

Stacey Borland

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Monday, August 15, 2011 4:21 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Response to Exhibit 189

Hello Mr Pilcher,
Please forward to the hearing examiner.

To Hearing Examiner Olbrechts,

Upon visiting the city website DA exhibit page, I see that Yarrow Bay has submitted Exhibit 189, "Yarrow Bay's Objections to Exhibit 47 through Exhibit 180." While I could reply to specific concerns I have about objections to my testimony, I am more concerned about how objections are handled. Because people will not know to check the website for objections to their testimony, and should not reasonably be expected to do so, people cannot respond.

I've observed and learned from the oral proceedings that when there is an objection, the person who is being objected to can explain and clarify why they are giving the testimony. They can explain their point in a different context that makes the objection irrelevant. However, when objections are simply placed on a website with no notice, and additionally the items are hard to find on that website, the opportunity is lost to provide this clarification.

Citizens who have gone to the trouble to testify as part of a Public Hearing have the right to expect that their testimony remain on the record. If this record is at risk through an objection, those testifiers must be given notice of the objection. It seems that one of the few logical ways to do this is to require Yarrow Bay to serve the objection directly to the individuals, or, if that is not proper given protocol for a public hearing, then the City could be a go-between and provide notice back to people. This notice could be provided via the same delivery mechanism in which testimony was received (email, or if paper testimony, via mail or phone call).

Please provide a mechanism to notify people of objections. Additionally, let us know what process we can use to respond to the objections. Thank you,

Kristen Bryant - 425-247-9619



Please think of the environment before printing this email.

Stacey Borland

From: Nancy Rogers <NRogers@Cairncross.com>
Sent: Monday, August 15, 2011 5:00 PM
To: Steve Pilcher
Cc: Stacey Borland; Andy Williamson; Brenda Martinez
Subject: Responses to Yarrow Bay objections in Ex. 189

Mr. Pilcher:

Please forward this to the Examiner.

We have learned that Ms. Bryant has asked the Examiner to amend the process he already set for the submittal of objections to Exhibit Nos. 47 – 180. The process was set in the Examiner's Order on Exhibits and Response/Reply Documents, dated August 4, 2011 and required filing of objections with Steve Pilcher. All parties to this proceeding have heard statements from the Examiner or seen orders instructing them that all documents are being managed through the City's website. Indeed, other parties, including Mr. Edelman, Mr. Rimbos, and Ms. Proctor have all already responded to Yarrow Bay's objections. Thus, Ms. Bryant's concern that people may not know about the objections is incorrect.

Ms. Bryant's request for personal service appears to be directed at simply inserting more delay and expense into this hearing process. Moreover, it would be impossible to meet, since many of these exhibits do not include contact information, nor were they personally served on Yarrow Bay.

YarrowBay requests that the Examiner not impose an impossible and new "personal service" standard regarding objections, allow hearing participants through Thursday to submit responses to objections to their testimony via delivery to Mr. Pilcher, and then issue a ruling on Yarrow Bay's objections.

Thank you.

CH&

Nancy Bainbridge Rogers

Attorney

Cairncross & Hempelmann

524 Second Ave., Ste. 500

Seattle, WA 98104-2323

nrogers@cairncross.com

Direct phone 206-254-4417

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

Steve Pilcher

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Tuesday, August 16, 2011 9:52 AM
To: Steve Pilcher; Brenda Martinez
Cc: NRogers@Cairncross.com; kristenbry@gmail.com
Subject: Ruling on Yarrow Bay objections
Attachments: Order on Yarrow Bay ObjectionsII.doc

Ms. Martinez,

Please post.

Ms. Bryant,

The attached order requires information from you to authenticate photographs you submitted as exhibits.

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BEFORE THE HEARING EXAMINER FOR
THE CITY OF BLACK DIAMOND

Development Agreements Lawson Hills PLN10-0021; PLN11-0014 Villages PLN10-0020; PLN11-0013	Order on Yarrow Bay Objections to Exhibits
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As authorized by the Examiners July 14, 2011 "Order on Exhibits and Response/Reply Documents", Yarrow Bay has submitted an extensive number of objections to most of the exhibits entered into the record after the close of the verbal portion of the hearings. All objections are overruled except for those that pertain to the proper authentication of photographs for Exhibits 123, 124 and 132. The party that submitted those documents will be given an opportunity to authenticate as outlined in the "Order" section of this document.

The primary reason the objections are overruled is that as discussed in Pre-Hearing Order II the scope of a development agreement is broad. It is with some irony that almost every time the Applicant's attorney has argued that the development agreements ("DAs") are limited to implementing the master plan development ("MPD") conditions of approval, she has followed those comments with the observation that the Applicant has already proposed terms for the DAs that go beyond what is required by the MPD ordinances. Of course, it is highly commendable that the Applicant is willing to cooperate in this fashion and it is hoped that the Black Diamond community acknowledges these efforts. However, the Applicant's position results in a bifurcated review process where the City and the Applicant are free to discuss and negotiate terms that both implement and supplement the MPD conditions of approval while the public can only comment on terms that implement them. As authorized by the state statutes that create them, development agreements are an opportunity for the City and the Applicant to both satisfy the requirements of the Black Diamond Municipal Code and to negotiate the mitigation of any other impacts associated with the development proposal. The fact that the DAs are required by the Black Diamond Municipal Code to implement the MPD conditions of approval does not in any way suggest that the public is prohibited from making suggestions on how to supplement the conditions of approval as

1 authorized by state statute, especially when the City and the Applicant have been engaged in those
2 discussions themselves.

3 The Applicant's most frequent objection is that environmental impacts have already been
4 addressed in SEPA review. For the reasons discussed in the preceding paragraph, the scope of a
5 development agreement is certainly broad enough to encompass environmental impacts. The courts
6 have also ruled that the completion of SEPA review does not preclude the mitigation of impacts in
7 associated permitting review if relevant to the permitting criteria. *See Quality Products, Inc. v.*
8 *Thurston County*, 39 Wn. App. 125 (2007). Further, a finding that an FEIS is adequate does not
9 preclude mitigation in other development review as suggested by the Applicant in its objections.
10 RCW43.21C.060 provides that "any governmental action may be conditioned or denied" pursuant to
11 SEPA. (emphasis added). An environmental document such as an EIS is intended to provide the
12 basis for this exercise of supplemental authority to all the government actions to which it applies.
13 However, the exercise of SEPA supplemental authority is subject to numerous restrictions. Most
14 pertinent, conditions must mitigate impacts identified in the FEIS and the conditions must be
15 reasonable, which in the context of the DAs probably means they must be related to and
16 proportionate to the mandatory (i.e. as an implementing tool) scope of the DAs. *See*
17 *RCW43.21C.060*. Parties may also be precluded from arguing for specific mitigation if they argued
18 for the same mitigation in the MPD/FEIS hearings. *See Willapa Grays Harbor Oyster Growers*
19 *Ass'n v. Moby Dick Corp.*, 115 Wash. App. 417, 423, 62 P.3d 912 (2003). However, if all the pre-
20 requisites are satisfied, SEPA can used to mitigate a broad range of environmental issues triggered
21 by the DAs.

22 The Applicants also object to several exhibits on the premise that they are challenging the
23 MPD conditions of approval. As made clear by the Examiner in Pre-Hearing Order II and during
24 the hearings, the DA hearings are not an opportunity to request a revision to the MPD conditions of
25 approval. However, the exhibits in question do not advocate revisions to the MPD conditions.
26 They cite what the authors view as deficiencies in the MPD conditions that the authors hope to be
addressed in supplemental condition in the DAs. Framed in this manner, the arguments are relevant
to the DA hearings.

Exhibits depicting problems associated with other developments are admitted. That
information is relevant to evaluating the effectiveness of proposed design and mitigation. The
Applicants were free to identify distinguishing features. Exhibits critical of the City's design
standards are also relevant. Supplemental conditions can be used to address deficiencies of the
standards.

It is recognized that some of the concerns raised in the DA hearings are duplicative of
MPD/FEIS hearing testimony. It is also recognized that the MPD conclusions and conditions were
intended to serve as a final resolution to some issues. The Examiner's recommendation will
identify where testimony is duplicative and will identify language from the MPD approvals and
FEIS decision indicating a final resolution of issues resurrected by the public. If the Council still
wishes to try to negotiate some voluntary supplementary conditions on those issues anyway, that is
its choice. The Examiner is not in a position to deprive the Council of those choices by excluding
evidence the Council could use from the record.

1 The Applicant has objected to photographs presented in Exhibits 123, 124 and 132 as not
2 properly authenticated. The party responsible for those exhibits will be given an opportunity to
3 authenticate them.

4 **Order**

5 Except as to Exhibits 123, 124 and 132, all objections presented in "YARROW BAY'S
6 OBJECTIONS TO EXHIBIT 47 THROUGH EXHIBIT 180" are overruled. As to Exhibits 123,
7 124 and 132, the party submitting those exhibits shall identify where, when and by whom the
8 photographs were taken. No further location information on photographs identifying cross streets is
9 necessary. Tax parcel numbers may suffice instead of addresses. If the photographer and/or date of
10 a photograph is unknown, a statement that the photograph accurately depicts current conditions will
11 suffice. The requested information shall be emailed to Steve Pilcher at
12 SPilcher@ci.blackdiamond.wa.us or otherwise received by him by 8:00 am, August 19, 2011.
13 Yarrow Bay may provide a written response on the authentication information, which must be
14 emailed to Steve Pilcher at SPilcher@ci.blackdiamond.wa.us or otherwise received by him by 8:00
15 am, August 23, 2011. Mr. Pilcher is requested to immediately forward the email to the Applicant.

16 This order will be emailed by the Examiner to Kristen Bryant, who submitted Exhibits 123, 124 and
17 132, as well as the Applicant. As previously ruled by the Examiner, arguments concerning
18 objections to evidence are to be limited to the person making the objection and the person subject to
19 the objection.

20 ORDERED this 16th day of August, 2011.

21 _____
22 Phil A. Olbrechts
23 Hearing Examiner for Black Diamond
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LETTER TO THE HEARING OFFICER PHIL OLBRECHTS CONCERNING UNCONSCIONABLE REBUTTALS BY YARROW BAY DEVELOPERS REGARDING BALD EAGLE PROTECTION AND THE LAW, BOTH FEDERAL AND STATE



Dear Phil Olbrechts,
Patient Hearing Officer,

Three times our daughter Angela Taeschner has brought up the need to protect the American Bald Eagle. Her attempts show in the Black Diamond Hearing Exhibit List of April 9, 2010, as Numbers 2, 32, and 56 . (Should Yarrow Bay object because her documents were sent in via our e-mail, the fact that I have durable Power of Attorney for Angela needs to be taken into account. Said DOA dates back to December 27, 1990. Oftentimes when Black Diamond Public Hearings have been held concerning the Yarrow Bay developments, Angela has been away for medical studies in Italy, especially during times when oral public hearings have been held. She has asked me repeatedly to send in her written testimony, which I have done.) In the same list of April 9, 2010, my letters Numbers 29 and 57 appear also. Recently, I re-submitted Angela's letter with documents she had included, for we feared that they might have been lost. (You will find information as to why the this most recent submission with its attachments as coming from the e-mail address rjtaeschner@hotmail.com.) Please read the documents attached, too, for they contain federal and state law insistence on specific boundaries regarding roosting and nest sites for the bald eagle, that these boundaries of nests and roosts must be respected both in **earth-moving and building PLANS AND TIMES!** These documents, Yarrow Bay tried to silence once again with a rebuttal as follows:

“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 analysis, environmental mitigation and SEPA review is irrelevant to the Developmental Agreement Hearings and must be stricken by the Hearing Examiner.”

We are all Americans, thus bound by federal and state laws. It is unconscionable for Yarrow Bay to state that the City of Black Diamond has deemed adequate in a SEPA agreement the fact that eagle nests and roosts are placed in the agreement as SPECIFICALLY LOCATED AND DOCUMENTED AND PLACED ON THE MAPS OF PLANNED DEVELOPMENT TO BE INSPECTED PER YEAR INTO PERPETUITY BY THE VESTED AUTHORITIES OF STATE AND FEDERAL WILDLIFE DEPARTMENTS. As an American, I wish to appeal the fact that our American Bald Eagle, pinpointed as a wildlife occupant of the Lake Sawyer and Environs Area via aerial diagrams sent in documents sent in to you, has not had the benefit of

adequate protection in the MPD proposals for agreement with the City of Black Diamond. Yarrow Bay and The City of Black Diamond are bound by federal and state law—and they cannot “agree” their way around these laws no matter how many acronyms they invoke. As an American, as the Granddaughter of Italian immigrant coal miner pioneers of Black Diamond and as the daughter of a mother who bore Native American blood of the Menominee Tribe (Chippewa) in her background, I ask that you insist upon binding agreements, non-changeable and enforced into perpetuity, with respect to Yarrow Bay Developments of the land so that state and federal laws regarding the protection of the American bald eagle are adequately respected and enforced. (Please read the attached documents sent to you in our last letter via rjtaeschner@hotmail.com and you will see the specific times and seasons when NO EARTHMOVING AND/OR BUILDING IS PERMITTED. You will also note that the American eagle counts on returning to “chosen” trees and nests for re-nesting and nurturing/training the young.) In like manner, I ask you to make binding the laws enacted by the City of Black Diamond AS TO ENFORCEMENT with regard to our Heritage Trees (already cavalierly ignored by the City’s forgiving Yarrow Bay’s ruthless cutting down of over one hundred Douglas firs without permission) and add to those binding agreements for enforcement monitored by state and federal wildlife officers that our wildlife, not only the American bald eagles but also all of the fish and wildlife inclusive in this precious area, be protected by more than a narrow swath of swampland, choked-off streams, and polluted lake waters. WHEN THE GREAT TREES AND THE WILDLIFE ARE GONE, THEY ARE GONE FOREVER. It is unconscionable to attempt to negate through “hearings” the true and actual needs of the wildlife, lakes, streams, and forests that are an inheritance for all Americans. We rely on you to insist that REASON and THE LAW OF THE LAND prevail!

Yours sincerely,



Jacqueline Paolucci Taeschner, M.A., Woodrow Wilson Fellow
 30846 229th Place S.E.
 Black Diamond, WA 98010

Steve Pilcher

From: Robert Taeschner <rjtaeschner@hotmail.com>
Sent: Tuesday, August 16, 2011 4:15 PM
To: Steve Pilcher; Peter Rimbo; rjtaeschner@hotmail.com; Robert & Jacqueline Taeschner; Cincity63@comcast.net; olbrechtslaw@gmail.com
Subject: Letter from the Taeschners
Attachments: UNCONSCIONABLE YB OBJECTIONS TO FEDERAL AND STATE LAW REGARDING BALD EAGLE PROTECTION, LETTER TO HEARING OFFICER.docx

LETTER TO THE HEARING OFFICER PHIL OLBRECHTS CONCERNING
UNCONSCIONABLE REBUTTALS BY YARROW BAY DEVELOPERS
REGARDING BALD EAGLE PROTECTION AND THE LAW, BOTH FEDERAL
AND STATE

August 16, 2011

Dear Phil Olbrechts,
Patient Hearing Officer,

Three times our daughter Angela Taeschner has brought up the need to protect the American Bald Eagle. Her attempts show in the Black Diamond Hearing Exhibit List of April 9, 2010, as Numbers 2, 32, and 56 . (Should Yarrow Bay object because her documents were sent in via our e-mail, the fact that I have durable Power of Attorney for Angela needs to be taken into account. Said DOA dates back to December 27, 1990. Oftentimes when Black Diamond Public Hearings have been held concerning the Yarrow Bay developments, Angela has been away for medical studies in Italy, especially during times when oral public hearings have been held. She has asked me repeatedly to send in her written testimony, which I have done.) In the same list of April 9, 2010, my letters Numbers 29 and 57 appear also. Recently, I re-submitted Angela's letter with documents she had included, for we feared that they might have been lost. (You will find information as to why the this most recent submission with its attachments as coming from the e-mail address rjtaeschner@hotmail.com.) Please read the documents attached, too, for they contain federal and state law insistence on specific boundaries regarding roosting and nest sites for the bald eagle, that these boundaries of nests and roosts must be respected both in **earth-moving and building PLANS AND TIMES!** These documents, Yarrow Bay tried to silence once again with a rebuttal as follows:

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We are all Americans, thus bound by federal and state laws. It is unconscionable for Yarrow Bay to state that the City of Black Diamond has deemed adequate in a SEPA agreement the fact that eagle nests and roosts are placed in the agreement as SPECIFICALLY LOCATED AND DOCUMENTED AND PLACED ON THE MAPS OF PLANNED DEVELOPMENT TO BE INSPECTED PER YEAR INTO PERPETUITY BY THE VESTED AUTHORITIES OF STATE AND FEDERAL WILDLIFE DEPARTMENTS. As an American, I wish to appeal the fact that our American Bald Eagle, pinpointed as a wildlife occupant of the Lake Sawyer and Environs

Area via aerial diagrams sent in documents sent in to you, has not had the benefit of adequate protection in the MPD proposals for agreement with the City of Black Diamond. Yarrow Bay and The City of Black Diamond are bound by federal and state law—and they cannot “agree” their way around these laws no matter how many acronyms they invoke. As an American, as the Granddaughter of Italian immigrant coal miner pioneers of Black Diamond and as the daughter of a mother who bore Native American blood of the Menominee Tribe (Chippewa) in her background, I ask that you insist upon binding agreements, non-changeable and enforced into perpetuity, with respect to Yarrow Bay Developments of the land so that state and federal laws regarding the protection of the American bald eagle are adequately respected and enforced. (Please read the attached documents sent to you in our last letter via rjtaeschner@hotmail.com and you will see the specific times and seasons when NO EARTHMOVING AND/OR BUILDING IS PERMITTED. You will also note that the American eagle counts on returning to “chosen” trees and nests for re-nesting and nurturing/training the young.) In like manner, I ask you to make binding the laws enacted by the City of Black Diamond AS TO ENFORCEMENT with regard to our Heritage Trees (already cavalierly ignored by the City’s forgiving Yarrow Bay’s ruthless cutting down of over one hundred Douglas firs without permission) and add to those binding agreements for enforcement monitored by state and federal wildlife officers that our wildlife, not only the American bald eagles but also all of the fish and wildlife inclusive in this precious area, be protected by more than a narrow swath of swampland, choked-off streams, and polluted lake waters. WHEN THE GREAT TREES AND THE WILDLIFE ARE GONE, THEY ARE GONE FOREVER. It is unconscionable to attempt to negate through “hearings” the true and actual needs of the wildlife, lakes, streams, and forests that are an inheritance for all Americans. We rely on you to insist that REASON and THE LAW OF THE LAND prevail!

Yours sincerely,

Jacqueline Paolucci Taeschner, M.A., Woodrow Wilson Fellow
30846 229th Place S.E.
Black Diamond, WA 98010

Stacey Borland

From: Cincity63@comcast.net
Sent: Tuesday, August 16, 2011 11:29 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; Bill Wheeler; Joe May
Subject: Response to Exhibit 218 -
Attachments: Objection to 218 Falsehoods - DC-final word.doc

Steve-

Please forward to the Hearing Examiner and provide separate receipts to myself, William Wheeler and Joe May.

Thank you.

Cindy Wheeler

BLANKET OBJECTION
TO
RESPONSE OF CITY OF BLACK DIAMOND
EXHIBIT 218

We object to the City's Response to Verbal Testimony and Written Comments especially as they relate to William and Cynthia Wheeler, Joe May and The Diamond Coalition.

William and Cynthia Wheeler, as well as Joe May, have testified at Public Hearings throughout the MPD Process. At all times these individuals testified as just that, tax paying citizens and individual residents of this city.

At NO time did any of these three individuals say they were there to represent The Diamond Coalition or participate on behalf of The Diamond Coalition.

The City incorrectly infers that because these three individuals names appear in the corporate documents for The Diamond Coalition **and** those same names appear in the legal documents associated with the Growth Mgmt Appeal and other ongoing legal action that the goals, opinions and actions are one and the same for both individuals and The Diamond Coalition. This is completely inaccurate and unsupported.

The Diamond Coalition has never been a Party of Record on these projects NOR has The Diamond Coalition ever been a party to any appeals or pleadings. Not the FEIS Appeals, not the MPD Hearing Process, not the LUPA Appeals and NOT the case before the Washington State Growth Mgmt. Board, regardless of the City's bold faced creations of false associations. The City is simply WRONG in its theories about "artful assertions" and "candid ambition". Moreover, they are simply wrong. This false information needs to be stricken.

The "mission statement" attributed to The Diamond Coalition is completely inaccurate.

Per the City's Response - Page 4 Line 12:

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.

The Diamond Coalition webpage and its mission statement, unchanged since formation, application and federal status being granted in June of 2010, is clearly not what the City

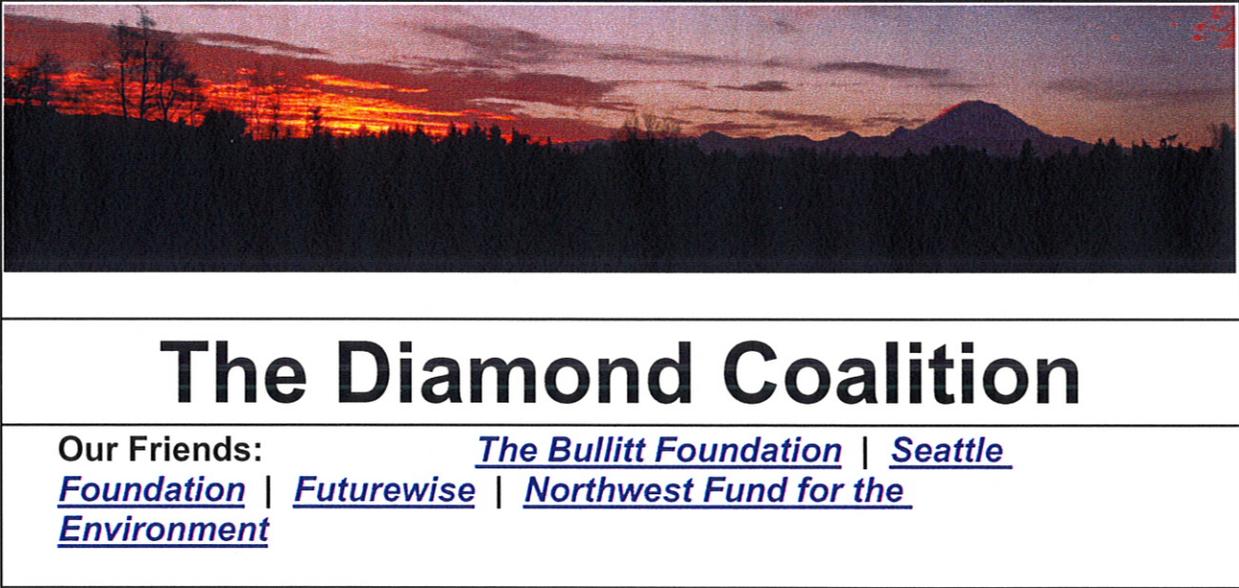
falsely claims it to be. Indeed the Mission Statement included by the City attorneys as their own Attachment A doesn't jive, agree or support their own absurd rendition of the Mission Statement they ascribe to The Diamond Coalition. on page 4. Perhaps they should read their own Attachments.

Further, The Diamond Coalition has no goal "to see a significant reduction in the MPD proposed density / scale" as alleged on Page 5 at line 12. As the City does not cite a source for this, I am unable to say where it came from, but it is certainly incorrectly attributed to The Diamond Coalition.

All of these statements are false, unsupported and quite frankly amount to irresponsible admissions in these proceedings. For that reason we ask that these falsehoods be stricken and completely removed from this record.

William Wheeler, Cynthia Wheeler and Joe May

The Diamond Coalition webpage is "screen captured" below.



The Diamond Coalition

Our Friends: [The Bullitt Foundation](#) | [Seattle Foundation](#) | [Futurewise](#) | [Northwest Fund for the Environment](#)

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Our Mission:

The Diamond Coalition was formed for exclusively charitable, and educational 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.

Contact Us:

Our mailing address is:
The Diamond Coalition
P.O. Box 448
Black Diamond, WA 98010

email contact:
thediamondcoalitionorg@gmail.
com



Stacey Borland

From: Bob Edelman <BobEdelman@comcast.net>
Sent: Wednesday, August 17, 2011 6:48 AM
To: Steve Pilcher
Cc: Stacey Borland; Andy Williamson; 'Galarza, Brenda'
Subject: Motion to Strike
Attachments: Motion to Strike.pdf

Please forward the attached motion to the Hearing Examiner.

Please acknowledge.

Thanks, Bob Edelman

**Before the City of Black Diamond Hearing Examiner
Motion to Strike Exhibits
August 11, 2011**

I object to the following exhibits submitted by the City.

Exhibit 218 – Much of this exhibit is speculation, misrepresentations, personal attacks and false. All of the parts identified below are, at a minimum, irrelevant. The exhibit should either be stricken from the record or redacted. I object to the following:

Page 3, line 16 through page 10, line 8.

Page 10, line 15 starting with “These” through line 19.

Page 11, line 19 through page 12, line 1.

Page 12, line 8. The phrase “and not entitled to generally opine on technical subjects”

Page 12, line 14-17.

Page 12, line 20. The parenthetical phrase “perhaps deliberately”

Page 13, line 14-15. The phrase “fiscal or otherwise”

Exhibits 219, 220, 221, and 222 – These exhibits are irrelevant.

Respectfully submitted,

Robert Edelman
29871 232nd Ave SE
Black Diamond, WA 98010

Steve Pilcher

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Wednesday, August 17, 2011 6:57 AM
To: Steve Pilcher
Cc: Brenda Martinez
Subject: Fwd: Letter on behalf of Save Black Diamond to Hearing Examiner
Attachments: Save Black Diamond letter to Hearing Examiner 8.12.11.pdf

Hi,
Can you please confirm the attached was received on the 12th and forwarded to the hearing examiner?
The original message is below.
thank you,
Kristen Bryant

----- Forwarded message -----

From: **Kristen Bryant** <kristenbry@gmail.com>
Date: Fri, Aug 12, 2011 at 9:58 PM
Subject: Letter on behalf of Save Black Diamond to Hearing Examiner
To: Steve Pilcher <spilcher@ci.blackdiamond.wa.us>
Cc: Brenda Martinez <bmartinez@ci.blackdiamond.wa.us>

Hello,
Please add the attached response-to-testimony document to the record.
Thank you,
Kristen

 Please think of the environment before printing this email.



**Bricklin &
Newman**
LLP

Seattle Office:
1001 Fourth Avenue
Suite 3303
Seattle, WA 98154

Spokane Office:
35 West Main
Suite 300
Spokane, WA 99201

Contact:
Phone: 206-264-8600
Toll Free: 877-264-7220
Fax: 206-264-9300
www.bnd-law.com

Reply to: Seattle Office

August 10, 2011

Phil Olbrechts
Hearing Examiner, City of Black Diamond
Olbrechts & Associates, PLLC
18833 74th Street NE
Granite Falls, WA 98252-9011

Dear Mr. Olbrechts:

I have been asked by Save Black Diamond to respond to certain legal arguments made by Yarrow Bay (commencing at page 69 of its written testimony). In doing so, it is useful to begin with some basics regarding development agreements. Fortunately, Yarrow Bay agrees with us regarding some of these elements. We address some points of agreement first and then move on to contested issues.

A. Development Agreements May Not Be Used to Establish New Regulatory Controls Governing the Use of the Subject Property

First, development agreements are not the mechanism for establishing development regulations (regulatory controls) that are to be applied to the subject property. Yarrow Bay agrees: "RCW 36.70B.170 makes clear that development agreements do not create new regulations . . ." YB at 78.

Rather, with regard to regulatory controls, development agreements are used to lock-in existing regulations so that they apply to future permit applications, *i.e.*, applications which have not been filed yet and which, ordinarily, would be subject to changes in the regulations that occur before they are filed. This feature of a development agreement provides certainty to developers of multi-phased projects. These projects may stretch out over many years. All phases of the project may not be ready for the filing of a subdivision or building permit applications, *i.e.*, the standard methods to vest (lock in) existing development regulations. But developers do not want to begin construction of initial phases of an integrated project only to learn, later on, that rules have changed and subsequent phases cannot be built as originally contemplated. Thus, the Legislature authorized development agreements to provide a developer with some protection against shifting regulations over the course of an extended development plan.

But this does not mean development agreements can be used to adopt or apply new regulations to the subject property. They are simply used to freeze (vest) some (or all) of the regulations currently in force. It bears repeating that Yarrow Bay agrees: “RCW 36.70B.170 makes clear that development agreements do not create new regulations, but instead are to be consistent with existing regulations . . .” Yarrow Bay at 78. Thus, as Yarrow Bay recognizes, the statute authorizes the development agreement to specify existing regulations which will apply to the multiple phases of a long-term project, but it does not authorize the development agreement to actually establish new regulations that do not currently apply to the subject property.¹

B. The City Has Discretion as to Whether to Adopt a Development Agreement and Discretion to Decide Its Content

Another fundamental proposition regarding development agreements that Yarrow Bay acknowledges is that the City has discretion in deciding on whether to enter into a development agreement and, if so, on what terms. Certainly, the state statute does not compel any local government to enter into a development agreement and Yarrow Bay does not contend otherwise.

Yarrow Bay focuses not on the state statute, but the municipal code to argue that the City Council’s discretion is constrained to some extent. Thus, Yarrow Bay states that the City Council’s decision is “not purely discretionary.” *Id.* at 70 (emphasis supplied). But notably, Yarrow Bay does not contend that the City has no discretion at all. Even Yarrow Bay acknowledges that the City has discretion to decide, for instance, which regulations that currently apply to the property should be included in the development agreement (so that Yarrow Bay may be vested to them) and which regulations currently applicable to the property should be excluded from the development agreement (so that later phases of the project would have to comply with later versions of those ordinances).

Moreover, the development agreement serves not only the purpose of establishing vesting as to regulations identified in the development agreement, but also addresses matters like the duration of the vesting period, phasing requirements, subsequent review procedures, and impact fees. See RCW 36.70B.170(3). We agree with Yarrow Bay that the City cannot exercise its discretion in an “arbitrary” manner,² but otherwise, the City has nearly unbridled discretion to determine the content of the development agreement.

To the extent that the City in the MPD ordinances dictated that certain issues be *addressed* in the development agreement, the City may ostensibly be required to address those issues in the development agreement. (We address the legitimacy of this “requirement” below.) But simply

¹ Incidentally, we question the constitutionality of the development agreement statute inasmuch as it appears to be providing local officials with an unconstitutional authorization to restrict the police power authority of the legislative bodies of local governments that may want to modify regulations in the future. But we recognize that the Hearing Examiner and City Council do not have the authority to address the constitutionality of the state legislation so we do not pursue that issue further here. We do provide notice, however, to the City and Yarrow Bay that we may challenge the constitutionality of the statute and, if successful, invalidate the City’s use of it on that basis.

² See Yarrow Bay at 70 (citing *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947 (1998)).

because the ordinances specify that certain issues be *addressed* does not limit the City's discretion as to *how* those issues are addressed. For instance, the MPD ordinance specifies that the development agreement "shall specify which infrastructure projects the applicant will build" and "shall specifically describe when the various components of permitting and construction must be approved, completed, or terminated," (Exhibit C at 1), but the MPD does not dictate which infrastructure projects the applicant will build nor when the various components of permitting and construction must be approved. The MPD ordinances leaves the City with complete discretion to make those decisions (as long as it does so in a non-arbitrary manner). Yarrow Bay appears to agree.

C. City Staff and Yarrow Bay Have Put Themselves in a Box

Unwittingly, City staff and Yarrow Bay have put themselves in a bind. The MPD ordinances did not establish all of the land use controls that are necessary to guide development on the subject property. Yet Yarrow Bay acknowledges that those gaps cannot be filled by the development agreements, *i.e.*, the development agreements can only lock-in (vest to) regulations that already apply to the property; the development agreement cannot adopt new regulations to fill gaps that were left by the MPD ordinances. Because those gaps cannot be filled by the development agreements, action on the development agreements is premature. The City must first complete its work of establishing the development regulations that apply to the property before it can decide which regulations will be included in the development agreement for vesting purposes.

For example, Yarrow Bay's MPD application requested approval of a number of regulatory controls for residential areas, *e.g.*, setbacks, parking, landscaping, and a variety of non-residential uses. *See, e.g.*, Villages Application at 3-28, *et seq.* But the Hearing Examiner did not recommend adoption of those portions of the application and the City Council followed the Examiner's advice. The MPD ordinances expressly excludes from its approval the portions of the applications addressing traditional regulatory controls like setbacks, parking, landscaping, and non-residential uses within residential zones. *See, e.g.*, Villages Condition of Approval No. 128 (limiting approval of MPD Application Chapter 3 (Design Concept and Land Use Plan) to certain limited excerpts). About the only regulatory controls adopted in the MPD Ordinances for the residential zones are density ranges. As stated in Condition 128: "All other specifics shall be resolved through the Development Agreement process." Yet Yarrow Bay now agrees that a development agreement cannot be used to establish new regulations. Thus, the bind.

The only way out of this knot is for the City and Yarrow Bay to go back to the MPD ordinances and revise them to include the omitted items. There is nothing arbitrary in the Examiner recommending to the City Council denial of the development agreements until these missing pieces of the regulatory controls are put into place through the proper legislative process.

An example of Yarrow Bay attempting to use the development agreements to fill in the gaps left by the MPD ordinances is found in Table 4-1 of the draft Development Agreements. That table identifies – for the first time – a list of "additional possible uses" which would be authorized in various portions of the property that are designated for residential development. Such "additional" uses include neighborhood commercial, industrial, public, home occupations,

accessory dwelling units, major and minor utility facilities, and a variety of other temporary and accessory uses. While there previously were municipal code sections that authorized these uses (but not all of them, e.g., "major and minor utility facilities") elsewhere in the City, none of those code sections had been made applicable to the subject property in the MPD ordinances. It is only in those Development Agreements that Yarrow Bay (and City staff) seek, for the first time, to establish that these specific uses will be allowed on the subject lands.

That decision, to apply these development regulations to these parcels for the first time, goes beyond the proper role of a development agreement. The Development Agreement would not be used simply to lock in (vest) regulations already applicable to the property, but rather would attempt to make regulations that are not currently applicable to the property applicable to the property for the first time. That goes beyond the allowed use of a development agreement, as Yarrow Bay itself has acknowledged.

Likewise, and even more blatantly, Chapter 5 of the Development Agreements establish new regulatory controls for setbacks, other bulk regulations, landscaping, and signs. These are entirely new regulatory controls that Yarrow Bay concedes cannot be included in a Development Agreement.

Simply because the MPD ordinance directed that the specifics be resolved "through the Development Agreement process" does not mean that the Examiner should recommend to the City Council that the City violate state law by including them. To the contrary, the Examiner should recommend to the City Council that the MPD ordinances attempt to make an impermissible use of the development agreement process and that the Council should engage Yarrow Bay in a discussion to modify the MPD ordinances so that this legal obstacle can be removed.

Presumably, Yarrow Bay will characterize this discussion as a "collateral attack" on the MPD ordinances. That characterization would be inaccurate. We are not asking the Examiner nor the City Council to unilaterally invalidate the MPD ordinances. Rather, the City Council is confronted with two conflicting commands: the command of state law (as recognized by Yarrow Bay) that development agreements cannot be used to establish new regulatory controls and the conflicting requirement of the MPD ordinances that the development agreements be used to do just that. Faced with that conflict, the City Council certainly is entitled to deny or defer the development agreement application until such conflict is resolved. If it cannot be resolved, the City must comply with state law, not its local ordinance. See Constitution, Art. XI, § 11.

D. SEPA

Yarrow Bay's discussion of SEPA suffers from a failure to distinguish SEPA's procedural requirements from its substantive authority. We acknowledge that the City Code does not provide an administrative appeal mechanism for challenging staff's (obviously incorrect) determination that the prior programmatic EIS is sufficient for the more specific decisions that are proposed in the Development Agreements. But the EIS adequacy issue is separate from the issue of the City's authority to utilize its substantive discretion under SEPA to mitigate adverse

impacts or to even deny a project if its adverse impacts cannot be adequately mitigated. *See* RCW 43.21C.060. Requests by concerned citizens that the Examiner recommend that the Council use its substantive SEPA authority is not “an inappropriate collateral attack on the FEIS.” Yarrow Bay at 76. The City’s exercise of its discretionary substantive authority under SEPA is a distinct issue from the adequacy of the EIS.

An example of Yarrow Bay conflating SEPA’s procedural and substantive elements is found in footnote 21 where Yarrow Bay states “the FEISs and its proposed mitigation measures were deemed adequate.” But the appeal of the EISs was a challenge to the adequacy of the disclosures in the EIS; those appeals did not challenge the adoption of specific substantive mitigation measures. The Examiner concluded the EISs’ discussion of the project’s impacts and mitigation measures was adequate, but the Examiner’s EIS appeal decision did not substantively adopt any mitigation measures to be applied to the development proposal.

Further, while we acknowledge that the City has not provided a process to allow an administrative appeal of the staff’s determination that the programmatic EIS is adequate for use in this context, that does not mean that the Examiner cannot advise the Council that the EIS does not provide all the information the Council may want or need before it makes these decisions. SEPA is not the exclusive means by which the City obtains information prior to making a decision. SEPA supplements other mechanisms. RCW 43.21C.060. The Examiner certainly has the right to inform the Council that relying on the earlier EIS for a disclosure of all environmental impacts and potential mitigation measures may be misplaced and that additional information may be necessary to allow the City Council to have all the information it needs to make a reasoned decision on the development agreement applications.

This Examiner has previously recognized that the EIS has multiple deficiencies. Among other things, the Examiner blessed the EIS despite those deficiencies because it was being used at that time simply as the basis for the City Council to approve the MPD ordinances. Nothing in the Examiner’s EIS decision suggests that the EIS was also adequate (in the Examiner’s eyes) for making the more detailed decisions that now arise in the development agreement context. To the contrary, the Examiner’s guarded approval of the EIS for purposes of the MPD ordinance decision strongly suggests that the EIS was not adequate for later, more specific decisions like those included in the Development Agreements.

E. The Subdivision Applications

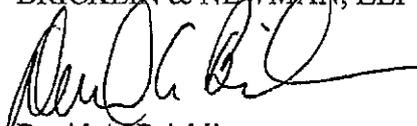
The subdivision applications are not directly before the Examiner, however, we must correct certain statements made by Yarrow Bay regarding them. Yarrow Bay suggests that City staff correctly determined that the applications were complete as of September 20, 2010. But, as we demonstrated above, the MPD ordinances left many gaps in the establishment of development regulations that would apply to the subject property. The applications to develop the land could not possibly be deemed “complete” if the regulations governing development of the land had not yet been adopted.

Phil Olbrechts
August 10, 2011
Page 6

Thank you for your consideration of these comments.

Very truly yours,

BRICKLIN & NEWMAN, LLP



David A. Bricklin

DAB:psc

cc: Mike Kenyon/Bob Sterbank
Nancy Bainbridge Rogers
Client

Steve Pilcher

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Wednesday, August 17, 2011 7:12 AM
To: Steve Pilcher; Brenda Martinez
Subject: FW: Request Regarding Rebuttal Time to Development Agreement Responses

Please post.

As discussed in the email below, I had reserved a ruling on a request for an extension on the reply time until I could see what response documents filed for the August 12, 2011 deadline. Due to the late issuance of this order, the reply time is extended to 8:00 am 8/19/11.

I had attempted to get a copy of the Applicant's submittals over the weekend, but from some apparent miscommunication with staff was told that the Applicant had only submitted the AESI report plus a couple attachments to the report that were emailed to me. One of those files was corrupted. I was not able to download the rest of the Applicant's documents until this afternoon. Since it would be unreasonable to set the final reply deadline on the date this order is posted, I will extend the reply deadline to 8:00 am on 8/19/11.

The circumstances of this order spare the necessity for having to otherwise make a decision on the extension request. The City and the Applicant both objected to the request. As anticipated, the Applicant's response documents were voluminous, but they were also primarily composed of documents that were already a part of the development agreement record (i.e. the FEIS and its appendices) or documents or testimony submitted during the MPD hearings.

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

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Friday, August 12, 2011 4:19 PM
To: 'Steve Pilcher'
Subject: RE: Request Regarding Rebuttal Time to Development Agreement Responses

Please post.

The requested extension is granted for the written response of Sarah Cook to August 22, 2011. The reply (for any party) to the Cook written response is extended to two business days after the Cook response is posted on the City's website. The specific due date for the reply will be posted when it is known when the City can post the Cook response.

The request to extend the response time for all other parties as outlined below will be ruled upon when the Yarrow Bay response comes in.

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

From: Steve Pilcher [<mailto:SPilcher@ci.blackdiamond.wa.us>]
Sent: Friday, August 12, 2011 3:26 PM
To: olbrechtslaw@gmail.com
Subject: FW: Request Regarding Rebuttal Time to Development Agreement Responses

fyi

From: Kristen Bryant [<mailto:kristenbry@gmail.com>]
Sent: Friday, August 12, 2011 3:23 PM
To: Steve Pilcher
Cc: Stacey Borland; Sarah Cooke
Subject: Request Regarding Rebuttal Time to Development Agreement Responses

Dear Steve,

Can you forward this to the Hearing Examiner and Yarrow Bay if appropriate?

I am uncertain if it is appropriate to send directly to them, but I believe the need to see it as soon as possible.

Thank you,

Kristen

To Hearing Examiner Olbrechts, and the Development Agreement applicant, Yarrow Bay:

I have recently been informed by the our wetlands Expert, Dr. Sarah Cooke, of a conflict with the rebuttal timeframe next week.

As you know, the deadline for response to initial comments is today, Aug 12.

When we learned that Yarrow Bay had commented on Dr Cooke's oral testimony in their August 4 written submission, we scheduled time with Dr Cooke to prepare a response. Given her already-full professional schedule, she did not have adequate time to respond by the deadline of the 12th and was not able to work on this as much as she would like.

With that in mind, we point out that Dr Cooke provided many additional points in her written testimony turned in on Aug 4. We expect to receive a much longer response from Yarrow Bay after today, but we have a shorter time to respond. She has clearly stated to me that two days will not be sufficient for her to analyze and give expert rebuttal.

Additionally, on August 15 and 16th, Dr. Cooke's child will be in the hospital and Dr. Cooke will be unable to work on a rebuttal at all on those days.

Request 1: We request the rebuttal period be extended to a week, so that Dr Cooke's testimony is due on August 22.

Request 2: Given the expected volume Yarrow Bay will produce in response to 1700 pages of written comment, we know that the 2-day rebuttal period is unrealistic for many people, who may also have unavoidable life conflicts.

We request that everyone have rebuttal time until the end of the week, Friday, August 19.

Thank you for your consideration,

Kristen Bryant for Save Black Diamond

425-247-9619<<tel:425-247-9619>>

Steve Pilcher

From: Bob Edelman <BobEdelman@comcast.net>
Sent: Wednesday, August 17, 2011 9:10 AM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez
Subject: Motion to Strike - correction
Attachments: Motion to Strike.pdf

Please forward the attached as a correction to the previous submittal. I had an incorrect date.

Please acknowledge.

I apologize for the inconvenience.

Thanks, Bob Edelman

From: Bob Edelman [<mailto:BobEdelman@comcast.net>]
Sent: Wednesday, August 17, 2011 6:48 AM
To: 'Steve Pilcher'
Cc: 'sborland@ci.blackdiamond.wa.us'; 'awilliamson@ci.blackdiamond.wa.us'; 'Galarza, Brenda'
Subject: Motion to Strike

Please forward the attached motion to the Hearing Examiner.

Please acknowledge.

Thanks, Bob Edelman

**Before the City of Black Diamond Hearing Examiner
Motion to Strike Exhibits
August 17, 2011**

I object to the following exhibits submitted by the City.

Exhibit 218 – Much of this exhibit is speculation, misrepresentations, personal attacks and false. All of the parts identified below are, at a minimum, irrelevant. The exhibit should either be stricken from the record or redacted. I object to the following:

Page 3, line 16 through page 10, line 8.

Page 10, line 15 starting with “These” through line 19.

Page 11, line 19 through page 12, line 1.

Page 12, line 8. The phrase “and not entitled to generally opine on technical subjects”

Page 12, line 14-17.

Page 12, line 20. The parenthetical phrase “perhaps deliberately”

Page 13, line 14-15. The phrase “fiscal or otherwise”

Exhibits 219, 220, 221, and 222 – These exhibits are irrelevant.

Respectfully submitted,

Robert Edelman
29871 232nd Ave SE
Black Diamond, WA 98010

Stacey Borland

From: BOB STERBANK <BOB@kenyondisend.com>
Sent: Wednesday, August 17, 2011 10:12 AM
To: Steve Pilcher; MIKE KENYON
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; MARGARET Starkey
Subject: Re: Response to Exhibit 218 -

Steve,

Please communicate to the Hearing Examiner that the City intends to respond to both Mr. Edelman's Motion to Strike and Ms. Wheeler's objection, and that the City respectfully requests that he refrain from ruling on the Wheeler objection or the Edelman motion until the City has had an opportunity to do so.

Best regards,

Bob Sterbank

Bob C. Sterbank
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820

Direct Tel: (425) 988-2208
Main Tel: (425) 392-7090
Fax: (425) 392-7071
bob@kenyondisend.com
www.kenyondisend.com

>>> Steve Pilcher <SPilcher@ci.blackdiamond.wa.us> 8/17/2011 8:50 AM >>>
FYI

From: Cincity63@comcast.net [<mailto:Cincity63@comcast.net>]
Sent: Tuesday, August 16, 2011 11:29 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; Bill Wheeler; Joe May
Subject: Response to Exhibit 218 -

Steve-

Please forward to the Hearing Examiner and provide separate receipts to myself, William Wheeler and Joe May.

Thank you.

Cindy Wheeler

This message has been scanned for malware by SurfControl plc. www.surfcontrol.com

Stacey Borland

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Wednesday, August 17, 2011 10:45 AM
To: Stacey Borland
Cc: BOB@kenyondisend.com; BobEdelman@comcast.net
Subject: RE: Response to Exhibit 218 -

There is no reason to await a response from the City on the Edelman motion as I am overruling the motion except as to one issue in which I will wait to hear from the City. I do not wish to further delay the hearing process to respond to objections when it is not necessary to do so.

Mr. Edelman's motion as it relates to City Attorney comments on the organization and motives of hearing participant is overruled. The comments are of highly marginal relevance to the Examiner. The Examiner is far more interested in the substance of comments made as opposed to who presented them or why. However, as discussed at length in several pre-hearing orders, the Council has a very wide degree of discretion in its decision to pursue supplemental conditions or exercise supplementary SEPA authority.

One factor that may be of importance to the Council in committing time and resources to exercising this discretionary authority is the degree of concern of its constituents. The organizational structure and motives of the organizations presenting evidence in this regard can be of relevance in this regard. The City Attorney may have other reasons for arguing the information is relevant, but the reason cited is sufficient to keep the information in the record.

Mr. Edelman has also objected to a couple attachments that provide comparisons to other development projects. The Examiner recently ruled that SAVE Black Diamond could make comparisons to other developments. The City Attorney has the same right.

One point that is left open for response from the City Attorney is the Page 12, line 20 phrase "perhaps deliberately". As noted by the Examiner during the hearings when he stated that calling the Applicant "greedy" was not appropriate, in order to maintain a level of civility that fosters a constructive hearing process any attacks of a personal nature that are not necessary to argue a point will be stricken. The comment cited by Mr. Edelman appears to be unfounded, inflammatory and unnecessary. The City Attorney may very well have good reason to employ this language and the Hearing Examiner will defer a ruling on the issue until the City Attorney has had an opportunity to respond. The City Attorney will have until 5:00 pm today to respond.

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

From: Stacey Borland [<mailto:SBorland@ci.blackdiamond.wa.us>]
Sent: Wednesday, August 17, 2011 10:24 AM
To: Phil Olbrechts
Subject: FW: Response to Exhibit 218 -

Mr. Olbrechts,

Please see the communication below from the City Attorney.

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010

360-886-2560 ext. 222

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

From: BOB STERBANK [<mailto:BOB@kenyondisend.com>]

Sent: Wednesday, August 17, 2011 10:12 AM

To: Steve Pilcher; MIKE KENYON

Cc: Andy Williamson; Brenda Martinez; Stacey Borland; MARGARET Starkey

Subject: Re: Response to Exhibit 218 -

Steve,

Please communicate to the Hearing Examiner that the City intends to respond to both Mr. Edelman's Motion to Strike and Ms. Wheeler's objection, and that the City respectfully requests that he refrain from ruling on the Wheeler objection or the Edelman motion until the City has had an opportunity to do so.

Best regards,

Bob Sterbank

Bob C. Sterbank
Kenyon Disend, PLLC
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11 Front Street South
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Direct Tel: (425) 988-2208
Main Tel: (425) 392-7090
Fax: (425) 392-7071
bob@kenyondisend.com
www.kenyondisend.com

Steve Pilcher

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Wednesday, August 17, 2011 10:58 AM
To: Steve Pilcher
Cc: Brenda Martinez; Cincity63@comcast.net; BOB@kenyondisend.com
Subject: RE: Response to Exhibit 218 -

Please post.

The Wheeler objections identified below are overruled. The objections are geared towards accuracy as opposed to admissibility. The comments of the Wheelers in this regard are made a part of the record and will be available to the Council should the issues addressed by the Wheelers become of any relevance to the Council.

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

From: Steve Pilcher [<mailto:SPilcher@ci.blackdiamond.wa.us>]
Sent: Wednesday, August 17, 2011 8:47 AM
To: olbrechtslaw@gmail.com
Subject: FW: Response to Exhibit 218 -

FYI

From: Cincity63@comcast.net [<mailto:Cincity63@comcast.net>]
Sent: Tuesday, August 16, 2011 11:29 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; Bill Wheeler; Joe May
Subject: Response to Exhibit 218 -

Steve-

Please forward to the Hearing Examiner and provide separate receipts to myself, William Wheeler and Joe May.

Thank you.

Cindy Wheeler

Stacey Borland

From: Cindy Proctor <proct@msn.com>
Sent: Wednesday, August 17, 2011 12:37 PM
To: Steve Pilcher
Cc: Brenda Martinez; Stacey Borland; Andy Williamson
Subject: DA Responses due 8.17.11 Villages/Lawson
Attachments: Proctor Response to Exhibit 209-CFDs due 8.17.11.pdf; Proctor Response Ex 209-Expansion
Parcels and Section 3.1_ due 8.17.11.pdf

Importance: High

Steve,

Please forward my DA responses to Mr. Olbrechts. Please confirm receipt.

Regards,

Cindy Proctor

**Before the Hearing Examiner of Black Diamond
Response to YB Development Agreement Comments Exhibit 209**

Ex 209 pgs 37-40 (Proctor)

Yarrow Bay Comment:

“Without development, there is no need or requirement that infrastructure be constructed. This means that the infrastructure improvements described in the Development Agreements will be phased. Id. As explained below, on day one of development, the Master Developer does not need funding in place to construct all the infrastructure improvements outlined in the Section 11.”

Proctor Response:

Yarrow Bay is correct that if there is NO development there is NO need for infrastructure to be constructed. However, Yarrow Bay has not spent many years and millions of dollars to NOT develop their land; that is absurd, of course they intend to develop the land or at a minimum sell the Master Developer rights. In fact the ability to immediately start development, thus supposedly generating revenue for the City, is the primary reason for approval of the MPDs in the first place. MPD revenue has already been removed from the 2011 City budget and it will now be moved into the 2012 projected City budget. The financial ability and solvency of Yarrow Bay for infrastructure cost goes to the heart of the municipal code 18.98.080(A) (3) that development pays for development.

Regardless of this issues, Yarrow Bay has a complete misunderstanding of this public comment, the issue is not *whether* the financing needs to be in place on day one of the development - it is *which* financing will be in place; the issue is that Yarrow Bay has already proclaimed to the Mayor, and Council (audio Ex. 97 CFD Workshop) that the only way Yarrow Bay can build the MPD infrastructure is with CFDs. If there are no CFDs then they cannot move forward as there is no other financing available for infrastructure of this scale.

Contrary to Yarrow Bay’s blatant attempt to continue to re-direct the evidence away from the public’s true intent, my comment did not disparage the use of CFDs as a financing source. My point was that the inclusion of CFDs as the only financing source of infrastructure (no developer lid or impact fees are currently contemplated) knowingly and willfully has the intent to force the creation and approval of laws that constrain fundamental duties of a future City Council and take away the rights of the public they serve. My comment was that approval of the CFDs must take place now prior to the finalization of the Development Agreement and/or other financing mechanism should be included in the Development Agreement to ensure future options for the City Council and the public.

Yarrow Bay Comment:

“Contrary to Ms. Proctor's allegations, costs in excess of the Master Developer's proportionate share may be recovered using any method approved and allowed by City code, state law, or existing agreement. See, e.g., Section 11.3(B) of the Development Agreements. If the Master Developer does not have financing to construct the necessary capacity improvements for an

Cindy Proctor 718 Griffin Ave PMB #241 Enumclaw, WA 98022

Implementing Project (whether through CFDs and/or other funding sources), it cannot proceed with development. Thus, Section 11 is by definition self-limiting.”

Proctor response:

I concur that the Master Developer cannot proceed forward if the Master Developer does not have financing to construct the necessary capacity improvements. This is our greatest fear, and again the Applicants Attorney, John Hempelmann, has already confirmed that this is the case and that the ONLY way they can finance the MPDs is through CFDs. Ex. 97.

Yarrow Bay Comment:

“Specific sites for eminent domain are not specifically contemplated by the Development Agreements”

Proctor Response:

This is another misleading statement by the Applicant and frankly is egregious. Technically speaking YB can twist the fact that they have not specifically identified, lets say “John Doe’s Home” for eminent domain, however table 11.3.1 of the Villages/Lawson Development Agreements clearly list projects that will require eminent domain including but not limited to areas near HWY 169, Auburn-Black Diamond RD, Green Valley RD, Construction Easements, ROW at intersection and many others Furthermore, John Hempelmann and City Council had a long discussion about the need for eminent domain for some of the larger infrastructure needs and Mr. Hempelmann had a frank conversation about an inter-local agreement for the execution of the eminent domain process. Ex. 97.

Yarrow Bay Comment:

While Ms. Proctor complains in Exhibit 70 about the City's reliance on the Master Developer's self-financing, she does not appear to recognize the municipal benefits of CFD funding mechanism

Proctor Response:

Once again, this is an attempt to “hide the cheese” or “re-direct”, I never complained in my comments that CFDs were not a viable or worthy financing mechanism. In fact, I participated with the facilitation of the CFD Workshop working with Colin Lund and David MacDuff of YB and by asking Mr. Hugh Spitzer of Foster Pepper PLLC to provide relevant information on CFDs to ensure that City Council at least had an idea what CFDs were. Furthermore, professionally I would be happy to see a successful CFD. I do have concerns about possible tax burdens and the attempt to use CFDs for parks and/or schools, but generally speaking I am supportive of the CFD concept and wholly recognize the municipal benefits, although a Developer Lid has similar qualities. Again, my comment was there must be an alternate source of infrastructure financing in place to ensure that approval of a Development Agreement that contemplates CFDs only doesn't force the creation and approval of laws that constrain fundamental duties of a future City Council and take away the rights of the public they serve. (It bears repeating!)

Yarrow Bay Comment:

“Last, Yarrow Bay objects to the inclusion of any testimony regarding CFDs in these Development Agreement Hearings. There is no CFD petition pending in front of the Hearing Examiner, Such information is irrelevant to the Examiner's recommendation on the Development Agreements. Nevertheless, to the extent the Hearing Examiner allows the YarrowBay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order II inclusion of CFD-related testimony into the record, YarrowBay responds as follows.”

Proctor Response:

Yarrow Bay objects to pretty much any facts or positions other than their version. The CFD is the most critical financing piece of the massive MPD infrastructure requirements; Yarrow Bay's legal representation, John Hempelmann spent over two-and-half hours in a “**public**” Council workstudy talking about the need for CFDs; Mr. Hempelmann and his guest Rep. Chris Hurst are the ones who voluntarily told Black Diamond City Council and the Mayor that there will be no public funds out of Olympia (The State of WA) for years to come; YB Legal is the one who voluntarily stated that there is no financing out there to finance all the infrastructure to implement the MPDs as approved; YB Legal is the one who emphatically stated that YB must have a CFD to complete the financing of the infrastructure. All of these statements were voluntarily and publically made on behalf of Yarrow Bay by Yarrow Bay's legal staff. **(Hopefully you have time to listen to the CFD Workstudy Ex 97 in its entirety)**

Yarrow Bay's objection about the inclusion of testimony on CFDs since no petition or ordinance is pending in-front of the Hearing Examiner is baseless in so much that I am not asking the Hearing Examiner to approve or disapprove CFD legislation; furthermore this is no different than talking about future Fire Impact fees, they are referenced in the Development Agreement and there is no petition or ordinance pending in front of the Hearing Examiner on that either. Finally CFDs are mentioned as a financing mechanism in the conditions of approval and it is clear that they are contemplated in the future as financing tool.

[Type text]

**Before the Hearing Examiner of Black Diamond
Response to YB Development Agreement Comments Exhibit 209**

Ex 209 pgs 20-21 (Proctor)

Yarrow Bay Comment:

(iv) There is nothing in the MPD Conditions of Approval or BDMC that require the additional language requested by Ms. Proctor. Vesting is governed by BDMC 18.98.195 and Section 15.1 of the Development Agreements.³

Proctor Response:

BDMC 18.98.195 governs the MPD Overlay Parcels; the expansion parcels *are not currently zoned MPD Overlay*¹, therefore clarifying language is needed explicitly stating that the vesting of the Expansion Parcels are excluded by the MPD Development Agreement. YB has confirmed my concerns that they believe that future forest lands and/expansion parcels yet- to-be- approved as MPD overlays areas can somehow be vested under current MPD laws.

Yarrow Bay Comment:

Contrary to Ms. Proctor's assertions, Section 10.5.2 acknowledges that a SEPA document must be prepared for an Expansion Proposal that "discloses and evaluates impacts, if any, which were not addressed in the EIS for the original Project Site, such as impacts to elements of the natural environment located on the Expansion Parcels or additional traffic impacts." See Section 10.5.1(D).

Proctor Response:

I continue to have grave concerns that the Development Agreement and Yarrow Bay wish to infer that the programmatic EIS for the MPDs had any perceived evaluation of the Expansion Parcels...it did not. It is unequivocally clear from the FEIS appeal hearing that no environmental evaluations have even been considered in the rural areas for schools and the Expansion Parcels for commercial or other to be defined uses.

Yarrow Bay Comment:

Moreover, also contrary to Ms. Proctor's and Ms. Schmidt's allegations, an Expansion

1

10.5 EXPANSION PARCELS: The Master Developer may acquire and add certain Expansion Parcels to the MPD requiring either a Minor or Major Amendment of the MPD Permit Approval and additional State environmental Policy Act ("SEPA") review. If a defined Expansion Parcel is neither designated with an MPD Overlay on the City's Comprehensive Plan Future Land Use Map nor is zoned MPD, then a Comprehensive Plan Amendment and rezone shall be required.

Cindy Proctor 718 Griffin Ave PMB#241 Enumclaw, WA 98022

[Type text]

Proposal may qualify as either a Major or Minor Amendment to the MPD Permit Approvals (Ord. Nos. 10-946 and 10-947). It is entirely possible that YarrowBay may propose commercial or other non-residential uses on such parcels that: (1) would not affect minimum residential density; and (2) stay within the total amount of nonresidential development set forth in Section 4.3. Such Expansion Proposal may in fact be a Minor Amendment. The important take away, however, is that each Expansion Proposal shall be reviewed on a case-by-case basis.

Proctor Response:

The following statement by YB again reaffirms the concerns related the vagueness of the Expansion Parcels Conditions with there statement, "*It is entirely possible that YarrowBay may propose commercial or other non-residential uses on such parcels*". Yes, it is possible, it is also possible that YB proposes to move dwelling units from the Villages/Lawson MPDs into the Expansion Parcels; it is also possible that no other school sites are feasible and they need to be placed on the Expansion Parcels; it is possible that infrastructure could go in the Expansion Parcels; it is possible that roads could be placed in the Expansion Parcels; it is possible that Yarrow Bay could leave it as a beautiful open space. The point is that the Development Agreement language is so ambiguous that it leaves an open path for the Master Developer to develop a myriad of possibilities with a little as a minor amendment and no public process.

Pg 3-4

Yarrow Bay Comment:

Cindy Proctor (Exhibit 95): In Exhibit 95, Cindy Proctor alleges that Section 3.1 of the Development Agreements violates BDMC 18.98.080(7) and (8) and that it is not legal.

Paul Reitenbach (Exhibit 149): In Exhibit 149, Mr. Reitenbach expresses concerns regarding Section 3.1 of each Development Agreement.

Bob Edelman (Exhibit 75): In Exhibit 75 at page 14, Mr. Edelman alleges that Section 3.1 conflicts with prior agreements.

Yarrow Bay states BDMC 18.98.080 outlines the City's list of MPD Permit approval criteria. Subsection (A) states in relevant part: "An MPD permit shall not be approved unless it is found to meet the intent of the following criteria..." Criteria 7 and 8, as noted in Ms. Proctor's Exhibit 95, require that an MID proposal be consistent with the terms and conditions of the BDUGAA and Ordinances 515 and 517, if subject properties are contained in such a proposal. At Conclusion of Law No. 33 of both The Villages and Lawson Hills MPD Permit Approvals (Ord. Nos. 10-946 and 10-947) and Conclusion of Law No. 34 of The Villages MPD Permit Approval (Ord. No. 10-946),² **the Black Diamond City Council found that the MPDs satisfied these criteria. Therefore, Ms. Proctor's assertions of BDMC 18.98.080 violations are misplaced. These conclusions of law cannot be revisited in Hearings.**

Proctor Response:

The Council Approval of the MPDs does remove the violation of BDMC 18.98.080; the violation still exists.

Cindy Proctor 718 Griffin Ave PMB#241 Enumclaw, WA 98022

[Type text]

Yarrow Bay Comment:

Moreover, Section 3.1 of The Villages and Lawson Hills Development Agreements specifically notes: "With respect to the property included in [The Villages MPD/the Lawson Hills MPD], this Agreement fulfills and implements all provisions related to development standards, infrastructure, Open Space and land use within [The Villages MPD/the Lawson Hills MPD] contained in the Prior Agreements." **Thus, City Staff and YarrowBay worked together to ensure that the Development Agreements fully implemented the terms and conditions of the BDUGAA and Ordinances 515 and 517**, as to all matters between YarrowBay and the City. As such, Ms. Proctor's and Mr. Reitenbach's concerns are misplaced.

Proctor Response:

Yarrow Bay states, "that they met with the City and that the MPDs and Development Agreements have no conflicts with the prior agreement", if so Yarrow Bay should have no issues with removing the Development Agreement language that infers differently therefore,

Delete: "To the extent there is any conflict between this Agreement and any of the Prior Agreements, the terms of this Agreement shall control, as between the City and the Master Developer. This Agreement incorporates many of the terms of the Prior Agreements and to the extent any provision or requirement of a Prior Agreement is not included in this Agreement said provision or requirement shall be construed as not applicable to the Development of The Villages MPD."

Yarrow Bay Comment:

Also contrary to Ms. Proctor's and Mr. Reitenbach's allegations and as detailed in YarrowBay's Written Testimony dated August 4, 2011(Exhibit 139), the City does not waive the rights of any third parties in Section 3.1. Instead, Section 3.1 only controls "as between the City and the Master Developer." (Emphasis added). See Section 3.1 of each Development Agreement.

Proctor Response:

Yarrow Bay claims that the development agreement does not waive the rights of any third parties; first Yarrow Bay, the City through the Development Agreement do not have authority to waive any third party rights, however with that said, the language in Section 3.1 does not explicitly affirm 100% compliance with the prior agreements and doublespeak infers possible noncompliance especially in regards to Expansion Parcels:

"To the extent there is any conflict between this Agreement and any of the Prior Agreements, the terms of this Agreement shall control, as between the City and the Master Developer."

Again the most reasonable resolution is to revise the language to ensure compliance.

Robbin Taylor's Rebuttal to Yarrow Bay's Exhibit 209

August 17, 2011

Robbin Taylor
32110 Botts Dr
Black Diamond, WA 98010



Exhibit 209, Section 4.4.1 and 4.4.2 re: Exhibit 77 comments

YarrowBay continues to make the claim that the City Council specifically authorized the reversion of mapped "School" Parcel L5 (Lawson Hills) from "School" to "MPD-M" in LH Conditions of Approval no. 132. This is blatantly contrary to what Condition of Approval actually states. NO WHERE in Condition of Approval no. 132 is it stated that the parcel L5 may revert from "School" to "MPD-M". As proof of this "specific" approval YarrowBay again uses YarrowBay's own document to prove the assertions of their document instead of using the Conditions of Approval or the Black Diamond Municipal Code. Contrary to YarrowBay's assertions, the Development Agreement document is NOT the Conditions of Approval, nor is it the BDMC, to which the Development Agreement must line up.

The Hearing Examiner is not to decide if the Development Agreement lines up with the Development Agreement, but rather if it lines up with the Conditions of Approval and the BDMC.

YarrowBay also makes the statement that "*citizens and the community were **put on notice*** (emphasis added)" regarding the authorization of this reversion, without providing documentation regarding this "notice". When, where and how was this "notice" posted?

The Development Agreement references which YarrowBay uses as proof of the Council's approval of such a reversion is page 3-9 of Exhibit "L" of the Lawson Hills Development

Agreement. In Condition of Approval no. 132 the Council *specifically* point to only three different Development Permit Application sections; 3-1 Land Use Map (as updated July 8,2010), Figure 3.2 Density Table and the description of categories beginning on 3-18 (sic).

Even if the description of Schools on page 3-9 states that the land can revert to MPD-M, this does nothing to negate the fact that not only is this a Land Use Category change, but it is also a change in density at the perimeter of the MPD.

4.4.2 restates Conditions of Approval nos. 137 and 167 in that NO development parcel abutting the perimeter of the Project Site can increase in density without a major amendment to the MPD. With the mapped "School" site L5 abutting the perimeter, the argument can be made that changing a "school" to "MPD-M" would not only be a change in density but also a change in land use and should trigger the process for a major amendment.

Again, I include the closing arguments before the Hearing Examiner on March 22, 2010 where the applicant's attorney, Ms. Rogers, made the following statement at audio mark 1 minute, 30 seconds.

"...only request to shift between residential densities. You asked questions about the process to change land use categories. That process is described again in Chapter 3 of each MPD Application. I think it's important to understand that (the) only request that is being made by the applicant is to shift between the land use categories. Low, medium and high residential land use categories. No shifts between other land use categories is proposed. So if it is mapped 'open space' it is going to remain 'open space'. I think that is important to understand."

Therefore; changing the mapped MPD Parcel L5 from "School" to "MPD-M" should trigger the Major Amendment process.

Exhibit 209, Section 4.7.1 re: Exhibit 77 comments

Testimony regarding the use of the Botts Drive office is very relevant as the following excerpt from Exhibit 77 asserts;

"The Development Agreement 4.7.1 allows for the use of existing structures on MPD property to be used as construction/field offices. Through the process of the City's Special Events Permit the Developer has used an existing residence, in a residential zone for their office during the MPD application process."

In the Development Agreement Section 4.7.1 a completely NEW subject has been introduced into the MPD process. The subject of construction/field offices cannot be found in the Permit Application, nor the Conditions of Approval. Section 4.7.1 introduces the use of MPD owned property as construction/field offices. As the subject of construction/field offices was not part of the MPD Permit, there was no testimony regarding this issue in the Open Record Hearings for the Permit Application. It could not be considered by the City Council in the Closed Record Hearings and therefore; was not included in the Conditions of Approval. Section 4.7.1 must be removed from consideration in the Development Agreement.

Should Section 4.7.1 be allowed to remain for consideration, then the discussion of the past, and until recently, current use of just such a property is extremely relevant and must be allowed as there is no other opportunity to address this issue.

Attached are Black Diamond City Council Agendas dating from December 2007 through November 2010 in which Yarrow Bay had submitted, and had been granted, a Special Events Permit. The Public Hearings were held on the dates of the attached Agendas. YarrowBay has used this residence as an office for the past four years through the Special Events Permit process. Prior to this they used a neighboring residence without any non-conforming use permits of any kind. YarrowBay has only recently moved out of the Botts Drive office into a different location in Black Diamond, yet the Special

Events Permit has not expired. This is a four year long track record of the use of this office in almost the precise manner addressed in the Development Agreement 4.7.1. The fact that Section 4.7.1 states that such use will be allowed does not disallow the fact that YarrowBay may move back into the Botts Drive office once the Development Agreement is approved.

Again:

- Use of construction/field office was not addressed in the MPD Permit Application
- Use of construction/field office was not addressed in the Conditions of Approval
- Section 4.7.1 is part of the Development Agreement
- Section 4.7.1 should be removed from consideration
- Should Section 4.7.1 remain for consideration, the subject of the Botts Drive office and necessary mitigation is extremely relevant

**Lawson Hills MPD Permit Approval,
Conditions of Approval:**

132

137

167

sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein.

CLIMATE CHANGE

130. Building design guidelines shall allow the use of solar, wind, and other renewable sources. [FEIS Mitigation Measure]

131. Should a large employer (100+ employees) or a group of similar employers locate in the commercial areas of the MPD, a Transportation Management Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

LAND USE

132. Approval of the design concept and land use plan (Chapter 3) shall be limited to the plan map (Figure 3-1 as updated July 8, 2010); description of categories (beginning on page 3-18); a maximum of 1,250 total residential units and 390,000 square feet of commercial space; and target densities (Table 3.2), except as modified herein. Corner store-style neighborhood commercial uses within residential land use categories shall be defined in the Development Agreement and shall only be allowed through minor amendment of the MPD. All other specifics shall be resolved through the Development Agreement process.

133. Parcel L2 shall be designated either Low or Medium Density Residential, or open space.

134. The project shall provide a mix of housing types in conformance with the MPD Design Guidelines. The Development agreement shall set targets for various types of housing for each phase of development.

135. Identification of specific areas where live/work units can be permitted shall be done as part of the Development Agreement or through an MPD minor amendment.

136. A minimum density of 4 du/per net acre for residential development shall be required for implementing projects, and shall be calculated for each development parcel using the boundaries of that parcel (or the portion thereof to be developed) as shown on the Land Use plan map (Figure 3-1, as updated July 8, 2010).

137. If the applicant requests to increase a residential category that abuts the perimeter of the MPD, it shall be processed as a Major Amendment to the MPD. Residential land use categories can otherwise be adjusted one category up or down through an administrative approval process

provided they also otherwise meet the requirements for minor amendments outlined in BDMC 18.98.100.

138. The Development Agreement shall limit the frequency of proposed reclassification of development parcels to no more frequently than once per calendar year.

139. Project specific design standards shall be incorporated into the Development Agreement. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines. All MPD construction shall comply with the Master Planned Development Framework Design Standards and Guidelines, whether or not required by the Development Agreement.

140. A unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) shall be incorporated into the Development Agreement.

141. All commercial/office uses (other than home occupations and identified live/work areas) shall only occur on lands so designated. Additional commercial areas shall be identified on the Land Use Plan through future amendment to the MPD.

142. The project shall include a mix of housing types that contribute to the affordable housing goals of the City. The Development Agreement shall provide for a phase-by-phase analysis of affordable housing Citywide to ensure that housing is being provided at affordable prices. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis.

143. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis referenced in the preceding condition.

144. A distinct land use category shall be created to recognize potential light industrial uses or the "office" category shall be renamed to properly indicate the range of potential uses. Areas intended to have light industrial type uses shall be identified on the Land Use Map that is made part of the Development Agreement.

145. An additional 14.8 acres of open space shall be provided and designated as such on the Land Use Plan or a plan for providing the acreage shall be provided in the Development Agreement.

146. The high density residential (18-30 du/ac) supplemental design standards and guidelines (MPD application Appendix E) shall become part of the Development Agreement.

147. Detached single family dwelling units shall be predominantly alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in his/her reasonable discretion.

SSB 6241 and, as set forth in Section 205, determine in its sole discretion whether the petitioners will benefit from the proposed district and whether the formation of a district will be in the best interest of the City and comply with the requirements of the Growth Management Act, Ch. 36.70A RCW.

162. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example: when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

163. The Development Agreement shall document a collaborative design/review/permitting process that allows City staff to participate in the conceptual stage of project planning in order to provide input on designs and choices that benefit the City as well as the applicant.

164. The Development Agreement shall specifically identify which rights and entitlements are vested with each level of permitting, including but not limited to the MPD Application approval, the Development Agreement approval, and Utility Permit approvals.

165. Reclassification of development parcels shall occur no more frequently than once per calendar year.

166. A process for including lands identified as "Expansion Areas" in the application shall be defined in the Development Agreement.

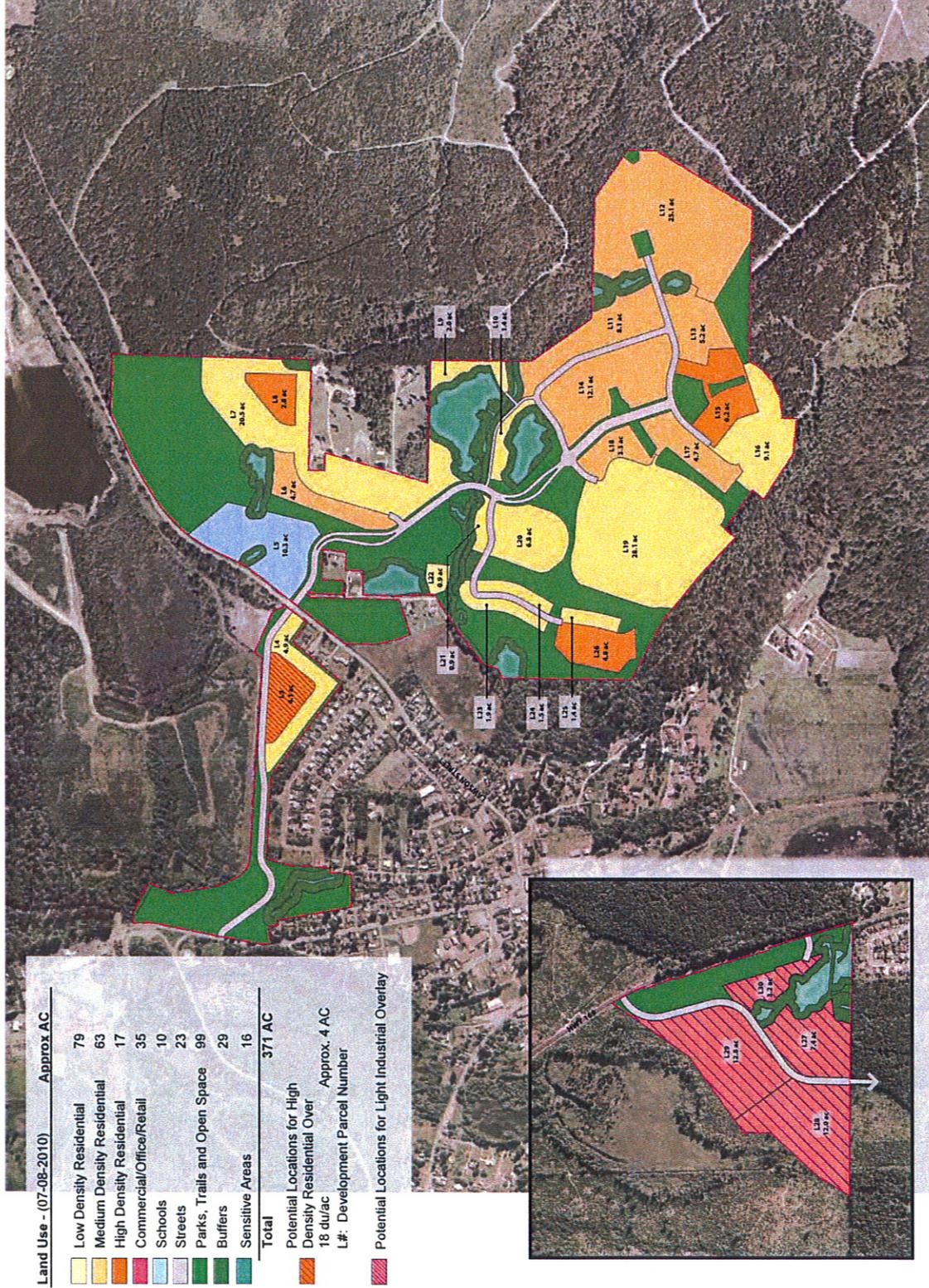
167. Proposed reclassification of development parcels located at the project perimeter to a higher density shall only occur through a Major Amendment to the MPD.

168. The Development Agreement shall define the proposed phasing plan for the various matters (utility and street infrastructure, parks, transferred development rights, etc.) subject to phasing standards.

169. Prior to the approval of the first implementing project of a defined phase, a detailed implementation schedule of the regional projects supporting that phase shall be submitted to the City for approval. The timing of the projects shall be tied to the number of residential units and/or square feet of commercial projects.

MPD Permit Application Land Use Map 3-1
(as updated July 8, 2010)

DESIGN CONCEPT AND LAND USE PLAN
 FIGURE 3-1 LAND USE PLAN



Black Diamond City Council Agendas

December 2007

November 2008

November 2009

November 2010

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Public Hearing Special Event Permit Application - Yarrow Bay for temporary office space	Agenda Date: December 6, 2007		AB07
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy	X	
	Finance – May Miller		
	Public Works – Dan Dal Santo		
	Police – Chief Luther		
	Court – Kaaren Woods		
Commander Kiblinger			
Cost Impact:			
Fund Source:			
Timeline:			
Attachments: Permit Application, Public Hearing Notice, Ord. 07-834, Staff Comments, Testimony			
SUMMARY STATEMENT: Recently the City received a Special Event Permit Application from Yarrow Bay for temporary office space on Master Planned Development property. On October 18 th , 2007 Council adopted Ordinance No. 07-834 (copy attached), which regulates this type of event. Per Section 2.59.040 (2) City Council shall be responsible for approving this type of event after holding a public hearing. Staff has reviewed this application and attached are their comments and conditions as well a written testimony received from Mr. & Mrs. Ron Taylor.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to approve the Special Event Permit Application from Yarrow Bay for temporary office space on Master Planned Development property.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
December 6, 2007			



CITY OF BLACK DIAMOND
November 6, 2008 Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

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

PUBLIC HEARINGS:

- | | |
|--|---------------|
| 1.) AB08-108 - Ordinance Forming a Stormwater Utility | Mr. Boettcher |
| 2.) AB08-109 - Ordinance Adopting 2008-2013 Capital Improvement Plan | Ms. Miller |
| 3.) AB08-110 - Special Events Permit – YarrowBay | Mr. Pilcher |

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

- | | |
|--|-------------|
| 4.) AB08-111 -Confirming Appointment to Civil Service Commission | Mayor Botts |
|--|-------------|

UNFINISHED BUSINESS: None

NEW BUSINESS:

- | | |
|---|-------------|
| 5.) AB08-112 - Ordinance Authorizing Petty Cash Fund for Community Development | Ms. Miller |
| 6.) AB08-113 - Resolution Authorizing Prosecution Services with Moberly & Roberts | Ms. Voelpel |
| 7.) AB08-114 – Resolution Authorizing Amendment No. 1 to Local Hazardous Waste Management Program Grant #D37962D | Mr. Nix |
| 8.) AB08-115 – Resolution Authorizing Mayor to Execute an Agreement for Property Access, Occupancy and Use with Nestle Waters North America, Inc. | Mr. Combs |

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 9.) **Claim Checks** – November 6, 2008 No. 32453 through 32532 (void checks 32452, 32498, 32505) in the amount of \$ 293,748.86
- 10.) **Minutes** – Council Meeting of October 9, 2008 and October 16, 2008 and Workstudy Notes of October 16, 2008, October 22, 2008, October 23, 2008, October 29, 2008 and October 30, 2008

EXECUTIVE SESSION: Labor Negotiations

ADJOURNMENT:



CITY OF BLACK DIAMOND
November 5, 2009 Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

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

PUBLIC HEARINGS:

- 1.) **AB09-125** – 2009-2014 Capital Improvement Plan Ms. Miller
- 2.) **AB09-126** – Special Events Permit, YarrowBay Temporary Office Space Mr. Pilcher
(*Council action may follow public hearing*)

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS: None
UNFINISHED BUSINESS:

- 3.) **AB09-119A** – Ordinance Amending Subdivision Code Mr. Pilcher

NEW BUSINESS:

- 4.) **AB09-127** – Resolution Accepting Warehouse Roof Replacement Project as Complete Mr. Boettcher

DEPARTMENT REPORTS:

MAYOR’S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 5.) **Claim Checks** – November 5, 2009 No. 34750 through No. 34832 in the amount of \$190,737.59
- 6.) **Minutes** – Council Meeting of October 15, 2009, Workstudy Notes of October 15, 2009, October 22, 2009 and Special Council Meeting of October 26, 2009

EXECUTIVE SESSION:

ADJOURNMENT:



CITY OF BLACK DIAMOND
November 4, 2010 Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-2560. Thank you for attending this evening.

PUBLIC HEARINGS:

- 1) **AB10-083** – Comprehensive Plan Amendments Mr. Pilcher
- 2) **AB10-084** – YarrowBay Special Events Permit Mr. Pilcher

(Council Action may follow Public Hearings)

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS

UNFINISHED BUSINESS:

NEW BUSINESS:

- 3) **AB10-085** – Resolution Authorizing Municipal Stormwater Capacity Grant Program Mr. Boettcher

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 4) **Claim Checks** – November 4, 2010, No.36220 through No.36259 (voided check No. 36329) in the amount of \$71,739.03
- 5) **Minutes** – Special Meeting Minutes of June 21 through June 24, June 28 through June 30, July 6 and July 7, July 14 and July 19 through July 20, Workstudy Notes of October 14, 2010 and Council Meeting of October 21, 2010

EXECUTIVE SESSION:

ADJOURNMENT:

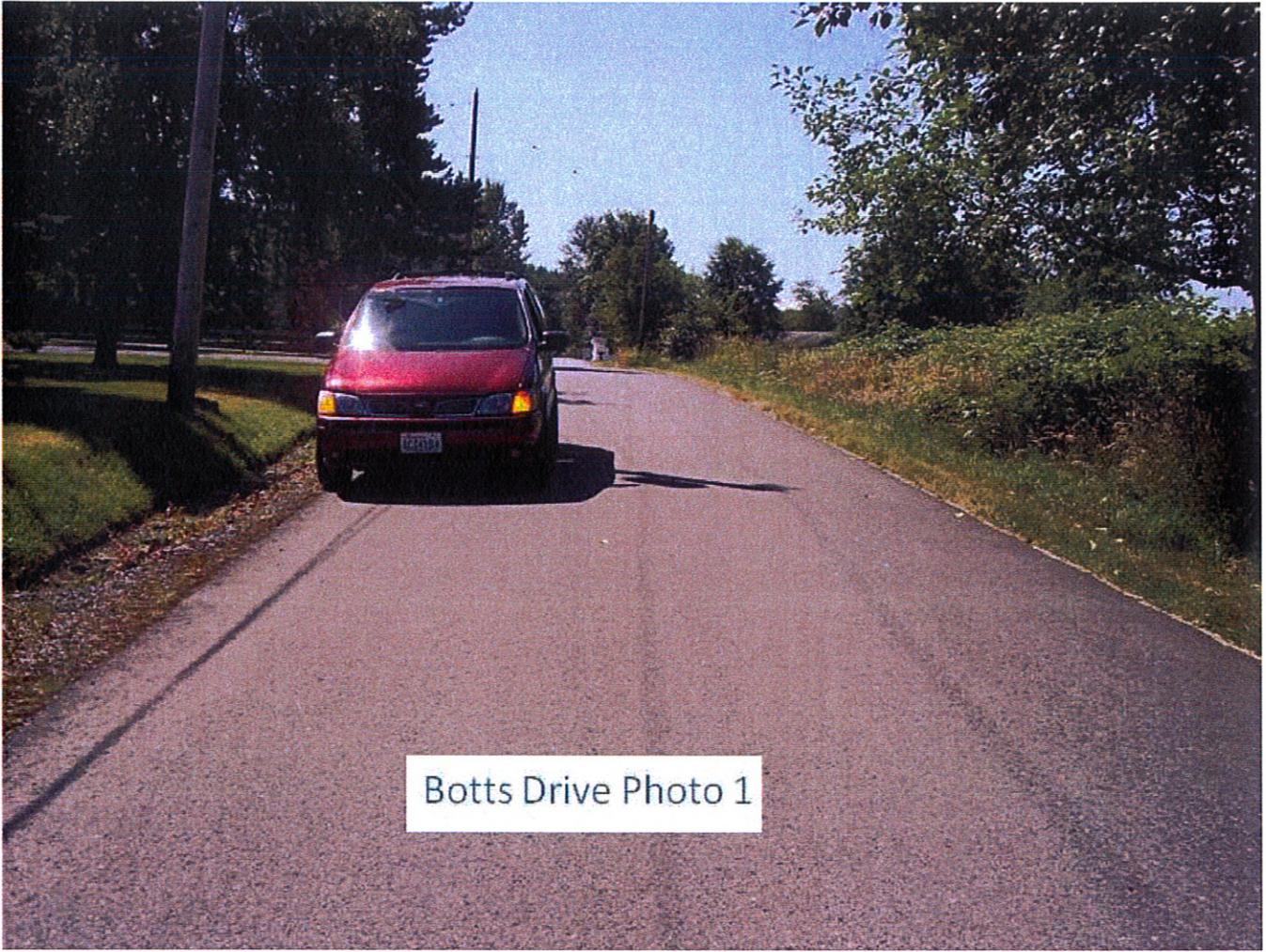
Photographs

Botts Drive Photo 1

Botts Drive Photo 2

Easement Photo 1

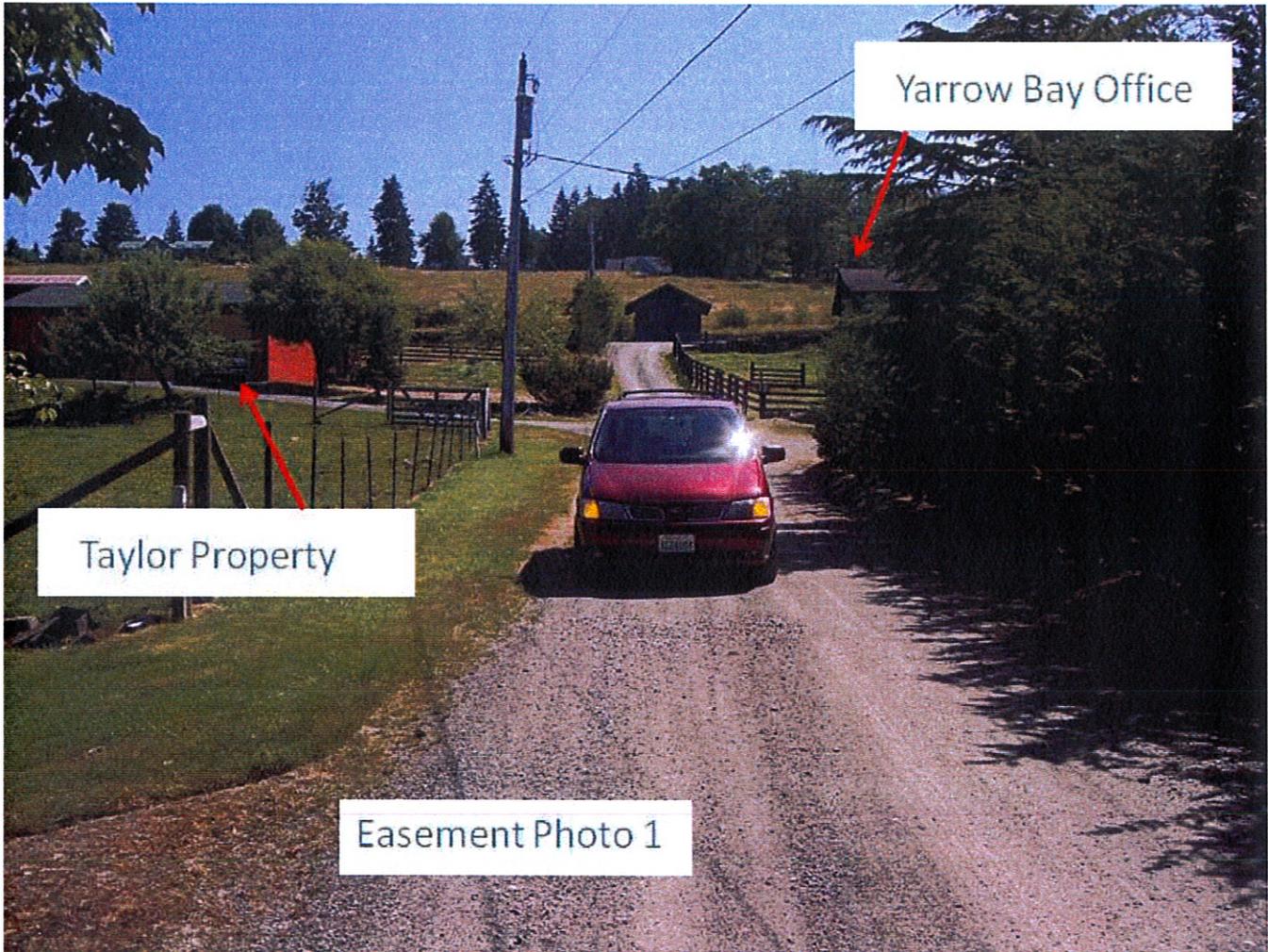
Easement Photo 2



Botts Drive Photo 1



Botts Drive Photo 2



Yarrow Bay Office

Taylor Property

Easement Photo 1



Easement Photo 2

Stacey Borland

From: Irrgang, Michael E <michael.e.irrgang@boeing.com>
Sent: Wednesday, August 17, 2011 3:29 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: replies to YarrowBay rebuttals of my written testimony
Attachments: Irrgang reply to Yarrow Bay rebuttals 8-17-11.doc

Attached please find for forwarding to the Hearing Examiner my replies to the rebuttals by YarrowBay of my written testimony, in Exhibits #208 and #209.

Thank you,
Michael E. Irrgang
22505 SE 329th St.
Black Diamond, WA 98010

206-384-5531
mike@irrgang.net

EXHIBIT 242

Irrgang replies to Yarrow Bay rebuttals

Exhibit 209, p. 47: Yarrow Bay refers to me challenging 3 taxpayer subsidies of their MPD in my Exhibit 121. However, they leave out the largest and fourth subsidy, school construction, which as I state (and which they do not challenge) is a roughly \$300 million subsidy of a key infrastructure requirement.

Exhibit 209, p. 48: Yarrow Bay refers to my “traffic guesstimates” as precluding any need for a real traffic mitigation project, widening SR 169 to 4 lanes. Yet in their own exhibit 208 rebuttal, p 33, they indicate that they both agree with my estimates of current traffic as well as my estimates of MPD traffic, in terms of cars per minute. If there is gridlock today, as anyone can clearly see at rush hour today, my current counting of actual traffic and simple observation of anyone driving during rush hour times can also see (from having to wait for multiple traffic lights), then Yarrow Bay is admitting in a back-handed way that SR 169 has to be widened in order to accommodate MPD traffic. In simplistic terms, if 2 lanes are gridlocked, and traffic is to be doubled, then 4 lanes are needed merely to maintain the current level of gridlock as opposed to doubling commute times from not so doing

Exhibit 209, p. 40, 47 & 48: Yarrow Bay indicates that their CFD proposal matches my MUD proposal, which I would agree, yet they indicate here and also on p. 39 that they are going to pay for infrastructure requirements, which they clearly are not (since they plan to neither pay for schools nor major roadway widening. On p. 39 they clearly indicate that the city will incur no liability for mitigating any infrastructure requirement caused by the MPD. If they are going to comply with this in their own words, then they clearly must be paying for both major roadway widening as well as construction of schools. Since they are using circular arguments to state why they should not pay for these items which are currently likely to be taxpayer subsidies of their MPDs, then it is incumbent upon the Hearing Examiner to require explicit language in the Development Agreements requiring them to truly pay for the mitigation of these definitive transportation and school taxpayer-subsidized mitigations.

Exhibit 208, p. 24: Yarrow Bay states that I am stating that the MPDs will cause gridlock on SR169, which I believe they should mitigate. I stated in Exhibit 137 that gridlock already exists at certain times and that the MPDs will cause effectively a doubling of traffic. Failure to mitigate this untenable situation will be a nightmare. Yarrow Bay then goes into a lengthy discussion of how my financial analysis of their potential revenue is not legally relevant and cannot be considered in reference to mitigation. My point (which they carefully avoid) is that based on what was originally their own projected revenues, in my Exhibit 121 and 137, I am saying that those infrastructure impacts needing mitigation only as a result of the MPD would each require 12% of their projected revenue. While 24% of their projected revenue would significantly impact their profits, these are not impossible mitigation costs for them – and they could, of course,

raise their housing prices, which would certainly help the City of Black Diamond in its tax base.

Exhibit 208, p. 32 (Transpo letter, p. 1 & 2): A careful read of Mr. Kevin Jones' letter (ignoring all the barbs and implications that I don't know what I am taking about) indicates that he is actually stating that his assessment of current traffic on SR 169 and his assessment of rush hour traffic from the YarrowBay MPDs are similar. What he is stating, however, (as he also stated in his letter to the City Council of May 4, to which he refers, and which I included in my testimony) is that SR 169 is not at maximum capacity. It may very well be (and I would not disagree) that SR169 can handle more cars, but as any "layman" (a term which he uses as a pejorative) can readily observe and would also no doubt opine, gridlock already exists now at certain times even if there is more capacity on the roadway. Gridlock, i.e. people waiting for the light to change more than once, is what causes long commute times on such a road – it does not require a traffic study to gauge the existence of a current problem – it merely requires going and sitting in the gridlock – which I have done and do almost daily!

What a traffic study does is allow forecasting of future levels. What a simulation can do is both predict the effect of future traffic levels on specific roadways, as well as allow comparison and evaluation of different potential solution alternatives, Though I may be a "layman" regarding traffic studies, I am certainly not a layman in simulation technology. I received an MS in Computer Science from the College of Engineering at Northwestern University in Illinois. In 1985, I developed a sophisticated software simulation methodology for modeling complex moving systems, which received U.S. patent # 5,182,793 in 1992. From looking at the Maple Valley traffic simulation, the software tool they used may very well have been developed using an IBM tool called C-Plex, which uses the methodology in my patent. During the closed record MPD hearings, the Maple Valley traffic simulation appeared to be considerably more sophisticated than the Parametrix simulation used by YarrowBay.

In reviewing the Parametrix study and simulation results, the assumptions for forecasting future traffic levels are seriously flawed – the entire project was performed using 2000 census data, but much worse 2000 census demographics. The issue with the demographics is that the current rural-area Black Diamond demographic is one of retirees, unemployed, and multi-generational native residents. Adding 6,050 new homes will most certainly modify this demographic, most likely creating a bedroom city for Seattle/Bellevue instead of a sleepy rural town. The effect of this would be a significant reduction in the Internal Recapture Rate for traffic, which logical assumption was [self-servingly] ignored in the Parametrix study, and which point is studiously avoided by Mr. Jones in his commentary. Mr. Jones refers instead to "linked trips between different land uses within the MPDs". Of course this will occur, but at trivial levels, given the lack of employment which will still exist in Black Diamond, regardless of these "different land uses".

Mr. Jones states that he is substantially in agreement with the number of cars I am forecasting will travel on a per-hour basis on SR169.

Given that in spite of using words to try to tear down my analysis **Mr. Jones actually endorses my traffic figures, both for today as well as after the MPDs are built.**

Since the traffic figures upon which we agree for today's SR 169 and the future **additional** traffic from the MPDs are very similar, then it requires no complex calculation or thought to conclude the obvious – that SR169 will need to have the capacity to handle this additional traffic. If, as I point out above, **SR169 is already gridlocked**, which anyone can observe Tuesday-Thursday from roughly 3:30 or 4 to 6 or 6:30, then it is obvious that SR169 needs to double its carrying capacity. If it is now gridlocked at two lanes, then **to merely maintain the same level of gridlock would require increasing it to a 4 lane road.** In other words, a minimum mitigation would require 4 lanes. It is also quite obvious that **for a given set of people traveling to a common terminus** if you make a small section of a road 4 lanes without making the full length of the common travel 4 lanes, all you do is create a corresponding or worse gridlock in a different place.

Mr. Jones dances around or ignores all these issues, as YarrowBay has also done in all of their arguments, presentations, and claims that they were allegedly “mitigating traffic” by improving a few dozen intersections in Black Diamond and the immediately adjacent communities, while ignoring the **real** issue – commuter traffic to Seattle/Bellevue. So how can Mr. Jones say that my conclusions are “unfounded” when he effectively endorses my numbers? The Hearing Examiner or anyone else can do just what I did – count cars at SR169 & 240th to see the current problem, and then use Mr. Jones’ and my numbers of future and current traffic.

As Yarrow Bay indicates in **Exhibit 209, p. 47 & 48** as referred to above in my earlier comments, they are stating that they will mitigate all infrastructure impacts as they impact the community. They are saying this now **in their own words**, but the Development Agreements do not contain sufficient wording to require them to do so. If they are saying now that they will do such mitigation, then the Development Agreements need to be specifically modified to **explicitly require such mitigation on all infrastructure – especially** transportation! How can anyone object to such a reasonable requirement, if YarrowBay has freely stated they will do it? The language needs to **require** them to do what they have said they will do.

Stacey Borland

From: BOB STERBANK <BOB@kenyondisend.com>
Sent: Wednesday, August 17, 2011 3:42 PM
To: Andy Williamson; Stacey Borland; Steve Pilcher; Phil Olbrechts
Cc: BobEdelman@comcast.net
Subject: RE: Response to Exhibit 218 -

Good afternoon, Mr. Examiner:

This e-mail is to respond to your inquiry concerning the reason for the statement, in the City's written response, that Mr. Rimbos' statements in Exhibit 118 misunderstood the workings of the traffic modeling and monitoring conditions in the MPD Permit Conditions, "(perhaps deliberately)." The Examiner has the discretion to determine the weight, if any, to give to this phrase in considering the City's overall comments. The Examiner can certainly also decide to consider the City's comments without considering the phrase, if for no other reason to avoid further objection from project opponents.

Even so, the Examiner should nevertheless consider the comment appropriately made, for the following reasons. While Mr. Edelman's Motion to Strike labels that phrase a "personal attack," it was actually a comment on the relative illegitimacy of a particular tactic employed by the commenter, as distinct from an attack on the person himself. As an example of the difference, see Mr. Rimbos' Exhibit 224, which refers at page 7 to "the "rogue" City of Black Diamond" and its "irresponsible and inconsiderate decisions"

As another example, I can say that I like and respect Mr. Rimbos as a person. He appears to be thoughtful, articulate, and a nice person, from the conversations that I have had with him. The comment in the City's response did not address was not an attack on Mr. Rimbos personally. It expressed disagreement with a particular tactic.

Context is also important. The comment was part of a larger argument in the City's response to the efforts of some project opponents to re-argue the MPD Permit conditions. See City's Response at 10-11. The City pointed this out because the Hearing Examiner's orders have repeatedly indicated that re-argument of MPD Permit Conditions is not properly within the scope of the Development Agreement hearings. See, e.g., Order on Yarrow Bay Objections to Exhibits at 2 ("As made clear by the Examiner in Pre-Hearing Order II and during the hearings, the DA hearings are not an opportunity to request a revision to the MPD conditions of approval.")

On page 12, the City's comments ask that the Examiner reject a related effort, namely, the call to "rewrite" MPD Permit conditions on the grounds that existing ones are misunderstood or require additional specificity. As the City's response and the attached declaration of John Perlic go on to explain, the existing MPD Conditions are thorough and address the substance of many of the commenter's complaints. Ex.

118's author was fully apprised of the workings of the MPD Permit traffic conditions. He is the leader of the Save Black Diamond Technical Action Team, he met with City staff and Mr. Perlic and reviewed and commented on the MPD Conditions in detail, proposed new ones, and solicited and prepared witnesses to testify at the DA hearings. While not a traffic expert, he is unlikely to have misunderstood the MPD Permit traffic Conditions.

Meanwhile, though CR 11 does not technically apply, in order for City administrative processes to function, they must be premised on the same notions that underlie our Civil Rules: namely, that arguments made will be warranted by existing law and not interposed for any improper purpose. Where, as here, there are grounds for concluding that a particular line of argument is made in contravention of multiple previous Examiner orders, for an apparently improper purpose — the re-opening of the MPD Permit Conditions -- it is fair comment to observe, parenthetically, that such a strategy may be "perhaps deliberate."

EXHIBIT 243

Last but not least, the Examiner's e-mail below acknowledges that the City may have had reasons for presenting evidence concerning the organizational structure and motives of the organizations presenting evidence. At least one of those reasons merits elaboration. As pointed in the City's Response at pages 7-9 makes the legal argument that collateral attacks on the approved MPD Permit density are untimely and improper. Evidence of the relationship between various commenting organizations and individuals, and the "goal" stated in online materials for those organizations' funding arm, is relevant to whether the evidence and arguments presented by project opponents are, in fact, an untimely and impermissible collateral attack on MPD project density.

As noted in the City's comments, this evidence was not intended to as a comment on the use of nonprofit corporations or any individuals involved. It was offered, properly, in support of a particular legal argument, namely, whether attacking MPD project density is legally proper at the DA juncture.

As always, the City appreciates both the opportunity to fully articulate the reasons for its submissions, as well as the Hearing Examiner's thoughtful consideration of the same.

Respectfully submitted,

Bob C. Sterbank
Counsel to the City of Black Diamond

Bob C. Sterbank
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
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Direct Tel: (425) 988-2208
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bob@kenyondisend.com
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>>> "Phil Olbrechts" <olbrechtslaw@gmail.com> 8/17/2011 10:44 AM >>>

There is no reason to await a response from the City on the Edelman motion as I am overruling the motion except as to one issue in which I will wait to hear from the City. I do not wish to further delay the hearing process to respond to objections when it is not necessary to do so.

Mr. Edelman's motion as it relates to City Attorney comments on the organization and motives of hearing participant is overruled. The comments are of highly marginal relevance to the Examiner. The Examiner is far more interested in the substance of comments made as opposed to who presented them or why. However, as discussed at length in several pre-hearing orders, the Council has a very wide degree of discretion in its decision to pursue supplemental conditions or exercise supplementary SEPA authority.

One factor that may be of importance to the Council in committing time and resources to exercising this discretionary authority is the degree of concern of its constituents. The organizational structure and motives of the organizations

presenting evidence in this regard can be of relevance in this regard. The City Attorney may have other reasons for arguing the information is relevant, but the reason cited is sufficient to keep the information in the record.

Mr. Edelman has also objected to a couple attachments that provide comparisons to other development projects. The Examiner recently ruled that SAVE Black Diamond could make comparisons to other developments. The City Attorney has the same right.

One point that is left open for response from the City Attorney is the Page 12, line 20 phrase "perhaps deliberately". As noted by the Examiner during the hearings when he stated that calling the Applicant "greedy" was not appropriate, in order to maintain a level of civility that fosters a constructive hearing process any attacks of a personal nature that are not necessary to argue a point will be stricken. The comment cited by Mr. Edelman appears to be unfounded, inflammatory and unnecessary. The City

Attorney may very well have good reason to employ this language and the Hearing Examiner will defer a ruling on the issue until the City Attorney has had an opportunity to respond. The City Attorney will have until 5:00 pm today to respond.

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

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Wednesday, August 17, 2011 10:24 AM
To: Phil Olbrechts
Subject: FW: Response to Exhibit 218 -

Mr. Olbrechts,

Please see the communication below from the City Attorney.

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222

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

From: BOB STERBANK [mailto:BOB@kenyondisend.com]
Sent: Wednesday, August 17, 2011 10:12 AM
To: Steve Pilcher; MIKE KENYON
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; MARGARET Starkey
Subject: Re: Response to Exhibit 218 -

Steve,

Please communicate to the Hearing Examiner that the City intends to respond to both Mr. Edelman's Motion to Strike and Ms. Wheeler's objection, and that the City respectfully requests that he refrain from ruling on the Wheeler objection or the Edelman motion until the City has had an opportunity to do so.

Best regards,

Bob Sterbank

Bob C. Sterbank
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820

Direct Tel: (425) 988-2208
Main Tel: (425) 392-7090
Fax: (425) 392-7071
bob@kenyondisend.com
www.kenyondisend.com

This message has been scanned for malware by SurfControl plc. www.surfcontrol.com

Stacey Borland

From: Steve Pilcher
Sent: Thursday, August 18, 2011 5:24 PM
To: Stacey Borland
Subject: FW: Road Services Division Comments to Hearing Examiner
Attachments: 08182011.2.pdf

From: Angeles, Gail [<mailto:Gail.Angeles@kingcounty.gov>]
Sent: Thursday, August 18, 2011 5:16 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Nolan, Matthew; Kara, Fatin; Reitenbach, Paul; Norman, Paulette
Subject: Road Services Division Comments to Hearing Examiner

Dear Mr. Pilcher:

Please see the attached Road Services Division comments for the City of Black Diamond Hearing Examiner.

Sincerely,

Gail Angeles
Administrative Specialist III
Department of Transportation
King County Road Services Division
gail.angeles@kingcounty.gov
206.296.3725

EXHIBIT 244



King County

Road Services Division

Department of Transportation

KSC-TR-0313

201 South Jackson Street

Seattle, WA 98104-3856

206-296-6590 Fax 206-296-0566

TTY Relay: 711

www.kingcounty.gov/roads

August 18, 2011

Dear Mr. Obrechts:

Thank you for this opportunity to comment and to re-iterate earlier recommendations of the King County Road Services Division. These comments are meant to clarify details of two issues. The first relates to the traffic modeling, and the second relates to traffic capacity along Southeast Green Valley Road.

In earlier testimonies, Matthew Nolan focused on your recommended conditions 11, 12, 15, and 34, all of which had been proposed to be changed by the applicant. Mr. Nolan agreed with your first suggestion that the Black Diamond City Council do the modeling right away. At that time, it appeared that you were recommending a new model be developed for the Development Agreement process.

To clarify comments regarding traffic modeling, we recommend that a periodic review be conducted to check actual conditions and actual trip internalization information. King County supports re-checking the traffic modeling internalization and trip export figures at 1000-2000 dwelling units. The Black Diamond City Council has required a review after issuing permits for 850 units.

In addition, I would note that the County recommended tying residential development thresholds to commercial/retail/employment opportunity thresholds, minimizing (future) Master Planned Developments (MPD) residents' potential of developing employment and shopping trip patterns well-outside the MPD boundaries. This approach would more closely mimic modeling results of the initial traffic impact analyses.

Concerning traffic capacity on Southeast Green Valley Road, we do not agree with the applicant's assertion that capacity on Southeast Green Valley Road is accurate simply by classifying the road as an arterial. The actual capacity has not been calculated, nor does the County wish to make an estimate without considerable evaluation of the roadway conditions. Factors limiting the basic lane capacity could include lane widths of less than 12 feet, shoulder widths of less than six feet, and lateral obstructions and their proximity to the travel lane. Other limiting factors include the presence of bicyclists and farming equipment and vehicles. No assessment has been made of road grades or the percent of roadway restricted to passing maneuvers.

Phil Obrechts
August 18, 2011
Page 2

I hope this clarification is helpful. If you have questions, please feel free to contact me by phone at 206-296-6590, or via email at paulette.norman@kingcounty.gov.

Sincerely,

A handwritten signature in cursive script that reads "Paulette Norman".

Paulette Norman, P.E.
Interim Division Director
County Road Engineer

cc: Andrew Williamson, Economic Development Director, City of Black Diamond
Brenda L. Martinez, Assistant City Administrator/City Clerk, City of Black Diamond
Paul Reitenbach, Program Manager IV, Department of Development and
Environmental Services
Matthew Nolan, P.E., County Traffic Engineer, Traffic Engineering Section (TES),
Road Services Division (RSD), Department of Transportation (DOT)
Fatin Kara, P.E., Supervising Engineer, TES, RSD, DOT

Stacey Borland

From: Ryan Kohlmann <rkohlmann@yarrowbayholdings.com>
Sent: Thursday, August 18, 2011 5:24 PM
To: Steve Pilcher
Cc: Stacey Borland; Andy Williamson; Brenda Martinez
Subject: YarrowBay reply documents
Attachments: Reply to Exhibit 202.pdf; DA Hearing Reply re Transportation.pdf; YB Reply 08182011.pdf; Attach 4 - Reitenbach Testimony (01748918).pdf; Attach 5 - Staffing and Facilities Funding Agreement.pdf; Attach 6 - CFD Materials.pdf; Attach 1 Third Brainard Declaration and letter.pdf; Attach 2 3rd Declaration of AI Fure - Memorandum.pdf; Attach 3 Gibbons Declaration and letter.pdf

Attached are documents prepared for reply to the Hearing Examiner. Attachment #7 to YB Reply 08182011 will be provided under separate email.

Ryan J. Kohlmann, AICP
Senior Project Manager, Black Diamond



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EXHIBIT 245

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CH&

August 18, 2011

Mr. Phil Olbrechts
Hearing Examiner
c/o Steve Pilcher
City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010

Re: Reply to Save Black Diamond Legal Arguments dated August 10, 2011 (Exhibit 202)

Dear Mr. Examiner:

This letter responds to the legal arguments of Save Black Diamond ("SBD"), presented in a letter dated August 10, 2011, and filed with the City on August 12, 2011 (Exhibit 202).

- The Examiner has allowed a wide range of testimony, due to the broad range of issues that can be voluntarily addressed by YarrowBay and the City in the Development Agreements. However, the City has limited discretion with regard to matters that the City can compel addressed in the Development Agreements, and there is no authority by which the City can re-open the MPD Permit Approval Ordinances.**

As the Examiner has previously stated in the Pre-Hearing Order II, the City Council's discretion with regard to matters that can be compelled to be addressed in the Development Agreements for The Villages and Lawson Hills is limited to the incorporation of the MPD Permit Conditions of Approval. However, the scope of the hearings has been broad because the issues that can be voluntarily addressed by YarrowBay and the City are broad. As the Examiner has acknowledged in the *Order on YarrowBay Objections to Exhibits*, dated August 16, 2011, YarrowBay and City Staff have voluntarily agreed to a number of provisions that go beyond the MPD Permit Conditions of Approval, and YarrowBay's previous filings with the Examiner have also included additional matters where YarrowBay has cooperated with requests from the City Staff or the concerned public to do more. It appears SBD may be confusing that past cooperation with an obligation for YarrowBay to agree to any supplemental conditions that the Council chooses to impose. That goes too far.

nrogers@cairncross.com
direct: (206) 254-4417

{01746989.DOC;5 }

Mr. Phil Olbrechts
Hearing Examiner
City of Black Diamond
August 18, 2011
Page 2

SBD also argues that the City has the discretion to choose which regulations to include in the Development Agreements for purposes of vesting. That argument is incorrect. Pursuant to BDMC 18.98.195.A, the “MPD permit approval vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.” (Emphasis added.) Thus, the MPD Permit Approvals for both The Villages and Lawson Hills vested all Implementing Permits for both MPDs to the regulations in effect on September 20, 2010. The Council does not have the discretion to exclude a certain chapter of the regulations from vesting in the Development Agreement process.

Next, SBD argues that the Council and YarrowBay should re-open the MPD Conditions of Approval to add new provisions. Again, SBD is incorrect. As the Examiner also stated in the Pre-Hearing Order II, “[o]ne issue that can’t be addressed is the validity of the MPD conditions of approval. . . . The development agreement process cannot be used to modify those approvals.” But SBD alleges a conflict between State law and the MPD Permit Approval Ordinances that supposedly mandates re-opening those Ordinances. There is no such conflict. State law does not allow the legislative adoption of development regulations through a development agreement. And the MPD Permit Approval Ordinances do not call for the adoption of any development regulations through the Development Agreements.

SBD characterizes the location and siting of uses, and the inclusion of various setbacks, landscaping standards, sign standards, and similar matters detailed in the Development Agreements as “regulatory controls.”¹ SBD is wrong. When the City of Black Diamond enacted BDMC chapter 18.98 in 2005 and amended that code chapter in 2009, the City adopted “non-Euclidean” regulatory controls to govern master planned developments. The express purposes of the adopted MPD “permit process and standards” include to allow “alternative, innovative forms of development and encourage imaginative site and building design and development lay out with the intent of retaining significant features of the natural environment,” and to “allow flexibility in development standards and permitted uses.” BDMC 18.98.010. Another express purpose is to “promote and achieve the city’s vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book *Rural By Design* by Randall Arendt and in the City’s design standards.” *Id.*

Enclosed with this letter is a Declaration of Randall Arendt confirming that the City’s Code represents a non-Euclidean zoning scheme, and explaining that the adoption of rigid code standards as regulatory controls is precisely the opposite of what a city should do when implementing the principles of *Rural By Design*. As stated by Mr. Arendt: “[t]he City’s adopted regulations allow a more flexible approach to uses, design standards, setbacks, parking,

¹ SBD also asserts that they plan to make the novel argument that the 16-year old, widely used development agreement statutes are somehow unconstitutional restrictions on police power authority. Since SBD does not support its argument, and the Examiner does not have authority to decide such an issue, we do not respond here.

Mr. Phil Olbrechts
Hearing Examiner
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August 18, 2011
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landscaping, signs, bulk, and similar matters for Master Planned Developments. This approach recognizes the value of determining certain standards based on the proposed permits for development, rather than having inflexible standards in adopted codes." Thus, in Mr. Arendt's professional opinion, meeting the goals of Rural by Design, as the City has committed to do in BDMC 18.98, requires that matters such as uses, design standards, setbacks, parking, landscaping, signs, and bulk allowances be addressed on a project-by-project basis rather than in an inflexible code.

Because BDMC 18.98 allows a wide mix of uses, and sets no minimum lot size or setbacks, YarrowBay could proceed to obtain MPD Permits and Development Agreements that include no such limits whatsoever. However, the City Council adopted MPD Permit Conditions of Approval that asked for such limits to be defined in the Development Agreement. To implement the terms of those Conditions, YarrowBay and City Staff negotiated the language in the Development Agreements.

SBD's arguments seek to twist, confuse and delay the orderly process for these Development Agreement hearings. SBD's arguments are a collateral attack on the adopted, unappealed, and valid terms of BDMC 18.98 and other City Codes, as well as a collateral attack on the MPD Permit Approval Ordinances. The only bind that exists in this situation is the bind that SBD and other project opponents have created for themselves by failing to appeal what they really wish to challenge -- the City's adopted Comprehensive Plan and development regulations, including Chapter 18.98 BDMC. Today, the Washington Supreme Court has again confirmed that challenges to development regulations must be brought within 60 days of adoption and, thereafter, only LUPA challenges can be brought regarding the compliance of site-specific approvals with those development regulations. *Feil v. Eastern Washington Growth Management Hearings Board*, No. 84369-4, slip op. at 10-13 (Wash., August 18, 2011).

At this stage in the permit process, the City Council may not defer the Development Agreement applications. The City Council "is bound to follow its own ordinances," setting a quasi-judicial process. *Phoenix Development, Inc. v. City of Woodinville*, ___ Wn.2d ___, ___ P.3d ___, 2011 WL 2409635 at 6 (June 16, 2011). Here, the quasi-judicial process for a development agreement is specifically required by BDMC 18.08.030 and 18.08.070. The Examiner should recommend that the Council continue processing the Development Agreements, and for the reasons described throughout this record, should recommend to the Council that they approve the Development Agreements.

2. The City's SEPA substantive authority is limited to the imposition of mitigation conditions for impacts that are identified in the adopted environmental documents.

SBD concedes that there is no administrative SEPA appeal available or pending before the Examiner, and that the result of prior appeals was the Examiner's determination of adequacy of the EISs for The Villages and Lawson Hills MPDs. But SBD asks that the Examiner instruct the Council that they can exercise SEPA substantive authority to impose additional mitigation

Mr. Phil Olbrechts
Hearing Examiner
City of Black Diamond
August 18, 2011
Page 4

conditions, and that the Examiner should also instruct the Council that reliance on the EISs for a disclosure of environmental impacts and potential mitigation might be misplaced because there might be additional information related to making the more detailed decision on the Development Agreements.

As described above, the City's discretion to review and approve the Development Agreements is limited, and supplemental conditions outside the scope of the MPD Permit Approval Ordinances can only be imposed if YarrowBay voluntarily agrees to those conditions. The City may exercise its substantive SEPA authority to impose mitigation only for "specific adverse environmental impacts which are identified in the environmental documents prepared under [SEPA]." RCW 43.21C.060. Here, the environmental documents are the EISs for The Villages and Lawson Hills MPDs, which have been deemed adequate. Because the Development Agreements are for the same proposal as the approved MPD Permits, those EISs were adopted, unchanged, for the Development Agreements as is required by WAC 197-11-600(3). To YarrowBay's knowledge, all identified specific adverse environmental impacts have already been mitigated through the imposition of conditions in the MPD Permit Approval Ordinances. Thus, YarrowBay perceives any request for additional SEPA mitigation, as a request for mitigation of impacts that were not disclosed in the EISs and, therefore, which constitutes an inappropriate collateral attack on the EISs.

3. No subdivision applications are currently before the Hearing Examiner.

SBD concedes that there are no subdivision applications pending before the Examiner, but then seeks to "correct" statements made by YarrowBay on this issue that they admit is not before the Examiner. While we disagree with SBD's supposed "correction," we concur that the vested status of YarrowBay's three pending subdivision applications is not an issue which the Examiner has authority to review or upon which the Examiner should render any ruling.

Thank you for your consideration of these reply comments. As indicated throughout these proceedings, YarrowBay respectfully requests that the Examiner recommend approval of the Development Agreements for The Villages and Lawson Hills.

Very truly yours,



Nancy Bainbridge Rogers

Enclosure: Declaration of Randall Arendt

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**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 RANDALL ARENDT

I, Randall Arendt, F.R.T.P.I., ASLA (Hon.), am a citizen of the United States and a resident of the State of Rhode Island, 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 the penalty of perjury, that the following declaration is true and correct.

1. I am a landscape planner, site designer, author, lecturer, and an advocate for "conservation planning." A true and correct copy of my curriculum vitae is attached to my Declaration.

2. I was asked to assist Yarrow Bay to respond to Mr. Bricklin's assertion in his August 10, 2011 letter that uses, design standards, setbacks, parking, landscaping, signs, bulk, and similar matters for Master Planned Developments must be in the form of adopted regulations, rather than addressed on a project-by-project basis.

3. In my professional opinion, the Master Planned Development regulations adopted by the City of Black Diamond (chapter 18.98 BDMC), like planned unit development

1 regulations, represent a non-Euclidean approach to zoning. The adopted regulations allow a
2 more flexible approach to uses, design standards, setbacks, parking, landscaping, signs, bulk, and
3 similar matters for Master Planned Developments. This approach recognizes the value of
4 determining certain standards based on the proposed permits for development, rather than having
5 inflexible standards in adopted codes.

6 4. The flexible, project-specific approach to uses, design standards, setbacks,
7 parking, landscaping, signs, bulk, and similar matters adopted by the City of Black Diamond
8 embodies the principles of my book, "Rural by Design: Maintaining Small Town
9 Communities." In fact, BDMC 18.98.010.L explicitly incorporates the overarching design
10 principles explained in my book as representative of the design approach adopted by the City for
11 Master Planned Development in chapter 18.98 BDMC. BDMC 18.98.010.L states:

12 The purposes of the master planned development (MPD) permit process and
13 standards set out in this chapter are to:

14 L. Promote and achieve the city's vision of incorporating and/or adapting the
15 planning and design principles regarding mix of uses, compact form, coordinated
16 open space, opportunities for casual socializing, accessible civic spaces, and sense
17 of community, as well as such additional design principles as may be appropriate
18 for a particular MPD, all as identified in the book Rural By Design by Randall
19 Arendt and in the city's design standards;

20 5. In my professional opinion, to meet the goals of Rural by Design, as the City has
21 committed to do, uses, design standards, setbacks, parking, landscaping, signs, bulk, and similar
22 matters for Master Planned Developments must be addressed on a project-by-project basis rather
23 than in an inflexible code. Better design and stronger communities can be, and frequently are,
24 achieved by encouraging this flexible approach to design standards. Conversely, codifying all
25 standards for all development removes flexibility and frequently results in poorer design. To
26 paraphrase Clarence Stein, designer of Radburn, New Jersey, in the 1920s, dimensional
standards are like handcuffs and leg irons, inhibiting good design. Requiring the City to adopt

1 specific dimensional standards in its development code for Master Planned Developments is
2 neither required nor desired.

3
4 Dated this 18th day of August, 2011, at Narragansett, Rhode Island.
5 *City* *State*

6
7 *Randall Arendt*
8 RANDALL ARENDT, F.R.T.P.I., ASLA (Hon.)



MEMORANDUM

To: The Black Diamond Hearing Examiner
From: Megan Nelson, Director of Legal Affairs, YarrowBay Holdings
CC: Nancy Bainbridge Rogers, Counsel for YarrowBay Holdings; Kevin Jones, P.E., PTOE, Transpo Group
Re: YarrowBay's Reply to Transportation-Related Response Testimony
Date: August 18, 2011

INTRODUCTION

YarrowBay supports and incorporates by reference the testimony of Perlic (Ex. 216). In addition, YarrowBay provides this reply to the following written "response" testimony regarding transportation issues: Rimbos (Ex. 224), Carrier (Ex. 186), and Schmidt (Ex. 197). Most of the matters argued in these exhibits have already been addressed by YarrowBay in Exhibit 8, Exhibit 139, and Exhibit 208, and by Mr. Perlic in Exhibit 216. Unless clearly stated otherwise, all references are to the Villages numbering system, but apply to the mirror sections in the Lawson Hills MPD Permit Approval and Development Agreement.

YARROWBAY'S REPLY TO RESPONSE EXHIBITS RAISING TRANSPORTATION ISSUES IN DEVELOPMENT AGREEMENTS

Provided below is a section by section reply to transportation-related comments regarding specific Development Agreement sections raised in the response documents. While some items are repeated from the responses YarrowBay provided in Exhibits 8, 139, and 208, the following list does not substitute or replace those earlier responses.

EXHIBIT "F" (The Villages)

Comments:

Peter Rimbos (August 12, 2011, Exhibit 224): Mr. Rimbos re-iterates his assertion that Exhibit "F," the Traffic Monitoring Plan, is not proactive.

YarrowBay Response:

Please see the short discussion in Exhibit 139, together with the extensive discussion in Exhibit 208. As explained therein, and as described in Exhibit "F" itself, the Traffic Monitoring Plan absolutely includes a predictive component, looking forward in time to determine—before development phases begin—which transportation improvements will be

needed during that phase and, therefore, which transportation mitigation projects need to be provided.

EXHIBIT “P” (The Villages)

Comments:

Carrier (August 9, 2011, Exhibit 186): Ms. Carrier alleges that “nowhere in the study is the South Loop Connector to SR 169 from The Villages mentioned” and that because this future intersection is far closer to Green Valley Road and SR 169 than the referenced “midpoint” between The Villages and Lawson Hills, the study’s conclusions are incorrect.

Carrier (August 9, 2011, Exhibit 186) and Schmidt (August 12, 2011, Exhibit 197): The commenters argue that the Green Valley Road Study does not include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road.

Carrier (August 9, 2011, Exhibit 186): Ms. Carrier alleges that Lake Holm Road and its characteristics are brought up for the first time in the study, *SE Green Valley Road – Traffic Calming Strategies*, Exhibit 30, and that characteristics of that road, as well as whether or not Green Valley Road has controlled intersections, were misstated.

Carrier (August 9, 2011, Exhibit 186): Ms. Carrier alleges that “a major traffic mitigation that would calm traffic is a described, new traffic model applied specifically to all of the roads mentioned in the ‘study’.”

Carrier (August 9, 2011, Exhibit 186): Ms. Carrier questions why the study does not describe how the LOS for the intersections at either end of Green Valley Road will require mitigation, but the remainder of the roadway between those intersections will not.

Carrier (August 9, 2011, Exhibit 186): Ms. Carrier questions whether the Condition language meant that the Green Valley Road committee should have been formed prior to the Development Agreement hearings.

YarrowBay Response:

The FEISs evaluated Green Valley Road, including a prediction of MPD traffic that would use it, as well as an evaluation of the intersections at SR 169 (where mitigation was identified); at 218th Avenue SE; and at Auburn-Black Diamond Road (where mitigation was identified). As described in Exhibits 139, 208, and 216, Green Valley Road has capacity to accommodate MPD traffic. *See also*, Exhibit 30 at pages 9-10, concluding that “with the build out of both MPDs all east-west routes [including Green Valley Road] would still have available capacity in 2035.”

For the Green Valley Road study to provide a fair comparison between the differing east-west routes, the travel time and distance of each route are all required to be measured from the same "midpoint." As is shown on pages 9 – 10 of the *SE Green Valley Road – Traffic Calming Strategies*, Exhibit 30, the report used the traffic volumes predicted for Green Valley Road that were included in the TTRs for the FEISs. That means that the volumes assigned to Green Valley Road were assigned assuming that the South Connector Roadway was built to intersect with SR 169. Accordingly, any concern that somehow traffic volumes using Green Valley Road were "skewed" due to the study's assumed mid-point for all east-west routes is misplaced. The traffic volumes on Green Valley Road are the volumes predicted for full build out of both MPDs, and including the South Connector Roadway intersecting with SR 169.

The Green Valley Road study includes analysis and recommended mitigation ensuring safety and compatibility of the various uses of Green Valley Road. Exhibit "P" does not include all of the possible traffic calming measures analyzed by Parametrix in Exhibit 30, the *SE Green Valley Road – Traffic Calming Strategies*. Exhibit "P" includes only those measures that could achieve traffic calming, including safety and compatibility. For example, "heavy machinery and farming equipment" and "school buses and fire trucks" were judged by Parametrix to be non-compatible with traffic calming strategies that narrow the roadway or introduce sharper turning radii, such as traffic circles, curb extension/chokers, chicanes, diverters, and curb bulb outs and, therefore, those measures were not transferred from Exhibit 30 to Exhibit "P" in the Development Agreements. Condition 33.a. limited the Parametrix study to traffic calming devices within "the existing improved right-of-way," therefore, no analysis was included for separated pedestrian or cycling access. However, as described in Exhibit 30, all of the measures listed in Exhibit "P" would reduce vehicular speeds on Green Valley Road. As described in Attachment A to this Memorandum, the relationship between speed and safety is both obvious and supported by published research. As further described in Attachment A, the safety benefits of these measures extend to all users of the Green Valley Road corridor.

The purpose and focus of the report *SE Green Valley Road – Traffic Calming Strategies*, Exhibit 30, was to evaluate potential traffic calming mitigation for Green Valley Road. Lake Holm Road is mentioned because it is another possible east-west route. Ms. Carrier should also be aware that YarrowBay confirmed with Parametrix that Lake Holm Road is included in the model. *See* Exhibit 139, Attachment 6.

The characteristics of all roads are properly summarized on page 8 of Exhibit 30. We recognize that the public may question the statement that there are no controlled intersections on Green Valley Road, because there are cross streets where a stop sign controls the northbound and/or southbound approaches. The reference to no controlled intersections on Green Valley Road means that there are no controlled intersections east of Auburn-Black Diamond Road and west of SR 169 where motorists traveling on Green Valley Road itself are subject to stopping.

The suggestion that running the new model now would result in traffic calming measures is incorrect. Traffic calming measures, such as speed humps, slow down and calm traffic. A transportation demand model does nothing more than estimate project trip patterns and forecast future traffic volumes.

No capacity improvement to Green Valley Road are required because there will not be enough traffic on Green Valley Road to warrant additional lanes. That is, Green Valley Road does not need more capacity in order to serve existing traffic, background growth, and the trips that are predicted from the MPDs. However, at either end, since Green Valley Road traffic is controlled with a stop sign but traffic on SR 169 (to the east) and Auburn-Black Diamond Road (to the west) flows freely, traffic delays exceeding adopted standards are predicted. Therefore, mitigation improvements at these two intersections were identified and included in the MPD Conditions of Approval.

MPD Condition of Approval No. 33.b. does not include a deadline by which the Committee is to be formed. Rather, the Committee's task is defined as to "review the study required by Condition 33(a)" and "attempt to reach agreement on whether any suggested traffic calming devices should be provided." Thus, the timing for formation of the Committee is after the study was completed and before any potential traffic calming improvements are installed on Green Valley Road. As stated in the *Guide to MPD Design and Build-Out as Envisioned by the Development Agreements*, Exhibit 8, at page 41, YarrowBay plans to form the Green Valley Road Committee within 30 days after approval of the Development Agreements for The Villages and Lawson Hills.

EXHIBIT "Q" (The Villages)

Comments:

Peter Rimbos (August 12, 2011, Exhibit 224): Mr. Rimbos asserts the structure of the MPD Conditions of Approval puts Maple Valley over a barrel such that Maple Valley was helpless to do anything but accept the list of mitigation YarrowBay offered.

YarrowBay Response:

Mr. Rimbos's description of the MPD Conditions of Approval fails to acknowledge that Maple Valley was free to choose to appeal the MPD Conditions of Approval, seeking to overturn all of the adopted conditions and obtain different mitigation. Indeed, if Maple Valley appealed what Mr. Rimbos characterizes as "the 'rogue' City of Black Diamond's irresponsible and inconsiderate decisions," then assuming Mr. Rimbos's characterization of those conditions was correct, Maple Valley would have had a strong case to get those same rogue and inconsiderate conditions modified. Instead of that appeal, or being held over a barrel, Maple Valley has stated that it "aggressively pursued and was able to reach a Mitigation Agreement with YarrowBay." See Attachment B, a copy of a newspaper column written by the Maple Valley Mayor, Noel Gerken. The Mayor confirms that the mitigation is "significant and the resulting road improvements should help mitigate the traffic impacts due to these master planned communities." *Id.*

YARROWBAY'S RESPONSE TO OTHER ISSUES

Comments:

Lisa Schmidt (August 12, 2011, Exhibit 197): Ms. Schmidt asserts, without support, that “[c]apacity restraints are outlined in GMA III, which sets the ‘rural area standard average/capacity ratio of .69 during afternoon peak period.’” Based on this assertion, Ms. Schmidt argues in favor of Mr. Nolan’s request that lot recording within the MPD cease upon a 50% increase in traffic on Green Valley Road so as to ensure the safety along Green Valley Road.

YarrowBay Response:

Reference to “GMA III” is not a meaningful citation, so it is unknown what document Ms. Schmidt is referencing.

As described by Mr. Perlic in Exhibit 216, there is no basis for the repeated request to impose a condition on MPD development that halts development in the event a 50% increase in traffic is measured on Green Valley Road. While it is clear that some members of the community do not want added traffic on Green Valley Road, there has been no showing that Green Valley Road lacks the capacity to accept that traffic. In fact, the exact opposite is true: Green Valley Road has more than enough capacity to accept the small amount of MPD traffic that is expected to travel there. *See* Exhibit 216, Exhibit 139, Exhibit 208, and Exhibit 30. Where no impact has been demonstrated, no mitigation can be imposed. In addition, Green Valley Road is a public road. The law defines “Highway” as “every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns.” RCW 36.75.010. Neither YarrowBay, nor area residents, nor the City of Black Diamond, nor King County, nor the Hearing Examiner can control and limit who travels on Green Valley Road.

Comments:

Peter Rimbo (August 12, 2011, Exhibit 224): Mr. Rimbo asserts that Condition No. 17 does not provide for “Periodic Review” of transportation mitigation.

YarrowBay Response:

Mr. Rimbo is incorrect. We encourage the Examiner and all interested parties to read all of Condition No. 17, together with Exhibit 208, including Exhibit 208’s “Introduction and Description of How The MPD Conditions Result in Comprehensive and Pro-Active Mitigation of Transportation Impacts.”

Comments:

Peter Rimbo (August 12, 2011, Exhibit 224): Mr. Rimbo states his opinion that additional environmental review must be conducted now, at least on the South Connector alignment and perhaps other roads, because in his opinion, if SEPA review is not conducted now, it will never be conducted.

YarrowBay Response:

Mr. Rimbos is incorrect. As described in Exhibit 8, pp. 42 – 44, there are a substantial number of future permits and opportunities for public review as the MPD projects and mitigation are built-out, over time. In addition, SEPA review associated with the impacts of constructing the South Connector roadway was described in Exhibit 139 (Response to K. Bryant).

Comments:

Peter Rimbos (August 12, 2011, Exhibit 224): Mr. Rimbos re-iterates his belief that a “Cost-Benefit-Risk” analysis must be conducted “of each traffic project” and, “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.”

YarrowBay Response:

Mr. Rimbos’s repeated demands for a “Cost-Benefit-Risk” analysis appear to derive from a planning metric used by his employer, the Boeing Company. While a “Cost-Benefit-Risk” analysis may be perfectly appropriate to assist Boeing in deciding whether or not it would be profitable to pursue a modified aircraft design, a “Cost-Benefit-Risk” analysis is completely unnecessary and pointless when the FAA *mandates* that Boeing re-design some element of an aircraft. Here, the transportation mitigation conditions imposed on YarrowBay are like that FAA mandate – YarrowBay doesn’t have a choice, the projects need to be provided.

Further, as explained in Exhibit 208, all cost, schedule, and technical risk associated with any transportation mitigation project is borne by YarrowBay, and is directly tied to YarrowBay’s ability to build-out the MPDs. There is no requirement for the analysis desired by Mr. Rimbos in State law, City Code or the MPD Conditions of Approval, and as YarrowBay pointed out in Exhibit 139, there is no legal obligation under SEPA to evaluate the cost and effectiveness of mitigation measures. Moreover, designing, estimating costs, and assessing risks today for an intersection improvement that will not be built for a decade – when designs, materials, costs, and risks could be completely different – does nothing more than make work, presumably intended by Mr. Rimbos to delay the commencement of the MPD construction.

Comments:

Peter Rimbos (August 12, 2011, Exhibit 224): Mr. Rimbos asserts that Kevin Jones, P.E., PTOE, of Transpo Group should not be considered an expert.

YarrowBay Response:

The Examiner has already ruled that expert testimony may be submitted in writing. *See* Order on Expert Testimony, July 14, 2011. Mr. Jones is a qualified expert, and his written testimony must be treated as expert testimony.

Comments:

Peter Rimbos (August 12, 2011, Exhibit 224): Mr. Rimbos again argues that the new

model should be run now, not after 850 units have been permitted. Similarly, he again argues that the MPD Conditions of Approval should be modified or supplemental conditions imposed to address how mitigation is evaluated in the future, how internal capture rates are determined, whether queuing analysis should occur, to address his concerns regarding concurrency, and several other issues.

YarrowBay Response:

Please see the detailed response to these assertions in Exhibits 139, 208, and 216.

Comments:

Peter Rimbo (August 12, 2011, Exhibit 224): Mr. Rimbo asserts that Mr. Perlic told him that 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.

YarrowBay Response:

Mr. Perlic may reply to this assertion. In the event that he does not, we note that not only is this hearsay, but that analysis plainly was provided for this corridor, even in the EISs, because impacts were identified and mitigation was required at the intersections of that corridor with SR 169 and with SE Kent-Kangley Road.

Comments:

Peter Rimbo (August 12, 2011, Exhibit 224): Mr. Rimbo repeats an allegation of King County that “appropriate provisions” are not addressed in the Development Agreements.

YarrowBay Response:

The reference to “appropriate provisions” is to RCW 58.17.110, a section of Washington State’s subdivision statutes. The Development Agreements are not subdivisions.

List of Attachments

- A. Declaration of Kevin L. Jones, including Letter
- B. *Ask the Maple Valley Mayor Noel Gerken*, Voice of the Valley, July 2011

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**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 KEVIN L. JONES

I, Kevin L. Jones, P.E., PTOE, 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 the penalty of perjury, that the following declaration is true and correct.

1. I am a licensed civil engineer and certified professional traffic operations engineer, and a true and correct copy of my curriculum vitae was attached to my Declaration, filed as Attachment 6 to Exhibit 139.

2. Written testimony was provided during The Villages and Lawson Hills Development Agreement Hearings regarding a variety of MPD transportation-related issues.

3. I was asked to assist YarrowBay to respond. I wrote portions of, and I have read all of the Memorandum entitled YarrowBay's Reply to Transportation-Related Response Testimony. In my professional opinion, these materials accurately describe how The Villages and Lawson Hills MPD Conditions of Approval and the Development Agreements operate to assure appropriate transportation mitigation is provided. In addition, attached is a true and

1 correct copy of the brief I prepared in response to certain allegations regarding the *SE Green*
2 *Valley Road – Traffic Calming Strategies* report (Exhibit 30).

3 Dated this 16th day of August, 2011, at Lincoln City, Oregon.

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6 KEVIN L. JONES, P.E., PTOE

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August 16, 2011

Black Diamond Hearing Examiner Olbrechts
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

**Subject: Development Agreement Public Hearings for The Villages and Lawson Hills MPDs—
SE Green Valley Road Traffic Calming Measures and Safety**

Dear Examiner Olbrechts:

This letter accompanies a memorandum filed by YarrowBay in reply to "response" comments filed with the City of Black Diamond on August 12, 2011.

While many different traffic calming measures were evaluated in the Parametrix study entitled *SE Green Valley Road – Traffic Calming Strategies* (Exhibit 30), only those measures that would ensure safety and compatibility of the various uses of SE Green Valley Road were incorporated into Exhibit "P" of the Development Agreements.

With respect to safety, all of the measures listed in Exhibit "P" would, individually or in combination, reduce vehicular speeds on SE Green Valley Road. The relationship between speed and safety is obvious to many: lower-speed roadways generally experience fewer serious collisions. This is supported by published research. For example, the following statements appear in *Managing Speed—Review of Current Practice for Setting and Enforcing Speed Limits* (Transportation Research Board, Special Report 254, 1998):

"[O]n a given road, crash involvement rates of individual vehicles rise with their speed of travel." (page 270)

"There are unequivocal data to indicate that the risk of injuries and fatalities increases as a function of precrash speed...This is true for all road types." (page 271)

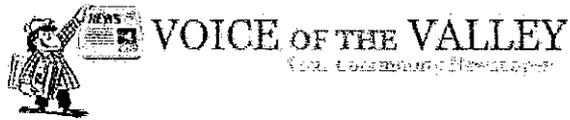
Therefore, in reducing vehicular speeds, the traffic calming measures identified in Exhibit "P" would ensure safety by reducing the likelihood of serious collisions while increasing travel times and making SE Green Valley Road a less desirable route for commuting traffic, including MPD traffic. Safety benefits would extend to the various motorized and non-motorized users of this corridor.

Sincerely,
Transpo Group



Kevin L. Jones, P.E., PTOE
Associate Principal

KLJ/



Ask the Maple Valley Mayor Noel Gerken

Ask the Maple Valley Mayor – July 2011

A reader recently asked two questions regarding development in our City and region. One was about how much automobile traffic will increase as a result of the planned developments in Black Diamond by YarrowBay, the Villages and Lawson Hills. They will add 6,000 new homes in the next 10-20 years with most of the traffic going to the state highways, SR 516 (Kent Kangley) and SR 169. The City of Maple Valley's traffic modeling shows significant increases over the current baseline due to expected trips from these homes. This will significantly affect traffic, especially during peak commuting hours in the early morning and late afternoon.

To help mitigate the traffic impacts, the City aggressively pursued and was able to reach a Mitigation Agreement with YarrowBay. This agreement covers fifteen road improvement projects in the City of Maple Valley and specifies YarrowBay's financial contribution, as a percentage of the total cost, for each project. The payments occur at certain thresholds based on the number of homes built. The potential payments are significant and the resulting road improvements should help mitigate the traffic impacts due to these master planned communities. For more information on this agreement visit the City's website: www.maplevalleywa.gov/index.aspx?page=474.

The other question the reader asked was if developers are required to leave a certain number of trees on a property being developed in Maple Valley. What is required is that developers provide a tree canopy with 'mature tree' coverage depending on the type and size of the development. Unfortunately this allows developers to cut down existing trees and replant with smaller, younger trees. Small groups or single mature trees left standing can be a safety hazard during high winds and this is one reason they are cut down. Also the development footprint including buildings, parking and landscaping require certain areas to be cleared. The City Council and staff have wrestled with this issue several times since incorporation and have added more 'teeth' to this section a few years ago. It is difficult to balance tree retention with safety and the realities of development. For more information see the City Code section 18.40.130 'Landscaping and tree retention.' on the City's website at www.mrsc.org/wa/maplevalley/index_dtSearch.html

Dear reader, thank you for the timely and insightful questions. I hope my thoughts helped.

Take care,

Mayor Noel Gerken



MEMORANDUM

To: The Black Diamond Hearing Examiner

From: Megan Nelson, Director of Legal Affairs, YarrowBay Holdings

cc: Nancy Bainbridge Rogers, Counsel for YarrowBay Holdings

Re: YarrowBay's Reply Testimony Per Hearing Examiner's Pre-Hearing Order II

Date: August 18, 2011

I. INTRODUCTION

BD Village Partners, LP and BD Lawson Partners, LP (collectively, "YarrowBay") submit this Reply Testimony "In re: The Matter of Development Agreement Hearings Related to The Villages MPD Approved in Ord. No. 10-946 and Lawson Hills MPD Approved in Ord. No. 10-947" pursuant to the Black Diamond Hearing Examiner's Pre-Hearing Order II dated July 6, 2011¹ and the Hearing Examiner's email to Steve Pilcher and Brenda Martinez dated Wednesday, August 17, 2011 7:12AM.

As you know, The Villages and Lawson Hills Development Agreements are required under BDMC 18.98.090. The purpose of these Development Agreements is to ensure that: (i) the "MPD conditions of approval [are] incorporated" into a development agreement; (ii) the Development Agreements' terms are "binding on all MPD property owners and their successors;" and (iii) the MPD project sites are developed "only in accordance with the terms of the MPD approval[s]."² As the Hearing Examiner has made clear:

Since the City has made approval of a development agreement a requirement for MPD approval, it arguably cannot condition participation in a development agreement upon terms that the Applicant would not otherwise be compelled to accept by state law. At this stage of permit review it appears that the only requirements that can be imposed in the development agreements is implementation of MPD permit conditions.³

¹ The Hearing Examiner's Pre-Hearing Order II dated July 6, 2011 is hereinafter referred to as the "Pre-Hearing Order II."

² BDMC 18.98.090.

³ Id. at pages 2-3.

YarrowBay's Reply Testimony Per Hearing Examiner's Pre-Hearing Order II

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In addition, YarrowBay has already agreed to "supplemental conditions" in the Development Agreements that go beyond what is required by the MPD Permit Approval Ordinances (Nos. 10-946 and 10-947). As recognized by the Examiner, "it is highly commendable that the Applicant is willing to cooperate in this fashion and it is hoped that the Black Diamond community acknowledges these efforts." However, YarrowBay's past agreement to terms beyond what was required by the MPD Conditions of Approval does not mean that the community, Hearing Examiner, or City Council can act unilaterally to force YarrowBay to accept other supplemental conditions.

The City's discretion to review and approve the Development Agreements is limited, and supplemental conditions outside the scope of the MPD Permit Approval Ordinances can only be imposed if YarrowBay voluntarily agrees to those conditions. The City may exercise its substantive SEPA authority to impose mitigation only for "specific adverse environmental impacts which are identified in the environmental documents prepared under [SEPA]." RCW 43.21C.060. Here, the environmental documents are the FEISs for The Villages and Lawson Hills MPDs, which have been deemed adequate. Because the Development Agreements are for the same proposal as the approved MPD Permits, those EISs were adopted, unchanged, for the Development Agreements as is required by WAC 197-11-600(3). To date, no party has identified any specific adverse environmental impacts disclosed in the FEISs that have not already been mitigated through the MPD Conditions of Approval. Thus, public testimony requesting additional SEPA mitigation is outside the City's substantive SEPA authority and an inappropriate collateral attack on the MPDs' FEISs.

As the Hearing Examiner has also made clear, these Development Agreement Hearings are not an opportunity to request revisions to the MPD Conditions of Approval.⁴ Instead, the "primary and ideally exclusive focus of the development agreement hearings should be on whether the terms of the agreements implement the MPD conditions of approval."⁵

Using the standards outlined above, YarrowBay again respectfully requests that the Examiner recommend approval of The Villages and Lawson Hills Development Agreements.

Finally, for the Hearing Examiner's ease of review, this Reply Testimony mimics the formatting used in YarrowBay's Written Testimony and Response Testimony dated August 4, 2011 (Exhibit 139) and August 12, 2011 (Exhibit 209), respectively. In Section II, YarrowBay responds section-by-section to written comments specific to The Villages and Lawson Hills Development Agreements. In Section III, YarrowBay responds to legal arguments raised regarding the Development Agreements. In Section IV, YarrowBay provides responses by subject matter to more general written comments. And, finally, in Section V, YarrowBay provides a short conclusion. Throughout this written response,

⁴ See Pre-Hearing Order II at page 3; Order on YarrowBay's Objections to Exhibits dated August 16, 2011 at page 2.

⁵ Id. (Emphasis added).

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references to alphabetical exhibits, e.g., Exhibit "A", are references to exhibits attached to The Villages and Lawson Hills Development Agreements themselves; whereas references to numerical exhibits, e.g., Exhibit 4, are references to exhibits admitted during the Development Agreement hearings in front of the Black Diamond Hearing Examiner.⁶

⁶ Over YarrowBay's objections to relevance, the Hearing Examiner has allowed the public and experts to testify about a number of topics, including the adequacy of the MPDs' Final Environmental Impact Statements ("FEISs"), the Comprehensive School Mitigation Agreement, transportation mitigation, and MPD Permit criteria. YarrowBay's responses below to the various issues raised that are outside the scope of these hearings should not be viewed as a waiver of our objections.

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

SECTION 2.3.1 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "Our point is two-fold. First, the large-scale map has been modified during these proceedings and is a moving target and not available for public review. Second, even the map on file is not as detailed as those typically prepared as part of a subdivision application, yet this map will guide the review of future subdivisions even if actual detailed conditions on the ground differ from it.

YB itself admits on page ten of its written statement: "The Land Use Maps for the Villages and Lawson Hills MPDs that were approved by the Black Diamond City Council and are contained within Exhibit "L" to each Development Agreement, were not specifically surveyed maps and the acreages shown therein were only approximate."

YarrowBay Response:

Contrary to Mr. Derdowski's allegations, the MPD Site Plan (Exhibit "A") for each Development Agreement has not been modified since the agreements were publicly noticed on June 10, 2011. Moreover, the large-scale version of the MPD Site Plan is available for public review at the City during business hours.

There is no requirement in the BDMC that the MPD Permit Approvals or the Development Agreements contain a fully surveyed site plan. Notwithstanding this fact, the large version of the MPD Site Plan (Exhibit "A") kept on file with the City has surveyed exterior boundaries and sensitive areas. See Section 2.3.1 of the Development Agreements. The MPD Site Plans contained in Exhibit "A" are sufficient for reviewing future subdivision applications for general consistency.

There is no reason or basis to revise this section of the Development Agreements.

SECTION 3.0 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "YB's contention that Development Agreements do not have to be consistent with adopted ordinances is unusual to say the least, and obviously in error. Similarly, YB's contention that the Development Agreements only establish interpretations is irrelevant. Prior agreements have been adopted by ordinance, legislatively, and cannot be re-defined or re-interpreted during these proceedings. YB's attempt to, in effect, indemnify itself

YarrowBay's Reply Testimony Per Hearing Examiner's Pre-Hearing Order II

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from the provisions of prior agreements vis a vis the City puts the City in a perilous position with respect to other parties, and is poor policy at best.”

Bob Edelman (Exhibit 199): “The Development Agreements cannot supersede the requirements of prior agreements that involve third parties without their consent. Unless the agreement in question states otherwise, all parties to joint agreements rely on joint performance.

When there is conflict with prior agreements the first sentence is incorrect if the Development Agreements are to control. The Development Agreements would effectively amend prior agreements by establishing control of the prior agreements by the Development Agreements in the event of conflict. As discussed above, all parties would have to agree for multi-party agreements. With respect to all prior agreements, including two party agreements, the Development Agreements cannot repeal or amend prior agreements if the prior agreements were entered into by legislative action notwithstanding belief by Yarrow Bay and City Staff that there are no conflicts. To do so requires legislative action by the City. If this provision is to remain then the Development Agreements are not complete until the consent of all parties to all prior agreements cited in the Development Agreements is obtained. In addition, with respect to all agreements, legislative action by the City Council is required to give the Development Agreements controlling authority over the past agreements. The Examiner should remand the Development Agreements to City Staff to resolve conflicts or obtain agreement by third parties.”

William Wheeler (Exhibit 203): “By reading YB’s response, one would think that the DA only has to be compatible with “Regulations” and not ordinances, but that is incorrect.”

Lisa Schmidt (Exhibit 197): “The term “prior agreements” in this case easily refers to the laws in effect at the time of proposal, especially taken in context with those cited, along with Mr. Derdowski’s use of lower case. The more general assertion remains that no project, citizen, or group of citizens is immune from adhering to the laws in effect. The seeming inapplicability of some codes or ordinances does not grant permission to act in a manner inconsistent with them. Agreements, whether 2-, 3-, or multiple-party, which are inconsistent with or in conflict with existing code, would mandate a revision of those codes, in order that the Development Agreements do not supersede existing law. Regardless of the intentions of Section 3.0, these realities of the language remain. Mr. Derdowski’s concerns in this regard are well-founded. The DAs should not supersede previous agreements.”

YarrowBay Response:

Each Development Agreement provides in Section 3.0:

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With respect to the property included in [The Villages MPD/The Lawson Hills MPD], this Agreement fulfills and implements all provisions related to development standards, infrastructure, Open Space and land use within [The Villages MPD/The Lawson Hills MPD] contained within the Prior Agreements.

Emphasis added. It is important to note that no party to these proceedings has identified any provision of the Development Agreements that are inconsistent with the Prior Agreements. The Development Agreements do not supersede, repeal, or amend the Prior Agreements, as alleged above, but instead merely implement their provisions. City Staff agrees with this. Third parties to the Prior Agreements will have the same rights before and after execution of the Development Agreements whether or not Section 3.0 is included. As such, there is no impairment of the rights of third parties.

Finally, contrary to Ms. Schmidt's allegations, the term "Prior Agreements" is a specifically defined term in each Development Agreement. The term only includes the agreements specifically referenced in Section 3.1 of each Development Agreement, not to all "laws in effect at the time of proposal. . ."

In summary, there is no reason or basis to revise Section 3.0 of either Development Agreement.

SECTION 4.1 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "The record is clear that the Development Agreements amend the Land Use Plan and associated maps. Our point is that this is not lawful, regardless of what the motivation is. YB and the City are obviously using the Development Agreements to refine the Zoning and Land Use Plan and make what they consider to be necessary "corrections". We believe that Conditions of approval 128 and 132 do not allow changes to foundational land use and zoning documents."

YarrowBay Response:

Contrary to Mr. Derdowski's allegation, there is nothing in the record to support the assertion that the Development Agreements amend the Land Use Plans (Figure 3-1) in Exhibit "L" of the Development Agreements. MPD Conditions of Approval Nos. 128 (The Villages) authorize City Staff and YarrowBay to resolve all other specifics "through the Development Agreement process." Since the MPDs were approved, YarrowBay added additional detail to, and further refined, Figure 3-1. This more specific and detailed figure is the MPD Site Plan attached to both Development Agreements at Exhibit "A." The additional details include conceptual lot layouts, building footprints, and parking and circulation areas.

Finally, and more importantly, the Land Use Plans (Figure 3-1) approved by the Black Diamond City Council in the MPD Permit Approvals (Ord. Nos. 10-946 and 10-947) are not zoning documents. The land within The Villages and Lawson Hills MPDs are zoned MPD. BDMC Ch. 18.98 and the City's Comprehensive Plan allow residential, commercial and public uses on MPD-zoned property. See BDMC 18.98.120 and Black Diamond Comprehensive Plan at p. 5-13. Figure 3-1 contained within Exhibit "L" of the Development Agreements merely depicts where those allowed uses will occur within each MPD project site. As such, it is a site plan; it has no zoning significance.

There is no reason or basis to revise Section 4.1 of the Development Agreements.

SECTION 4.2 (The Villages and Lawson Hills)

Comments:

Lisa Schmidt (Exhibit 197): "The MPD Executive Summary states that housing for The Villages will consist of "A maximum of 4,800 residential units (approximately 3,600 single family *detached* (emphasis added) and approximately 1,200 attached dwelling units)." So, even if allowed per City code, and encouraged as one among a mix of housing types, 4-plexes are not a housing type approved by the MPD as single-family homes, nor anticipated in the FEIS, which calculated 11,940 eventual total residents of The Villages (3600 homes x 2.7 inhabitants + 1200 units x 1.85 inhabitants). The breakdown of "single-family" residential units into 4-plexes, accessory dwelling units, and the like are simply not anticipated. The "Residential" portion of the MPD states: "Single-family units will be located on a variety of lot sizes, and will include traditional single-family homes, as well as duplexes and cottage units. Multi-family attached units will include townhouses, condominiums, and apartments." While arguably inconsistent with the Executive Summary of the MPD, it nonetheless lists townhomes and condominiums as "multi-family attached units" which are clearly differentiated from single-family units. Aside from the fact that the MPD does not include the 4-plex among single-family dwellings, its inclusion is not permissible according to City code. This conclusion is reached by the simple fact that there is a cap on the number of *dwelling units* allowed, and BDMC 14.02.070 B counts each unit in a 4-plex as a separate unit. The MPD states that The Villages will not exceed a "maximum of 4800 dwelling units." Besides greatly increasing population and therefore no longer aligning with the FEIS, The Villages DA is inconsistent with the MPD. Because it is inconsistent with previous agreements, both the FEIS and the MPD, Mr. Derdowski's concerns are well-founded. 4-plexes should not be considered "single-family" dwellings."

YarrowBay Response:

MPD Conditions of Approval No.1 of both The Villages and Lawson Hills Development Agreements specifically provide: "Approval of the MPD is limited to the terms and conditions set forth in the City Council's written decision, and

does not include approval of any other portion of the MPD set forth in the application.” The Executive Summary of The Villages and Lawson Hills MPD Permit Applications was not specifically approved by the Black Diamond City Council in its MPD Conditions of Approval. Instead, the City Council explicitly adopted Conditions of Approval Nos. 128 (The Villages) and 132 (Lawson Hills) that placed caps on the total number of dwelling units allowed in The Villages and Lawson Hills MPDs (4,800 and 1,250, respectively) and explicitly approved specific portions of Chapter 3 of the MPD Permit Applications. The approved components of Chapter 3 are included in the Development Agreements as Exhibit “L”. But notably, the portions of Chapter 3 in Exhibit “L” do not limit The Villages MPD to 3,600 single family detached units.⁷

The City Council went on to require, in MPD Condition of Approval Nos. 129 (Villages) and 134 (Lawson Hills), that the Development Agreements establish targets for various types of housing for each phase of development.⁸ These required targets are set forth in Table 4-8-4 (The Villages) and Table 4-8-1 (Lawson Hills.). Again, there is no requirement in these tables for 3,600 single family detached units in The Villages MPDs.

As noted in YarrowBay's Written Response dated August 12, 2011 (Exhibit 209), while 4-plexes are considered single family, each unit in the 4-plex counts as a separate dwelling unit. Thus, the MPDs will not exceed their total number of dwelling units as set forth in Section 4.2 of each Development Agreement.

Finally, ADUs are authorized under the BDMC and the MPD Framework Design Standards & Guidelines at page 7, Section E.1.e expressly include “accessory dwelling units” as one of types of housing that an MPD should include. The Master Developers are voluntarily limiting the number of ADUs in each MPD at Section 4.7.3 of each Development Agreement.⁹

There is no reason or basis to modify Section 4.2 of the Development Agreements.

⁷ It is important to note that, as a general rule, single family attached units, as compared to single family detached units, have fewer environmental impacts. Attached single family units are generally smaller in size than detached single family units. As a result of the size difference, generally fewer people live in attached single family units and therefore generate fewer vehicle trips as compared to single family detached dwelling units. To the extent the FEISs estimated that The Villages MPD would consist of 3,600 single family detached dwelling units, the environmental analysis was conservative and would in fact overestimate the impacts associated with 3,600 single family units that include both detached and attached housing products. There are other benefits associated with this conservative approach to analysis. In terms of the triggers for recreational facility requirements outlined in Table 9-5, 3,600 single family units that include both detached and attached housing products means that recreational facility threshold requirements will be triggered where there is in fact fewer people living in the MPDs.

⁸ See Attachment 7 which includes representative photographs of single family attached housing products.

⁹ See also Exhibit 197 at page 4, Section 4.7.3.

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SECTION 4.4 (Lawson Hills)

Comments:

Robbin Taylor (Exhibit 204): "Page 8 of YarrowBay's written response to oral testimony, second paragraph of the YarrowBay response states that per Conditions of Approval nos. 137 and 167 (Lawson Hills) the increasing of density of a development parcel which abuts the perimeter of the MPD must be a Major Amendment. I agree with this as this is exactly what I pointed out in my oral and written testimony.

Parcel L5 abuts the perimeter with no intervening development. Changing the actual use of a parcel from "school" to "MPD-M" yet allowing the label of "school" to remain does not change the fact that the use has changed and therefore the density.

Somehow YarrowBay attorneys are able to read Conditions of Approval no. 132 and state categorically that "the City Council specifically approved the reversion of school parcels to MPD-M". For proof of this "specific" approval YarrowBay cites Chapter 3 of the MPD Permit Application, which was prior to the Council's rulings through the Conditions of Approval. How can this be used as "proof"?

Therefore; should Parcel L5 change from "School" to "MPD-M" it should trigger the process of a Major Amendment."

Lisa Schmidt (Exhibit 197): In Exhibit 197, Ms. Schmidt writes in relevant part: "Table 1-1 was approved as part of the MPD, and as such should align with the DA."

YarrowBay Response:

Contrary to Ms. Taylor's assertions, Condition of Approval No. 132 (Lawson Hills) adopted by the City Council explicitly approved the "description of categories" in Chapter 3 of the Lawson Hills MPD Permit Application. On page 3-9 of the description of categories (contained in Exhibit "L"), the application stated: "The Schools category is an overlay intended for a school site and other accessory uses and facilities. Parcel L5 is proposed as an Elementary School Site. In the event that the parcel is not needed for a school, it shall revert to the MPD-M category."

Conditions of Approval Nos. 137 and 167 (Lawson Hills) do not support a different outcome. As described in Exhibit "L", Development Parcel L5 is designated MPD-M with a school overlay. If the parcel is not needed for a school, reverting to MPD-M is merely the removal of an overlay, and is not the "increase [of] a residential category" nor a "proposed reclassification...to a higher density."

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Further, as noted above, the MPD Permit Approvals only approved very limited portions of The Villages and Lawson Hills MPD Permit Application binder. See MPD Conditions of Approval Nos. 128 (The Villages) and 132 (Lawson Hills). Table 1-1 was not explicitly approved by the Black Diamond City Council.

There is no reason or basis to revise this section of the Lawson Hills Development Agreement.

SECTION 4.4.6 (The Villages) & SECTION 4.4.4 (Lawson Hills)

Comments:

Sheila Hoefig (Exhibit 194): "The Yarrow Bay response only responds to one portion of my concerns. The primary issue is not whether the off-site replacement reduces the total open space requirement; the request is for the Development Agreement to clarify what happens to the proposed on-site open space in each phase when it is replaced off-site i.e. can it become developed space; and what type of limitations to reductions in onsite open space per each phase is in place. An on-going compliance matrix to track this would be prudent and should be part of the Development Agreement. Allowing the project to fully build out and only accounting for total open space in the last phase is dangerous and would allow the MPD to be fully built before compliance is an issue. Compliance should be with each phase."

Lisa Schmidt (Exhibit 197): "Sheila Hoefig's concerns are valid. The 505 acres approved in the MPD needs to be enforced."

YarrowBay Response:

Per the terms of the Development Agreements, the Master Developer is required to provide open space within The Villages and Lawson Hills Project Sites. See Section 9.1 of the Development Agreements. "Project Site" is defined in Section 14.0 of each Development Agreement as the area within the MPD boundaries. Therefore, per the terms of the Development Agreements, this open space acreage must be provided within the MPDs themselves – it cannot be provided off-site. Stated differently, the on-site open space for each project will never be replaced off-site; therefore, because it cannot be replaced off-site, the on-site open space would never become developable land. Ms. Hoefig's concerns are resolved by simply looking at a different section of the Development Agreements. There is no reason to modify Section 4.4.6 (The Villages) or Section 4.4.4 (Lawson Hills).

The MPD Conditions of Approval do not require the matrices or "compliance by phase" requested by Ms. Hoefig above and, therefore, cannot be imposed by the Hearing Examiner. Moreover, because Ms. Hoefig desired the matrices so as to track open space which she misunderstood could be moved off-site, there is no need for such matrices.

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In response to Ms. Schmidt's comments, the 505 acres of open space referenced in Finding of Fact 18(B) of The Villages MPD Permit Approval (Ord. No. 10-946) will be enforced per the terms of the Development Agreement. Per Section 4.4.6 (The Villages) and Section 4.4.4 (Lawson Hills), the overall open space requirement cannot be modified. Again, there is no reason or basis to revise these sections of the Development Agreements.

SECTION 4.4.8 (The Villages) & SECTION 4.4.6 (Lawson Hills)

Comments:

*Brian Derdowski (Exhibit 205):*¹⁰ "Our objection to this section is that it allows changes to the Design Concept and the Land Use Plan without any defined amendment process, let alone public process. This is clearly an error. The MPD zoning and permit approval means nothing if the design and maps can be changed apparently at will by the developer.

In defending this section, YB resorts to claiming that their MPD application is only "approximate": "The Land Use Maps for the Villages and Lawson Hills MPDs that were approved by the Black Diamond City Council and are contained within Exhibit "L" to each Development Agreement, were not specifically surveyed maps and the acreages shown therein were only approximate." However, elsewhere YB claims an entitlement of what are essentially project level vested "rights", not subject to review under SEPA or any other process.

YB cannot have it both ways. Either the MPD permit and maps fully define the project or they don't.

We have consistently contended that the MPD permit approval and the Development Agreements are based on a programmatic review and a programmatic SEPA. We assert that this fact, which YB is conceding in their response here, precludes the vesting of specific project level standards, maps, sensitive area delineations etc.

If, however, we are to consider the MPD permit to be a vested development defined by a Zoning and Land Use Map, at least let us not allow those land use designations to be changed unilaterally by the developer without a defined public process."

YarrowBay Response:

The Villages and Lawson Hills MPD Permits (Ord. Nos. 10-946 and 10-947) are vested entitlements as outlined in YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139). These MPD Permits were subject to review under SEPA, during which the Hearing Examiner deemed The Villages and Lawson Hills

¹⁰ See also Exhibit 197.

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FEISs adequate. The MPD Permits contained site plans (Figure 3-1 in Exhibit "L" of each Development Agreement) that were not specifically surveyed and used approximate acreages. The MPD Permits include vesting to these approved site plans – YarrowBay is not arguing anything else.

Section 4.4.8 (The Villages) and Section 4.4.6 (Lawson Hills) of the Development Agreements authorizes the increase or decrease of the stated approximate acreage of any Development Parcel only with the City's processing of an Implementing Project application and provided doing so does not alter the maximum total dwelling units or commercial square footage or target densities for the Project Site as a whole. Thus, contrary to Mr. Derdowski's assertions, there will be public process for any increase or decrease of Development Parcel acreage – it will be the public process associated with the Implementing Project (e.g., subdivision or binding site plan approval). As such, opportunity for public comment and feedback will be provided.

There is no reason or basis to revise Section 4.4.8 (The Villages) or Section 4.4.6 (Lawson Hills) of the Development Agreements.

SECTION 4.4.9 (The Villages) & SECTION 4.4.7 (Lawson Hills)

Comments:

Lisa Schmidt (Exhibit 197): "This provision violates MPD permit approval, because the MPD was approved as stating that 'all other specifics shall be resolved through the Development Agreement process.' Mr. Derdowski is correct. The DA should confirm road alignments within an acceptable degree of error as necessary for surveyed accuracy."

YarrowBay Response:

Per the terms of the Development Agreements, the modification of roadway alignments within the MPDs can only be done pursuant to Implementing Project applications. See Section 4.4.9 (The Villages) and 4.4.7 (Lawson Hills). Such Implementing Projects will also be subject to the City's notice requirements and SEPA review. See Section 4.10 of both Development Agreements. This proposed process for roadway modifications in no way violates any MPD Conditions of Approval. As such, there is no reason or basis to revise these sections of the Development Agreements.

SECTION 4.5 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "Here, YB ignores our comment, and attempts to use its response to address a completely different issue. Our point is that adjoining properties deserve the protections of compatibility mitigations whether or not they are currently developed at the time of the Implementing Project

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application. YB's attempt to remove such mitigations from all properties unless they are owned by YB should be denied."

YarrowBay Response:

Mr. Derdowski misread YarrowBay's requested revision to Section 4.5 on page 11 of Exhibit 139. It is provided again for the Hearing Examiner's ease of reference:

When an Implementing Project application for a Development Parcel along the Project Site perimeter is submitted, and the abutting property outside the MPD to such Development Parcel is ~~already developed on that submittal date~~ not owned by the Master Developer, then the Development Parcel is subject to the section of the MPD Framework Design Standards and Guidelines entitled "Interface with Adjoining Development," which provides guidelines to ensure a transition between the Development within The Villages MPD that abuts Development outside the Project Site but within the City limits.

Per these revisions, compatibility mitigations will apply to all adjoining parcels (except those owned by YarrowBay) whether or not they are currently developed at the time of the Implementing Project application. As such, there is no reason to further revise Section 4.5 of the Development Agreements.

SECTION 4.6 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "Our comment stands. YB's response in citing Section 10.5 does not address the issue. Even if the City's Comprehensive Plan *Future Land Use Map* (emphasis added) designates a parcel as MPD, a rezone or Comprehensive Plan Amendment would still be required before that parcel could actualize that zoning. The Development Agreement states that in such an event no Comprehensive Plan Amendment would be required, and this is in error."

YarrowBay Response:

Contrary to Mr. Derdowski's assertions, the Development Agreements recognize and contemplate that a rezone and/or Comprehensive Plan Amendment may be needed for an Expansion Parcel Proposal. No rezone or Comprehensive Plan Amendment is required if the Expansion Parcels are both zoned MPD and designated in the City's Comprehensive Plan with a MPD Overlay.

Section 4.6 cross-references Sections 10 and 12 of the Development Agreements. Section 10.5 of both Development Agreements identifies that a rezone and a Comprehensive Plan Amendment may be necessary for Expansion Parcel Proposals. Sections 12.8.11 and 12.8.12 of the Development Agreements

reference the City's rezone and comprehensive plan amendment processes at BDMC 18.12.020 and BDMC Title 16, respectively. As such, there is no reason or basis to revise Section 4.6 of either Development Agreement.

SECTION 4.10 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "YB's response supports our contention that Implementing Projects will require SEPA review. The clause that we object to should be stricken. The Development Agreements cannot state that all environmental impacts will assume to be fully mitigated."¹¹

YarrowBay Response:

Section 4.10 of the Development Agreements specifically provides that: "Nothing in this section applies to preclude subsequent environmental review of Implementing Projects under the State Environmental Policy Act ("SEPA"), and Implementing Projects are expected to undergo additional SEPA review." As such, no revision is necessary to this section of either Development Agreement.

SECTION 5.4.3 (The Villages and Lawson Hills)

Comments:

Robbin Taylor (Exhibit 204): "To quote the written response regarding Section 5.4.3 of the Development Agreement 'First, while the City may not typically enforce private signage programs on private property, The Villages and Lawson Hills Development Agreements specifically give the City permission to enter onto private property and enforce a private signage program.'

It is all well and good to contract with a private security and enforcement agency to cruise developments in order to enforce the Conditions, Covenants and Restrictions in which all home owners within that development have voluntarily agreed to abide. It is quite a different matter to state that tax supported City staff "shall" enforce C, C & R's within the public right-of-way, and "may" enforce the C, C & R's on private property. This would result in City staff and LAW enforcement officers stepping OUTSIDE bounds of the LAW to enforce the RULES of a private entity that are stricter than what the LAW provides.

...

Therefore; Sections 5.4.3 and 5.4.4 must be changed to reflect the LAW of Black Diamond, which is the Black Diamond Municipal Code, not some future, nebulous and unwritten Conditions, Covenants and Restrictions."

¹¹ See also Exhibit 197 at page 5, Section 4.10.

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YarrowBay Response:

City Staff and YarrowBay negotiated the terms of Section 5.4.3, including the City's ability to enforce the MPDs' Construction and Real Estate Sign Program. This provision grants the City more authority to enforce the aesthetics of The Villages and the Lawson Hills MPD as well as signage that may cause safety issues, such as sight distance limitations, for vehicles entering a street. There is no reason or basis to revise this section of the Development Agreements.

SECTION 6.4.1 (The Villages)

Comments:

Lisa Schmidt (Exhibit 197): "Moving the South Connector to remain within city limits does not impact more sensitive areas if its new location involves an area where other uses are currently proposed. Mitigation through reduced scope of development cannot be overlooked. Also, YarrowBay suggests waiting until the Implementing Project when the County decides whether to grant permission for grading, instead of approving the South Connector as part of the DA. So, the DA would need to be approved with no existing South connector currently in accordance with City code."

YarrowBay Response:

Contrary to Ms. Schmidt's assertion, given the layout and orientation of the wetland between Development Parcels V56 and V59 on The Villages MPD Project Site, any revised alignment of the South Connector that stays within the City limits will necessarily involve more wetland impacts than using the existing proposed alignment that follows an existing logging road through a portion of King County. See Exhibit "A" of The Villages Development Agreement. Furthermore, mitigation "through reduced scope" also does not work because the Master Developer is required to construct the South Connector per Condition of Approval No. 28 (The Villages). Thus, making The Villages MPD smaller does not remove the South Connector requirement.

The County's Comprehensive Plan at T-203 allows road segments serving urban areas in unincorporated King County.¹² Section 4.4.9 of The Villages Development Agreement authorizes modifications to roadway alignments pursuant to an Implementing Project application. Thus, if King County refuses to issue a grading permit for this road segment despite its Comprehensive Plan policy to the contrary, then the South Connector alignment can be modified later

¹² King County 2008 Comprehensive Plan with 2010 Update at T-203: "King County shall not construct and shall oppose the construction by other agencies of any new arterials or highway or any additional arterial or highway capacity in the Rural Area or natural resource lands except for segments of certain arterials that pass through rural lands to serve the needs of urban areas. Any capacity increases to these urban connector arterials shall be designed to serve mobility and safety needs of the urban population while discouraging development in the surrounding Rural Area or natural resource lands." (Emphasis added).

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per the terms of the Development Agreement. Thus, there is no reason or basis to revise Section 6.4.1 of The Villages Development Agreement.

SECTION 6.4.2 (The Villages and Lawson Hills)

Comments:

Lisa Schmidt (Exhibit 197): "The design and location of off-site connection roads is significant in the determination of the approval or disapproval of the development. Such specifics were, per MPD, to have been provided in the DAs, and as they are still open to collaboration, the DAs fail to meet the criteria laid out in the MPDs. Mr. Derdowski's assertion is well-founded. The DAs must include location of all off-site connection roads."

YarrowBay Response:

Section 6.4.2 identifies the off-site connections as generally shown on Figure 6-3 of each Development Agreement. As noted in YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139), Mr. Derdowski failed to cite any MPD Condition of Approval, BDMC provision, or SEPA requirement that Section 6.4.2 violates in his Exhibit 40. Ms. Schmidt's comments above suffer from the same deficiency. There is no requirement that YarrowBay and the City identify and design the exact off-site connections in the Development Agreements. As such, there is no reason or basis to revise this section of the Development Agreements.

SECTION 7.1.5 (The Villages and Lawson Hills)

Comments:

Lisa Schmidt (Exhibit 197): "This Agreement is an enduring contract that must recognize future City officials' ability to comply. Because of the nature of this quasi-judicial process, the City Council has so far received input concerning this only from YarrowBay, and may not have considered the long term implications, nor the time constraints that should be placed upon YarrowBay for the correction of projects, particularly those resulting in negative impacts.

Additionally, transfer of liability to homeowners associations should only occur after such associations show proof of assets capable of responding with appropriate mitigations in the event of occurrences for which they are liable."

YarrowBay Response:

First, Ms. Schmidt cites no inconsistencies with a MPD Condition of Approval or BDMC provision. Again, as the entity responsible for performance, City Staff is the most appropriate party to determine whether the timeframes in this section are appropriate. There is no reason or basis for revision of this Section 7.1.5 of each Development Agreement.

Second, there is no basis for Ms. Schmidt's unsubstantiated assertion that YarrowBay has provided the City Council with input regarding Section 7.1.5. Contrary to Ms. Schmidt's assertion, YarrowBay has had no communications with City Council members regarding Section 7.1.5 of the Development Agreements.

The concerns of Ms. Schmidt contained in the second paragraph of the above comments have already addressed by the Black Diamond City Council in its MPD Conditions of Approval. See, e.g., MPD Conditions of Approval Nos. 22 and 23 (The Villages). In its MPD Conditions, the City Council required that the Development Agreements grant the City the authority to both: (i) enter onto property to repair or maintain certain landscaping and private streets if the City determines it is reasonably necessary; and (ii) collect the costs of such repair and maintenance from the applicable HOA as applicable, including placing a lien on individual lots within a subdivision to secure repayment. The City's right to maintain certain improvements, to collect maintenance fees, and to lien property for the purpose of recovering maintenance costs is outlined in Sections 5.5.7(D) and 6.5(B) of the Development Agreements. As such, there is no reason or basis to amend the Development Agreements as requested by Ms. Schmidt.

SECTION 7.2.1 (The Villages and Lawson Hills)

Comments:

*Brian Derdowski (Exhibit 205):*¹³ "We assert the obvious fact that a water right does not in itself guarantee the actual delivery of water to support a development. This is why water certificates are required of new development. The clause that we objected to is problematic because it removes the certainty of a finding of adequate water supply at the time of Implementing Project application."

YarrowBay Response:

Contrary to Mr. Derdowski's assertions, the City of Black Diamond has already established the existence of an adequate water supply for the MPDs in its Water System Comprehensive Plan. See Exhibit "E", Vol. V, Water System Comprehensive Plan, pp. 2-13 through 2-14, p. 5-5, and Appendix I. On page 5-5 of the Water System Comprehensive Plan, the City notes: "The City of Black Diamond has sufficient water rights to serve the projected growth that the City of Black Diamond is anticipated to experience over the next twenty years." These water rights are described in detail on pages 2-13 and 2-14 of the Plan. They are comprised of two sources: (1) two water right certificates from Ecology for the Black Diamond Spring Field; and (2) a Wholesale Water Agreement with the City of Tacoma (see Appendix I). Given the findings in the City's Water System Comprehensive Plan, there is no reason or basis to revise Section 7.2.1 of the Development Agreements. Adequate water supply for the MPD Implementing

¹³ See also Exhibit 197.

Projects has been identified. Moreover, Sections 7 and 11 of the Development Agreements collectively ensure that the Master Developer will construct the necessary infrastructure such that sewer and water are delivered to the MPD Project Sites.

SECTION 7.3.1 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "Our point is that a certificate of sewer availability for Implementing Projects is far better than merely referring to a Development Agreement that simply states that sewer service must be available. We believe that a showing of adequate sewer capacity should be a requirement for a complete application for an Implementing Project. The Developer has already sought to vest three preliminary plats without proof that sewer capacity exists to support those plats. Sewer certificates are the most recognized and legally supportable way to establish sewer availability."¹⁴

YarrowBay Response:

Mr. Derdowski asserts with citation or reference that "a certificate of sewer availability for Implementing Projects is far better than merely referring to a Development Agreement that simply states that sewer service must be available." While this may be Mr. Derdowski's personal opinion, the Development Agreements do in fact require that each Implementing Project be reviewed for adequate sewer capacity prior to approval and authorize the addition of mitigation conditions if additional capacity is required. See Section 11 of the Development Agreements. Because adequate sewer capacity is assured, there is no reason or basis to revise this section of the Development Agreements.

SECTION 8.2 (The Villages and Lawson Hills)

Comments:

*Brian Derdowski (Exhibit 205):*¹⁵ "Our issues here will be further addressed by our wetlands consultant, Dr. Cooke, under separate cover.

As to our SEPA concerns, it is well established that additional SEPA analysis and mitigations may be applied to vested projects based on new information or a newly documented adverse environmental impact. Clearly a field survey that shows an error in a mapped sensitive area delineation would be new information that would call for appropriate mitigation. If such mitigation were precluded due to some claim of vesting, SEPA would be the only and most appropriate way to address the issue. Our point here is that fixing boundaries at this programmatic

¹⁴ See also Exhibit 197.

¹⁵ See also Exhibit 197.

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level, based on a programmatic EIS, and based on an "approximate" map is poor policy and probably illegal.

The City's Engineering Design and Construction Standards do not sufficiently detail project monitoring and corrective actions to address potential damage to sensitive areas."

YarrowBay Response:

YarrowBay reserves the right to reply to Dr. Cooke's testimony when it is submitted to the City. Please also see pages 29-33 of YarrowBay's Exhibit 139, as well as Attachment 1 to Exhibit 139 and Exhibit 210.

Pursuant to BDMC 18.98.195 and Section 15.1 of the Development Agreements, the City's Sensitive Areas Ordinance (SAO), BDMC Ch. 19.10, as set forth in Exhibit "E", shall apply to all MPD Implementing Projects. Sensitive area jurisdictional determinations and sensitive area reports meeting the City's SAO requirements have been completed and verified for the entire MPD project sites. Consistent with the SAO, any Implementing Project that does not propose any changes or alterations to sensitive areas or their buffers as shown in the completed reports has met the jurisdictional determination requirement of BDMC 19.10.120(C) such that no additional reports under the SAO need to be submitted with the Implementing Project application.

With the exception of certain mine hazard areas discussed under Section 8.2.3 of Exhibit 139, all sensitive areas described in Section 8.2 of The Villages and Lawson Hills Development Agreements received a full analysis and delineation matching the level of work conducted for site-specific permitting. This work is reflected in the surveyed topography and boundaries shown on the Constraint Maps that are now attached as Exhibit "G" to the Development Agreements. A surveyed, large scale, plan size set of drawings providing the appropriate level of detail for constraints boundaries is on file with the City Community Development Department and will remain on file throughout the life of the Development Agreements. Thus, contrary to Mr. Derdowski's allegations, the Constraint Maps in Exhibit "G" are not "approximate."

Pursuant to MPD Conditions of Approval Nos. 155 (The Villages) and 159 (Lawson Hills), "[o]nce the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction, it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed." As summarized above, the SAO's sensitive area jurisdictional requirement has been met, Constraint Maps showing the surveyed boundaries of the MPDs' sensitive areas have been prepared, and all this information has been reviewed, verified, and approved by

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City Staff and/or the City's third party consultants. Section 8 of the Development Agreements complies with the requirements of these MPD conditions. No evidence to the contrary has been submitted to the Hearing Examiner.

Finally, pursuant to RCW 36.70B.170(1): "A development agreement shall be consistent with applicable development regulations adopted by a local government." In compliance with Washington State law, The Villages and Lawson Hills Development Agreements are consistent with the adopted regulations of the City of Black Diamond, which include the Engineering Design and Construction Standards. Mr. Derdowski cannot attack the Development Agreements for complying with these adopted regulations which are not the subject of an appeal before the Hearing Examiner. Such testimony is therefore irrelevant and should be excluded by the Hearing Examiner.

In summary, there is no reason or basis to revise Section 8.2 of the Development Agreements.

SECTION 8.4 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "The comment that we made regarding the removal of hazardous trees stands. As written, the Development Agreement would allow substantial alteration of sensitive areas and their buffers. The standards are vague and allow extensive clearing. The 2:1 ratio that YB blithely says will result in 'more trees' ignores the qualitative aspects of removing mature trees with replacement by seedlings."

YarrowBay Response:

Contrary to Mr. Derdowski's allegations, there is nothing in Section 8.4 that allows substantial alteration of sensitive areas and their buffers or extensive clearing.

Furthermore, Section 8.4 includes the requirement that tree removal must be consistent with BDMC Ch. 19.30. BDMC 19.30.070 requires that "[d]eciduous replacement trees shall be a minimum of three inches in caliper (DBH), evergreen trees must be a minimum of twelve feet in height." Thus, Mr. Derdowski's allegation that replacement trees will consist of "seedlings" is false and, in fact, prohibited by City Code. Also, trees may only be removed if permitted by the City after review of a report from a certified arborist. See Section 8.4 of each Development Agreement.

There is no reason or basis to revise Section 8.4 of either Development Agreement.

SECTION 9.1 (The Villages and Lawson Hills)

Comments:

Bob Edelman (Exhibit 199): "To say that failure to meet open space requirements is not a subject of the Development Agreement Hearings is to ignore Condition 145 of the Lawson Hills MPD ordinance, which Yarrow Bay cites. Yarrow Bay admits that they have not met the acreage requirement. Deficiencies in its plan to meet the requirement are the subject of one of my written comment submittals and will not be repeated here. The Examiner should remand the Development Agreements to City Staff to develop a viable plan to meet the 50% requirement.

In regard to the open space discussion in the Guide, the inflated claim of 67% open space, repeated in Yarrow Bay's response, was arrived at by considering land that was encumbered by prior agreements. For example, they included the Black Diamond Area Open Space Protection Agreement. That agreement was between the City, Plum Creek, King County, and the Cascade Land Conservancy. The implication that the open space would not have been preserved without the MPDs is a logical absurdity considering that the open space agreement was entered into in 2005.

The assertion that 'Only portions of the MPDs are subject to the 50% open space requirement set forth in BDMC 18.98.020' is disputed and currently being litigated so argument will not be made in this response."

Lisa Schmidt (Exhibit 197): "Whether 50% or 42% Open Space is ultimately ordered to be designated, the Black Diamond Comprehensive Plan, June 2009, 5-14, MPD overlay lists as the designation criteria 7: "at least 50% of the MPD site is devoted to open spaces uses, which may include recreational amenities." If it can include recreational amenities, open space clearly does not refer to areas such as wetlands, streams, steep terrain, and high-risk mine areas, themselves. It has already been determined that their buffers might allow certain recreational activities, but the sensitive areas, themselves, cannot. These areas need to be excluded before the calculation of open space."

YarrowBay Response:

The Villages and Lawson Hills MPDs' open space percentages were approved within the MPD Permit Approvals (Ord. Nos. 10-946 and 10-947). Moreover, the MPD Permit Approvals specifically concluded that only portions of the MPDs are subject to the 50% open space requirement. See Conclusion of Law 20 from Exhibit B of Ord. Nos. 10-946 and 10-947. The open space percentage of MPD areas subject to prior agreements are governed by the specific provisions of those prior agreements (such as the BDUGAA or Black Diamond Open Space Agreement). See *Id.* As noted by the Hearing Examiner in his Pre-Hearing Order II dated July 6, 2011, the MPD Permit Approvals (and the specific provisions thereof) cannot be challenged in these Development Agreement Hearings. As

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such, Mr. Edelman's request to "remand the Development Agreements to City Staff to develop a viable plan to meet the 50% requirement" must be rejected by the Examiner.

As explained by King County's Paul Reitenbach in testimony at the MPD and SEPA Appeal hearings last year, the BDUGAA was a contract that assured almost 2,000 acres of open space both inside and outside the City of Black Diamond would be protected, which open space has been provided, and in exchange the contract provided that projects like The Villages and Lawson Hills would be developed inside the City of Black Diamond. *See* Attachment 4 to this Memorandum, Excerpts of Testimony (March 8, 2010). Similarly, the Black Diamond Area Open Space Protection Agreement was entered pursuant to the BDUGAA and to effectuate the annexation of the West Annexation Area into the City of Black Diamond by Plum Creek for urban development. The entire agreement was predicated on the annexation – if the annexation did not occur, the agreement would have terminated without the dedication of any open space. See Paragraph Q of the Black Diamond Area Open Space Protection Agreement. YarrowBay purchased the entire West Annexation Area from Plum Creek and this annexation area now forms a portion of The Villages and Lawson Hills MPDs. Therefore, contrary to Mr. Edelman's assertions, open space preservation in the Black Diamond Open Space Protection Agreement was in fact predicated on future urban development in the West Annexation Area.

BDMC 18.98.140(A) provides:

Open space is defined as wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreation areas, such as golf courses, trail corridors, playfields, parks of one-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system.

Emphasis added. Therefore, contrary to Ms. Schmidt's assertions, City Code specifically includes "sensitive areas and their buffers" in its definition of MPD open space. There is no reason or basis to revise this section of the Development Agreements based on the above testimony of Ms. Schmidt.

SECTION 9.2 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "YB responds that parks would be bonded 'for slightly later construction'. We believe that bonding until 60% of the Dwelling

Units are occupied is an unreasonable and unlawful delay in the requirement to meet level of service standards for parks.”

YarrowBay Response:

Mr. Derdowski cites no authority for his assertion that the 60% requirement is “unreasonable” or constitutes an “unlawful delay.” Contrary to Mr. Derdowski’s assertions, Conditions of Approval Nos. 96 (The Villages) and 97 (Lawson Hills) provides that “[p]arks within each phase of development shall be constructed or bonded prior to occupancy, final site plan, or final plat approval of any portion of the phase, whichever occurs first . . .” (emphasis added). YarrowBay’s agreement in Section 9.2 is to complete each park no later than the time that 60% of the dwelling units within ¼ mile of that park have received approval for occupancy. That agreement voluntarily surpasses the MPD conditions approved by the Black Diamond City Council. As such, there is no reason or basis to revise this Section 9.2 of each Development Agreement.

SECTION 9.3 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): “This clause allows trails, crossings, and encroachments into sensitive areas as a matter of right. Normally there needs to be some finding of necessity or over-arching public interest.”

YarrowBay Response:

Mr. Derdowski’s comment merely repeats his prior testimony and is nonresponsive to YarrowBay’s response in its Written Testimony dated August 4, 2011 (Exhibit 139). In Exhibit 139, YarrowBay stated:

Section 9.3 of The Villages and Lawson Hills Development Agreements does not authorize encroachments into sensitive areas as a “blanket provision.” Instead, this section only allows trails, crossings, and encroachments within sensitive areas and buffers if such placement is consistent with: (i) the City’s Sensitive Areas Ordinance (“SAO”), Chapter 19.10 BDMC (Exhibit “E”) and (ii) appropriate mitigation is identified pursuant to the SAO. Given the required consistency with the City’s SAO, there is no violation of the BDMC or other (unidentified by Mr. Derdowski) laws.

Again, there is no need or basis to revise this section of the Development Agreements.

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SECTION 9.5.2 (The Villages and Lawson Hills)

Comments:

Sheila Hoefig (Exhibit 194): "Yarrow Bay's comment is non-responsive. Section 9.5.2 of the Development Agreement does not explicitly exclude the Master Developer from receiving open space credit from the publically owned open space within the Lake Sawyer Regional Park. The request was to add clarifying language excluding private developers from obtaining open space credit in the future for any recreational facilities placed in the Lake Sawyer Park or any other publically owned open space."

YarrowBay Response:

See YarrowBay's Response in Section 4.4.6 (The Villages) and Section 4.4.4 (Lawson Hills) above.

SECTION 11.1 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "YB's response attempts to distract the Hearing Examiner from our central point. The Development Agreements as written allow all infrastructure and timing of development to be changed without amendment or public process.

Taken together with other sections, the Development Agreements allow the maps, land uses, road alignments, infrastructure, phases and timing to all be changed without any amendment or public process. However, the sensitive area delineations, environmental mitigations, and development entitlements are vested and fixed for fifteen years. How can this be a fair and just result?"

YarrowBay Response:

Please see YarrowBay's Exhibit 139 at pages 42-45 for a thorough discussion of Section 11 of the Development Agreement. As summarized therein, MPD Condition of Approval No. 3 in both The Villages and Lawson Hills MPD Permits (Ord. Nos. 10-946 and 10-947) adopt the MPD Phasing Plans included in Chapter 9 of the MPD Permit Applications. The portions of Chapter 9 explicitly approved by the City Council are included within Exhibit "K" of each Development Agreement. These adopted phasing plans and the multiple Conditions of Approval cited in Sections 11.1 and 11.2 all anticipate that alternative and functionally equivalent transportation, water, and sewer infrastructure improvements may be approved by City Staff. Certainty, however, will be provided on a phase-by-phase basis. Per Conditions of Approval Nos. 27 and 169 (Lawson Hills) and 29 and 164 (The Villages), before the first Implementing Project of any Phase is approved, a more detailed implementation schedule of the Regional Facilities supporting that Phase must be submitted to the

City for approval. This requirement is specifically referenced in Section 11.2 of both Development Agreements.

Again, contrary to Mr. Derdowski's allegations above, the Development Agreements do not allow land uses, road alignments, and infrastructure to change without public process. See YarrowBay's responses in Sections 4.1, 4.2, 4.4, 4.4.6, 4.4.8, and 4.4.9 above.

Section 11 of the Development Agreements meets the criteria of the MPD Conditions of Approval related to infrastructure and phasing. No evidence to the contrary has been presented to the Hearing Examiner. As such, there is no reason or basis to revise this section of the Development Agreements.

SECTION 11.3.1 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "Our point is that the table is just a table. There is insufficient language to give it any force and effect."

YarrowBay Response:

Contrary to Mr. Derdowski's assertions, Section 11.3(B) of both Development Agreements requires that the Master Developer design, fund and construct the on-site regional facilities identified in Table 11-3-1. Whether or not Community Facilities District (CFD) funding under RCW Ch. 36.145¹⁶ is used to finance these improvements, the Master Developer cannot proceed with MPD development unless adequate infrastructure capacity is provided per the terms of Section 11. If CFDs are not ultimately approved by the City Council, the Development Agreements do not limit the Master Developer's use of other forms of financing. Because these improvements must be constructed in order for MPD development to occur, the Master Developer will find another way to pay for them. As such, there is sufficient language to give Table 11-3-1 force and effect. There is no reason or basis to revise Section 11.3.1 of the Development Agreements.

SECTION 11.4 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "YB's response that it is 'illegal' to withhold occupancy if Regional Facilities are not in place is ridiculous. If sewer or water facilities were not available to serve the development the City would be *obligated* to withhold occupancy permits. The payment of a mitigation fee is irrelevant to the issue of whether the services are available. There are many examples where

¹⁶ See Attachment 6 outlining a CFD as a financing tool.

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the failure of an outside agency to provide essential services blocks development.”

Lisa Schmidt (Exhibit 197): “If YarrowBay does not control the construction of all Regional Facilities pertinent to the development, then those agencies being asked to provide those facilities should be party to such an Agreement and provide consent for construction of those facilities before the Agreement as a whole is considered for approval, realizing that further specificity must be approved by those agencies at the Implementing Project level.”

YarrowBay Response:

In Exhibit 139, Yarrow Bay said “it is arguably illegal to withhold [] occupancy [approval] when the Master Developer is incapable of correcting an outside agency’s construction schedule.” Mr. Derdowski is correct that a lack of water and sewer availability would require the City to withhold occupancy permits. But that is not the point. The point is that there are interim solutions that can be provided to assure infrastructure, such as an interim pump station. So long as service is provided, and the Regional Facilities are permitted, it is arguably illegal to withhold occupancy approvals. The language of the Development Agreement simply acknowledges the reality of what YarrowBay and the City can and cannot control.

Contrary to Ms. Schmidt’s testimony above, Section 11.4 of the Development Agreements shows only one off-site Regional Facility that neither the City nor YarrowBay has sole construction responsibility for – a wastewater storage facility sufficient to serve the MPDs. The King County Wastewater Treatment Division has in fact already executed a separate agreement with the City regarding the provision of sewage disposal service and, therefore, it an unnecessary third party to these Development Agreements. See Agreement for Sewage Disposal dated September 12, 1990 between City of Black Diamond and the Municipality of Metropolitan Seattle (“Metro”) which has been submitted into the record of these proceedings by the City at Exhibit 215. There is no reason or basis to amend Section 11.4 of the Development Agreements.

SECTION 12.3 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): “If the Design Review Committee has no review authority, then there is no need to include it in the Development Agreements. The Developer may create any committee that it wants without grant of authority by the City.”

YarrowBay Response:

Contrary to Mr. Derdowski’s allegations, the City does not grant the Design Review Committee (DRC) any authority in Section 12.3. Instead, Section 12.3

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functions to require the Master Developer to establish a DRC that conducts a preliminary review of Implementing Projects' consistency with the MPD Project Specific Design Standards and Guidelines (Exhibit "H") and the High Density Residential Supplemental Design Standards and Guidelines (Exhibit "I"). This is one method for ensuring that Implementing Project applications that are submitted to the City have been vetted for design compliance such that the City's review is more efficient. There is no reason or basis to remove this section from the Development Agreements.

SECTION 12.5 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "The Development Agreement reverses the intent of the MPD permit approval. Condition of Approval No. 163 was obviously intended to extend the City staff's input early into the conceptual design stages. As written this section appears to create a performance standard of collaboration for the review of Implementing Projects."

YarrowBay Response:

Contrary to Mr. Derdowski's assertions, Sections 12.5.1(A)-(C) do in fact describe a process through which City Staff's input is included early in the design of Implementing Project applications. Subsection (A) outlines an "informal feasibility consultation" for all Implementing Projects and subsection (B) describes a pre-application meeting. The purpose of these meetings is to "work collaboratively" and "obtain direction from City staff on the consistency of the proposed Implementing Project with the MPD Permit Approval" and the Development Agreements. See Section 12.5.1(A), (B). There is no reason or basis to revise this section of the Development Agreements.

SECTION 12.8.13 (The Villages and Lawson Hills)

Comments:

Vicki Harp (Exhibit 190): In Exhibit 190, Mrs. Harp asserts that the MPD Conditions of Approval do not require that work hours be governed by BDMC 18.12.040.

YarrowBay Response:

Development Agreements must be consistent with City Code provisions. RCW 36.70B.170. As such, the City cannot require that YarrowBay utilize fewer work hours than allowed in BDMC 18.12.040. Nevertheless, YarrowBay has voluntarily agreed to limit itself to fewer work hours than allowed under the BDMC. As such, there is no reason or basis to revise this section of the Development Agreements.

SECTION 12.8.15 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "Our point is that revisions to the MPD permit would be a land use action, subject to Growth Management, Planning, and Development Regulations, while Amendments to the Development Agreement would be legislative and contractual. YB appears to want it both ways, combining the processes where it suits them, while denying any linkage when it doesn't.

There is no need, and there may well be legal problems with requiring a single process for MPD Permit Amendments and Amendments to the Development Agreement. For example, if a MPD Permit Amendment qualified for administrative review, would the Development Agreement be changed without Council action? Amendments to the Development Agreement are inherently legislative, while MPD Permit Amendments may be administrative, quasi-judicial, or legislative."

YarrowBay Response:

Mr. Derdowski's comments are nonresponsive to YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139). As YarrowBay explained therein:

Pursuant to BDMC 18.08.130, "[i]f a project requires more than one type of land use application, the applications shall be processed concurrently unless the applicant demonstrates that separate processing will result in a more efficient or effective review process." Thus a consolidated permit process is required by City code. The existing City code (which is not subject to appeal and therefore deemed valid) makes the review of Major Amendments to both MPD Permits and Development Agreements a Type 4, quasi-judicial process. See BDMC 18.08.030, BDMC 18.66.020(E), and BDMC 18.98.100. Also, Section 12.8.15 authorizes the Designated Official to determine that "separate processing will result in a more efficient or effective review process."

The BDMC requires that Major Amendments to MPD Permit Approvals and the Development Agreements be processed and reviewed using the same Type 4-quasi-judicial process. See Exhibit "E" at Section 18.08. As such, there is no need or basis to revise this section of the Development Agreements.

SECTION 13.3 (The Villages and Lawson Hills)

Comments:

Brian Derdowski (Exhibit 205): "The central thrust of much of the public's testimony on this issue is that the presence of a mitigation agreement does not itself ensure school capacity to serve the development. The Development Agreement should include a provision that a finding of adequate school capacity must be made before the approval of any Implementing Project."

Cindy Proctor (Exhibit 191): ". . . However, I believe it is important to focus on what is really relevant to the Hearing Examiner's recommendation to the City Council regarding the Comprehensive School Agreement. What is relevant is whether the CSA clearly and adequately incorporates the MPDs Conditions 98 and 99 into the Development Agreement[:]

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

Yarrow Bay would like the Hearing Examiner believe that the only intent of the BDMC 18.98.080(A)(14) is to designate school sites, regardless if the sites are valid; regardless if they will remain available to the ESD throughout full build-out to serve the children of the MPD; regardless if there is possible permitting and feasibility issues with the designated site; regardless if mine hazards are an issue; regardless if they are walkable; regardless if they are within the City, MPD or UGA; and regardless of whether all the sites will be encumbered with the

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regulatory constraints for the Development Agreement. Besides transportation the lack of adequate school mitigation is one the biggest failures of these MPDs and DAs.

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

YarrowBay Response:

Please see the lengthy discussion in Exhibit 139 at pages 49-52 and 89-90. As explained therein, the Development Agreements meet the requirements of BDMC 18.98.080(A)(14) and MPD Conditions of Approval Nos. 98 (The Villages) and 99 (Lawson Hills). BDMC 18.98.080(A)(14) provides:

School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district's adopted standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.

Emphasis added. The City Council determined in its MPD Permit Approvals (Ord. Nos. 10-946 and 10-947) that The Villages and Lawson Hills MPDs met the City's walkable school standard. See Conclusion of Law 40 from both The Villages and Lawson Hills MPD Permit Approval.

Therefore, the only other requirement set forth in BDMC 18.98.080(A)(14) is that the number and size of school sites designated in the School Agreement accommodate the total number of children that will reside in the MPD through full build-out. The School District and City recognize in the School Agreement that the seven designated sites meet this criterion.

In addition to BDMC 18.98.040(A)(14), the MPD Conditions of Approval Nos. 98 (Villages) and 99 (Lawson Hills) provide that:

The Applicant shall enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If

approved, such agreement shall be incorporated into the Development Agreement by reference. Alternatively, school mitigation may be addressed in the Development Agreement, using terms similar to those contained in Exhibit 6, or through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws). The agreed number of school sites and associated minimum acreage, both as set forth in Exhibit 6, shall be used to guide any school mitigation alternative. To the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas. All school sites shall be located either within the MPDs or within one mile of the MPDs.

Exhibit 6 referenced in Conditions of Approval Nos. 98 and 99 is a draft copy of the Comprehensive School Mitigation Agreement that is substantially similar to the final executed copy incorporated by reference in Section 13.3 of the Development Agreements. Between the version contained in the referenced Exhibit 6 and the final executed version, no changes were made to the number of school sites and associated minimum acreage in the School Agreement.

Thus, the BDMC and the MPD Conditions of Approval do not require some additional "adequate mitigation of impacts to schools." Rather, the MPD Permits' Conditions of Approval are an announcement of the Black Diamond City Council's determination that, for the MPDs the School Agreement is adequate mitigation.

The Black Diamond City Council determined in the MPD Permit Approvals (Ord. Nos. 10-946 and 10-947) that the school sites set forth in the School Agreement met the City's walkable schools standard. See Conclusion of Law 40 of Exhibit B of each MPD Permit Approval. Compliance with this standard has already been determined and ensured by the Council's inclusion of Conditions 98 (The Villages) and 99 (Lawson Hills) which requires, where reasonable and practical, all schools to be located within a half-mile walk of residential areas. The Hearing Examiner cannot revisit -- in the context of these Development Agreement Hearings-- the City Council's prior determination. Moreover, absent an initiation of the MPD Permit revocation process set forth in BDMC 18.98.200, the City Council cannot revisit the MPDs' satisfaction of this standard as well.

Contrary to Ms. Proctor's testimony, the three school sites shown in unincorporated King County are currently authorized uses in the County's code. See KCC 21A.08.050. The Black Diamond Comprehensive Plan at Section 8.6.1 provides: "It is also important to residents of the City that their children attend schools within or near the City." (Emphasis added). Further down in this same

section Policy CF-11 states: "Work with the school districts serving the City to identify new school sites within City limits and encourage school districts to acquire those sites at the earliest possible time." This Comprehensive Plan policy, especially when combined with Section 8.6.1's introductory language cited above, in no way precludes the siting of schools near the City in unincorporated King County. Ms. Proctor notes that the City's Comprehensive Plan also provides at UGA Policy U-9: "Sewer and water facilities extended to the UGA will not serve adjacent rural or resource lands" Sewer and water availability for these three school sites will be addressed at the time of permit applications. There is no evidence in the record that the City is the exclusive purveyor of sewer and water services for these sites. In fact and to the contrary, at Exhibit 25 the record shows that the middle school site directly west of The Villages is located within Covington Water District's water service area. If the Enumclaw School District determines that an alternate school site is required, there are methods in the School Agreement for identifying different school sites that will have to meet the walkable standards set forth in MPD Conditions of Approval Nos. 98 (The Villages) and 99 (Lawson Hills).

Ms. Proctor also comments in Exhibit 191 that the School Agreement "did not go thru a legal, public hearing process." However, to date, no party to these Development Agreement hearings has cited any authority that requires a public hearing for the School Agreement. As such, the absence of a public hearing is no basis for revising the Development Agreements.

In summary, the Development Agreements meet the requirements of BDMC 18.98.040(A)(14) and MPD Conditions of Approval Nos. 98 (The Villages) and 99 (Lawson Hills). The City Council (in both these MPD conditions and the School Agreement itself) and the School District determined that the School Agreement constitutes adequate mitigation for the MPD Permits. The Black Diamond City Council found the existing seven school sites met the City's walkable standard. As such, there is no reason or basis to revise Section 13.3 of the Development Agreements.

SECTION 13.6 (The Villages and Lawson Hills)

Comments:

Bob Edelman (Exhibit 199): The pages cited in the Staff Report do not say that Henderson & Young "provided expert review" of the Fiscal Impacts Analysis section. The report merely says that they "provided assistance" and that they prepared an analysis of fire mitigation fees which the City "considered". The use of the word "considered" leaves the impression that fire mitigation fees were not used directly from the analysis.

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Henderson & Young did not provide expert testimony nor was any report by Henderson & Young evaluating the Fiscal Impacts Analysis section submitted as a hearing exhibit.

Yarrow Bay presents no evidence that the City will "undoubtedly" retain the services of a qualified firm to review future fiscal analyses. Further, it would not be prudent to have such a review conducted by the same firm that agreed to the faulty methodology if, indeed, Henderson & Young did prepare or agree to the methodology. The problems with the methodology are discussed in written comments which I have submitted separately and will not be repeated here.

YarrowBay Response:

The City's fiscal expert, Randall Young of Henderson, Young & Company, filed a declaration in support of Section 13.6 on August 12, 2011. See Exhibit 217. This declaration establishes as false the majority of Mr. Edelman's above comments regarding Section 13.6. The Staff Report (Exhibit 3) coupled with this declaration verify that Henderson, Young & Company did in fact provide expert review and assistance to the City in the development of the fiscal analysis outlined in Section 13.6.

Moreover, see Section 13.4(A) of the Development Agreements, which provides: "Payment of fire mitigation fees at the rate described in Table 4 of the Fire Impact Fee Study (\$1,783.13 per Dwelling Unit, and \$2.29/square foot of non-residential construction . . ." There is no question that these fire mitigation fees were taken directly from the Fire Impact Fee Study set forth in Exhibit "T" of the Development Agreements.

Contrary to Mr. Edelman's comments above, Randall Young's Declaration (Exhibit 217) does in fact state at page 4, paragraph 10 that the City of Black Diamond has an independent consultant to provide peer review of the results of the fiscal analysis outlined in Section 13.6.

Finally, Mr. Edelman cites no expert testimony in support of his statement that the fiscal analysis set forth in Exhibit 13.6 contains "faulty methodology." This may be his lay opinion; however, it is directly contrary to the sworn conclusions of the City's fiscal expert that Section 13.6 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." See Exhibit 217 at Paragraph 25. There is no reason or basis to revise Section 13.6 of the Development Agreements.

SECTION 15.3 (The Villages and Lawson Hills)

Comments:

Bob Edelman (Exhibit 199): "Susan Harvey requested the addition of a consent provision to the assignment clause in Section 15.3. Yarrow Bay responded that they and the City decided not to because such a provision had not been incorporated in other development agreements that they reviewed.

The City and its citizens should not rely upon the judgment of other jurisdictions in this extremely important matter. One could easily think of assignees that would be unacceptable to the City. For example, transfer of a developer's interest to someone of very limited finances, known bad character, who has a history of defaulted obligations, is an official of an unfriendly foreign country, or is a member of a criminal enterprise would be inimical to the public good. The list goes on."

YarrowBay Response:

Many of the examples cited by Mr. Edelman above, e.g., "bad character" or "foreign", are exactly the types of vague determinations that municipalities, like the City of Black Diamond, are counseled to avoid. Such potentially discriminatory and vague decision making has the potential to subject the City to expansive legal liability. Most importantly, Mr. Edelman's comments provide no reason or legal basis for revision of Section 15.3 of the Development Agreements. There is no requirement for consent in State law, City Code, or the MPD Permit Conditions of Approval, and as drafted, the Development Agreements already require advance notification.

EXHIBIT "A" (The Villages and Lawson Hills)

Comments:

Bob Edelman (Exhibit 199): "I pointed out in written and oral testimony that the Villages non-contiguous commercial area also known as the "North Property" or Parcel B included a strip of high density residential. This is about 9 acres and would contain approximately 200 dwelling units. This area is non-contiguous to the MPD and is not intended for commercial purposes. Therefore this land use violates BDMC 18.98.030(C) . . ."

YarrowBay Response:

This allegation of Mr. Edelman was addressed twice in YarrowBay's Exhibit 139. See pages 63 and 73. Mr. Edelman raises nothing new in his above comments. The Villages Condition of Approval No. 128 expressly approves the "Land Use Map" and the Land Use Map included high density multi-family uses on a portion of Parcel B. As such, there is no reason or basis to revise Exhibit "A" of The Villages Development Agreement.

EXHIBIT "N" (The Villages and Lawson Hills)

Comments:

Bob Edelman (Exhibit 199):

Building Permit Surcharge. In my oral comments on the Building Permit Surcharge in Exhibit N, I pointed out that the Surcharge Agreement violated both [BDMC 18.98.040(C)] and state law.

There is no provision in the code for reimbursing costs. Further, [RCW 82.02.020] prohibits imposing a charge on construction for other than certain exceptions, none of which apply to recovery of permit processing costs.

In its response, Yarrow Bay attempts to defend the surcharge on the basis that it is somehow an MPD requirement because it replaces the existing Staff and Facilities Funding Agreement (SFFA) requirement which has a reimbursement provision. The content of the existing SFFA is irrelevant to the new Funding Agreement.

The MPD conditions call for a replacement to the existing Funding Agreement, not an amendment or an extension. If it were intended that certain terms and conditions of the existing funding agreement be carried over to the new funding agreement then the conditions would have so stated and would have listed the specific terms and conditions to be carried forward. They did not. There is no requirement in the MPD ordinances that requires the City to reimburse YarrowBay for its expenses. In fact, to do so runs counter to municipal code. The code requires that the applicant pay the costs of processing an MPD permit application.

RCW 82.02.020 prohibits the surcharge contemplated by the Development Agreements. . . .Yarrow Bay does not address the State law issue directly but rather asserts by footnote that the potential violation is taken care of by language that says the agreement will be entered into only if it is legal. (That should go without saying since to do so otherwise would invalidate the agreement). There is no sense whatsoever in including language for a potential agreement while knowing that it is illegal.

Yarrow Bay also implies that adding the charge only to permits makes it acceptable with the statement that "the building permit surcharge proposed in the new MPD Funding Agreement has no effect on property owners outside the MPDs, only applies to building permits (instead of all land use and construction permits generally)". However, the charge does not meet the permitting exception of 82.02.020. . . . It cannot be claimed that a permit fee to reimburse Yarrow Bay covers any of the costs in the exception.

The Examiner should condition the Development Agreements on removal of the Surcharge Agreement language.

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Consideration and Surety. Yarrow Bay asserts that I alleged "that the MPD Funding Agreement provides 'no consideration from Yarrow Bay and its hold harmless clause lacks surety'". They obviously made an error in that I was referring to the Surcharge Agreement, not the Funding Agreement. My statement still stands.

Master Development Review Team (MDRT). I will address one issue here that Yarrow Bay raises – that of the ability of the City to contract. The implication is that future City Councils can be bound by a contract to establish and control the functions of the MPDRT if the current City Council so decides.

The question is not whether a municipality can contract but rather if this would be a permitted contract. This would not be a contract to run a City-owned utility or similar function of government. This contract away extensive control of the City's police powers inherent in the new organization including processing, reviewing, and implementing development permits.

It is a long established principal of law that the legislative body of a jurisdiction cannot contract away its police powers. . . . The Funding Agreement in its present form would attempt to do the prohibited. It would attempt to bind future City Councils to the terms of the contract and take away the ability to make changes to a part of City government that would have a significant part of the City's police powers. This would give Yarrow Bay de facto control of City police powers through its extensive involvement and control of the organization's structure and functions.

Examples of Yarrow Bay's involvement and control of the MDRT, and therefore, the police powers of the City, include the following provisions in the agreement: (1) "The primary function of the MDRT is to process, review, and implement development permits and development agreements of the Villages MPD and the Lawson Hills MPD."; (2) "The MDRT shall initially be comprised of the following current positions, or their functional equivalent: (i) City's Economic Development Director; (ii) the City's Community Development Director; (iii) the City's MPD planner; (iv) a new City administrative support position; (v) necessary consultants as determined in the City's sole, reasonable discretion after consultation with the Developer; and (vi) additional City staff as identified by the Developer through the Annual Review described in Section 6."; (3) "The MDRT composition may be modified by mutual agreement of the parties."; and (4) "... BD Village and/or BD Lawson may elect to reduce, or eliminate, MDRT staffing during the Annual Review described in Section 6".

Thus, the developers would establish their effective control over the MDRT by funding employee salaries and benefits, requiring that the employees give first

priority to the developers, have veto power over changes in staff positions, and have unilateral authority to eliminate staff positions.

The Examiner should remand the Funding Agreement to City Staff for removal of language giving the developers any such control and limiting them to funding activities necessary to processing, reviewing, and implementing permits.

Relationship between the MPD Funding Agreement and Fiscal Analysis. I further pointed out in my oral comments that the MPD Funding Agreement as structured is not part of the fiscal analysis as required by The Villages MPD condition 156 and Lawson Hills condition 160. Yarrow Bay responded that this was “just a matter of form” and that “the fiscal analysis and the MPD Funding Agreement are in fact interdependent and linked”. It is a non sequitur that if two things are interdependent and linked then one is part of the other. One could devise many examples to illustrate that point.

First, I raised the issue that the Funding Agreement provides that amendments be made by mutual agreement of the parties while the Development Agreement requires that an amendment be classified as either major or minor and then specifies a different amendment process according to classification. Yarrow Bay responded that amendment to the Funding Agreement is a minor amendment by definition because amendment to Exhibit N of the Development Agreement is defined to be minor in Section 15.7. This again raises the question of whether the Funding Agreement is a separate instrument or an exhibit to the Development Agreement. Yarrow Bay might claim that this is “form over substance” but it is of major importance regarding the amendment process. . . .

Second, Yarrow Bay claims that the example I raised of partial assignment is invalid because “there can be only one Master Developer for each MPD at a time”. This is another non sequitur. The assignment clause of the Development Agreements allows transfer of “all or any portion” of the developer’s “interests, rights or obligations”. . . . Partial assignment is allowed under the MPD while under the Funding Agreement there is no provision for partial assignment.

Third, Yarrow Bay claims that “given deficiencies in the existing Staff and Facilities Funding Agreement, the City and YarrowBay specifically drafted the MPD Funding Agreement to commence upon execution in the unlikely event that the City Council elected to move forward with the new MPD Funding Agreement before taking action on the Development Agreements”. This is an admission that the Funding Agreement is a separate instrument and not part of the Development Agreement unless one accepts the odd notion that the Development Agreement can be executed one piece at a time.

Fourth, I brought up the simple fact that the Funding Agreement seemed to differentiate between itself and the Development Agreements with the phrase

“this Agreement or The Villages Development Agreement or Lawson Hills Development Agreement”. Yarrow Bay responded that “a distinct ‘MPD Funding Agreement’ was specifically called out in Conditions of Approval Nos. 156 (The Villages) and 160 (Lawson Hills)”. This does not explain the distinction made in the Funding Agreement between itself and the Development Agreements unless the Funding Agreement is not part of the Development Agreement.

All indications are that the Funding Agreement is intended to be executed as a separate instrument. If so then two steps must be taken: (1) the MPD Ordinance must be amended to allow a separate agreement and (2) the Funding Agreement must be approved through the legislative process.

MPD Funding Agreement Review and Processing. Yarrow Bay incorrectly states that I assert “that new MPD Funding Agreement should be processed as a separate standalone agreement”. I stated that if it is determined that then it would have to be executed in advance the Funding Agreement can be a separate agreement to be incorporated by reference then it would have to be executed in advance of the Development Agreement as a separate standalone agreement and would require legislative action.

Yarrow Bay responded that “Consolidated review is authorized at BDMC 18.98.050”. It is not. 18.98.050 relates to MPD approval, not Development Agreement approval. Again, if the Funding Agreement is determined to be a separate instrument then legislative action is required and its approval cannot be consolidated in a quasi-judicial action. Consolidate review of a Development Agreement with anything else is not provided for in the municipal code or state law.

In light of Yarrow Bay's comments I would restate the above quote from my oral testimony to say that all evidence shows that the Funding Agreement is a separate standalone agreement and must be enacted by the legislative process. It is recommended that the Examiner remand the Development Agreement to City Staff to make the agreement part of the fiscal analysis as required by the MPD ordinance and correct the identified deficiencies. Alternatively, if it is determined that the Funding Agreement can be incorporated by reference then the Examiner should recommend that deficiencies be corrected and the agreement adopted through the legislative process before consideration of the Development Agreements.

Cindy Proctor (Exhibit 191): “A clear example of this is the proposed “Surcharge” (pg 66) which requires the creation and approval of laws that constrain fundamental duties of a future City Council and the State Legislators. Prior to any enactment by City Council the State must first create this new law. Furthermore, the sole purpose of this surcharge is to pay the Master Developer back their quote “voluntary contributions”; how is this in the best welfare of the

City and the taxpayers? Why would the City give money back to the Master Developer if they were not required to give money back?"

YarrowBay Response:

Building Permit Surcharge. In short, Mr. Edelman and Ms. Proctor argue that the potential for a building permit surcharge that is described in the Funding Agreement should be removed from the Funding Agreement. Contrary to Mr. Edelman's comments above, the building permit surcharge proposed in the MPD Funding Agreement (Exhibit "N") at Paragraph 9 is consistent with City Code and State law. First, under the Existing Funding Agreement (as defined in Exhibit 139, p. 65-66) as well as the proposed MPD Funding Agreement, YarrowBay pays more than the costs incurred by the City "in processing the MPD permit applications." BDMC 18.98.040(C). In addition to MPD permit processing costs, YarrowBay voluntarily contributes to the City's staffing and facilities costs unrelated to MPD processing up to a maximum of approximately \$2.5 million dollars a year. Thus, authorizing a surcharge that allows YarrowBay to recoup some of these extra costs from builders constructing homes and commercial structures within the MPD project sites in no way violates the requirement in BDMC 18.98.040(C) that an MPD "applicant shall pay all costs incurred by the city in processing the MPD permit application . . .". Second, the MPD Funding Agreement (Exhibit "N") at Paragraph 9 only authorizes a building permit surcharge if it is permitted under State law or other agreement between YarrowBay and its subsequent purchasers. Thus, nothing in the Funding Agreement itself forces the surcharge to be adopted and the Funding Agreement by its express terms requires compliance with RCW 82.02.020 (via later adoption of a resolution by City Council), or authorization pursuant to a voluntary agreement between YarrowBay and subsequent MPD land purchasers. As such, there is no violation of State law.

Contrary to Ms. Proctor's comments in Exhibit 191, the building permit surcharge in no way requires the "creation and approval of laws that constrain fundamental duties of a future City Council and State Legislators." First, no action is required by the State in the MPD Funding Agreement (Exhibit "N"). Second, the City Council is required to only consider adopting a resolution imposing the surcharge on MPD building permits. Approval of a subsequent resolution by City Council is not required by the terms of the MPD Funding Agreement (Exhibit "N"). See Paragraph 9 of the MPD Funding Agreement. Per the terms of the Existing Funding Agreement (as defined in Exhibit 139, p. 65-66), the City committed to taking action so that YarrowBay could recover Supplemental Costs (as defined in the Existing Funding Agreement) by adding a surcharge. Thus, the City contractually obligated themselves to paying back a portion of the costs incurred by YarrowBay under the Existing Funding Agreement. See Paragraph M of the Existing Funding Agreement entitled "Reimbursement" ("The City will take actions so that Yarrow Bay can recover the Supplemental Costs by adding a surcharge, to the extent allowed by law, to all impacts fees, latecomer's

agreements, and all other financial obligations that are created by City codes, and to all fees charged for the following land use applications and permits submitted by Benefitted Non-Contributing Parties . . .").¹⁷

The surcharge arguments of Mr. Edelman and Ms. Proctor provide no basis or reason to revise the MPD Funding Agreement.

Consideration and Surety. Mr. Edelman asserts that the "Surcharge Agreement" provides no consideration from YarrowBay and that YarrowBay made an error in its response to this same argument on page 68 of its Written Testimony (Exhibit 139) because he was "referring to the Surcharge Agreement, not the Funding Agreement." Contrary to Mr. Edelman's assertions, there is no separate Surcharge Agreement. The building permit surcharge is one provision within the MPD Funding Agreement (Exhibit "N"). See Paragraph 9. A basic principle of contract law is that consideration sufficient to support one promise is sufficient to support any number of promises, and each written term of a contract need not be bargained for. *Millican of Washington, Inc. v. Wienker Carpet Service, Inc.*, 44 Wn.App. 409, 413 (1986). It is not the law that one must bargain for each and every written term of a contract. *Lyall v. DeYoung*, 42 Wn.App. 252, 257 (1985). Thus, the consideration provided by YarrowBay for the MPD Funding Agreement applies to the agreement as a whole not just certain provisions. There is no requirement that the Paragraph 9 of the MPD Funding Agreement containing the building permit surcharge provision have separate consideration and surety. Any subsequent action by the City Council to authorize the surcharge will be regulatory not contractual and, therefore, requires no consideration, and any agreement between YarrowBay and subsequent MPD land purchasers will include its own consideration. Based on these arguments of Mr. Edelman, there is no basis or reason to revise the MPD Funding Agreement.

MDRT. Cities have the authority to enter into contracts. *Burns v. City of Seattle*, 161 Wn.2d 129 (2007); *Yakima County (West Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wash.2d 371, 383 (1993); RCW 35A.11.010. The power to contract, like other specific and general powers conferred upon optional code cities, "shall be liberally construed in favor of the municipality." RCW 35A.01.010. A city may enter into any contract so long as it does not conflict with the constitution, a statute, or a city's own charter or ordinances. See *Branson v. Port of Seattle*, 152 Wn.2d 862, 871 (2004). As summarized above, the MPD Funding Agreement (Exhibit "N") does not conflict with State law or the City Code and thus may be entered into by the Black Diamond City Council.

Contrary to Mr. Edelman's assertions, the MPD Funding Agreement does not "contract away extensive control of the City's police powers . . . including processing, reviewing, and implementing development permits." The MDRT

¹⁷ A copy of the Existing Funding Agreement and its first amendment are attached hereto as Attachment 5.

provisions in the MPD Funding Agreement are just a mechanism through which YarrowBay will pay all costs incurred by the City in processing MPD Implementing Project applications. Under the MPD Funding Agreement, the City retains full authority over hiring and all personnel decisions, including establishing compensation amounts. See pp. 3-4. The City retains the ability to hire new or additional City staff not subject to the MPD Funding Agreement. If YarrowBay ceases paying MDRT costs, then the City's obligations under Paragraph 3 of the MPD Funding Agreement also cease. And, most importantly, the City retains full control over MPD Implementing Approval decisions. As such, the MDRT does not constitute any delegation of police powers, let alone an improper delegation of police power.

Relationship between the MPD Funding Agreement and Fiscal Analysis. Contrary to Mr. Edelman's arguments, Conditions of Approval Nos. 156 (The Villages) and 160 (Lawson Hills) do not require that the MPD Funding Agreement be included in the fiscal analysis. This is a strained interpretation of the MPD Condition language, which provides in relevant part: "The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific 'MPD Funding Agreement,' which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement." The more reasonable interpretation of this language is that the Development Agreement shall include a new MPD Funding Agreement that replaces the existing standalone funding agreement.

The MPD Funding Agreement is inextricably interlinked with the fiscal analysis outlined in Section 13.6 of the Development Agreements. Section 4 of the MPD Funding Agreement requires the Master Developer provide funding, staffing, and other equipment necessary to satisfy any deficit projected by the Development Agreements' fiscal analysis. Subsections (5) and (6) of the "Fiscal Impacts Analysis" section (Section 13.6) of the Development Agreements incorporated the MPD Funding Agreement and its terms by reference. The mechanics of the interrelationship is addressed by YarrowBay in Exhibit 139 at page 67. Again, Mr. Edelman's comments merely place form over substance. There is no reason or basis to revise the Development Agreements or Exhibit "N" as a result of Mr. Edelman's comments.

MPD Funding Agreement Review and Processing. Conditions of Approval No. 156 (The Villages) and 160 (Lawson Hills) require the exact terms and process of the fiscal analysis to be outlined in the Development Agreements, which "shall include a specific 'MPD Funding Agreement,' which shall replace the existing" funding agreement. Thus, the new Funding Agreement is a condition of the MPD Permit Approvals, and processing the Funding Agreement as part of the Development Agreement was expressly contemplated in the MPD Conditions of Approval. Again, Mr. Edelman cites no State law or city regulation that requires separate processing of the MPD Funding Agreement and the Development

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Agreements. See page 67 of YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139).

EXHIBIT "O" (The Villages and Lawson Hills)

Comments:

Bob Rothschilds (Exhibit 201): In his email Exhibit 201, Mr. Rothschilds submits comments to the Hearing Examiner regarding the nature of his prior testimony on July 16, 2011, the adequacy of the monitoring term, the timeframes for corrective action, and the Water Quality Committee.

YarrowBay Response:

In response to Mr. Rothschilds's comments, YarrowBay asked its limnology experts to review Exhibit 201 and submit a response. Attached hereto as Attachment 3 is a copy of Tetra Tech, Inc.'s response to Exhibit 201. In addition to Attachment 3, YarrowBay responds to Mr. Rothschilds as follows.

In Exhibit 201, Mr. Rothschilds requests for the first time "explicit timeframes" for corrective action. Unfortunately, this request is infeasible. Given the varying nature of compensatory phosphorous mitigation projects that may be used by YarrowBay if there is ever a need for corrective action, identification of a specific timeframe in the Development Agreements is impractical and infeasible. Depending on the project, there will be different applicable construction timeframes and windows. However, and most importantly, explicit timeframes are unnecessary to ensure that YarrowBay's "not net phosphorous commitment" is enforced. The City, per the terms of the Development Agreement, has the authority to take enforcement action if the Master Developer does not perform per the requirements of Section 7.4.5 of each Development Agreement. Section 7.4.5 requires that YarrowBay shall modify existing practices, modify the design of a proposed new facility, or implement a project within the Lake Sawyer basin if monitoring reveals that the "no net phosphorous commitment" is not being met. Thus, there is no basis or need to revise the Development Agreements to include "explicit timeframes" to ensure performance under Section 7.4.5.

As for Mr. Rothschilds's comments on the Water Quality Committee, YarrowBay refers the Hearing Examiner to pages 88 and 89 of YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139). The MPD Conditions of Approval Nos. 85 (The Villages) and 86 (Lawson Hills) require the creation of a Water Quality Review Committee. The conditions do not require any specific timeframe for the creation of this committee. However, YarrowBay has committed in the Guide (Exhibit 8) to convening the first meeting of the Water Quality Committee within 30 days after approval of the Development Agreements. Conditions 85 and 86 are self-enforcing and incorporated by reference into the Development Agreements. If YarrowBay fails to perform, it is in violation of the MPD Conditions of Approval and the Development Agreements, at which point the

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City is authorized to take enforcement action. As such, no action is specifically required in the Development Agreements themselves.

There is no reason or basis to modify Exhibit "O" as a result of Mr. Rothschild's testimony.

III. YARROWBAY'S RESPONSE TO LEGAL ARGUMENT

A. MPD Permits in the City of Black Diamond are Entitlements.

Comments:

Brian Derdowski (Exhibit 205): "The MPD permit approval did not convey a complete entitlement because it's provisions could not be applied to any Implementing Project without the additional detail provided by a Development Agreement. Moreover, the MPD permit specifically stated that no Implementing Project could be approved until a Development Agreement was adopted.

YB's response to our comment uses analogous reasoning and examples that are not applicable. The cases cited have nothing to do with Development Agreements or MPD permits."

YarrowBay Response:

Contrary to Mr. Derdowski's pejorative remarks, legal argument by analogy is a commonly accepted method of legal reasoning.¹⁸ Also, Mr. Derdowski provides no legal support for his assertion that The Villages and Lawson Hills MPD Permits are not entitlements.

As noted on page 69 of YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139), under Washington law, the need for subsequent City approval or permit does not alter the original permit's status as an entitlement. See *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91 (1992) (holding that a conditional use permit, a discretionary land use decision subject to ongoing approval, is an entitlement subject to due process claims).

B. The Villages and Lawson Hills Development Agreements Must Implement the Conditions of Approval of the MPD Permits.

Comments:

Brian Derdowski (Exhibit 205): "Our comment stands. Development Agreements are voluntary contracts as defined by State law. The Development Agreements are standalone actions that have their own SEPA requirements and must be independently supported by findings of consistency with the Black Diamond Municipal Code and other laws.

Development Agreements are inherently an exercise of the City's legislative authority. While the GMHB's decision regarding the MPD permit approval is

¹⁸ See Emily Sherwin, *A Defense of Analogical Reasoning in Law*, 66 U. CHI. L. REV. 1179, 1181 (1999) (arguing that "the practice of reasoning by analogy from prior decisions has advantages, both epistemic and institutional, that exceed its rational force.").

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indeed under appeal, the Board's reasoning is nevertheless instructive and additionally supports the legislative nature of Development Agreements."

YarrowBay Response:

Mr. Derdowski's comments above do not respond to the legal argument presented by YarrowBay in its Written Testimony dated August 4, 2011 (Exhibit 139) at pages 70 through 71. As noted therein:

Here, because: (i) the development agreements are a mutual requirement of both the City and YarrowBay per the City's MPD Ordinance (BDMC Ch. 18.98) (ii) the MPD Permit Approvals are entitlements. . . ; and (iii) development agreements are an explicit condition of the MPD Permit Approvals themselves, YarrowBay does in fact have a right to the conclusion of these Development Agreements. See Condition of Approval No. 2 of both The Villages and Lawson Hills MPD Permit Approvals. Municipalities are legally prohibited from arbitrarily withholding subsequent approvals (such as a development agreement) from property owners that are necessary as a condition of a prior permit approval. See *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947 (1998).

Moreover, the Hearing Examiner and the City Council are required to follow the Black Diamond Municipal Code, including when that code calls for a quasi-judicial process. *Phoenix Development, Inc. v. City of Woodinville*, ___ Wn.2d ___, ___ P.3d ___, 2011 WL 2409635 at 6 (June 16, 2011). The Black Diamond Municipal Code requires that development agreements be reviewed pursuant to a Type 4, Quasi-Judicial process. See BDMC 18.08.070. Thus, whatever the GMHB's decision states regarding the MPD Permit Approval Ordinances (Nos. 10-946 and 10-947) is irrelevant to the review process the City must use for The Villages and Lawson Hills Development Agreements.

C. Substantive SEPA Authority to Add Mitigation to the Development Agreements is limited to The Significant Environmental Impacts Identified in the FEISs.

Comments:

Brian Derdowski (Exhibit 205): "YB responds: '...any SEPA related information or testimony is not relevant to the Black Diamond City Council's review of The Villages and Lawson Hills Development Agreements. Such testimony should be struck by the Hearing Examiner as irrelevant to the Development Agreement hearings.' We counter that SEPA is not irrelevant to these proceedings. The Development Agreements are using the prior adopted Environmental Impact Statement. That document is intended to inform the officials as to their decision,

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in this case the Development Agreements. YB's fallacious interpretation of SEPA law would have those officials simply ignore the EIS.

Where the EIS documents an adverse environmental impact that requires mitigation, and if that mitigation is not included in the BDMC or the MPD permit, then that mitigation can be included in the Development Agreement."

YarrowBay Response:

Yarrow Bay concurs with the last paragraph of Mr. Derdowski's above comment. Where The Villages and Lawson Hills FEISs document a probable significant adverse environmental impact and mitigation specific to that impact was not included in the MPD Conditions of Approval, the Development Agreements may include such mitigation. However, to date, no party has identified any significant adverse environmental impact in the FEIS in which mitigation was not incorporated into the MPD Conditions of Approval.

To the contrary, parties to these proceedings have presented arguments challenging the adequacy of the FEISs' environmental analysis or the sufficiency of mitigations proposed in the FEISs. As the Hearing Examiner recognized in his "Order on Yarrow Bay Objections to Exhibits" dated August 16, 2011:

Most pertinent, conditions must mitigate impacts identified in the FEIS and the conditions must be reasonable, which in the context of the DAs probably means they must be related to and proportionate to the mandatory (i.e. as an implementing tool) scope of the DAs. *See* RCW43.21C.060. Parties may also be precluded from arguing for specific mitigation if they argued for the same mitigation in the MPD/FEIS hearings.

Because no parties have submitted testimony regarding impacts specifically identified in the FEISs that has not already been subject to mitigation conditions imposed on the MPD Permit Approvals, there is no reason or basis to revise the Development Agreements to include additional SEPA mitigation conditions.

D. YarrowBay's Preliminary Plats are Not Before the Hearing Examiner.

Comments:

Brian Derdowski (Exhibit 205): "YB responds: 'The three preliminary plat applications filed by YB... are...irrelevant to the Examiner's and the City Council's review of the Development Agreements.' Yet, YB also responds: 'The terms and conditions of the Development Agreements apply to the three preliminary plats because that is what is called for in the contracts themselves...'"

With such statements is it any wonder that the public is confused?! Our testimony contended that the issue of vesting of the preliminary plat applications

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is relevant and important to the Development Agreement. If the Plats are vested as of the date of their completed applications, then some of the conditions of the MPD permit as well as the Development Agreement may not apply. For example, the MPD permit was vested prior to the adoption of the City's tree ordinance, but the Plats' completed applications were accepted after the date of adoption of that ordinance. There are other examples.

We believe that the City should have denied the applications as incomplete, pending the approval of the Development Agreement. However, we urge the Hearing Examiner to not compound this problem by taking YB's counsel and ignoring the issue of what conditions and vesting apply to the Preliminary Plats."

YarrowBay Response:

Again, as argued on pages 77-79 of YarrowBay's Exhibit 139, the three preliminary plat applications filed by YarrowBay (Villages MPD Preliminary Plat 1A and 2A and Lawson Hills MPD Preliminary Plat 2B) are not currently before the Hearing Examiner and are, thus, irrelevant to the Examiner's and the City Council's review of the Development Agreements. There is no aspect of the Development Agreements that needs to be addressed due to the filing of the subdivision applications. Unfortunately, unless some global settlement is reached with project opponents, YarrowBay expects to see this vesting issue raised later, presumably during hearings on the preliminary plats. Further explanation of competing legal theories over an issue which the Examiner has no authority or jurisdiction to resolve is pointless and, therefore, we simply stand by our prior comments and explanation.

E. The Growth Management Act (GMA) Does Not Grant the Hearing Examiner or the City Council the Authority To Add Mitigation to the Development Agreements.

Comments:

UAC (Exhibit 196): "The WA State Growth Management Act (GMA) gives King County the authority to recommend conditions in the Development Agreement requiring schools and stormwater retention facilities serving the MPDs be located inside the UGA."

YarrowBay Response:

Contrary to the UAC's assertions in Exhibit 196, the Growth Management Act does not grant King County, the Hearing Examiner, or the Black Diamond City Council the authority to add mitigation conditions to the Development Agreements. The Washington courts have specifically rejected the UAC's argument that the GMA can be used to directly regulate site-specific land use activities. See *Viking Properties v. Holm*, 155 Wn.2d 112, 125 (2005); see also *Timberlake Christian Fellowship v. King County*, 114 Wn.App. 174, 182-83 (2002). The GMA establishes a general framework; it is not a source of authority

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for mitigation conditions. Id. For this reason, the UAC's request for additional conditions related to schools and stormwater retention facilities in the Development Agreements must be rejected.

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

A. Guide (Exhibit 8) Comments.

Comments:

Bob Edelman (Exhibit 199):

Annual Surplus. "In objecting to the Guide being accepted as a summary of the MPDs I pointed out several reasons why is [sic] was not a summary. One of those was the tables on page 47 which unequivocally show approximate surpluses at buildout. It is true that the tables were also in the MPD applications. But there were a number of conditions which require revision, reanalysis, and additions to the fiscal analysis leading to those tables. The graphic is an exaggeration of the content of the MPDs and, for that matter, the text in the Guide. Graphics like these reinforce the argument that the Guide is more of a sales brochure than a summary of the MPDs."

Photographs. "Another example of information in the Guide that Yarrow Bay defends is numerous illustrations and photographs that are not in the MPD ordinances. Yarrow Bay maintains that these are representative of what is possible under the MPD. In no way can possibilities be considered to be MPD summary information. This is speculation."

YarrowBay Response:

Annual Surplus. As noted in Exhibit 217, paragraph 4, Mr. Edelman is not a fiscal expert. While he comments that the tables on page 47 of the Guide (Exhibit 8) are "exaggeration[s]", he cites no evidence for his personal opinion. As summarized on page 91 of YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139), the tables cited by Mr. Edelman are the result of a report prepared by fiscal experts – Development Planning & Financing Group, Inc. – included within the MPD Permit Applications.

Photographs. Contrary to Mr. Edelman's comments above and as explained in Ryan Kohlmann's Declaration set forth as Attachment 12 to YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139), the representative photographs contained in YarrowBay's Guide (Exhibit 8) provide specific examples of MPD development that complies with the City of Black Diamond's (i.e., MPDFDSG) and Master Developer's design guidelines (see Exhibits "H" and "I"). Again, Mr. Edelman has failed to cite any specific conflicts between the representative photos in Exhibits 7F-H and the applicable design guidelines.

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B. Flooding.

Comments:

Jack Sperry (Exhibit 198): In Exhibit 198, Mr. Sperry criticizes the drainage report included as Attachment 9 to YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139).

YarrowBay Response:

YarrowBay's response to Mr. Sperry's critique is attached hereto as Attachment 2. See also Declaration of Dan Ervin at Exhibit 215. Moreover, per Exhibit 215, current lake levels were established at the behest of lakefront homeowners and can be modified by those homeowners. In summary, Mr. Sperry's analysis is incorrect and, as a result, does not undermine Triad's conclusion: there will be no noticeable impact from the MPDs on potential Lake Sawyer flooding. Again, there is no need or basis to revise the Development Agreements related to potential flooding impacts to Lake Sawyer.

C. Wetlands.

Comments:

Kristen Bryant (Exhibit 214): In Exhibit 214, Ms. Bryant asserts: "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 "the wetland areas will be protected." The problem is, the Issaquah Highlands wetlands protection was a failure."

YarrowBay Response:

YarrowBay objects to the inclusion of Exhibit 214 and its attached PowerPoint presentation in the Development Agreement Hearings record for the following reasons. First, Exhibit 214 relates exclusively to environmental impact analysis that is outside the scope of these Development Agreement Hearings. As noted in YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139) on page 74:

[T]he MPD Permit Approvals (Ord. Nos. 10-946 and 10-947) and the Development Agreements are two different approvals for the same project. The Final Environmental Impact Statements for The Villages and Lawson Hills MPDs ("FEISs") identified the probable adverse impacts generated by the MPDs and provided mitigation measures. The FEISs were deemed adequate by the Hearing Examiner and were adopted by the City for these Development Agreements. See Notices of Adoption attached hereto as Attachment 8. The FEIS mitigation measures were incorporated into The Villages and Lawson Hills MPD Permit Approvals' Conditions of Approval. See Exhibit C of the MPD Permit

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Approval Ordinances. Those Conditions of Approval have been incorporated into the Development Agreements under review by the Hearing Examiner. The City's SEPA Adoption has not been administratively appealed indeed, by law, it is not subject to appeal. WAC 197-11-680(3). Therefore, the propriety of the adoption is not before the Hearing Examiner.

Second, whether or not the Issaquah Highlights wetlands protection was successful or not is irrelevant to the Development Agreement Hearings. There is no evidence in the record that the City of Issaquah's critical areas ordinance under which the Issaquah Highlands were developed is the same as Black Diamond's sensitive areas ordinance that the MPD Implementing Projects are subject to. There is no evidence in the record regarding how the Issaquah Highlands wetlands were delineated, typed, and buffers determined and how that process is at all similar to the process used in Black Diamond for the MPDs. For support of this second point, YarrowBay submits the attached declaration and letter from Scott Brainard of Wetland Resources, Inc. as Attachment 1.

Third, Ms. Bryant's written comments are nonresponsive to YarrowBay's written testimony. Ms. Cooke alleged that the Issaquah Highlands and Talus critical area maps were more detailed than the Constraint Maps proposed by City Staff and YarrowBay in Exhibit "G" of the Development Agreements. Contrary to Ms. Cooke's testimony, and not addressed by Ms. Bryant, YarrowBay's Written Testimony showed that the critical area maps of the Issaquah Highland and Talus development agreements are no more detailed than the Constraint Maps in Exhibit "G". See Attachment 2 to Exhibit 139. YarrowBay does not assert in its Written Testimony that the Issaquah Highlands approach to wetland review is superior to the Talus approach; instead, both approaches are merely summarized on page 32 given Ms. Cooke's citation to their critical areas maps in her oral testimony on July 21, 2011.

In summary, Exhibit 214 is irrelevant to the Hearing Examiner's recommendation on The Villages and Lawson Hills Development Agreements and should be stricken. What is relevant is MPD Conditions of Approval Nos. 155 and 159 of The Villages and Lawson Hills MPD Permit Approvals, that provide:

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

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The Constraint Maps in Exhibit "G" reflect the agreed boundaries of the MPDs' sensitive areas. As such, there is no reason or basis to revise the Development Agreements.¹⁹

D. Privatization.

Comments:

Bob Edelman (Exhibit 200): "Carol Benson's oral and written testimony included the following comment:

Last year, at one of the hearings, a citizen asked Nancy Rogers if this was common and she said yes. That is not true. After more than 25 years in the development industry and hundreds of residential projects, not once did any of the companies I worked for design or build a project where some streets were ultimately owned or maintained by the Homeowners Association. This is just another attempt by Yarrow Bay to deny financial responsibility for the costs of the development, just as they are trying to escape responsibility for transportation and the schools. Development should pay for development.

Exhibit 31. In their response, Yarrow Bay apparently took exception to the word "ultimately" in that they were able to locate a single project where Barghausen Consulting Engineers were surveyor and engineers for a project that ultimately had private streets. This is far from the claim made by the Yarrow Bay attorney that this is common. Although Yarrow Bay states in response that "many" other plats in this region include similar private maintenance requirements they fail to identify any significant number, much less show that this is a common practice."

YarrowBay Response:

YarrowBay did not take exception to the word "ultimately" in Ms. Benson's oral testimony. Instead, YarrowBay took exception to Ms. Benson's testimony that "not once" did any of the companies she worked for design a project where streets were ultimately maintained by a HOA. As confirmed by Mr. Edelman above, YarrowBay in its Written Testimony dated August 4, 2011 proved that this statement was in fact untrue.

¹⁹ In his email dated Friday, August 12, 2011 4:19 PM, the Hearing Examiner granted an extension for the written response of Sarah Cooke to August 22, 2011. In Exhibit 214, Kristen Bryant notes that the PowerPoint included with the exhibit was prepared by Dr. Sarah Cooke. Given the lack of explanatory text associated with the PowerPoint, YarrowBay assumes that Dr. Cooke will be providing additional written testimony regarding the PowerPoint when she submits a response on August 22nd. YarrowBay reserves the right to respond to this PowerPoint presentation included within Exhibit 214 following Dr. Cooke's submittal.

Moreover, contrary to Mr. Edelman's testimony above, HOA maintenance of private streets within subdivisions is in fact common practice. Here are a handful of examples in which HOAs maintain streets within subdivisions or are responsible for significant amounts of roadway landscaping: (i) Kimura Gardens (Snohomish County Recording No. 201012105003); (ii) Waterbury Meadows (Snohomish County Recording No. 200203115003); (iii) Highland Court (Snohomish County Recording No. 200704175257); and (iv) Conover Commons (King County Recording No. 200406230000021).

E. Bald Eagles.

Comments:

Jacqueline Taeschner (Letter to the Hearing Examiner dated August 16, 2011): In her letter to the Hearing Examiner dated August 16, 2011, Ms. Taeschner objects to YarrowBay's rebuttals regarding bald eagle protection.

YarrowBay Response:

In response to the Ms. Taeschner's letter, YarrowBay reminds the Hearing Examiner that the Washington Department of Fish & Wildlife (WDFW) testified during the FEIS hearings that bald eagles do not nest on the MPD Project Sites. See the Hearing Examiner's Decision on The Villages EIS Appeal, Finding of Fact F.7 and F.14 (emphasis added):

7. According to the testimony of DFW employee Richards, there are elk groups at both the Villages and Lawson Hills sites. Being residential elk groups, they do not migrate in and out of this region. Mr. Richards thought that the EIS was well written, professionally done and contained a lot of information, but he also thought it did not speak to what was going to happen as a result of the projects. He felt that the EIS lacked effort in translating loss of habitat to impact on wildlife. He was adamant that any development, regardless of size, impacts wildlife and that such impacts are forever. Mr. Richards also opined that there was no way to mitigate such impacts. He did not feel that protecting a portion of the land that already serves as habitat was mitigation. He added that the corridors proposed already serves as elk habitat. He noted that elk are listed by the state as game species. He also noted that with habitat's landscape changes, there is always the possibility that protected species, like a bald eagle, will take up residence. He felt that the EIS were deficient because they do not mention which species will survive and which will be lost despite mitigation and open spaces. He opined that elk would disburse into different areas as a result of development. He noted that band tailed pigeons migrate past the area in late summer, but neither they nor bald eagles nest at the subject sites. He also noted that

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there is the possibility of elk tearing down fences, invading yards and causing property damage. He added that bears do not move as a result of development and will be a problem to deal with, as will mountain lions. Finally, he noted that the EIS correctly addressed the impact of development on wildlife, which was that detrimental impact will occur. Tr. at 46-68.

14. The FEIS discloses and discusses the presence of a bald eagle nest off site near Lake Sawyer. See the Villages FEIS at 4-74.

There is no reason or basis to revise the Development Agreements based on the objections of Ms. Taeschner.

V. CONCLUSION

As summarized above, The Villages and Lawson Hills Development Agreements are required to incorporate the MPD Conditions of Approval and to ensure those conditions are binding on all property owners. All matters in the MPD Conditions of Approval that required some specific action in the Development Agreements have been addressed. In its Staff Report, the City provided the Hearing Examiner with compliance matrices showing how and where each of the specific Conditions of Approval has been addressed within the Development Agreements. See Attachments to Staff Report (Exhibit 3). Finally, the Development Agreements are consistent with the BDMC Chapter 18.66 and RCW 36.70B.170 *et seq.*

To date, public and expert testimony has not raised any issues that provide any reason for the Examiner to find that the above criteria have not been met. While YarrowBay has attempted to respond fully to all testimony, we again note that neither the Hearing Examiner nor the City Council can require YarrowBay to accept conditions in the Development Agreements that are outside the requirements of the MPD Permit Approval Ordinances' Conditions of Approval. See Exhibit C of Black Diamond Ordinances Nos. 10-946 and 10-947.

Based on the applicable legal standards, the content of the Development Agreements, the exhibits, and the testimony provided to date, the Examiner should recommend approval of The Villages and Lawson Hills Development Agreements to the Black Diamond City Council, with the revisions described in the Staff Errata (Exhibit 4), the revisions described in YarrowBay's Exhibit 139, and the single revision suggested by the City on page 13 of Exhibit 218.²⁰

List of Attachments

1. Third Declaration of Scott Brainard and Wetland Resources Inc. Letter
2. Third Declaration of Alan Fure and Triad Memorandum
3. Second Declaration of Harry Gibbons and Tetra Tech, Inc. Letter
4. Excerpts of Testimony (March 8, 2010)
5. Existing Funding Agreement and First Amendment.
6. CFD Example.
7. Second Declaration of Kevin Thomas and Exhibit of Single Family Attached Housing Products

²⁰ As suggested by the City at page 13 of Exhibit 218, the Examiner could revise section 2.1 to add the words "the MPD Permit Approval and" at this location. That change is acceptable to YarrowBay.

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THE EXAMINER: All done from the appellant side?

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All right. Now, Ms. Rogers, go ahead.

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EXAMINATION

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BY MS. ROGERS:

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Q. Mr. Reitenbach, isn't it true that the Black

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Diamond Urban Growth Area Agreement, or BDUGAA, was signed

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in 1996 by both King County and the City of Black Diamond?

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A. Correct.

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Q. Okay. And isn't it true that that agreement

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expressly anticipated master planned developments just like

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The Villages project and Lawson Hills project that are

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proposed by YarrowBay today?

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A. Correct.

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Q. And isn't it true that the Black Diamond Urban

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Growth Area Agreement anticipated that those MPD projects

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would be applied for, and at the some time over a thousand

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acres, close to 2,000 acres of open space would be provided

1 for both inside the -- both inside the city of Black Diamond
2 and in King County?

3 A. Correct.

4 Q. And has that open space been provided?

5 A. To my knowledge, yes.

6 Q. Okay. So to your knowledge, the contract that is
7 represented by the BDUGAA has been met by the developer as
8 to the provision of open space, correct?

9 A. Oh, yeah. We raised no issues.

10 Q. Right. And right now, do I understand that the
11 developer's in the permit process to achieve master planned
12 development approval; is that correct?

13 A. Yes.

14 Q. Which is the other part of that contract, correct?

15 A. Mm-hm.

16 Q. Okay.

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CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT

1. Date and Parties.

29th This City of Black Diamond Staff and Facilities Funding Agreement is dated the day of June, 2007 and is entered into by and between BD Lawson Partners, LP and BD Village Partners, LP and the City of Black Diamond, a Washington municipal corporation.

2. Definitions.

"Agreement" shall mean this City of Black Diamond Staff and Facilities Funding Agreement.

"Agreement Date" shall mean June 29, 2007.

"Agreement Term" shall mean the period of time between the Agreement Date and either 1) the execution of one or more MPD Development Agreements between the Parties or the City and a third party that provide for funding of the then-unfunded Supplemental Costs and adequate security for their payment; 2) the determination, after peer review of the economic analyses outlined in paragraph 4 (K), that the Supplemental Costs subsidy is no longer needed; or 3) Yarrow Bay's termination of its funding under this Agreement pursuant to paragraph 4 (J) after the City's default of its Processing obligations.

"BDUGAA" shall mean the Black Diamond Urban Growth Area Agreement dated December 31, 1996.

"Benefited Non-Contributing Parties" shall mean legal entities that benefit from the staffing and facilities provided by this Agreement, but that have not contributed to the expenditures required to provide such staffing and facilities.

"City" shall mean the City of Black Diamond, a Washington municipal corporation.

"City Code Consultants" shall mean consultants to finish various City regulations needed for the City to lift the current development moratorium.

"Core City Staff" shall mean City staff positions necessary to rectify the staffing deficiencies referenced in paragraph 3 (E) and as further detailed in paragraph 4 (A) below.

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"Default Amount" shall mean the amount required to cure any Yarrow Bay default under this Agreement.

"Default Notice" shall mean a written notice sent from the City to Yarrow Bay in the event that Yarrow Bay does not make any payment or deposit required under this Agreement. The Default Notice shall contain a concise explanation of the alleged default and, if applicable, the Default Amount.

"EIS" shall mean Environmental Impact Statement.

"Legal Costs" shall mean the costs of legal work that will be done to prepare and implement this Agreement, including, but without limitation, assisting the City Administrator in reviewing City Code Consultants' work product, preparing and reviewing documents related to the implementation of the various parts of this Agreement, updating and finalizing City Code additions and revisions needed for the City to lift the current moratorium on development, preparing form documents to assist in the processing of land development applications, updating the City Municipal Code, and dealing with the legal issues related to the expansion of the Core City Staff and the facilities needed for such staff.

"Facilities Costs" shall mean the costs detailed in paragraph 4 (D) below.

"Letter of Credit" shall mean an irrevocable letter of credit in a form and from a financial institution acceptable to the City.

"MPD" shall mean Master Plan Development.

"Net Core City Cost Amount" shall mean the City's estimate of Supplemental Costs for the following calendar quarter, less any credit for unexpended funds, or debit for over-expenditures, for the previous calendar quarter.

"Parties" shall mean Yarrow Bay and the City, collectively.

"Process" or "Processing" shall mean completion of all the City's obligations under the City MPD Ordinance, codified at chapter 18.98 of the City's Municipal Code, that are conditions precedent to the City Council decisions on Yarrow Bay's MPD applications, and the City Council making its oral decision on the application . Processing does not include any appeals brought against the City Council's decisions on Yarrow Bay's MPD applications.

"Supplemental Costs" shall mean all expenditures addressed in this Agreement that are beyond the financial obligations that the City could impose upon Yarrow Bay under City regulations existing as of the Agreement Date. Supplemental Costs include

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the costs of funding the Core City Staff, the City Code Consultants, the Facilities Costs, the Legal Costs, the amounts that Yarrow Bay has paid the City prior to the Agreement Date for the City Code Consultants and for the salary and benefits of the City's former Community Development Director.

"Vision" shall mean the City's vision of economically viable smart urban growth, creating a sense of community through wise land use planning and implementation, while, at the same time preserving and enhancing integrated open space and riparian corridors that protect the Lake Sawyer watershed and provide wildlife and pedestrian corridors throughout the City.

"Yarrow Bay" shall mean BD Lawson Partners, LP and BD Village Partners, LP, collectively.

3. General Recitals.

A. The City, King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996. Yarrow Bay owns or controls all properties that were subject to the BDUGAA.

B. Consistent with the BDUGAA, the City has amended, or is in the processing of amending its Comprehensive Plan and other regulations, including its Master Plan Development Ordinance and Transfer of Development Rights Ordinance, to facilitate accomplishing the Vision.

C. The Parties share the Vision and want to bring it into reality as soon as possible. The Parties realize that the limited number of large land owners, the amount of undeveloped properties within the City, the scenic beauty and related natural amenities in and around the City, and the BDUGAA and related implementation efforts made to date have created a unique opportunity not available to other cities and citizens in the State of Washington.

D. Yarrow Bay has acquired interests in large amounts of property in the City in the belief that if the Vision can be successfully implemented it not only will be a model of successful environmentally friendly development in an urban setting, but will be economically successful as well.

E. The Parties recognize that the City is currently significantly understaffed in its core functions, making it impossible for the City to effectively and efficiently handle its current workload, let alone the increased workload for all City staff, including the staff charged with the responsibility for processing MPD applications, that will result from applications that Yarrow Bay will be submitting. This preexisting understaffing has been exacerbated by the recent loss of key City staff. The Parties also acknowledge the recommendations of experts, including the 2005 studies by Nesbitt Planning and

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Management, that the City must significantly expand its staff and staff facilities in order for the City to effectively function, regardless of the anticipated increase in development permit application activity.

F. The Parties acknowledge that the City does not have the legal authority to require Yarrow Bay to fund the Supplemental Costs set forth in this Agreement. However, Yarrow Bay acknowledges that there is adequate consideration for this Agreement because a properly staffed City government will allow for the expeditious completion of the remaining City regulations necessary to assure the Vision is properly implemented, and will allow for the City to operate efficiently and effectively so that Yarrow Bay's development applications can be processed without the delay that would be caused by understaffing and inadequate staff resources and facilities.

G. Increasing City staff will also be of great benefit to the City's existing and future citizens because the City will be able to provide quality municipal services for all citizens, including small and large property owners who cannot currently proceed with development consistent with the Vision due to lack of sufficient City staff, equipment and capital facilities.

H. The purposes of this Agreement are to provide funding for Core City Staff, City Code Consultants, related support facilities, equipment expenses, and Legal Costs through contributions by Yarrow Bay until such time as the City can independently provide funding for the Supplemental Costs, and to provide a mechanism, to the extent authorized by law, for Yarrow Bay to receive reimbursement for the funding of Supplemental Costs from Benefited Non-Contributing Parties. Because the City's MPD Ordinance requires that Yarrow Bay's proposed MPDs will produce revenue for the City, the Parties expect that the need for funding under this Agreement will be reduced over time, and ultimately eliminated.

4. **Yarrow Bay's Commitment to Fund City Staff and Support Facilities.**

A. **Core City Staff**

Subject to the provisions of this Agreement, Yarrow Bay commits to fund the Core City Staff, including the salary and benefit costs of each Core City Staff person, up to a maximum \$2,000,000 per year. The City shall determine the positions that will be included within the Core City Staff, but it shall include at least the following: 1) not less than six (6) executive level staff members; and 2) the staff necessary to allow the executive level staff members to expeditiously handle the tasks assigned to them by the Mayor, through the City Administrator. The Core City Staff may participate in Processing development applications submitted by Yarrow Bay and others, and will direct and assist other staff who will process development applications submitted by Yarrow Bay and others. In reliance upon the funding contemplated by this Agreement

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the City may choose to offer multiyear employment contracts to some or all of the Core City Staff.

The Parties acknowledge that the City will determine the method and manner of hiring the Core City Staff, and will be solely responsible for hiring and firing decisions and compensation amounts. The City shall regularly (at least monthly) advise Yarrow Bay on hiring efforts, including compensation and benefits to be paid to Core City Staff, so that Yarrow Bay can honor its commitment to provide funding.

B. City Code Consultants

The Parties acknowledge that the completion of City development regulations and other City Code amendments will require the use of City Code Consultants. Yarrow Bay commits to pay the costs of the City Code Consultants pursuant to the following procedure. Prior to entering into any contract with a City Code Consultant, the City shall notify Yarrow Bay of the contract amount. Upon such notification, Yarrow Bay shall promptly negotiate with the City in good faith to pay the contract amount, and the Parties shall memorialize each payment through an amendment to this Agreement.

C. Legal Costs

Yarrow Bay shall pay the Legal Costs, as said term is defined above, incurred by the City to date, and up to an additional \$450,000 over the Agreement Term, upon invoice for the same from the City. The City shall be responsible for all Legal Costs beyond that amount.

D. Furniture, Equipment, and Office Space

The Parties acknowledge that there is a need for furniture, equipment and temporary office space related to the Core City Staff. Yarrow Bay commits to pay the City's Cost, up to \$15,000 per month, to lease or purchase, install, and maintain temporary or permanent buildings, such as modular structures or metal structures (that could later be converted to City shops and garages), to provide good temporary working space for Core City Staff. Yarrow Bay also commits to pay an agreed upon sum for furniture, fixtures and equipment related thereto. The City will be responsible for all expenditures beyond \$15,000 per month.

It is anticipated that at some time during the Agreement Term the City may construct permanent facilities to house the Core City Staff. Yarrow Bay shall: 1) pay to the City, within 21 days after the time the lowest responsible bidder for constructing the facility is determined, the anticipated construction costs for the facilities related to City staff reviewing and/or processing Yarrow Bay's development applications; or 2) once the permanent facilities are constructed, pay the City the fair market rental rate each month for the facilities used by the City staff reviewing and/or processing Yarrow Bay's

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development applications, for the length of time that Yarrow Bay has an MPD application pending and/or an MPD permit being implemented. The choice to pay construction cost or market rate rent shall be in Yarrow Bay's sole discretion. However, the choice shall be made, in writing, at least 10 days before the construction contract is awarded. If the City has constructed other permanent facilities, such as the metal structures detailed above, to provide temporary offices, Yarrow Bay will receive a credit for those structures if they can be converted to serve other City uses, e.g., shops and garages.

E. Payment Procedure

Yarrow Bay shall advance funds to the City on a calendar quarter basis to pay Supplemental Costs pursuant to the following mechanism. Within 10 days of the Agreement Date, the City will provide Yarrow Bay with the unreimbursed expenditures for Supplemental Costs through June 30, 2007. Yarrow Bay shall pay said sum to the City within 40 days of the Agreement Date. Within 30 days of the Agreement Date the City will provide its estimate of Supplemental Costs for the calendar quarter commencing on July 1, 2007. Yarrow Bay will deposit with the City funds for that calendar quarter within 30 days of receiving the City's estimate. By July 30, 2007, and within 15 days after the start of each calendar quarter thereafter, for the remainder of the Agreement Term, the City will provide Yarrow Bay with the Net Core City Cost Amount. Thirty days before the beginning of each following calendar quarter, for the remainder of the Agreement Term, Yarrow Bay will deposit with the City the Net Core City Cost Amount.

F. Accounting

Within 30 days of the end of each calendar quarter for which Yarrow Bay has made a deposit with the City pursuant to the terms of the previous paragraph, the City shall provide Yarrow Bay with an accounting showing actual Supplemental Costs paid by the City in the prior fiscal quarter, broken down by Supplemental costs for each staff position, facilities costs, equipment costs, City Code Consultant costs, Legal Costs, and any other expenditures for which Yarrow Bay is obligated to make pursuant to the Agreement, all according to generally accepted accounting principles for municipal corporations in the State of Washington. The difference between the City-estimated Supplemental Costs and actual Supplemental Costs shall either be a debit or credit toward the following quarter's deposit required by the previous paragraph.

G. Security

Since the City will be making irrevocable commitments in hiring personnel and consultants, and will be committed to provide furniture, fixtures, equipment, and office space for said employees and consultants, Yarrow Bay will provide as security a combination of a Letter of Credit of two million dollars (\$2,000,000.00) by July 10, 2007 and a first position deed of trust to the City on property within the City that is owned by

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Yarrow Bay and has a current fair market value of at least eight million dollars (\$8,000,000.00) no later than July 29, 2007, to assure that the obligations created by this Agreement are timely met. This security does not relieve Yarrow Bay from liability for the full amount of the obligations hereunder if they exceed the security value. The City may record the deed of trust on or after the Agreement Date. Yarrow Bay may substitute other property for some or all of the property that is the subject of the security deed of trust. Any such substitution will be subject to the City's approval, which shall not be unreasonably withheld as long as the substitute property has substantially equivalent developable acreage to the original property. The required amount of the Letter of Credit and/or deed of trust security provided by Yarrow Bay will be reduced by the amount of the Supplemental Costs funded and secured with like security under one or more MPD Development Agreements entered into by the Parties, or the City and a subsequent purchaser of property that is subject to one or more of such agreements.

H. Default

If Yarrow Bay does not timely make any payment or deposit required hereunder, then the City shall send Yarrow Bay a Default Notice. Yarrow Bay shall have seven (7) days after receiving the Default Notice to cure its default by making the required payment or a deposit of the Default Amount. If the default is not cured within the seven day period, then the City shall have the right, without further notice, to make demand upon the Letter of Credit for the Default Amount. Yarrow Bay shall then replenish the Letter of Credit back to its full \$2,000,000 amount within 60 days from the City's demand. If the City does not receive notice that the full amount of the Letter of Credit has been reinstated within 60 days from the City's demand, then the City may make demand for the full amount of the Letter of Credit, and said amount shall be held by the City as a deposit for Supplemental Costs, and other Yarrow Bay financial obligations set forth in the Agreement for the remainder of the Agreement Term. If the balance in the deposit account drops below \$1,000,000, then the City may begin foreclosure proceedings against the property that is the subject of the Deed of Trust, with the City impounding, at sale, the full sale amount, up to \$8,000,000, to be held as a deposit for Supplemental Costs, and other Yarrow Bay financial obligations set forth in the Agreement for the remainder of the Agreement Term. The City will provide a quarterly accounting for all payments made toward Yarrow Bay obligations set forth in the Agreement in the same manner as required for payments made by Yarrow Bay pursuant to Paragraph 4(F) above. The provisions of this paragraph notwithstanding, the City may also cease processing any pending Yarrow Bay applications until such time as the default is cured, or all monies are collected from the security, so that the City has monies on deposit to pay for the application processing costs.

I. Funding Commitments Non-Duplicative

The commitment to funding set forth in the Agreement is in addition to, but shall not be duplicative of, any financial obligations created by City codes such as the MPD

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Code that are related to the filing and processing of a land use application by Yarrow Bay, or any other applicant. While the Parties recognize that the Core City Staff will participate in the processing of Yarrow Bay development applications, Yarrow Bay will not be charged for this time; provided, however, that pursuant to the City MPD Ordinance Yarrow Bay will pay the full cost of staff hired specifically to review and process MPD applications. For example, when Yarrow Bay is required under the City Code to pay a fee to the City related to the filing and processing of a land use application, Yarrow Bay shall only pay the City a base administrative charge and such other amounts as are required by the City Code that are not otherwise provided for in the Agreement.

J. Yarrow Bay Development

Given the current inadequate City staffing, the parties to this Agreement recognize that Yarrow Bay will benefit directly from expanded staff and support facilities, because expanded City staff will be able to expedite completing the Vision implementation regulations, and provide a support structure for timely review and processing of Yarrow Bay's Master Plans. As partial consideration for Yarrow Bay funding Core City Staff and facilities, to expedite economic and fiscal benefits to the City, and to facilitate the transfer of funding obligations from the Agreement to Yarrow Bay's MPD Development Agreement(s), the City intends to Process, as defined above, each Yarrow Bay's MPD application within 24 months from the latter of: 1) the date a notice of complete MPD application is submitted and 2) 6 months after the Agreement is executed by all Parties and Yarrow Bay has provided the security referenced in Paragraph 3 (G) and the Deed of Trust referenced therein has been recorded.. The 24 month time line does not include the following: 1) any time which the processing of the MPD application is delayed because of the City having to wait for further information relevant to the MPD Processing reasonably requested from the Yarrow Bay team; 2) any time during which an appeal is pending; and 3) the environmental review period. Provided, however, the City commits to continuing its Processing efforts during the "excluded" time periods on those portions of the application(s), if any, that are unaffected by the reasons for the delay. If the City does not Process Yarrow Bay's MPD applications within the above referenced 24 months, less excluded periods, and if Yarrow Bay has timely paid all of its financial commitments, then Yarrow Bay shall have the option, on 60 days written notice to the City, to terminate funding of the Supplemental Costs. Provided, the termination of funding shall not apply to those Supplemental Costs for which the City entered contractual obligations to pay the same prior to the date the notice to terminate was given and to the extent the payments for said Supplemental Costs are due within 5 years of the date the notice to terminate was given.

Pursuant to Section 18.98.070 of the Black Diamond Municipal Code, the Parties agree to prepare EISs for Yarrow Bay's proposed MPDs prior to or concurrent with Yarrow Bay's submittal of MPD applications.

K. Reduction of Necessary Funding under Agreement; Termination of Agreement

The City shall work in good faith and use reasonable best efforts to periodically review its fiscal condition and policies so that Yarrow Bay funding for Supplemental Costs can be reduced by other funding sources. The City agrees, to the extent staff is available, to apply for grants that could be used to contribute to Supplemental Costs, and shall use any funds awarded under such grants to pay Supplemental Costs. The City, if funding is provided by Yarrow Bay or one of its successors in interest, shall cause an economic analysis to be prepared by qualified independent consultants, and subjected to peer review, to determine if the City's normal general fund receipts from sales tax, property tax and any other regularly occurring tax sources, now have a sufficient base line so as to reduce or eliminate the need for continued subsidy of Supplemental Costs by Yarrow Bay and/or its successors in interest. These economic analyses shall occur biannually, with the first analysis to be done in calendar year 2012.

Yarrow Bay's commitment to fund Supplemental Costs under this Agreement shall end when: 1) the Parties, or the City and a successor in interest to Yarrow Bay, or the City and a third party, execute MPD Development Agreements that provide funding for the then-unfunded Supplemental Costs and any other obligations remaining hereunder, and provide adequate security for the payment of said costs and obligations; or 2) when it is determined, after peer review of the economic analyses outlined in this paragraph, that the Supplemental Cost subsidy is no longer needed; or 3) Yarrow Bay terminates the Supplemental Costs funding pursuant to paragraph 4 (J) in the event that the City defaults on its Processing obligations.

L. No Special Treatment

As a matter of law, Yarrow Bay acknowledges that the City has legal and ethical obligations to implement its plans and to enforce its regulations objectively, without regard to the fact that Yarrow Bay is providing funding for Core City Staff, City Code Consultants, Legal Costs, and facilities costs. Yarrow Bay understands that this Agreement does not entitle Yarrow Bay to any special treatment, other than the City commitments set forth herein.

M. Reimbursement

The City will take actions so that Yarrow Bay can recover the Supplemental Costs by adding a surcharge, to the extent allowed by law, to all impact fees, latecomer's agreements, and all other financial obligations that are created by City codes, and to all fees charged for the following land use applications and permits submitted by Benefited Non-Contributing Parties: MPD Applications, multifamily dwelling unit building permits, subdivisions, multiple short plats, commercial/industrial site plans, and single family home construction permits if more than one is submitted in a 12 month period,

Exhibit A to Resolution Number 07- 451

This surcharge, designed to amortize Supplemental Costs, shall be equivalent to the Benefited Non-Contributing Party's pro-rata fair share of the Supplemental Costs. The surcharge shall include administrative fees for the City's costs in establishing and processing the surcharge, and for Yarrow Bay's costs associated with this Agreement. The amount of this surcharge actually collected from the Benefited Non-Contributing Parties, minus the City's administrative fee, shall be issued as a credit against Yarrow Bay's quarterly payments during the term of this Agreement, or shall be issued as a credit against development-related fees and costs owed from Yarrow Bay to the City after the term of this Agreement. In the event that a third party who is benefited by this Agreement contributes to the Supplemental Costs, that party shall not be reimbursed for any of its contributions until Yarrow Bay has been reimbursed for all of its contributions prior to the third party's contribution date. After that point, Yarrow Bay and any third party contributing to Supplemental Costs shall be reimbursed pro-rata according to their monetary contributions. The City will not collect the surcharge under the terms of this Agreement after the earlier of: 1) the date when Yarrow Bay has been fully repaid for all Supplemental Costs it has paid under this Agreement, or 2) the end of the vesting term specified in the final MPD Development Agreement between the Parties.

5. Miscellaneous.

A. Amendments

Any Party may request changes to this Agreement. Proposed changes that are agreed upon by all Parties will be incorporated by written amendments to this Agreement.

B. Integration

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

C. Negotiation and Drafting

The Parties hereby acknowledge that this Agreement has been reached as a result of arms length negotiations with each Party represented by counsel. No presumption shall arise as a result of one Party or the other having drafted all or any portion of this Agreement.

Exhibit A to Resolution Number 07- 451

D. Counterparts

This Agreement may be executed by the Parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the Party signing thereon.

E. Severability

If any section, sentence, clause, or portion of this Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Agreement shall continue in full force and effect.

F. Authority to Sign

Each Party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the Party on whose behalf such person signed.

G. Binding Effect on Subsequent Parties

This Agreement shall bind and inure to the benefit of the Parties and their respective receivers, trustees, insurers, successors, subrogees, transferees and assigns.

H. Notice

Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City: Rick Luther, City Administrator
City of Black Diamond
25510 Lawson St.
PO Box 599
Black Diamond, WA 98010
Facsimile: (360) 886-2592

Loren Combs
McGavick Graves
1102 Broadway, Suite 500
Tacoma, WA 98401
Facsimile: (253) 627-2247

Exhibit A to Resolution Number 07- 451

To Yarrow Bay:

Brian Ross
Yarrow Bay Group
825 5th Ave., Suite 202
Kirkland, WA 98033
Facsimile: (425) 202-3694

John Hempelmann
Calmcross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
Facsimile: (206) 587-2308

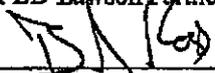
I. Choice of Law, Jurisdiction, and Venue.

This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Washington. If any action is brought by any of the Parties to enforce provisions of this Agreement, the Parties agree that the exclusive jurisdiction and venue of any lawsuit arising from such action will be the Superior Court of Washington for King County.

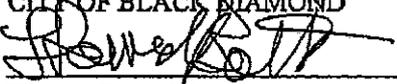
J. Mediation, Attorneys' Fees and Costs

In the event of any dispute concerning this Agreement, the parties agree to submit their dispute to a mutually-agreed mediator before seeking recourse from any court. In the event that mediation fails to resolve the dispute, the substantially prevailing Party shall be entitled to receive its attorneys' fees and costs at trial, at any alternative dispute resolution proceeding, and on appeal.

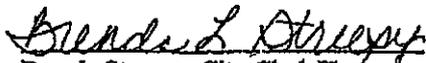
YARROW BAY COMMUNITIES
For BD Lawson Partners, LP and BD Village Partners, LP


By: Brian Ross
Title: Managing Partner

CITY OF BLACK DIAMOND


Howard Botts, Mayor

Attest:


Brenda Streepy, City Clerk/Treasurer
626853MindAgr062207-Final

FIRST AMENDMENT TO
CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT

1. Date and Parties.

This First Amendment to City of Black Diamond Staff and Facilities Funding Agreement is dated the 16 day of April, 2009 and is entered into by and between BD Lawson Partners, LP and BD Village Partners, LP and the City of Black Diamond, a Washington municipal corporation.

2. Definitions. All definitions set forth in the City Of Black Diamond Staff and Facilities Funding Agreement dated the 29th day of June, 2007 ("Agreement"), as approved by City Resolution 07-451 are incorporated herein by reference. The following definitions are added to Agreement paragraph 2.

"Economic Development Activities" shall mean activities the purpose of which is to encourage or advance the City's independent economic development. Economic Development Activities include, but are not limited to, citywide marketing, advertising and other collateral materials and associated distribution, dues and memberships, mapping of available properties, economic development seminars, conferences, training, and the creation of an economic development plan and implementing action items from that plan for the City.

"First Amendment" shall mean this First Amendment to City of Black Diamond Staff and Facilities Funding Agreement.

"Net Monthly Core City Cost Amount" shall mean the City's estimate of Supplemental Costs (as amended by this First Amendment) for the calendar month to be funded.

"Miscellaneous Expenses" shall include training, travel and other expenses for community development staff that are pre-approved in writing by Yarrow Bay and are not already funded pursuant to the Agreement terms.

"Supplemental Costs" shall mean all expenditures addressed in the Agreement and the First Addendum that are beyond the financial obligations that the City could impose upon Yarrow Bay under City regulations existing as of the Agreement Date and the date of the First Amendment. Supplemental Cost include the costs of funding the Core City Staff, the City Code Consultants, the Facilities Costs, the Legal Costs, the amounts that Yarrow Bay has paid the City prior to the Agreement Date for the City Code Consultants, Miscellaneous Expenses, Economic Development Activities, and for the salary and benefits of the City's former Community Development Director.



City



Yarrow Bay

"Working Capital Reserve" shall mean the amount of funding advanced by Yarrow Bay under the Agreement that is not specifically advanced to cover costs identified in the Net Monthly Core City Costs estimates. Working Capital shall be available to fund Supplement Costs not funded through prior estimates.

3. General Recitals.

A. The City wishes to pursue Economic Development Activities for community and economic development purposes. Yarrow Bay recognizes that these efforts are of value to Yarrow Bay because they will reduce the City's dependence upon funding from the Agreement. In order to increase budgeting accuracy and provide for the future funding of pre-approved Economic Development Activities, the City and Yarrow Bay wish to add two new funding categories to the Agreement through this First Amendment,

B. The City and Yarrow Bay wish to increase the frequency of Yarrow Bay's payments under the Agreement from quarterly to monthly and agree to specify a minimum Working Capital Balance that must be available to the City to cover Supplemental Costs not requested through Net Monthly Core City Cost estimates.

4. New Funding Categories.

A. Economic Development

Yarrow Bay shall pay the costs of pre-approved City Economic Development Activities pursuant to the following procedure. Prior to incurring any costs for Economic Development Activities, the City shall provide Yarrow Bay with written notification of the proposed activity or activities and the actual costs thereof. Where actual costs are not available, the City shall notify Yarrow Bay of estimated costs and shall provide Yarrow Bay with the basis, including documentation where available, for its estimate. Upon such notification, Yarrow Bay shall promptly review the proposed Economic Development Activities and provide the City with written notification if the proposed Economic Development Activity is approved, partially approved or disapproved. If approved or partially approved Yarrow Bay shall pay the actual or estimated costs of such activities, up to the approved amount, as set forth in Paragraph 4(C) below. The Parties acknowledge that Yarrow Bay's approval of payment of costs for Economic Development Activities is in Yarrow Bay's complete discretion.

B. Miscellaneous Expenses

Yarrow Bay shall pay the costs of Miscellaneous Expenses pursuant to the following procedure. Prior to incurring any Miscellaneous Expenses, the City shall provide Yarrow Bay with written notification of the proposed activity or activities and



City



Yarrow Bay

the actual costs thereof. Where actual costs are not available, the City shall notify Yarrow Bay of estimated costs and shall provide Yarrow Bay with the basis, including documentation where available, for its estimate. Upon such notification, Yarrow Bay shall promptly review the proposed Miscellaneous Expense and provide the City with written notification if the proposed Miscellaneous Expense is approved, partially approved or disapproved. If approved or partially approved Yarrow Bay shall pay the actual or estimated costs of such activities, up to the approved amount, as set forth in Paragraph 4(C) below. The Parties acknowledge that Yarrow Bay's approval of payment of costs for Miscellaneous Expenses is in Yarrow Bay's complete discretion.

C. Amended Payment Procedure

Paragraph 4(E) of the Agreement shall be eliminated in its entirety and replaced with the following:

E. Payment Procedure. Yarrow Bay shall advance funds to the City on a monthly basis to pay Supplemental Costs pursuant to the following mechanism. The City shall provide Yarrow Bay with an estimate of the Net Monthly Core City Cost Amount for the month beginning in approximately 50 calendar days (the "Estimate"). Five working days before the start of the calendar month for which the Estimate applies, Yarrow Bay will deposit with the City funds in amount equal to the Estimate, less any credit for unexpended funds or debit for over-expenditures for the previous calendar month. By way of example, by the 10th day of March, the City will provide Yarrow Bay an Estimate for the month of May. Five days prior to the end of April, Yarrow Bay will deposit with the City funds equal to the Estimate for May, as submitted by the City in March. The minimum amount of working capital held by the City under the terms of the Agreement during any month will be \$150,000. At any time, should the City find itself with less than \$150,000 to cover Supplemental Costs, the City may make an immediate request of Yarrow Bay to deposit with the City amounts necessary to restore the working capital balance to \$150,000, within five working days of receipt of written notice.

5. Indemnity and Hold Harmless.

When the City imposes the surcharge referenced in Agreement paragraph 4 (M), Yarrow Bay agrees to pay the City's costs and attorney's fees associated with defending any challenge to the legality of the surcharge, and Yarrow Bay shall indemnify and hold the City harmless from any monetary judgment or award that results directly or indirectly from that challenge.

6. Agreement in Full Force and Effect.


City


Yarrow Bay

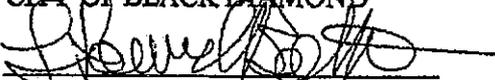
The Agreement, except as expressly modified by the First Amendment terms, shall remain in full force and effect. The First Amendment terms are hereby incorporated into the Agreement. The First Amendment and the Agreement shall, to the fullest extent possible, be interpreted to be consistent. Provided, however, in case of conflict between the Agreement terms, and the First Amendment, the First Amendment provisions shall control.

YARROW BAY COMMUNITIES
For BD Lawson Partners, LP and BD Village Partners, LP



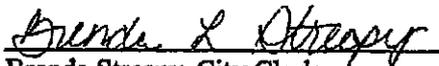
By: Brian Ross
Title: Managing Partner

CITY OF BLACK DIAMOND



Howard Botts, Mayor

Attest:



Brenda Streepy, City Clerk

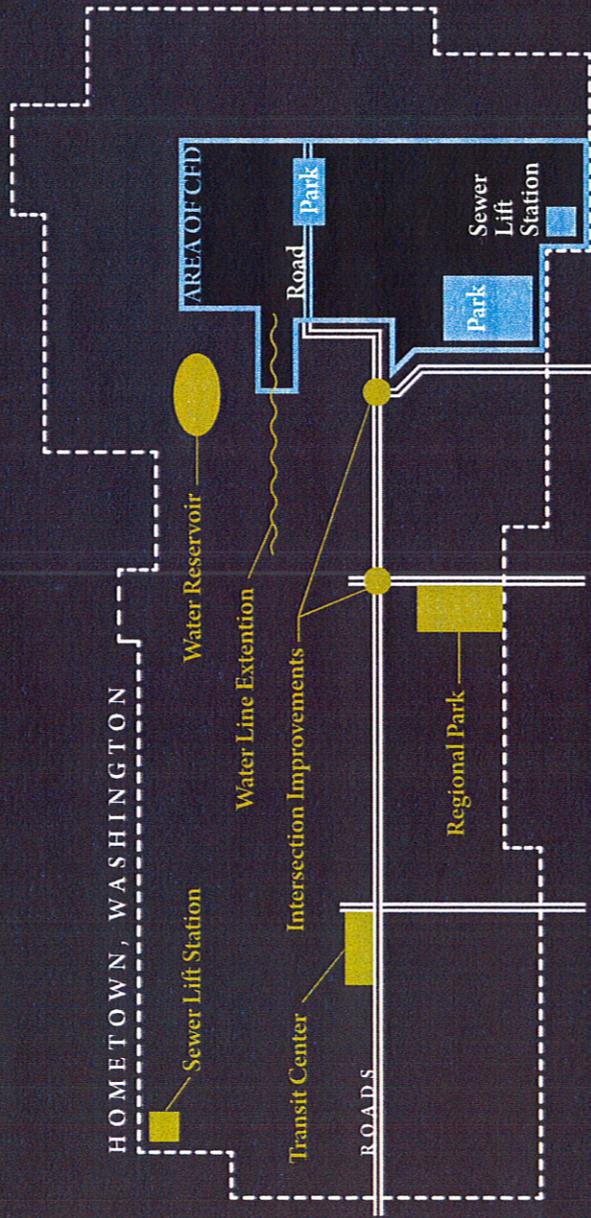
A simple example of a CFD and why we need this new financing tool:

Hometown, a jurisdiction in Washington, and its development community, both recognize the need for infrastructure to support and meet its development plans.

Property owners in the area slated for growth petition Hometown to create a CFD. The CFD will be used to provide parks, trails, utilities, new roads and connectors. The property owners pledge their property as collateral for the new CFD, with an independent board of supervisors that approves plans, issues revenue bonds, makes assessments and monitors all CFD finances.

100% of property owners within this proposed CFD petition the jurisdiction to allow the formation of a CFD to finance public infrastructure. Unlike a LID, all property owners agree to the CFD, which means 61% of owners can't impose on 39% of owners who might not want to be included.

Unlike a LID, which required all improvements be for the primarily for the benefit of the property owners in the LID, the CFD funds improvements that can benefit the entire community, such as traffic improvements, connector roads, utilities and the like.



How the CFD operates:

1. CONFIRMATION

The Board of Supervisors confirms improvements to be financed and constructed by CFD

2. ASSEMBLE THE TEAM

The Board of Supervisors hires on behalf of the CFD:

- Construction expertise
- Municipal finance expertise
- Operational expertise

3. CONFIRM FINANCES

The Board of Supervisors confirms the financing needs through review of:

- Budgets and/or contracts for onsite improvements
- Budgets and/or contracts for offsite improvements

FOR EXAMPLE:

On site costs: \$15million
Off site costs: \$5million
Total \$20million

4. REVENUE BONDS SOLD

- CFD has revenue bonds underwritten to support sale of \$20million of bonds
- Bonds are sold and proceeds are distributed to the CFD

5. PROPERTY ASSESSMENTS

- Assessments are levied on CFD properties to support financing and construction of \$20M in improvements
- As property is subdivided to include more owners over time, the assessment is also subdivided to developed commercial and residential parcels.

6. EXPENSES PAID BY CFD

- Bond payments
- Infrastructure construction payments made at completion
- Operating costs

7. POST-CONSTRUCTION

- All CFD construction projects completed
- CFD levies annual assessments
- Continues to pay operating costs
- Bonds are paid off and CFD is terminated

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

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

**THIRD DECLARATION OF SCOTT
BRAINARD**

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

16 1. I am a Certified Professional Wetland Scientist, and a true and correct copy of my
17 curriculum vitae was attached to my Declaration submitted as Attachment 1 to Exhibit 139.

18 2. I was an investigator and author of Wetland Resources, Inc.'s sensitive area
19 reports for Lawson Hills and Villages MPDs. I also have read and understand the City of Black
20 Diamond's 2009 Sensitive Areas Ordinance requirements that apply to wetlands.

21 3. In Exhibit 214, Ms. Kristen Bryant provides testimony regarding Issaquah
22 Highlands wetland impacts.

23 4. I was asked to respond to Ms. Bryant's Exhibit 214. Attached is a true and
24 correct copy of the letter I prepared in response.



Wetland Resources, Inc.

Delineation / Mitigation / Restoration / Habitat Creation / Permit Assistance

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

August 15, 2011

Yarrow Bay Holdings
Attn: Ryan Kohlmann
10220 NE Points Drive, Ste 310
Kirkland, WA 98033

RE: Response to written testimony provided by Kristen Bryant

The intent of this letter is to provide responsive comments to the written testimony provided by Kristen Bryant (Exhibit 214) titled *Response to Development Agreement (DA) Written Testimony*. I have read Ms. Bryant's testimony and the attached power point presentation and have the following rebuttal comments.

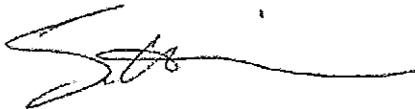
In Exhibit 214, Ms. Bryant states that, "the Issaquah Highlands wetlands protection was a failure". This statement is purportedly based on the "*IssaquahHighlandsFollowup Presentation.ppt*" prepared by Sarah Cooke. After reading this document I observed that nowhere in the referenced power point presentation does it say that the Issaquah Highlands wetlands protection was a failure. Neither does it state the cause of the tree loss within the wetlands and buffers. Are beavers active in the wetlands, was there illegal clearing or grading, was there a storm with unusually high winds, record precipitation, or significant snowfall? None of these questions are addressed and all of them could be the potential cause of the tree loss in the wetlands. In addition, the Issaquah Highlands project was approved in 1995 under the development standards for wetlands established under the old (pre 10/29/2004) KCC 21A.24. These standards were based on a three-tiered rating system and buffers that ranged from 25 to 100 feet. Based on current best available science, this code has been updated and development standards have increased significantly since the original approval of the Issaquah Highlands project.

The City of Black Diamond has adopted BDMC 19.10 Sensitive Areas Ordinance (SAO) in order to protect sensitive areas within the City limits and comply with GMA. This Code, which the Development Agreements are bound to, is based on current best available science as documented in *City of Black Diamond Sensitive Areas Ordinance Best Available Science Review, Summary and Recommendations for Code Update, Parametrix, September 2008* (BAS). Development standards for most wetlands in the City of Black Diamond are determined by categories established in the *Washington State Department of Ecology Wetland Rating System for Western Washington, revised*

August 2004 (Rating System). Core and Headwater wetlands, as defined in the BAS document, are given specific protection and are excluded from the rating system. The net result of the BAS document and the SAO is that wetland buffers range between 40 and 225 feet. These buffers are significantly larger than those required at the time of approval of the Issaquah Highlands project.

While there are similarities between the Issaquah Highlands project and The Villages and Lawson Hills, it is inappropriate to compare the protection of wetlands due to the aforementioned variables. It is my professional opinion that BDMC 19.10, as developed via BAS and as referenced in the Development Agreement, will adequately protect wetlands within the City of Black Diamond for the duration of the Development Agreement.

Cordially,

A handwritten signature in black ink, appearing to read 'S. Brainard', with a long horizontal flourish extending to the right.

Scott Brainard, PWS
Principal Wetland Ecologist

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

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

**THIRD DECLARATION OF ALAN D.
FURE**

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

16 1. I am a licensed civil engineer, and a true and correct copy of my curriculum vitae
17 was attached to my Declaration, filed as Attachment 9 to Exhibit 139.

18 2. Mr. Jack Sperry filed a "Response to Attachment 9 of Exhibit 139 from Yarrow
19 Bay" with the Black Diamond Hearing Examiner labeled as Exhibit 198 by City Staff.

20 3. I was asked to respond to Exhibit 198. Attached is a true and correct copy of the
21 memorandum I prepared in response.

22 4. Nothing in Mr. Sperry's Exhibit 198 undermines my prior conclusion in
23 Attachment 9 to Exhibit 139. It remains my professional opinion that there will be no noticeable
24 impact from The Villages MPD and the Lawson Hills MPD development on potential Lake
25 Sawyer flooding.

26 *[signature on following page]*

THIRD DECLARATION OF ALAN D. FURE - 1

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

1 Dated this 16th day of August, 2011 at Kirkland, Washington.

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5 ALAN D. FURE, PE

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MEMORANDUM

Date: August 16, 2011
To: Colin Lund, YarrowBay Holdings
From: Alan D. Fure, PE
Re: The Villages
Triad Job No.: 10-001

The following is provided in reply to Jack Sperry's "Response to Comments Exhibit 139, Attachment 9", dated August 12, 2011.

Sperry Comment

Mr. Sperry indicates in his response that the basin areas (and therefore runoff volumes) used for the Drainage Report on Lake Sawyer Flooding and Project Effects (Attachment 9 to Exhibit 139) ("Lake Sawyer Project Effects Report") are less than those used in the Estimated Total Phosphorous Loading from the Completed MPDs report ("Total Phosphorus Report"). He states that this is incorrect and that the areas from the Total Phosphorus Report (which are larger) should be used.

Triad Response

Mr. Sperry is correct in deducing that the areas are different but he is incorrect in stating that the wrong areas were used.

Discussion

The areas provided in the Total Phosphorus Report are for all basins within the two MPD projects from which additional stormwater is conveyed to Lake Sawyer. The difference between infiltration facilities and surface water discharge facilities was unimportant in the Total Phosphorous Report since the phosphorus in the stormwater discharge would be conveyed to Lake Sawyer in both cases.

The areas provided in the Lake Sawyer Project Effects Report do not include the areas with stormwater facilities which discharge via infiltration. This is due to the fact that infiltrated stormwater will take much longer to reach the lake and will be greatly attenuated in contrast to the detention pond discharges which were conservatively assumed to reach Lake Sawyer instantaneously. Therefore, the impact from the infiltrated water was not included because it would not coincide with the peak events.

Sperry Comment

Mr. Sperry states that in the Lake Sawyer Projects Effects Report, the difference in water elevation at the weir and water elevation at the inlet of the three culverts when the water elevation at the weir is 26 inches over the weir is shown to be 1.38 feet. He also mentions that “Lake Sawyer and other nearby residents” have observed that around 14 to 15 inches above the weir, the elevation at the inlet of the culverts is equal to the elevation at the weir. His conclusion is that because the Lake Sawyer Project Effects Report does not reflect the proper elevation relationships, it is “not applicable and cannot be used.”

Triad Response

Mr. Sperry is incorrect on all accounts. The difference in water elevation at the weir and water elevation at the inlet of the three culverts when the water elevation at the weir is 26 inches over the weir is shown to be zero (0) in the Lake Sawyer Project Effects Report.

Discussion

The Lake Sawyer Project Effects Report shows that the difference in water elevation between the culvert inlets and the weir is zero, not 1.38 feet. The water level was assumed to be flat because the culverts become the controlling factor at some depth above 10 inches over the weir. Additionally, Mr. Sperry’s comments about the water level flattening at approximately 14 to 15 inches over the weir are consistent with the assumptions to create Exhibit 4 – Lake Discharge vs. Height Above Weir – in the Lake Sawyer Project Effects Report. At lower flows, the weir is the controlling outlet, and there is a drop in elevation from the weir to the inlet of the culverts. At higher flows, the culverts are the controlling outlet structure and there is no drop in water elevation. Somewhere in between 10 inches and 26 inches above the weir is the transition. Mr. Sperry’s comments show this transition to be around 14 to 15 inches above the weir. Thus, Mr. Sperry’s observation of how the water behaves between the weir and the culvert is exactly what the lake Sawyer Project Effects Report represents.

Sperry Comment

Mr. Sperry states that “some form of unknown downstream blockage of Covington Creek” makes the Lake Sawyer outlet act as if it were “plugged”. He claims that only a downstream constriction can account for the “phenomena” and that further exploration is required to determine if Covington Creek can “plug” the Lake Sawyer Outlet.

Triad Response:

This is incorrect and hydraulically improbable.

Discussion

The observed Covington Creek pooling which Mr. Sperry mentions is actually expected in a creek during winter flood conditions and does not indicate that the outlet to the lake is plugged. In fact, it is an indication of very high flow rates leaving the area which in turn will rapidly lower the level of Lake Sawyer, the opposite of what Mr. Sperry is arguing.

The survey information provided in the Lake Sawyer Project Effects Report carefully determined the physical attributes of the area around the Lake Sawyer outlet. In addition to this information, field visits at the time of the report and prior survey data of Covington Creek downstream of the current survey (from a separate Triad Associates project) confirmed that the area immediately downstream of the culverts is the most restrictive in terms of flow. The report clearly shows that it is hydraulically impossible for the water to pile up on the downstream side of the culvert and block the flow. Interviews with the downstream property owner also confirmed this fact relative to historical high water elevations next to his house. Using this information, it was determined that at the flow rates occurring when there are 26 inches of water over the weir, the tailwater elevation created by Covington Creek is not the controlling factor.

If you have any questions or wish to discuss any of our comments in greater detail, please feel free to call. Thank you.

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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**

**SECOND DECLARATION OF HARRY L.
GIBBONS**

I, Harry L. Gibbons, Ph.D., 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 have received a Ph.D. in limnology, and have practiced in that field for over 37 years advising governmental agencies and private developers; a true and correct copy of my curriculum vitae was attached to my Declaration included within Attachment 4 to Exhibit 139.

3. I was asked to respond to Mr. Rothschilds' Exhibit 201 regarding YarrowBay's no net phosphorous commitment. Attached is a true and correct copy of the letter I prepared in response.

4. It is my professional opinion that the stormwater monitoring requirements, set forth in Exhibit "O" of The Villages and Lawson Hills Development Agreements, are sufficient "as is" to ensure that YarrowBay's commitment to "no net phosphorous" from the MPD development areas to Lake Sawyer is achieved.

[signature on following page]

SECOND DECLARATION OF HARRY L. GIBBONS - 1

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

1 Dated this 16th day of August, 2011 at Seattle, Washington.

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TETRA TECH

August 16, 2011

Colin Lund
Yarrow Bay Holdings
10220 NE Points Drive, Suite 310
Kirkland, Washington 98033

Subject: Response to Rothschilds's Exhibit 201

This letter is provided in response to Bob Rothschilds's written review of Attachment 7 to YarrowBay's Written Testimony dated August 4, 2011 (Exhibit 139). Response is provided to Mr. Rothschilds's written comments made in points 1 and 2 of Exhibit 201 and directs attention to technical documents previously submitted by YarrowBay to the City of Black Diamond as evidence of compliance with the TMDL.

Point 1. "I want to alert the Hearing Examiner to the fact that YarrowBay's response did not address my testimony...."

Information has already been submitted to the City that describes the expected total phosphorus loads contributed prior to development and following development from the MPD sites. The total phosphorus loads calculated to be contributed by each of the MPDs are described in the following excerpts submitted by YarrowBay to the City entitled "TMDL Memos." Each of these excerpts shows, consistent with MPD Conditions of Approval Nos. 81 (The Villages) and 85 (Lawson Hills), how the estimated maximum annual mass of total phosphorous that will be discharged from the developed MPD sites will comply with the TMDL established by Ecology for Lake Sawyer:

For The Villages MPD:

Concentrations of Phosphorous in the Developed Runoff: For each basin, the runoff volume for each type of land use by its associated (estimated) influent concentration of phosphorous. Then, for the basin, its weighted average influent concentration was computed. For all of The Villages, the composite average influent concentration of phosphorous was computed at 0.122 mg/L. The influent concentration of phosphorous for each basin was then multiplied by the treated percentage and removal rate for the respective water quality treatment facility to compute the effluent concentration of phosphorous. For all of The Villages, the composite average effluent concentration of phosphorous was computed at 0.055 mg/L. These concentrations are at the low end of the range suggested in DOE's Water Quality Implementation Plan (0.10 – 0.50 mg/L) influent = (0.05 – 0.25 mg/L) effluent.

Estimated Total Phosphorous Mass: And finally, the estimated annual runoff volume is multiplied by the estimated effluent phosphorous concentration to yield an estimated annual phosphorus mass. For The Villages, this results in 20.2



kilograms of phosphorous per year. This is within the 511 kg/year allocation for the Ravensdale and Rock Creek basins. Most importantly, as described in the excerpts from the Department of Ecology's Water Quality Implementation Plan (June 2009), the City of Black Diamond is in compliance with the TMDL when the City approves new development with the requirement to remove phosphorus as provided in the 2005 Ecology Western Washington Stormwater Manual, and meets the goal of 50% phosphorus removal for a range of influent concentrations of 0.1 – 0.5 mg/L TP.

For Lawson Hills MPD:

Concentrations of Phosphorous in the Developed Runoff:** For each basin, the runoff volume for each type of land use is multiplied by its associated (estimated) influent concentration of phosphorous. Then, for the basin, its weighted average influent concentration was computed. For all of Lawson Hills, the composite average influent concentration of phosphorous was computed at **0.104 mg/L**. The influent concentration of phosphorous for each basin was then multiplied by the treated percentage and removal rate for the respective water quality treatment facility to compute the effluent concentration of phosphorous. For all of Lawson Hills, the composite average effluent concentration of phosphorous was computed at **0.048 mg/L**. These concentrations are at the low end of the range suggested in DOE's Water Quality Implementation Plan (0.10 – 0.50 mg/L) **influent = (0.05 – 0.25 mg/L) effluent.

***Estimated Total Phosphorous Mass:** And finally, the estimated annual runoff volume is multiplied by the estimated effluent phosphorous concentration to yield an estimated annual phosphorous mass. For Lawson Hills, this results in **43.3 kilograms** of phosphorous per year. This 43.3 kilogram load is in compliance with the TMDL for Lake Sawyer based on DOE policy as follows: as described in the excerpts from the Department of Ecology's Water Quality Implementation Plan (June 2009), the City of Black Diamond is in compliance with the TMDL when the City approves new development with the requirement to remove phosphorus as provided in the 2005 Ecology Western Washington Stormwater Manual, and meets the goal of 50% phosphorus removal for a range of influent concentrations of 0.1 – 0.5 mg/L TP.*

The initial concentrations of total phosphorus were measured from actual on-site field sampling this past year and verifying that these runoff concentrations during storm events reflected concentrations in other reference drainages generated by past Ecology studies (TFW Ecoregion Bioassessment Pilot Project 1992). The presence of the MPDs with recommended stormwater treatment BMPs will reduce the existing TP sources and those generated from within the MPDs to less than half the concentration (and TP load) that pre-exists development. Thus, even without the “no net increase in phosphorous” commitment, The Villages and Lawson Hills MPDs are in compliance with MPD Conditions of Approval Nos. 81 and 85, respectively.

Point 2. In response to YarrowBay's Attachment 7 to Exhibit 139....



- a) With regard to whether the TMDL and “no net increase in phosphorus commitment” is met:

A calculation for annual phosphorous loading was presented to the City in the TMDL Memos for The Villages MPD and Lawson Hills MPD as previously described in **Point 1**. The pre-development phosphorous load for the MPD sites was calculated based on use of runoff concentrations generated from a nearby and similar drainage setting and relating these concentrations to the proportion of analogous land use types in the pre-development footprint of the MPDs. A weighted average influent concentration was calculated based on runoff coefficients and proportion of land use types within the MPDs’ footprint (as described above in *Concentrations of Phosphorous in the Developed Runoff*).

This final concentration was the basis for calculating annual TP loading to Lake Sawyer from the MPDs. The derived concentration was verified with actual pre-development monitoring in the drainage during storm events and from examining TP concentrations from reference sites collected from a past Ecology (1992) study (TFW Ecoregion Bioassessment Pilot Project).

Pursuant to the “No Net Phosphorous Implementation Plan” by Triad Associates dated February 25, 2011 in Exhibit “O”, YarrowBay will continue to monitor pre-development phosphorous levels at specific locations within the MPDs’ drainage basins. Monitoring is to occur consistently over the course of at least one water year (October to September) in accordance with the procedures and criteria outlined in Chapters 6 through 12 of the QAPP. The data collected over this water year will be used to establish a baseline phosphorous load from the MPDs. Upon commencement of project construction, monitoring shall be performed at all drainage outlets to establish post-mitigation phosphorous levels. Upon completion of a water year, YarrowBay will compare actual loads to pre-development loads to determine if its “no net phosphorous” commitment is in fact being achieved. As such, Mr. Rothschilds’s request for a comparison of pre-development and post-development annual phosphorous loading has already been addressed in Exhibit “O.” No revisions to the No Net Phosphorous Implementation Plan are necessary.

Please refer below to previously submitted technical analysis in the TMDL Memo:

Runoff Coefficients

The Final EIS for Lawson Hills, Appendix M, includes a report titled Lawson Hills MPD – Water Quality Technical Analysis, by A.C. Kindig & Co., dated May 5, 2008. A copy is attached as Appendix B. This Technical Analysis was prepared for the Lawson Hills EIS with data specific to the Puget Sound Region. At Section 3.2.5, Water Quality Analysis Model, pp. 3-30 through 3-33, this Technical Analysis draws data and conclusions from approximately 110 referenced sources / reports. With respect to Total Phosphorous (TP),



this Technical Analysis provides the following influent concentrations of Phosphorous in runoff from six different land use categories:

*Single Family Residential ~ 0.075 mg/L
Multi-Family Residential ~ 0.040 mg/L
Mixed Use ~ 0.160 mg/L
Commercial / Office / School ~ 0.170 mg/L
Arterial ~ 0.170 mg/L
Parks ~ 0.200 mg/L*

In aggregate, these values are consistent with the range of influent concentrations referenced in the Department of Ecology Water Quality Implementation Plan noted above.

Detailed Description for Calculation of Runoff

Calculation method: *The average annual mass of phosphorous leaving a project site is calculated by multiplying the average annual volume of runoff leaving the treatment facilities by the average annual concentration of effluent phosphorous leaving the treatment facilities. In other words: Mass (kg/year) = Runoff Volume (L/year) times Concentration (kg/L).*

Runoff Volume Estimates: *Each developed basin of the proposed Lawson Hills MPD and The Villages MPD that drains to Lake Sawyer was divided into categories based upon the Land Use Plan. Each Land Use Category was then multiplied by the respective assumed percent impervious area to produce developed impervious and pervious areas. Associated Earth Sciences assembled regional data for Evapotranspiration, Recharge and Runoff for five types of ground cover for Lawson Hills MPD and The Villages MPD (relative to water balance issues on that project). This information was used for the Lake Sawyer phosphorous loading calculations. The ground covers are: **Impervious, Till Grass, Till Forest, Outwash Grass and Outwash Forest.** The average annual rainfall, 54" for the Black Diamond vicinity, was then 'processed' through the varying development scenarios and ground covers to yield an estimated annual runoff volume.*

(As a confirmation, these runoff parameter estimates were applied to current drainage basin conditions. When compared to measured 2008 rainfall amounts and measured 2008 Rock Creek runoff volumes, the predicted volumes were within 2.0% of the measured volumes. See Appendix E for calculations.)

- b) To determine whether the conditions noted above are met, more explicit language is needed in the Das to ensure that monitoring continues until after nearly full occupancy occurs....

The "No Net Phosphorous Implementation Plan" by Triad Associates dated February 25, 2011 in Exhibit "O" states that stormwater facilities will continue to



TETRA TECH

be monitored by the Master Developer for five years following acceptance of each constructed facility to confirm compliance with the no net phosphorous provision of the Development Agreements. The MPDs will be constructed in phases. See Phasing Plan in Exhibit “K” of the Development Agreements. Within each phase, there will several stormwater facilities. The City will not likely “accept” a given stormwater facility until at least a majority of the land uses contributing to such facility are constructed and occupied. The five-year monitoring window for each stormwater facility is not triggered until the City accepts it. Thus, stormwater monitoring will in fact occur for at least the next twenty years assuming, conservatively, that the City accepts the Master Developer’s last stormwater facility on the date the Development Agreements expire. In reality, this monitoring period could be far longer.

Monitoring will continue through the development phase of the MPDs and is expected to capture several different types of storm events of several years during the hydrologic cycle (typically determined to be a ten-year span and corresponds with effects from the Pacific Decadal Oscillation in this region). Long-term monitoring will be conducted during this period and will document storm runoff with high and low concentrations of total phosphorus prior to capture (removal) in established treatment facilities at different stages of development of the MPDs. Comparison of multiple years of monitoring will be useful for demonstrating progress in achieving the lower TP runoff from the MPD footprint and will be an adaptive management tool for improving water quality conditions and achieving no net TP increase throughout the period of development.

Thus, the five-year monitoring period outlined in Exhibit “O” as currently written ensures that phosphorous monitoring will continue until significant MPD occupancy occurs.

Sincerely,

Harry L. Gibbons, PhD.
Principal Limnologist and Environmental Services Lead

Stacey Borland

From: Judy Carrier <gotrocks886@msn.com>
Sent: Thursday, August 18, 2011 6:01 PM
To: Steve Pilcher; Stacey Borland; Brenda Martinez; Andy Williamson
Subject: 8.17.2011 DOC 1 CARRIER RESPONSE TO YB COMMENTS
Attachments: 8.17.2011 DOC 1 CARRIER RESPONSE TO YB COMMENTS.docx

Steve, Brenda, Staci, and Andy,

Attached for Hearing Examiner Olbrechts is my response to Yarrow Bay's comments to my written DA Testimony.

Please send an acknowledgement of your receipt.

Thank you,

Judy Carrier

EXHIBIT 246

RESPONSE TO EXHIBIT 208
OPEN -RECORD HEARING YARROW BAY COMMENTS FOR
JUDITH CARRIER WRITTEN TESTIMONY

of

August 4, 2011, Exhibit 130

Your Honor, Mr. Olbrechts:

Introductory Carrier Response: It is my understanding that the Development Agreements (DAs) are the place for specifics. If they are not written in obligatory, legal terms; in the future, the Applicant is free to choose other options should they better suit the latter's goals.... which might not necessarily be those of the City of Black Diamond or outlying areas such as Green Valley Road (GVR). This does put a member of the public without legal background or assistance at a disadvantage for submitting exact legal language However:

Yarrow Bay Comments (Black):
Judy Carrier (August 4, 2011, Exhibit 130):

Yarrow Bay Comments (Black): Response to request for New Condition re Plass Road
Ms. Carrier asks the Examiner to recommend a condition that if a majority of Plass Road residential property owners oppose "an agreement that will still allow a direct or indirect connection to Green Valley Road, the applicant will work in good faith with the committee to find another alternative besides total vacation of Plass Road." Such a condition would appear to give a citizens committee veto authority over the South Connector Roadway through the Villages, which has already been planned by the City in the City's Comprehensive Plan. Thus, that portion of the condition is not appropriate.

Carrier Response (Bolded red): Clarification and added information is needed in supplementing MPDOA Condition 34b regarding vacating Plass Road/257 SE to obstruct indirect traffic to or from Green Valley Road (GVR) to the South Connector Roadway as it crosses Plass to SR 169:

From Carrier Written Testimony (Bolded black): MPDOA, Conditions 33 and 34b should be fulfilled: *"The Committee shall also meet to review the plan to prohibit or discourage the use of Plass Road". (The committee is the Green Valley Road Review Committee that has never convened yet.) "The Applicant agrees to work in good faith with the City, King County and residents on Plass Road to develop a plan to prohibit or discourage the use of Plass Road as connection to Green Valley Road. The Applicant will agree to vacate a portion of Plass Road*

through the Villages property to assure no connectivity to the South Connector roadway towards Green Valley Road, provided the City, King County and Plass Road residents support the road vacation. “

New Condition: If a majority of Plass Road residential property owners oppose an agreement that will still allow a direct or indirect connection to Green Valley Road, the applicant will work in good faith with the committee to find another alternative besides total vacation of Plass Road.

Carrier Response:

- **Vetoing The Villages’ South Connector Roadway was not considered as an option! The goal would be adding to the DAs written affirmation that if some solutions were not agreeable to Plass Road residents, other alternatives would be pursued by Yarrow Bay and The City until one is found to satisfy them, King County, Yarrow Bay, The City AND property owners on GVR. The explanation of the public process and example given:**

Yarrow Bay Comments: Street vacations are public processes, so there will be an opportunity for further public input as the City processes any vacation request. In addition, a street vacation need not be an "all or nothing" deal. For example, the City could agree to vacate a five foot long stretch of Plass Road just south of and another five foot long stretch just north of the South Connector roadway such that a fence or hedge or other barrier to access could be built. That would not close or prevent access from Green Valley Road north to that vacated area, nor would it close or prevent access from SR 169 down to the vacated area.

are reassuring. Since most of Plass Road is in King County, however, will the City’s public process for street vacation apply? This is a detail that should be included in the DAs if it is not.

- **Since the GVR Review Committee has never materialized (nor, apparently, a meeting of Plass residents) to discuss and possibly determine for GVR and the Plass neighborhood an agreeable intervention (with all the analysis of impacts, mitigations, and funding this would entail); there are no specifics in the DAs for MPDOA Conditions 33 and 34 because they have not been fully completed.**

The opportunity for the exchange of information and explanation as just occurred through the public written testimony-Yarrow Bay comment-public response process and the discovery of an item to be included in the DAs has passed unless supplemental conditioning can be added. The DA contract needs to contain precise legal language for these Conditions.

- Timelines for completing both Conditions 33 and 34 should supplement the MPDOA Conditions to insure that these Conditions are completed AND that a mutual agreement with Plass and GVR residents, the Applicant, King County, and The City of Black Diamond is reached.
- It is reassuring to read that the Applicant will work with Plass and GVR residents in “good faith”. However, past performance is undermining the meaning of “good faith” to my mind. They are words open to interpretation. For this legal document, I would suggest adding GVR to the discussion and changing “good faith” to more binding legalese.
- In the DAs, any confirmation a South Connector to SR169 span will definitely be made is some assurance traffic flow onto Green Valley Road (GVR) from The Villages will not be as desirable as it was when a direct connection was considered in 2009. Confirmation should be written in terms of how the connection will happen without environmental, topographical, financial, safety and any other restrictions. Be reassured that vetoing the South Connector Roadway to SR 169 as a replacement for any proposed 2009 Direct or Indirect Connection to GVR would be foolhardy for its residents!
- Veto power should be evenly balanced between the public and the developers. That is why I have suggested the GVR Review Committee balance of one representative from the City, two from Yarrow Bay, and two Green Valley Road residents be changed to two Yarrow Bay representatives, one City representative, one King County representative, and two Green Valley Road residents.

Yarrow Bay Comments: Response to re nest for New Condition re no Connections to Green Valley Road

Here, Ms. Carrier asks the Examiner to recommend a new Condition on the Villages project not to allow any future connection, including an emergency connection between a potential future school site outside the Villages property. We sympathize with Ms. Carrier's concern, but neither the Examiner nor YarrowBay has the authority to control or condition what may happen in the future on lands that are outside the boundaries of the Villages,

Carrier Response:

- Although Plass Road is a possibility for an indirect connection to GVR, there are at least two potential possibilities for this to occur directly if not more.

- Two schools in the rural area of The Villages outside the Urban Growth Boundary were shown on Carrier Exhibit A (Map attached to submitted Written Testimony) bounding directly on GVR in November of 2009. These “twin” schools” are now shown on a DA map (Carrier Exhibit B) a bit to the west from the first map location, but not fronting directly on GVR. In time, the schools could necessitate an emergency connection that could become a direct or indirect connection.
- School locations have not been confirmed to my knowledge. They could be re-located at any time. Plans for building construction, streets in the developments, and any other fixed objects need to be made in conjunction with buildable locations for the schools so it is not necessary to place them in the rural area of the developments and, especially, not on a King County road of the valuable character of Green Valley Road. That planning needs to include the placement of emergency access/egress through Yarrow Bay property to SR 169.

Yarrow Bay Comment:or to constrain King County or the Enumclaw School District in the event that emergency access routes are required to serve public safety.

Carrier Response:

- King County has testified that they oppose schools in the rural area.
- Mike Nelson, Superintendent of the Enumclaw School District, in his FEIS testimony said there would never be a connection from an Enumclaw school to Green Valley Road. However, as sincere as his words may have been and as sympathetic as Yarrow Bay and The City may be, without the detailed planning in the Development Agreements that will keep the schools away from Green Valley Road, a connection for traffic could still occur sooner or later.
- Please consider detailing development plans in the DAs so that my request below can be added, also.

From Carrier Written Testimony: As another new condition: a legally binding, written agreement that there will be no direct or indirect connection from the Developments to Green Valley Road for any reason by current or future property owner(s) of The Villages MPD would be another major traffic calming “device”.

Thank you.

Stacey Borland

From: Peter Rimbo <primbos@comcast.net>
Sent: Thursday, August 18, 2011 10:16 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: REPLY TO STERBANK RESPONSE TO RIMBOS W.S.
Attachments: REPLY_to_Mr._Sterbank.doc; ATT00001..htm

Importance: High

Steve,

Hi. Attached is my REPLY to Mr. Stebank's Response (after the Hearing Examiner asked for further clarification) to my Written Statement. I do not know the Exhibit No. of Mr. Sterbank's Response.

Please acknowledge receipt. Thank you.

EXHIBIT 247

**REPLY TO MR. BOB STERBANK RESPONSE
TO WRITTEN STATEMENTS**

STERBANK RESPONSE: This e-mail is to respond to your inquiry concerning the reason for the statement, in the City's written response, that Mr. Rimbos' statements in Exhibit 118 misunderstood the workings of the traffic modeling and monitoring conditions in the MPD Permit Conditions, "(perhaps deliberately)." The Examiner has the discretion to determine the weight, if any, to give to this phrase in considering the City's overall comments. The Examiner can certainly also decide to consider the City's comments without considering the phrase, if for no other reason to avoid further objection from project opponents.

REPLY: Either it was meant or it was not meant. In either case it is an insult to my personal and professional integrity. To set the record straight, I do not "misunderstand" the "workings of the traffic modeling and monitoring conditions." I lead the Citizens' Technical Action Team. I have studied the transportation issues related to the MPDs for nearly 2 years. I have met with The City's Traffic Consultant, Parametrix' John Perlic, to specifically discuss the traffic model used and the new one under development. I have a Master of Science in Civil Engineering from one of the country's elite Engineering Universities, Lehigh University. I have 24 years of Engineering and Project Management experience at Boeing. For part of that time I was a Finite Element Modeling expert and a Principal Engineer in Advanced Structures. As an Engineer, I would never "deliberately" misunderstand technical information. Engineers by their nature are inquisitive to a fault. We constantly ask questions, seek knowledge, and seemingly are never satisfied.

STERBANK RESPONSE: Even so, the Examiner should nevertheless consider the comment appropriately made, for the following reasons. While Mr. Edelman's Motion to Strike labels that phrase a "personal attack," it was actually a comment on the relative illegitimacy of a particular tactic employed by the commenter, as distinct from an attack on the person himself. As an example of the difference, see Mr. Rimbos' Exhibit 224, which refers at page 7 to "the "rogue" City of Black Diamond" and its "irresponsible and inconsiderate decisions"

REPLY: Yes, I made those statements. However, there is a big difference here. I was not attacking individual people. In fact, I was not attacking anything. I was describing City actions based on the facts and data available to me as someone who has sat through every hour of every Hearing since March 6, 2010. That is what Engineers do--deal with facts and data.

STERBANK RESPONSE: As another example, I can say that I like and respect Mr. Rimbos as a person. He appears to be thoughtful, articulate, and a nice person, from the conversations that I have had with him. The comment in the City's response did not address was not an attack on Mr. Rimbos personally. It expressed disagreement with a particular tactic.

**REPLY TO MR. BOB STERBANK RESPONSE
TO WRITTEN STATEMENTS**

REPLY: What "tactic"?

STERBANK RESPONSE: Context is also important. The comment was part of a larger argument in the City's response to the efforts of some project opponents to re-argue the MPD Permit conditions. See City's Response at 10-11. The City pointed this out because the Hearing Examiner's orders have repeatedly indicated that re-argument of MPD Permit Conditions is not properly within the scope of the Development Agreement hearings. See, e.g., Order on Yarrow Bay Objections to Exhibits at 2 ("As made clear by the Examiner in Pre-Hearing Order II and during the hearings, the DA hearings are not an opportunity to request a revision to the MPD conditions of approval.")

REPLY: Any arguments in my Written Statement (Exhibit #118) regarding any deficiencies in the MPD Ordinance Conditions serve as background for the proposed "new" Conditions I presented, as allowed by your Honor's Pre-Hearing and subsequent Orders to build the record and forward to the City Council. In fact, I took great care to segregate those proposed "new" Conditions in a separate section at the tail-end of my 103-page Written Statement.

STERBANK RESPONSE: On page 12, the City's comments ask that the Examiner reject a related effort, namely, the call to "rewrite" MPD Permit conditions on the grounds that existing ones are misunderstood or require additional specificity. As the City's response and the attached declaration of John Perlic go on to explain, the existing MPD Conditions are thorough and address the substance of many of the commenter's complaints. Ex. 118's author was fully apprised of the workings of the MPD Permit traffic conditions. He is the leader of the Save Black Diamond Technical Action Team, he met with City staff and Mr. Perlic and reviewed and commented on the MPD Conditions in detail, proposed new ones, and solicited and prepared witnesses to testify at the DA hearings. While not a traffic expert, he is unlikely to have misunderstood the MPD Permit traffic Conditions.

REPLY: I will take each point separately:

1. I must set the record straight. There are many citizen-driven organizations that have particular problems with the MPDs as proposed. As your Honor knows, I lead the Citizens' Technical Action Team. We are not affiliated with "Save Black Diamond."
2. As stated herein and in my Written Statement, I met with Mr. Perlic to discuss the Traffic Demand Modeling.
3. It is "unlikely" that I "have misunderstood the MPD Permit traffic Conditions." In fact, I fully understand them and that is why I have so many issues with them.

**REPLY TO MR. BOB STERBANK RESPONSE
TO WRITTEN STATEMENTS**

STERBANK RESPONSE: Meanwhile, though CR 11 does not technically apply, in order for City administrative processes to function, they must be premised on the same notions that underlie our Civil Rules: namely, that arguments made will be warranted by existing law and not interposed for any improper purpose. Where, as here, there are grounds for concluding that a particular line of argument is made in contravention of multiple previous Examiner orders, for an apparently improper purpose - the re-opening of the MPD Permit Conditions -- it is fair comment to observe, parenthetically, that such a strategy may be "perhaps deliberate."

REPLY: This is patently absurd! Herein I have fully explained myself. Your Honor provided the freedom to propose "new" Conditions that would be passed onto the City Council. I have availed myself of that opportunity and provided same in my Written Statement.

STERBANK RESPONSE: Last but not least, the Examiner's e-mail below acknowledges that the City may have had reasons for presenting evidence concerning the organizational structure and motives of the organizations presenting evidence. At least one of those reasons merits elaboration. As pointed in the City's Response at pages 7-9 makes the legal argument that collateral attacks on the approved MPD Permit density are untimely and improper. Evidence of the relationship between various commenting organizations and individuals, and the "goal" stated in online materials for those organizations' funding arm, is relevant to whether the evidence and arguments presented by project opponents are, in fact, an untimely and impermissible collateral attack on MPD project density.

REPLY: As stated herein, there are multiple citizen-driven groups that have problems with the MPDs as proposed. Those groups--I don't even know them all--probably share some common concerns and most likely do not share others. I do not understand why being concerned about something as critical to the quality of life of all of us who live in SE King County as "density" is somehow not allowed. We live in the United States of America. If someone happens to publicly state that they think it is not prudent to plop down up to 20,000 more people and 10,000 more cars in the far reaches of SE King County, they are free to do so. I am not a lawyer--I only deal with facts and data. Those facts and data worry me, as they should anyone who lives in SE King County.

STERBANK RESPONSE: As noted in the City's comments, this evidence was not intended to as a comment on the use of nonprofit corporations or any individuals involved. It was offered, properly, in support of a particular legal argument, namely, whether attacking MPD project density is legally proper at the DA juncture.

**REPLY TO MR. BOB STERBANK RESPONSE
TO WRITTEN STATEMENTS**

REPLY: This is a question for the lawyers; it is above my pay grade.

STERBANK RESPONSE: As always, the City appreciates both the opportunity to fully articulate the reasons for its submissions, as well as the Hearing Examiner's thoughtful consideration of the same.

Stacey Borland

From: Jack Sperry <JackSperry@Comcast.net>
Sent: Thursday, August 18, 2011 10:20 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Reply to Exhibits 139, 209, 215, and 218
Attachments: Reply to Exhibits 139, 209, 215 & 218.pdf

Mr. Pilcher,

Attached is my Reply to Exhibits 139, 209, 215, and 218. Please forward this Reply to the Hearing Examiner.

Also, please provide confirmation of receipt.

Thank you,

Jack Sperry
29051 229th Ave. SE
Black Diamond, WA 98010

EXHIBIT 248

Reply to Responses in Exhibits 139, 209, 215 and 218 Regarding Flooding of Lake Sawyer Properties from New MPD Stormwater Runoff

In Exhibit 215, Mr. Daniel Ervin, of RH2 Engineering, Inc., provides a second opinion analysis of the conclusions in Exhibit 139, Attachment 9 authored by Mr. Alan Fure (Triad Associates) that the large additional runoff from the developed MPDs will have only a minor impact on raising water levels of Lake Sawyer during the peak high water winter season. In paragraphs 8-10 Mr. Ervin describes how his analysis shows that the outflow from Lake Sawyer would be slightly less than that shown in the analysis of Attachment 9 of Exhibit 139, but that the general conclusions of Mr. Fure's Drainage Report are "generally correct".

Then Mr. Ervin goes on to assert in paragraphs 12-13 of Exhibit 215 that the calculations and assertions in my written testimony are "generally incorrect" and he asserts that a table in my testimony claimed that there would be a 6.8 inch rise in lake level during the December-January time period due to MPD runoff. In paragraph 13 Mr. Ervin states "*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.*"

First of all let me point out that the value of 6.8 inches of water level rise in Table 1 of my testimony (Exhibit 67) is labeled "**Total Potential Impact to Lake Sawyer Water Level Dec.-Jan. = 6.8 inches**" and was simply the vertical amount of water predicted to arrive at Lake Sawyer in that period as derived from the report provided by Mr. Fure in January, 2011 on estimated annual new Total Phosphorous Loading expected to arrive at Lake Sawyer from the developed MPDs. This was the volume of water used in that report that was tributary to Lake Sawyer after it left the storm retention ponds in the MPDs. I simply used the data in Mr. Fure's Total Phosphorous Loading report to the City because it had a much more carefully computed value for the runoff leaving the retention ponds that were tributary to Lake Sawyer. If Mr. Ervin believes that this is an overstatement of water coming to Lake Sawyer because infiltration of water in the retention ponds is unaccounted for then that needs to be addressed to Mr. Fure.

Secondly, nowhere in my testimony did I state that the Lake would rise 6.8 inches in the Dec.-Jan. time frame, only that there was a potential rise that could be upwards of that amount. And that brings me to my third point which is the crux of the difference between my concerns with MPD caused increases to Lake Sawyer flooding and that of Mr Fure and Mr Ervin.

Neither of these two "Experts" have recognized, or maybe they choose to ignore, the real issue involved in the flooding threat to Lake Sawyer. While not a "Certified Technical Expert" I do have a Masters of Science degree in Mechanical Engineering from the University of Washington and do know how to do flow analysis of water over a weir and through culverts to be able to predict the amount of water level rise that would be expected in Lake Sawyer from MPD runoff. Based upon my own calculations I would tend to agree that the runoff from the MPDs to Lake Sawyer should cause only a relatively small rise in water level based upon

flow analysis of water over the weir and through the outlet culverts, but only if water beyond the culverts is allowed to flow away from the culverts down Covington Creek. **However, this is not the case during high water levels of 10 inches and higher above the weir.**

When the Lake's water level rises to approximately 10 inches above the weir some form of downstream constriction to the flow of Covington Creek causes the creek to flood beyond its banks and the water in the culverts to rise higher than would be predicted by the flow analysis. At higher water levels flow analysis over the weir and through the culverts is meaningless in determining water level rise in Lake Sawyer. At 14-15 inches above the weir, the water level below the weir becomes equal to the water level in the Lake and flow through culverts is dramatically reduced from Covington Creek backup. This phenomena has been noted by many local residents who have remarked about this surprising sight. Parties of record, Mr. Robert Rothschilds and Mrs. Sheila Hoefig, as well as Wayne and MaryAnn Monts have both witnessed this phenomena and reported it to me. And I have seen this phenomena as recently as the winter of 2009 and 2011.

So when Mr. Ervin claims in paragraph 13 of Exhibit 215 that "...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" he is mostly correct. Except that this is not an assumption, but an observed fact. More precisely I would modify this analogy to say that at high water levels of more than 10 inches above the weir the lake outlet starts to become slightly plugged by downstream blockage and flooding of Covington Creek. As the water level grows higher that leaky plug becomes less and less leaky and compounds the problem by not letting the weir and culverts do their job.

In February, 2009 the water level in the Lake rose to approximately 17 inches above the weir and the equal level above and below the weir was seen by many people. The flow analysis described by Mr. Ervin and Mr. Fure would have predicted that the water below the weir would have been more than 1 ½ feet lower. It's this difference between analysis and fact that confirms that flow through the culverts is not the controlling factor at high water levels and that a plugging of Covington Creek has caused the water to rise faster and be much higher. Between February 8th and 9th, 1996 the water level in the Lake, measured by King County, rose 14.2 inches in one day from 11.3 inches above the weir to 25.5 inches above the wier. This very dramatic increase was caused by a rare heavy rainfall event and constriction of the outlet due to inability of Covington Creek to adequately pass the flow.

Conclusion:

The analysis of water level increase caused by stormwater runoff from the MPDs by Mr. Ervin in Exhibit 215, and the analysis in Attachment 9 of Exhibit 139 by Mr. Fure may be techically sound under the assumption that culvert outflow into Covington Creek is unrestricted, but it does not represent the facts in the real world. Neither analysis accounts for the backup of Covington Creek at high water levels above 10 inches over the weir. And the results of the flow analysis are entirely negated at higher water levels by the observed equal water levels above and below the weir. While Mr. Ervin and Mr. Fure would like the Hearing Examiner to be impressed with their credentials and analytical skills, neither has lived on the Lake for 65 years as I have and witnessed many, many flooding conditions. Mr. Ervin doesn't even know how many culverts are involved in the outlet to lake sawyer and consistently refers to the twin culverts when in fact there are three culverts. Neither man has witnessed the backup of Covington Creek to see its effect on constricting outlet flow. And neither man has ventured

far enough down Covington Creek to assert that there is no obstruction such as a slot canyon, beaver dam, or other natural blockage causing this constriction.

The conclusion then is that with this blockage, that many local residents have witnessed, the water level does rise much faster and higher than would be the case with unrestricted flow as assumed in the Exhibit 139, Att. 9 and Exhibit 215. I'm not suggesting that the Lake would rise the additional full 6.8 inches as would be the case with total blockage, but it would certainly rise much more than the 1 inch predicted in Mr. Fure's analysis. And why should Lake Sawyer residents be exposed to this threat? For Mr. Ervin to suggest in Exhibit 215 that Lake Sawyer residents, or the City, always have the option to petition the Superior Court for permission to lower the lake level before winter rains by paying to construct a new adjustable weir is the height of impudence. Why should the Lake Sawyer property owners or Black Diamond property owners have to pay to install an adjustable water level weir to protect Lake Sawyer properties from a threat posed by a yet to be constructed development. Maybe YarrowBay needs to pay for such a contrivance to protect itself from the liability that awaits it from future lawsuits when increased flooding is shown to be caused by the MPDs.

Because the "Drainage Report" contained in Attachment 9 of Exhibit 139 is fatally flawed from not recognizing the well-known blockage of Covington Creek and its impact on Lake Sawyer flooding, YarrowBay's response in item "IV L" on pages 43 and 44 of Exhibit 209 is also invalid and should be disregarded by the Hearing Examiner. The Hearing Examiner should also ignore the assertions of the City in Exhibit 218, Section C, pages 10 and 11 based upon these flawed flow-based only analyses. In fact all assertions by YarrowBay, the City, and their hired consultants, regarding the negligible impact to Lake Sawyer from MPD runoff are invalid due to the overlooking of the impact of Covington Creek blockage at high water levels.

Consequently the Hearing Examiner should act to protect the Public Safety of Lake Sawyer residents per RCW 36.70B.170 (4) by recommending to the City Council that the new provision recommended in my testimony (Exhibit 67) be incorporated into the Development Agreements. That provision which would fully protect Lake Sawyer residents from any potential increase to existing flooding conditions regardless of how minimal reads as follows: ***Maintain hydrology for Lake Sawyer and associated wetlands by providing their tributaries with no greater volume of stormwater in the post-developed state than would occur under pre-developed conditions.***

The two pictures below show the scene on January 8, 2009 when the water level was 17.5 inches above the weir and the fire department was trying to save Wayne and MaryAnn Monts house (at 22540 SE 304th Pl. Black Diamond, WA 98010) on the west side of Lake Sawyer. (These pictures were taken on 1-8-2009 by Mrs. Sheila Hoefig from the deck of a neighbor's house at 30262 225th Ave SE Black Diamond WA 98010.) The Monts home is one of the 30 to 40 homes threatened when flooding occurs on Lake Sawyer. Clearly any additional lake level rise from new large volumes of MPD runoff will just exacerbate this Public Safety issue that seems to be occurring every few years. As the Examiner can tell from these pictures, even a few inches of additional water rise caused by MPD runoff will have a profound effect.

Photo by Mrs. Sheila Hoefig on January 8, 2009

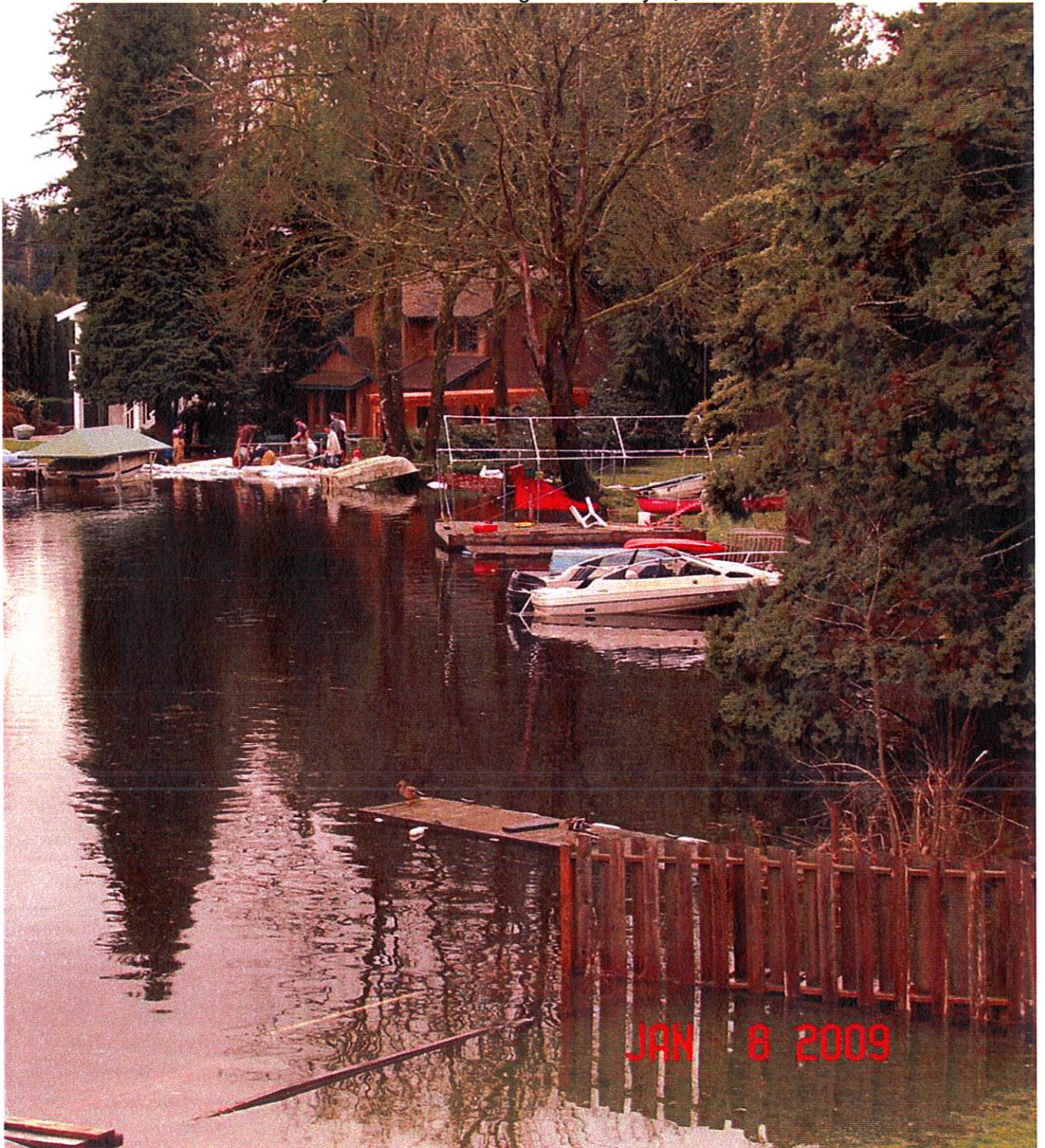


Photo by Mrs. Sheila Hoefig on January 8, 2009



Lake Sawyer residents don't want YarrowBay's phosphorous and other pollutants contained in MPD runoff. To its credit YarrowBay got that message and made no net increase in phosphorous coming to Lake Sawyer a commitment and quite recently, via an errata submission, a requirement in future versions of the Development Agreements. Now YarrowBay needs to make the same commitment regarding its water runoff volume coming to Lake Sawyer. With the past history of flooding on Lake Sawyer, which has been far greater than that experienced at Horseshoe Lake, Lake Sawyer residents want no additional water from these MPDs than exists in the pre-developed condition.

YarrowBay needs to commit to making the stormwater retention ponds large enough to ensure that the proposed new provision recommended above will be achieved.

Respectfully submitted,

Jack C. Sperry
29051 229th Ave SE
Black Diamond, WA 98010

Stacey Borland

From: lisaschmidt001@comcast.net
Sent: Thursday, August 18, 2011 11:03 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Response to YarrowBay's rebuttal
Attachments: Response to YB Rebuttal to Aug. 4 testimony.doc

August 18, 2011

Steve Pilcher
P.O. Box 599
Black Diamond, WA 98010

RE: Response to YarrowBay's rebuttal regarding the Development Agreements.

Dear Mr. Pilcher;

Attached is my response to YarrowBay's rebuttal to testimony concerning the Development Agreements.

Please forward to the Hearing Examiner and confirm receipt of electronic copy.

Thank you.

Sincerely,

Lisa D. Schmidt

EXHIBIT 249

Response to YarrowBay's rebuttal to testimony submitted August 04, 2011

In this response, "**Counter-responses**" follow testimony and rebuttals, and are indicated in **bold** type.

In the introduction to their rebuttal to testimony submitted on August 04, 2011, YarrowBay states that they seek to respond to all the written testimony related to the Development Agreements, whether or not outside the proper scope of these hearings. YarrowBay replies, however, with several indefinite, self-referential, and evasive responses. YarrowBay states that they, "[i]n fact, respond to many of the exhibits to which [they] already specifically objected to." However, it should be reiterated that their objections pertained to only portions of those exhibits. Moreover, many of those objections were in response to the general and widespread concerns regarding SEPA issues. In such general objections to SEPA, relevancy must be recognized where the DAs provide greater specificity or modifications to the MPDs. Such environmental references are applicable and vital to the decision regarding whether these DAs should be approved. For ease of reference, those statements from Exhibit 117 lacking response are referenced at the end of this response.

Section II of YarrowBay's response to testimony, numbered in accordance with DAs:

SECTION 2.2 (The Villages and Lawson Hills)

Comments:

Lisa Schmidt (Exhibit 117): In Exhibit 117, Ms. Schmidt asserts that "[e]xact numbers are needed concerning how many acres will be utilized for Open Space This is one of many items that keeps changing."

YarrowBay Response:

In Finding of Fact No. 18(B) of The Villages and Lawson Hills MPD Permit Approval Ordinances (Nos. 10-946 and 10-947), the Black Diamond City Council approved the open space acreage contained in each MPD's Land Use Map 505 acres and 152.8 acres for The Villages and Lawson Hills respectively. Section 2.2 of the Development Agreements, on the other hand, describes the minimum amount of open space that each MPD must provide based on the City's 50% open space requirement and the requirements of prior agreements 481.4 acres and 153.3 acres for The Villages and Lawson Hills, respectively. This means that, based on the Land Use Maps approved with each MPD and contained within Exhibit "L" of each Development Agreement, each MPD is in fact providing more open space than what is minimally required. There is no reason or basis to revise Section 2.2 of the Development Agreements.

Counter-response:

The response provided lends no clarity to the exact amount of open space anticipated in the DAs. Nowhere in the DAs is the MPD-approved 505 acres for the Villages stated as being adhered to. Instead, the minimum acreage allowable is quoted (481.4 acres). This provides

clear inconsistency between the DAs and the MPDs. The DAs should assert that, indeed, 505 acres will be dedicated to open space, as opposed to the minimum quoted.

SECTION 2.3.1 (The Villages and Lawson Hills)

Comments:

Lisa Schmidt (Exhibit 117): In Exhibit 117, Ms. Schmidt expresses concern that the consolidation or adjustment of Development Parcel boundaries authorized in this section may allow YarrowBay to extend its boundaries outside the existing MPD Project Site.

YarrowBay Response:

This Section 2.3.1 does not authorize YarrowBay to expand its MPD boundaries outside the project site boundaries legally described in Exhibit "B" of each Development Agreement. There is no basis or reason to revise this section of the Development Agreements.

Counter-response:

YarrowBay did not respond to the important portion of this statement, which asserts that there is no definition of “general character” in their statement that such would not change if they are allowed to adjust or consolidate Development Parcel boundaries. The portion of my original statement lacking response was, “This provision is asking for a degree of freedom that could negate mitigations and change the impact of the plan.There is no definition of ‘general character.’”

SECTION 4.4.6 (Lawson Hills) & SECTION 4.4.8 (The Villages)

Comments:

Ron Taylor (Exhibit 10): In his Exhibit 10, Ron Taylor alleges that "parcels can change size and shape without implication defying any expectations."

Lisa Schmidt (Exhibit 117): In Exhibit 117, Ms. Schmidt asserts that "[a]mendments to Open Space should be major amendments because of the set mitigations they influence."

YarrowBay Response:

Per these subsections of the Development Agreements, Development Parcel acreages can only be changed pursuant to and concurrent with an Implementing Project application (e.g., subdivision or binding site plans). Implementing Project applications are subject to the City's notice requirements as set forth in BDMC 18.08.120-.180. See Section 12.6.1 of the Development Agreements. Therefore, the public will have notice of any proposed Development Parcel acreage modifications and an opportunity to comment. Contrary to Ms. Schmidt's assertion, the MPD Ordinance at BDMC 18.98.100(D) and (I) specifically contemplates minor amendments to open space provided the minimum threshold amount is not decreased and locations are not significantly altered. There is no reason or basis to change these subsections of the Development Agreements.

Counter-response:

In this current draft DA, a wide variety of possible alterations to open space acreage are listed, and alterations are not limited to those on the list. Modifications to open space should be considered a major amendment to the DA, not only because the range of unidentified impacts to open space deserve review and mitigation to the fullest extent possible, but because those unidentified changes do not preclude changes that would fundamentally alter the MPD. BDMC 18.98.100(D) and (I) state that minor amendments would be allowable provided locations are not significantly altered. Because there is no assurance of universal definition of “significantly altered,” generalized changes without amendments should not be supported by the DA. Either alterations allowable without amendments need to be specified, or the overarching rule should be that they all require amendments to the DA. Opportunity for public comment does not assure changes are aligned to the MPD, especially if the DA is to be the governing document.

SECTION 4.4.7 (Lawson Hills) & SECTION 4.4.9 (The Villages)

Comments:

Ron Taylor (Exhibit 10): In his Exhibit 10, Ron Taylor alleges that "roads can be changed at will without implication, again defying expectations."

Lisa Schmidt (Exhibit 117): In Exhibit 117, Ms. Schmidt expresses concerns regarding Section 4.4.9 of The Villages Development Agreement.

YarrowBay Response:

Per these subsections of the Development Agreements, road alignments can only be changed pursuant to and concurrent with an Implementing Project application (e.g., subdivision or binding site plans). Implementing Project applications are subject to the City's notice requirements as set forth in BDMC 18.08.120-.180. See Section 12.6.1 of YarrowBay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order H the Development Agreements. Therefore, the public will have notice of any proposed road alignment modifications and an opportunity to comment.

Counter-response:

Once again, as stated in Exhibit 13 testimony, for clarification purposes, a limit needs to be imposed upon the degree of acceptable modification. Also, as with 4.4.6 and 4.4.8 above, the opportunity for public comment does not assure changes are aligned to the MPD, especially if the DA is to be the governing document.

SECTION 4.4.8 (Lawson Hills) & SECTION 4.4.10 (The Villages)

Comments:

Ron Taylor (Exhibit 10): In his Exhibit 10, Ron Taylor alleges that "this catch all section allows generally any change that the applicant comes up with."

Lisa Schmidt (Exhibit 117): In Exhibit 117, Ms. Schmidt expresses concerns regarding Section 4.4.10 of The Villages Development Agreement.

YarrowBay Response:

Contrary to Mr. Taylor's assertions, this subsection of the Development Agreements does not authorize any MPD Site Plan amendment that the Master Developer comes up with. Instead, any MPD Site Plan amendment not listed in the subsections of Section 4.4 may be processed as a Minor Amendment to the MPD Permit Approvals provided the criteria set forth in BDMC 18.98.100(A)-(H) are met. As noted above, a Minor Amendment to the MPD Permit Approvals requires notice under the City's Type 2 process. See Section 12.6.1(A) of the Development Agreements. If proposed site plan amendments do not meet these criteria, then they must be processed as Major Amendments, which requires an entirely new MPD Permit review process. See Section 12.8.14 of the Development Agreements.

Counter-response:

As Exhibit 117 states, because it is impossible to envision all possible amendments not listed, the City should reserve the right, on a case-by-case basis, to determine whether “any other amendment” is to be considered a major or minor amendment.

SECTION 4.10 (The Villages and Lawson Hills)

Comments:

Larry Baird (Exhibit 74): In his Exhibit 74, Mr. Baird objects to Section 4.10 of The Villages Development Agreement because he states "[t]here is no possible way the City of Black Diamond can know prior to the start of this development that the planned and agreed mitigations will adequately mitigate the probable significant adverse environmental impacts of The Villages MPD."

Lisa Schmidt (Exhibit 117): In her Exhibit 117, Ms. Schmidt objects to Section 4.10 of the Development Agreements.

YarrowBay's Response:

Contrary to Mr. Bawd's and Ms. Schmidt's objections, the provisions of Section 4.10 of both Development Agreements are exactly what are required by Washington's SEPA review process. See RCW Ch. 43.21C. At the earliest point in project planning, SEPA requires project proponents to submit the information necessary to have their projects reviewed for environmental impacts and to identify appropriate mitigation. See WAC 197- 11-055. FEISs were prepared for the MPDs, and have been deemed adequate. Subsequent Implementing Projects and any mitigation project that itself triggers SEPA review, will receive additional environmental review.

Counter-response:

Throughout testimony, several areas of the DAs have been shown to be altered, or “revised” from the MPD, and other areas leave specificity open to further revision. Because of this, many specific impacts identified in the FEIS have *not* been mitigated. Even though it is understood that implementing projects will each be required to undergo a

separate environmental review, the details that are provided in the DAs do not align with expectations of the FEIS; for example, the altered population expectations from the FEIS to the DA.

SECTION 8.3 (The Villages and Lawson Hills)

Comment:

Lisa Schmidt (Exhibit 117): In Exhibit 117, Ms. Schmidt asserts that the Development Agreements do not address mine hazard setbacks.

YarrowBay Response:

Contrary to Ms. Schmidt's assertions, the Development Agreements address mine hazard setbacks, where applicable, in the Constraint Maps contained in Exhibit "G" of both Development Agreements.

Counter-response:

The uncertain word in YarrowBay's response is "applicable." All high and moderate risk mine hazards should be applicable and outlined on this map, along with their buffers. As YarrowBay, itself, stated on Exhibit G, Macks Mine location is approximate, not field verified, and hazard zones have not been determined. It follows from this admission that appropriate buffers have not been set, either. So, at this point, the constraint map is incomplete and should not be approved.

SECTION 10.5 (The Villages and Lawson Hills)

Comments:

Cindy Proctor (Exhibit 71): In Exhibit 71, Ms. Cindy Proctor alleges that: (i) MPD Conditions of Approval Nos. 134 (The Villages) and 166 (Lawson Hills) are too vague and contradictory; (ii) Section 10.5.2 shall be deleted in its entirety; (iii) clarification should be added to the Development Agreements that Expansion Parcels are not required to be approved by future councils; and (iv) language should be added to the Development Agreements to clarify that the vesting standards are at the time of the Parcel Proposals Final Approval.

Lisa Schmidt (Exhibit 117): In her Exhibit 117, Ms. Schmidt expresses concerns regarding the Expansion Parcel process.

YarrowBay Response:

Citing and responding to the points in Ms. Proctor's Exhibit 71:

(i) The Conditions of Approval were adopted by the Black Diamond City Council in Ordinances Nos. 10-946 and 10-947. As noted in the Hearing Examiner's Pre-Hearing Order II dated July 6, 2011, the validity of Conditions of Approval Nos. 134 (The Villages) and 166 (Lawson Hills) cannot be challenged in the context of these Development Agreement Hearings. Moreover, Ms. Proctor failed to include a third Condition of Approval in The Villages MPD Permit Approval that also references the creation of a process for the inclusion of Expansion Areas: See Condition

of Approval No. 162 (The Villages) ("A process for including lands identified as 'Expansion Areas' in the application shall be defined in the Development Agreement.")

(ii) Deleting Section 10.5.2 of the Development Agreements would be a violation of MPD Conditions of Approval Nos. 134 and 162 (The Villages) and Condition of Approval No. 134 (Lawson Hills) which require "a process of including lands identified as 'Expansion Areas' in the application shall be defined in the Development Agreement." Without Section 10.5.2, these conditions are violated because there would be no process.

(iii) Section 10.5.1(E) provides that an Expansion Proposal "shall be reviewed using the process and procedures for either a Minor or Major Amendment to the MPD Permit Approval pursuant to Section 12.8.14 and BDMC 18.98.100..." Thus, an Expansion Parcel review process has been established that outlines decision-making authority. There is no reason to include Ms. Proctor's proposed clarification language.

(iv) There is nothing in the MPD Conditions of Approval or BDMC that require the additional language requested by Ms. Proctor. Vesting is governed by BDMC 18.98.195 and Section 15.1 of the Development Agreements.

Contrary to Ms. Proctor's assertions, Section 10.5.2 acknowledges that a SEPA document must be prepared for an Expansion Proposal that "discloses and evaluates impacts, if any, which were not addressed in the EIS for the original Project Site, such as impacts to elements of the natural environment located on the Expansion Parcels or additional traffic impacts." See Section 10.5.1(D).

Moreover, also contrary to Ms. Proctor's and Ms. Schmidt's allegations, an Expansion Proposal may qualify as either a Major or Minor Amendment to the MPD Permit Approvals (Ord. Nos. 10-946 and 10-947). It is entirely possible that YarrowBay may propose commercial or other non-residential uses on such parcels that: (1) would not affect minimum residential density; and (2) stay within the total amount of nonresidential development set forth in Section 4.3. Such Expansion Proposal may in fact be a Minor Amendment. The important take away, however, is that each Expansion Proposal shall be reviewed on a case-by-case basis. In summary, there is no reason or basis to revise Section 10.5 of the Development Agreements.

Counter-response:

The deletion of 10.5.2 as it currently exists does not constitute a violation of MPD COA 134 (of both) and 162 (of The Villages). Rather than defining a process of incorporating expansion parcels, this section simply provides permission for the expansion parcels to undergo a less complete SEPA review than would be performed by officials outside the City as part of a separate EIS. Such internal handling avoids the use of Best Available Science in determining environmental effects perhaps overlooked by the "SEPA Designated Official." Instead of the additional "SEPA document" that is referenced in 10.5.2, a statement should be made here to anticipate that expansion parcels will undergo a separate EIS, along with its official review process, to incorporate the evolved environmental status that will exist at the time of application for expansion.

Section IV of YarrowBay's response to testimony, organized in accordance with BDMC numbers.

In Exhibit 117, Lisa Schmidt also alleges inconsistencies with various sections of the BDMC. These BDMC sections are addressed by YarrowBay below.

BDMC 14.02.070. Ms. Schmidt alleges that the Development Agreements fail to contain exact figures of impervious ground cover as required by this code section. However, BDMC 14.02.070 requires that the City's stormwater and surface water management utility calculate the impervious ground cover of each parcel of developed real property in the City limits; it does not require that MPD development agreements provide such information. Impervious surface calculations will, however, be provided to the City with MPD Implementing Project applications. There is no reason or basis to revise the Development Agreements on the basis of DMC 14.02.070.10

Counter-response: The assertion made in Exhibit 117 referenced above does not demand that YarrowBay, themselves, calculate impervious ground cover, as the response was directed. It requires that YarrowBay provide the City with the information needed to calculate impervious ground cover. The City has not been provided the specificity of information needed to calculate the amount of impervious ground cover proposed in the DAs. BDMC 14.02.070 requires the City to be able to do so. This is important in order to avoid such situations as reaching the limit of impervious ground cover before necessary amenities are provided for those structures. Delaying the calculation of impervious ground cover (by either the Developer or the City) until the time of each Implementing Project fails to recognize the intent of BDMC 14.02.070 to ensure that the limit is not exceeded. The City needs, minimally, actual specific road designs, parking lot areas, and at least an estimate of building roof areas, with limited variability in order to ensure an overall “planned” development.

BDMC 14.04.330. Ms. Schmidt alleges that this BDMC section authorizes City Staff to exercise stricter standards for the MPDs in the Development Agreements. Contrary to Ms. Schmidt's assertions, Section 14.04.330 does not authority the *City* to impose stricter standards in the Development Agreements. This BDMC section is not applicable until the MPD Implementing Project stage. When applicants submit MPD Implementing Project applications, City Staff can then assess whether it is appropriate to exercise its authority under BDMC 14.04.330 based on reported threats to water quality, erosion, habitat destruction, protection of uninterruptible services and endangerment to property. There is no reason or basis to modify the Development Agreements based on this code section.

Counter-response: Section 14.04 of BDMC addresses stormwater easements, run-off streams, and set-backs that are proposed in the DAs. BDMC 14.04.330 does not reserve the implementation of stricter standards by City Staff for Implementing Projects. Rather, section C of the same Code states, “Where requirements in this chapter are covered in any other law, ordinance, resolution, rule or regulation, the more restrictive of the two shall govern.” Accordingly, the City could, for instance, choose to find the placement of stormwater ponds unacceptable as proposed in the DAs.

BDMC 19.08.030. Ms. Schmidt alleges that the Development Agreements are insufficient because they do not address the use requirements of City's Shoreline Master Program (SMP) as set forth in BDMC 19.08.030. No action is required in the Development Agreements to comply with City's SMP. If, in the future, an Implementing Project application triggers shoreline jurisdiction, the Implementing Project will be reviewed for compliance with the SMP's use criteria then. There is no reason or basis to revise the Development Agreements based on the City's Shoreline Master Program use criteria.

Counter-response: The fact remains, as cited in Exhibit 117, that BDMC 19.08.030 states, “7. Adequate water supplies shall be available so that groundwater quality will not be endangered by overpumping.” As discussed at length in Exhibit 117, adequate water supplies have not been shown for the DAs’ population as revised from the time of the FEIS. Water supply is not a concern that should be deferred until the Implementing Project stage.

JJ Condition of Approval No. 154 (The Villages). Lisa Schmidt alleges in Exhibit 117 that exact acreages should be provided in order to comply with this condition. However, nowhere in the condition language are exact acreages" required. Instead, this condition of approval requires that the Development Agreements define and article the timing of final open space designation.

Counter-response: Page 24 of Exhibit 117 states, “...only approximations are given, including the amount of land dedicated to Open Space, and exact acreages should be provided in order to comply with this condition.” While this statement more accurately shows non-compliance with COA 153, rather than COA 154, the fact remains that “specific details on which open space shall be dedicated to the city, protected by conservation easements and maintained by other mechanisms shall be established as part of the development agreement.” It is those “specific details” that are needed.

In conclusion, the following items are referenced from Exhibit 117 either receiving no response, or included in a general objection which I request be overruled because of possibly overlooked relevance to the Hearing:

-- Page 3’s discussion of the Black Diamond Comprehensive Plan, which seems to exclude actual critical areas prior to calculation of Open Space.

-- Page 5’s (Section 4’s) TDR discussion and the assertion that sending parcels, which may contain critical areas, should not be sending development rights from those critical areas, themselves, or their buffers, because those areas do not have rights for development.

-- The recognition on page 6 that the FEIS was not approved for the DAs’ interpretation of “single-family” and the resultant huge additions to population expectations.

- The suggestion, on pages 6 and 7, that limitations be set to acceptable inaccuracies as mapped (not as a new Condition, but for clarification purposes).
- The numbers of dwelling units for Phase I, as listed on page 7, that differ between the MPD and the DA.
- Noting of need for documentation, in various places of the Exhibit, of right-of-way passages for sewer, water, and roads proposed to cross land not currently owned by YarrowBay.
- Denial of deferment of improvements, as discussed on page 8 of the Exhibit.
- The suggestion in 7.1.5 that YarrowBay be held to deadlines as concerns corrections to be made following inspections. If this item is to be left to the Implementing Project level, then the timeframe demands upon the City should not be included here.
- Concerns about water availability on pages 9 and 10 of the Exhibit, which are relevant at the DA stage, because of the change in expected population from the time of the FEIS. The suggestion that certificates of water availability (other than by reference to the Agreement) should be required.
- Discrepancies throughout pages 12-18 between water quality and stormwater monitoring offered and that expected by the MPD at the level of the DA.
- The need for plans for responsive mitigation.
- Assertions in various places of the Exhibit that facilities should be kept within the UGA.
- Information needed relevant to COA #74, 63, and 65, as discussed on page 17 of the Exhibit.
- Information needed relevant to MPD COA #103, as discussed on page 18 of the Exhibit.
- Information needed relevant to MPD COA #75, as discussed on page 19 of the Exhibit.
- Pursuant to MPD COA #115, a tree inventory should be included in the DA (“prior to implementing projects”).
- As discussed on page 22, justification for buffer reductions and deviations need to be provided, along with the support of Best Available Science.
- Also as discussed on page 22, created functionally-equivalent wetlands should be mapped.

-- As discussed on page 24, additional work is needed concerning traffic studies, especially on the Green Valley Road.

-- As discussed on page 25 of the Exhibit, Section 15.5 should be excluded, as the Hearing Examiner and City should reserve the right to reject or remand the Agreements in part or in whole.

-- More specific information for general approximations is needed throughout.

Thank you, Mr. Hearing Examiner, for inviting additional comments that you are not able to rule on, for passing those concerns on to the City Council, and most of all, for listening to everyone.

Sincerely,

Lisa D. Schmidt

Stacey Borland

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Thursday, August 18, 2011 11:46 PM
To: Stacey Borland
Subject: Fwd: Response pursuant to Hearing Examiner Order on Yarrow Bay Objections to Exhibits
Attachments: OtherDevelopmentComparison Testimony for DA Hearings.docx

Hi Stacy,
Forwarding because Steve is out of the office. thanks,
Kristen

----- Forwarded message -----

From: **Kristen Bryant** <kristenbry@gmail.com>
Date: Thu, Aug 18, 2011 at 11:24 PM
Subject: Response pursuant to Hearing Examiner Order on Yarrow Bay Objections to Exhibits
To: Steve Pilcher <spilcher@ci.blackdiamond.wa.us>
Cc: Brenda Martinez <bmartinez@ci.blackdiamond.wa.us>

Hello Mr. Pilcher,
This is the first of several emails with updated photograph information pursuant to the subject of this message. Please forward to the Hearing Examiner.

Thank you,

Kristen - [425-247-9619](tel:425-247-9619)

 Please think of the environment before printing this email.

--

Kristen - [425-247-9619](tel:425-247-9619)

 Please think of the environment before printing this email.

EXHIBIT 250

Testimony for Development Agreement Hearings – City of Black Diamond, “The Villages” and “Lawson Hills” applications.

August 4, 2011

Kristen Bryant, 1006 139th PI NE, #C-4. Bellevue, WA 98005

Photograph update August 18, 2011: all photos have been updated to show below each where it was taken, if available, when taken and photographer. In cases where the photographer is not noted, the photographer is either myself or members of Save Black Diamond. In all cases, I affirm that the photo is authentic and reflects current conditions.

Contents:

1. First, this document depicts a failed stormwater system in the development of Grand Ridge. This site was clear cut and during the construction period serious problems occurred. Then, related clarifications and requirements to be added to the Development Agreement are stated.
2. Next, this document includes some issues from another development, the Issaquah Highlands. These items will be relevant to decision makers as they try to form a vision of the twenty years of the Development Agreement in Black Diamond.

1. Regarding Mitigations over the Twenty Year Contract

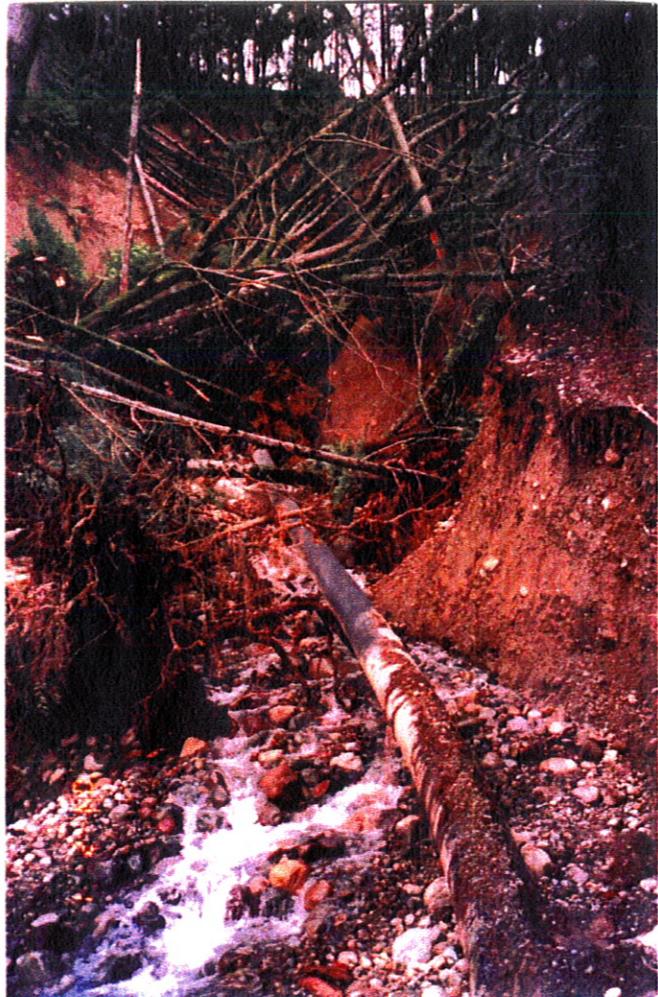
Following is an example of something that happened in a recent local development:

This 150-acre site on Grand Ridge was cleared of all trees and top layer of gravel, down to clay several years ago. The Issaquah Highlands site was one of the major recharge areas for the Issaquah Aquifer, which supplies drinking water to the residents of Issaquah. With the forest cover and soils gone, almost double the rainfall now hits that ground. Furthermore, without vegetation and soils to absorb the rain water, it runs off at a faster rate. Apparently, the engineered system of stormwater detention ponds and constructed infiltration was overwhelmed. During the construction of the new Sunset Interchange, the State Department of Transportation had moved a lot of earth from below. Numerous new springs are now weeping and cascading out of the hillside below the cleared areas and above the new road. Previously, this hillside had been very dry, as shown by the grasses, scotch broom and firs growing on it.

This event triggers some interesting issues, some raised more than a decade earlier by community members during the Environmental Impact review process .

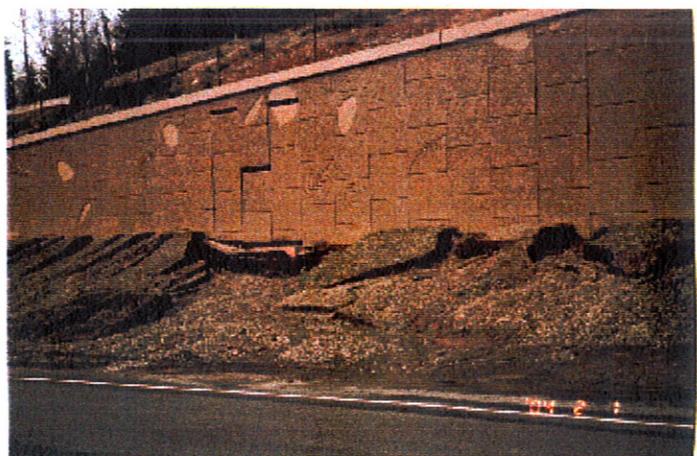
The Issaquah Aquifer could be impacted and affect Issaquah's water supply.

Similar issues could happen in Black Diamond, especially near Lawson Hills.



Where: Downgradient from Grand Ridge development.
When: 2004. Who: Save Lake Sammamish website

Blowout



Where: Westbound I-90 on-ramp at the Sunset Interchange (Renton Rd). When: 2004. Who: Save Lake Sammamish website.

The undermined retaining wall

The city of Black Diamond should require the following to protect itself and residents:

“In the event any environmental mitigations fail, it is required that an independent investigation and mitigation plan be created by different people than those who created the original plan. In addition, the permitting shall be done by different individuals than those who permitted the original plan. This new plan will be adopted subject to applicable laws and regulations. Where changes are recommended by the new plan, the old plan will no longer be valid.”

It is unlikely that those who designed, reviewed and permitted the failed system would be able to look at it in a fresh and objective fashion.

In addition, the city of Black Diamond’s Municipal Code that no clearing and grading be done in winter. In the Development Agreements are provisions seeking to change this. Instead, the correct interpretation should be as follows:

The BDMC regulates and restricts clearing and grading within the wet season. The code’s provisions can be read as a prohibition against clearing and grading where the conditions and the weather would likely result in high risk of erosion, sediment, flooding, or landslides. The Development Agreement’s provisions to allow clearing and grading during the wet season do not reflect the Municipal Code’s intent and language. The provisions in the Development Agreement to mitigate potential damage will likely be ineffective because they do not require 3rd party review. They do not require a pre-development and monitoring plan, and they do not provide for instant reaction to deal with emergencies or issues.

The problems associated with rainy season clearing and grading are well-documented and well-known. Certain “best management” practices have been shown to be reasonable effective at controlling these problems. Thus, the following condition is proposed:

“Clearing and grading during the rainy season from October 1 thru April 1 is prohibited. “

We offer an alternative condition as follows:

Clearing and grading October 1 through April 1 shall be prohibited unless all of the following conditions are met:

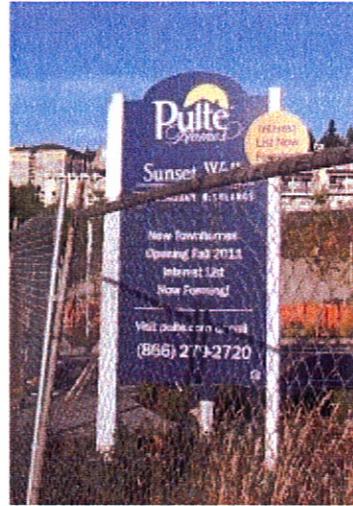
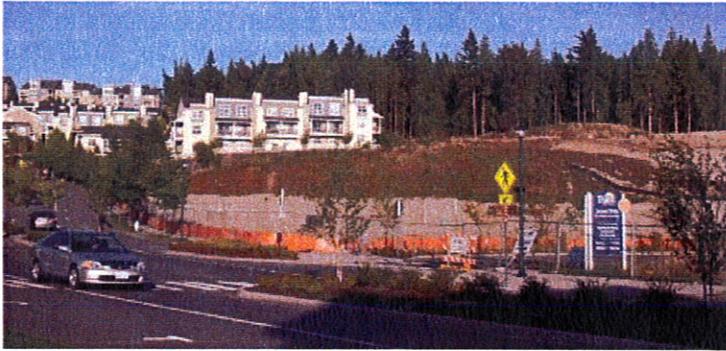
1. The developer can document substantial financial hardship
2. The developer has prepared an erosion control plan that includes flow control and storage equal to the storage and flow control requirement of the state 2005 stormwater manual to handle flows during the clearing and grading.
3. The erosion and flow and flood control plan has been reviewed by a competent 3rd party selected by the city.
4. A 24-hour emergency response crew and equipment are on standby to deal with any emergencies.

2. Development Examples from Issaquah Highlands

Construction

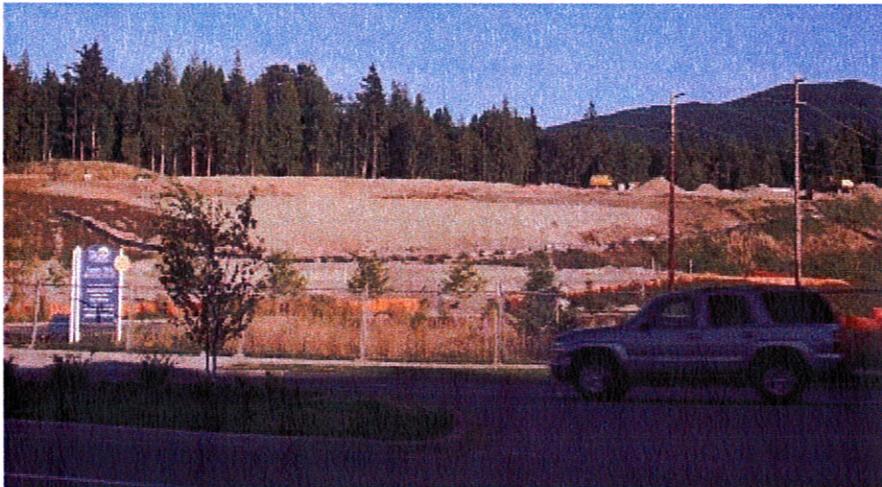
Although the Issaquah Highlands has been going on for a long time and Issaquah has recently grown by about 20,000 people, there is still a lot of construction visibility in people’s daily lives.

This construction zone is advertised as planned for 2011... It does not look like it will be ready.

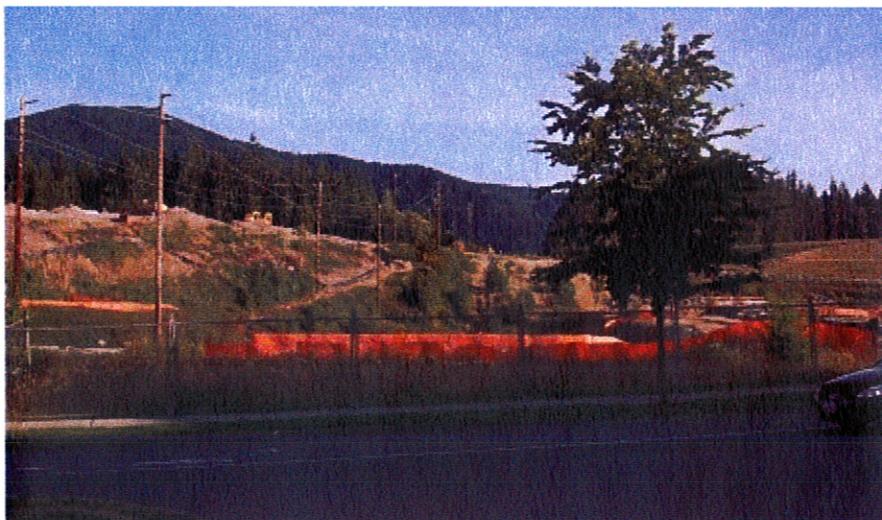


Where: looking Across NE Park Dr, Issaquah, Parcel # **363040020**. When: Early Aug 2011.

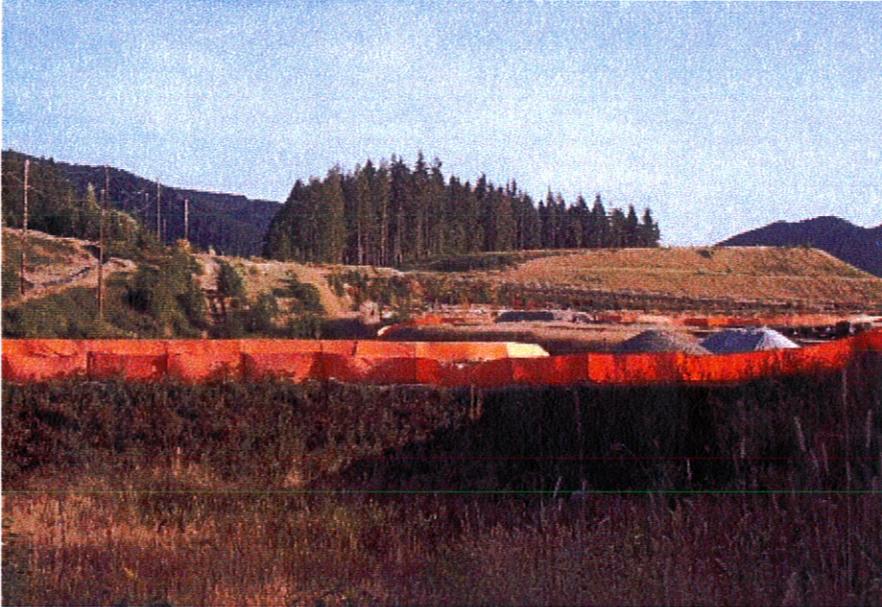
Notice the trees in the background, while the same trees that once covered the construction area have been removed. In the highlands living areas, there are no old trees, only new ones planted after construction.



Where: Looking across NE Park Dr, Issaquah, Parcel # **363040020**. When: Early Aug 2011.



Where: Across NE Park Dr, Issaquah, Parcel # **363040020**. When: Early Aug 2011.



Where: Across NE Park Dr, Issaquah, Parcel # **363040020**. When: Early Aug 2011.

The construction zone is blocked by chain-link fence.



Where: Along NE Park Dr, Issaquah, near Parcel # **363040020**. When: Early Aug 2011



Where: Issaquah, Parcel # **3630400020**. When: Early Aug 2011.



Where: Issaquah, Parcel # **3630400020**. When: Early Aug 2011.

It is hard to see, but there is a trail through this development. The developer must have been required to put the trails in first, which is a good thing and I recommend Black Diamond do `the same.

Where: Issaquah, Parcel # **3630400020**. When: Early Aug 2011.



Where: Issaquah, overlooking parcel # **363040090**. When: Early Aug 2011.

Open Space and the Environment

This is an example of open space with powerlines crossing through. Black Diamond should make sure that its open space is protected and more attractive and environmentally friendly than this.



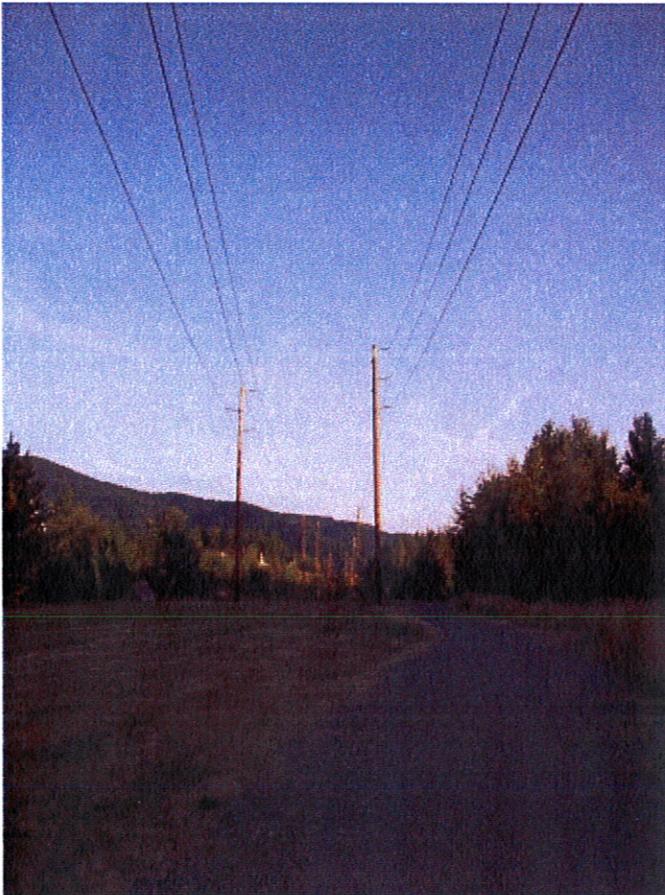
Where: Parcel # **362980440** near NE Katsura St, Issaquah WA. When: Early Aug 2011. Who: Kristen Bryant.

It appears to be bordered by wetlands, where the tall trees have fallen and some replaced.



Where: Parcel # **3629800440** near NE Katsura St, Issaquah WA. When: Early Aug 2011. Who: Kristen Bryant.

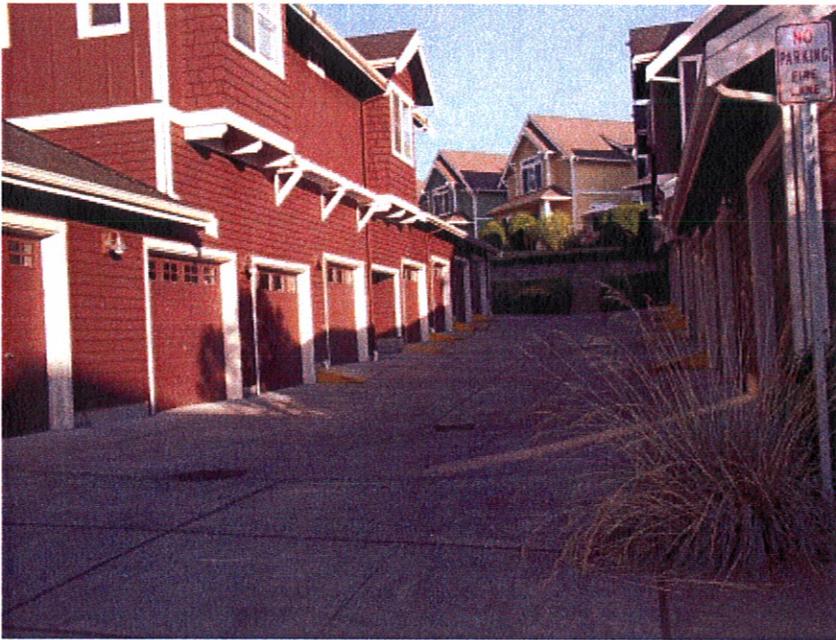
More open/trail space. We must prevent this from being the only type of opens space Black Diamond has.



Where: Parcel # **3629780170**, Issaquah WA. When: Early Aug 2011. Who: Kristen Bryant.

Some Parking examples

This is a back-loaded alley in Issaquah Highlands.

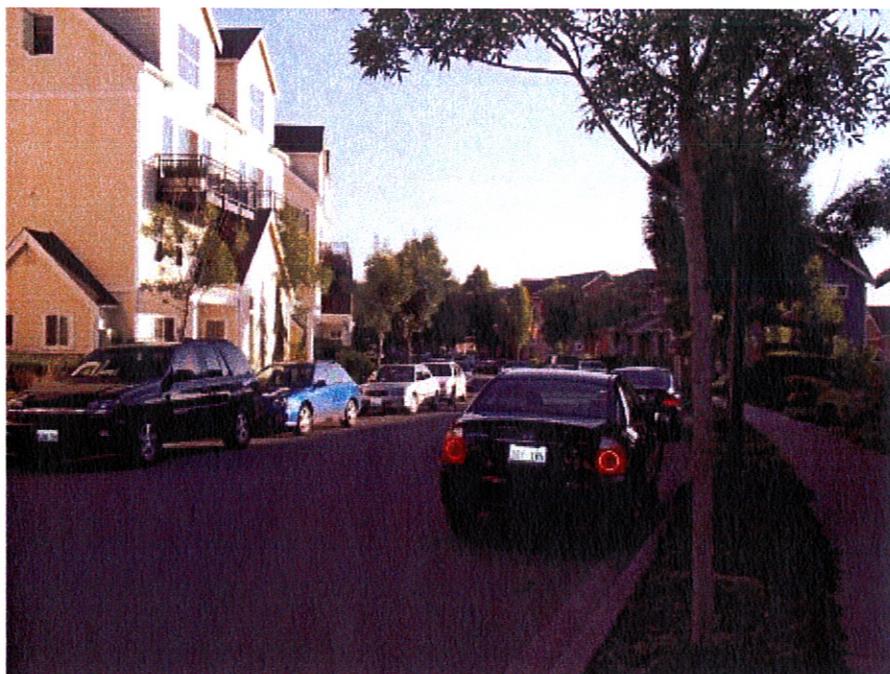


Where: From this point to the end of the document images are from Issaquah Highlands, exact street not noted. When: Early Aug 2011.

These still seem new and fairly nice, but it does not seem fitting with the character of Black Diamond.



In this area residents use a lot of street parking. Note the new trees. The previous evergreen forest was not left behind.

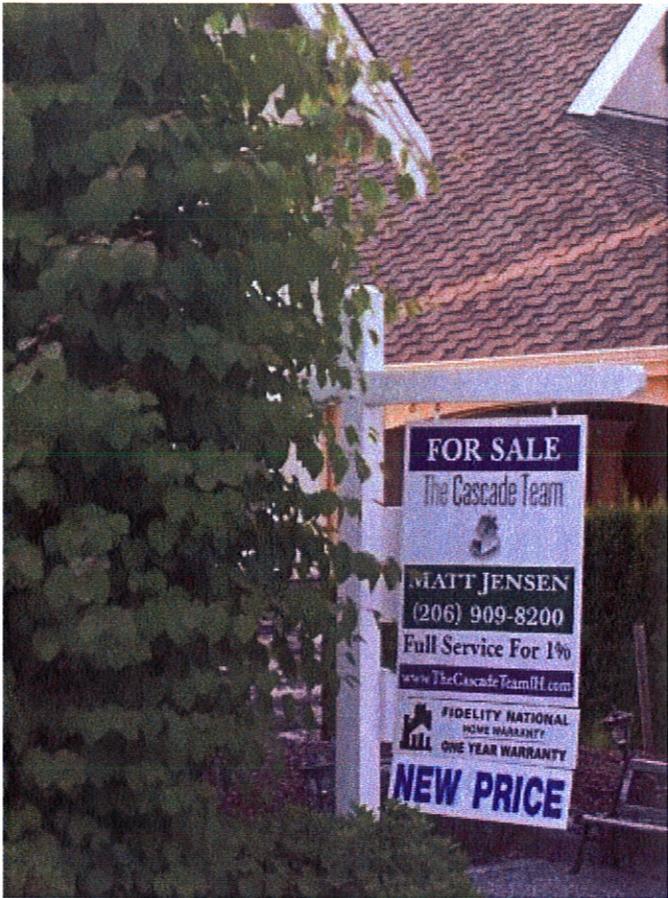


More street parking and small trees. Black Diamond has a tree protection ordinance and a lot of evergreens. Getting rid of the evergreens to switch to this kind of street isn't right for Black Diamond.



Homes for Sale.

There are above 80 homes for sale in the Issaquah Highlands. Many were completed in 2011, leaving those who bought in the previous 10 years and now face a slow market to compete with new homes.



Office Businesses

In the business area of Issaquah Highlands, it appears there is some office space still under construction, and not occupied. Some kind of construction project continues.



Stacey Borland

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Thursday, August 18, 2011 11:46 PM
To: Stacey Borland
Subject: Fwd: Response pursuant to Hearing Examiner Order on Yarrow Bay Objections to Exhibits
Attachments: Road Testimony2 for Development Agreement Hearings.docx; KristenBryant RoadTestimony for DAs.docx

----- Forwarded message -----

From: **Kristen Bryant** <kristenbry@gmail.com>
Date: Thu, Aug 18, 2011 at 11:25 PM
Subject: Re: Response pursuant to Hearing Examiner Order on Yarrow Bay Objections to Exhibits
To: Steve Pilcher <spilcher@ci.blackdiamond.wa.us>
Cc: Brenda Martinez <bmartinez@ci.blackdiamond.wa.us>

Second message...

On Thu, Aug 18, 2011 at 11:24 PM, Kristen Bryant <kristenbry@gmail.com> wrote:
Hello Mr. Pilcher,
This is the first of several emails with updated photograph information pursuant to the subject of this message. Please forward to the Hearing Examiner.

Thank you,

Kristen - [425-247-9619](tel:425-247-9619)

 Please think of the environment before printing this email.

--

Kristen - [425-247-9619](tel:425-247-9619)

 Please think of the environment before printing this email.

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EXHIBIT 251

Kristen - 425-247-9619

 Please think of the environment before printing this email.

Testimony for Development Agreement Hearings – City of Black Diamond, “The Villages” and “Lawson Hills” applications.

August 4, 2011

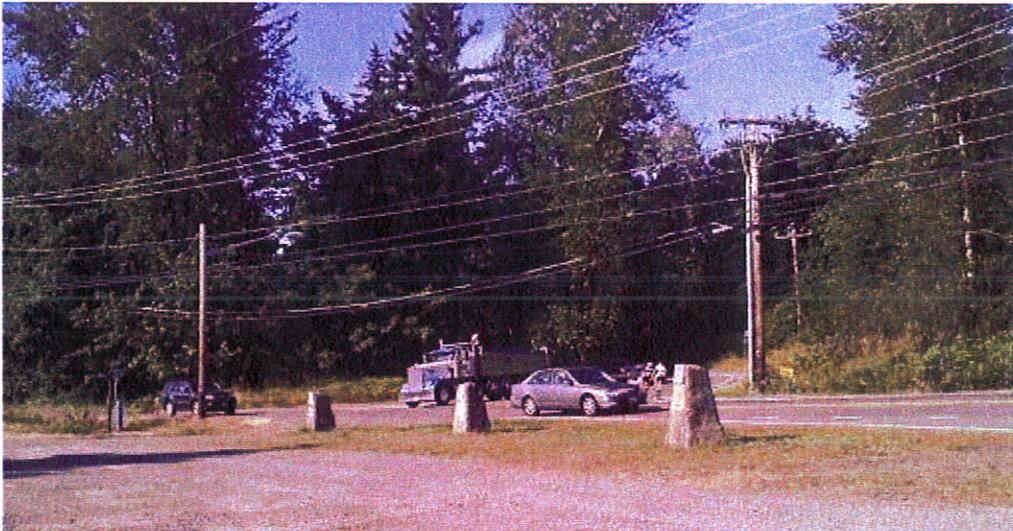
Kristen Bryant, 1006 139th PI NE, #C-4. Bellevue, WA 98005

Photograph update August 18, 2011: all photos have been updated to show below each where it was taken, if available, when taken and photographer. In cases where the photographer is not noted, the photographer is either myself or members of Save Black Diamond. In all cases, I affirm that the photo is authentic and reflects current conditions.

This document is a continuation of Road Testimony. Broken up to prevent documents from being too large.

Areas where some Traffic Funding will be provided by the Developer:

1. Issaquah-Hobart Road and Highway 169. I believe that along with the Roberts Drive traffic circle, some changes will be made to the Issaquah Hobart Road. At rush hour people wait 5 minutes or more to turn. So, will changes now only accommodate needs now, and not those needs brought on by the city’s MPD-based rapid growth?



Where: looking across hwy 169 and parcel **1121069099**. When: early Aug 2011.

2. The intersection of Lawson St and highway 169. People can wait ten minutes to turn onto Highway 169. Same potential funding issues as above.



Where: Looking north on Highway 169 at intersection of Lawson ST, Black Diamond. When: Early Aug 2011.

3. Intersection of 169 and Kent-Kangley in Four corners. This is part of Maple Valley. Will the Maple Valley funding agreement with Yarrow Bay be used to reduce some problems here? But as Black Diamond expands, could it possibly be enough? Maple Valley has many many troubled intersections already. The money will work for some of today's problems, but leave tomorrow's problems of 20,000 Black Diamond residents unsolved.



Where: Looking northeast on highway 169 near parcel # **2722069046**. When: Early Aug 2011.

Testimony for Development Agreement Hearings – City of Black Diamond, “The Villages” and “Lawson Hills” applications.

August 4, 2011

Kristen Bryant, 1006 139th PI NE, #C-4. Bellevue, WA 98005

Photograph update August 18, 2011: all photos have been updated to show below each where it was taken, if available, when taken and photographer. In cases where the photographer is not noted, the photographer is either myself or members of Save Black Diamond. In all cases, I affirm that the photo is authentic and reflects current conditions.

This document addresses traffic improvements not being made or paid for by the developer. The city of Black Diamond should consider whether the Development Agreement appropriately allows them to place additional traffic conditions or update impact fees for road improvements. As the town grows from only 4000 in population to up to 20,000 in population, many streets will experience the impacts of growth. Many of these are not uppermost in our minds right now.

Those streets we think of and have planned for the developer to improve are those that today, even with a small population, already have traffic problem. These include Lawson St and 3rd Ave (Highway 169), for example. But paying for a traffic light and traffic flow improvements that are already needed today does not mean that this will be sufficient as the population dramatically increases.

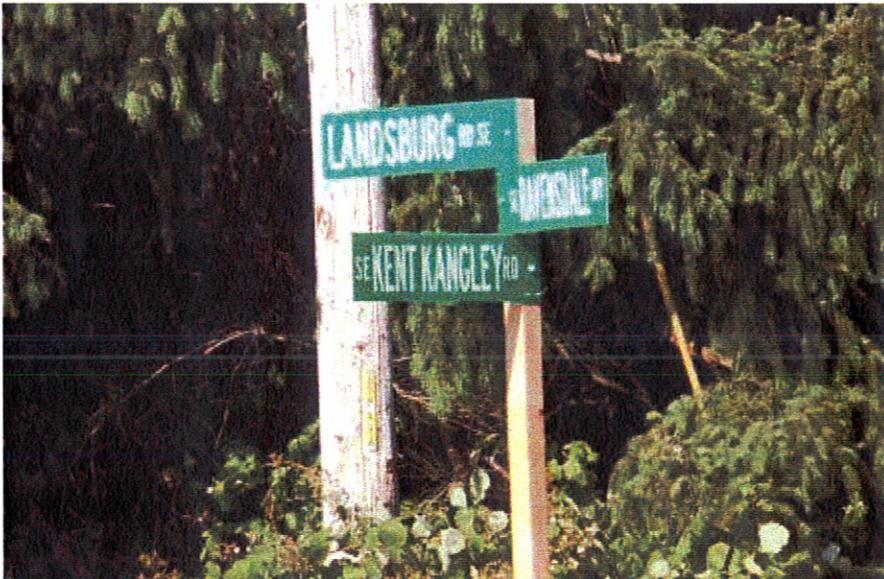
Below are some additional streets to consider in and around Black Diamond. What improvements will be needed and how will (we) the city, the county, or the state pay for them? If a street or intersection is already improved, will it be enough not just for today but for 5 times the traffic?

Most of the images shown are of areas that will not receive ANY traffic funds from the developer, but will receive many additional drivers from the population increase.

1. Ravensdale Road and Kent-Kangley Road. This will not be improved by Black Diamond or the developer, but will see significant traffic increase.



Where: SE Ravensdale Way and SE Kent-Kangley Rd. When: early Aug 2011.



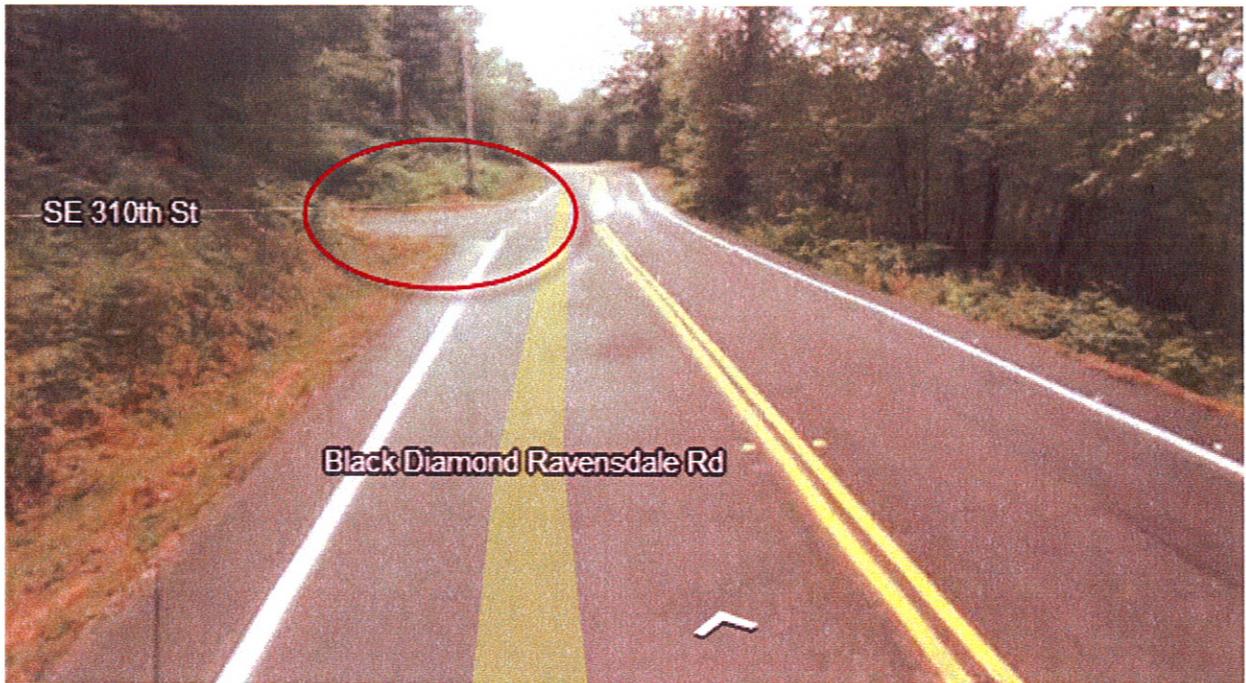
Where: SE Kent-Kangley Rd and SE Ravensdale Way. When: When: early Aug 2011.

2. Ravensdale-Black Diamond road between Highway 169 and Morgan Creek development. Narrow shoulder, drops to Ginder Creek on one side, up hill on the other. Cannot be widened, and no funds planned to do so.



Where: near parcel: **1121069056** When: within last 2 years. Who: Google Maps.

3. The intersection of SE 310th and BD-Ravensdale Road. Already a dangerous stretch with poor visibility due to corners. Additional traffic will likely lead to accidents.



Where: as described in image and above. Looking South. When: within last 2 years. Who: Google Maps.

4. Highway 169 between Four Corners and Black Diamond. This is not only an example of an area that will become more congested, it is an example of the future road NEEDS of Black Diamond. Notice the wide turn lanes and widening at traffic lights. This is the kind of thing that will be needed when Black Diamond grows to the size of Maple Valley, but most of the streets don't have the open space next to them to allow it. Most residents don't want the extra pavement. The environmental mitigation is difficult as well.



Where: along highway 160 south of kent-kanglely, exact parcel unknown. When: Early Aug 2011.

5. Highway 169 and 280th Street in Black Diamond.



Where: Hwy 169 and SE 280th st. When: early Aug 2011

6. Where Summit Drive intersects Highway 169. There is no traffic light. Residents of Diamond Glen will endure long wait times to turn. Additionally, the business area further south where a number of businesses will find it increasingly difficult for customers to make left turns.



Where: aerial over Hwy 169 and Summit Pl. When: within last several years. Who: Google Maps.

7. Highway 169 south of Summit Dr.



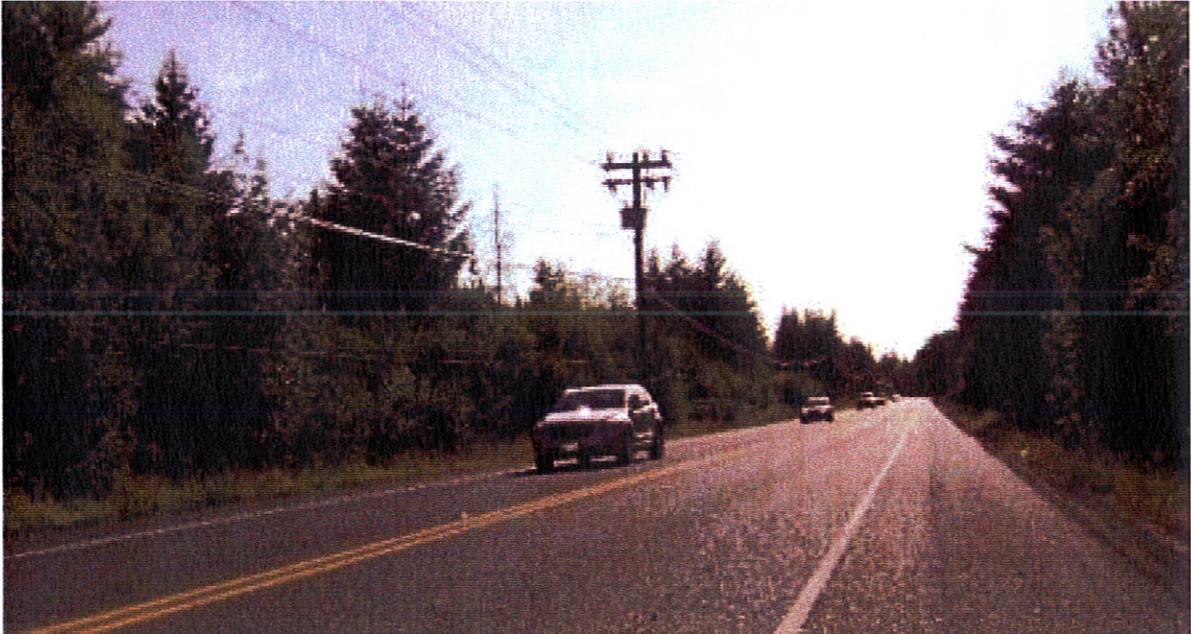
Where: approx. 30400 3rd Ave, Black Diamond, WA facing south. When: Early aug 2011.

8. The entrance to Cedar Brook Mobile Home Park. From 90-100 homes have occupied this area for many years. It is already difficult to turn in and out due to traffic.



Where: aerial, red circle is over approx. 31100 3rd Ave, black diamond, wa. When: within last several years. Who: Google maps.

9. Auburn-Black Diamond Road near town.



Where: looking west on Auburn-Black Diamond Road near parcel **1521069100**. When: early Aug 2011.

10. Near 101 Pines on the Auburn-Black Diamond Road. The people who live here will not get a traffic improvement paid by Yarrow Bay.



id

Where: originally mis-labelled. Please disregard.

11. Covington-Sawyer Road.



Where: originally mis-labelled. Please disregard.

12. Roberts Drive coming into Black Diamond from the west. This road may be overwhelmed during construction, but little improvements will be paid by the developer. The bottom of the hill has a small old bridge going over wetlands.



Where: Roberts Dr and 236th Ave SE, looking east on Roberts Dr. When: Early Aug 2011.

13. The intersection near Lake Sawyer Grocery does not have funds from the developer.



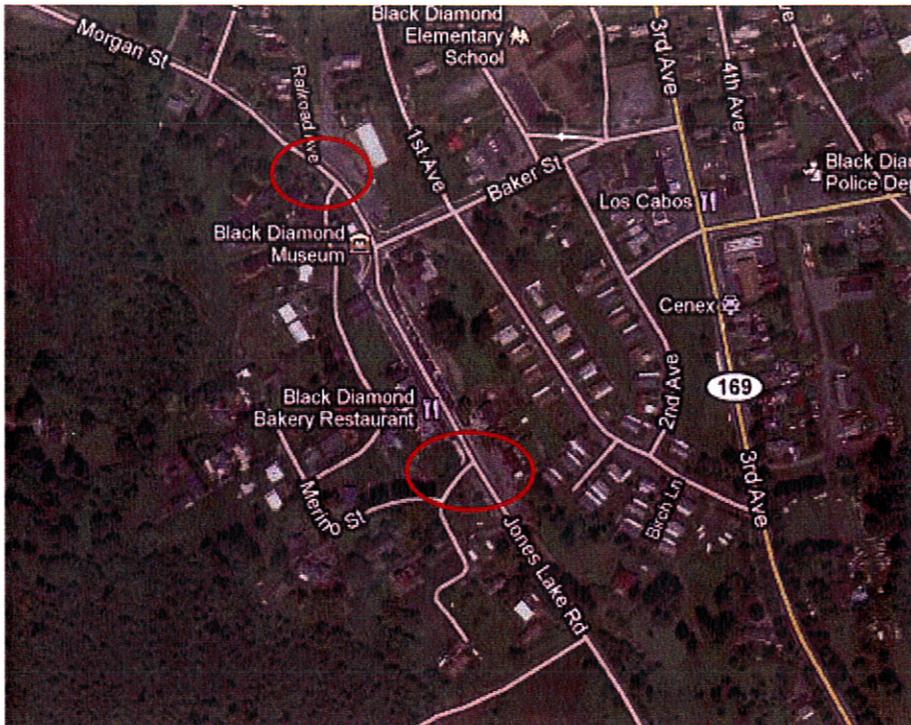
Where: 216th Ave SE and SE 292nd St, Black Diamond, WA looking north. When: Early Aug 2011.

14. Highway 169 near Jones Lake. Turning left from Railroad Ave, Old Lawson Road, or Plass Road will be increasingly problematic. Additionally, how will construction on Lawson Hill and the corresponding water drainage work in the area affect traffic? These local roads, as well as local business and local commuters will face large challenges for a number of years.



where: Parcel # **1421069026** and Highway 169. When: early Aug 2011. 2nd photo: Jones Lake Aerial, parcel # **142106HYDR**. When: in last several years. Who: Google Maps.

15. Railroad Avenue will become a pass-through for some residents headed south from the Villages. However, tiny Merino street is already in a difficult position for residents to go out into town. The street has poor visibility for those on Railroad Ave. This is not much of a problem now because the road in front of the bakery sees little traffic except on Sundays when people are not in a hurry.



Where: Aerial over streets as shown. When: in last several years. Who: Google Maps.

16. The intersection of 5th St and Lawson. When a traffic light goes in at Highway 169, and when traffic greatly increases on Lawson, the backup of cars will potentially make a left turn from 5th Street impractical at busy times.



Where: Aerial over streets as shown (Lawson St and 5th Ave). When: in last several years. Who: Google Maps.

17. Wear and tear on the Green River Gorge bridge to Enumclaw



Where: Highway 169 near parcel **2521069010**, & Green River Gorge bridge. When: in last several years. Who: Google Maps.

18. Lawson St. Consider maintenance on Lawson St. Lawson St will see a huge increase in construction traffic and later residential traffic. This street on a steep hill is already an aging road.



Where: Intersection of Newcastle Dr and Lawson St, Black Diamond. Looking across Lawson St.
When: Early Aug 2011

19. Highway 169 headed toward Enumclaw. No funded improvements planned. Narrow shoulders and power lines will make widening difficult.



Where: Highway 169 between Enumclaw and Black Diamond, more specific location not available. When: Early Aug 2011.

20. Green Valley Road and Highway 169.



Where: Highway 169 looking south to Green Valley Road intersection. When: Early Aug 2011.



Where: West of Highway 169 looking east to Green Valley Road. When: Early Aug 2011.

21. Enumclaw-Black Diamond Road and Enumclaw-Franklin Road. This intersection can already be very difficult to cross. See information in next item below about additional school-year traffic problems.



Where: Enumclaw-Franklin Road looking west across Highway 169. When: Early Aug 2011. (both photos).



Where: Highway 169 and Enumclaw-Franklin Road and as shown. When: within last several years.
Who: Google Maps.

22. Krain Corner – 400th St in Enumclaw. During the school year (unfortunately pictures not available during summer when this document was produced), this intersection gets very backed up. With additional students driving to Enumclaw high school and parents driving to middle schools and possibly elementary schools Enumclaw for years during the build-out, this intersection will be a major problem.



Where: Highway 169 facing south across SE 400th St, Enumclaw, WA. When: Early Aug 2011.

23. Roberts Dr near the intersection of Morgan St. It will be many years before an additional connector road will take some of the traffic from the Villages over to Highway 169. In the meantime, this road will have to take a lot of construction traffic and traffic from new residents. How are changes and needs of this road going to be handled by the city and is there a way to hold the developer accountable for construction noise and road damage?



Where: Roberts Dr in Black Diamond looking east toward intersection of Morgan St (on right).
When: Early Aug 2011.

24. Existing Roberts Drive:



Where: Roberts Dr. in Black Diamond looking at intersection of Union Dr. When: Early 2011

25. Roberts drive has homes close by, and narrow streets crossing it. It is quaint and charming now. Too much traffic could necessitate expensive projects to widen involving moving power lines and acquiring homes to be demolished.



Where: intersection of Roberts Dr and Union Dr (looking south). When: Early 2011.

26. On Morgan St in Black Diamond, it can be difficult to widen the road or do construction repairs because of nearby historic homes.



Where: near 24400 Morgan St, Black Diamond, looking east. When: Early 2011.

Stacey Borland

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Thursday, August 18, 2011 11:47 PM
To: Stacey Borland
Subject: Fwd: Response pursuant to Hearing Examiner Order on Yarrow Bay Objections to Exhibits
Attachments: KristenBryant Watershed and Images Testimony DAs.docx

----- Forwarded message -----

From: **Kristen Bryant** <kristenbry@gmail.com>
Date: Thu, Aug 18, 2011 at 11:26 PM
Subject: Re: Response pursuant to Hearing Examiner Order on Yarrow Bay Objections to Exhibits
To: Steve Pilcher <spilcher@ci.blackdiamond.wa.us>
Cc: Brenda Martinez <bmartinez@ci.blackdiamond.wa.us>

Third message.

Thanks,
Kristen

On Thu, Aug 18, 2011 at 11:25 PM, Kristen Bryant <kristenbry@gmail.com> wrote:
Second message...

On Thu, Aug 18, 2011 at 11:24 PM, Kristen Bryant <kristenbry@gmail.com> wrote:
Hello Mr. Pilcher,
This is the first of several emails with updated photograph information pursuant to the subject of this message. Please forward to the Hearing Examiner.

Thank you,

Kristen - [425-247-9619](tel:425-247-9619)

--

Kristen - [425-247-9619](tel:425-247-9619)

 Please think of the environment before printing this email.

EXHIBIT 252

Public Hearing Testimony

To The City of Black Diamond

Development Agreements for The Villages and Lawson Hills

From: Kristen Bryant
1006 139th PI NE, Apt C-4,
Bellevue WA 98005

Photograph update August 18, 2011: all photos have been updated to show below each where it was taken, if available, when taken, and photographer. In cases where the photographer is not noted, the photographer is either myself or members of Save Black Diamond. In all cases, I affirm that the photo is authentic and reflects current conditions.

My testimony includes this document as well as an additional document titled "DevAg Testimony 2011-07-14.pdf".

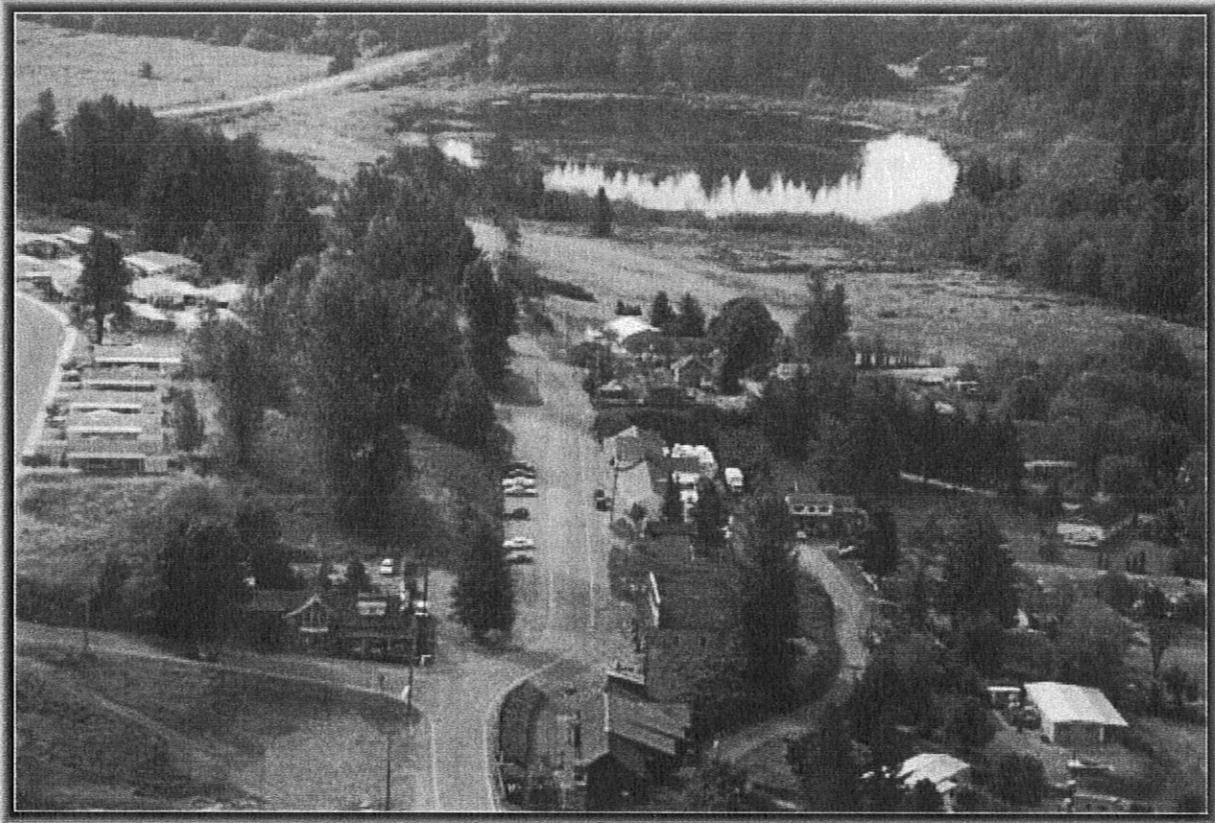
A view from Lawson Hill. Much of these trees will be removed as part of the Lawson Hills development. If there are run-off problems during and after construction, the city needs to find a way to hold the developer accountable. The city also needs to protect the peace and quiet this area affords for existing residents.



Where: from Parcel #: **1121069113**, When: spring 2011

The city of Black Diamond must protect Ginder Creek. This includes allowing changes for unforeseen consequences of development. The drainage from Lawson Hills will be very near here. These images depict parts of the creek as it is today.

Jones Lake from the air. Stormwater may impact the lake. The city should require all legal options to prevent impacts to this natural treasure.



Where: Aerial from approx. over Morgan St, can see Baker St & Railroad Ave. When: several years old, still reflects current conditions. Who: Photographer Unknown.

Black Diamond Lake and surrounding area. The watershed and buffers should be protected. The city must take the strongest precautions possible. When looking at 20 year impacts, this legacy should be kept in mind. Using the Tree Ordinance and Open Space rules, it is possible to require the developer to keep large numbers of the evergreens shown.

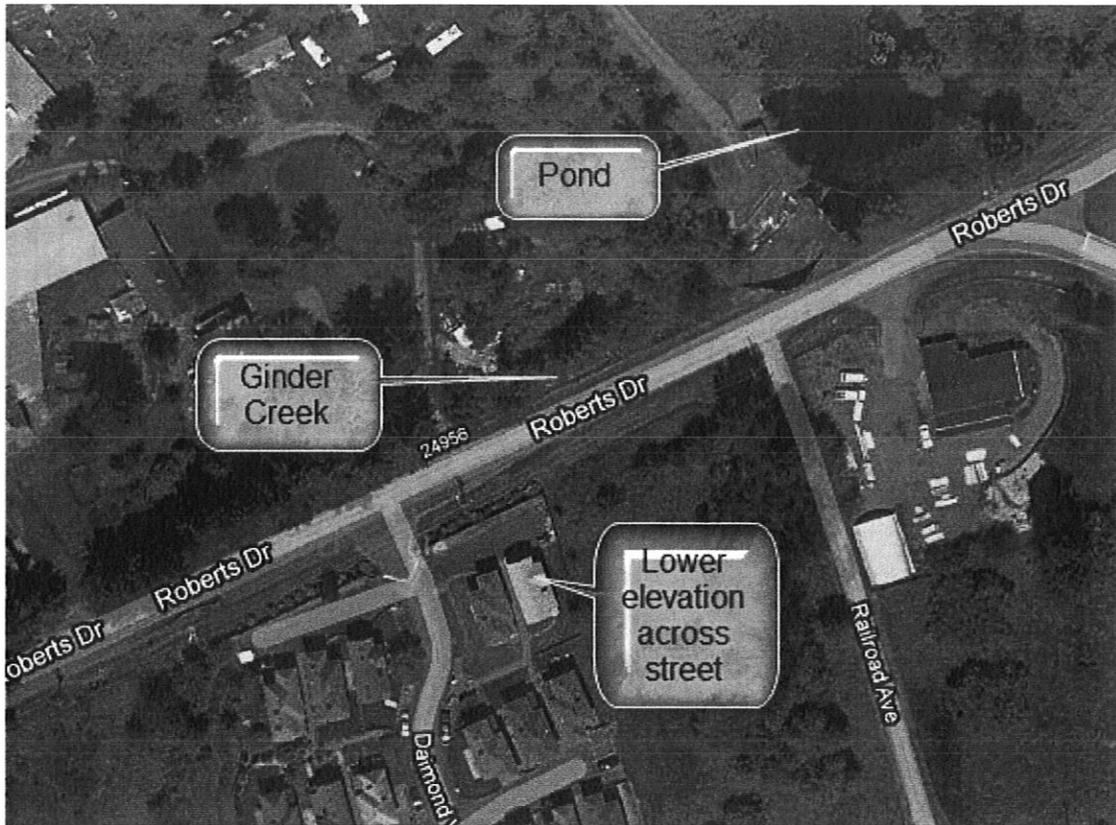


Where: Aerial , parcel # **2221069040** is below the lake in the picture. The picture looks approx. northeast .
When: within the last several years. Who: Photographer Unknown.

Roberts Drive next to Ginder Creek. Every few years the road floods and has to be closed.



Where: From road near Parcel # **2026940000**, When: Uncertain but accurately reflects current conditions,
Who: Google Maps



Where: Over Parcel # **2026940000** and surrounding. When: uncertain but accurately reflects current conditions. Who: Google Maps

Near Ginder Creek, Highway 169, & Ravensdale Road:



Where: Parcel# **1121069051**, When: Fall 2010

The creek near the above location. BD Community Center in the background.



Where: Parcel# **1121069051**, When: Fall 2010



Where: Parcel# **1121069051**, When: Fall 2010

Near the same location, this images shows pollution in the water where bubbles form.



Where: Parcel# **1121069051**, When: Fall 2010

Further upstream:



Where: Parcel# **1121069050**, When: Fall 2010

See next page...

Wetlands near Abrams Avenue in Black Diamond. This watershed will be affected by the Lawson Hills and the Villages Developments as water flows through the area via Ginder Creek, other streams, and underground. If any of this area is damaged, the developer should be required to stop work and prevent further damage.



Where: near parcel# **1421069009**, When: Spring 2011



Where: parcel # **1421069011**, When: Spring 2011



Where: parcel # **1421069011**, When: Spring 2011



Where: parcel # **1421069011**, When: Spring 2011



Where: parcel # **1421069011**, When: Spring 2011



Where: parcel # **1421069011**, When: Spring 2011



Where: parcel # **1421069175**, When: spring 2011



Where: parcel # **1421069011** , When: spring 2011

Stacey Borland

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Thursday, August 18, 2011 11:49 PM
To: Steve Pilcher; Stacey Borland
Cc: Cathy Berkey
Subject: Rebuttal Testimony due Aug 19 - rebuttal of Aug 12
Attachments: KristenBryant Rebuttal to Aug12 Submission.doc

Hello,
Please forward the attached to the hearing examiner.

Thanks,

Kristen - 425-247-9619



Please think of the environment before printing this email.

EXHIBIT 253

Kristen Bryant Rebuttal to "YarrowBay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order II" dated Aug 12, 2011.

One section of this document also contains response by Cathy Berkey.

Traffic:

With regard to Yarrow Bay's page 23, and their comment on Kristen Bryant's Exhibit 123:

From Yarrow Bay's document, Continued p23 and top of 24 :

However, the public should be aware that, in the event that the adopted standards are not met in the future, the following improvements may occur. For any location inside the City of Black Diamond, Condition of Approval No. 10 requires that Yarrow Bay construct any improvement that would otherwise be necessary "to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard." Similarly, for locations in unincorporated King County, the County assesses transportation needs on a regular basis and in the event roads or intersections

4.DOC;3)

23

located in the unincorporated area do not meet standards in the future, improvement projects can be added to the County's Transportation Needs Report or Capital Improvement Program, depending on priority.

Rebuttal to Traffic:

In general, the traffic testimony I submitted was intended to convey that there are additional impacts beyond those already identified. While I did not have time to look into the details of every intersection, there are some that will not be improved, and it is true that improvements needed but not yet identified and agreed to outside the city limits will not be paid by the developer. Much concern still rightfully exists when considering King County and State roads which on which people travel in and out of town.

The Council intended that the Development Agreement would provide additional detail about how future transportation impacts would be identified and mitigated. Those impacts include King County and State roads. The Development Agreement fails to provide the additional detail that the Council expected. Moreover, by not even analyzing the impact to King County and State highways, the MPD review process failed to meet even the most minimum standards for ensuring regional transportation consistency.

The City's failure to consider impacts to King County and State roads creates impacts within the City itself. If King County and State roads are not improved, traffic patterns within the City will fall outside of the

parameters that most traffic models use to predict traffic flows. Drivers will begin to act “irrationally” in response to King County and State road bottlenecks, and so the MPD traffic mitigation plan will fail.

For any road in unincorporated King County not agreed to in the current Development Agreement, Yarrow Bay will not fund the improvements. Instead, King County will be responsible for assessing the need, and then using its own Transportation funding, such as the Capital Improvement Program, to deal with the needed capacity improvements for those roads. This means that county tax payers will have to pay. Yarrow Bay is not asserting that improvements will not be needed, they are leaving these improvements, if needed, for the county to deal with. The same is true for improvements for State roads.

In response to Yarrow Bay’s assertion that increased traffic on Roberts Dr will be alleviated by construction of the Pipeline Road, my concern is for the time period before the Pipeline Road is completed. It is reasonable for the city to require completion of Pipeline Road before construction of subdivisions and the city should consider doing so. Residents along that road will live with increased traffic for many years before Pipeline Road exists and the city should not overlook this. Some retired residents don’t have that much time to wait.

Success Criteria and School Criteria

From Yarrow Bay’s Aug 12 testimony:

(Emphasis in the original.) YarrowBay objects to these proposed additional conditions/mitigations and responds to each such request below.

- a. “Success” Criteria. In Exhibit 124, Kristen Bryant requests the addition of “success criteria” into the Development Agreements: “Small increments of building with success criteria requiring mixed use development in all phases must be adopted. Each increment should only proceed if the previous one is proven successful. Some criteria are traffic, schools, environmental impact.” These success criteria are not identified in the MPD Conditions of Approval and therefore cannot be added by the Hearing Examiner into the Development Agreements.
- b. School Bonds. In Exhibit 124, Kristen Bryant requests the addition of the following language: “The Development Agreement must add language preventing construction of additional residential units if a new school is needed and school bonds are not passed by the voters. In addition, language should be added so that the school population is never ‘more than one school behind.’” Mr. Irrgang requests a similar condition in Exhibit 121. However, the Black Diamond City Council already concluded that the Comprehensive School Mitigation Agreement referenced in Section 13.3 of the Development Agreements provides adequate mitigation for the MPDs’ school-related impacts. See Conditions of Approval Nos. 98 (The Villages) and 99 (Lawson Hills). As a result, this language cannot be added to the Development Agreements by the Hearing Examiner.

Rebuttal: Based on the Hearing Examiner’s ruling, the city council can review and consider additional conditions. If the council wishes to add detail about implementing projects and their success, the Development Agreement is an appropriate place to do that.

Stormwater

On page Page 42 and 43 of Yarrow Bay's document:

As a result, the Development Agreements contain the most stringent standards for stormwater treatment. Moreover, should the City determine that additional treatment is necessary, the City can require new standards, and AKART technology, be implemented at the beginning of any new phase. However, should the City determine that a drainage problem exists, BDMC 14.04.370 grants the City the authority to correct the problem by performing "the necessary construction or remedial work and bill the property owner, property owner's

YarrowBay's Written Response Pursuant to Hearing Examiner's Pre-Hearing Order II

Page 43

August 12, 2011

association, or project proponent for all costs associated with said work." As such, there is no reason or basis to revise the Development Agreements based on Ms. Bryant's written testimony.

Stormwater Rebuttal:

Yarrow Bay's response rests on a condition of the BDMC that will not address the concerns that I raised in my statement. The section of the code referred to only applies to highly localized drainage issues such as a mis-ocated catch-basin or the like. My concern applies to the potential failure of the overall stormwater management systems. Ms Doremus' testimony identifies several deficiencies in the current plan and the risk of relying on an outdated State stormwater manual that is not designed to fully mitigate all project level impacts for the next twenty years.

My comment suggested that there be a fall-back plan if some component of the regional stormwater system fails to achieve its performance objectives. The Development Agreement is a good vehicle to include such a plan.

It is important to point out that the comment still stands that city should require a halt of future construction if stormwater impacts are not being properly mitigated from previously constructed buildings, roads, or subdivisions.

Secondly, regarding the city's authority under BDMC 14.04.370. Imagine a real life scenario:

1. The city may determine there is a drainage problem. Or, more likely: Someone, a citizen, an affected neighboring property owner, must bring the city's attention to the problem. Imagine yourself in this situation. One phone call from a citizen does not trigger a city to do the extensive research and documentation needed to show there is a problem. It likely takes multiple attempts of talking and

personal time and documentation on behalf of a property owner. (See the city’s public records where Donna Gauthier has spoken at council meetings, written letters, and talk to city employees attempting to deal with a drainage issue affecting her property for years.)

2. If the city does do extensive work and find the problem is a result of the new development, there are two scenarios:
 - a. **Scenario 1: The city has the financial capability of doing the work before being paid back for it.** (it is not very expensive). The city begins a project to fix it. Next:
 - i. **Scenario 1.a – the project proponent (developer) is available.** Having either recently completed the project or still owning it, the city will approach the developer to pay. The developer may dispute the need or the method of fixing the problem, especially the more it costs. The project will be stalled and the city will spend time and money dealing with the dispute.
 - ii. **Scenario 1.b – The problem property is now owned by homeowners or businesses.** The same problem could occur. These people will likely dispute the expense and cause. Another likely outcome is they won’t have the money to pay the bill.
 - b. **Scenario 2: The project is very expensive.** As an example, one stormwater pond proposed for Ginder Creek is estimated to cost over \$700,000*. The city does not want to begin the work before being assured that the city will be paid back. Thus, while disputes as mentioned in item two above go on, the environmental and property issue will continue.
 - i. **Scenario 2.a: The developer is available or still owns the property.** The city notifies the “project proponent” and the project is disputed.
 - ii. **Scenario 2.b: The liability falls to homeowners.** Imagine the problem involves an entire subdivision. Perhaps this cost could be spread over up to 1000 homeowners. Still, the city will probably find it impossible to send them each a bill for \$700 if the project is as costly as the Ginder Creek stormwater pond example. If the project is less expensive, it is hard to imagine the city even billing people for \$50. Of course, there could be fewer homeowners to share the cost, or it could be a commercial property owner. There are many scenarios.
 - iii. **Scenario 2.c: The developer is available but no longer owns the property.** A dispute begins about which party – the owners or the developer – is liable.

* In the city’s <http://www.ci.blackdiamond.wa.us/Depts/Finance/CIP/CIP%202012-2017.pdf> Capital Improvement Plan, page 43



Capital Improvement Plan 2012 - 2017

Project for the	Stormwater Department	# D2
PROJECT TITLE	Ginder Creek Stormwater Treatment Pond	
DESCRIPTION	Stormwater treatment facility: a wetpond and bioswale combined treatment facility to provide maximum phosphorous removal along the abandoned RR Ave north of Park Street. Detention will also be provided.	

...

		Capital Plan 2012 - 2017						
CAPITAL PROJECT COSTS	Budgeted & Funded 2011	Total \$ Requested 2012-2017	2012	2013	2014	2015	2016	2017
		Design Engineering	50,000				50,000	
Construction Costs	700,000					700,000		
TOTAL COSTS	-	750,000	-	-	50,000	700,000	-	-

The above problems can be avoided if the city collects fees to deal with unexpected problems. After the construction is completed and a set amount of time has passed, from 3-5 years, the city will return this money to the developer minus any amount that needed to be spent.

Additional Stormwater Rebuttal

The following comments relate to Yarrow Bay's response to Kristen Bryant and to Llyn Doremus, who testified on Behalf of Save Black Diamond (in which Kristen is a member) :

More information is needed by decision makers to know if the developer will be able to absorb all mitigations and impacts within the project without affecting property outside the project. Permits at the implementing project level cannot be sufficient to do this as they will only look at hydrologic impacts from one small piece at a time.

Concern 1: No additional detail incorporated since MPD approval.

The intent at the time of the MPD Approval was that additional detail would be provided in the Development Agreement. The Development Agreements do not provide any more detail on the stormwater plans. Stormwater is not a minor detail, but a major impact on many acres, and most of, if not the entire, existing community. It is hard to understand that the site plans as laid out are viable without some additional stormwater information. If the DA's do not provide more detail and the intent was that they would provide more detail, then the Hearing Examiner should find that the intent of the MPD approval with regard to stormwater detail has not been met.

Concern 2: Possible conflict with approved acreage and units and implementing projects.

The Development Agreements are structured to give the developer the right to build an identified amount of housing and commercial buildings. We are concerned that the over-riding criteria for implementing projects will be that they have the right to build to the capacity and density in the Development Agreement, whether the implementing projects can assure that the yet-to-be-identified stormwater mitigations can be achieved or not. If the implementing projects submit stormwater plans that have risks and/or could be made better*, and the city would like changes for the better at that time of project permitting, the city must maintain the authority to require better plans. The Development Agreement needs to clearly recognize this authority.

For example, if and when the city (or review team) requests changes or disputes the developer's proposed project-level stormwater plans, the developer may claim that because they have a Development Agreement (if approved as is), they must be allowed to build and their permits must be granted so long as they meet minimum standards. The actual conditions that lead the city or review team at the project planning time to request changes to the proposal will not necessarily be addressed.

*The regulations that will be adhered to are not prescriptive enough to provide a single correct answer for every situation. There will be the need to exercise judgment. See part 3 below.

Part 3: Concerns Regarding Outcomes of Stormwater Implementations.

Proposed Addition to Development Agreements: The city should proactively collect impact fees in a fund to deal with possible problems such as the above, rather than wait for problems and then assess fees on future property owners to deal with those problems. If no problems are found within 3 years of completing a parcel, the developer can have the funds released back to them.

Reasons for the above proposal can be understood via the information below:

The 2005 stormwater manual does not guarantee successful outcomes. For example, in Black Diamond, the new King County library completed in 2008 has a stormwater pond that does not capture the water for settling as it is intended to do. Instead, during storms the water goes through the pond too quickly or overflows to non-designated stormwater receiving areas and does not receive adequate treatment. The library's poor stormwater system has impacted neighboring properties. Neighbor Cathy Berkey[†] bears witness to this in the following statement:

"We live next door to the Black Diamond King County Library. Adjacent to our property are two drainage ponds that collect drainage from the Library parking lot, which is an impervious surface. When the ponds are full they drain onto property on the northeast sides of the ponds. During frequent heavy winter rain there are times water pours out of the library storm water ponds onto a property, northeast of my property near an area where we share a common fence line. This causes the water table to be higher along that side of our property. This is an area where we access our lower field and near where I plant a large dahlia garden. In the years since the library storm water ponds, our access area to our field has become very muddy and many times we have had to use four-wheel drive to drive in that area, which we did not before. I have also noticed that the dahlia tubers at the back of my garden rot when I winter them over. This did not occur before the stormwater ponds went in."

[†]Ms. Berkey is a party of record for the Development Agreement hearings.

Figure 1: King County Parcel Viewer (captured Aug 18, 2011). Depicts location and parcels in referred to in example above.

Library Parcel # **1421069205**

Berkey Parcel # shown in yellow: **1421069079**

Other Berkey Parcel #: **1421069066**

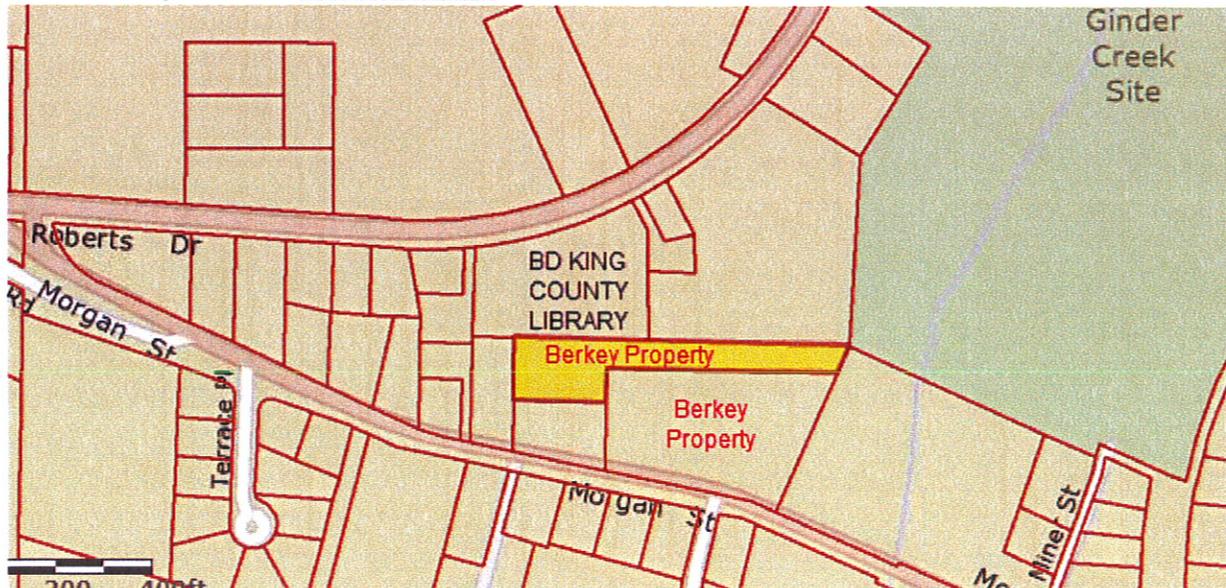
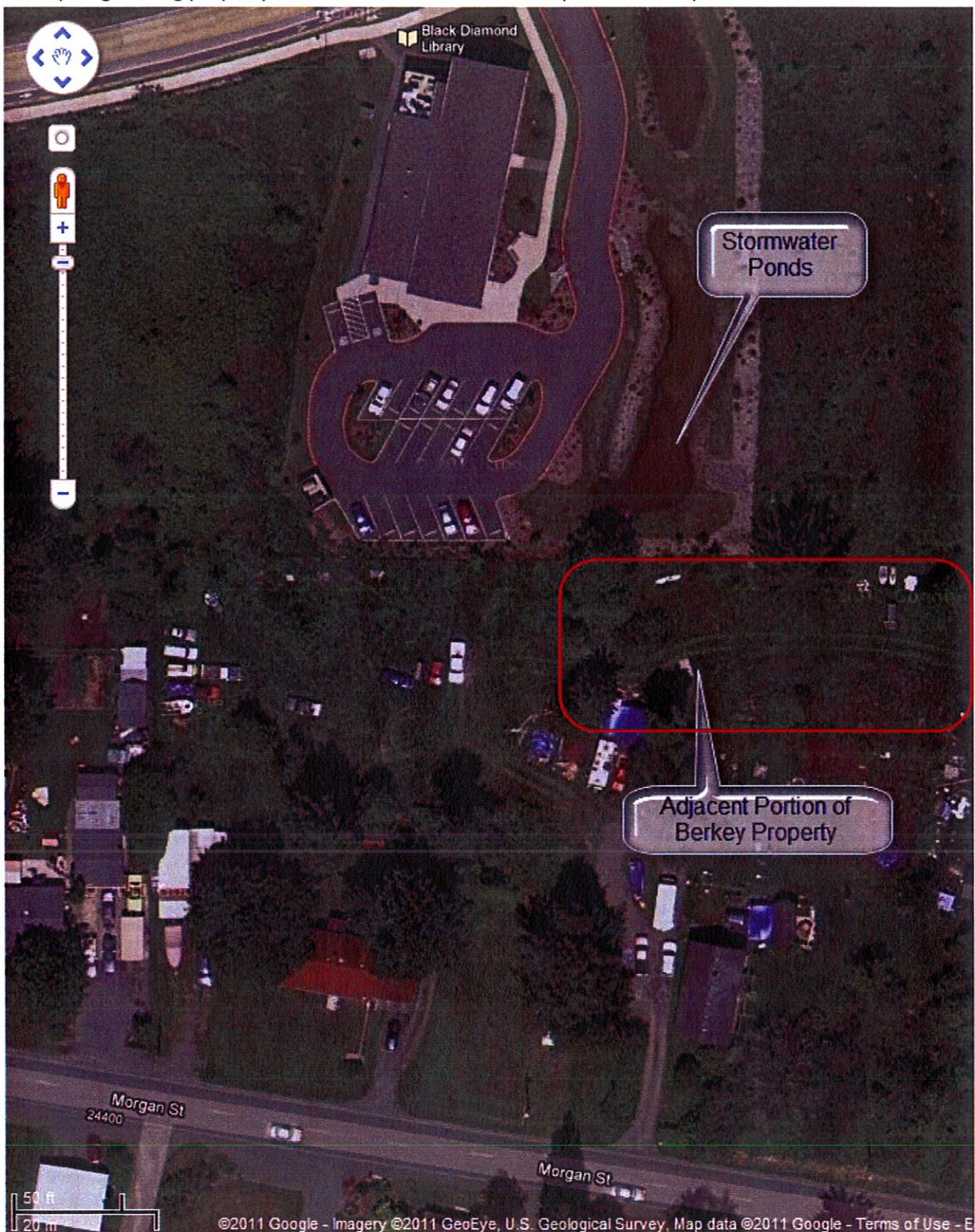


Fig 2. From Google Maps captured Aug 18, 2011. Depicts Black Diamond library stormwater system and Berkey neighboring property that now has more water than prior to Library's construction.



Stacey Borland

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Thursday, August 18, 2011 11:52 PM
To: Steve Pilcher; Stacey Borland
Cc: Llyn Doremus
Subject: Doremus Rebuttal of Aug 12 response
Attachments: Doremus_Rebuttal_and_SBD_responses_Final.doc

Hello,

The attached is the rebuttal by Llyn Doremus, sent on behalf of Save Black Diamond.

Thank you,

Kristen - 425-247-9619



Please think of the environment before printing this email.

EXHIBIT 254

Rebuttal from Llyn Doremus pursuant to Yarrow Bay testimony submitted August 12 (with rebuttal period closing Aug 17):

1. The Yarrow Bay responses to the Doremus testimony protest that:

“defining the Lawson Hills and Villages stormwater runoff impacts by which the proposed mitigation measures are to be evaluated for adequacy with respect to the area project stormwater is “not required by the Black Diamond Municipal Code”.

Doremus Rebuttal: How is it possible to determine whether the mitigation measures proposed adequately mitigate for the stormwater runoff impacts of the project, when there are no project impacts that have been defined in Development Agreements for the Villages or Lawson Hills developments? Yarrow Bay does not address this basic common sense question, neither in their responses nor in their original documents (the Master Planned Development applications or the Draft Development Agreements). Stormwater runoff under current conditions impacts residences in Black Diamond that are downgradient from the proposed Lawson Hills site. Water quality is degraded in the proposed receiving water bodies for stormwater runoff from the developments. While the existence of degraded water quality conditions in the Black Diamond vicinity is recognized in the Yarrow Bay documents, the factors and processes contributing to these existing degraded conditions are not addressed in the stormwater management measures for the project. Neither are they considered with respect to the significantly increased stormwater runoff that will be generated from the projects if they are constructed.

2. The Doremus comments are silent on questions regarding what stormwater management measures will be required in order to meet the water balance for the shallow aquifer, and maintain the wetlands functions. This is because the complexity of the engineering analyses required to answer these questions is beyond the scope of the Master Planned Development applications and the Draft Development Agreements. However, the basic capacity to identify the areas proposed for Lawson Hills and Villages construction and the stormwater runoff that will be generated by the various modifications to the ground surface by the project(s) construction must be identified before the project(s) proceed to permitting in order for the constraints of the hydrologic system and the existing water quality conditions to be incorporated into the project design. Minimization and mitigation of the impacts to those hydrologic functions and processes are appropriately incorporated into the overall development(s) at this design and permitting stage. It is a basic physical fact that facilities' volumetric capacity to retain water, soil infiltration rates, and water conveyance rates through pipelines for the constructed facilities are finite. The limitations of these constructed facilities, the Black Diamond hydrologic and hydrogeologic system and the parameters of the projects proposed for construction must be taken into account when assessing what adequate design features are that will accomplish the project goals for stormwater management and treatment presented in the Master Planned Development applications. The Draft Development Agreements do not contain quantitative information about any of these design features, making it impossible to assess the potential for the developments as proposed to comply with the Black Diamond city code and the Washington Department of Ecology NPDES Phase 2 Stormwater permit requirements .

3. **Summary from Doremus:**

The hydrologic and hydrogeologic systems, and the project development areas and the entire surroundings, need to be considered for a huge project like this in order to design for the attainment of the stormwater management criteria defined in the regulations (and the project goals).

In addition to all the other planning necessary (like traffic flow and other infrastructure), stormwater management is best considered at a “watershed or regional scale” in order to develop stormwater facilities that work in conjunction with the natural hydrologic system. This is essential to minimizing the impacts of a project of this size.

One of the key points of this whole “Master Planned Development” process is that regional scale planning is necessary to ensure that the whole project is designed in accordance with the regional systems. And, with that regional planning the development infrastructure functionality and livability should be increased. In fact, the MPD and DA documents do give the general overall picture of the regional hydrology. However, it is so generalized that the specifics necessary to demonstrate that the basic project design specifications are in compliance with the regulations is lacking.

Stacey Borland

From: Susan D. Harvey <susandharvey@hotmail.com>
Sent: Friday, August 19, 2011 1:16 AM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Transmittal of Susan Harvey Comments
Attachments: Comments Addressing YarrowBay's Response Testimony-81811.docx

Hello Steve,

Here are my comments in response to YarrowBay's Response Testimony. I understand that the deadline is 8:00 a.m. this (Friday) morning. Good thing I am a night owl.

Please let me know if you have any questions.

Thank you,

Susan Harvey

EXHIBIT 255

August 18, 2011

To: Mr. Steve Pilcher, Director of Community Development
Mr. Phil Olbrechts, Hearing Examiner
Mayor Rebecca Olness
Councilmember Bill Boston
Councilmember Craig Goodwin
Councilmember Kristine Hanson
Councilmember Leih Milvihill
Councilmember William Saas

Subject: Comments Addressing YarrowBay's Response Testimony

My response to YarrowBay's Response Testimony regarding my July 14, 2011 Oral Testimony to Mr. Phil Olbrechts and my Written Testimony submitted to Mr. Pilcher on August 3, 2011 is discussed below.

1a) The terms "Vesting" and "Build Out" were not clearly defined nor was the relationship between the two terms made clear.

1b) Contrary to the response of Yarrow Bay Counsel, I stated in both my oral and written testimonies that the term "Build Out" is defined in Section 14, "Definitions". However, "Vesting" is not defined in Section 14, "Definitions". Vesting is a word and concept of such importance that it should not be omitted from Section 14. "Vesting and "Build Out" were used almost interchangeably at times, leaving their relationship unclear. This makes defining both terms even more important.

2a) By not specifying how many Build-Out Periods of five years each were possible on the part of the Developer, the Development Agreements had no defined end date.

2b) YarrowBay responded favorably to this concern by agreeing to add additional language to the end of Section 15.16: "In no event, shall the Build-Out Period for all Development and construction exceed twenty (20) years". So, if I interpret this correctly, this is a 20-year contract consisting of the original 15-year Build-Out Period followed by one (only) Build-Out period of five years for a total of 20 years.

3a) Section 15.3 "Assignment" states: "Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement."

3b) The assignment of rights and interests by Master Developer, Yarrow Bay, to another business entity, a Master Developer Transferee, is a decision of

such impact to the daily workings and finances of the City of Black Diamond that one wonders why it is necessary to specifically exclude the right of the City to give its consent. According to the current Agreements, all the Master Developer has to do is give the City a 30-day notice. If the city has a problem with the selection of the Transferee, the City has NO recourse other than to revise the contract itself, which will be extremely difficult.

Yarrow Bay Counsel responded that the City and YarrowBay did in fact discuss the need for a consent provision during negotiation of the Development Agreements. For direction, the parties looked at Talus, Issaquah Highlands, Snoqualmie Ridge II, and Redmond Ridge for precedent. Counsel concluded, “not one of these five development agreements included a consent provision within their assignment clauses”. Precedent is not one size fits all. I believe that the cities agreeing to such a submissive role were terribly ill advised.

4a) The last sentence of Section 15.3, “Assignment” states: “BD Lawson Partners, LP (and BD Villages Partners, LP) shall advise prospective transferees or assignees that obligations of the Agreement may apply to the property upon transfer or assignment.”

4b) YarrowBay’s response (above) would be an acceptable umbrella clause if it referred the reader to an Exhibit containing contract language governing the work relationship between the Developer, the City and any Third Party Subcontractor. From all I could tell, no indemnity or insurance clauses have been devised and there is nothing contractually in place to document the rules and responsibilities between Third Party Subcontractors, the Developer, and the City of Black Diamond. The term “obligations of the Agreement” is so general as to be meaningless and could eventually prove negligent.

5a) In its entirety, Section 15.9 “Interpretation” reads: “This Agreement has been reached as a result of arm’s length negotiations with each party represented by counsel, and thus no presumption of draftsmanship shall be used in interpreting this Agreement”.

5b) YarrowBay’s response side-stepped the real issue. They responded that there were significant revisions made to the Development Agreements during the approximately nine-month long negotiation and that the Development Agreements submitted to the Hearing Examiner look very different from the versions submitted to the City back in September 2010.

The issue is not the number of changes being made, but, rather, the fact that these changes are being made by the YarrowBay staff and the City of Black Diamond staff—whose salaries are both being paid through the YarrowBay Funding Agreement. Although reportedly “legal”, this arrangement challenges the idea of impartiality and loyalty, and, in my opinion, brings into question the

statement: "This Agreement has been reached as a result of arm's length negotiations..."

I pointed out that an intermediary group of some type could be formed by the City to serve as a liaison to the City Council and citizens. This issue could be addressed through action by the City Council. I urge you to take a remedy of this type into consideration so that residents of Black Diamond might feel as though they are truly represented in this process.

6a) I took issue with the process being constructed to deal with Minor Amendments per Section 12.0 "Development Review Process".

6b) YarrowBay confirmed my conclusion that there would be a lack of public process or input relating to Minor Amendments. Their response clarified, "that Minor Amendments are administrative decisions not City Council decisions".

Section 12.0 "Development Review Process", states that a Minor Amendment can be approved by the Mayor. The final determination regarding whether an Amendment to the Agreement is "Minor" or "Major" (which is a big deal) shall rest with the Designated Official--who is appointed by the Mayor. In other words, two people rule this entire process. I found no process for public appeal and maintain my objection to the process being developed.

Respectfully,

Susan Harvey
P. O. Box 314
Ravensdale, WA 98051-0314
susandharvey@hotmail.com

Stacey Borland

From: Bob Edelman <BobEdelman@comcast.net>
Sent: Friday, August 19, 2011 3:03 AM
To: Steve Pilcher
Cc: Stacey Borland; Brenda Martinez; Andy Williamson
Subject: Replies to responses 8/19/2011
Attachments: Reply to Ex 218.pdf; Reply to responses.pdf

Please forward these two exhibits to the Hearing Examiner.

Please acknowledge receipt.

Thanks, Bob Edelman

EXHIBIT 256

**Before the City of Black Diamond Hearing Examiner
Hearing on Development Agreements
Regarding Reply to Exhibit 218
August 19, 2011**

The following is in reply to the City's response brief in Exhibit 218.

The scope of permitted testimony was clearly explained by the Examiner and should not be narrowed.

The City continues to attempt to have suggested changes to the Development Agreements rejected if not required by the underlying MPD ordinances. The issue was thoroughly argued in pre-hearing briefs and should not be revisited by the City. Rather than repeat those arguments I will reference the Examiner's order:

The Applicant and City argue that the scope of the hearing is primarily limited to implementing the conditions of approval of the master plans. The Black Diamond and state regulations do not support this position. BDMC 18.98.090 does provide that a development agreement shall implement MPD conditions of approval. However, nothing in this provision states that the development agreement shall be limited to this function. Certainly, if the Applicant came forward and requested that the development agreement address other issues, the City would be hard pressed to conclude that its code or any other legal authority precluded that consideration. RCW 36.70B.170-230, which governs development agreements, also does not limit development agreements to implementing conditions of approval. Those statutes are notably silent on the scope of development agreements, merely providing that *"a development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement."* See RCW 36.70B.170(1). RCW 36.70B.170(3) defines a development standard to include development restrictions such as permitted uses, mitigation measures, development conditions, vesting and *"any other appropriate development requirement or procedure"*. The scope of what can be included in the development agreements should not be confused with what can be required as opposed to requested from the Applicant. As noted by the City, BDMC 18.98.090 requires the Applicant to enter into a development agreement to implement MPD conditions of approval. RCW 36.70B.210 provides that development agreements may not be used to require a developer to provide for any financial contributions or mitigation measures *"except as expressly authorized by other applicable provisions of state law."* Since the City has made approval of a development agreement a requirement for MPD approval, it arguably cannot condition participation in a development agreement upon terms that the Applicant would not otherwise be compelled to accept by state law. At this stage of permit review it appears that the only requirements that can be imposed in the development agreements is implementation of MPD permit conditions. The parties are free to identify other legal requirements that may apply at this time as well. [Emphasis added.]

Although the Hearing Examiner did not encourage parties to make suggested changes to the Development Agreement that were not otherwise required he did point out that suggested changes were allowed and the applicant and the City could incorporate them if they agree.

The City also attempted to prevent the agreements from being changed even when they do not meet the underlying MPD ordinance requirements or other requirements of law. The City stated:

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. Rimbo's comments (Ex. 118); still others are laid out at length by Mr. Edelman. This ploy must also be rejected.

I can't speak for other parties but regarding my submittals I challenge the City to find a single instance where I suggested that the Examiner rewrite anything in the Development Agreements. Rather, I suggested that where there was insufficient information for the Examiner to make a decision on what to recommend or where the law or MPD conditions were not met that he remand to City Staff for more information or correction. This is within his authority. I would think that getting the draft Development Agreements revised to a draft that is compliant and has sufficient detail to be evaluated would be far better for the City and Yarrow Bay than rejection of the agreements or submitting them to the Council with draft changes that have not been agreed to by City Staff and Yarrow Bay. In this regard I join the City in asking that the Examiner not rewrite entire sections of the Development Agreements. Instead that should be done on remand.

Statements that assert that the opposition to the draft Development Agreements is controlled by a small group of opponents is a fiction,

There are a large number of misunderstandings on the part of the City that has caused a fictitious concept to emerge -- that opposition to the present form of the Development Agreements is controlled by a small group of people who are united in their beliefs. From those misunderstandings, an intricate conspiracy has been constructed that consists of an interlocked web of organizations, all with a common goal. The elaborate conspiracy is quite imaginative but still a fiction.

Here are some of the statements that assert that we are all of a single mind controlled by the conspiracy (emphasis has been added).

“An overarching theme of all of the project opponents' written comments is ...”

“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 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.”

“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%”

“The well-meshed organization of the Black Diamond MPD project opponents deserves comment, however, because it is precisely their stated mission -- and preparation of witnesses - that is responsible for the uniform "MPDs are too big" theme constituting an improper collateral attack.”

“Of fundamental importance regarding the implementation of the "MPDs are massive" theme as a tool to advance the groups' density-reduction goal ...”

“To further its objective, the group created a second website ...”

“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 Councilapproved MPD density by two-thirds ...”

The colorful language can be overlooked as hyperbole from an over-enthusiastic proponent. But the fundamental errors need to be corrected for the record.

- The most important and most repeated error is that of the Diamond Coalition’s mission statement. The City asserts that this is 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.

Oddly, the correct mission statement was submitted in the City’s own Exhibit 219:

The Diamond Coalition was formed for exclusively charitable, and educationally [sic] 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 Diamond 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.

- A mythical entity called “the group” is mentioned several times and the Diamond Coalition is called its “the funding arm”.
- Another error is that the TAT is part of Save Black Diamond. The TAT was independently formed by Peter Rimbo to bring together engineers and scientists who have the background to understand and analyze technical issues.

And the list continues.

We are definitely not an “interlocking network of three nonprofit corporations” “directed by a small group of people”. Anyone who knows us and has been involved will tell you so. The fact that there are some members and officers in common does not mean that we work in concert, no more than the fact that City officials are members and officers of civic groups means that all of those groups support the proposed Development Agreements or that all of those groups are working toward getting the agreement approved without change.

Nor are opponents of the draft Development Agreements a single group of one mind. There is a wide variety of opinions about growth in general and the MPDs specifically. The opponents that I know (many of whom have become close friends) have a broad range of political, economic, and environmental beliefs, education, and background. Most are actually pro-development as is the Evergreen Freedom Foundation with whom I have worked many years. There are a few who want no growth – a very few. We all have one thing in common; we want what is best for our community and we are willing to stand up and say so. So when the City opposes an “overarching theme of all project opponents” it would probably be a good idea to either choose the words more carefully or listen more carefully because the overarching theme is “we want what is best for Black Diamond and our neighbors”.

Petition to Repeal Black Diamond MPD Approval Ordinances

WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

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Printed Name	Signature	Address	Comment	Date
DALE L. RASMUSSEN	<i>[Signature]</i>	29409 232nd AVE SE. Black Diamond WA 98010		2/22/11
Kent D. Rasmussen	<i>[Signature]</i>	29235 229th Ave SE, WA 98010	Black Diamond	2/22/11
Heather M. Rasmussen	<i>[Signature]</i>	29235 229th Ave SE Black Diamond WA 98010	Black Diamond	2/22/11
Barbara Rasmussen	<i>[Signature]</i>	24409 232 Ave SE Black Diamond WA 98010		2/22/11
DAVID A. ROOS	<i>[Signature]</i>	22957 SE 292 nd Pl	TO THE COUNCIL + MAYORS BLACK DIAMOND, APPLY FOR A NEW POSITION	2/22/11
Valerie Erickson	<i>[Signature]</i>	20839 237th SE	Black Diamond	2/22/11
Jake Erickson	<i>[Signature]</i>	20839 237th SE	Black Diamond	2/26/11
Kenneth A. Rusk	<i>[Signature]</i>	24864 237 th Pl SE	BLACK DIAMOND	2/26/11
Colin J. Carlson	<i>[Signature]</i>	20862 237 th Pl SE	Black Diamond	2/26/11
Josh Lyons	<i>[Signature]</i>	20855 237 th Pl SE		2/26/11

BLACK DIAMOND 98010

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
CHRISTEEN SELZ	<i>Christeen Selz</i>	29621 232ND AVE SE, Black Diamond BLACK DIAMOND 98010	Black Diamond	2/21/2011
Bart Selz	<i>Bart Selz</i>	29621 232ND AVE SE		2/2/2011
Michelle Leach	<i>Michelle Leach</i>	23376 S.E. 291 st St. Black Diamond, WA		2/26/11
Timare Fedorak	<i>Timare Fedorak</i>	23333 SE 291 st Black Diamond, WA 98010		2/26/11
Don Montgomery	<i>Don Montgomery</i>	23322 SE 291 st Black Diamond		2/26/11
Kim Montgomery	<i>Kim Montgomery</i>	23322 SE 291 st Black Diamond 98010		2/26/11
Sten Powers	<i>Sten Powers</i>	28166 133rd Ave S.E.		2/26/11
Jennifer Kramer	<i>Jennifer Kramer</i>	2885 237 th Pl. SE, 98010		2/26/11
Joe Wagner	<i>Joe Wagner</i>	28831 237 th Ave N.E.		2-26-11
Laura Marie Wagner	<i>Laura Marie Wagner</i>	28831 237 th Pl. SE.		2-26-11

Petition to Repeal Black Diamond MPD Approval Ordinances

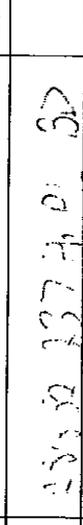
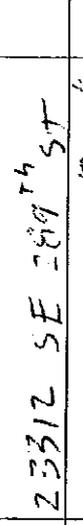
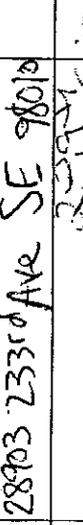
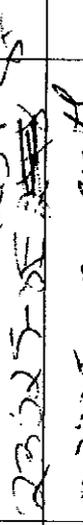
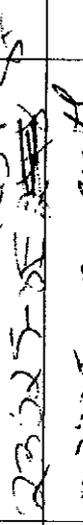
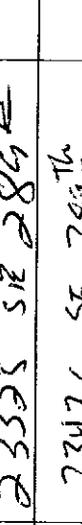
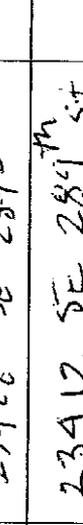
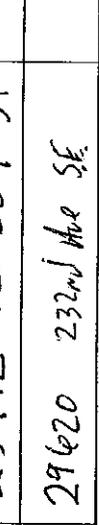
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Printed Name	Signature	Address	Comment	Date
Steve Moeget	<i>Steve Moeget</i>	29853 232nd Ave SE		2-20-11
Katrin Geiger	<i>Katrin Geiger</i>	29837 232nd Ave SE		2/20/11
Doug Geiger	<i>Doug Geiger</i>	29837 232nd Ave SE		2/20/11
Linda Nyberg	<i>Linda Nyberg</i>	29808 232nd Ave SE		2/20/11
Charles Graves	<i>Charles Graves</i>	29825 232nd Ave SE		2/20/11
Holly Fierro	<i>Holly Fierro</i>	23016 SE 290th St SE	1	2/20/2011
Felicia Clafin	<i>Felicia Clafin</i>	23016 SE 290th St SE		2/20/2011
Tim Fierro	<i>Tim Fierro</i>	23016 SE 290th St SE		2/20/2011
RANDY MESKER	<i>Randy Mesker</i>	23024 SE 291st St SE		2/21/2011
<i>Shannon Mesker</i>	<i>Shannon Mesker</i>	23024 SE 291st St		2/21/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Jackson Cupps		28932 237th St SE		2/26/11
Jesse Gunn		28927 23rd Pl SE		2/26/11
Shane Hertz		23312 SE 289th St		2/26/11
William Jones		PO Box 1134 ^{Maple Valley} 98159	Friendly	2/26/11
Angela Terry		28903 233rd Ave SE 98010		2/26/11
		23325 SE 233rd St		2/26/11
Mark Farns		23325 SE 289th		2/26/11
Matt Eivaris		23426 SE 289th		2/26/11
Reginald R. Tucker		23412 SE 289th St		2/26/11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
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Printed Name	Signature	Address	Comment	Date
Brandon Tucker		29620 232 ND AVE. SE Black Diamond, WA 98010		2/26/11
Arden Butt		29445 Barvelsue SE Black Diamond, WA 98010		2/26/11
Charles Butt		29445 232nd Ave SE Black Diamond, WA 98010		2/26/11
Kevin E. Anderson		21459 232 Ave SE Black Diamond, WA 98010		2/26/11
Marcy Anderson		2949 232nd Ave Black Diamond, WA 98010		2/24/11
Both Seyer ANCE SEYER		23215 JE 29th St. Black Diamond, WA 98010		2/26/11
Jacqui Seyer		23215 SE 298TH ST. BLACK DIAMOND WA 98010		2/26/11
Carla Roshell		23521 SE 29th St Black Diamond, WA		2/26/11
Eric Roshell		11	n	2/26/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
MICHAEL DEICHER	<i>[Signature]</i>	32700 RAILROAD AVE 28943 233 rd AVE SE		2-25-11
Lynette Roberts	<i>[Signature]</i>	28951 233 rd AVE SE		2/26/11
James Bryant	<i>[Signature]</i>	28951 233 rd AVE SE		2/26/11
Shelby Bryant	<i>[Signature]</i>	28951 233 rd AVE SE		2/26/11
Paul Woods	<i>[Signature]</i>	28959 233 rd AVE SE		2/26/11
Kirsti Woods	<i>[Signature]</i>	28959 233 rd AVE SE		2/26/11
Gene Hobson	<i>[Signature]</i>	23311 SE 291 st		2/26/11
Brenda McLean	<i>[Signature]</i>	23311 SE 291 st		2/26/11
Terry Dady	<i>[Signature]</i>	23337 SE 291 st		2/26/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Annette Thompson	Annette Thompson	29645 - 232 Ave SE Black Diamond, WA		2-22-11
DON MANSON	Don Manson	29615 232 Ave. SE. Black Diamond, WA		2-22-11
Jean Manson	Jean Manson	29615 232 Ave SE Black Diamond, WA 98010		2-22-11
Cheri Holbrook	Cheri Holbrook	29308 233rd Ave SE		2/22/11
Patricia Perovich	Patricia Perovich	29313 233rd Ave SE		2/22/11
RICHARD HASS	Richard Hass	29326 233 Ave SE		2/22/11
Paula Kawal	Paula Kawal	29320 233rd Ave SE Black Diamond, WA 98010		2/22/11
Jason Kawal	Jason Kawal	29328 233rd Ave SE BLACK DIAMOND, WA 98010		2/22/11
Danny Jauregui	Danny Jauregui	29314 273rd Ave SE Black Diamond, WA		2/22/11
Lisa Goulet	Lisa Goulet	23211 SE 293rd Pl. Black Diamond, WA		2-22-11

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Printed Name	Signature	Address	Comment	Date
Roger Shane Brazier	<i>Roger Brazier</i>	30243 234th Ave SE	BD	2/20/11
TAMMY MUNKO	<i>T Munko</i>	29317 235 Ave SE	BD	2/20/11
MICHAEL MUNKO	<i>M Munko</i>	SAME		2/20/11
KAY J ROSS	<i>Kay J Ross</i>	29225 - 232nd Ave SE	BD	2/20/11
GREENE I ROSS	<i>Greene I Ross</i>	29225 - 232nd Ave SE		2/20/11
David Jellison	<i>David Jellison</i>	29630 232nd Ave SE		2/20/11
Yuan M. Wu	<i>Yuan M Wu</i>	29620 232nd Ave SE		2/20/11
Staron Velisius	<i>Staron Velisius</i>	30249 234th Ave SE		2/20/11
Michele Wellborn	<i>Michele Wellborn</i>	30255 234th Ave SE		2/20/11
Arac Wellborn	<i>Arac Wellborn</i>	29255 234th Ave SE		2/20/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Cindy Sutherland	<i>Cindy Sutherland</i>	Black Diamond WA 98010 30239 239th Ave SE 30236 - 234th Ave SE		2/20/11
Elyse Estes	<i>Elyse Estes</i>	Black Diamond WA 30256 232nd Ave SE	Enough already! h	2/20/11
GARY STANFORD	<i>Gary Stanford</i>	Black Diamond WA 30002 232nd Ave SE		2/20/11
Jenny Stanford	<i>Jenny Stanford</i>	Black Diamond WA 30014 - 232nd Ave SE		2/20/11
Howard Stanford	<i>Howard Stanford</i>	Black Diamond WA 30019 232nd Ave SE		2/20/11
Gary Farmer	<i>Gary Farmer</i>	Black Diamond WA 30005 232nd Ave SE		2/20/11
Ulla Kemman	<i>Ulla Kemman</i>	Black Diamond WA 29863 - 232nd Ave SE		2/20/11
Charles Kemman	<i>Charles Kemman</i>	Black Diamond WA 29863 232nd Ave SE		2/20/11
Paula Moerjeh	<i>Paula Moerjeh</i>	Black Diamond WA 29853 232nd Ave SE		2/20/11

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Printed Name	Signature	Address	Comment	Date
FRED ROHBAUGH		27655 732 AVE SE, BLACK DIAMOND, WA	TARRIC CONCERN AT 169 BEAT RANGLEY	2/20/11
Val Brazier		30243 234th SE	lets try listening to the people!!	2-20-11
Polly Rohrbach		29655 232nd AVE SE		2.20.11
Annette Costelow		23314 SE 293rd PL		2.20/11
Sheryl Gordon		28909 230th AVE SE Black Diamond WA 98010	P future	2/20/11
KAREN LUTZ		23320 SE 293rd PL Black Diamond, WA 98010		
LOUI LUTA		23320 SE 293rd PL Black Diamond, WA 98010		
NICK MILAT		23509 SE 293rd PL BLK. DIAMOND, WA 98010		2/20/11
DAVID STORSEN		23510 SE 293rd PL BLACK DIAMOND, WA 98010		2/20/11
KAREN STORSEN		BLACK DIAMOND, WA 98010		2/20/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
CHARK JOHNT	<i>[Signature]</i>	15718 S.E. Auburn Way BLK DIAMONDS RD. 98002		2-17-11
Bardberry	<i>[Signature]</i>	25214 SE 357 St WA 98092		2-18-11
Linda Fergang	<i>[Signature]</i>	22505 SE 529th St Black Diamond WA 98010		2-17-11
Kristen Bagnall	<i>[Signature]</i>	4000 NW 25th Black Diamond WA 98010		2-18-11
GLENU CARRIA	<i>[Signature]</i>	24305 SE Green Valley Rd Auburn 98005		2-18-11
GIL BURTSON	<i>[Signature]</i>	25231 SE GRV ROAD Auburn, WA 98002		2-18-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Card Benson	<i>Card Benson</i>	3005-23rd Ave SE Suburb 98092		2/18/11
Karen Meador	<i>Karen Meador</i>	3240 16th Ave SE		2/18/11
Peter Timbs	<i>Peter Timbs</i>	19711 24th Ave SE MV98028	YES!!!	2/18/11
MIKE IRREGANG	<i>Mike Irregang</i>	22505 SE 329th St 98010		2/18/11
VERN GIBSON	<i>Vern Gibson</i>	32800 1st Ave Black Diamond		2/18/11
JACK SPERRY	<i>Jack Sperry</i>	29051-229th Ave SE BD 98010		2/18/11
Christa Nethercross	<i>Christa Nethercross</i>	19102 SE Green Valley Ave 98012		2/18/11
Allie Smith	Allie Smith	25214 SE 359th Auburn 98012		2/18/11
Terilyn Bradbury	<i>Terilyn Bradbury</i>	25278 SE 350th St Auburn 98012		2-18-11
Betty Gibson	<i>Betty Gibson</i>	P.O. Box 581 Bl. Diamond		2/18/11

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Printed Name	Signature	Address	Comment	Date
Elizabeth Mescardini		WA 98010 27616 E 306 th Black Diamond		2-23-11
LENI BEEBE		26843 213 rd PL SE Maple Vly		2-23-11
Jan White		2840 SE 27 th St Maple Vly		2-23-11
Matthew "Tiger" Birch		25426 129 th AV SE Kent, 98030		2/23-11
GEORGETTE FLEWDER		24 2ND Ave S, Aigone 98001		2-23-11
Barbara Marud		32700 227 th PL SE Black Diamond		2/23/11
Cynthia B. Hebis		32929 224 th PL SE Black Diamond		2/23/11
Linda Linthicum		22424 SE 329 th Street Black Diamond WA 98010		2/23/11
Simon Calis		22515 SE 329 th St Black Diamond WA 98010		2/24/11
Kimberly Calis		22515 SE 329 th St Black Diamond WA 98010		2/24/11

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Printed Name	Signature	Address	Comment	Date
Karen Benedetti		24215 SE Green Valley Rd <i>Ashton WA</i>	Please Repeal Ordinance	2/24/11
Andrew Benedetti		24215 SE Green Valley Rd	" "	2/24/11
LORETTA B...		32516 McKay Lane <i>Black Diamond WA</i>	" "	2/27/11
Jacki Mavrenna		32518 McKay Lane	" "	2/27/11
WILLIAM JAMES		32514 MCKAY LANE	" "	2-27-11
BRIAN WEBER		32510 McKay Lane, Black Diamond	REPEAL!	2-27-11
Leslie Weber		32510 McKay Lane <i>Black Diamond</i>	Repeal	2-27-11
Alyson Grubelup		32501 McKay Ln <i>Black Diamond, WA</i>	Repeal	2-27-11
fire-Lynn Stiles		32505 McKay Ln	Repeal	2-27-11
BRYAN STILES		32509 McKay Ln	Repeal	2-27-11

2-4

Petition to Repeal Black Diamond MPD Approval Ordinances

WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore We, the undersigned, urge the City Council to repeal the Yarrow Bay MPD Ordinances, put an end to needless litigation, and reengage with us in a legal process. We look forward to developments that truly reflect the concepts of "rural by design" and "growth pays for growth".

Printed Name	Signature	Address	Comment	Date
KLENN CARRIER		24305 SE GREEN VALLEY RD AUBURN	Please Repeal Ordinance	2-25-11
BEERY GRANT		32512 MCKINLEY BLVD BLACK DIAMOND		2/27/11
FRU BARNES		3217 MCKINLEY BLVD BLACK DIAMOND		2/27/11
SUSANA BARNES		"		2/27/11
KATHLEEN DELFACIO		33519 MCKINLEY BLVD BLACK DIAMOND		2-27-11
Erika Bradford		32526 McKay Drive Black Diamond, WA	NO!	2-27-11
Alyssa Saas		32524 mckay LN BIK Diamond, 98010		9/27/11
Sue Adams		32504 Newcastle WA	Repeal	2/27/11
HOWARD MEEDE		24515 SE GREEN VALLEY RD		2/27/11
SHARON MEEDE		24515 SE GREEN VALLEY RD 98022	PLEASE!! CONSIDER THE CONSEQUENCES OF THIS MESS	2/27/11

GROWTH - YOU NEED TO REALIZE WHAT THESE MAPS WOULD MEAN TO THE TAXPAYERS OF BLACK DIAMOND - ENUMCLAW - ETC.

1-2

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Tracey Campbell	<i>Tracey Campbell</i>	16727 SE Lake STOWN RD Suburban WA		2-23-11
Judith Carrier	<i>Judith Carrier</i>	24205 SE Green Valley Rd Auburn, WA 98002	CRUCIAL!	2-24-11
WICKI K...	<i>Wicki K...</i>	21917 Paulding Ave Black Diamond	you're kidding!	2/23/11
GERARD AWARD	<i>Gerard Award</i>	31618 SE 206th Ave	STOP!	
Kathleen Alvarez	<i>Kathleen Alvarez</i>	31618 SE 260th Rd	CRUCIAL!	2-23-11
Tommy...	<i>Tommy...</i>	31108 3rd Ave Black Diamond	STOP!	2-24-11
Steve Sandquist	<i>Steve Sandquist</i>	24713 SE Green Valley Rd Auburn, WA	STOP!	2-24-11
Lice Wingard	<i>Lice Wingard</i>	32631-1st Ave	STOP!	2-24-11
Maxwell Quake	<i>Maxwell Quake</i>	32205-1st Ave	STOP!	2-24-11
Katli Shay	<i>Katli Shay</i>	32828 Merino St		2-27-11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
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Printed Name	Signature	Address	Comment	Date
Diana Brazier	<i>[Signature]</i>	35923 Lawson St. Black Diamond, WA 98010		2/19/11
John Newkey	<i>[Signature]</i>	35509 Lake St Black Diamond, WA 98010		2/19/11
JAY McELROY	JAY McELROY	2417 SE GREEN VALLEY RD AUBURN, WA		2/24/11
KELLEY McELROY	Kelley McElroy	" " "		2/24/11
GEROLD MITTLESADT	<i>[Signature]</i>	24825 SE GREEN VALLEY RD AUBURN, WA.		2-24-11
JOAN MITTLESADT	JOAN MITTLESADT	" " "		2-24-11
THOMAS PAYNE	<i>[Signature]</i>	38812 HYDE AVE BLACK DIAMOND		2-24-11
Darlys Green	<i>[Signature]</i>	22519 SE 304th Dr Bk 1 Black Diamond		2-24-11
Charles Green	<i>[Signature]</i>	22519 SE 304th Dr Bk 1 Black Diamond		2-24-11
TARA RUMAN	<i>[Signature]</i>	P.O. Box 554 Black Diamond	Keep B.D. AS IT IS!!!	2-24-11

Wired here for 254RS.

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Michael F. Garrett	<i>Michael F. Garrett</i>	25511 Cumberland Way Black Diamond, WA 98006		2/24/11
Jolene Michael	<i>Jolene Michael</i>	25023 Morgan St. BLK DMD, wa 98010		2/24/11
Pamela Hink	<i>Pamela Hink</i>	19229 amb BUK DIARD Auburn wa 98002		2/24/11
Keith Flink	<i>Keith Flink</i>	33422 19229 192ND AVE SE		2/24/11
Jonathan S. Salvatori	<i>Jonathan S. Salvatori</i>	25023 Morgan St BLK D, WA 9800		2/24/11
STEVE KINNEY	<i>Steve Kinney</i>	28615 KANAKA KANGLEY, RI SE		2/24/11
JAMES SCHERT	<i>James Schert</i>	7090 Marshall Ave SE Auburn wa 98092		2/27/11
Jeneva Schair	<i>Jeneva Schair</i>	7090 Marshall Ave SE #2001 Auburn WA 98092		2/27/11
Kristine Nicholson	<i>Kristine Nicholson</i>	24030 SE 282nd ST Maple Valley WA 98038		2/27/11
Orville Bernard Glaze, Jr	<i>Orville Bernard Glaze, Jr</i>	25138 234th Ave SE Maple Valley, WA 98038		2/27/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
DONALD R. COUTURE		32635 229th Ave SE, Black Diamond		25 FEB 11
STAN E. KANOSTA		37523 RAILROAD AVE BLACK DIAMOND 98010		25 FEB 11
Anne M. Wolfe		15823 SE 254th Pl Covington WA 98042		27 Feb 11
Theresa Duncan		24806 SE 239th St Maple Valley, WA 98038		27 Feb 11
GREG SCHMIDT Duy Schmidt		37422 176th Ave SE Auburn, WA 98002		27 Feb
Charles Garner		Box 216 Hobart WA 98025		27 Feb
SALVADOR B. HOLBURN		27468 259TH WAY SE MAPLE VALLEY WA 98038		27 FEB 11
Karla K. Schmidt		34427-176 Ave SE Auburn, WA 98092	People love trees; government in that yard; neighborhood.	27 Feb 11
Joyce Shaw		425-452-3846		" "
Betty L. Brunette		25861 SE 224th Maple Valley, WA		" "

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Susan I. Davidson		22975 SE 292nd Pl	Please keep our city rural by design!	2/20/11
Mark A. Davidson		22975 SE 292nd Pl		2/20/11
David H. Schindler		22969 SE 292nd Pl	Please listen to your City residents.	02/20/11
Drew A. Davidson		22975 SE 292nd Pl		2/20/11
Sherry Lund		2905 232nd Ave SE	PLEASE keep our lake area green	2/20/11
Stan Lund		2920 S 232nd Ave SE	Don't let them kill our lake!!	2/22/11
BRUCE EARLEY		22963 SE 292nd Pl	PLEASE LISTEN TO US	2/27/11
JULIE EARLEY		22963 SE 292nd Pl		2/27/11
MONICA R. STEWART		21516 SE 307th St. BD.		2/28

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
KATHY FARRELL		25267 SE 356 th ST	REPEAL THE ORDINANCES	2/28/11
BRIAN FARRELL		25267 SE 356 th ST		2/28/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
ROY IRONS	<i>ROY IRONS</i>	30016 225 TH AVE.		2/27
Bert Evans	<i>Bert Evans</i>	22500 SE 300 TH ST		2/27
Gary Bobick	<i>Gary Bobick</i>	22472 SE 300 TH ST		2/27
Robin Erickson	<i>Robin Erickson</i>	22468 SE 300 TH ST.		2/27
Don Erickson	<i>Don Erickson</i>	22468 SE 300 TH ST.		2/27
JANNA HOE	<i>JANNA HOE</i>	22443 SE 300 TH ST.		2/27
JOHN TAYLOR	<i>JOHN TAYLOR</i>	31306 116 AVE SE		2/27
ERIC CLINE	<i>ERIC CLINE</i>	22436 SE 300 TH		2/27
Diane Hall	<i>Diane Hall</i>	22430 SE 300 TH ST.		2/27/11
GENE KENNEDY	<i>GENE KENNEDY</i>	22425 SE 300 TH ST		2/27/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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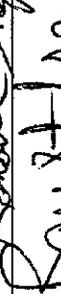
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Printed Name	Signature	Address	Comment	Date
Neel L. Wells	<i>Neel L. Wells</i>	22-147 SE 300th ST.		2/27/11
John C. Brantley	<i>John C. Brantley</i>	30007 225th Ave SE		2/27/2011
Jayne Holby	<i>Jayne Holby</i>	30040 225th Ave SE		2/27/11
KENNETH M HOLZ	<i>Kenneth M Holz</i>	30040 225th Ave SE		2/27/11
Amanda Budeson	<i>Amanda Budeson</i>	24106 SE 300th St.		2/27/11
MICHAEL ROYSON	<i>Michael Royson</i>	29740 226th Ave SE		2/27/11
Leona Doub	<i>Leona Doub</i>	29429 218th Pl. S.E.		2/27/11
DOUG VEST	<i>Doug Vest</i>	29429 218th Place SE		2/27/11
CHRIS COFFEY	<i>Chris Coffey</i>	18051 S.E. 272 St	U.K.C.	2/27/11
RICHARD STEWART	<i>Richard Stewart</i>	22516 SE 300th ST		2/28/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Tanu Kyle		29015 218th Ave SE	Black Diamond	2/25/11
Chris Mayeln		30202 225th Ave. SE.		2/25/11
Kyle Long		32218 Morgan Dr Black Diamond WA 98010		
Ronald C. Shepard		22440 SE 297th St BD WA 98010		2/26/11
RAY STEINSON		29025 229th Ave SE B D 98010		2/26/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
PHILIP ACOSTA		28859 229TH AVE SE BLACK DIAMOND WA	THANKS FOR YOUR INSIGHT	2/22/11
JEFFREY T. BROWN		21305 518TH ST. ST. KENT WA		2/22/11
Karin Powell		29103 218TH PLE Black Diamond, 98010		2/22/11
Thomas F. Ball				
Susan F. Ball		30820 229th Pl SE Black Diamond WA 98010 21612 SE 280th Ct		2/22/11
MICHAEL TROJUSKY		BLACK DIAMOND WA 98010		2-22-11
LENNIS WALTER		18906 SE 282nd Ct KENT WA 98042		2-22-11
MARGARET KELLY		Black Diamond, WA 98010 50051 252nd PLE		
Dennis McBroom		19503 NE 287th Ct		2-22-11
David A. Hunt		28914 220th Pl SE		2-22-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
JANIE EDELMAN	<i>Janie Edelman</i>	29871 232nd Ave SE	density, crime rate traffic, water quality	2/21/11
Bob Edelman	<i>Bob Edelman</i>	"	traffic, Lake Sammamish schools, taxes	2/21/11
George McIsaac	<i>George McIsaac</i>	30650 204th Ave SE		2/21/11
STEVE MILLER	<i>Steve Miller</i>	31028 228th Ave SE		2/21/11
Carol Sutter	<i>Carol Sutter</i>	20529 35th Ave SE		2/21/11
KASEY WATERS	<i>Kasey Waters</i>	29418 18th Pl SE		2/21/11
Kjersti Miller	<i>Kjersti Miller</i>	31042 228th Ave SE		2/21/11
Phyllis Swanson	<i>Phyllis Swanson</i>	29019 218th Pl. SE		2/21/11
TOM HALLGREN	<i>Tom Hallgren</i>	29009 220th Pl SE	TRAFFIC SCHOOLS, WILD LIFE	2/21/11
Dora Jolly	<i>Dora Jolly</i>	28633 216th Ave SE		2/21/11

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Printed Name	Signature	Address	Comment	Date
STEVEN GARVICH	<i>Steven R Garvich</i>	29635 232 nd Ave SE		2/27/11
USAGARVICH	<i>Steven Garvich</i>	29635 232 nd Ave SE B.O. WA		2/27/2011
WAYNE MONTS	<i>Wayne Monts</i>	22540 S.E. 304 th Pl. Black Diamond Wa.		2/27/11
Mary Ann Monts	<i>Mary Ann Monts</i>	22540 SE 304 th Pl. Black Diamond Wa.		2/27/11
Brian Kerley	<i>Brian Kerley</i>	30436 227 th Pl SE Black Diamond, WA		2/27/11
Sam Kerley	<i>Sam Kerley</i>	30436 227 th Pl SE Black Diamond WA		2/27/11
Joyce GREENWOOD	<i>Joyce Greenwood</i>	30416 - 227 th Pl. S.E. Black Diamond WA		2/27/11
JIM KING	<i>Jim King</i>	30412 227 Pl SE BLACK DIAMOND 98010		2/27/11
Patricia Raine	<i>Patricia Raine</i>	30408 227 Pl SE Black Diamond, WA 98010		2/27/11
Mike Raine	<i>Mike Raine</i>	30408 227 th Ave SE Black Diamond WA		2/27/11

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Printed Name	Signature	Address	Comment	Date
Jeff McCloskey	<i>Jeff McCloskey</i>	30401 227th Pl SE		2/27/11
Kathy McCloskey	<i>Kathy McCloskey</i>	30401 227th Pl SE		2/27/11
Deborah Minkley	<i>Deborah Minkley</i>	30409 227th Pl SE		2/27/11
David Peters	<i>David Peters</i>	30442-227th Pl SE		2/27/11
Noreen Peters	<i>Noreen Peters</i>	30442-227th Pl SE		2/27/11
Jamie Sheridan	<i>Jamie Sheridan</i>	30461 227th Pl SE		2/27/11
Carolyn Rose	<i>Carolyn Rose</i>	30461 227 Pl SE		2/27/11
Joel Higgins	<i>Joel Higgins</i>	30469 227th Pl SE		2/27/11
Toni Higgins	<i>Toni Higgins</i>	30469 227th Pl SE		2/27/11
Sam Riechy	<i>Sam Riechy</i>	30474 227th Pl SE		2/27/11

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Printed Name	Signature	Address	Comment	Date
Michael Johnston	<i>Michael Johnston</i>	22534 SE 24TH PL BLACK DIAMOND WA		2/27/11
Merrilyn Johnston	<i>Merrilyn Johnston</i>	22534 SE 304th Pl Black Diamond WA		2/27/11
Jean Gardiner	<i>Jean Gardiner</i>	30404-225th Ave SE Black Diamond		2/27/11
Jesse Gardiner	<i>Jesse Gardiner</i>	30404 225th Ave SE Black Diamond		2/27/11
Toy Gardiner	<i>Toy Gardiner</i>	30404 225th Ave SE Black Diamond WA		2/27/11
Steve Frank	<i>Steve Frank</i>	30249 225th Ave SE Black Diamond, WA		2/27/11
Julie Frank	<i>Julie Frank</i>	30249 225th Ave SE Black Diamond 98010		2-27-11
ALEN EIVINE	<i>ALEN EIVINE</i>	P.O. BOX 595 BLACK DIAMOND 30254 - 225th Ave SE	BLACK DIAMOND	2/27/11
Sharon Phillips	<i>Sharon Phillips</i>	22517 225th Ave SE BLACK DIAMOND WA 98010	BLACK DIAMOND	2/27/11
Robert Muri	<i>Robert Muri</i>	22507 SE 90th Pl Black Diamond 98010		2-27-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Wilmer Davis	<i>Wilmer Davis</i>	29215-232 nd AVE SE		2-27-11
Lillian Gallion	<i>Lillian Gallion</i>	29215-232 nd Ave SE		2-27-11
Olivia Cox	<i>Olivia Cox</i>			2/27/11
Jessica Young	<i>Jessica Young</i>	29834 232 nd AVE SE		02/27/11
Ken Young	<i>Ken Young</i>	29834 232 nd AVE SE		2/27/11
Donna Peterson	<i>Clinton Goodman</i>	29834 232 nd AVE SE		2/27/11
Orville Peterson	<i>Orville Peterson</i>	30063.232 PLE		
GLENIS RICHARDSON	<i>GRichardson</i>	37529 200 th AVE Auburn		2/28/11
Gillian Cooper	<i>Gillian Cooper</i>	26102 SE 285 th & Maple Street		2/28/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Harry Moore	<i>Harry Moore</i>	20408 30th Ave SE MV		2/20/11
ARENE BAI	<i>Arene Bai</i>	21430 SE 26th Way MA		2-20-11
ELDON F. BAKER	<i>Eldon F. Baker</i>	11000-187 Ave S.E. Benton		
Tona Smith	<i>Tona Smith</i>	13720 SE 268th St Kent		2-20-11
Deborah Kaiser	<i>Deborah Kaiser</i>	23640 SE 19th St MV		2-20-11
Thomas Brown	<i>Thomas Brown</i>	24292 224th N, SE		2-20-11
Amy Silveria	<i>Amy Silveria</i>	22503 S.E. 218th St Maple Valley		2/20/11
DAVID SILVERIA	<i>David Silveria</i>	CC		2/20/11
Keith A. Littlefield	<i>Keith A. Littlefield</i>	17632 S.E. 299th Place Kent, Wash 98042		Feb 20 '11
Molly Littlefield	<i>Molly Littlefield</i>	" " "		2/20/11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
 WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

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Printed Name	Signature	Address	Comment	Date
Erica L. Wilber	Erica Wilber	AKSUN		2/20/11
Mary C Headrick	Mary C Headrick	Renton	No More Traffic Need true representation of all stakeholders!	2-20-11
Deborah F. Hutchinson	Deborah F. Hutchinson	Ravensdale	Need representation	2-20-11
Wayne Kappenman	Wayne Kappenman	Maple Valley	No More Traffic	2-20-11
Gay Elzea	Gay Elzea	Maple Valley	Too Much Traffic	2-20-11
Scott R Case	Scott R Case	Maple Valley		2-20-11
Regina Adam	Regina Adam	Maple Valley		2-20-11
David Fullerton	David Fullerton	Kent (Lake Meridian)		2-20-11
Craig R. Minton	Craig R. Minton	Maple Valley	ROADS CAN'T SUSTAIN TRAFFIC THROUGH MAPLE VALLEY	2-20-11
Deborah Minton	Deborah Minton	19846 Maxwell Rd. S.E.	Same	2-20-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
JENNIE NOONAN	<i>Jennie Noonan</i>	P.O. Box 777 Ravensdale WA		2-22-11
Patricia Fox	<i>Patricia Fox</i>	P.O. Box 59 Ravensdale WA		2-22-11
SUSAN HARVEY	<i>Susan Harvey</i>	P.O. Box 314, RAVENSDALE, WA		2-22-11
Mike Harvey	<i>Mike Harvey</i>	P.O. Box 314 Ravensdale WA		2-24-11

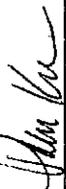
Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Benjamin Litherfeld	<i>Benjamin Litherfeld</i>	1763A SE 299PL Kent WA 98042		2-20-11
Samuel Litherfeld	<i>Samuel Litherfeld</i>	17632 SE 299PL Kent WA 98042		2-20-11
M M Pedratz	<i>M M Pedratz</i>	16220 184 Ave SE Renton WA 98058		2-20-11
Louise B. Brown	<i>Louise B. Brown</i>	24232 224th Ave SE #9 Maple Valley WA 98038	URGENT	20 Feb 2011
Rogee Karison	<i>Rogee Karison</i>	23640 SE 192nd St Maple Valley WA 98038	TRAFFIC	2/20/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Robert G. Mullikin		29723-225th Pl SE Black Diamond WA 98010		2/27/2011
RHONDA D. MULLIKIN		29723 225TH PL SE 98010 Black Diamond WA		2/27/2011
Keith Price		29722 225th Pl SE Black Diamond WA 98010		2/27/2011
Pam Krassin		22108 SE Sawyer Pkwy Black Diamond WA 98010		2/28/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Willard F Pric	<i>Willard F Pric</i>	29722-225th PL SE BLACK DIAMOND WA		2/27/2011
Maxine and Russell McLeod	<i>Maxine McLeod</i> <i>Russell McLeod</i>	29717 225th Pl SE Black Diamond WA 98010		2/27/2011
Mike + Diane SIMONSON	<i>Mike Simonson</i> <i>Diane Simonson</i>	29729 225th PL SE Black Diamond, WA 98010		2/27/2011
Linda McGuire	<i>Linda McGuire</i>	29716 225th PL SE BLACK DIAMOND, WA 98010		2/27/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Jennifer Blakemore Mark Blakemore	<i>Jennifer Blakemore</i>	30505 Selleck Pl Black Diamond, WA 30505 Selleck Pl 98010		2/28/11 2/28/11
Dianna Perry	<i>Dianna D. Perry</i>	30513 Selleck Pl. Blk Diamond 98010		2/28/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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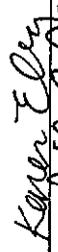
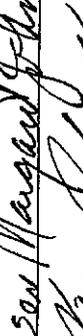
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Printed Name	Signature	Address	Comment	Date
DAVID KASZYCKI	<i>David Kaszycki</i>	30726 229 th Pl SE 98010		2-28-2011
DIANE KASZYCKI	<i>Diane Kaszycki</i>	30726 229 th Pl. S.E. 98010		2-28-2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Kurt Eby		22516 SE 304 Pl.		2/27/11
Karen Eby		22516 SE 304mpl		2/27/11
Michael S. Tulloch		22525 SE 304 Pl.		27 Feb 11
Stephanie Tulloch		22525 SE 304th Pl		27 Feb 11
Elizabeth Nagy		22545 SE 304 Pl		2/27/11
Kelly Dadd		22546 SE 304th Pl.		2/27/11
Lou Owen		29627 232 SE BK. Dlg		2/27/11
BRADY OWEN		29627-232 AV SE BLACK DIAMOND		2/28/11
MARGARET JOHNSON		27425 E. E. 304th Pl.		2/28/11
KEN JOHNSON		22415 SE. 304th Pl		2-28-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
LLOYD A. BARNES	<i>Lloyd A Barnes</i>	22404 SE 304th PL		2/28/11
MARGARET L. BARNES	<i>Margaret Barnes</i>	22404 SE 304th PL		2/28/11
Anne West	<i>Anne West</i>	22533 SE 304th PL		2/28/11
Don West	<i>Don West</i>	22533 SE 304th PL		2/28/11
LYLA BROWN	<i>Lyla Brown</i>	30428 - 227th PL SE		2/28/11
RICHAR WOODS	<i>Richard Woods</i>	30428 - 227th PL SE		2/28/11
Clark Mettes	<i>Clark Mettes</i>	30483 227th PL SE		2/28/11
Natalie metter	<i>Natalie Metter</i>	30483 227th PL SE		2/28/11
Ann Kulesza	<i>Ann Kulesza</i>	30490 227th PL SE		2.28.2011
Joan Gans	<i>Joan Gans</i>	30720 229th PL SE		2/28/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Uchi A Harp	<i>Uchi A Harp</i>	82508 836th AVE SE BLACK DIAMOND, WA 98010	NOISE & SCHOOL AGREEMENT X NO DA TRAFFIC	2/19/11
Rudy Espino	<i>Rudy Espino</i>	30532 Cumberland Dr	None	2/19/11
Christine Levine	<i>Christine Levine</i>	30530 Cumberland	None	2/19/11
Kimberly Chiechi	<i>Kimberly Chiechi</i>	30516 Cumberland	None	2/19/11
Brandon Walsh	<i>Brandon Walsh</i>	30513 Cumberland Dr	School Taxes and No Fire & Police	2/19/11
Jennifer Winters	<i>Jennifer Winters</i>	30513 Cumberland Dr	Concern about taxes specifically for schools	2/19/11
Julie Veblich	<i>Julie Veblich</i>	30504 Cumberland Dr	Concern about taxes, Fire & Police	2/19/11
Corraine Howard	<i>Corraine Howard</i>	30504 Cumberland Dr	Concerned about LOW INCOME HOUSING	2/19/11
Billy Heard	<i>Billy Heard</i>	30428 Cumberlandy Dr	None	2/19/11
Randy Antonio	<i>Randy Antonio</i>	30428 Cumberland and Pt.	None	2/19/11
Marcos Antonio	<i>Marcos Antonio</i>	30428 Cumberland and Pt.	None	2/19/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
J.D. Credit		30420 Cumberland Dr.	Schools!	2/19/11
AMBER HADWIN		30416 Cumberland Dr.	to office	2/19/11
Tim Danielson		25911 Cumberland way	TRAFFIC / Schools	2/19/11
DANA MAZZANTI		25211 Cumberland way	TRAFFIC / SCHOOLS	2/19/11
MIKE CAREY		25515 Cumberland way	TRAFFIC !!!	2/19/11
JOHN HARPER		25512 Cumberland way	'	2/19/2011
Nancy Thomas		25504 Cumberland way	'	2-19-11
DUNE GIBBIL		25724 CUMBERLAND way		2-19-11
Carol Lynn Harper		24430 Morgan St		02/19/2011
Cindy Proctor		2950 SUN MT DR	Schools / Fiscal	2/25/10

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Diana Box	<i>[Signature]</i>	P.O. Box 123 30517 2nd Ave. Blk. D.a.		2/28/11
Diana Box	<i>[Signature]</i>	P.O. Box 123 30517 2nd Ave. Blk. D.a.		2/28/11
Felix BN	<i>[Signature]</i>	2350 2nd Ave	is in our	2-28-11
CAROL PRINCE	<i>[Signature]</i>	3040 2nd Ave		2-28-11
Liz Woods	<i>[Signature]</i>	52911 309th Ave		2-28-11
Walene Brint	<i>[Signature]</i>	43907-2883rd Pl SE Enumclaw, WA 98022		2-28-11
MOSICA BRIGHT	<i>[Signature]</i>	43907-2883rd Pl SE, Enumclaw, WA 98022		2-28-11
Wendell Brint	<i>[Signature]</i>	43907 2883rd Pl SE Enumclaw		2-28-11
Judith Altonberg	<i>[Signature]</i>	P.O. Box 300 37227 K Woodman Pl SE Enumclaw, WA		2-28-11

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Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Edward Sellers	<i>Edward J. Sellers</i>	16946 SE Auburn Black Diamond RE	Travis	2/19/11
Judith Sellers	<i>Judith Sellers</i>	16946 SE Auburn Black Dia Rd	Too much impact on roads, schools and taxes	2/26/11
Stanley Sellers	<i>Stanley Sellers</i>	16946 SE Auburn - Black Diamond R.	existing in structure cannot handle population influx	2/28/11
HONNA GANTHER	<i>Honna Gantner</i>	32427 - 6th Ave. BIK BIA. WA 98010	COUNCIL WAS NOT JUST ON LEGAL PROCEDURE	3/11/11
GERALD GANTHER	<i>Gerald Gantner</i>	32427 - 6th Ave W 98010	ROADS - SCHOOLS and TAXES	3/11/11

(5)

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Manfred Stamm	<i>Manfred Stamm</i>	32514 Newcastle Dr	Repeal	2/20/11
Andree Martin	<i>Andree Martin</i>	32502 Newcastle Dr	Repeal	2/20/11
Lola Matsumoto	<i>Lola Matsumoto</i>	32410 Newcastle Dr	Repeal	2/20/11
Stephen Matsumoto	<i>Stephen Matsumoto</i>	32410 Newcastle Dr	Repeal	2/20/11
Tom Taff	<i>Tom Taff</i>	24817 Morgan St	Repeal	2/20/11
Lorianne Taff	<i>Lorianne Taff</i>	24817 Morgan St	Repeal	2/21/11
Troy Deady	<i>Troy Deady</i>	32705 Commission Ave PO Box #1102	Repeal	2/22/11
City Evans	<i>City Evans</i>	32601 Newcastle Dr Black Diamond VA	Repeal	2/22/11
Mary Ando	<i>Mary C. Ando</i>	32517 Newcastle Dr Black Diamond, WA	Repeal	2/26/11
Yvonne Knight	<i>Yvonne Knight</i>	32513	REPEAL	2/26

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Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Tamie Deady	Tamie Deady	32424 1st Ave BD	Repeal !!! * YD !!!	2/20
Brook Deady	Brook Deady	32424 1st Ave BD	Open hearing for public input	2/20
AUGLEWIS	[Signature]	32430 1st Ave BD		2/20
PALUS SHAY	[Signature]	32621 3 AVEN		
Seanell Capp	[Signature]	380129th Ave SE		2/20
FAYRE MACKAY	[Signature]	32414 5th Ave		2/20
DARCY NELSON	[Signature]	25625 Lawson St		2/20
Lynne Reed	[Signature]	25701 Lawson St		2/20
Peter Fisher	[Signature]	32602 Newcastle Dr		2/20
Janine Fisher	[Signature]	32002 Newcastle Dr		2/20

(10)

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Cherian Driesen	<i>Cherian Driesen</i>	33515 Newcastle Dr Black Diamond, WA 98010		2/26/11
David Holbrook	<i>David Holbrook</i>	32505 Newcastle Dr Black Diamond, WA 98010		2/26/11
Julie Holbrook	<i>Julie Holbrook</i>	32505 Newcastle Dr Black Diamond, WA 98010		2-26-11
Jacob Holbrook	<i>Jacob Holbrook</i>	32505 Newcastle Dr Black Diamond, WA 98010		2-26-11
STEVE DUNCAN	<i>Steve Duncan</i>	32501 Newcastle Dr Black Diamond, WA 98010		2-26-11
Matt Lish	<i>Matt Lish</i>	32409 Newcastle Dr Black Diamond, WA 98010		2-26-11
Simon Robinson	<i>Simon Robinson</i>	32107 Newcastle Dr Black Diamond, WA 98010		2-26-11
Sarah Johnson	<i>Sarah Johnson</i>	32401 Newcastle Dr Black Diamond, WA 98010		2/26/11
Lynn Turnbull	<i>Lynn Turnbull</i>	32103 Newcastle Dr Black Diamond, WA 98010		2/26/11
DAVE TURNBULL	<i>David Turnbull</i>	32403 Newcastle Dr Black Diamond, WA 98010		2/24/11

(10)

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Printed Name	Signature	Address	Comment	Date
Elizabeth Garcia	<i>Elizabeth Garcia</i>	30401 Blaine Ave Black Diamond	Repeal	2-28-11
Alcantar	<i>[Signature]</i>	30401 Blaine Ave Black Diamond	Repeal	2-28-11
Rayne Kunk	<i>[Signature]</i>	30403 Blaine Ave Black Diamond	Repeal	2-28-11
Rayne Kunk	<i>[Signature]</i>	30403 Blaine Ave Black Diamond	Repeal	2-28-11
Sara Lange	<i>[Signature]</i>	30405 Blaine Ave Black Diamond	Repeal	2-28-11
Lina Churchill	<i>[Signature]</i>	30406 Blaine Ave	Repeal	2-28-11
Tim Norwood	<i>[Signature]</i>	30407 Blaine Ave	Repeal	2/28/11
ERIC SHIRLEY	<i>[Signature]</i>	2500 SUMMIT DR BLACK DIAMOND	Repeal	2/28/2011
STEVEN WASSERSTROM	<i>[Signature]</i>	25003 SUMMIT DR BLACK DIAMOND	REPEAL	2/28/11
Jim Moran	<i>[Signature]</i>	25002 Summit Dr	Repeal	2/28/11

T.S.D

Steve Moran

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Mike Simpers	<i>[Signature]</i>	32404 Newcastle DR	—	26 Feb 11
Amber Fortin	<i>[Signature]</i>	32406 Newcastle DR	—	2-26-11
Billy Binston	<i>[Signature]</i>	32412 Newcastle DR	—	2-26-11
LISA BURTON	<i>[Signature]</i>	32412 Newcastle Drive	—	2-26-11
Joséphine Schamp	<i>[Signature]</i>	32508 Meton Ln BD	—	2-28-11
Brian Boyd	<i>[Signature]</i>	32509 Blaine Ave Black Diamond	—	2-28-11
Tony FEENEY	<i>[Signature]</i>	32401 KUMMER AVE BD	—	2/28/11
Anthony Feeney	<i>[Signature]</i>	30401 KUMMER AVE BD	—	—
Josephine Barbara	<i>[Signature]</i>	25002 Franklin Dr	—	2/28/11
JOSEPH SCHAEFFEL	<i>[Signature]</i>	25002 FRANKLIN DRIVE	—	28 Feb 11

10

Petition to Repeal Black Diamond MPD Approval Ordinances

WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and **WHEREAS** the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and **WHEREAS** the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

We, the undersigned, urge the City Council to repeal the Yarrow Bay MPD Ordinances, put an end to needless litigation, and reengage with us in a legal process. We look forward to developments that truly reflect the concepts of "rural by design" and "growth pays for growth".

Printed Name	Signature	Address	Comment	Date
Kristy Boxx	<i>Kristy Boxx</i>	32529 Railroad Ave		3-1-11
Leslie Frazier	<i>Leslie Frazier</i>	32529 Railroad Ave		3/1/11
Heather Frazier	<i>Heather Frazier</i>	32529 Railroad Ave.		3/1/11
Brett Meyer	<i>Brett Meyer</i>	24727 Morgan St.		3/1/11
Amy Meyer	<i>Amy Meyer</i>	24727 Morgan St		3/1/11
Bry Meyer	<i>Bry Meyer</i>	24727 Morgan St.		3/1/11
Corey Fagan	<i>Corey Fagan</i>	5606 247th St. E		3/1/11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
 WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

Action petitioned for
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Printed Name	Signature	Address	Comment	Date
BENJAMIN BREE	<i>[Signature]</i>	25027 MORGAN	BLACK DIAMOND	3-1-11
MIKE CHILCOAT	<i>[Signature]</i>	32509 3rd AVE	BLK DIA	3-1-11
ROBERT PARKIN	<i>[Signature]</i>	32979 RAILROAD AVE	Black Diamond	3-1-11
ARLENE PARKIN	<i>[Signature]</i>	30024 RAILROAD AVE	BLACK DIAMOND WA	3-1-11
Darwin Glaser	<i>[Signature]</i>	540 Grand Main Dr.	Enumclaw WA.	3-1-11
Tim Kemmer	<i>[Signature]</i>	25327 Baber St	BD WA	3-1-11
KEITH STEENHARD	<i>[Signature]</i>	25922 SE 151 st ST	Enumclaw WA	3-1-11
Fanny Romine	<i>[Signature]</i>	20310 SE 429 th	Enumclaw WA	3-1-11
Brett Meldahl	<i>[Signature]</i>	32800-3rd AVE	Black Diamond	3-1-11
Chris Veady	<i>[Signature]</i>	32721 1st AVE	Black Diamond	3-1-11

⑩

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
LILLIAN WICKSTALE SEU	<i>Lillian Wickstale</i>	25004 Summit Dr		2/24
Austin Mudd	<i>Austin Mudd</i>	25003 Summit Dr	Repeal	2/28
Ken Lykker	<i>Ken Lykker</i>	25004 Summit Dr	↑	2/28
Kristina Lykker	<i>Kristina Lykker</i>	25005 Summit Drive	↑	2/28/11
TAMMY DALLI	<i>Tammy Dalli</i>	25015 Summit Dr	↑	2/28/11
Jaime LeBlanc	<i>Jaime LeBlanc</i>	30404 Kummer Ave	Repeal	2/28/11
KERI HANSEN	<i>Keri Hansen</i>	30422 Kummer Ave	REPEAL	2/28/11
Brea Walls	<i>Brea Walls</i>	25000 Frank Ave		2/28/11
Paula Boyl	<i>Paula Boyl</i>	35401 Blaine Ave	Repeal	2-28-11

9

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Wes DAVIS	Wesley Davis	31108 3 rd Ave Black Diamond WA No	#236	3-1-11
K Newbank	K Newbank	31109 3 Ave Black Diamond WA No		3-1-11
Edward Dussert	Edward Dussert	32704 1 st Ave. B D, WA No		3-1-11
Margaret Dugstad	Margaret Dugstad	25326 Peach Lane WA	Black Diamond WA	3-1-11
CHERYL ARAUJO	Cheryl Araujo	25327 Peach Lane BP, WA No		3-1-11
Denaris Paragster	Denaris Paragster	25329 Birch Lane BP, WA No		3-1-11
Richard Paragster	RICHARD PARAGSTER	" " " BP, WA No		3-1-11
Scott Steen	Scott Steen	32803 1 st Ave. Black Diamond WA		3/1/11
JANET SILL	Janet Sill	32707 2nd Ave WA	Black Diamond WA	3/1/11
ALBERTSIL	Albert Sill	32707 2nd Ave Black Diamond WA	No	3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
JOHN COOK	<i>[Signature]</i>	33701 KASS RD BLACK DIAMOND WA		3/1
STEPHEN THOMPSON	<i>[Signature]</i>	2545 SE WILSON LANE AUBURN WA		3/1
W. A. NEJ. HALEY	<i>[Signature]</i>	35715 253 AVE SE AUBURN WA		3/1
JIMMY A. ABERNETHY	<i>[Signature]</i>	3501 252 ND AVE SE AUBURN WA		3/1
LARRY E. SHORT	<i>[Signature]</i>	25329 S.E. 356 AUBURN WA		3/1
MARY S. SHOOT	<i>[Signature]</i>	25229 SE 356 AUBURN WA		3/1
Cheryl Palensky	<i>[Signature]</i>	25230 SE 359th St. AUBURN WA	Stop this craziness	3/1
Allen Palensky	<i>[Signature]</i>	25230 S.E. 359th St. AUBURN WA		3/1
Azt W. H. W. SA	<i>[Signature]</i>	25252 S.E. 395th St. AUBURN WA		3/1
TRAVIS PALENSKY	<i>[Signature]</i>	25337 SE 357th St AUBURN WA		3/1

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
IRENE D WARREN		25217 8835th St. Auburn, WA 98092	Auburn, WA 98092	3-1-11
Curt Olosky		35430 252nd Ave S Auburn, WA 98092		3-1-11
Janet Blank		20326 SE Gr. Vg Rd Auburn, WA 98092	Auburn, WA 98092	3-1-11
DWIGHT THIRKIELD		35415 227th Ave SE Auburn, WA 98092	Auburn, WA 98092	3-1-11
VERA THIRKIELD		35415 227 SE Auburn, WA 98092	Auburn, WA 98092	3-1-11
Alice Louise DeBerry		25430 5455th St Auburn, WA 98092	Auburn, WA 98092	3-1-11
DONALD L. DEBERRY		25430 5455th St Auburn, WA 98092	Auburn, WA 98092	3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
 WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

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Printed Name	Signature	Address	Comment	Date
MARLENE BORTLESON	<i>[Signature]</i>	PO Box 188 Bosman WA 98002		2-18-11
Meri Bortleson	<i>[Signature]</i>	700 Front Street S # B108		2-28-11
Nicole Hepworth	<i>[Signature]</i>	700 FRONT STREETS, B108 ISSAQUAH, WA 98027		2-22-2011
James Stapp	<i>[Signature]</i>	23517 SE Green Valley Auburn, WA 98002		
Doreen MacIver	<i>[Signature]</i>	95015 P.E. Green Valley Rd. Auburn, WA 98002		2-28-11
LYNN MARGHIRE	<i>[Signature]</i>	95015 SE GRN. VALLEY RD. AUBURN WA 98002		2-28-11
Cory Olson	<i>[Signature]</i>	25230 SE Green Valley Rd Black Diamond WA 98010		3-1-11
Virginia Weibs	<i>[Signature]</i>	34415 343rd Ave SE Auburn WA 98002		3-1-11
Michael Smith	<i>[Signature]</i>	24319 SE Green Valley Rte Auburn WA 98002		3-1-11
Annette Smith	<i>[Signature]</i>	24319 SE Green Valley Rd Auburn, WA 98002		3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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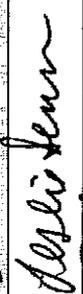
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Printed Name	Signature	Address	Comment	Date
Julie Burdon	<i>Julie Burdon</i>	28003 SE 432 nd St Burien, WA	28003 SE 432 nd St Burien, WA	3/1/11
Troy Baxx	<i>Troy Baxx</i>	325 22 nd Ave Black Diamond, WA	325 22 nd Ave Black Diamond, WA	3/1/11
Shoreline	<i>Shoreline</i>	32513 22 nd Ave Black Diamond, WA	32513 22 nd Ave Black Diamond, WA	3/1/11
SENECH GILVORE	<i>SENECH GILVORE</i>	32513 22 nd Ave Black Diamond, WA	32513 22 nd Ave Black Diamond, WA	3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Leslie Senn		35411 252nd Ave SE Auburn, WA 98092		3/1/11
Sheki Greco		17904 SE Green Valley Rd Auburn WA 98092	Green Valley Rd cannot handle traffic increase	3/1/11
Doug Cross		19102 SE Green Valley Rd Auburn WA 98092		3/1/11
Harriet M. DeLos		19004 SE Green Valley Rd. Auburn, WA 98092	AV Road would not be safe with more traffic	3/1/11
MARK H. ANLOIS		19004 SE GREEN VALLEY RD. AUBURN, WA 98092-1544	SENSITIVE SALMON HABITAT WILL BE IMPACTED	3/1/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Katherine Smith		Black Diamond 32602 224th Pl. SE. 98010	Full support of the Diamond Council	2/28/2011
Hadi Ross		Black Diamond 32606 224th Pl SE	Please listen to the origins in this community	
Jeff Ross		Black Diamond 32606 224th Pl SE WA 98010		

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Mike Bily	<i>Mike Bily</i>	32720 224 th Pl SE Black Diamond WA		1/24
<i>[Handwritten Name]</i>	<i>[Handwritten Signature]</i>	32720 224 th Pl SE Black Diamond WA		1/28
<i>[Handwritten Name]</i>	<i>[Handwritten Signature]</i>			1/28
<i>[Handwritten Name]</i>	<i>[Handwritten Signature]</i>			1/28
<i>[Handwritten Name]</i>	<i>[Handwritten Signature]</i>			1/28
<i>[Handwritten Name]</i>	<i>[Handwritten Signature]</i>			1/28
William Parker	<i>William Parker</i>	32623 224 th Pl SE Black Diamond WA 98010		2/28
Mary D. Parker	<i>Mary D. Parker</i>	32623 224 th Pl SE Black Diamond WA 98010		2/28
<i>[Handwritten Name]</i>	<i>[Handwritten Signature]</i>	32623 224 th Pl SE Black Diamond WA 98010		2/28

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Timothy Rasmussen		3502 227th Ave SE.	Auburn, WA 98092	03/02/2011
Ed Vallejo		14419 SE Green Valley Rd	Auburn WA 98092	12/11
SUSAN HART		POB 65	BLACK DIAMOND	2 MAR 11
Ram Linden		35311 227th Ave SE	Auburn WA	3/2/11
Rick Stroh		35614 252nd Ave SE	Auburn WA	98092
Jen Stroh		35614 252nd Ave SE	Auburn WA	98092
WILLIAM R. SEAMAN		2725 SE 321st PL	KENT, WA (101 PINES)	98042
LORRAINE D. SEAMAN		2725 SE 321st PL	KENT, WA (101 PINES)	98042
Pat Pepper		28934 229th Pl SE	BLACK DIAMOND 98010	03/02/2011
Lindsay Pepper		20134 229th Pl SE	Black Diamond WA 98010	03/02/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Barbara Walker	<i>Barbara Walker</i>	2445 Ferris Pl		3-1-11
Mareen Haley	<i>Mareen Haley</i>	35215 253rd SE Auburn WA		3/2/11
Dwaine Smith	<i>Dwaine Smith</i>	3524 253rd SE Auburn WA		3/2/11
Joann Smith	<i>Joann Smith</i>	35241 253rd SE Auburn WA		3/2/11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
 WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

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Printed Name	Signature	Address	Comment	Date
Vickie Mattern	<i>Vickie L. Mattern</i>	22509 SE 329th St Black Diamond 98010		2/28/11
Michael Mattern	<i>Michael Mattern</i>	11 11		2/28/11
MICHAEL CRAMBER	<i>Michael Cramber</i>	32818 227th Plac Black Diamond 98010		2/28/11
Zoe Sturzen	<i>Zoe Sturzen</i>	32808 227th Pl SE Black Diamond, WA 98010		2/28/11
DAVID SWIAS	<i>David Swias</i>	22600 SE 329th St Black Diamond		2-28-11
Kathryn Jonas	<i>Kathryn Jonas</i>	" "		2-28-11
Amy Sampson	<i>Amy Sampson</i>	22504 SE 329th St		2/28/2011
Deborah Sampson	<i>Deborah Sampson</i>	22504 SE 329th St		2/28/2011
Nicholas Linthicum	<i>Nicholas Linthicum</i>	22474 SE 329th St SE		2/28/2011
Steve Wright	<i>Steve Wright</i>	22405 SE 329th St SE		2/28/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Gunner Bridges		28894 th 229 th Ave SE	No more people	3/2/11
WES FEIGNER		28854 229 th Ave SE	Don't need the extra traffic	3/2/11
TOKO FEIGNER		28854 229 th Ave SE	Don't need the extra traffic in small town	3/2/11
JERRY GILARA		28905 229 th Pl SE	No more people & people	3/1/11
MARY GILARA		28905 229 th Pl SE	No more traffic & people	3/1/11
Joe Sevank		28906 225 th Pl SE	No more traffic & people	3/1/11
Michael Glatt		28910-229 th Pl SE	No more traffic	3/1/11
Brandon Glatt		28910 229 th Pl SE	No more traffic	3/1/11
Chris Henninger		28925 229 th Pl SE	"	3/1/11
Chris Henninger		"	"	"

Petition to Repeal Black Diamond MPD Approval Ordinances

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 WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

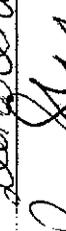
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Printed Name	Signature	Address	Comment	Date
KEVIN CROO	<i>[Signature]</i>	28910 23 rd AVE SE BLK B		3/1/11
LICKHURST	<i>[Signature]</i>	22225 SE 288 th ST BP		1 MAR 11
KIRSTEHNIST	<i>[Signature]</i>	22925 SE 288 th ST BR		1 MAR 11
Gerde Stollor	<i>[Signature]</i>	22909 SE 288 th ST		1-March
Laura Lane	<i>[Signature]</i>	22829 SE 288 th ST 98010 BLK DMS		3-1-11
Kevin Salway	<i>[Signature]</i>	22821 SE 288 th ST		3-1-11
Lola B Karr	<i>[Signature]</i>	22813-SE 288 th ST BLK D		3-01-11
MIKE JAY	<i>[Signature]</i>	28814 228 th AVE SE BP		3-1-11
Ryan Killoit Perkins	<i>[Signature]</i>	28824 228 th AVE SE		3-1-11
MARINA SCHMIDT	<i>[Signature]</i>	" " " "		3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinance

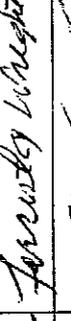
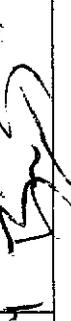
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Printed Name	Signature	Address	Comment	Date
PAM TOMICH		30738-229 TH PLSG		2-27-11
Ron Tomich		11		11
Jim Sumner		22024 SE 29 TH PL		2-27-11
Leena Sumner		"		"
Brian Stadenberg		22513 SE 322 ND ST		2-27-11
MOCKENZICKS		21015 21 ^{STH} AVE SE		2-27

Petition to Repeal Black Diamond MPD Approval Ordinances

<p>Petition summary and background</p>	<p>WHEREAS the State has found that Black Diamond used an <u>illegal</u> process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore</p>
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Printed Name	Signature	Address	Comment	Date
Rob Cortino		P.O. 162 RAUMUS DEL 98051		3/1/11
Joe Banda		23317 S.E. 353 rd PI MV WA 98038		3/1/11
Alicia Rogers		21004 270TH AVE SE MAPLE VALLEY WA 98043 35422 142 AVE SE AUBURN		3/1/11
Wendy O'Brien		31606 NE 17th RAUMUS WA 98051		3/1/11
EMER L ENBLE		Blacks Diamond		3-1-11
Gary West		32999 Pacific St Blacks Diamond		3-1-11
Norma West		32990 PACIFIC ST BLACK DIAMOND WA 98010		3/1/11
RON BESCH		33703 PACIFIC STREET BLACK DIAMOND		3-1-11
FOREST WRIGHT JOYCE WRIGHT		27751 ARDAMS AVE BD. WA		3-1-11
Brian Swaney				3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinances

WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and **WHEREAS** the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and **WHEREAS** the City has resolved to wait for all litigation to be over before complying with the State's order; therefore

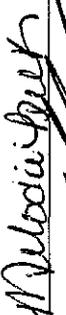
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Printed Name	Signature	Address	Comment	Date
Ky Boisjolie	<i>[Signature]</i>	24725 Mason St		3-1-11
Sonia Boisjolie	<i>[Signature]</i>	24729 Mason St		3-1-11
Justin Boisjolie	<i>[Signature]</i>	24729 Mason St		3-1-11
Esque Kobachuk	<i>[Signature]</i>	24723 Mason St		3-1-11
Galina Afanasyeva-Gubin	<i>[Signature]</i>	24723 Mason St		3-1-11
Karen Jacobsen	<i>[Signature]</i>	32818 Hyde Ave		3-1-2011
Jaime Thompson	<i>[Signature]</i>	32800 Hyde Ave		5/1/11
Hannah Sanders	<i>[Signature]</i>	32807 Hyde Ave		
ED BERGMAN	<i>[Signature]</i>	24670 MORGAN ST.		3-1-11
JIM BERGMAN	<i>[Signature]</i>	24670 MORGAN ST		3-1-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Jeff Beck		24686 Morgan Street		3/1/11
Melodie Beck		24686 Morgan St		3/1/2011
Michael Cannon		2089 166th Wg Dr		3/1/11
Gary Cannon		2009 SE 85th St		3/1/11
John o'Shaughnessy		24901 Roberts Dr,		3/1/11
Cliff Bowden		51108 3rd Ave #325		3/1/11
Tawnya L. Peltit		P.O. Box 653 Bldg 4 98010		3/1/11
Paul G. Hopkins		P.O. Box 653 98010		3/1/11
Clinton Wallace		24465 Terrace PL 98010		3-1-11
Scott T. Krebs		27412 237th N 98028		3/1/11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background	WHEREAS the State has found that Black Diamond used an illegal process to consider the Yarrow Bay development proposals and did not allow us to have a direct dialogue with our representatives; and WHEREAS the City Attorney continues to support Yarrow Bay's court defense of the resulting ordinances; and WHEREAS the City has resolved to wait for all litigation to be over before complying with the State's order; therefore
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Printed Name	Signature	Address	Comment	Date
Todd W. HARGENSON		Raven State #8051 35922 SE Courtway Rd		3-1-2011
Susan Sherer		22426 SE 300th St Black Diamond	Please listen to our concerns!	3-1-11
EUGENE J. MAY		29611 232nd Ave BLACK DIAMOND		3-02-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Carrie Hartman	<i>Carrie Hartman</i>	28314 180 th Ave SE Black Diamond WA 98042		2-21-11
Betty A. Wheeler	<i>Betty A. Wheeler</i>	304630 229 th Pl S.E. Covington WA 98042	Please listen to the people of Black Diamond	2-21-11
Robert Hartman	<i>Robert Hartman</i>	28314 - 180 th Ave SE		2-21-11

Petition to Repeal Black Diamond MPD Approval Ordinances

Petition summary and background
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Printed Name	Signature	Address	Comment	Date
MARYANNE TAGNEY-JONES <i>Maryanne Tagney-Jones</i>		22603 SE 288th St. Black Diamond 98010 30221 234th Ave SE Black Diamond 98010	The Zoning Ordinance was changed since the ordinance was adopted. Change it!	2/20/11
William B Wheeler		30221 234th Ave SE Black Diamond WA 98010		2/27/11

Petition to Repeal Black Diamond MPD Approval Ordinances

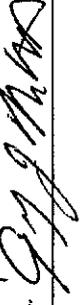
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Printed Name	Signature	Address	Comment	Date
Linda A. Chase	<i>Linda A. Chase</i>	22511 SE 298th St. Black Diamond WA 98010		2/20/2011
Stephen J. Chase	<i>Stephen J. Chase</i>	22511 SE 298th St. Black Diamond WA 98010		2/20/2011
Cynthia Smith	<i>Cynthia K. Smith</i>	29744-226 Ave SE Black Diamond, WA 98010		2/26/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Romana McNamee		22460 S.E 300th	Repeal & listen to us!	2/25/2011
GREGORY McNamee		22460 SE 300TH ST	REPEAL & WORK WITH RURAL BY DESIGN	2/25/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Erik Eknes	<i>Erik Eknes</i>	29810 224th Ave SE Black Diamond, WA 98010	REPEAL!!!	2/21/11
Ryan McShane	<i>Ryan McShane</i>	29800 224th Ave SE Black Diamond, WA 98010	Repeal	2/21/11
Audrey Nason-Schubert	<i>Audrey Nason-Schubert</i>	29830 224th Ave SE Black Diamond, WA 98010	Repeal	2/21/11
Marcin Lawrence	<i>Marcin Lawrence</i>	29830 224th Ave SE Black Diamond, WA 98010	Repeal	2/21/11
Laura Maitland	<i>Laura Maitland</i>	29820 224th Ave SE Black Diamond, WA 98010	Repeal!!!	2/22/11
Donovan Carrier	<i>Donovan Carrier</i>	Black Diamond WA 98010	Repeal!	2/22/2011
Spencer Lawrence	<i>Spencer Lawrence</i>	13033 SE 201st St Washington 98042	Repeal	2/22/2011
Colleen Boyle	<i>Colleen Boyle</i>	29722 224th Ave SE BLACK Diamond WA 98010	Repeal	2/22/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
JASON SHANNON		22920 SE 312th ST		2/28/11
CHARLES HOFFIG		23004 SE 312th ST		2/28/11
Isabel Tjessima		30846 229th Place SE		3/1/11
Charlene Tjessima		30846 - 229th Pl. SE		3/1/11
Deb Gustafson		22539 SE 298th ST		3/1/11
Deel Gustafson		22539 SE 298th ST		

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Lynnette R. Christie	<i>Lynnette R. Christie</i>	32517 SE 298TH ST BLACK DIAMOND, WA	Please begin the process again	2/20/11
ALAN C. CHRISTIE	<i>Alan C. Christie</i>	22577 SE 298TH ST BLACK DIAMOND, WA	BEGUN PROCESS —	2/20/11
Douglas Christie	<i>Douglas Christie</i>	32517 SE 298TH ST BLACK DIAMOND, WA		2/20/11
Joe Waller	<i>Joe Waller</i>	22527 SE 298TH ST BLACK DIAMOND, WA		02/21/2011
Robert Fish	<i>Robert Fish</i>	22527 SE 298TH ST BLACK DIAMOND, WA		02/21/2011
Claudia Brynn	<i>Claudia Brynn</i>	22459 SE 297TH BLACK DIAMOND, WA 98010		2/22/11
WALTER T. BRYNN	<i>Walter T. Brynn</i>	22459 SE 297TH BLACK DIAMOND, WA 98010		2/22/11
Alvaro Hernandez	<i>Alvaro Hernandez</i>	22465 SE 297TH BLACK DIAMOND, WA 98010		2/22/11
LYNN J. WARD	<i>Lynn J. Ward</i>	22210 S.E. 295th pl Black Diamond WA 98010		2/24/11
Ruth M Ward	<i>Ruth M. Ward</i>	22210 SE 295th PL BLACK DIAMOND, WA 98010		2/24/2011

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
SHEILA HOEFIS	<i>Sheila Hoefis</i>	23204 SE 312 th ST	I believe the hearings were assigned to you	2/15
Brent Miller	<i>Brent Miller</i>	23210 SE 312 th ST		2/15
SHERI MILLER	<i>Sheri Miller</i>	23210 SE 312 th ST	I am hopeful you will show that you represent your constituents	2/15
Brian Hoefis	<i>Brian Hoefis</i>	23204 SE 312 th ST		2/27
NICHOLAS PETERSON	<i>Nicholas Peterson</i>	23202 SE 312 th ST		2/27
John Gollnick	<i>John Gollnick</i>	30458 227 PL SE		2/28/11
Janet Robinson	<i>Janet Robinson</i>	31109 230 th PL SE		2/28/11
DON KAISER	<i>Don Kaiser</i>	31139 230 th PL SE		2/28/11
THERESA ROBERTS	<i>Theresa Roberts</i>	31139 230 th PL SE	LISTEN TO YOUR CONSTITUENTS	2/28/11
Laura Shirron	<i>Laura Shirron</i>	22920 SE 312 th ST		2/28/11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
Robert Byrd	<i>Robert Byrd</i>	32633 1st Ave Black Diamond, WA 98010	Black Diamond, WA 98010	2/22/11
Vernon Gibson	<i>Vernon E. Gibson</i>	P.O. Box 58, Black Diamond, WA 98010	Black Diamond, WA 98010	2/23/11
Jeanne Riggs	<i>Jeanne Riggs</i>	32709 6th Ave	Black Diamond	2/25/11
Bill McDermond	<i>Bill McDermond</i>	32632 - 1st Ave	Black Diamond, WA 98010	2/28/11
Mary Ann McDermond	<i>Mary Ann McDermond</i>	32632 1st Ave	Black Diamond WA 98010	2/28/11
George Byrd	<i>George Byrd</i>	32633 1st Ave	Black Diamond WA 98010	2/28/11
Gene Montes	<i>Gene Montes</i>	P.O. Box 190	Black Diamond WA 98010	2-28-11
Yvonne Montes	<i>Yvonne Montes</i>	P.O. Box 190	Black Diamond WA 98010	2-28-11
REINHOLD	<i>REINHOLD</i>	70. BOX 981 BLACK DIAMOND WA 98010	WE LIVE DIRECTLY NEXT TO YARROW BAY TRAIL	2-28-11
AMPARO FAMILIS	<i>Amparo FAMILIS</i>	P.O. Box 981, Black Diamond, WA		2-28-11

Petition to Repeal Black Diamond MPD Approval Ordinances

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Printed Name	Signature	Address	Comment	Date
BERKHEIMER GLORIA	<i>Gloria Berkheimer</i>	P.O. Box 981 Black Diamond 22710 S.E. 329th St WA 98010		2-28-11
JAMES JACOBSON	<i>James Jacobson</i>	32819 222 6th Pl. SE Black Diamond 9800		2-28-11
LINDA JACOBSON	<i>Linda Jacobson</i>	32819 227th Pl SE Black Diamond 98010		2/28/11
SEAN KHAS	<i>Sean Khas</i>	22518 SE 325th St Black Diamond WA 98010		2-28-11
THOMAS K. BROOKS	<i>Thomas K Brooks</i>	22421 SE 329th St Black Diamond WA 98010		2/28/11
MERRIBETH BROOKS	<i>Merribeth Brooks</i>	22421 SE 329th St Black Diamond WA 98010		2/28/11
DEMMIS LOGUE	<i>Demmis Logue</i>	22415 SE 329th St Black Diamond WA 98010		2/28/11
HAROLD HUTCHIN	<i>Harold Hutchin</i>	22327 SE 325th Pl Black Diamond WA 98010		2/28/11
VIOLA TEASLEY	<i>Viola Teasley</i>	22331 SE 328th Pl Black Diamond WA 98010		2/28/11
WILLIAM TEASLEY	<i>William Teasley</i>	22331 SE 328th Pl Black Diamond WA 98010		2/28/11

**Before the City of Black Diamond Hearing Examiner
Hearing on Development Agreements
Regarding Replies to Responses
August 19, 2011**

The following replies are keyed to responses in the identified exhibits.

Reply: Yarrow Bay Exhibit 209, pp 3-5

Re: Section 3.1

Issue: Control of Development Agreement over prior agreements in the event of conflict.

Yarrow Bay misunderstands my response comments, claiming that I allege conflicts with prior agreements. I did not contend that there were any conflicts although they might exist. My comments are reproduced here in part:

The Development Agreements cannot supersede the requirements of prior agreements that involve third parties without their consent. Unless the agreement in question states otherwise, all parties to joint agreements rely on joint performance.

The Development Agreements would effectively amend prior agreements by establishing control of the prior agreements by the Development Agreements in the event of conflict. As discussed above, all parties would have to agree for multi-party agreements. With respect to all prior agreements, including two party agreements, the Development Agreements cannot repeal or amend prior agreements if the prior agreements were entered into by legislative action notwithstanding belief by Yarrow Bay and City Staff that there are no conflicts. To do so requires legislative action by the City. If this provision is to remain then the Development Agreements are not complete until the consent of all parties to all prior agreements cited in the Development Agreements is obtained. In addition, with respect to all agreements, legislative action by the City Council is required to give the Development Agreements controlling authority over the past agreements. The Examiner should remand the Development Agreements to City Staff to resolve conflicts or obtain agreement by third parties.

Yarrow Bay maintains that there are not any conflicts because the MPD ordinance said there aren't any. This is an obvious non-sequitur. There may well be conflicts yet to be revealed. And third parties are not bound by the MPD ordinances. Yarrow Bay asserts that third parties are not affected by the terms of the clause in question – only matters between the City and Yarrow Bay. They fail to address the fact that all parties to a multi-party agreement rely on performance by all other parties unless the agreement provides otherwise.

Yarrow Bay is adamant that there are no conflicts. In that case the clause in question is not needed and should be removed to prevent future confusion. Otherwise, conflicts should be resolved now.

Reply: Yarrow Bay Exhibit 209, p 16

Re: Section 9.1

Issue: Failure to include a plan for providing required open space in Lawson Hills

The MPD requirement for “a plan for providing the acreage” clearly means a strategy for achieving the objective. Waiting to see what happens is not an acceptable plan. A “plan for providing the acreage shall be provided in the Development Agreement” cannot be reasonably interpreted to mean that “a statement that the acreage will be provided shall be included in the Development Agreement”. But that is the essence of what has been included.

Yarrow Bay will be obligated to follow the land use designations in the MPD ordinance and Development Agreement. Yet somehow they expect the required additional acreage to appear before the final Implementing Project. This is not a plan to achieve the additional acreage in any reasonable sense of the word.

The Lawson Hills Development Agreement should be remanded to City Staff for incorporation of a viable plan to provide the required acreage.

Reply: Yarrow Bay Exhibit 209, pp 18-19

Re: Sections 9.9.1 and 9.9.2

Issue: Requirement for specificity in when open space must be dedicated and the mechanisms for protection

The following comments were provided in Exhibit 75:

The Villages Condition 152 and Lawson Hills Condition 156 require that the Development Agreements specifically identify “when open space must be dedicated”. The requirement for specificity demands either a time-line or identification of discrete events that immediately precede open space dedication.

The Villages Condition 153 and Lawson Hills Condition 157 require specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.

Yarrow Bay argues that Section 9.1, 9.9.1 and 9.9.2 satisfy these conditions when read together. The following is in reply to that assertion:

Section 9.1 This section identifies the amount of open space but does not identify when it must be dedicated.

Section 9.9.1 Yarrow Bay asserts that “Section 9.9.1 provides that ownership of sensitive areas and buffers is governed by BDMC 19.10.150(B)(1), which authorizes three different methods of ownership but requires a designation at time of final plat or binding site plan recording”.

There is no mention of BDMC 19.10.150(B)(1) in Section 9.9.1. Regardless, the cited code has nothing to do with identifying specifically which open space will be protected by what method – it gives a menu of methods. As to when, the cited code merely refers to recording sensitive areas on plats and short plats.

Section 9.9.2 Yarrow Bay argues that “Section 9.9.2 provides for the ownership and timing of dedication for non-sensitive area open space” by the fact that the only recreational areas dedicated to the City will be regional parks which would be dedicated to the City at the time of an implementing project. Besides lacking specificity, there is no mention of what mechanism will be use to protect other open space such as natural areas, stormwater ponds, and infiltration areas.

Yarrow Bay fails to meet the requirements of The Villages MPD Conditions 152 and 153 and Lawson Hills MPD Conditions 156 and 157. Both Development Agreements should be remanded to City Staff to add the required language.

Reply: Yarrow Bay Exhibit 209, pp 19-20

Re: Section 9.9.3

Issue: Public access to privately-owned parks and trails

Before proceeding with the discussion, it is noted that the requirements of The Villages MPD ordinance and the Lawson Hills MPD ordinance are different.

The Lawson Hill MPD condition 92 requires:

The Development Agreement shall include provisions to define which parks and trails facilities will be public and which shall be private. The Agreement shall also include language to guarantee public access to privately-owned parks and trails facilities. [Emphasis added]

The Villages MPD condition 94 requires:

The Development Agreement shall include language authorizing public access to parks and trails facilities.

Yarrow Bay suggests that these two conditions be read together and then concludes that all that is required is that there be “some authorizing language in the Development Agreements”.

The two ordinances cannot be interpreted together. The MPDs are separate and the MPD authorizing ordinances are separate. The above emphasized sentence in the Lawson Hills ordinance is quite clear in its meaning and intent: there must be language that guarantees access to privately-owned parks and trails facilities. The public cannot be denied access.

Yarrow Bay cites BDMC 9.86.230 as confirming the “City's existing authority to put reasonable limitations on public access, including but not limited to, hours of operation or the ability to host private events”. The language relied on provides in part:

Such rules and regulations may include the establishment of hours during which any park or portion thereof as designated by signs located within the designated portion, shall be closed to the general public; such closures may be for reasons of public safety, welfare and convenience, or for reasons of park maintenance.

The City has no authority to apply this code to private parks. If applied to private parks it would allow closure of parks to “the general public” which would include the park owners, and would regulate park owners’ access to their own parks. An obvious exception would be closing for public safety under code that permits closing any property for that reason.¹

The Villages MPD Ordinance condition is not as strongly worded as the Lawson Hills MPD Ordinance condition. Nevertheless, it unequivocally calls for language that authorizes public access to parks and trails facilities. It does not differentiate between public and private but the

¹ Yarrow Bay relies on municipal code in this instance when they assert that the MPDs override municipal code elsewhere in their arguments.

condition would not have been included if it meant public only – the public has access to public parks and trails by definition. Therefore this ordinance condition should be construed to also require public access to privately-owned parks and trails.

Adding authorizing language to the Development Agreements would violate the MPD conditions.

Both Development Agreements should be remanded to City Staff to incorporate the proper required language.

Reply: Yarrow Bay Exhibit 209, pp 23-24 and City Exhibit 217²

Re: Section 13.6

Issue: Scope of requirement to outline exact terms and process for fiscal analysis and fiscal impact evaluation

Reply to Exhibit 209

Exhibit 209 contains Yarrow Bay’s response to my written comments in Exhibit 62 in which I discuss the deficiencies in the Development Agreement Section 13.6. One of the deficiencies is failure meet the requirements of MPD Conditions 156 (The Villages) and 160 (Lawson Hills).

The conditions require in part:

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement ...

Yarrow Bay misinterprets or misrepresents a key statement in my comments. They highlight part of a sentence that says that the conditions do not require that every detail of the fiscal analysis be included in the Development Agreement and omit the rest of the sentence by use of an ellipsis.

The rest of the sentence is “but it does require that the ‘exact terms and process’ be summarized”. The key word is “exact”. The fiscal analysis methodology has an overwhelming number of areas where the terms and/or process are not exact. Most significant processes and

² Exhibit 217 was entered and referenced by the City’s Exhibit 218. Replies to the remainder of Exhibit 218 are submitted separately.

parameters were left to future determination by the analyst or by negotiation between Yarrow Bay and the City Staff.

Yarrow Bay also makes an unsupported assertion that the fiscal analysis process was drafted and agreed to by the City's fiscal consultant and Yarrow Bay's fiscal consultant. There is no evidence presented by Yarrow Bay that fiscal consultants drafted and agreed to the fiscal impact analysis independent of other persons. Nor were they both identified and vetted as experts. Nor was there any expert testimony and therefore no cross examination.

Reply to Exhibit 217

The City entered a declaration by a financial consultant, Mr. Randall Young, in the form of a reply to my comments. Mr. Young bases his reply almost entirely on his contention that almost none of the processes should be defined in detail because circumstances change and the state-of-the-art improves. His declaration heavily criticizes any exception that I took to lack of definition in the process. His entire declaration is a testimony to how much of the analysis is left to judgment and how little he would wish to define in advance. This is the problem – the MPD calls for exact terms and processes and he would prefer to leave a very significant amount for future definition. He relies on assumptions that the City will use the services of experts to both negotiate future decisions with the developers and to review results. There are no such requirements expressed in the Development Agreement specification of the fiscal analysis process. In defending deferral of definitions he states the following:

... [T]he City has engaged an independent expert to review the proposed decisions, and to advise the City's Designated Official to insure that the ultimate decision is the best interest of the City. In addition, the City's expert will provide peer review of the results of the fiscal analysis to ensure that it is consistent with the City's best interests, and was prepared using practices, sources and methods that are acceptable to the City.

The fiscal impact analysis section does not specify a requirement that the City engage independent experts to review the proposed decisions that are deferred to the designated official. Nor is there an agreement that the analysis results will be reviewed and blessed by an independent expert. In any case, the Development Agreement must set the exact terms and process to be used by whomever will perform the analysis.

Much of Mr. Young's declaration is devoted to the fact that I am not an expert in the field of Municipal fiscal impact analysis. To that I will agree. However, I do have considerable relevant experience.

My biographical sketch is attached. My education background includes a BS degree in Applied Mathematics from Georgia Tech in 1958 (a forerunner of Computer Science) and an MS in Management from MIT under a Sloan Fellowship in 1976. I had 33 years of experience in the aerospace industry of which 26 were in supervisory, management and executive positions. I managed several large development and production programs with budgets of hundreds of millions of dollars. I retired as Chief Engineer of the Electronics Systems Division, with program responsibilities for operations of the former Boeing Electronics Company, functional responsibility for the company's 2,000 electrical/electronic design engineers, and engineering responsibility for development, maintenance, and modification of large land-based and airborne systems including the Airborne Warning and Control System (AWACS).

Throughout my career I had extensive experience in cost estimation, a pre-requisite for bidding and managing large military contracts. In addition, my technical background began with software development for modeling complex physical systems. As a Sloan Fellow I was educated in financial estimating and financial control systems including the use of system modeling for dynamic social system prediction. My thesis was an analysis of the effects of different organizational structures and required the development and exercise of a detailed social system dynamic model.

This background is directly relevant to the methodology of Fiscal Analysis. Parametric modeling is used extensively in cost estimation. Financial estimating, when properly done, uses all the techniques of social system modeling including parametric estimation. The principles of a disciplined approach are well known. In parametric cost estimation and system modeling the parameters and system interactions have to be developed through extensive collection and reduction of historic data from directly relevant experience. One should not develop parameters and "adjustment factors" through judgment or negotiation unless absolutely necessary, and then only with full justification so that the approach can be independently verified (shown to meet

specifications). On most military programs in which I was involved, estimating methods had to be verified and any estimating parameters had to be validated (proven) to the customer, even on fixed price proposals. Case study analysis was one method but the case experience had to be a close match to the proposed program or proposed program change. Any differences had to be understood.

In his conclusions, Mr. Young states: “Mr. Edelman admits that the methodology’s ‘exact terms and process’ can be summarized by the Development Agreement, and he quotes the MPD condition that says this information should be outlined”. This is hardly an admission. The words “outlined” and “summarized” are synonymous in this context. That we agree on. Apparently Mr. Young’s quarrel is with the word “exact”. The requirement is to summarize the exact terms and process of the fiscal impact analysis in the Development Agreement. The exact terms and process cannot be summarized unless they exist.

Mr. Young never identifies his interpretation of the requirement for “exact” terms and conditions. Whatever his interpretation, the fiscal analysis description seemed to be a hybrid where the terms are reasonably well defined but processes are generally undefined (or ill-defined). Much is left for the judgment of analysts and future consultants who may or may not materialize and who may or may not be well qualified.

The example of determining the size of the police force required for a future Black Diamond was discussed briefly in Exhibit 62. In reply to the City’s response I will carry this further to illustrate that approaches to defining precise processes are not impossible or require esoteric approaches. I don’t do this because I purport to be an expert or because I have the ultimate approach – I do it to illustrate that a plain language interpretation of the MPD requirement is not unreasonable.

The case study/comparable city method is the method the Development Agreement specifies to be used for estimating police costs. Some of the pitfalls were discussed in Exhibit 62. It is a viable approach only when comparable cities exist. Mr. Young describes the complexities and

why expert analysis is required with that methodology.³ Another approach and one more easily defined is to start with a common cost estimation tool -- the use of metrics from readily available and reliable sources. The fiscal analysis section could have defined the police force estimate as being a parametric estimate based on the average officer-to-resident ratios for municipal police departments using the latest published statistics from the Bureau of Justice.⁴ Indirect costs and capital equipment costs could be derived from direct estimates of requirements to support the estimated number of officers required and to arrive at the total costs.⁵

The exact terms and process for performing the fiscal analysis are required to be specified and can be specified. Processes (methodology) should be selected and described in detail. Methods for evaluating key parameters should be specified and not deferred to future judgment and negotiation. Methodologies that require expert judgment should be avoided. If such methodologies must be used then the Development Agreements should require the participation of independent qualified experts to verify and validate the approach.

Reply: Yarrow Bay Exhibit 209, pp 25-27

Re: Section 15.1

Issue: Attempt to vest MPDs on two different dates

YB response to the vesting argument in Exhibit 64 overlooks the fact that each MPD application was and remains a single proposal. Each MPD proposal was first the subject of the MPD ordinance and now is the subject of a proposed Development Agreement. Under the case law I cited, Yarrow Bay does not have the option of having an MPD proposal vested to one set of laws for the initial decision (the MPD ordinances) and then vest to another set of laws for a latter decision (the Development Agreement). The case law makes clear that a developer cannot pick and choose in this manner. It's "all in" or "all out." Yarrow Bay's efforts to have the initial decision for its proposals judged by laws in effect in 2009 and the second set of approvals judged by laws in effect in 2010 directly conflicts with the holding of these cases.

³ One simple reason is the difficulty in finding a rural community in the state that has experienced the growth planned for Black Diamond and yet is situated remote from major transportation facilities.

⁴ Available on-line at <http://bjs.ojp.usdoj.gov/content/pub/pdf/lpd07.pdf>.

⁵ As a point of interest, that would give a level of 10 officers for our current population of 4200 to achieve the national level of service average..

The Yarrow Bay MPDs were vested and remain vested to the laws in effect at the time their applications were deemed complete, shortly after the moratorium was lifted in 2009.

Reply: Yarrow Bay Exhibit 209, p 28

Re: Exhibit L

Issue: Failure to update Land Use Plan as required by Lawson Hills MPD condition 151

The essence of Yarrow Bay's argument is that Lawson Hills Condition 151 should not have been approved by the City Council because the Land Use Plan had already been updated. Yarrow Bay takes issue with the following MPD condition:

Prior to approval of the Development Agreement, the legend on Figure 3-1 (Land Use Plan) must be clarified to differentiate between wetlands, their associated buffers, other critical areas and open space, trails and parks and to incorporate the additional required open space area.

Yarrow Bay asserts that the legend had already been clarified when the MPD ordinances were approved with that condition in it. However, there is no designation of wetlands in the legend although buffers are designated so one is able to find the wetlands despite this error. However, the MPD ordinance called for the "additional required open space area". What was identified was some of the required additional open space that L1 and L2 provided. The rest has not been identified. Until it is identified and the Land Use Plan is revised the Development Agreement does not meet the condition.

Reply: Yarrow Bay Exhibit 209, pp 28-29

Re: Exhibit N

Issue: Adequacy of security for the Funding Agreement if developer defaults

Exhibit 139 was responded to in Exhibit 199. Yarrow Bay did not reply to my response except on the issue of the MDRT and adequacy of security.⁶

Their sole comment on the MDRT was to refer to the following sentence in a three page letter that addressed mine hazards:

⁶ I am expecting that the City will send a report by Mr. Young as a reply, which I will not be allowed to address until the closed record hearing.

It is also our opinion that the city should consider utilizing a process similar to the one developed by the City of Issaquah for reviewing submittals for Issaquah Highlands, including procedures for evaluating abandoned mine hazards reports. We reviewed submittals as a member of Issaquah's MDRT and found this process to work very well.

An endorsement of a “similar” concept used in a different jurisdiction from a mining consultant is hardly a significant reason to approve such an important organizational concept of doubtful legality.

Regarding my supposed assertions, I did not allege that the City Staffing Shortfalls and MDRT Costs did not include the furniture, fixture, and equipment costs associated with the funded City Staff positions. That is a faulty interpretation. The following are my comments that were apparently misinterpreted:

The security specified in the Funding Agreement is an estimated amount required solely “to assure that, in the event of Developer’s default, the City Staffing Shortfalls and MDRT Costs provided under this Agreement are timely paid to the City”. The Development Agreement and the Funding Agreement are silent on the other obligations that the City will incur in the event of default. These include such costs as operation and maintenance of facilities provided by the developer to mitigate impacts. These costs could be an order of magnitude larger than the amount of security in the agreement.

Apparently they believe that only the cost of MDRT facilities that Yarrow Bay is required to pay for will impact the City’s obligations in the event of a default. They ignore how MPD facilities will be affected. Examples might be operation and maintenance of facilities necessary to measure runoff to ensure that phosphorous levels do not exceed mitigation requirements. Or protection of land that has been cleared and default occurred before re-vegetation was completed. Some obligations may be covered by bonding, some not. The City’s obligations in the event of default could easily exceed two million dollars.

Reply: Yarrow Bay Exhibit 209, pp 31-34

Re: Deferral of decisions

Issue: Ability to delegate certain legislative powers

Yarrow Bay argues that the Development Agreements’ proposed deferral (or delegation) of any authority to City Staff is lawful because it is merely the delegation of typical permit processing functions, not delegation of legislative power. The following is a discussion of areas where the

legislative body, the City Council, would be not be delegating typical permit processing functions but rather would be delegating its legislative powers.

- Fiscal Impact Analysis The key parameters used in the fiscal impact analysis and the selection of comparable cities for study are not laid out in the Development Agreements but rather are deferred for later decisions by the developer and City Staff. This is not simply a matter of specifying the specific process (or in the words of the condition, the “exact terms and process”) for determining the parameters and comparable cities and then delegating the authority to the staff to follow the exact guidelines and procedures. Rather the Development Agreement would delegate determination without specifying the strict guidelines required by case law.
- Access to Parks and Trails This is another case of delegation without guidelines. Yarrow Bay contends that this is cured (or would be cured) by referencing BDCC 9.86.230. As discussed in the reply to comments on failure to meet the public access to privately-owned parks and trails, BDMC 9.86.230 applies only to public access to City parks, not private parks. The legislative history clearly shows this fact. The code was passed by Ordinance 09-918 which references only “City parks” throughout its recitals and in its title “An ordinance of the City Council of the City of Black Diamond, King County, Washington, amending Chapter 9.86 of the Black Diamond Municipal code to update the provisions dealing with prohibited conduct in City parks”.
- Changes to the Funding Agreement The Designated Official has delegated authority to approve amendments to the Funding Agreement by Section 10.4.2. The delegation is made by designating such amendments in Section 15.7 to be minor amendments. No guidelines are provided.

Under case law, these are improper delegations. The Development Agreements should either be revised to remove the delegations or to provide strict guidelines.

Reply: Yarrow Bay Exhibit 209, pp 36-40

Re: Community Facility Districts (CFDs)

Issue: Requirement for developer to get CFDs to fund adequate MPD mitigation measures

Yarrow Bay correctly states that there is no requirement in the MPD ordinances that a CFD be used. However, they have conditioned timing of fire mitigation measures on CFD approval.

Construction. The Master Developer shall construct or cause to construct, the satellite fire station designed pursuant to subsection D(i) above on the site selected pursuant to subsection D(ii) above as credit against existing or future fire mitigation or impact fees. Master Developer shall cause the letting of a contract for construction of such fire station as follows:

- a. If the construction of the satellite fire station is financed pursuant to a Community Facilities District (CFD) established under RCW Ch. 36.145, the construction contract shall be awarded no later than the time of issuance of a Certificate of Occupancy for the 500th Dwelling Unit; or
- b. If the construction of the satellite fire station is not financed pursuant to a Community Facilities District established under RCW Ch. 36.145, the construction contract shall be awarded no later than the time of issuance of a Certificate of Occupancy for the 750th Dwelling Unit.

Section 13.4(D)(iii)

Thus, Yarrow Bay will delay construction of the fire station unless they are successful in getting CFD financing. Further, Yarrow Bay has stated through their attorney that they have insufficient financing sources to undertake the MPD required infrastructure projects without CFDs. Exhibit 75, pp 17-18. Yarrow Bay has objected to these statements on the basis of relevance. In response, these statements are relevant to the financial ability of Yarrow Bay to carry out its obligations under the Development Agreement and go to the heart of whether or not the City should approve a long term agreement that could have serious financial and environmental consequences without adequate financing.

If CFDs are simply another source of financing and there is no requirement, explicit or implied, that they are needed to fund infrastructure then there is no need to include reference to them in the Development Agreement. There should certainly be no condition in the Development Agreement that implies that the City must approve a CFD to get a fire mitigation measure on time.

Reply: Yarrow Bay Exhibit 209, pp 44-46

Re: Non-compliance with BDMC

Issue: Failure to identify certain specific information in Development Agreements as required by municipal code

I commented that the Developments Agreements fail to identify the sizes of the recreational facilities and trails as required by BDMC 18.98.150(B). Yarrow Bay responded that the sizes of recreational facilities are defined in Exhibit "E" which contains the City's Parks, Recreation, and Open Space Plan. Exhibit "E" is incorporated by reference in Section 15.7 which provides: "The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this agreement."

The cited Parks, Recreation, and Open Space Plan states the purpose and scope of the document.

This Plan is a guide for capital investments in property, facility, and programs for the planning period 2008-2013. It represents an effort to address maintenance, safety, aesthetics, and service standards for existing parks as well as acquisition and development of future parks. It also provides a prioritized list of park and recreation projects and should be used as a guide when developing citywide policy and documents affecting parks and recreation now and into the future.

The plan is self-described as a guide and does not set the requirements that must be implemented. Far from it. The entire guide goes far beyond what the City and Yarrow Bay have expressed agreement to commit to by contract. Further, the plan does not specify the sizes of trails except for one three mile trail.

Yarrow Bay states further that the sizes are defined in Table 9-5 and Section 14.

For example, per Table 9-5 of The Villages Development Agreement, the Master Developer shall provide "a minimum of 1 Adult Baseball Diamond per every 2,400 dwelling units constructed. Section 14.0 defines an "Adult Baseball Diamond" as a "baseball field with infield, grass outfield, backstop, wing fences and dugouts sufficient to meet fast pitch college/high school requirements. Does not include outfield fences or artificial turf" Thus, the sizes of recreational facilities are in fact described in the Development Agreements.

This description does not come close to describing the size of the facility unless one believes that Safeco Field and Enumclaw High School have the same size baseball field.

Yarrow Bay also responds that sizes of trails are described in Section 9.7. This section describes trail standards but does not describe the more important measure of trail sizes – their length. This is like saying that the width of a lot defines its size.

The Development Agreements fail to meet the requirement of BDMC 18.98.150(B) and must be revised to be compliant with the municipal code before being presented for consideration to the City Council. The Development Agreements should be remanded to City Staff to incorporate the needed revisions.

Respectfully submitted,

Robert Edelman
29841 232nd Ave SE
Black Diamond, WA 98010

Bob Edelman
Biographical Sketch

I was born in Fort Meade Maryland in 1936 into an army family. My father had joined the army at age 15 and rose through the ranks in World War II to the rank of Lt. Colonel. As an army brat I lived all over the United States, graduating High School in Metuchen, New Jersey.

I went to Georgia Tech while working as a co-op student at Delco Products in Dayton, Ohio. I graduated in 1958 with a BS in Applied Mathematics, the forerunner of Computer Sciences. I joined Boeing as a software engineer. In 1964 I was promoted into management of data reduction and later flight simulation organizations. In 1966 I entered the world of hardware design engineering and real time software design, eventually in charge of development and production of ground systems and B-52 carrier aircraft equipment for the SRAM missile system. In 1975 I was selected for a Sloan Fellowship at MIT where I received an MS in Management Science.

After return from MIT in 1976, I held various program management positions for military and space contracts and later executive management positions. These included program manager of B-1 Aircrew Training Equipment (primarily flight simulators), deputy program manager for test and evaluation of the Air Launched Cruise Missile, deputy program manager for production of the Inertial Upper Stage rocket (IUS), manager of Small ICBM programs and Peacekeeper programs, manager of the President's Airborne Command Post upgrades, program manager of various classified programs, manager of ALCM and SRAM system upgrades, and Chief Engineer of the Electronics System Division. In the latter position I was responsible for all remaining development and production activities of the Boeing Electronics Company after it was disbanded, functional manager of Boeing's 2000 electrical/electronic design engineers, and, wearing my third hat as Division Chief Engineer, engineering responsibility for development, maintenance, and modification of large land-based and airborne systems including the E-3 Airborne Warning and Control System (AWACS), Navy E-6 Mercury airborne command post, military electronic products, and the Commercial Avionics Systems organization. I retired early in 1992, primarily to reduce stress after requiring heart surgery two years earlier. (The stress reduction part isn't working too well but now it's my own choice.)

After retirement I became involved in community and civic organizations including a number of political and initiative campaigns. In 1996 I volunteered to do campaign finance investigations for the Freedom Foundation in Olympia. Some work I did independently, primarily as a watchdog of the PDC. That included a successful suit of the PDC to force changes to campaign finance regulations that had been based on faulty construction of the RCW. That suit culminated in a 6-3 State Supreme Court decision in my favor.

I was later recruited to form and direct a new Voting Integrity Project (VIP) at the Evergreen Freedom Foundation which I accepted as a voluntary position until a bright young attorney, Jonathan Bechtle, was recruited to help and later direct the project full time. (Jonathan is now CEO of the foundation.) The VIP project was able to accomplish several reforms in State elections systems.

Other activities after retirement included Vice President and board member of the Lake Sawyer Community Club, water quality studies of the lake in cooperation with King County, current owner and operator of the Lake Sawyer Weather Station (www.lakesawyerweather.com), , and president of Toward Responsible Development, a civic organization. A peripheral interest has been the issue of climate change. I did field research in support of site location evaluation of the US Historical Climate Network and was cited in a Senate report as one of “700 prominent international scientists” on the subject – a real stretch to say the least.

I am married to Janie Edelman, who is very active in community activities and an accomplished quilter. I have four children and five grand-children. My son, Ed, owns and operates a company that specializes in outdoor and weather equipment. His business, Ambient Weather (www.ambientweather.com) located in Phoenix, was named one of the 500 fastest growing businesses by Inc. Magazine three years in row. My other son, David, is a teacher, writer and poet living in Seattle, and my daughter, Laura, is a Naturopathic physician practicing in Bellevue. My step-daughter, Melissa, is a licensed pharmacist’s assistant in Chelan.

I take greatest pride, other than that in my wife and family, with my time as a long distance runner. At age 51 I ran in the Vancouver International Marathon; with a time of 3:19, which qualified me for the Boston Marathon. I ran Boston the following year – an amazing experience that I couldn’t pass up, even with a knee injury. That year I competed in 5K and 10K races, often medaling (albeit in the old guy’s age bracket) until heart surgery that winter. (Dr. Sheehan was right about the protective of effects of distance running – the doc said they love to operate on healthy people because it makes them look good.) My favorite recreational activities are cross-country skiing, travel, and photography.