both the theoretical and observed travel times for the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes were consistently lower compared to the Green Valley Route and the combination of routes using the 218th Avenue SE connection. The Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes were nearly 3 minutes shorter compared to the Green Valley Route, and over 4 minutes shorter than the Combination 2 Route.

Summary of Route Operating Characteristics

The HCM and research suggests that the east-west route capacity likely ranges between 18,600 vpd to 22,800 vpd. The capacity for the Green Valley Route is likely lower compared to the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes as a result of lower speeds and more frequent horizontal curves that require speed reductions. However, for the purposes of this analysis, the capacities for all three east-west routes are assumed and likely to be within 18,600 vpd to 22,800 vpd.

Future 2035 forecasts suggest that all three primary east-west routes will continue to have available capacity after the complete construction and occupation of both MPDs.

Travel times were selected as the most appropriate gauge of route operating conditions because they account for running time, internal congestion due to turning movements, and control delay. Existing travel times indicate that the Auburn-Black Diamond Route has the shortest travel time and would therefore serve as the preferred east-west route.

It is likely that forecasted traffic volumes would increase internal congestion and control delay. However, given that all three routes are expected to have available capacity in the future year 2035, no traffic diversion from the preferred east-west route (Auburn-Black Diamond Route) is anticipated.

In the event that some diversion occurs, traffic volumes would likely divert to the Auburn-Black Diamond/Lake Holm Route first since this route is also expected to have available capacity and has the second shortest travel times.

4. Potential Traffic Calming Strategies

Traffic calming strategies are measures that primarily focus on reducing travel speeds, but depending on the type and extent implemented, can reduce traffic volumes as well. Traffic calming strategies evaluated as part of this study include:

- Speed Limits – Reduced speed limits.
- Radar Speed Alert Signs – Solar powered variable message signs that provide driver feedback on speed.
- Speed Humps/Cushions/Tables – Intermittent raises in the pavement surface; curved 3-4 inches high and 7-14 feet long (humps), curved 3 inches high and 7 feet long (cushions), flat 3 inches high and 14-21 feet long (tables).
- Traffic Circles – Small traffic circles (not roundabouts) at intersections.
- Curb Extensions/Chokers – Reduced lane width, either with striping or curb extensions.
- Chicanes – Curb bulges or planters (usually 3) on alternating sides.
- Stop Signs/Signals – Stop sign or signal control on all approaches.
- Diverters – Raised centers medians that create directionally separate lanes of travel where drivers must sharply turn to avoid the median.
- Curb Bulb Outs – Curb extensions at intersections.
- Surface Treatments – Colored and/or textured surfaces that provide visual, auditory, and vibratory queues.

Evaluation Criteria

Based on research and professional engineering judgment, the traffic calming measures described above were evaluated with respect to their potential to reduce traffic volumes and/or travel speeds on Green Valley Road. Exhibit 9 summarizes the effectiveness of the aforementioned traffic calming strategies and identifies the ideal locations.

Exhibit 9. Evaluation of Traffic Calming Strategies

Traffic Calming Strategy	Ideal Locations	Reduces Volumes	Reduces Speeds
Speed Limits	SR 169 to 218th Ave; 218th Ave	Possible	Yes
Radar Speed Alert Signs	Along Green Valley; 218th Ave	No	Yes
Speed Humps/Cushions/Tables	SR 169 to 244th Ave	Possible	Yes
Traffic Circles	257th Ave, 253rd Ave, 244th Ave	Possible	Yes

Traffic Calming Strategy	Ideal Locations	Reduces Volumes	Reduces Speeds
Curb Extensions/Chokers	SR 169 to 244th Ave; 218th Ave	Possible	Yes
Chicanes	SR 169 to 244th Ave; 218th Ave	Possible	Yes
Stop Signs/Signals	257th Ave, 253rd Ave, 244th Ave	Possible	Yes
Diverters	257th Ave, 253rd Ave, 244th Ave	No	Yes

Traffic Calming Strategy	Ideal Locations	Reduces Volumes	Reduces Speeds
Curb Bulb Outs	257th Ave, 253rd Ave, 244th Ave	No	Yes
Surface Treatments	SR 169 to 244th Ave; 218th Ave	No	Yes

Source: (Carman Hass-Klau, et al. 1992), (Savage et al. 1994), (Seattle 1996), (Noyes 1998).

The ideal locations identified were based on the type of traffic calming strategy, ability to minimize interconnectivity between Auburn-Black Diamond Road and SE Green Valley Road, and serve as a "gate" to deter through traffic from the MPDs while minimizing impacts to existing residents along SE Green Valley Road.

The potential to reduce traffic volumes along SE Green Valley Road would be dependent on the extent of implementation; more traffic calming strategies along more of SE Green Valley Road would reduce more traffic volumes as a result of increased travel times. However, increased implementation would also likely be opposed by residents along SE Green Valley Road.

All traffic calming strategies would likely reduce travel speeds where implemented.

As described above, the majority of the SE Green Valley Road corridor has agricultural land uses adjacent to the roadway and heavy machinery and farming equipment use portions of the roadway. These larger vehicles may be unable to use the roadway if some of the traffic calming strategies listed above narrow the roadway and/or introduce sharper turning radii, such as traffic circles, curb extension/chokers, chicanes, diverters, and curb bulb outs.

Other larger vehicles, such as school buses and fire trucks, may also be affected by strategies that tighten turning radii or narrow travel lane widths.

Summary of Traffic Calming Strategies

Traffic calming strategies are most effective at reducing travel speeds and have only a small potential to reduce traffic volumes. The probability to reduce traffic volumes increases with a greater extent of implementation.

Lowered posted speed limits, traffic circles, chokers, chicanes, and stop signs/signals would likely provide the greatest traffic volume reductions. Most of these strategies reduce the roadway width and/or introduce tighter turning radii, which increase travel times.

Strategies that are likely the most effective at discouraging MPD traffic would equally and adversely affect existing residents along SE Green Valley Road.

The ideal locations for implementation would be along the 218th Avenue SE connection and along SE Green Valley Road near SR 169 – these locations would create a "gate" to discourage MPD traffic and minimize adverse impacts to residents along SE Green Valley Road.

5. Conclusions

The following conclusions are drawn from this study:

East-West Route Desirability

- Based on functional classifications, the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes provide better east-west routes because they are designed and intended to serve more long-distance trips (greater emphasis on mobility), compared to SE Green Valley Road, where direct property access is more important.
- Both the Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes have controlled intersections, which make these routes less desirable. However, these routes also have higher posted speed limits (44.4 to 44.9 weighted average mph) compared to the Green Valley Route (39.0 weighted average mph), and the Green Valley Route has over twice as many horizontal curves that require speed reductions compared to the Auburn-Black Diamond Route. Based on overall roadway characteristics, the Auburn-Black Diamond Route is the most desirable.
- In addition to lower posted speed limits and frequent horizontal curves, other existing roadway characteristics (e.g., Jersey barriers, river-rock privacy walls, dense vegetation and mature trees within the right-of-way, and steep embankments that narrow the corridor) along SE Green Valley Road suggest that this corridor, relative to the other two east-west routes, is already traffic calmed.
- Land uses adjacent to SE Green Valley Road and signage suggest usage by slow-moving farming equipment, which would likely deter commuter traffic.
- The Auburn-Black Diamond and Auburn-Black Diamond/Lake Holm Routes are shorter (9.4 to 10.4 miles) compared to the Green Valley Route (12.5 miles). The shorter distances and higher posted speed limits result in lower travel times along the Auburn-Black Diamond (16.74 minutes) and Auburn-Black Diamond/Lake Holm (16.76 minutes) Routes compared to the Green Valley Route (20.52 minutes).
- Future traffic volume forecasts inclusive of both MPDs are not expected to exceed the roadway capacity for any of the east-west routes and excess capacity for all three routes is expected. Accordingly, no diversion is expected to occur from the preferred east-west route (Auburn-Black Diamond Route). However, in the event that some diversion occurs, traffic volumes would likely divert to the Auburn-Black Diamond/Lake Holm Route since this route is also expected to have available capacity and has the second shortest travel times.

- These items individually and collectively suggest that the most desirable routes between the vicinity of the MPDs and SR 18 are along Auburn-Black Diamond Road and SE Lake Holm Road; not SE Green Valley Road.

Traffic Calming Strategies

- All traffic calming strategies would reduce travel speeds. The potential to reduce traffic volumes would be largely dependent on the extent of implementation.
- Traffic calming strategies most likely to deter MPD traffic from using SE Green Valley Road largely consist of strategies that narrow lanes and/or introduce tighter turning radii. These strategies could adversely affect existing roadway users such as farming equipment, school buses, and fire trucks.
- All traffic calming strategies that effectively reduce roadway usage by MPD traffic would equally and adversely affect existing residents along SE Green Valley Road.
- To minimize adverse effects to the existing SE Green Valley Road residents, the ideal locations for implementing traffic calming strategies would create a "gate" to minimize interconnectivity between the MPDs and SE Green Valley Road. These "gate" locations would be along 218th Avenue SE and along SE Green Valley Road near SR 169.
  - In addition to these considerations, any potential traffic calming strategies will need to be evaluated with respect to maintaining historical and cultural character of SE Green Valley Road's since this roadway is identified as one of nine Heritage Corridors in King County.

Next Steps

This study provides the necessary information required in Condition 33a of Ordinances 10-946 and 10-947 that approve The Villages and Lawson Hills MPDs.

SE Green Valley Road is under King County jurisdiction. It is the County's responsibility, alongside the Green Valley Road Review Committee, to review this study and any other necessary information to determine if traffic calming strategies along SE Green Valley Road are warranted, the preferred type of calming strategies, and the locations and extent of implementation.

6. References

AASHTO, 2004. American Association of State Highway and Transportation Officials. A Policy On Geometric Design of Highways and Streets, Fifth Edition, 2004, Exhibit 1-5, page 7.

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BEFORE THE HEARING EXAMINER OF THE CITY OF BLACK DIAMOND

IN RE DEVELOPMENT AGREEMENTS RELATED TO MPD PERMIT ORDINANCES 10-946 (VILLAGES) AND 10-947 (LAWSON HILLS)	NOS. PLN10-0020/11-0013; PLN10-0021/11-0014 DECLARATION OF RANDALL L. YOUNG

RANDALL L. YOUNG declares and states as follows:

1. I am a consultant to the City of Black Diamond in this matter. I am over the age of eighteen years, competent to testify herein, and make this declaration on personal knowledge of the facts stated.

2. Attached hereto as Exhibit A is a true and correct copy of my resume and expert credentials.

3. The following is a review and response to comments submitted by Robert Edelman in 2011 concerning Section 13.6 Fiscal Impacts Analysis of the MPD Development Agreements for The Villages and Lawson Hills. Specifically, the review and response presented below pertains to Section II Fiscal Analysis of Edelman's comments. Responses to Section III Funding Agreement of Edelman's comments are provided separately.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

EXHIBIT 217

4. Edelman does not offer any information about his expertise or experience with fiscal impact analysis. Edelman makes many assertions without citing examples or other evidence. If Edelman is not an expert in fiscal impact analysis, it is assumed that his comments are his personal opinions, but not expert opinions.

5. In the review and response below, references to Edelman's comments correspond to the letters and numbers in Section II of Edelman's comments.

6. Edelman II.A contends that the Development Agreement fails to meet the "exact terms and process" requirement of the MPD ordinances for the fiscal impact analysis because it leaves key parts of the process and key parameters open for future definition. Edelman provides comments on ten specific provisions in Section 13.6 in which he asserts that decisions that are left to future negotiations fail to provide sufficient exactness to comply with his interpretation of the "exact terms and process" requirement.

7. There are several problems with the interpretation of "exactness" that Edelman uses in his comments. First, Edelman quotes, but then ignores a key term in the MPD Conditions regarding fiscal analysis. The Conditions require: "The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts <u>shall be outlined</u> in the Development Agreement." (Emphasis added). The plain language of the condition calls for an "outline," which is different than the details Edelman asserts are required. Edelman acknowledges that MPD Conditions 156 (Villages) and 160 (Lawson Hills) "do not require that every detail of the fiscal analysis be included in the Development Agreement ..." and that the "terms and process be summarized." The rest of Edelman's comments, however, ignore his own admissions, by asserting that significant additional detail is required to be included in the Development Agreement.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

8. Second, the Development Agreement intentionally defers decisions about some technical details because there may be important changes in the best sources of information, and the best methods of analysis, between the time of execution of the Development Agreement and the time of preparation of fiscal analyses for project phases that will occur in the future. Washington cities are subject to frequent revisions to their revenues and expenditures caused by changes to state laws, state budgets, economic conditions, and the results of voter sponsored initiatives. For example, voter initiatives changed property taxes, motor vehicle license fees, and motor vehicle excise taxes, and each change has caused material changes in the funding of local governments. To ensure an accurate fiscal analysis, these changes should be addressed at the time each fiscal analysis is prepared, and not carved in stone at the time the development agreement is executed. This is one of the reasons that the Development Agreements permit the flexibility about which Mr. Edelman complains.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

9. An example of the need to defer the choice of technical elements of a fiscal analysis is Washington's streamlined sales tax. It was enacted recently and there is only a limited history of collections on which to base an analysis. A fiscal analysis prepared now, or in the near future, would likely find that the best available data are projections based on expenditures per household and assumptions about the type and location of expenditures on taxable transactions. A fiscal analysis conducted years from now would be able to look at a growing body of actual streamlined sales tax revenue in communities with comparable economic and demographic characteristics. If the MPD development agreement were too detailed, and specified the information, it could require methods or sources of data that have become obsolete by the time the fiscal analysis is actually prepared. For this reason, the "outline" specified in the MPD Conditions is preferable to detailed prescriptive language sought by Edelman.

10. Third, there are several reasons that deferring decisions about some of the specific data or methods does not put the City or the public at risk that the fiscal analysis will be inaccurate, or biased. First, no deferred decision is left to the discretion of the Master Developer because each such decision requires the agreement of the City's Designated Official. Second, the City has engaged an independent expert to review the proposed decisions, and to advise the City's Designated Official to insure that the ultimate decision is the best interest of the City. In addition, the City's expert will provide peer review of the results of the fiscal analysis to ensure that it is consistent with the City's best interests, and was prepared using practices, sources and methods that are acceptable to the City.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

11. Edelman's comments on the ten specific provisions in Section 13.6 offer his opinions regarding specific items that could be addressed in more detail in the development agreement rather than at the time the fiscal analysis is prepared. His comments do not demonstrate that deferring these specific technical decisions will cause harm to the integrity or accuracy of the fiscal analysis. Edelman's comments only show that those details might be addressed in the development agreement, but not that they should (i.e., need to) be.

12. Edelman also asks what "reasonable agreement" and "reasonably acceptable" mean (A.3 and A.4). Fiscal impact analysis is a combination of art and science, of facts and the exercise of professional judgment. Fiscal analysis uses data and expresses potential outcomes in quantitative terms, but it is not a rigid, formulaic calculation. Fiscal analysis includes selection of variables, sources of data and methods that involve judgments of human beings, and humans can, and often do, disagree. The requirement for "reasonable" agreement and acceptance requires that the parties agree, therefore neither party can control the outcome. The requirement that the agreement must be achieved "reasonably" prevents either party from being arbitrary (i.e., unreasonable) in achieving agreement and acceptance. While these terms may be less specific than Mr. Edelman would like, they offer some protection to the City against arbitrary or unreasonable conduct by the Master Developer.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

13. Edelman II.B asserts that the case study method does not contain the "exact methodology" for the fiscal impact analysis. This is a repetition of his point in II.A, that it is possible to include detailed technical decisions in the development agreement, but again Edelman does not demonstrate that these details need to be included in the development agreement, or that their absence would pose some potential harm to the City. And Edelman again fails to recognize the need to be able to adapt to change (as demonstrated by the examples, above, of change that regularly occur in Washington cities).

14. Edelman also complains in II.B of the lack of criteria for choosing case study comparable cities. Development agreement paragraph 1(e)(v) includes "factors" (i.e., criteria) for selection of comparable cities, and Edelman accurately cites them: "population, employment, levels of service, services provided by city or by contract, etc." So Edelman is incorrect that there are no criteria. Edelman then complains that there is not more detail about criteria. He states that the list of factors cited above "...demonstrate the lack of definition." Edelman's idea of "definition" significantly exceeds the "outline" specified in the MPD Conditions.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

15. Edelman II.B also includes an example of how he applied the Case Study Method to identify 2 comparable cities. He conducted some research about the two cities and produced a list of questions that he concludes show that "The problems with Case Study analyses are manifold ..." There are several problems with Edelman's analysis. First, Edelman incorrectly selects two cities based solely on their population, and no other factors, ignoring the other factors listed in the development agreement. Second, he failed to consider 6 other Washington cities with populations ± 10% of the 8,000 population cited as an example of an analytical threshold, or the 21 Washington cities with populations ± 20% of the 8,000 population threshold. Any of these might be viable "comparable cities" after consideration of the other factors (*i.e.*, employment, levels of service, provider of the service, tax base, tax rates, *etc.*).

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

16. The questions Edelman raises about the two cities he selected in II.B show why a broader range of comparable cities will be evaluated based on a broader list of factors. Edelman's assertion that "... the analyst [can] subjectively force-fit cities into being comparable" is prevented by the provisions, discussed above, that the selection of comparable cities requires the reasonable agreement of the City's Development Official, with the advice and peer review of the City's own expert. And, Edelman's example of the two cities in II.B proves the point why future flexibility is required. If, for example, the Development Agreement specified the "exact" criteria for selecting comparable cities -- in the way that Mr. Edelman defines "exact," say, cities of 8,000 population, the Development Agreement would risk requiring the use of a city that is not, in fact, suitably comparable. As Mr. Edelman observes, either DuPont or Fife may not be comparable; yet, specifying and requiring particular criteria (population of 8,000) could dictate that very result.

17. Edelman II.C complains that the format for the fiscal analysis is not defined. Edelman cites provisions that require the fiscal analysis to be compared to the City's budget and he concludes that, therefore, the fiscal analysis must be in the <u>same format</u> as the City's budget. This interpretation is not supported by the language of the MPD Conditions, which say nothing about format. The requirement to compare each fiscal analysis to the budget is intended to compare the <u>outcome</u> (*i.e.*, surpluses and/or deficits). The format of the documents themselves, or a comparison of formats, is not important, or relevant.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

18. Edelman II.D objects that the method for estimating taxable value is undefined. In reality, Sections 4(c) and (d) of the development agreement do specify the method for determining the value for residential and non-residential development, and requires that the values and the studies they are based on must be acceptable to the City.

19. Edelman II.E contends that the method for determining sales tax revenue lacks "adequate" definition. It should be noted that the development agreement section on forecasting sales taxes is one of the most detailed of all the sections pertaining to fiscal analysis, yet it is not "adequate" for Edelman. He suggests requiring market studies of market space occupancy, but such an analysis is unnecessary when using data from comparable cities because occupancy rates are inherent in their sales tax data. Measuring sales tax revenue per square foot or per employee are accepted practices in fiscal impact analysis. Edelman restates his concern about comparable cities analysis, therefore refer to the response above for the defense of comparable cities analysis.

20. Edelman II.F contains concerns similar to II.E but this time about estimates of utility tax revenues, including previously stated concerns about market studies, occupancy rates, and comparable cities. All of these concerns are addressed by responses to Edelman comments above.

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

21. Edelman II.G concerns grants and non-formulaic intergovernmental revenue. Edelman asserts that "There is no demonstrable relationship between such revenue and population." There are several problems with Edelman's comment. First, Edelman offers no evidence to back his assertion. Second, grants and other non-formulaic revenues are typically based on competitive applications submitted by many local governments. Each grant has its own criteria, thus making it impossible to generalize a specific predictor of such revenues. Per capita estimates are the common practice in fiscal analyses for relatively small amounts of revenue such as competitive (non-formulaic) grants.

22. Edelman II.H relates to revenue from municipal court, objecting that per capita estimates are not acceptable because they assume no change in demographics and that court revenue is generated only by City residents. Edelman presents no information to back his statement that assuming no change in demographics is "probably a false assumption." One wonders where this leads: do different demographics lead to different violations before the municipal court? And if true, how much difference would it make. Regarding the generation of court revenue by City residents, current court revenue includes City and non-City violators. Dividing that total revenue by the current resident population produces and amount per capita that represents payments by City and non-City violators. Applying that per capita amount to future population will include revenue from future City violators and future non-city violators.

23. Edelman II.I presents the same comments as II.H, but applies them to a variety of other revenue sources. No new information or arguments are offered, therefore the response to II.H above is the response to II.I.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

24. In conclusion, Edelman admits that the methodology's "exact terms and process" can be summarized in the Development Agreement, and he quotes the MPD condition that says this information should be outlined. He then proceeds to ignore these provisions and focuses instead on an interpretation of the word "exact" that would effectively require the Development Agreement to contain virtually everything except the surplus or deficit result of the fiscal analysis. All of this is presented as Edelman's personal opinion, without examples or evidence, and without any information that indicates any expertise or experience with fiscal impact analysis. The specific shortcomings Mr. Edelman claims exist in the Development Agreement are not shortcomings at all, but allow for the appropriate exercise of professional judgment by the City and its consultants, so as to ensure the most accurate fiscal analysis and thereby best protect the City.

25. In my expert opinion, Section 13.6 of the draft Development Agreement will produce a robust and objective fiscal impact analysis that serves the best interest of the City of Black Diamond while complying with MPD Condition 156 for The Villages and MPD Condition 160 for Lawson Hills.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 12th day of August, 2011, at Redmond, Washington.

Randall L. Young

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Ex A

Randall L. Young

CAREER HISTORY

Partner
Henderson, Young & Company
February 1979 - Present

Vice President
Planalysis, Inc.
June 1973 - February 1979

Education Consultant
Office of the Auditor General
State of California
January 1973 - June 1973

Consultant
Joint Committee on Textbooks and Curriculum
California Legislature
January 1971 - December 1972

Assistant to the Chancellor
Board of Governors of the California Community Colleges
July 1969 - January 1971

Assistant Consultant
Joint Committee on Higher Education
California Legislature
July 1968 - July 1969

EDUCATION

Master of Arts (Political Science): May 1968
Eagleton Institute - Rutgers University
New Brunswick, New Jersey

Management Internship: Summer 1967
City Manager's Office
Pasadena, California

Internship in Public Affairs: September 1966 - June 1967
Coro Foundation
Los Angeles, California

Bachelor of Arts (Government Major; Economics Minor): June 1966
University of Redlands
Redlands, California

Randall L. Young

INSTRUCTOR/PRESENTER

Federal Agencies

Department of Housing and Urban Development: 1979
Office of Personnel Management: 1980

National Associations

American Planning Association: 2003
American Society for Public Administration: 1975, 1978
American Society of Civil Engineers: 1998
Government Finance Officers Association: 1976, 1979, 1980, 1981, 1990, 1998
Growth & Infrastructure Consortium: 2010
Institute of Transportation Engineers: 2008
International Association of Clerks, Recorders and Treasurers: 1985
International City Management Association: 1985, 1986
National Association of Counties: 1979, 1980 (5), 1981 (5), 1982, 1983 (2)
National Association of Housing and Redevelopment Officials: 1980
National Association of Regional Councils: 1978
National Impact Fee Roundtable: 2004, 2005, 2006, 2007, 2008, 2009
National Training and Development Service: 1976-78 (7)
Transportation Research Board: 2004

State Agencies

Colorado State Legislature: 1977
Florida Institute of Government: 1986, 1988, 1989 (2)
Florida Department of Community Affairs: 1988 (2), 1990
Florida Department of State: 1987
Illinois Department of Commerce and Community Affairs: 1980, 1981
University of Florida: 1980, 1988 (2)
University of South Florida: 1980
Washington Department of Community, Trade and Economic Development: 1990, 1992 (2), 1994, 1995, 1996 (4), 1999
Washington Department of Transportation: 1995

State and Regional Associations

Alaska Finance Officers Association: 1985
Central Florida American Public Works Association: 1988
Colorado City Managers Association: 1977
Colorado Finance Officers Association: 1986
Colorado Municipal League: 1995, 1996

( ) Indicates number of presentations if more than one in that year.

Randall L. Young

INSTRUCTOR/PRESENTER (continued)

Eastern Canada Finance Officers Association: 1985
Florida American Planning Association: 1988, 1989
Florida Association of Counties: 1979 (4), 1983, 1984, 1986 (4), 1987, 1988, 1989, 1991
Florida Association of Parks and Recreation Administrators: 1987
Florida Bar Association: 1986
Florida Chamber of Commerce: 1990, 1991 (3), 1992, 1993 (2)
Florida City and County Managers Association: 1989
Florida City Clerks Association: 1987
Florida Government Finance Officers Association: 1988, 1989, 1990, 1991, 1993
Florida Innovation Group: 1981, 1989
Florida League of Cities: 1987, 1988
Florida Okaloosa-Walton Community College: 1988 (5)
Florida Project Librarians: 1987
Florida Public Works Association: 1988
Florida Recreation and Parks Association: 1987
Florida School Superintendents Association: 1993
Illinois Government Finance Officers Association: 1988
Illinois Urban Counties Council: 1980 (2)
Iowa Finance Officers Association: 1985
Iowa State Association of Counties: 1982
Kitsap (Washington) Regional Economic Development Council: 2002
Maine Town & City Management Association: 1978
Michigan Finance Officers Association: 1984, 1989
Mid-America Chamber Executives: 1985
Minnesota Government Training Service: 1978 (3), 1981
Minnesota Police Chiefs Association: 1979
Minnesota Public Works Officials: 1978
Minnesota Valley Council of Governments: 1977, 1979
Missouri Municipal League: 1976
North Carolina Government Finance Officers Association: 1988
Northwest Library Human Resource Directors: 1996
Ohio Municipal League: 1986
Oregon Association of Counties: 1980
Portland (Maine) Council of Governments: 1976
South Carolina Association of Counties: 1981
Thurston (Washington) Regional Planning Council: 2002
Washington American Planning Association: 1996, 1997, 2000, 2001, 2011

( ) Indicates number of presentations if more than one in that year.

Randall L. Young

INSTRUCTOR/PRESENTER (continued)

Washington Association of Cities: 1991, 1992 (2), 1994, 1995
Washington City, County and Regional Planning Directors: 1990, 1991, 1997
Washington Institute of Transportation Engineers: 1996
Washington Public Ports Association: 1994
Washington & Oregon Planning Associations Bi-State Conference: 2004
Washington & Oregon Public Works Association: 2002
Washington Puget Sound Regional Council: 1994
Washington Law Seminars International: 1994, 1995, 1996
Washington State Association of Counties: 1994, 1995
Western Region National Recreation and Parks Association: 1987

Randall L. Young

PUBLICATIONS

"Impact Fees in Florida: Their Evolution, Methodology, Current Issues and Comparisons with Other States," About Growth, September 2005, (Tallahassee, Florida: Florida City and County Management Association). With Nicholas, Juergensmeyer, Mullen, Smith, Stewart, and Wallace.

Adequate Public Facilities Requirements and Focused Public Investment Plans, 1996, (Salem, Oregon Department of Transportation and Department of Land and Community Development). With Henderson.

"Big Issues to Resolve in a Concurrency Ordinance," About Growth, Summer 1994, (Olympia, Washington: Department of Community, Trade and Economic Development).

Making Your Comprehensive Plan a Reality: A Capital Facilities Plan Preparation Guide, (Olympia: Washington Department of Community Development, September 1992). With Henderson.

"System Development Charges [Oregon's Impact Fees]," League of Oregon Cities Newsletter, May 1991, (Salem, Oregon: League of Oregon Cities). With Ganer, D.

"Don't Just 'Survive' Measure Five [Oregon's Tax Levy Cap]," League of Oregon Cities Newsletter, March 1991, (Salem, Oregon: League of Oregon Cities). With Ganer, D.

"Concurrency Implementation: Matching Public Facilities and Private Development," Florida Planning, Vol. 9, No. 4, December 1988, (Tallahassee, Florida: Florida Chapter of the American Planning Association). With Romanello, Debra L.

The Capital Improvements Element of Florida Local Government Comprehensive Plans, (Tallahassee: The Florida Bar, March 1986).

State and Local Government Financial Analysis,
State and Local Government Procurement,
State and Local Government Capital Financing, (all New Jersey: AT&T Information Systems, 1985). With Henderson, W.P.

Local Government Financial Analysis, (New Jersey: AT&T Information Systems, 1983). With Henderson.

"Choice or Chance: Managing Procurement for Telephone Systems," Telecommunications for Local Government, (Washington, D.C.: International City Management Association, 1982). With Henderson.

Randall L. Young

PUBLICATIONS (continued)

"Productivity: Where to Begin," County News: New County Times, October 8, 1979, (Washington, D.C.: National Association of Counties). With Henderson.

Managing With Performance Measures in Local Government: A Dialogue, (Washington, D.C.: U.S. Department of Housing and Urban Development, 1979). With Williams, C. et al.

Program Performance Budgeting: An Effective Public Management System for Evaluating Municipal Services, (Chicago: Municipal Finance Officers Association, 1976). With Henderson.

Citizen Participation Manual, (Jefferson City: Missouri Municipal League, 1974).

A Study of the Effectiveness of the Office of the Chancellor of the California Community Colleges, (Sacramento: Joint Legislative Audit Committee, 1973).

The New Textbook System, A Working Guide for School Board Members, (Sacramento: California School Boards Association, 1973).

Assembly Bill 531 (Chapter 929, Statutes of 1972), [A new textbook adoption system.] (Sacramento: Legislative Bill Room, 1972).

The Challenge of Achievement, A Report on Public and Private Higher Education in California, (Sacramento: Joint Committee on Higher Education, 1969). With Evans, J. et al.

Randall L. Young

CLIENTS

Arizona
Navajo Nation Tribal Government

California
California State University at Los Angeles
Lake Forest
Oxnard
San Bernardino
San Bernardino County
San Mateo

Colorado
Boulder
Denver
Highlands Ranch Metropolitan District
Lakewood
Silverthorne

Florida
Altamonte Springs
Apopka
Bay County
Boca Raton
Broward County
Charlotte County
Charlotte County School District
Clay County
Bay County
Clearwater
Collier County
Collier County School District
Escambia County
Flagler County School District
Gainesville
Hernando County School District
Hillsborough County
Hillsborough County City-County Planning Commission
Jacksonville/Duval County
Kissimmee
Lake County
Lake County School District
Lake Mary

Randall L. Young

CLIENTS (continued)

Florida (continued)

Lee County
Leon County
Maitland
Manatee County
Marco Island
Marion County
Marion County School District
Martin County
Naples
Nassua County
New Smyrna Beach
North Central Florida Community Mental Health Center
Ocala
Okaloosa County
Orange County School District
Osceola County
Osceola County School District
Palm Beach County
Panama City Beach
Parkland
Plant City
Polk County
Polk County School District
Port St. Lucie
Punta Gorda
St. Cloud
St. Lucie County
Santa Rosa County School District
Sarasota County School District
Seminole County
Seminole County School District
Stuart
Sumter County
Sumter County School District
Tallahassee
Temple Terrace
The Villages of Sumter County
Volusia County
Volusia County School District
Wakulla County
Wellington
West Palm Beach

Randall L. Young

CLIENTS (continued)

Idaho
Ada County Highway District
Idaho Transportation Department
Ketchum

Illinois
Chicago Heights
McLean County
Naperville

Illinois (continued)
Oak Park
Peoria County
Winnebago County

Iowa
Bettendorf
Dubuque County
Scott County
Sioux City

Massachusetts
Boston
New Bedford
Newton

Minnesota
Minnetonka

Missouri
Missouri Department of Consumer Affairs, Regulation & Licensing
St. Louis
Springfield

Montana
Lewis & Clark County
Missoula County
Whitefish

Nevada
Clark County

Randall L. Young

CLIENTS (continued)

New York
Buffalo

North Dakota
Cass County
Fargo

Oregon
Bend
Medford (TGM Pilot Community)
Milwaukie
ODOT/DLCD: Transportation Growth Management Program
Portland
Salem
Tri-Met (Tri-County Metropolitan Transportation District)
Washington County
Willamalane Park District
Woodburn

Texas
Fort Worth
Sherman
Waco

Utah
Salt Lake City
Utah Office of Management and Budget

Washington
Anacortes
Auburn
Bainbridge Island
Bellevue
Black Diamond
Bothell
Bremerton
Bremerton School District
Burien
Burlington
Central Kitsap School District
Clark County

Randall L. Young

CLIENTS (continued)

Washington (continued)

Conway School District
DuPont
Eastside Fire and Rescue
Edgewood
Edmonds
Everett
Federal Way
Gig Harbor
Issaquah
Issaquah School District
Jefferson County
Kenmore
Kent
King County Boundary Review Board
King County Budget and Strategic Planning
King County Parks
King County Public Works
King County Library System
King County Metropolitan Services Department
King County Regional Policy Planning
Kirkland
Kitsap County
Kitsap Fire District No. 2
Kitsap Regional Planning Council
Kittitas County
Lake Washington School District
Lewis County
Mason County
Mountlake Terrace
Mt. Vernon
Newcastle
Nine Mile Falls School District
Normandy Park
North Bend
North Kitsap School District
North Whatcom Fire & Rescue (District 14)
Olympia
Olympia School District
Pasco
Pierce County

Randall L. Young

CLIENTS (continued)

Washington (continued)

Port Orchard
Port Townsend
Puget Sound Regional Council
Puyallup
Redmond
Renton
Richland
Sammamish
San Juan County
SeaTac
Seattle
Sedro-Woolley
Sequim
Shoreline
Skagit County
Snocom Medic 7
Snohomish County
Snohomish County Fie District 1
Snohomish County Tomorrow
South Kitsap School District
South Snohomish County Task Force on Fire Consolidation
Southwest Washington Health District
Spokane County
Tacoma
Tacoma School District
Thurston County
Thurston Regional Justice Center
Thurston Regional Planning Council
(Thurston County, Lacey, Olympia, Tumwater, Yelm)
Tukwila
Tumwater
Vancouver
Washington Department of Community, Trade and Economic Development
Washington Legislature - Transportation Committee
Westport
Whatcom County
Woodinville
Yakima County

Randall L. Young

CLIENTS (continued)

United States Government
Department of Housing and Urban Development

Randall L. Young

EXPERT TESTIMONY IN LITIGATION

Polk County Builders Association v. Polk County (Florida)
Role: Research and Expert Testimony on behalf of County and School District
Subject: School Impact Fees
Date: 2007-09
Outcome: County and School District prevailed.

Homebuilders v. Osceola County (Florida)
Role: Research and Expert Testimony on behalf of County and School District
Subject: School Impact Fees
Date: 2004-05
Outcome: County and School District prevailed.

Brown v. Lee County (Florida)
Role: Research and Expert Testimony on behalf of County and School District
Subject: School Impact Fee
Date: 2004
Outcome: County and School District prevailed.

ISQH, LLC (Leisure Care) v. City of Issaquah (Washington)
Role: Research and Expert Testimony on behalf of City
Subject: Park and Recreation Impact Fees
Date: 2001
Outcome: City prevailed.

Florida Home Builders Assn. v. County of Volusia and Volusia School District (Florida)
Role: Research and Deposition on behalf of Schools
Subject: School Impact Fees
Date: 1995-97
Outcome: Case settled out of court.

City of Atlantic Beach v. City of Jacksonville/Duvall County (Florida)
Role: Research and Deposition on behalf of County
Subject: Dual Taxation
Date: 1992-95
Outcome: Case settled out of court.

Randall L. Young

EXPERT TESTIMONY IN LITIGATION (continued)

Master Builders of Thurston County v. City of Olympia (Washington)
Role: Research and affidavit on behalf of City
Subject: Impact Fees
Date: 1992
Outcome: City prevailed (summary judgment).

Fernandina Beach v. Nassau County (Florida)
Role: Research on behalf of County
Subject: Dual Taxation
Date: 1992
Outcome: County prevailed (City dropped its challenge).

Ft. Myers v. Lee County (Florida)
Role: Research and Expert Testimony on behalf of County
Subject: Road and Bridge Tax
Date: 1986-88
Outcome: County prevailed on some issues; City prevailed on some issues. Award to City was less than 10% of amount claimed by the City.

Palm Beach v. Palm Beach County (Florida)
Role: Research and Expert Testimony on behalf of County
Subject: Road and Bridge Tax
Date: 1984-87
Outcome: County prevailed on some issues; City prevailed on some issues. Award to City was less than 10% of amount claimed by the City.

Tri-County Bank v. Lee County (Florida)
Role: Research and Expert Testimony on behalf of County
Subject: Mandatory Dedication of Right of Way
Date: 1986
Outcome: Bank prevailed.

Pensacola v. Escambia County (Florida)
Role: Research and Expert Testimony on behalf of County
Subject: Dual Taxation
Date: 1982-84
Outcome: County prevailed (position upheld by Florida Supreme Court).

Randall L. Young

EXPERT TESTIMONY IN LITIGATION (continued)

Tampa v. Hillsborough County (Florida)
Role: Research and Deposition on behalf of County
Subject: Dual Taxation
Date: 1982-83
Outcome: County prevailed (City dropped its challenge).

BEFORE THE HEARING EXAMINER OF THE CITY OF BLACK DIAMOND

IN RE DEVELOPMENT AGREEMENTS RELATED TO MPD PERMIT ORDINANCES 10-946 (VILLAGES) AND 10-947 (LAWSON HILLS)	NOS. PLN10-0020/11-0013; PLN10-0021/11-0014 CITY'S RESPONSE TO VERBAL TESTIMONY AND WRITTEN COMMENTS

I. INTRODUCTION

The City of Black Diamond submits this response to the verbal testimony given during the last two days of the open record hearing in this matter, and in response to the written comments submitted by other parties of record.

II. ANALYSIS

A. The Hearing Examiner Should Recommend That the City Council Approve the Proposed Development Agreements.

The City renews its recommendation, made at page 11 of the Joint Staff Reports, that the Hearing Examiner forward the Development Agreements to the City Council with recommendations for approval. As explained in the City's Response to Pre-Hearing Motions, the scope of the Hearing Examiner's jurisdiction concerning the Development Agreements ("DAs") is limited to whether the DAs comply with applicable legal

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

EXHIBIT 218

requirements, as set forth in BDMC Section 18.98.090 and RCW 36.70B.170. They do.

The basic requirements for a development agreement are set out in RCW 36.70B.170(1), which states:

> A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

Thus, there are two basic statutory requirements for a development agreement: (1) it must *set forth* the development standards and other provisions that apply to, govern and vest the development, use and mitigation of the MPD properties; and (2) it must be consistent with the applicable City of Black Diamond development regulations.

The City of Black Diamond development regulation requirements for a Master Planned Development Permit ("MPD") development agreement are set out in BDMC Section 18.98.090:

> The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval.

Given this mandatory language, the BMDC establishes three requirements applicable to an MPD development agreement: (1) the DA must incorporate the MPD Permit conditions of approval; (2) the DA must be binding on all MPD property owners and their successors (i.e., it must "run with the land"); and (3) the DA must require that the MPD property owners develop the property only in accordance with the terms of MPD

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Permit approval.

Taken together, there are five legal criteria for the Hearing Examiner to apply in reviewing the proposed DAs. The Examiner must ask:

1. Do the DAs set forth the development standards and other provisions that apply to, govern and vest the development, use and mitigation of the MPD properties;

2. Are the DAs consistent with the applicable City of Black Diamond development regulations;

3. Do the DAs incorporate the conditions of MPD Permit approval;

4. Are the DAs binding on all MPD property owners, and their successors; and

5. Do the DAs require that MPD property owners (and their successors) develop the MPD property only in accordance with the conditions of MPD Permit approval?

The answer to each of these questions is yes. As explained in more detail below, the protestations otherwise by project opponents are without merit, as they rely upon wholly erroneous legal arguments, improper collateral attacks, and simply mistaken contentions about various components of the DAs.

B. The Hearing Examiner Should Reject The Project Opponents' Collateral Attack on the MPD Density Standards in the City's Comprehensive Plan and Development Regulations.

An overarching theme of all of the project opponents' written comments is that the MPDs are, in opponents' word, "massive," will quadruple Black Diamond's population over twenty years, and that these "facts' in and of themselves justify extensive intervention by the Hearing Examiner in the DAs. Project opponents say this, because their written comments have been solicited, organized and directed by a small group of people operating through an interlocking network of three nonprofit corporations, whose

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

stated mission is to use the Development Agreement process to significantly reduce the density and scale of the MPD projects as described in the approved MPD Permit ordinances. Distilled to its essence, the project opponents' is a collateral attack upon the City Council's 2009 policy decisions to adopt an MPD density standard of a minimum of 4 units per gross acre. These policy decisions are beyond the reach of the Examiner's limited jurisdiction concerning the DAs. The Examiner should reject the improper collateral attack.

1. The Project Opponents' Complaint That the MPDs are Too Large Is Aimed At Reducing the Density and Scale of the MPDs As Approved in the MPD Permit Ordinances.

The project opponents' hyperbolic charge that the MPDs are "massive" is simply the "sound bite" portion of an expressly-adopted mission to cut the Council-approved density of the MPDs by 66%. This is highlighted in the mission statement of the Diamond Coalition:

> *Our goal is to see a significant reduction in the MPD proposed density/scale from the proposed 6,050* new dwelling units to be more consistent with current King County Growth Management Act standards of *1,900 new households* for the City of Black Diamond.

Attachment A hereto. The Diamond Coalition admits that it intends to use **the Development Agreements** to achieve this goal:

> *[W]e envision using the Development Agreement as a tool* that requires *phased incremental growth balanced through the 20 year GMA guidelines* whose impacts can be measured to determine the prudent extent of any further build out. *Controlling the growth targets* inherently benefits goals to improve the transportation and water quality issues.

Id. The Diamond Coalition's Secretary / Treasurer and President are Cynthia and

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

William Wheeler, and its Vice President is Joe May. All three testified to the Hearing Examiner on the MPDs, and the Wheelers did so again on the DAs.

In a recent pleading filed with the Growth Board seeking (unsuccessfully) for the third time to invalidate the MPD Permits, the Wheelers, Mr. May, and TRD claimed that they "*had never argued that the [MDP] density is too great.*" Reply in Support of Petitioner's Motion for Order of Invalidity (June 16, 2011) at 9, n. 4 (italics added). This artful assertion – that they had never "argued" that the MPDs' density is too great – is belied by the Diamond Coalition's candid ambition to reduce MPD density by 66%.

2. The Goal To Reduce The Density/Scale of the MPDs May Be Imputed to Other Project Opponents, Given Their Participation In an Interlocking Network of Nonprofit Corporations.

The Diamond Coalition's admitted goal "to see a significant reduction in the MPD proposed density/scale" – by two-thirds -- may be imputed to the other project opponents by virtue of their acknowledged participation in an interlocking network of three nonprofit corporations. The reason the "cut the density" mission may be imputed to others is that another admitted purpose of the nonprofit corporations' network was to solicit individuals to testify and then prepare and coach their testimony and written comments.[1] The interlocking relationship between the three nonprofit corporations – The Diamond Coalition, Save Black Diamond, and Toward Responsible Development -- is explained in detail in the City's Response to Pre-Hearing Motions, and illustrated by the documents attached as Attachment B.

[1] As noted in the City's Response to Pre-Hearing Motions, to identify the project opponents' organizations is *not* intended to denigrate them. A great deal of Washington appellate precedents in the areas of land use and environmental law are the outgrowth of disputes between non-profit organizations, on the one hand, and developers or cities and counties, on the other. The well-meshed organization of the Black Diamond MPD project opponents deserves comment, however, because it is precisely their stated mission – and

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Of fundamental importance regarding the implementation of the "MPDs are massive" theme as a tool to advance the groups' density-reduction goal, the Save Black Diamond websites highlight project opponents' efforts to solicit individuals to testify, and then direct and coach their oral testimony and written submissions. For example, in a web page authored in January, project opponents were already preparing for the hearing by soliciting individuals to provide oral and written testimony. Peter Rimbos wrote:

> [T]hose Development Agreements will be submitted to the City's Hearing Examiner to conduct Public Hearings *to commence sometime in February. People are encouraged to provide both Oral Testimony at and Written Statements to those Public Hearings.* Please contact us for more details on testifying.

Ex. B (emphasis added). In addition, Mr. Rimbos heads up Save Black Diamond's "Citizens Technical Action Team (TAT)," whose "objective" is:

> *[t]o understand all critical technical issues* and develop a winning strategy to *exploit them. It's [sic] strategy is to review and assess all pertinent documents including the . . . Development Agreements. . . .*

Id. (emphasis added). To further its objective, the group created a second website, (www.saveblackdiamond.net), on which it conducted additional witness solicitation, even going so far as to prepare the oral and written testimony outlines for witnesses. As shown in excerpts from this website, TAT stated:

> TAT is now prepared to provide key information to you, including reader-friendly summaries and highlights of important details. You can use this to write your Oral Testimonies and Written Statements.

(Emphasis in original). Save Black Diamond offered an "ends justify the means"

---

solicitation and preparation of witnesses – that is responsible for the uniform "MPDs are too big" theme constituting an improper collateral attack.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

rationale for this witness coaching:

> The documents are complex, and in order to get certain changes to them, incorporating a knowledge of land use beyond the documents into our testimony will be necessary. TAT is ready to arm you with whatever information you need to testify.

Id. (emphasis added).

The foregoing readily explains the why so many of the written comments repeat the refrain about the size of the MPDs and the estimated effect on Black Diamond's future population -- even though project size and ultimate population **are entirely unrelated** to any legal criteria the Examiner may use to judge the Development Agreements. The three organizations are interlocking, and outlines for verbal testimony and written comments were prepared by Save Black Diamond's TAT. Given that the adopted goal of the groups' funding arm (the Diamond Coalition) is to cut the Council-approved MPD density by two-thirds the frequency of the claim that the MPDs are "massive" or "too big for Black Diamond" is no surprise.

3. The Attempted MPD Density Reduction is an Improper, Untimely Collateral Attack on the City's Comprehensive Plan and MPD Development Regulations.

As the Hearing Examiner will recall, the minimum density of the MPDs was set by the Black Diamond MPD development regulations codified at BDMC 18.98.120(E). These regulations, in turn, cross-referenced the MPD base density standard set forth in the 2009 Black Diamond Comprehensive Plan, as well as the base density standard set in any development agreement or preannexation ordinance. The MPD section in the 2009 Comprehensive Plan's Land Use chapter calls for densities that "urban in nature (minimum 4 units per gross acre) . . . ." Comprehensive Plan at 5-13.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Likewise, the BDUGAA (which applies to large portions of the MPDs) calls for a base density of 4 units per acre. These base density standards are, in large portion, responsible for the total dwelling unit count to which the project opponents so vehemently object.

By attempting to use the DAs as a vehicle to reduce the approved MPD density, the project opponents are engaging in an improper and untimely collateral attack. When a GMA comprehensive plan or development regulation is adopted, and the 60-day limitations period expires, the enactment cannot be later challenged in another forum.[2] That is because, in part, a comprehensive plan is presumed valid upon adoption, and is in repose after the limitations period has passed. RCW 36.70A.320(1). At least one project opponent implicitly admits to this collateral attack, and acknowledges a desire to challenge the Comprehensive Plan, development regulations, and design guidelines, despite also admitting to having closely followed the City Council's 2009 process for adopting all three of those legislative policy documents. *See, e.g.*, 8/12/2011 submission of C. Proctor at 1-2 (arguing that public should still be allowed to challenge Comp Plan, development regulations and other documents adopted by City Council prior to lifting moratorium).

Project opponents can also be expected to reply by pointing out that the Growth Board determined that the MPD Permit ordinances were legislative and not in compliance with the GMA. The Board's ruling, however, was based solely on public participation, because the City did not hold a Planning Commission hearing. The Board did not hold that the MPD's density was inappropriately high, nor could it, given that the MPD unit

[2] *See, e.g.*, *Coffey v. Walla Walla*, 145 Wn.App. 435, 187 P.3d 272 (Div. III 2008) (challenge to comprehensive plan amendment could not be brought in superior court, after 60-day period for petition for review to Board had expired); *see also Woods v. Kittitas County*, 162 Wn.2d 597, 615, 174 P.3d 25 (2007);

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

counts were driven by the base density requirements of BDMC 18.98.120.E and (by reference) the Comprehensive Plan, and neither the MPD development regulations nor the Comprehensive Plan were ever challenged.

Given the foregoing, the Hearing Examiner must reject the project opponents' calls to address project density, either overtly, or by use of the DAs as a "tool" (the Diamond Coalition's word) to limit the amount of MPD development other than as approved by the City Council in the MPD Permits themselves.

4. Even Assuming That MPD Project Density Were Somehow Before the Hearing Examiner, the MPD Density Has Not Been Demonstrated To Be Inconsistent With The City's Comprehensive Plan, Ch. 18.98, or the GMA.

Even if the MPD's density/scale were somehow before the Examiner, the project opponents have demonstrated no legal flaw with the projects' density, repeated use of the "massive" label notwithstanding. In fact, the level of growth proposed by the MPDs is entirely consistent – if not less than – the level of growth experienced by other Western Washington communities that have permitted development of Master Planned Developments. For example, the City of Snoqualmie permitted a number of phases of the Snoqualmie Ridge MPDs. Its population grew from 1,631 people in the year 2000 to 10,670 people in 2010, an increase of 9,039 people and 554%. *See* excerpt from 2010 United States Census, Attachment C. Similarly, the City of Issaquah grew from 11,212 people in 2000 to 30,434 people, an increase of 19,222 people and 171.4%. Project opponents repeatedly claim that the Black Diamond MPDs will result in a quadrupling of the City's population, from 4,151 people in 2010 to less than 20,000 people at MPD buildout, this represents significantly less growth in total population than Issaquah and

KENYON DISEND

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

significantly less growth by percentage than Snoqualmie. Despite this growth, both cities boasts of retaining their "small city livability" (Snoqualmie) and "small-town atmosphere" (Issaquah), and treasured natural settings and resources such as mountains, streams and salmon, while also providing the other opportunities that flow from economic development associated with that growth. Attachment D. These data and examples highlight that, the Black Diamond project opponents claims about "massive" MPDs aside, there is nothing inherently wrong with a small city growing significantly through well-planned MPD projects.

C. The Hearing Examiner Should Reject Opponents' Requests To Revise MPD Project Permit Conditions And/Or To Impose Additional Mitigation.

Several project opponents request that the Hearing Examiner revise MPD Permit conditions of approval, and/or impose additional mitigation not required by the MPD Permit conditions. *See, e.g.*, Ex. 67 and 68 (Sperry Written Comments) and Ex. 118 (Rimbos Written Transportation Comments); *see also* testimony of King County Traffic Engineer Matthew Nolan. These requests appear to be the mirror image of the Diamond Coalition's stated goal: instead of controlling the growth targets to benefit transportation and water quality,[3] the commenters seek to control transportation and water quality/quantity as a means to control growth and reduce the MPD's overall density. The Hearing Examiner must decline these requests.

The Examiner has no jurisdiction to revise (or recommend revision) to the City Council's adopted conditions of MPD Permit approval. The MPD Permit ordinances are not before the Examiner, except to the extent that the Examiner must determine whether the DAs incorporate the terms and conditions of MPD Permit approval. BDCM

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

18.98.090. Consequently, the Examiner must reject Mr. Sperry's request for imposition of a new stormwater quantity condition that would limit the amount of stormwater volume draining to Lake Sawyer. Ex. 67. He must also reject Mr. Rimbos' request for new MPD Permit conditions of approval, and Mr. Nolan's request for a new DA condition not required by the MDP Permit Conditions.

In any event, the requests are also deeply substantively flawed, as explained in the declarations of Daniel Ervin and John Perlic, submitted in support of the City's written responses herein. Neither Mr. Rimbos nor Mr. Sperry is an expert. Accordingly, under the terms of the Examiner's previous rulings, their testimony on these technical topics must be given weight only as their personal opinions, and not an expert opinion. Conversely, both Mr. Ervin and Mr. Perlic are leading experts in their fields, as demonstrated by their resumes attached to their declarations. Their declarations conclusively demonstrate why Mr. Sperry's, Mr. Rimbos, and even Mr. Nolan's opinions and requested conditions are unsupported by the relevant, prudent engineering principles. The requested additional conditions must be rejected.

D. The Examiner Should Also Reject Mr. Sperry's Request to Delay Development Agreement Approval Pending Identification of the Site for King County's Peak Flow Wastewater Storage Facility.

Another tactic employed by project opponents is to claim that some particular detail is subject to a future decision by or agreement with a third party, and that therefore, DA approval must be delayed until that occurs. Mr. Sperry's written comment (Exhibit 68), asserting that the DAs must be delayed until King County reaches agreement with the City as to the precise location of the County's planned Peak Flow Wastewater Storage

[3] Attachment A.

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Facility, is one such example of this stall tactic. The Examiner should reject it, too.

As Mr. Ervin's Declaration and exhibits explain, King County is legally obligated to construct that facility to receive sewage directed to it by the City. Conversely, the sanitary sewer plan contained in the DAs is specific yet flexible enough to accommodate any one of multiple potential locations of the King County facility, and Mr. Sperry does not argue otherwise. Given this, proceeding with the DAs at this time is appropriate, as Mr. Ervin concludes. And again, the Examiner should recall that Mr. Sperry is not an expert, and not entitled to generally opine on technical subjects. His written comments must be given the weight appropriate to personal rather than expert opinion. Mr. Ervin's declaration, by contrast, is expert opinion and consequently entitled to substantial (and greater) weight.

E. The Examiner Should Reject Opponents' Invitation to Rewrite the Development Agreements In Pursuit of Unreasonable Specificity.

Project opponents have also rolled out still another tactic, this time, demanding that the Examiner rewrite entire sections of the DAs, claiming that current sections are not specific enough. Many examples of this occur in Mr. Rimbos' comments (Ex. 118); still others are laid out at length by Mr. Edelman. This ploy must also be rejected.

First, as Mr. Perlic explains, many of the items called for by Mr. Rimbos are, in fact, already provided for in detail by the MPD Permit Conditions; Mr. Rimbos simply misunderstands (perhaps deliberately) how they are to work. As explained by Yarrow Bay's comments in Exhibit 135, the MPD Permit and their conditions are already incorporated into the DAs, and a copy is attached to each DA as Exhibit C. To the extent that the Examiner believes a more express cross-reference is appropriate, the City

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

requests that the Examiner recommend that Section 2.1 of each DA be slightly revised as follows (with underscore showing additional language): "Land within the boundaries of The [Lawson Hills or Villages] MPD shown on Exhibit "A", together with associated off-site improvements, shall be physically developed only pursuant to the terms and conditions of the MPD Permit Approval and this Agreement."

Second, as explained in both the Declarations of John Perlic and Randy Young, the additional specificity demanded by Mr. Rimbos and Mr. Edelman is not appropriate. Allowing flexibility for the City's experts to exercise appropriate professional judgment in future circumstances will best protect the City and ensure that the relevant analysis (transportation or fiscal) will be performed appropriately and will best identify conditions and/or needed mitigation. Insertion of additional specificity now will unduly limit the City's future analyses and could well harm the City; conversely, as Mr. Young points out, the commenters have not demonstrated that the level of specificity in the existing DA language actually presents any harm. And, again, Mr. Edelman is not an expert, fiscal or otherwise, and his written comment is entitled to the weight only of his personal view, and not the weight of an expert opinion such as Mr. Young's. The Examiner should reject Mr. Rimbos' and Mr. Edelman's demands that he rewrite the DAs to provide additional specificity.

F. The Examiner Should Reject the Comments and Request by Covington Water District.

The Hearing Examiner should also reject the request by the Covington Water District to exceed his jurisdiction and make a determination concerning whether the District has a right, superior to the City's or otherwise, to provide retail water service

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

within the Villages MPD. As discussed at the outset of these comments, the Examiner's jurisdiction is limited to determining whether the DAs incorporate the terms and conditions of MPD Permit approval, run with the land, and require development of the MPDs consistent with the terms of the MPD Permits. The Examiner has no jurisdiction to determine whether a special purpose district has a right to provide retail service in a particular area, and no jurisdiction to construe the statutes cited to him by the District.

Even assuming, *arguendo*, that the Examiner had jurisdiction to consider the issue, the District's arguments are wrong. First, and most fundamentally, the District has no facilities located within the City, and does not possess a franchise to install any. Without a franchise, the District has no legal right install improvements with City rights-of-way, and consequently no right to provide water service in Black Diamond.

Second, the District's argument overlooks the fact that the City has a Comprehensive Water System Plan that was approved by King County and the Washington Department of Health ("DOH"). Attachment E. The City's retail water service area shown in its Plan includes all of the Villages MPD. *Id.* See City Water System Plan available at DOH's approval means, as a matter of law, that the City has not only the right but the duty to provide service within the City's retail service area shown in its Water System Plan. *See, e.g.*, RCW 43.20.260 and WAC 246-290-106 and-108. The South King County CWSP referenced by the District, on the other hand, is out of date and obsolete. *See, e.g.*, RCW 70.116.060(6) and WAC 246-293-280 (a CWSP must be updated every 5 years). In light of the foregoing, the District's argument lacks merit, even assuming the Examiner has jurisdiction to review it.

To the extent that the Examiner nevertheless determines that the DAs should

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

provide some "fall back" option for water service should it be determined in some other forum that the District (and not the City) can serve a portion of the Villages MPD, the Examiner should consider and recommend the revised DA language suggested by Yarrow Bay to address the District's comments.

III. CONCLUSION

For all the foregoing reasons, the Examiner should recommend approval of the DAs as outlined in the Staff Report and with the minor changes recommended by Yarrow Bay, in which the City joins.

DATED this 18th day of August, 2011.

KENYON DISEND, PLLC

By _____
Michael R. Kenyon
WSBA No. 15802
Bob C. Sterbank
WSBA No. 19514
Attorneys for City of Black Diamond

KENYON DISEND
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

Attachment A

The Diamond Coalition

Home

History

Projects

Contact Us

Our Mission:

The Diamond Coalition was formed for exclusively charitable, and educationally purposes related to environmental awareness and advocacy. Specifically, the Diamond Coalition provides outreach to educate, energize, engage and assist the general public in environmentally responsible and sustainable communities through the protection and stewardship of rural lands in Southeast King County through citizen outreach, environmental analysis, volunteer participation, organization assistance, and a variety of other means.

The Coalition's goals are to educate, energize and manage local volunteers for the preservation of natural habitat, and recreational and resource lands. We serve as a voice on local issues that encourage a clean environment and managed growth.

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EXHIBIT 219

The Diamond Coalition

Home

History

Projects

Our Mission

Contact Us:

Mailing Address:
The Diamond Coalition
P.O. Box 448
Black Diamond, WA 9801

Contact Information:
email contact: thediamondcoalitionorg@gmail.com
William Wheeler - President
Eugene J. May - Vice President
Cynthia Wheeler - Secretary/Treasurer

About Us:

Organization Name: The Diamond Coalition
Federal Tax ID #: 27-1773790
Non-profit Type: 501(c)(3)
Advanced Letter Ruling Status: Approved

Getting Involved:
These monster developments will affect you, either through higher taxes, gridlocked roads, degraded environment, or all of the above. Over the next few months as citizens appeal the decision, please consider donating your time and expertise or making a tax deductible contribution.

Contribute

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Corporations Division

Corporations Division - Registration Data Search

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TOWARD RESPONSIBLE DEVELOPMENT

UBI Number	603052737
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	09/30/2010
Expiration Date	09/30/2011
Inactive Date	
Registered Agent Information	
Agent Name	Robert Edelman
Address	29871 232nd Ave SE
City	Black Diamond
State	WA
ZIP	98010
Special Address Information	
Address	
City	
State	
Zip	

Governing Persons

Title	Name	Address
Chairman	Edelman, Robert	29871 232nd Ave SE Black Diamond, WA
Director	Edelman, Mary	29871 232nd Ave SE Black Diamond, WA

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REPORTER
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EXHIBIT B-2

5 COMMENTS EMAIL LETTER PRINT FOLLOW SHARE

Toward Responsible Development files appeal against YarrowBay developments in Black Diamond | Read Document

By DENNIS BOX
Covington Reporter Regional Editor
Oct 13 2010

Toward Responsible Development filed a land use petition act or LUPA appeal in King County Superior Court against the two YarrowBay master planned developments in Black Diamond, Lawson Hills and The Villages.

Superior court Judge Cheryl Carey has been assigned to the case. The court date for the appeal is March 21, 2011. The attorney who filed the document for the petitioners was David Bricklin of the Seattle firm Bricklin and Newman.

The petition asks for the court to invalidate the ordinances passed by the Black Diamond City Council approving the projects and remand the issue back to the city for further consideration. The appeal is also asking for the court to award "petitioners their damages and actual attorneys' fees and cost for violation of their constitutional rights pursuant to 42 U.S.C. (section) 1988."

The appeal listed a series of errors in the process the petitioners believe led to the council approving the projects. Included in the list was the city used the wrong process, quasi judicial, which "deprived the petitioners of their opportunity to communicate with their elected officials." The document also noted the ordinances violate the city's comprehensive plan calling for preserving Black Diamond's small town character.

Listed as petitioners on the court document are Cynthia and William Wheeler, Bob Edelman, Peter Rimbos, Mike Irgang, Judith Carrier, Eugene May, Vicki Harp, Cindy Proctor, and the estate of William Harp.

The Black Diamond City Council unanimously passed the ordinances approving the master planned developments Sept. 20

RELATED STORIES
Covington & Maple Valley Reporter
- Maple Valley appeals YarrowBay developments in Black Diamond over traffic problems | Read Documents
- Black Diamond rejects Maple Valley appeals unanimously | Read Documents
- Growth Management Hearings Board ruling on YarrowBay developments in Black Diamond may limit water in south King County | Read Documents
- YarrowBay files appeal in superior court of hearings board ruling on The Villages and Lawson Hills in Black Diamond | Read Documents
- YarrowBay commits to no increase in phosphorus from Black Diamond developments The Villages and Lawson Hills

South King County
- None at this time.

NEWS BLOGS
Highly Affirmed
Police and fire news from around Covington, Maple Valley, and beyond
News Flashes
The news and notes from around Covington, Maple Valley, and beyond

YarrowBay, a Kirkland development company, plans to build 4,800 residences or dwelling units on The Villages property and 1,250 in the Lawson Hills project.

Open hearings on the projects before city's hearing examiner, Phil Olbrechts, began in March and lasted more than two weeks. Olbrechts ruled the final environmental impact statements for the two projects adequate and recommended approval of the projects with conditions.

Closed record hearings before the City Council began in June and continued through September when the projects were approved.

The next step, unless court action halts the process, is the development agreements, which YarrowBay has filed with the city. Once the city approves the applications, they will be scheduled to go before the hearing examiner who will make a recommendation to the City Council on approval.

Edelman said Toward Responsible Development is a state not-for-profit corporation with about 50 members. Edelman described it as a loosely formed group that was started about two weeks ago.

He stated through the hearing process that has lasted nearly seven months he has "made friends that will last for life. There are really intelligent people involved in this."

Edelman said the only requirement to join the group is to "support what we are doing."

He stated the appeal is relying on considerable amount of volunteer efforts and funds raised by other groups. According to Edelman, Toward Responsible Development does no fundraising activities.

Edelman said groups like The Diamond Coalition and Save Black Diamond are raising funds for the effort.

Brian Ross, YarrowBay CEO, said by e-mail Wednesday, "We are still very happy with the city's approval and the progress on these projects. This appeal is a normal and typical part of the process of permitting a MPD or any large project, and YarrowBay will work through the appeal in due course."

LUPA

Most Read Stories This week | Last week
Covington Reporter
- Kent Police arrest ex-University of Washington player Vonay Overton for allegedly promoting prostitution
- A lone shoplifter and a pair working together caught at Covington Safeway | Police Blotter

B-3

Corporations Division

Corporations Division - Registration Data Search

Neither the State of Washington nor any agency, officer, or employee of the State of Washington warrants the accuracy, reliability, or timeliness of any information in the Public Access System and shall not be liable for any losses caused by such reliance on the accuracy, reliability, or timeliness of such information. While every effort is made to ensure the accuracy of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from the System does so at his or her own risk.

THE DIAMOND COALITION

UBI Number	602987012
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	01/21/2010
Expiration Date	01/31/2012
Inactive Date	
Registered Agent Information	
Agent Name	William Wheeler
Address	30221 234TH Ave SE
City	Black Diamond
State	WA
ZIP	98010
Special Address Information	
Address	
City	
State	
Zip	

Governing Persons

Title	Name	Address
President	Wheeler, William	30221 234TH AVE SE 30221 234th Ave SE BLACK DIAMOND, WA
Vice President	May, Joe	29611 232nd Ave SE Black Diamond, WA
Secretary	Wheeler, Cynthia	30221 234th Ave SE Black Diamond, WA
Treasurer	Wheeler, Cynthia	30221 234th Ave SE Black Diamond, WA

Purchase Documents for this Corporation »

EXHIBIT B-4

Corporations Division

Corporations Division - Registration Data Search

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SAVE BLACK DIAMOND

UBI Number	603086038
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	02/09/2011
Expiration Date	02/29/2012
Inactive Date	
Registered Agent Information	
Agent Name	Vernon Gibson
Address	32800 1st Ave
City	BLACK DIAMOND
State	WA
ZIP	98010
Special Address Information	
Address	PO Box 581
City	BLACK DIAMOND
State	WA
Zip	98010

Governing Persons

Title	Name	Address
Director	Irgang, Linda	22505 SE 329th St BLACK DIAMOND, WA
Director	Stewart, Monica	22516 SE 300th ST BLACK DIAMOND, WA
Director	Gibson, Vernon	P.O. Box 581 BLACK DIAMOND, WA
Director	Bryant, Kristen	1006 139th Pl NE Apt C-4 BELLEVUE, WA

Purchase Documents for this Corporation »

EXHIBIT B-5

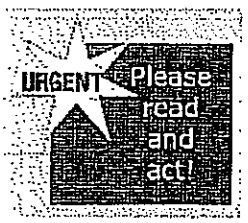
Save Black Diamond

What Will the New Development Look Like?

Read Letter to the Editor (from the Seattle Times)

Read November 4 article by Jean Williams from the Seattle *Examiner*.

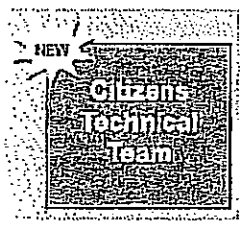
Background and Literature



Save Black Diamond is a network of volunteers and supporters who are working together to protect the Town of Black Diamond and the surrounding areas from irresponsible land development.

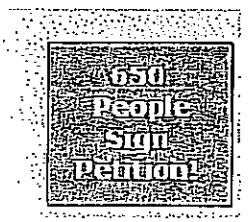
We are opposed to the massive development proposed by the Yarrow Bay Corporation. This development has been debated for many years, but only recently has the developer lobbied to get a long-term "entitlement" to build over 6,000 housing units and commercial development equivalent to ten Wal-Marts.

A Special Message to the People of Black Diamond



We support the legal and administrative appeals that have been filed against this development proposal. We are also working to monitor and hold accountable the City of Black Diamond and other government entities.

You are invited to learn more about these issues and join us in our various projects. We welcome your ideas and stand ready to assist you on the issues that are important to you.



The Yarrow Bay development proposal will have huge negative regional impacts.

Protecting Black Diamond's Historical Heritage

EXHIBIT B-6

State Hearings Board Rules in Our Favor February 15

Standing Room Only at City Council February 17

Development Agreement Testimony Needed

QUILT RAFFLE

State Senator Pam Roach testified at the Black Diamond City Council Meeting on February 17, describing the enormous regional impacts of the Yarrow Bay development. Senator Roach pointed out that there was no transportation funding to support this development until 2040!

Whether you live in Enumclaw, Kent, Maple Valley, Covington, Issaquah, Renton, or unincorporated King County .... this project will affect you!

Above: One of our groups of concerned citizens at a recent work session.

Press Room

LUPA Court Appeal

Growth Management Board Appeal

A Traffic Tutorial

Legal Update March 7

facebook

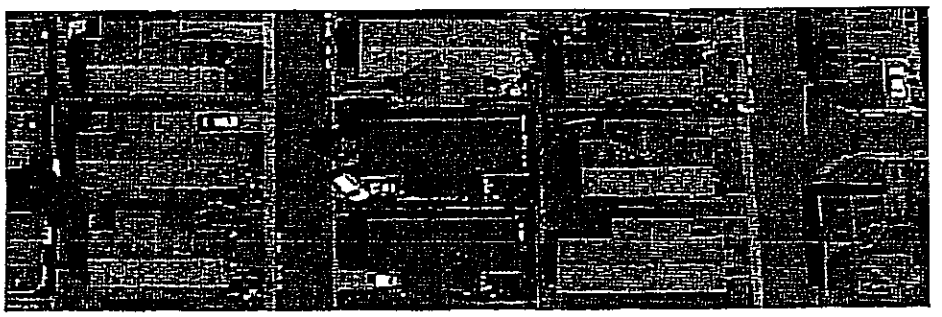
Name: Protect Black Diamond

B-7

Save Black Diamond

Outsized Master Planned Developments

by Peter Rimbos



Yarrow Bay, a major land developer in Western WA, has proposed two major MPDs comprising over 6,000 homes and over 1.1 million sq ft of commercial/business space in the City of Black Diamond. This would quintuple (not a misprint!) the current population of 4,000. These are the largest MPDs in King County history!

These MPDs would: (1) despoil 750 ac of forest and wildlife habitat, (2) add an additional 10,000 vehicles on two-lane roads throughout southeast King County, (3) impact the Rural Area outside the Urban Growth Boundary to enable urban development, and (4) set a dangerous precedent throughout the State of WA--if you can build these monstrosities in small Black Diamond, you can build them anywhere (and they will)!

Where are we in the process? FEISs were released a year ago. Hundreds of comments were received from citizens, adjacent cities, King County, and WSDOT--99+% negative! Citizens banded together to appeal those FEISs. In March 2010, those appeals were heard by the City's Hearing Examiner, who found the FEISs met the very low threshold of SEPA adequacy, but imposed over 150 conditions on the MPDs. Concurrently, the Hearing Examiner held public hearings on the MPD Applications submitted to the City by Yarrow Bay. He recommended approval of those applications, but imposed the same FEIS conditions plus more.

In the summer the City Council received the Hearing Examiner's recommendations and held Public Hearings. Hundreds of citizens attended and testified orally or in writing. Once again, adjacent cities and King County testified --99+% negative, again! When Council deliberations ended on September 20, it decided to approve the MPD Applications, but once again with over 150 conditions.

On September 21 (yes, the very next day!) Yarrow Bay submitted to the City DRAFT Development Agreements that provide the plan over the next 15 - 20 years for the design, development, and build-out of the MPDs. City Staff currently is "negotiating" with Yarrow Bay to "finalize" the Development Agreements. Once ready, those Development Agreements will be submitted to the City's Hearing Examiner to conduct Public Hearings to commence sometime in February. People are encouraged to provide both Oral Testimony at and Written Statements to those Public Hearings. Please contact us for more details on testifying.

Background and Literature

What Will the New Development Look Like?

What's the Solution?

Impact Summary

King County Historical Organizations

Home

B-8

Save Black Diamond

CITIZENS' TECHNICAL ACTION TEAM (TAT) UPDATE
by Peter Rimbos, TAT Leader

Background and Literature

What Will the New Development Look Like?

What's the Solution?

King County Historical Organizations

Home

A Citizens' Technical Action Team (TAT) formed shortly after the Black Diamond City Council passed the MPD Approval Ordinances in September 2010. The TAT's objective is to understand all critical technical issues and develop a winning strategy to exploit them. It's strategy is to review and assess all pertinent documents including the MPD Ordinances, Development Agreements, Preliminary Plat Agreements, etc.

In February 2011 the TAT requested meetings with BD City Council members to discuss the MPD Approval Ordinances and specific recommendations to improve the Conditions of Approval. Two members of the City Council agreed to meet with the TAT--Councilmen Goodwin and Saas. At that time the other three Council members stated they could not meet with the TAT based on what we believe is a mistaken rationale--they could not engage in dialogue with citizens involved in the Legal Appeals.

Between March 10 and 21, 2011, members of the TAT held a series of four meetings (a total of 11 hr) with Councilmen Goodwin and Saas on Transportation, Environment, Stormwater & Flooding, and Fiscal Impacts & Schools. Each meeting consisted of 2+ hour, in-depth, two-on-two discussions. The focus of these discussions were specific Ordinance Conditions the TAT recommended be revised, eliminated, or added. We believe everyone benefited from such a two-way dialogue denied citizens for the past 18+ months.

In our Transportation Conditions discussion; the following areas were addressed: Traffic Modeling, Assumptions for the Models, Sensitivity Analyses of Critical Parameters, Cost/Benefit/Risk Analyses, Internal Capture Rates, Green Valley Road, Funding Sources, etc. The result was a 21-page comprehensive set Conditions, supporting rationale, and a detailed treatise on Traffic Modeling and Validation.

In our Environment Conditions discussion, the following areas were addressed: Wildlife Habitat Preservation, Wildlife Corridors, Stream-Lake-Wetland Complexes, Groundwater Flow, Stormwater Infiltration Techniques, Mine Hazards, Geologic Hazards, Open Space, Parks & Recreation Facilities, etc. An array of detailed maps were used to augment the discussion. The result was a 6-page comprehensive set Conditions and supporting rationale.

In our Stormwater & Flooding Conditions discussion, the following areas

were addressed: Phosphorus Loading, Stormwater Runoff, Infiltration, Monitoring, etc. The result was a set of targeted Conditions and supporting rationale.

In our Fiscal Impacts & Schools Conditions discussion, the following areas were addressed: Fiscal Impact Analyses, Community Facilities Districts (CFDs), City Solvency, Letters of Credit, Yarrow Bay Organizational Structure, Schools, Bonding, Vesting, etc. The result was a set of targeted Conditions and supporting rationale.
The TAT is exploring meetings with the other three BD City Council members. At this time none are scheduled.

B-1D

Public Hearing Soon

Notice of Development Agreement Public Hearings

On June 10, the city of Black Diamond released the final applications for Development Agreement (DA) contracts for the Yarrow Bay-proposed Master-Planned Developments (MPDs). Also, it announced that related **Public Hearings will commence on Monday, July 11. They will continue all week and there is a full day session scheduled for Saturday the 16th.** The location is **Sawyer Woods Elementary.**

Please see: http://www.ci.blackdiamond.wa.us/Depts/CommDev/DA.html.

Your opportunity is to speak for **ten minutes** on something that could then become a **twenty year binding contract.**

The Development Agreements are supposed to contain sufficient detail on the 15-to-20-yr plan for buildout of the developments and comply with the City's MPD Ordinances passed last September, each of which contained over 160 conditions of approval.

Plan to provide Oral Testimony and/or Written Statements.
Information on how to Prepare.

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EXHIBIT B-11

Preparation for Development Agreement Hearings

Monday, June 27, 7 – 9 PM

Lake Sawyer Community Club - 29006 216th AVE SE, Black Diamond, WA

If you share our concerns and have an interest in shaping the future of Southeast King County, please attend.

The **Citizens' Technical Action Team (TAT)** will help us all prepare for the Master Planned Development (MPD) Development Agreement Hearings which are scheduled to start on July 11.

For the past nine months, since the Black Diamond City Council inexplicably passed two Ordinances approving the two Yarrow Bay-proposed developments, the TAT has been reviewing, dissecting, critiquing, and summarizing the issues. Since the release of the Development Agreement documents (on the city's website), TAT has been studying them. TAT is now prepared to provide key information to you, including reader-friendly summaries and highlights of important details. You can use this to write your Oral Testimonies and Written Statements.

The MPD Development Agreement Hearings are of great consequence. They are the method by which the public can critique the plans and voice their opinions on the development details. **Does Yarrow Bay's plan meet all of the 160+ Conditions listed in the Ordinances? Is there a long-range plan to mitigate the immense traffic volumes expected to be generated by 6,050 homes and 1.15 million sq ft of Commercial/Business space? Will Black Diamond go bankrupt? What happens when 760 acres of in-city forest are clear-cut?** Now is your chance to weigh in. Members of TAT will explain the details, help you prepare for the hearings, and answer any of your questions.

There will be two Hearings (just like last year for the MPD application). The first Hearing is called an **Open-Record Hearing** before the City's Hearing Examiner, Phil Olbrechts. The second Hearing is before the city council. All "evidence" must be presented in the first hearings in order to be valid in the second hearings and thus heard by the City Council. The same Hearing Examiner conducted the city's prior hearings, so he is well-versed on the subject. The public's past testimony helped form recommendations Mr. Olbrechts provided to the City Council. Unfortunately, the City Council ignored or watered down many of those recommendations (that is one reason why this November's Black Diamond City Council election is so very critical).

If you speak at the Open-Record Hearing, you are eligible to speak at the second hearing, called a **Closed-Record Hearing**. This hearing before the Black Diamond City Council will be held after Mr. Olbrechts has had time to create detailed recommendations based on testimony in the Open-Record Hearings.

This is your chance to have a voice on what could shape the future of Black Diamond and surrounding communities for generations!

- The documents are complex, and in order to get certain changes into them, incorporating a knowledge of land use beyond the documents into our testimony will be necessary. The TAT is ready to arm you with whatever information you need to testify.
- Conversely, some information that is simple to you, such as where water flows on your land, what roads you

EXHIBIT B-12

commonly drive and are concerned about, or what will preserve the special character of Black Diamond, is nearly impossible for anyone else to know unless you testify.

Note: There is a modest rental fee for the location, Lake Sawyer Community Club. We will have a donation jar available for those who wish to help offset the fee.

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EXHIBIT TB-13

Action Ideas

How You Can Help

1. Testify at upcoming city Development Agreement Contract Hearings. Contact SaveBlackDiamond@gmail.com or Vern Gibson at 360-886-6974.
2. Join Toward Responsible Development to become part of the legal appeal to the approvals. This will give you valuable, direct updates on the legal efforts that must continue. So far these efforts have resulted in at least one victory. Numerous challenges provide an exciting news weekly. Contact ResponsibleDevelopment@comcast.net.
3. Connect with Save Black Diamond. This organization is building a community, holding educational meetings, and working on Black Diamond politics. We provide the knowledge, expert support, and peer support to take effective action to improve our future. We are coordinating action on many fronts. Contact SaveBlackDiamond@gmail.com.
4. Watch the City of Black Diamond "In the Spotlight" section on its website. Read and provide comments to the city. Attend Black Diamond City Council Meetings (1st and 3rd Thursdays of the month at 7 PM at Black Diamond Council Chambers on Lawson St.)
5. Voice your concerns to the Enumclaw School District –Superintendent Mike Nelson and the elected school board.
6. Come to fundraisers for Black Diamond.
7. Contributing to our efforts. Send contributions to Save Black Diamond, P.O. Box 581, Black Diamond, WA 98010.
8. There is *much more* you can do. Contact Us to learn more at SaveBlackDiamond@gmail.com. We also welcome your ideas.

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EXHIBIT B-14

Attachment C

2010 U.S. Census Population Counts

King County and its Cities, April 1, 2010

City	2000 Census *Corrected*	2010 Census	Change 2000-2010	% Change 2000-2010
Algona	2,460	3,014	554	22.5%
Auburn (K.C. portion)	*42,901*	62,761	19,860	46.3%
Beaux Arts	307	299	(8)	-2.6%
Bellevue	109,827	122,363	12,536	11.4%
Black Diamond	3,970	4,151	181	4.6%
Bothell (K.C.portion)	*16,119*	17,090	971	6.0%
Burien *	31,881	33,313	1,432	4.5%
Carnation	1,893	1,786	(107)	-5.7%
Clyde Hill	2,890	2,984	94	3.3%
Covington	13,783	17,575	3,792	27.5%
Des Moines	29,267	29,673	406	1.4%
Duvall	4,616	6,695	2,079	45.0%
Enumclaw	11,116	10,669	(447)	-4.0%
Federal Way	83,259	89,306	6,047	7.3%
Hunts Point	443	394	(49)	-11.1%
Issaquah	11,212	30,434	19,222	171.4%
Kenmore	18,678	20,460	1,782	9.5%
Kent *	79,524	92,411	12,887	16.2%
Kirkland	45,054	48,787	3,733	8.3%
Lake Forest Park	*12,871*	12,598	(273)	-2.1%
Maple Valley	14,209	22,684	8,475	59.6%
Medina	3,011	2,969	(42)	-1.4%
Mercer Island	22,036	22,699	663	3.0%
Milton (K.C.portion)	814	831	17	2.1%
Newcastle	7,737	10,380	2,643	34.2%
Normandy Park	6,392	6,335	(57)	-0.9%
North Bend	4,746	5,731	985	20.8%
Pacific (K.C. portion)	5,373	6,514	1,141	21.2%
Redmond	45,256	54,144	8,888	19.6%
Renton	50,052	90,927	40,875	81.7%
Sammamish	34,104	45,780	11,676	34.2%
SeaTac	25,496	26,909	1,413	5.5%
Seattle	*563,376*	608,660	45,284	8.0%
Shoreline	*53,296*	53,007	(289)	-0.5%
Skykomish	214	198	(16)	-7.5%
Snoqualmie	1,631	10,670	9,039	554.2%
Tukwila	17,181	19,107	1,926	11.2%
Woodinville	*9,809*	10,938	1,129	11.5%
Yarrow Point	1,008	1,001	(7)	-0.7%
Cities Total	1,387,812	1,606,247	218,435	15.7%
Uninc. King County	*349,234*	325,002	(24,232)	-6.9%
King County	*1,737,046*	1,931,249	194,203	11.2%
Washington State	5,894,121	6,724,540	830,419	14.1%

Note: *Italics* represent corrections by the US Census Bureau or Washington State.

* Census numbers for the cities of Burien and Kent do not include annexations that took place after March 31, 2010. These annexations would increase Burien to 48,072, Kent to 118,565, and decrease uninc King County to 284,089.

Source: U.S. Census Bureau, PL 94-171 Redistricting data, 2000 and 2010. CityPop2000-2010.xls

EXHIBIT 221

King County Population, 2010 U.S. Census

King County Population Change, 2000 - 2010

	Population 2000	Population 2010	Change	Percent Change	2010 Percent
Total Population	1,737,034	1,931,249	194,215	11.2%	
Non-Hispanic	1,641,792	1,758,871	117,079	7.1%	91.1%
White	1,275,127	1,251,300	-23,827	-1.9%	64.8%
African-American	91,798	116,326	24,528	26.7%	6.0%
Asian	186,615	280,029	93,414	50.1%	14.5%
Pacific Islander	8,737	14,068	5,331	61.0%	0.7%
Native American	14,278	12,931	-1,347	-9.4%	0.7%
Other	4,577	4,688	111	2.4%	0.2%
Hispanic	95,242	172,378	77,136	81.0%	8.9%
Two or more race	60,660	79,529	18,869	31.1%	4.1%
Total Population	1,737,034	1,931,249	194,215	11.2%	100.0%
Housing units	742,237	851,261	109,024	14.7%	
Occupied hsg units	710,916	789,232	78,316	11.0%	

Source: US Census 2010, PL94-171 redistricting file, February 2011

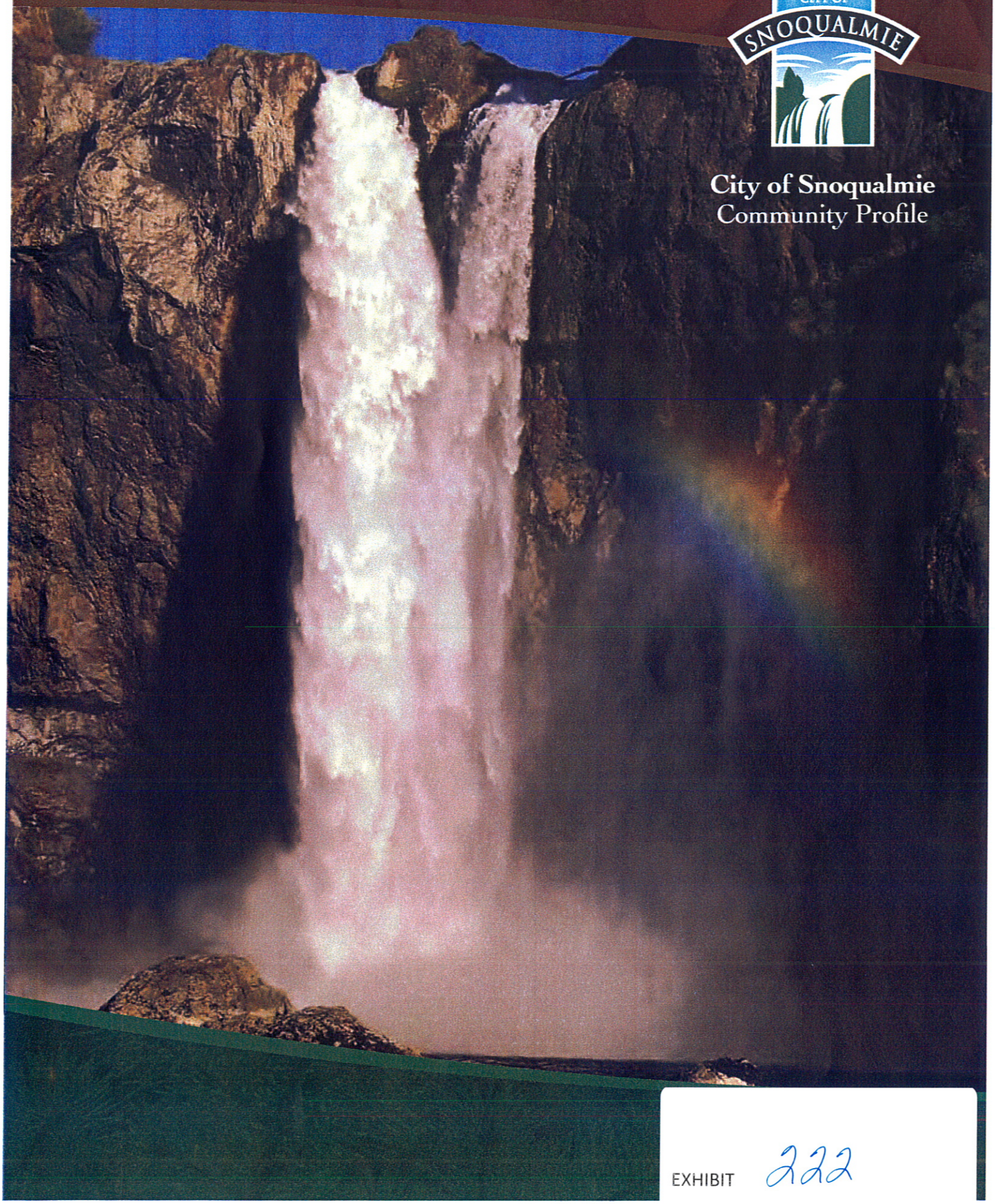
Unincorporated King County Population Change, 2000 - 2010

	Population 2000	Population 2010	Change	Percent Change	2010 Percent
Total Population	352,764	325,002	-27,762	-7.9%	
Non-Hispanic	337,511	299,607	-37,904	-11.2%	92.2%
White	279,593	228,392	-51,201	-18.3%	70.3%
African-American	12,052	14,851	2,799	23.2%	4.6%
Asian	29,239	38,813	9,574	32.7%	11.9%
Pacific Islander	1,595	1,986	391	24.5%	0.6%
Native American	3,275	2,717	-558	-17.0%	0.8%
Other	893	696	-197	-22.1%	0.2%
Hispanic/Latino	15,253	25,395	10,142	66.5%	7.8%
Two or more race	10,864	12,152	1,288	11.9%	3.7%
Total Population	352,764	325,002	-27,762	-7.9%	100.0%
Housing units	130,622	125,921	-4,701	-3.6%	
Occupied hsg units	125,715	118,101	-7,614	-6.1%	

Source: US Census 2010, PL94-171 redistricting file, February 2011

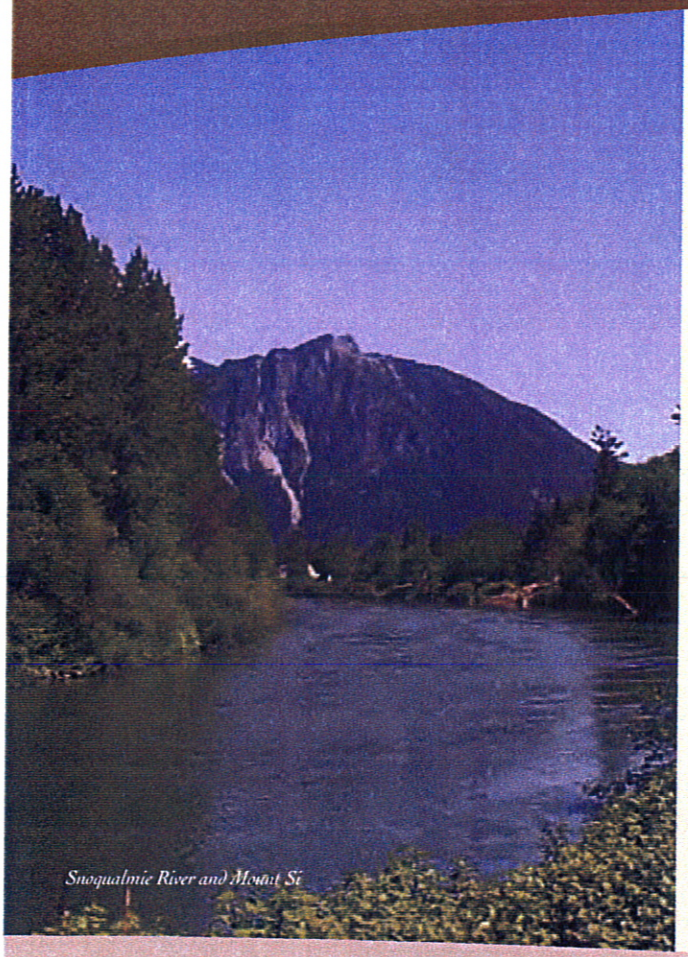
Cen2010KC-unincKC

Attachment D



City of Snoqualmie
Community Profile

EXHIBIT 222



Snoqualmie River and Mount Si

Inspiring scenic beauty. Small-town charm. A growing and vibrant community.

Snoqualmie is located 25 miles east of Seattle and is best known for Snoqualmie Falls, a stunning waterfall that attracts nearly 2.2 million visitors each year. From hiking, mountain biking, and road biking to fishing, kayaking, skiing and golf, the outdoors infuses Snoqualmie with energy and tranquility.

While city government is focused on protecting the unique character of Snoqualmie and its surrounding environment, economic development initiatives are vigorous. Snoqualmie is the fastest growing city in Washington state.* The current population is more than 9,800 and is expected to reach 12,000 by the year 2011. To build economic sustainability, city staff and commissions, residents, community businesses, and consultants are working together for thoughtful and measured city planning.

Snoqualmie is dedicated to making this community a leader in small city livability and business growth.

*2000-2008 by percent population, Office of Financial Management, Washington

PARKS AND RECREATION

The City of Snoqualmie is in the heart of the Mountains to Sound Greenway, a scenic corridor stretching along Interstate 90 from the edge of the desert grassland of Central Washington, through the forests and rugged peaks of the Cascades, to the bike and pedestrian trails on the Seattle waterfront. The city takes an active role as stewards of this region and integrates parks into natural surroundings carefully, with thought toward preservation of the original land while also providing areas for residents to enjoy outdoor recreation.

The City of Snoqualmie provides 540 acres of open space and 25 miles of trails to the public. It currently operates 34 parks ranging from various sized playgrounds and athletic fields throughout Snoqualmie neighborhoods, to large multi-use community parks, and parks suitable as outdoor event venues such as Snoqualmie Point Park, Sandy Cove Park, Snoqualmie Community Park, and Centennial Fields. The Parks & Recreation Department supports many youth and adult sports programs including soccer, softball, and baseball, among others.

Snoqualmie Point Park, the newest park in Snoqualmie, is part of the Mountains to Sound Greenway and offers a stunning view of the Snoqualmie Valley and the Cascades stretching from Snoqualmie Pass to Mount Baker in Northern Washington.

Activities in the Snoqualmie Valley

- Trails: walking and hiking (all levels)
- Biking: mountain and road (Home of Tour de Peaks)
- Fishing (trout, steelhead, salmon)
- Kayaking (Class II and Class III)
- Golf (two courses; Home of the Boeing Classic)
- Cross-country skiing
- Downhill skiing (25 miles to Snoqualmie Pass)

CITY PLANNING

City planning is a top priority in Snoqualmie to ensure a high quality of life for residents and economic viability for businesses. Currently, Snoqualmie is in final development of the Downtown Master Plan, which will provide a land use and development plan for the downtown commercial district. It includes concepts for streetscapes, on-street and off-street parking, a proposed river walk, redesign of Railroad Park, and potential for a new community green. The emphasis of the Downtown Master Plan is pedestrian accessibility, preservation of historic character, business mix, and other elements for downtown revitalization.

Snoqualmie contributes to the revitalization of downtown Snoqualmie as part of the Downtown Master Plan. By consolidating staff, three City of Snoqualmie properties in downtown can be sold, which will open prime real estate locations for additional retail and business services, further supporting economic growth initiatives.

The new city hall is the first facility built in Snoqualmie for the express purpose of providing city employee workspace and a central location for the public to access city services and information. It houses the City Council chambers and is designed to create a public space for civic gatherings. Many aspects of the new city hall integrate green initiatives as the city moves toward stronger environmental stewardship.

TRANSPORTATION

Snoqualmie is served by two King County Metro bus routes. One route travels roundtrip from North Bend to Issaquah by way of downtown Snoqualmie throughout the day. The other makes a direct connection with downtown Seattle during peak commute hours each weekday.

Snoqualmie Valley Transit shuttles serve the upper and lower Snoqualmie Valley.

SCHOOLS

Snoqualmie Valley School District #410 provides academics, sports, music programs, and much more for approximately 5,600 students in ten schools. Test scores are among the highest in the state.

Many excellent public and private colleges and universities are within an hour of Snoqualmie in King and Pierce counties. Bellevue Community College (BCC) is the nearest college to Snoqualmie – only 20 miles west on Interstate 90. It is the third largest institution of higher learning in Washington State. The University of Washington is 28 miles from Snoqualmie. Founded in 1861, it is one of the preeminent research universities in the world.

LIBRARY

The new 6,000 square foot Snoqualmie Library is located in the Snoqualmie Ridge Marketplace. Large windows throughout the building take advantage of the natural light and allow for views of the surrounding mountains. The library received the 2008 Build Washington Award. Other nearby libraries are located in North Bend and Fall City.

HEALTH CARE

There are a wide range of local health care options in Snoqualmie including family medicine, pediatrics, dental, optometry, chiropractic, physical rehabilitation, naturopathy and many other services. Hospital and emergency room facilities include the local Snoqualmie Valley Hospital and major medical centers in nearby Issaquah and Bellevue.

PUBLIC SAFETY

Public safety is an important and valued part of the community. The City of Snoqualmie has its own police, fire, and emergency management departments. It operates its own REVERSE 911® system, which allows city officials to quickly send emergency messages citywide. The city also owns and operates 1650 AM radio, a local radio broadcast system that can be used during local emergencies or disasters.

New Snoqualmie City Hall

POPULATION	
2004	5,100
2005	6,300
2006	7,800
2007	8,600
2008	9,300
2009	9,800

GREEN INITIATIVES

Environmental protection and conservation is an important part of Snoqualmie's culture. More than 100 years ago, Snoqualmie began producing clean, sustainable electricity at the Snoqualmie Falls power plant. That tradition continues. The City of Snoqualmie has been a leader and partner in conservation of open space such as Meadowbrook Farm preservation, Mountains to Sound Greenway efforts, and preservation of the Weyerhaeuser Tree Farm. The Snoqualmie Preservation Initiative protects the Snoqualmie Falls view-shed and also preserves thousands of acres of wilderness in the surrounding area.

Snoqualmie has employed numerous environmentally sensitive strategies including wastewater recycling, pedestrian-oriented urban design, energy saving code requirements in new housing, an extensive urban forestry program, and many features in the new city hall. Many more green-oriented projects are planned or underway such as completion of a bio-solids treatment facility, campaigns to significantly increase and broaden recycling efforts, further development of anti-sprawl land use policies, prospective conversion of the City's fleet to alternative fuel vehicles, and increased involvement in state and federal legislation.

One of the Snoqualmie City Council goals is to increase Snoqualmie's efforts in the areas of conservation and environmental sustainability. City staff will be measuring their current environmental practices and setting goals to reduce the city's carbon footprint. In partnership with more than 965 U.S. cities to date, Snoqualmie will strive to achieve the commitments and goals of the U.S. Mayors Climate Protection Agreement, which Snoqualmie Mayor Matt Larson signed in November 2007.
(www.usmayors.org; click "Mayors Climate Protection Center")

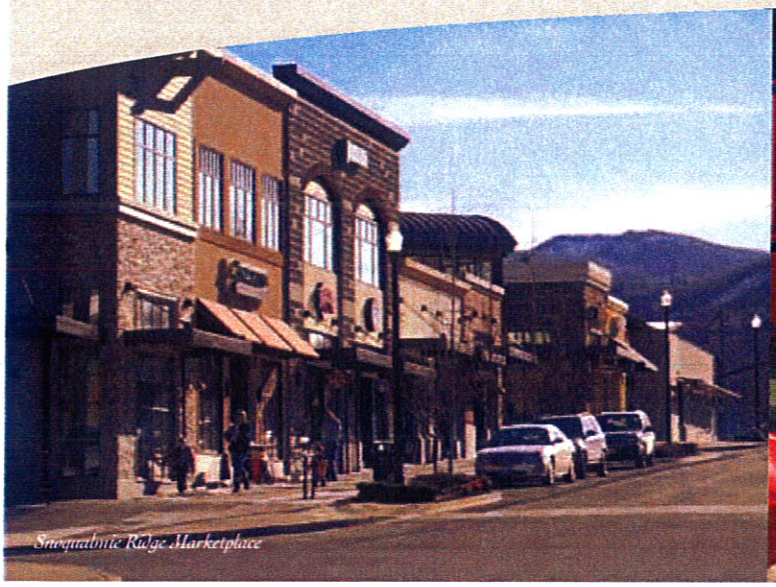
ECONOMIC DEVELOPMENT

Snoqualmie seeks to improve the economic well-being and quality of life for the community by helping to create and retain businesses that provide a stable tax base. Economic development includes job creation, economic diversification, productivity of property, and recognition of local products. Meeting these goals will support tax base growth, which the city government relies on to provide city services to residents, business owners, and tourists.

Businesses in Snoqualmie range from retail stores, restaurants, professional and health services, and non-profits to major corporations and business ventures. Among the largest businesses in Snoqualmie are T-Mobile, Philips Oral Healthcare, Nuprecon, and Technical Glass, all located in the Snoqualmie Ridge Business Park. Other large employers include the Snoqualmie Valley School District, Snoqualmie Valley Hospital, the City of Snoqualmie, and the Salish Lodge & Spa.

BUILDING PERMITS / VALUATIONS		
2004	510	$ 108,596,591
2005	411	$ 84,500,467
2006	535	$ 105,512,280
2007	514	$ 96,603,837
2008	414	$ 42,953,558

RETAIL SALES – TAXABLE	
2004	$129,974,661
2005	$152,021,474
2006	$172,619,313
2007	$187,741,867
2008	$167,754,077


Snoqualmie Ridge Marketplace

Northwest Railway Museum

Snoqualmie Falls

Snoqualmie Falls is the second most visited attraction in Washington State after Mount Rainier. Each year, more than 2.2 million visitors from around the world come to see its 270-foot cascade over granite cliffs from the Upper to the Lower Snoqualmie River. Snoqualmie Falls is higher than Niagara Falls by more than 100 feet. During summer, the cascade is steady and elegant. In the winter, the cascade creates a curtain of roaring volume and force. A forest trail leads hikers to the edge of the Snoqualmie River and an observation point near the base of the falls. This natural wonder is truly breathtaking.

Northwest Railway Museum

The Northwest Railway Museum is located at the historic Snoqualmie Depot and is the largest railway museum in Washington State. It has historic artifacts on display, including dozens of locomotives, freight cars and passenger cars. The Snoqualmie Valley Train offers seasonal train rides along a five-mile segment of historic railway from a viewpoint over Snoqualmie Falls to the North Bend Depot. The new Conservation and Restoration Center allows all types of collection care to be performed, including preservation, restoration, reconstruction, and maintenance.

Downtown Historic District

The City of Snoqualmie was established in 1903 with its heart along Railroad Ave SE adjacent to the Snoqualmie River. Downtown Snoqualmie is sometimes referred to as the historic district for its many landmarks. There are unique shops, local artisan crafts, and many restaurants from coffee houses to casual fare to fine dining. Downtown Snoqualmie is the home of the Northwest Railway Museum and is one mile from Snoqualmie Falls.

Snoqualmie Casino

The Snoqualmie Casino is the largest casino in the state and has a strong regional pull for Snoqualmie. It has a fully-stocked casino floor, six lounges and clubs, a world-class sports and concert venue for top-bill entertainment and a wide array of dining options.

TOP ATTRACTIONS

- Snoqualmie Falls
- Northwest Railway Museum
- Downtown Historic District
- Salish Lodge & Spa
- Snoqualmie Point Park
- Meadowbrook Farm
- Snoqualmie Casino
- Mount Si Golf Course
- TPC Snoqualmie Ridge
- Snoqualmie Ridge Marketplace

ANNUAL EVENTS

- Railroad Days
- Boeing Classic PGA Champions Tour
- Mountains to Sound Greenway Days
- Day Out with Thomas the Tank Engine
- Tour de Peaks
- 3-on-3 Basketball Tournament
- Legends Classic Car Show
- Tanner Jeans Memorial Bike Safety Rodeo
- Snoqualmie Relay for Life

Snoqualmie is 25 miles east of Seattle. Drive another 25 miles east on Interstate 90 and you'll reach the Snoqualmie Pass ski resorts and the gateway to Eastern Washington. Snoqualmie is adjacent to Interstate 90 and Highway 18, allowing easy access to and from our city.

CITY OF SNOQUALMIE DIRECTORY

City of Snoqualmie
38624 SE River St.
PO Box 987
Snoqualmie, WA 98065

425-888-1555
www.ci.snoqualmie.wa.us
SnoqualmieCityHall@ci.snoqualmie.wa.us

OFFICES

Main Office/Information	425-888-1555
Mayor's Office	425-888-5307
City Administrator	425-888-1555
City Attorney	425-831-1888
City Clerk	425-888-1555
Communications/PIO	425-888-1555

DEPARTMENTS

Building	425-888-5435
Finance & Administration	425-888-1555
Human Resources	425-888-1555
Emergency Management	425-888-5911
Fire	425-888-1551
Parks & Recreation	425-831-5784
Planning	425-888-5337
Police	425-888-3333
Public Works	425-831-4919

RESOURCES AND INFORMATION

Snoqualmie Valley School District
Administration: 8001 Silva Ave SE
425-831-8000
www.svsd410.org

Snoqualmie Valley Hospital
9565 Ethan Wade Way SE
425-831-2300
www.snoqualmiehospital.org

Snoqualmie Public Library
7824 Center Blvd SE
425-888-1223
www.kcls.org/snoqualmie

King County Government Services
206-296-0100
www.kingcounty.gov

King Country Metro Transit
206-553-3060
http://transit.metrokc.gov/

Snoqualmie Valley Transportation
425-888-7001
www.snoqualmievalleytransportation.org

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VISITOR INFORMATION

Snoqualmie Valley Chamber of Commerce
425-888-4440
www.snovalley.org
info@snovalley.org

Seasonal Visitor Information Center
North Bend Railroad Depot
205 E. McClellan St., North Bend

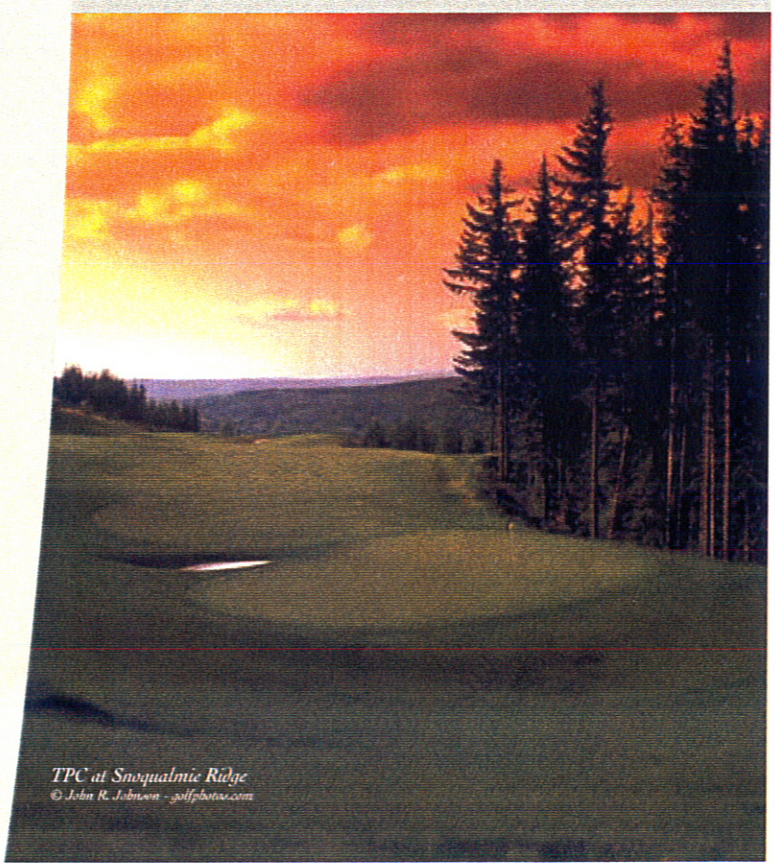
MEETING & EVENT VENUES

Salish Lodge & Spa
800-2-SALISH
www.salishlodge.com

Mount Si Golf Course
425-391-4926
www.mtsigolf.com

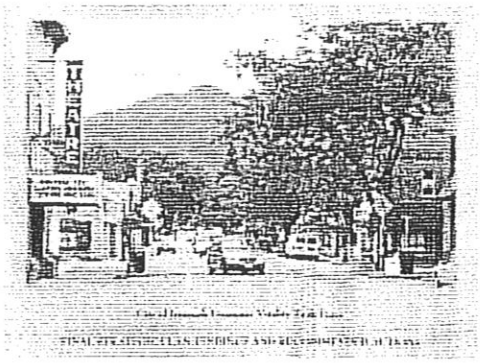
TPC Snoqualmie Ridge Golf Club
(membership required)
425-396-6000
www.tpcsnoqualmieridge.com

Snoqualmie Casino
425-888-1234
www.snocasino.com



TPC at Snoqualmie Ridge
© John R. Johnson - golfphotos.com

Economic Vitality



Economic Vitality

The City of Issaquah initiated a review of the City's Economic profile with the goal of developing a strategic plan to enhance the economic vitality of the City. The City set up an Economic Vitality Task Force to take that task on.

The purpose of the Task Force was to examine our strengths to understand the opportunities that exist today and in the near future, and to lay out potential roles and opportunities that Issaquah can work on to shape its future.

Now, and in the years ahead, the communities that are the healthiest economically will be those that offer high environmental quality and community livability. Issaquah has the chance for both. We have many treasures, cherished by residents and businesses alike, including our natural setting and resources, our mountains, streams, and salmon. The arts are vibrant here: we have a well respected live theater, summertime music concerts, among many other amenities. Our Salmon Days Festival and the Public Market bring neighbors and visitors together to enjoy our small-town atmosphere.

How do we take control of our future so that we can protect these values and attributes?

The Economic Vitality Task Force has completed their work and has presented a strategic plan to the City Administration and City Council. The City Council will be reviewing the strategic plan recommendations over the next several months to decide its priorities against the Task Force's recommendations.

Contact:

Daniel Trimble
Economic Development Manager
Phone: 425-837-3012
Email: dant@ci.issaquah.wa.us

City News

Meneghini to Retire

Mayor Honors Ichijo USA

Hearing: Medical Marijuana Collective Gardens

Read All City News

Attachment E

EXISTING SERVICE AREA & CHARACTERISTICS

WATER SERVICE AREA

The boundaries of the Black Diamond Water System's retail and future service areas are depicted in ***Figure 2.7, Water Service Area***.

Retail Service Area

The Municipal Water Supply – Efficiency Requirements Act, Chapter 5, Laws of 2003 (Municipal Water Law), amended the State Board of Health Code (RCW 43.20) to require that municipal water suppliers provide water service to all new retail customers within a retail service area under certain conditions. A retail service area is the area within which water is or will be sold directly to the ultimate consumers.

According to the Municipal Water Law, a municipal water supplier has a duty to serve new water service within the identified retail service area if the utility meets the criteria listed below. Black Diamond meets these criteria and thus has a duty to serve within the retail service area.

- Can provide water service in a timely and reasonable manner;
- Has sufficient water rights, or uses water from a source that has a water right;
- Has sufficient capacity to serve the water in a safe and reliable manner as determined by the Department of Health; and
- Is consistent with the requirements of any comprehensive plans or development regulations adopted under RCW 36.70A or any other applicable adopted comprehensive plans, land use plans, or development regulations.

It should be noted that a portion of the Retail Service Area is outside of the Future Service Area as defined in the SKC-CWSP. The location of this boundary discrepancy is in the western half of the western annexation area as recently annexed by the City. This land is anticipated to be developed in conjunction with the anticipated development in this area. The City and Covington Water District are cooperatively preparing an interlocal agreement reflecting this boundary adjustment. The City of Black Diamond will participate in a future update to the SKC-CWSP to ensure this boundary revision is properly reflected.

PHYSICAL ENVIRONMENT[2]

Planning for the future water system requires a basic understanding of the physical environment of the service area. A working knowledge is useful in identifying any constraints which may affect the development of the water system. Physical characteristics which influence planning and design include topography, geology and soils, surface water, groundwater, and climate. Descriptions of these characteristics, as well as a summary of environmentally sensitive areas in the City are as follows:

[2] This section on the Physical Environment is an excerpt from City of Black Diamond, Final Comprehensive Water System Plan, 2000.

223

EXHIBIT

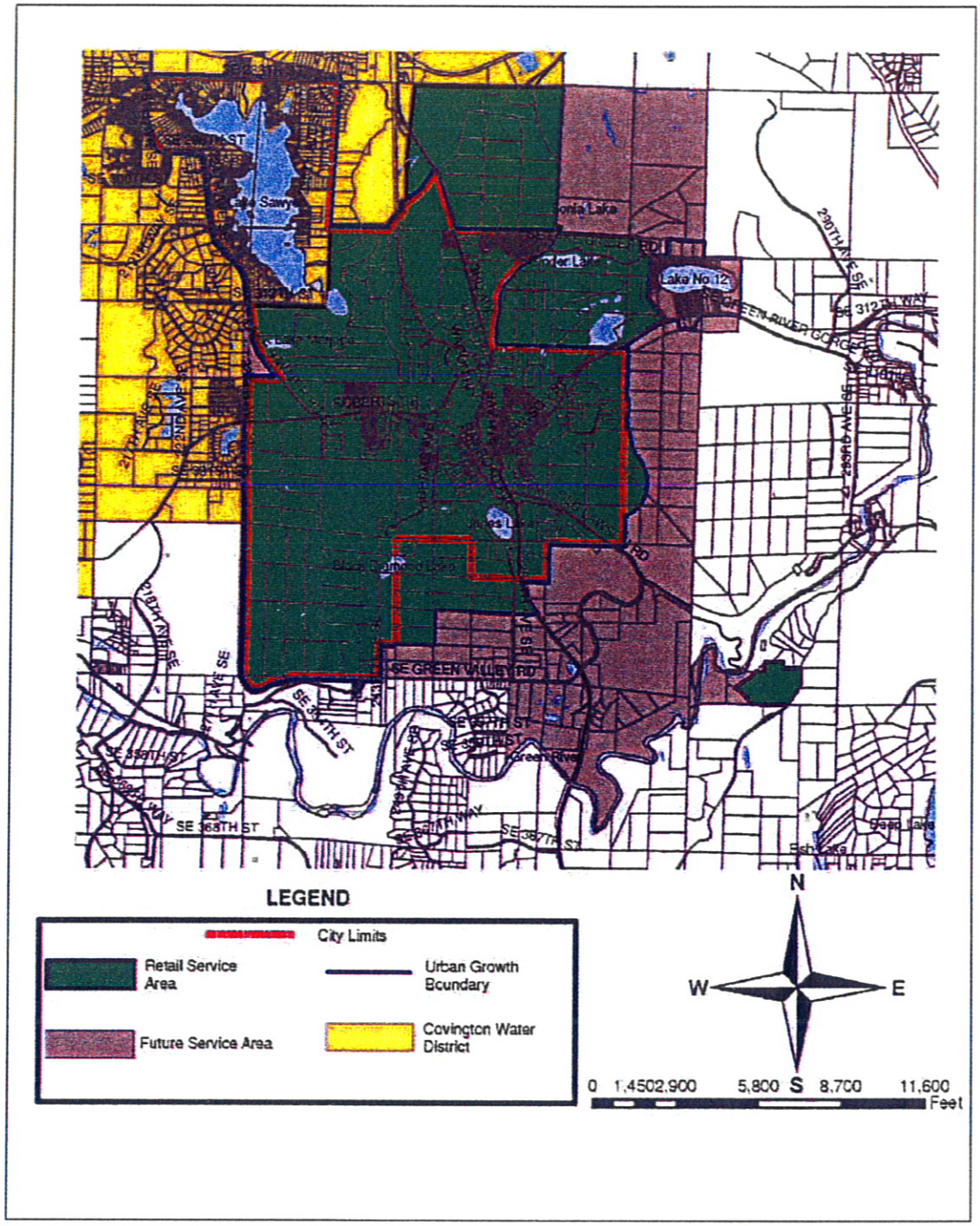


Figure 2.7, Water Service Area

Ex E-2

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

20435 72nd Ave. S. , Suite 200, K17-12• Kent, Washington 98032 -2358

July 24, 2009

Dan Dalsanto
City of Black Diamond
PO Box 599
Black Diamond Wa 98010

RE: City of Black Diamond, ID# 07220
King County
Water System Plan – Approval
Submittal #:08-0613

Dear Mr. Dalsanto:

The City of Black Diamond Water System Plan (WSP), received by the Office of Drinking Water (ODW) on July 19, 2008, with revisions submitted on June 4, 2009, has been reviewed and in accordance with the provisions of WAC 246-290-100, is hereby **APPROVED**.

Approval of this WSP is valid as it relates to current standards outlined in Washington Administrative Code (WAC) 246-290 revised July 2008, WAC 246-293 revised September 1997, and RCW 70.116, and is subject to the qualifications herein. Future revisions in the rules and statutes may be more stringent and require facility modification or corrective action. An approved update of this WSP is required on or before July 24, 2015, unless ODW requests an update or plan amendment pursuant to WAC 246-290-100(9).

APPROVED NUMBER OF CONNECTIONS

The analysis provided in this WSP shows the water system has sufficient capacity to meet the growth projections during this planning period. The City of Black Diamond water system can support an **"unspecified"** designation for its approved number of connections. A specific number of approved connections will not be applied at this time. Development may occur in compliance with the schedule and information provided in this WSP. This designation may be rescinded (and replaced with a specified number of approved connections) if ODW determines that the WSP is no longer representative of system activities.

LOCAL GOVERNMENT CONSISTENCY

This document meets local government consistency requirements for WSP approval pursuant to RCW 90.03.386 and RCW 43.20.

WATER RESOURCES

This approval does not provide any guarantee and should not be considered to provide any guarantee concerning legal use of water or any subsequent water right decisions by the Department of Ecology.

SERVICE AREA AND DUTY TO SERVE

Pursuant to RCW 90.03.386(2), the service area identified in this WSP service area map may now represent expanded "place of use" for this system's water rights. Changes in service area should be made through a WSP amendment.

The City of Black Diamond has a duty to provide new water service within its retail service area. This WSP includes service policies to describe how your system plans to provide new service within your retail service area.

CONSTRUCTION WAIVERS

Standard Construction Specifications for distribution main extensions in this WSP are approved. Consistent with WAC 246-290-125(2), this system may proceed with the installation of distribution main extensions provided this system completes and keeps on file the enclosed construction completion report form in accordance with WAC 246-290-125(2) and WAC 246-290-120(5) and makes it available for review upon request by ODW.

We recognize the significant effort and resource commitment involved in the preparation of this WSP. Thank you for your cooperation.

Sincerely,

Richard Rodriguez
Regional Planner
Northwest Drinking Water Operations
(253) 395-6771

Derek Pell, PE
Assistant Regional Office Manager
Northwest Drinking Water Operations
(253) 395-6764

cc: Steve Hirschey, King County UTRC
Seattle King County Health Dept.
Andy Dunn, Department of Ecology, NWRO
Christine Smith, P.E., PacWest Engineering

E-3

King County
Department of Natural Resources and Parks
201 S Jackson St, Suite 700
Seattle, WA 98104-3855
206.296.6500

April 19, 2010

Dan DalSanto
City of Black Diamond Water Department
25510 Lawson Street
P.O. Box 599
Black Diamond, WA 98010

Dear Mr. DalSanto:

Please find enclosed a copy of King County Ordinance 16774, which approves the City of Black Diamond 2008 Water System Plan.

Thank you for all of your assistance in developing the Plan and working with the Utilities Technical Review Committee during its review.

If you have any questions, please call me at 206-205-0817.

Sincerely,

Stephen Hirschey
Chair, Utilities Technical Review Committee

SH:cz

Enclosure

cc: Christine Smith, P.E., PacWest Engineering, LLC

King County

KING COUNTY

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

March 22, 2010

Ordinance 16774

Proposed No. 2010-0075.1 **Sponsors** Dunn and Phillips

1 AN ORDINANCE approving the City of Black Diamond
2 2008 Water System Plan.
3 STATEMENT OF FACTS:
4 1. King County has adopted K.C.C. chapter 13.24, which requires
5 approval of comprehensive plans for water and sewer utilities that
6 distribute or obtain water in unincorporated King County as a prerequisite
7 for operating in unincorporated King County, receiving approval for
8 annexation proposals, being granted right-of-way franchises and being
9 given approval for right-of-way construction permits. K.C.C. 13.24.060
10 prescribes the requirements for approval of such plans, including
11 consistency with state and local planning requirements.
12 2. RCW 70.116.050 requires that water system plans developed by
13 purveyors within the boundaries of a critical water supply service area are
14 to be reviewed by local governments to ensure that the plans are not
15 inconsistent with the land use plans, shoreline master programs and
16 developmental policies of those local governments.
17 3. King County has adopted a comprehensive plan that includes water
18 supply policies in its provisions for facilities and services (policies F-213
19 through F-245) that call for consistency with other adopted plans, support

for regional water supply planning, reclaimed water use and water conservation, and protection of water resources.

4. The city of Black Diamond ("the city") has submitted its 2008 water system plan ("the plan") to King County for review and approval. K.C.C. chapter 13.24 requires review of water system plans by the utilities technical review committee ("UTRC"), and a recommendation to the King County executive and council on the plan and the requirements under K.C.C. chapter 13.24 and consistency with the King County Comprehensive Plan. The UTRC has reviewed the planning data and city operations and hereby finds:

a. The plan uses growth projections based on build-out forecast information provided by developers, which are larger numbers than the population targets under the growth management act, but the customized forecast is appropriately used;

b. The plan uses King County land use classifications for those parts of the city's service area that are located in unincorporated King County. The city does not have a franchise to operate in unincorporated King County;

c. The capital facility plan is adequate to meet anticipated facility and service needs;

d. The plan is consistent with applicable state water quality laws, including the evaluation of reclaimed water use, which the city is doing voluntarily; and

e. The plan is consistent with other pertinent county adopted plans and policies, with the exception of the existing South King County Coordinated Water System Plan, which will need to be modified as provided for by law.

5. The Washington state Department of Health approved the city's plan on July 24, 2009.

6. The city completed a state Environmental Policy Act checklist and issued a determination of nonsignificance for the issuance of the plan on March 31, 2009.

7. The city's operations and facilities meet multiple existing statutory, administrative, and planning standards. As the city's operations, facilities and planning meet the requirements of the King County Code and are consistent with the King County Comprehensive Plan, the UTRC recommends approval of the plan conditioned on the city's submitting a franchise application under K.C.C. chapter 6.27 within one year of the date of such an approval.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The City of Black Diamond 2008 Water System Plan, Attachment A to this ordinance, is hereby approved as a comprehensive water system plan conditioned on the city's submitting a franchise application to King

62 County under K.C.C. chapter 6.27 within one year of the effective date of this

63 ordinance.

Ordinance 16774 was introduced on 2/8/2010 and passed by the Metropolitan King County Council on 3/22/2010, by the following vote:

Yes: 8 - Ms. Drago, Mr. von Reichbauer, Mr. Gossett, Ms. Hague, Ms. Patterson, Ms. Lambert, Mr. Ferguson and Mr. Dunn
No: 0
Excused: 1 - Mr. Phillips

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Robert W. Ferguson

Robert W. Ferguson, Chair

ATTEST:

Anne Noris

Anne Noris, Clerk of the Council

RECEIVED
2010 APR -2 AM 11:09
CLERK
KING COUNTY COUNCIL

APPROVED this 31st day of March, 2010.

Dow Constantine

Dow Constantine, County Executive

Attachments: A. City of Black Diamond Water System Comprehensive Plan--May 2009

E-4

ORDINANCE NO. 09-929

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AMENDING SECTION 13.08.010 OF THE BLACK DIAMOND MUNICIPAL CODE REGARDING THE COMPREHENSIVE WATER SYSTEM PLAN

WHEREAS, the City of Black Diamond owns and operates a public drinking water system within the State of Washington; and

WHEREAS, in July 2001 the City adopted a Comprehensive Water System Plan; and

WHEREAS, State law require the operators of water system to develop and maintain a current Water System Plan and the existence of such a plan is necessary to ensure that future improvement are planned and scheduled in the manner necessary to protect the public health and safety; and

WHEREAS, the City hired PacWest Engineering, LLC to update the Water Comprehensive planning for the City of Black Diamond in keeping with the Department of Health regulations; and

WHEREAS, PacWest has completed the plan update, addressed and answered comments, coordinated Department Health review, amended the plan to meet the most current land use decisions; and

WHEREAS, the City staff, the Public Works Committee of the Council, the public and the full council has had opportunity to review, provide comment, and/or provide input into the development of the water comprehensive plan; and

WHEREAS, a formal public hearing was held by the council on September 17, 2009; and

WHEREAS, King County has determined that our Water Comprehensive Plan is consistent with county planning policies and expects to approve Black Diamond's Water Comprehensive Plan in the near future; and

WHEREAS, the Department of Health has approved the City of Black Diamond's Water Comprehensive Plan on July 24, 2009;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 13.08.010 of the Black Diamond Municipal Code is amended to read as follows:

> **13.08.010 Adopted.**
> The City of Black Diamond Water System Comprehensive Plan prepared by PacWest Engineering, LLC dated May 2009 is adopted and incorporated by reference.

Section 2. Effective Date. This Ordinance shall be in full force and effect five (5) 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. Severability. 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 on the 17th day of December, 2009.

Passed by the City Council on the 17th day of December, 2009.

CITY OF BLACK DIAMOND:

Howard Botts, Mayor

Attest:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Yvonne Ward, Interim City Attorney

Published: 12-22-09
Posted: 12-18-09
Effective Date: 12-27-09

Black Diamond
Master Planned Developments

DEVELOPMENT AGREEMENT
OPEN-RECORD HEARINGS

July/August 2011

"Response" to YarrowBay's 8/4/11 Written Comments on Oral Testimony Regarding

Transportation Issues

by

Peter Rimbos

Presented to

Hearing Examiner Phil Obrechts

EXHIBIT 224

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IV. YARROWBAY'S RESPONSE TO PUBLIC TESTIMONY BY SUBJECT MATTER 2

ATTACHMENT #6 -- TRANSPO GROUP RESPONSE BRIEF ON THE VILLAGES AND LAWSON HILLS MPDs 2

Peter Rimbos *19711 241st Ave SE, Maple Valley, WA 98038*

1. Introduction

Presented herein is a "Response" to YarrowBay's "Written Comments" on Oral Testimony (Exhibit #139) submitted on August 4, 2011. This "Response" focusses solely on Transportation issues contained in the YarrowBay "Written Comments."

Selected passages from the YarrowBay "Written Comments" are reproduced herein (with their page numbers provided for easy reference). All Response's herein are presented in purple. The Villages MPD Ordinance Conditions of Approval numbering system is used throughout.

2. Response to YarrowBay's Written Comments

II. YARROWBAY'S SECTION-BY-SECTION RESPONSE TO DEVELOPMENT AGREEMENT COMMENTS

(p. 64)

EXHIBIT 'F" (The Villages and Lawson Hills)

Comments: During the Development Agreement Hearings, YarrowBay heard several citizens testify that the Traffic Monitoring Plan set forth in Exhibit "F" of both Development Agreements is reactive instead of proactive.

YarrowBay Response: These allegations are incorrect. The Traffic Monitoring Plan proposed in Exhibit "F" of both Development Agreements is in fact proactive because it ensures that transportation mitigations are in place and/or constructed prior to experiencing a significant adverse impact on the particular road segment or intersection. In order to further explain the proactive nature of its Traffic Monitoring Plan, YarrowBay asked its transportation consultant, Kevin Jones at Transpo Group, to prepare a more detailed response. His declaration and brief are attached hereto as **Attachment 6**. There is no need or basis to revise the Traffic Monitoring Plan contained in the Development Agreements.

RESPONSE:

Please see specific Response under Attachment 6 -- TRANSPO GROUP RESPONSE BRIEF ON THE VILLAGES AND LAWSON HILLS MPDs.

Peter Rimbos *19711 241st Ave SE, Maple Valley, WA 98038*

IV. YARROWBAY'S RESPONSE TO PUBLIC TESTIMONY BY SUBJECT MATTER

(pp. 86-87)

B. Transportation

During the public testimony portion of the Development Agreement Hearings, comments were made regarding the transportation mitigation component of The Villages and Lawson Hills MPDs. Such testimony included allegations that YarrowBay would perform no mitigation until the new transportation model is run at the 850 dwelling unit threshold established in the MPD Permits' Conditions of Approval; assertions that the Traffic Monitoring Plan is reactive instead of proactive; requests that the new regional transportation model be run now (contrary to the MPDs' Conditions of Approval); and questions regarding which roads and intersections are included in the new transportation model. In response to these comments, YarrowBay had its transportation consultant prepare a responsive document. This transportation brief is attached hereto as **Attachment 6**.

RESPONSE:

Please see specific Response under Attachment 6 -- TRANSPO GROUP RESPONSE BRIEF ON THE VILLAGES AND LAWSON HILLS MPDs.

In addition to the topics addressed in Kevin Jones' responsive document (Attachment 6), YarrowBay provides the following responses to some additional transportation-related testimony.

1. *Maple Valley Transportation Mitigation Agreement.* During the public testimony portion of the Development Agreement Hearings, comments were made that the transportation mitigation set forth in the Maple Valley Transportation Mitigation Agreement (Exhibit "Q") is insufficient because it was

based on the transportation model used in The Villages and Lawson Hills FEISs. To the contrary, Maple Valley is a municipal entity who hired its transportation experts, creates its own transportation demand model, and negotiated a transportation mitigation agreement with YarrowBay. Maple Valley actively participated in the MPD Permit hearings. With the help of its own transportation experts, Maple Valley independently analyzed the sufficiency of the transportation mitigation called out in the mitigation agreement. There is no reason to assume that mitigation was forced on the City of Maple Valley by YarrowBay or Black Diamond. Moreover, the Hearing Examiner does not have authority to recommend modifications to an agreement between the City of Maple Valley and YarrowBay. There is no reason or basis to revise Exhibit "Q" of both Development Agreements.

RESPONSE:

"(F)orced," one need look no further than MPD Conditions of Approval 15 and 16, which state, in part:

> [Cond. 15] *"Intersection improvements outside the City limits may be mitigated through measures set forth in an agreement between the developer and the applicable agency. Where agreement is possible, the developer shall enter into traffic mitigation agreements with impacted agencies outside the city that have projects under their jurisdiction in the list below....If an agreement is not reached, the projects identified below shall be added to the regional project list and included as part of the Development Agreement, and the developer and the City shall agree on reasonable time frames for construction (for projects located within the City of Black Diamond and subject to Condition No. 10), or Applicant payment of its proportional costs toward construction of projects located outside of the City of Black Diamond.*

[Cond. 16] *"If (a) the City of Maple Valley does not appeal or challenge....the Applicant shall provide the following mitigation for the City of Maple Valley, which as to the identified mitigation supercedes the mitigation projects listed for the City of Maple Valley in Condition 15 above."*

The City of Maple Valley took what they could get given the above Condition 15 language: "*If an agreement is not reached...the developer and the City shall agree on reasonable time frames for... Applicant payment of its proportional costs toward construction of projects located outside of the City of Black Diamond.*" This was coupled with the above Condition 16 language: *"If (a) the City of Maple Valley does not appeal or challenge...."* So, if Maple Valley does not reach "agreement" with the "developer" and decides to exercise their legal rights and appeal or challenge the "rogue" City of Black Diamond's irresponsible and inconsiderate decisions, then it will be subject to whatever Black Diamond and the "developer" decide they need for mitigation of their projects.

No. Maple Valley was not *"forced,"* but they were put over a barrel and told, more or less, to *"take this deal or we'll decide what monies are needed to "mitigate" the traffic nightmare we're imposing on your city."*

2. Periodic Review Requirement. The MPD Permits' Conditions of Approval Nos. 17(a) (The Villages) and 16(a) (Lawson Hills) require period(ic) review of the adequacy of The Villages's and Lawson Hills's transportation mitigation. These conditions require that additional mitigation will be tested to assure that it is working at such phase or interval determined by the Black Diamond City Council. There is no reason or basis to add additional transportation review requirements to the Development Agreements.

RESPONSE:

Firstly, Condition 17 a. only addresses validation of the new traffic demand model *"at such phase or interval determined by the Black Diamond City Council"* not *"period(ic) review."*

Secondly, the Development Agreements present no process for how and when any of the traffic analysis will be done, what will be done with the results, nor how those results will inform the formulation of *"...additional measures necessary to adequately mitigate the impacts."* (ref.: Cond. 17 b.). There is no Traffic Analysis Plan presented in the Development Agreements.

Finally, a City *"review"* is not a detailed traffic analysis and mitigation concept re-assessment.

3. South Connector Road Location. In her verbal testimony on July 14, 2011, Kristen Bryant testified that the South Connector Road had not been fully evaluated in its current alignment location and thus may cause adverse impacts on wetlands. The South Connector Road is located in the southern portion of the The Villages MPD. Contrary to the testimony of Ms. Bryant, the Villages FEIS (Exhibit 24) recognized that the final location of roads may change and, in fact, includes the express disclaimer:

> It should not be overlooked that the City's Transportation Element includes a substantially revised network from today's existing conditions. Many of the new roadways are developer-driven projects, which would be required as a result of development. No environmental analysis has been conducted on any of the potential new alignments - upon receipt of specific applications for development, the City will need to determine if additional impacts could occur, and what appropriate mitigation may be necessary.

At page 3-18. In addition to this language in the FEIS, Section 4.10 of The Villages Development expressly notes that MPD Implementing Projects are *"expected to undergo additional SEPA review."* Thus, between The Villages FEIS

at page 3-18 (Exhibit 24) and Section 4.10 of the Development Agreement, there is ample protection that any future application for construction of the South Connector Road will be subject to SEPA. There is no reason or basis to add supplemental conditions to The Villages Development Agreement regarding the South Connector Road.

RESPONSE:

Actually, this helps make a point the Public has made repeatedly: the original EISs did not evaluate all of the impacts of the project. As your Honor's EIS appeal decision stated, those were more like *"programatic"* EISs. Yet here we are at the next step--the Development Agreements--with more project details being proposed and the Public does not have the benefit of a supplemental EIS to assess these new details. Your Honor may not have the authority to reverse City Staff's adoption of the old EISs for the Development Agreement review, but he can acknowledge that detailed environmental review for this stage is wanting and recommend to the City Council that additional review be undertaken before decisions are made. This is especially a concern given that the EISs contained considerable transportation-related issues, many of which essentially are still outstanding.

YarrowBay suggests that additional review can occur later. This is a classic "shell game." At this juncture we are told it's too early for a supplemental EIS. Later, we'll be told the individual projects are too small to warrant an EIS. This approach will result in the cumulative effects of the numerous individual projects escaping detailed review in an EIS. Your Honor should not be a party to this evasion of SEPA's requirements.

Our reference to the cumulative effects of the individual projects is not limited to just the proposed transportation projects. Actually, virtually everything YarrowBay does on-site will impact wetlands, water quality, wildlife, and a host of other important environmental resources. It is still not known where all the Schools will be located! Deficiencies in the old EISs were excused, in part, due to the "general" nature of the

approval at the MPD Ordinance stage. With more specificity now in hand, the City requires more analysis of these issues now, whether through an SEIS or otherwise. Your Honor should recommend that that information be obtained now, before the City Council acts. Without it, the City Council cannot make informed decisions on the proposed development agreements.

(p. 92)

I. Cost/Benefit/Risk Analysis.

Throughout the Development Agreement Hearings, testimony was presented that the Development Agreements are somehow deficient because a cost-benefit analysis for various mitigation measures has not been completed. However, the SEPA Rules expressly do not require a cost-benefit analysis when conducting an EIS. WAC 197-11 450 ("A cost-benefit analysis (WAC 197-11-726) is not required by SEPA."). Moreover, other than a brief indication of the intended environmental benefits of mitigation measures, SEPA does not require a cost/benefit/risk analysis of identified mitigation measures. Thus, neither the FEISs nor the Development Agreements are deficient for not including a cost/benefit/risk analysis.

Here, the FEISs identified the environmental impacts of the proposed MPDs and conditioned the MPDs under SEPA to mitigate the environmental impacts. Including those mitigated conditions in the Development Agreements requires no further analysis. In addition, as argued elsewhere in this document, the Examiner has no jurisdiction or authority to review and comment on SEPA issues.

RESPONSE:

"Cost-Benefit-Risk Analyses" are a necessary part of **Transportation Planning**. Here they should consist of an assessment of costs, benefits, and risks associated with potential traffic mitigations to inform major decision points and identify problems before they become insurmountable, either technically or fiscally.

Projects one tenth this size call for such analyses. Imprudence is not strong enough a word to describe this omission. A "contract" of this size, cost, and risk should be subject to such analyses to head off technical, schedule, and/or fiscal disaster. This should go without saying.

Cost-Benefit-Risk Analyses should be conducted to identify critical trade-offs and inform the City's decision-making process. Analyses should also provide assessments of acceptable levels of Cost Risk, Schedule Risk, and Technical Risk associated with various levels of Traffic Mitigations. This affects not only the City of Black Diamond, but adjoining jurisdictions of Maple Valley, Covington, Enumclaw, Auburn, and Unincorporated King County.

Cost-Benefit-Risk Analyses of each traffic project should be conducted. These analyses, at a minimum, should address project impacts, estimated costs, cost risks, detailed schedule, schedule risks, and contingency plans.

The costs, along with cost estimation and schedule risks, potentially are enormous; as are the uncertainties in any projections associated with each. This represents a tremendous long-term commitment that could possibly "bet the city's future." Cost Risks should be addressed as desired funding levels may be unattainable and adequate funding sources unavailable. As of now such level and funding sources are not identified, nor apparently available possibly out several decades. Schedule Risks also are high, as is the case with any major transportation project. In either good or poor economic times it seems that finding adequate dedicated funding for large transportation projects always is a key issue to be confronted. These analyses should assess the attendant adverse impacts on traffic levels of service due to schedule slips and/or funding shortfalls.

Cost-Benefit-Risk Analyses should be continually revisited throughout the life of the projects and potential impacts related to each risk factor should be identified and assessed. Cost-Benefit-Risk Analyses should be included for each mitigation proposed that provide specific details for decision-makers and assess potential impacts

associated with slips in schedule, not securing adequate funding, and traffic pattern changes. Such Plans should be continually updated, as required, and submitted to the City for review and approval at an adequate time (possibly 180 days) before a Phase is scheduled to begin.

In addition, a rigorous Cost-Benefit-Risk Analysis should be performed, at a minimum, for three scenarios: 6-year Transportation Improvement Plans (TIPs) are funded on time; 20-year TIPs are not fully funded; and 20-year TIPs are funded on time. This would provide a good assessment of potential risks that could be encountered, so that City, County, and State leaders can make informed decisions.

Peter Rimbos *19711 241st Ave SE, Maple Valley, WA 98038*

ATTACHMENT #6 -- TRANSPO GROUP RESPONSE BRIEF ON THE VILLAGES AND LAWSON HILLS MPDs

(Reference: August 3, 2011, Mr. Kevin Jones of Transpo Group letter to Mr. Colin Lund of YarrowBay Holdings; **SUBJECT: RESPONSE BRIEF ON THE VILLAGES AND LAWSON HILLS MPDs**)

Let me preface this portion of my Response by stating that YarrowBay, in including Mr. Jones' letter in their Written Comments, is presenting it as being from an "Expert." Yet, when afforded the opportunity to do so by your Honor during the Expert Testimony portion of these Open-Record Hearings, YarrowBay offered no Expert Testimony. Consequently, *Attachment #6* cannot be considered as testimony from an Expert, because the Public was not able to cross-examine Mr. Jones during the Expert Witness session on July 21, 2011. Bottom line: Mr. Jones' letter should not carry any more weight than that of any other Testimony or this Response.

Should the new. transportation demand model be run prior to Development Agreement approval?

No. Running the model prior to Development Agreement approval would require debatable assumptions with respect to project information (trip generation rates, trip distribution; patterns, internal capture, mode splits, etc.) as well as other key assumptions (land use, planned roadways, standards, etc.) which are less predictable over a long time period. By running the model later, actual project information can be incorporated and the forecasting would be more meaningful because key assumptions would be more predictable over a shorter time period. Mitigation necessary after 850 dwelling units will be determined using the new model. In the meantime, intersections requiring mitigation can be reasonably predicted given existing traffic operations and the

applicable level of service standard. Adequate transportation mitigation for the first 850 dwelling units has, in fact, already been identified as outlined in the following section.

RESPONSE:

Of course, model assumptions always get more fine-tuned with time and experiential data. But, that misses the point. The entire premise of these MPDs and the traffic analysis on which they are based comes from a flawed model using flawed assumptions (both per your Honor's 2010 FEIS Appeals Hearings Decisions and the MPD Applications Hearings Recommendations and all the subject-matter Expert Testimony--except Parametrix's). During the FEIS Appeals Hearings your Honor ruled there was no current valid Traffic Demand Model with which to analyze the distribution of traffic locally or regionally, nor one from which mitigations could be analyzed and optimized for selection.

Now a new more "regional" Traffic Demand Model is under development. It will be completed soon, but put on the shelf until 850 building permits are issued, at which time it will be "validated." Such a plan provides no value. Why wait? The following prudent and technically sound steps should be followed:

1. Finish the new model now.
2. Validate the new model now.
3. Run the new model now.
4. Compare results from the new model with those of the original model (i.e., used in the traffic analyses to support the FEISs, MPD Applications, and MPD Ordinances).
5. Determine if any of the "proposed" mitigations would change, especially outside the City limits, where the new "regional" aspects of the model will be most useful.

Given the current flawed model with flawed assumptions, no one knows if *"Adequate transportation mitigation for the first 850 dwelling units has, in fact, already*

been identified." This is an empty statement since no credible analysis or data exists to support it.

If the model is not run now, is it possible that traffic impacts generated by the first 850 dwelling units will not be mitigated?

No. Traffic impacts generated by the first 850 dwelling units in the MPDs will be adequately mitigated per the terms of The Villages and Lawson Hills Development Agreements. For example, Phase 1A of The Villages MPD includes nearly 850 dwelling units. The Traffic Impact Study (TIS) prepared in conjunction with the land use applications for that phase concluded that intersection improvements will be necessary at four existing intersections. SE 288th Street/216th Avenue SE, SR 169/SE Black Diamond-Ravensdale Road and SR 169/Roberts Drive need to be improved by the first year of development (approximately 110 dwelling units) and SE Auburn-Black Diamond Road/Lake Sawyer Road SE needs to be improved by the third year of development (approximately 720 dwelling units). In addition, two future intersections will need to be improved, including SE Auburn-Black Diamond Road/Main Street by the second year of development (approximately 420 dwelling units) and SE Auburn-Black Diamond Road/Community Connector A by the fourth year of development (approximately 820 dwelling units).

Transportation mitigation is also required by the Cities of Covington and Maple Valley prior to the first 850 dwelling units (see Exhibits "R" and "Q" to the Development Agreements). As described in the *Covington Transportation Mitigation Agreement,* the first of four installments toward the City's "MPD Mitigation Fee" must be paid in conjunction with an occupancy permit for the first dwelling unit. In addition, before building permits are issued for more than 700 dwelling units, the *Maple Valley*

Transportation Mitigation Agreement requires a financial contribution to "Project E." This project will add a second southbound through lane on SR 169 from Witte Road SE to SE 244th Street as well as add a second northbound through lane on SR 169 from south of SE 240th Street to Witte Road SE.

RESPONSE:

All this "mitigation" proposed is based on the flawed model using flawed assumptions. No one knows if these "mitigations" are adequate to solve the impending traffic volumes that will be unleashed by even the first Phase of the MPDs. This is exactly why your Honor called for a "new" model and the assumptions be revisited, especially the wildly flawed Internal Capture Rate assumptions.

That aside, the Maple Valley "mitigations" proposed *("a financial contribution to 'Project E.' ")* are only ~0.3 and 0.7 mi segments along the long SR-169 corridor. Unfortunately, any "Band-Aid improvement" in those small segments will simply evaporate as traffic proceeds through all the "choke" points along the SR-169 corridor, a series of ratcheting between 1 lane to 2 lanes to 1 lane, etc. I live in Maple Valley. I drive these sections of SR-169 every day. I live and breath the existing "choke" points.

One last point is "Queueing." No Queueing Analyses have ever been done as part of the overall Traffic Analyses. Unfortunately, there are a number of consecutive "queued" intersections through Maple Valley, particularly the segments mentioned above for mitigation. Since Queueing Analyses never have been done, on what basis can anyone state these mitigations will work to maintain adequate traffic flows and throughput at key intersections?

Will the new transportation model include SE Green Valley Road, SE Lake Holm Road, 218th Avenue SE, and the SE Black Diamond-Ravensdale Road-Landsburg Road SE-Issaquah-Hobart Road SE corridor?

The new transportation model required by The Villages and Lawson Hills MPD Permit Approvals' conditions is being created by the City of Black Diamond's transportation consultant, Parametrix. I spoke with Parametrix staff the week of July 25, 2011 and confirmed that the entire limits of SE Green Valley Road, SE Lake Holm Road and 218th Avenue SE are included in the new model. Parametrix also confirmed that the SE Black Diamond-Ravensdale Road-Landsburg Road SE-Issaquah-Hobart Road SE corridor is included in the new model, extending from approximately 238th Way SE to the north (north of SR 18 and south of Issaquah) to SR 169 to the south.

RESPONSE:

In an April 18, 2011, meeting with Parametrix' Traffic expert John Perlic (City Staff members Steve Pilcher and Andy Williamson and members of the Public Mike Irrgang and myself were in attendance) I asked Mr. Perlic many questions about the Traffic Demand Model. The *"SE Black Diamond-Ravensdale Road-Landsburg Road SE-Issaquah-Hobart Road SE corridor"* is included in the new model, but it has never been "analyzed," nor do they intend to analyze it. As a major alternative for commuters to and from Black Diamond and Issaquah, Bellevue, or Seattle, this is unacceptable.

Further, for all its MPD-affected roads, King County repeatedly has warned in their comments (both for the DEISs and FEISs) that:

> *"Since 'safety'-related improvements are permitted, and 'capacity' improvements are expressly prohibited in the Rural Area, a detailed evaluation of existing conditions of the roadways impacted by The Villages & Lawson Hills projects should be made, and mitigation identified to address the "appropriate provisions" requirement in the RCWs."*

This is not addressed in the Development Agreements.

Do the MPD Conditions address the following analysis assumptions: internal trip capture rates, peak hour factors, and vehicle queue lengths?

Lawson Hills MPD Conditions of Approval Nos. 13 and 16(a) and The Villages MPD Conditions of Approval Nos. 14 and 17(a) address internal trip capture rates. Similarly, Lawson Hills MPD Condition No. 16(b) and The Villages MPD Condition No. 17(b) address peak hour factors. Therefore, there is no reason to include supplemental conditions regarding internal trip capture rates or peak hour factors in the Development Agreements. Such issues have already been addressed.

None of the MPDs' Conditions of Approval address vehicle queue lengths as part of the new transportation demand model. However, this exclusion is appropriate as the Hearing Examiner's Decision (Conclusion of Law No. 11) on the EIS Appeals of The Villages and Lawson Hills MPDs recognized: "Such [queuing] analysis should be done when looking at specific improvements in the construction phase, so that determinations of significant adverse impacts can occur in conjunction with construction, rather than trying to guess what will happen 15 years from now." The analysis of queue lengths, as the Hearing Examiner concurred, should occur at the specific traffic improvement stage and not in conjunction with the new transportation model.

RESPONSE:

Yes, the MPD Ordinance Conditions of Approval address Internal Capture Rates (ICRs) and peak-Hour Factors (PHFs). Unfortunately, the Development Agreements provide no methodology for choosing the final ICRs. Other questions left unanswered include: (1) At what intervals will ICRs be recomputed/reassessed and fed into the model? and (2) How will the expected differences between Institute of Transportation Engineers (ITE) ICR categories (e.g., *"residential"*) and <u>actual</u> ICR data from other MPDs in *"W. Washington"* be weighed and subsequently resolved?

ICRs: Reference to the *ITE Trip Generation Handbook* may not be appropriate, as there are several ITE scenarios from which to choose, none of which may be applicable in this case. The Master Developer chose ICRs for *"residential development"* (based on the *ITE Trip Generation Handbook* Codes 210--Residential and 220--Apartment for average US urban areas, which Black Diamond is not). This is a composite of urban and suburban communities throughout the country and yields ICRs which are much too high. Clearly, Black Diamond and related parts of southeast King County are not typical of many urban and suburban settings, but rather sit on the rural/suburban fringe where ICRs are expected to be much lower and, thus, AM and PM commuting traffic in and out of Black Diamond much worse than predicted.

PHFs: Unfortunately only peak-hour "monitoring is mentioned in the Development Agreements (ref.: *Exhibit F, Traffic Monitoring Plan, Sect. D Triggers and Timing for Construction of Transportation Projects*). However, Condition 17 b. calls for PHFs to be evaluated. PHFs must be addressed, as evaluating Level of service (LOS) for the *"entire PM peak hour"* (as called for in the above referenced Development Agreement section) is insufficient. Your Honor also specified that in his *FEIS Appeals Decision* and *MPD Application Recommendations*. Finally, the evaluation of PHFs was stated as a necessity by WSDOT's Ramin Pazooki in his Expert Testimony during the 2010 FEIS Appeals Hearings. Specifically, Mr. Pazooki discussed how Volume/Capacity (v/c) Ratios reveal problems with certain "legs" (e.g., lanes) of an intersection. He stated that maintaining v/c ratios of less than or equal to 1.0 is a necessity and that once a certain intersection reaches capacity (v/c > 1.0) the Level-of-Service (LOS) value is no longer effective, especially for major corridors.

Queueing Analyses: As discussed earlier, Queueing Analyses have never been done. While your Honor certainly stated in his FEIS Appeals decision that such analyses need not be done at the "programmatic" level of an FEIS, your Honor also stated it should be done at the "project" level. Unfortunately, even though we're now in the throes of the Development Agreements--where such details are to be discussed, we

still have no evaluation of Queueing between intersections (or even a discussion of what and how such analyses will be done). To make matters worse, there are two signed and sealed Traffic Mitigation Agreements with the Cities of Maple Valley and Covington that call out specific projects, none of which have ever been evaluated for Queue lengths. Unfortunately, this appears to be another "shell game"--didn't have to do it before, not planning for it now, and won't do it later!

What is the Traffic Monitoring Plan in the Development Agreements *and in what ways* is it *proactive?*

In simple terms, the Traffic Monitoring Plan contained in Exhibit "F" of both Development Agreements will monitor existing traffic and model future traffic before (and in the middle of) each phase of the combined MPDs. Potential traffic impacts will be identified through this Plan and the timing for necessary mitigation will be determined. Findings will be presented in a written report for the City's review. The report will be used by the City to, if necessary, adjust the mitigation or construction timing of any new roadway or intersection improvement.

The Plan is designed to ensure that the construction of a necessary transportation improvement project begins *before* a street or intersection is impacted by MPD traffic and therefore, by definition, the Plan is proactive.

The proactive measures of the Plan include: (1) modeling the potential traffic impacts of an entire phase of development *before* submitting land use applications for that phase; (2) determining when particular transportation improvements will be necessary *before* submitting land use applications for that phase; and (3) beginning construction of a particular improvement *before* the street or intersection is

predicted to no longer meet the applicable level of service standard.

RESPONSE:

Let's take each of these three points separately."

"(1) modeling the potential traffic impacts of an entire phase of development before submitting land use applications for that phase." This point relates to Development Agreements' Exhibit F -- Traffic Monitoring Plan *Part A. Required Timing for Modeling and Monitoring*. Unfortunately, details are lacking in the Development Agreements.

What *"model"* is going to be used *"before submitting land use applications for each Phase"* and in the *"middle of each Phase"* and how will that *"model"* be validated? This is especially of a concern prior to 850 building permits being issued as called for in MPD Ordinance **Condition 17a.** It should without saying that the confidence level associated with results generated using an un-validated model is unknown. There is no clarity on what will happen prior to the 850 threshold.

"Modeling" is a tool that helps to predict future traffic loads and distribution patterns over certain time periods. The *"model"* cannot be static, rather it must be ever evolving so its predictive capabilities are improving through periodic *"monitoring"* and subsequent validation cycles. In fact, "re-validation" of such a model often is required, especially if the original conditions under which it was validated change substantially, such as much higher traffic loads, major changes in traffic distribution, new intersections, road widening, employment center growth or movement, etc.

"Monitoring" is a tool to gage current traffic loads and distribution patterns in real time. Consequently, *"monitoring"* cannot supplant good predictive modeling techniques, but can be used to aid in validating a "model" to determine how close and repetitively it predicts current conditions. However, *"monitoring"* in itself is reactive at best and one will never "catch up" until after full build-out of the MPDs is reached. *"Monitoring"* will always be "chasing" the next needed mitigation improvement, such that the

transportation infrastructure--intersections and intervening road spans--always will be on the precipice of failure or outright in failure.

"(2) determining when particular transportation improvements will be necessary before submitting land use applications for that phase." This point relates to Development Agreements' *Exhibit F -- Traffic Monitoring Plan Part B. Report Requirements*. The Development Agreements again lack detail in this area.

Details are needed on how *"forecasts of future traffic volumes"* will be made and used to adjust the model and/or the speed and breadth of needed mitigations and further build-out of the MPDs. There is insufficient detail in the Development Agreements to determine whether this satisfies the stipulations of MPD Ordinance **Conditions 11** and **17**, which call for such methodology to be used.

Details are needed on the frequency of any traffic counts and level-of-service (LOS) computations are not discussed in the Development Agreements to determine whether and when these counts will be of practical use.

As to determining "when" traffic improvements are necessary, discussion of the *"Report"* mentions that *"results"* will be used to determine timing. Does this refer to *"results"* from the *"modeling"* or the *"monitoring"*? If the latter, then this is <u>reactive</u> and not <u>pro-active</u>. Consequently, it constitutes a risky approach that must be rectified. Results from a <u>validated</u> model could be used here, but those model runs must be done frequently, as conditions could and, probably, will change markedly throughout buildout of the MPDs.

"(3) beginning construction of a particular improvement before the street or intersection is predicted to no longer meet the applicable level of service standard." This point relates to Development Agreements' *Exhibit F -- Traffic Monitoring Plan Part D. Triggers and Timing for Construction of Transportation Projects.*

From Part D.: "*For intersection improvements, the threshold trigger is when the intersection level of service (LOS) ... would ... no longer meet the adopted LOS....*" and "*the threshold trigger to construct the improvement is when MPD traffic would increase*

delay or impact LOS at any intersection on existing roadways to a point at which the new roadway would be warranted." Again, it is not clear if we are talking about results from "modeling" or "monitoring." If the latter, this is all reactive, not pro-active. Consequently, it is unnecessarily risky. This does not meet either **Black Diamond Municipal Code Section 18.98.020 or 18.98.80** "*...to provide infrastructure when needed.*" This is particularly the case with **18.98.80**: "*Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ....*"

It appears the improvements will not even be identified until after LOS has been compromised! This is re-active and uses the wrong *"trigger"* to mis-*"time"* construction of needed projects to alleviate congestion. How large will the time lag be between *"delay"* or *"impact,"* intersection improvement design, securing funds, and construction? How can this be described as *"pro-active"*? This approach does not meet MPD Ordinance MPD Ordinance **Condition 20**: *"The Monitoring Plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service."*

Further driving home the point that the Monitoring Plan is re-active is the following statement from Part D: "*The Master Developer shall only be required to perform an improvement if the applicable threshold is triggered.*" *These "thresholds" really mean "failure"* of an intersection or intervening road segments. Successful engineering projects do not plan *for "failure"* and then react, they seek to thoroughly analyze and design their projects ahead of time with adequate margins so as to avoid failure.

The timing described in the Development Agreements is inadequate and unacceptable. How can permits be reviewed and issued and *"construction of transportation improvements" "commence before the impacted street or intersection falls below the applicable level of service"* when the entire Monitoring Plan is predicated on "failure" as a trigger mechanism?

Finally, there are two statements in Part D that once again prove the Monitoring Plan is reactive on timing:

Peter Rimbos *19711 241st Ave SE, Maple Valley, WA 98038*

> *"For projects within Black Diamond that are also within the State right-of-way, the report shall set a deadline for commencement of only engineering and design of the improvement but not a deadline for commencement of construction."*

There is no plan in the Development Agreements that explains how this "lag time" will be overcome or what will happen when planned mitigations are not put in place when needed.

> *"For projects outside the City of Black Diamond where additional permitting from another jurisdiction is required, the report shall set the time at which the Master Developer must commence the permitting and/or engineering and design process, but shall not set a deadline for commencement of construction."*

Since the vast majority of proposed mitigations are *"outside the City of Black Diamond,"* this in effect unnecessarily delays timely construction of those improvements. Many of the proposed projects are major undertakings to fundamentally change portions of SR-169, but the Monitoring Plan states that the Master Developer won't even commit to a process whereby the commencement of construction of needed improvements is identified.

In summary, the Development Agreements' *Exhibit F -- Traffic Monitoring Plan* does not support Mr. Jones statement: *"The Plan is designed to ensure that the construction of a necessary transportation improvement project begins before a street or intersection is impacted by MPD traffic and therefore, by definition, the Plan is proactive."* The Monitoring Plan as conceived and as written is re-active.

Are the requirements in the MPD Conditions and Development Agreements more stringent than Black Diamond's transportation concurrency system?

Yes. Similar to the City's Concurrency Management System (CMS) described in Chapter 7 of the adopted *Comprehensive Plan,* the MPD Conditions and Development

Agreements require that adequate transportation facilities are in place concurrent with the development of The Villages and Lawson Hills MPDs. The CMS and requirements in the MPD Conditions of Approval and Development Agreements are dissimilar in that "concurrent with the development" is defined in the City's *Comprehensive Plan* to mean that "improvements *or strategies* are in place at the time of development, *or that a financial commitment* is in place to *complete* the *improvements or strategies within* 6 years *of development."* (Emphasis added.)

In contrast, the requirement in the MPD Conditions of Approval and Development Agreements is far more stringent. It requires that the construction of a particular improvement begin *before* the street or intersection is predicted to no longer meet the applicable operations standard; whereas, the City's *Comprehensive Plan* authorizes the possibility that an improvement will be completed up to six years after the development occurs. Moreover, the requirements described in the MPD Conditions of Approval and Development Agreements require physical improvements to the City's transportation system, not (unlike the *Comprehensive Plan)* strategies that are less certain and may or may not prove successful.

Simply put, the MPDs' Conditions of Approval and Development Agreements not only meet the intent of the City's CMS but also ensure that transportation improvements are constructed before potential impacts and well before they would otherwise be required under the City's *Comprehensive* Plan.

RESPONSE:

Mr. Jones is lumping together the MPD Ordinance Conditions of Approval and the Development Agreements to make the contention that Concurrency requirements are met. The discussion herein does not address the MPD Ordinance Conditions of Approval, rather it addresses whether or not the Development Agreements meet the

MPD Ordinance Conditions of Approval. In this respect, meeting Transportation Concurrency requirements, as in many respects, the Development Agreements do not. As discussed in the response to the previous commentary regarding the Monitoring Plan, the timing required to meet Concurrency is not adequate. This is especially the case, as identified earlier, in how Exhibit F's Part D addresses mitigation *"within the State right-of-way"* and *"outside the City of Black Diamond City."*

There is no Transportation Concurrency Plan. For any mitigation plan to succeed, at a minimum, Transportation Concurrency must be met. The MPD Ordinances' *Exhibit B--Conclusions of Law, para. 30* mentions ensuring *"concurrency at full build-out."* Transportation Concurrency testing also is called out in the *Black Diamond Comprehensive Plan* in sections 7.2.2, 7.9.2, and 7.11.1. Also, Black Diamond Municipal Code Section 18.98.080 states, in part, as conditions of approval of any future MPD permits under *Paragraph A.4.a* that there be a: *"...phasing plan and timeline for the construction of improvements ... so that: Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ...."* So, looking ahead, the required transportation improvements must be in place, at least, at final plat approval.

Further, there is no Transportation Concurrency Plan to be put in place should concurrency not be met. Such a plan, when added, should detail needed adjustments--such as funding, timing, moratoriums, etc.--to be made should a particular improvement fail the Transportation Concurrency Test.

A viable and executable Transportation Concurrency Plan is not provided in the Development Agreements. The Development Agreements are incomplete until a cohesive Traffic Concurrency Plan is incorporated--as required by the **Black Diamond Municipal Code** and **Black Diamond Comprehensive Plan**. A proper Transportation Concurrency Plan should contain the following elements:

1. Complete a regional traffic demand model.

2. Validate the model to show it provides reproducible results in a variety of situations.

3. Evaluate model sensitivity to key assumptions and input parameters.

4. Run the validated model to conduct traffic analyses to determine the level and timing of needed mitigations.

5. Conduct transportation concurrency testing to address when and how required adjustments in funding, timing, moratoriums, etc. should be made if a particular mitigation improvement fails the Transportation Concurrency test.

6. Transportation Concurrency testing must be periodically conducted at the beginning, midpoint, and end of each Phase to ensure concurrency at full build-out.

7. The intersections needing mitigation as identified in the Traffic Analyses must be monitored. Such monitoring should identify those areas needing improvements to be constructed with development to bring mitigation projects into service before the Level of Service is degraded below the City's standard.

When it comes to Transportation Concurrency testing there is no mention in the Development Agreements of <u>how</u> it will be done, <u>when</u> it will be done, or <u>if</u> it will be done.

8-15-11

Before the City of Black Diamond Hearing Examiner Regarding YarrowBay Objections to Exhibits

Mr. Olbrechts,

YarrowBay forwarded a large number of objections to exhibits that were posted on the City's web-site on August 12, 2011 and labeled Exhibit 189. Included in Exhibit 189 was an objection to Exhibit # 67, which was my written testimony regarding the increased likelihood and magnitude of flooding of properties on Lake Sawyer due to the very large increase in new stormwater runoff that will arrive from the developed MPDs.

YarrowBay's specific objection is reproduced below:

> 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.

I strongly take exception to YarrowBay's objection to <u>all portions of Exhibit # 67</u>. If the Hearing Examiner reads my written testimony (Exhibit # 67) he will see that the intent of my testimony is not to debate the environmental effects of MPD runoff to Lake Sawyer, but to bring to the Examiner's attention a serious matter of Public Safety.

The increase to Lake Sawyer water levels documented in Exhibit# 67 clearly show that flooding magnitudes will increase due to large volumes of new MPD stormwater runoff and the blockage of Lake Sawyer's outlet under certain high winter water levels. This in

EXHIBIT 225

turn will increase the damage to property and pose an even greater threat to Public Safety from flooded septic systems and flooded homes.

Washington State code on Development Agreements, RCW 36.70B.170 (4), states (in part): *"**A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health or safety.**"*

Because the MPDs pose a threat to Public Safety, my testimony proposes to add new language to the Development Agreements to ensure that there will be no greater volume of stormwater delivered to the tributaries to Lake Sawyer from the MPDs in the post-developed state than would occur under pre-developed conditions. This is the only way the City and Lake Sawyer residents can be assured that the MPDs will cause no additional harm to Lake Sawyer residents.

So, Mr. Examiner this is an issue regarding a serious threat to Public Safety and not just an issue of environmental analysis, mitigation adequacy, and SEPA review to which YarrowBay objected. It is my fervent hope that the Examiner will overrule YarrowBay's objection to Exhibit# 67 and recommend to the City Council that the new provision suggested in Exhibit# 67 to protect the Public Safety be added to the Development Agreements.

Respectfully submitted,

Jack C. Sperry
29051 229th Ave SE
Black Diamond, WA 98010

DEVELOPMENT AGREEMENT OPEN-RECORD HEARINGS--July/August 2011

"Reply" to YarrowBay's 8/12/11 Objections (Exhibit #189)

to Exhibits #118 and #145: Written Statements on Transportation

INTRODUCTION

On August 12, 2010, the City of Black Diamond posted Exhibit #189 to its MPD Exhibits page. Exhibit #189 contained a series of "blanket" objections by YarrowBay to most Written Statements submitted by the Public, Organizations, and Government Jurisdictions.

My extensive Written Statement on Transportation, Exhibit #118, and my Supplement (a reformatting of my "Stop-Light" Table), Exhibit #145, were included in Exhibit 189's "blanket" objections. Interestingly, YarrowBay was able to cover 103 pages (Exh. #118) of highly technical and reasoned arguments into six "blanket" objections.

Herein I refute each objection and request your Honor overrule YarrowBay's objections. Below I reproduce and address each YarrowBay objection to Exhibits #118 and #145 (with my <u>underlining</u> to emphasize each issue in question).

OBJECTIONS AND COUNTER-ARGUMENT

1. *"This objection is to all portions of this exhibit regarding <u>environmental impacts</u>, <u>environmental analysis</u>, the <u>adequacy of mitigation</u>, and <u>SEPA review</u>...."*

In my Written Statements I simply use some of the background regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review to support arguments in describing the gross deficiencies in the Development Agreements, not attack prior SEPA review. Unfortunately, YarrowBay misrepresents that, possibly because it's advantageous for them to do so. It is requested your Honor remain steadfast in his convictions that the Public can present such support for its arguments.

Peter Rimbos 19711 241st Ave SE, Maple Valley, WA 98038

EXHIBIT 226

I respectfully request your Honor overrule this frivolous YarrowBay objection.

2. *"This objection is also to all portions of this exhibit that challenge the MPD Permit Approvals...."*

As described above, in my Written Statements I simply use some of the background regarding environmental impacts, environmental analysis, the adequacy of mitigation, and SEPA review to support arguments in describing the gross deficiencies in the Development Agreements, not attack prior SEPA review. Unfortunately, YarrowBay misrepresents that, possibly because it's advantageous for them to do so. It is requested your Honor remain steadfast in his convictions that the Public can present such support for its arguments.

I respectfully request your Honor overrule this frivolous YarrowBay objection.

3. *"This objection is to all portions of this exhibit regarding transportation concurrency and traffic mitigation."*

Once again YarrowBay completely misrepresents the intent and thrust of Exhibits #118 and #145. Throughout Exhibit #118 there is detailed discussion of whether or not the Development Agreements have met the *MPD Ordinance Conditions of Approval*. Those discussions describe in great detail where the Development Agreements fall short or completely ignore such Conditions. Those discussions are summarized in Exhibit $118's "Stop-Light Assessment Table" (and in Exhibit's #145's reformatted version of same) leading to a grade assigned by category and requirement. This type of discussion and critique are exactly what your Honor stipulated in his Pre-Hearing and

Peter Rimbos 19711 241st Ave SE, Maple Valley, WA 98038

subsequent Orders that he would consider from Oral Testimony and Written Statements.

What YarrowBay *apparently* finds "objectionable" in Exhibits #118 and #145 is the fact that a detailed technical argument has been presented that shows the Development Agreements are totally deficient in providing a plan that meets the following *minimum* transportation requirements:

(1) A **Traffic Analysis Plan** that provides sufficient detail to determine, analyze, and mitigate future traffic scenarios.
(2) Any specificity on needed **Transportation Mitigation** costs, schedules, risks, and funding mechanisms.
(3) No real **Transportation Plan** to address future traffic loads, develop and finance needed mitigations, and provide contingencies.

Against the *MPD Ordinance Conditions* and *Black Diamond Municipal Code* the Development Agreements received an overall Grade of **RED** because they fail to meet several requirements or supply insufficient information, as enumerated in the "Stop-Light Assessment Table" (ref.: Exhibit #118 and reformatted in Exhibit #145).

I respectfully request your Honor acknowledge his Orders that the Development Agreements are required to present the details of a plan to meet the MPD Ordinance Conditions of Approval and overrule this misdirected YarrowBay objection.

4. *"YarrowBay objects to the portions of this exhibit that allege non-compliance of the Development Agreements with certain BDMC provisions, the City's Comprehensive Plan, and the Growth Management Act (GMA)."*

Peter Rimbos 19711 241st Ave SE, Maple Valley, WA 98038

YarrowBay's "blanket" objection to any mention of Black Diamond Municipal Code, Black Diamond Comprehensive Plan, and the State GMA fails to identify what they are objecting to. Not only has YarrowBay offered no specifics, it has essentially stated that ,once an Ordinance is passed, there can be no question of whether codes, plans, and laws are properly adhered to. That in itself should cause your Honor pause.

I respectfully request your Honor either require specificity here on YarrowBay's part or overrule this frivolous YarrowBay objection.

5. *"YarrowBay objects to the portions of this exhibit that allege non-compliance with the King County Code."*

YarrowBay makes the incredible claim in their objection that *"...the King County Code does not apply to the Development Agreements."* Yet, for all the facilities--Schools, Stormwater Retention Facility, and Sewage Facilities--proposed outside the Black Diamond City limits King County is the primary Permitting Agency. Not only is King County Code applicable, in fact for these YarrowBay-proposed facilities, it is the only code that is applicable.

I respectfully request your Honor overrule this YarrowBay objection.

6. "YarrowBay objects to the supplemental conditions proposed...."

Your Honor's Pre-hearing and subsequent Orders were clear. Any "new" Conditions proposed by the Public, Organizations, and Government Jurisdictions would be transmitted by your Honor to the Black Diamond City Council for their consideration during the subsequent Closed-Record Hearings.

Peter Rimbos 19711 241st Ave SE, Maple Valley, WA 98038

Exhibit #118 fully meets your Honor's Orders and goes further by segregating Proposed "New" Conditions into a separately marked section (Section VI. Proposed "New" Conditions; pp. 76-88) following the presentation of all detailed technical arguments.

I respectfully request your Honor overrule this YarrowBay objection and forward all proposed "new" Conditions onto the Black Diamond City Council for their consideration as your Honor stated he would.

CONCLUSION

It *appears* that YarrowBay, through its "blanket" objections, doesn't understand the purpose of Development Agreements is to present a clear, unambiguous detailed technical plan to meet all applicable Ordinances, Codes, Plans and Laws.

YarrowBay's "blanket" objections to nearly anything stated or written by the Public, Organizations, and Government Jurisdictions that is critical of the Development Agreements--should they be upheld--could stifle free speech.

I respectfully request your Honor overrule the YarrowBay objections described herein.

Peter Rimbos 19711 241st Ave SE, Maple Valley, WA 98038